TABLE OF SECTION CHANGES MADE IN THE FLORIDA STATUTES AS AMENDED, REPEALED, TRANSFERRED OR ADDED BY THE 1963 LEGISLATURE

Key: "A" indicates sections amended; "R" indicates sections repealed; "T" indicates sections transferred; "N" indicates sections added.

Section No. Statutes	Key	Chapter No. 1963 Law
1.01(9)	A	63-572
7.22	A	63-200
7.26	A	63-200
7.26	A	63-391
7.43, 7.47	A	63-200
7.50	A	63-200
7.501	N	63-200
11.01	A	63-400
11.031(4)	R	63-572
11.11	A	63-232
11.13(2), (3)	A	63-400
11.15(7)	N	63-293
11.151	N	63-328
11.17	A	63-232
11.18	R	63-232
11.21(5)	A	63-400
11.22(1), (2)	A	63-400
13.01(3)	A	63-400
13.08(7)	A	63-400
13.24	A	63-400
13.63(2)	A	63-400
13.75	R	63-39
13.76	N	63-492
14.20	A	63-400
16.19, 16.20	A	63-2
16.22-16.24	A	63-2
16.44(5) (c)	R	63-517
16.44(9)	A	63-517
16.46(2)	A	63-517
16.501(1), (2)	A	63-517
16.51	A	63-400
17.15	R	63-400
18.10(4)	N	63-114
*19.13	R	63-294
*19.15-19.18	R	63-294
*19.20, *19.21	R	63-294
*19.24	R	63-294
21.19(8)	A	63-536
25.072	N	63-33
25.073	N	63-538
25.311, 25.381	A	63-570
25.391, 25.401	R	63-570
26.011(3)	A	63-400
*26.16(1)	A	63-470
*26.162	N	63-470
26.36	A	63-435
*26.36	A	63-470
*26.362	N	63-470
26.43	A	63-572
26.47	A	63-400
26.47	A	63-572
26.52	A	63-400
27.07	R	63-572
27.20	A	63-439
27.271(4)	A	63-400
27.32	N	63-516
27.33	N	63-440
27.50-27.54	N	63-409
27.55, 27.56	N	63-410
27.57, 27.58	N	63-409
28.24	A	63-45
28.241(1)	A	63-47
28.241(5)	A	63-43
29.04(1)	A	63-400
29.10	A	63-394
30.231	N	63-41
30.31(1)	A	63-170
32.06	R	63-572
33.01	A	63-4
33.11	A	63-559
33.12	R	63-559
34.01(5)	R	63-559
34.041(2)	A	63-559
34.17	R	63-559
34.21	Reenacted	63-572
34.23	N	63-266
35.17	R	63-570
36.06	A	63-400
36.06	A	63-572
37.04	R	63-572
38.02, 38.05	A	63-559
38.07	A	63-572
38.08	A	63-559
38.09	A	63-572
39.02(1)	A	63-12
39.11, 39.12	A	63-449
39.14	A	63-559
40.11	A	63-217
40.13	A	63-400
42.04	A	63-168
43.01	R	63-403
43.011-43.014	N	63-403
43.02	R	63-403
43.08, 43.09	A	63-521
43.11	R	63-521
43.13	A	63-521
44.01-44.11	N	63-365
46.01	A	63-572
47.35	A	63-241
49.01	A	63-387
49.04	A	63-49
49.06	A	63-50
55.611	N	63-144
56.05(2)	R	63-559
65.08	A	63-145
72.07, 72.09	A	63-449
72.091	N	63-449
72.10, 72.12	A	63-449
72.13	A	63-211
72.14	A	63-449
72.34	A	63-273
73.10(3)	A	63-159
73.14	A	63-559
73.16	A	63-281
74.05	A	63-505
74.10	A	63-282
74.141(1)	A	63-242
75.08	A	63-559
78.071	N	63-152
79.11	A	63-559
81.28	R	63-559
82.19	A	63-559
83.18, 83.27	A	63-559
83.38	A	63-559
84.01-84.35	R	63-135
84.011-84.361	N	63-135
86.06(8)	A	63-559
87.06	A	63-559
90.141	N	63-508
*92.16, *92.17	A	63-294
97.041	A	63-408
98.082	N	63-185
98.091	A	63-268
98.201	A	63-481
98.311	A	63-184
99.012	N	63-269
99.021(1) (j)	N	63-269
99.021(2)	A	63-66
99.041	A	63-99
99.061(3)	A	63-502
99.161(14)	N	63-520
99.172	A	63-255
*100.041(1)	A	63-479
100.112	N	63-229
101.58	A	63-256
101.59	R	63-481
101.63	A	63-186
101.691(1)	A	63-484
101.693	A	63-190
102.012(1), (7)	A	63-53
102.021	A	63-400
103.071, 103.102	A	63-400
103.111(2)	A	63-66
103.111(9)	N	63-199
103.121(1) (g)	A	63-97
104.012	N	63-198
104.27	A	63-279
104.27(9)	A	63-559
110.01	A	63-279
110.04(4)	A	63-400
110.091	N	63-432
110.15	T	by Stat. Rev. Dept. from 111.10
111.10	T	by Stat. Rev. Dept. to 110.15
112.061(1)	A	63-5
112.061(1) (a)	N	63-192
112.061(5)	A	63-122
112.061	A	63-400
116.34	N	63-441
117.01, 117.02	A	63-138
117.07	A	63-138
117.09	N	63-138
120.021(2)	A	63-552
120.041(4)	A	63-552
120.041(5)	N	63-552
120.051, 120.061	A	63-552
122.01(4)	A	63-555
122.01(5)	N	63-555
122.02(5)	A	63-453
122.02(5)	A	63-555
122.03(5)	A	63-555
122.08(4)	A	63-555
122.10(3)	N	63-555
122.19(1)	A	63-568
122.28(3)	N	63-555
122.34, 122.35	N	63-555
123.01	A	63-462
123.02(1)	A	63-462
123.22-123.33	N	63-462
123.34-123.44	N	63-462
125.041(2)	A	63-358
125.161	R	63-572
125.47(3)	A	63-400
125.56	N	63-290
127.01	A	63-559
130.04	A	63-118
136.02(5)	N	63-112
145.031-145.11	A	63-560
145.13	A	63-560
145.14	N	63-560
153.58	A	63-94
155.07	A	63-400
156.16	A	63-512
158.03	A	63-400
160.01(2)	A	63-400
161.08, 161.09	A	63-511
167.75	A	63-333
171.04(2)	N	63-311
175.01-175.27	R	63-249
175.011-175.361	N	63-249
176.16	A	63-512
185.08	A	63-196
185.16(4)	A	63-196
185.35(1) (i)	A	63-196
185.37(3) (c), (d)	A	63-196
192.03	A	63-550
192.06(13)	N	63-541
192.062	N	63-342
192.063	N	63-432
192.31(1)	A	63-250
193.021	N	63-250
193.03, 193.06	A	63-250
193.11(1), (2)	A	63-250
193.11(3)	A	63-245
193.12, 193.13	A	63-250
193.22	A	63-250
193.221	A	63-355
193.51	A	63-167
193.62	A	63-95
195.001(2)	A	63-400
198.07	A	63-400
198.17	A	63-559
199.021	N	63-331
199.18(1)	A	63-429
200.01	A	63-550
200.02	A	63-572
200.08(1)	A	63-397
200.08(4)	N	63-397
200.10	A	63-512
200.27	A	63-430
201.02	A	63-533
201.04	A	63-488
201.04	A	63-533
201.05	A	63-488
201.05	A	63-533
201.07, 201.08	A	63-533
203.04	N	63-535
204.10	A	63-298
205.011	N	63-421
205.63	A	63-421
205.73	N	63-421
207.06	A	63-299
207.28	A	63-559
207.34	A	63-512
207.39-207.51	N	63-451
208.07	A	63-302
208.182-208.184	A	63-332
208.186	A	63-332
208.25	A	63-302
208.44(2)	A	63-302

* Dependent upon ratification of constitutional amendment.

TABLE OF SECTION CHANGES MADE IN THE FLORIDA STATUTES AS AMENDED, REPEALED, TRANSFERRED OR ADDED BY THE 1963 LEGISLATURE

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Section No. Statutes	Key	Chapter No. 1963 Law
208.48	A	63-297
208.50-208.52	A	63-297
208.57, 208.59	A	63-297
209.09	A	63-512
209.10(1)	A	63-301
210.02(1), (3)-(5)	A	63-480
210.02(8)	N	63-480
210.03(1)	A	63-486
210.05(3)	A	63-480
210.13	A	63-512
210.15(1)	A	63-486
210.16	A	63-512
212.02(3), (4), (6), (16)	A	63-526
212.03(4)	A	63-526
212.03(6)	R	63-526
212.04	A	63-526
212.05(3)	A	63-526
212.08(2)-(7)	A	63-526
212.08(8)	A	63-565
212.08(10)	N	63-526
212.16(8)	A	63-512
212.50-212.58	N	63-527
213.01-213.10	N	63-253
215.03	A	63-559
215.18	A	63-572
215.19(1), (2)	A	63-380
215.19(3) (e), (8)	N	63-380
215.20	A	63-567
215.22(21)	R	63-572
215.22(33)	A	63-496
215.26(2)	A	63-271
215.33	R	63-572
215.421	T	
by Stat. Rev. Dept. to 288.031		
215.47(2) (e), (f)	N	63-341
215.47(3)	A	63-446
215.56	N	63-335
216.041	N	63-493
216.291	R	63-412
222.13	A	63-230
222.15, 222.16	A	63-165
228.041(8), (14)	A	63-495
228.041(28)	N	63-376
228.15(1)	A	63-495
228.15(2)	A	63-400
228.15(3)	A	63-495
*229.08(5)	A	63-522
229.08(16)	R	63-225
229.091	N	63-549
229.302	N	63-246
229.303	N	63-389
229.50	A	63-400
230.201	A	63-400
230.221	N	63-532
230.23(4) (m)	N	63-376
230.23(5) (b)	A	63-376
230.23(10) (f)	A	63-376
230.23(12) (a)	A	63-376
230.23(17)	N	63-376
230.232(3) (c)	A	63-512
230.33(6) (j), (k)	N	63-376
230.33(7) (b)	A	63-376
230.33(14) (a)	A	63-376
230.33(19)	A	63-376
230.58(2)	N	63-317
230.58(2)	N	63-411
230.58(3)	N	63-445
230.58(4)	N	63-438
230.59-230.62	N	63-221
230.63-230.65	N	63-475
231.03, 231.15	A	63-376
231.151	N	63-398
231.16(2)	A	63-223
231.161	R	63-223
231.17	A	63-376
231.28	A	63-225
231.28(6)	A	63-248
231.34	A	63-376
231.351	N	63-316
231.36(3)	A	63-376
231.362	A	63-376
231.39	A	63-376
231.50	A	63-540
231.54-231.59	N	63-363
232.26	A	63-376
232.39	A	63-63
233.01	A	63-55
233.01	A	63-400
233.06	A	63-55
233.06	A	63-400
233.07	A	63-400
233.12	A	63-55
233.12	A	63-376
233.12	A	63-400
233.15	A	63-55
233.16(3), (4)	A	63-55
233.24, 233.36	A	63-55
233.37	A	63-55
233.39-233.41	A	63-55
233.46(5), (6)	A	63-55
233.48	A	63-55
233.49	N	63-373
234.03(1)-(3)	A	63-376
234.081	N	63-8
234.10(3)	A	63-376
235.31	A	63-500
235.40	N	63-221
236.02(6) (a), (b)	A	63-401
236.02(6) (b)	A	63-463
**236.021	R	63-463
236.03	A	63-495
236.04(2) (d)	N	63-370
236.04(9)	R	63-495
236.04(9), (10)	A	63-495
236.07(3) (a), (b)	A	63-413
236.07(3) (f), (5) (b)	R	63-495
236.07(3) (c), (5), (7), (8)	A	63-495
236.07(8)	A	63-529
236.074(4)	A	63-572
236.075(1)	A	63-495
236.075(2)	A	63-572
236.14	R	63-55
236.70-236.74	N	63-495
237.02(9)	A	63-376
237.02(10), (11)	N	63-376
237.04	A	63-376
237.26(4)	N	63-15
237.32(1), (3)	A	63-376
238.01(15), (18)	A	63-554
238.021	A	63-554
238.03(6)	A	63-400
238.06(4)	A	63-554
238.07(3)	A	63-554
238.07(3) (a)	R	63-554
238.07(16) (e)	R	63-554
238.07(17)	N	63-554
238.08(5)	A	63-554
238.09(3)	A	63-554
238.11(1)	A	63-554
238.19-238.30	R	63-554
238.31	N	63-554
239.011(1)	N	63-347
239.011(2)	N	63-348
239.021	R	63-572
239.11-239.13	R	63-572
239.15, 239.18	R	63-572
239.36, 239.37	R	63-572
239.371	N	63-561
239.38	A	63-543
239.41	A	63-376
239.41	A	63-543
239.42	A	63-376
239.42	A	63-543
239.43	A	63-376
239.47(1), (2), (4), (6)	A	63-376
239.51, 239.52	A	63-376
239.58	A	63-22
239.66	N	63-404
239.67	N	63-452
239.0100-239.0117	N	63-415
240.01	A	63-23
*240.01-240.28	R	63-204
*240.011	N	63-204
240.02	A	63-400
*240.021-240.121	N	63-204
240.13	A	63-572
*240.131-240.191	N	63-204
*240.201	N	63-204
*240.201	R	63-558
*240.211	N	63-204
241.401	N	63-566
241.412(2)	A	63-400
241.471(4)	N	63-537
241.621	N	63-534
242.33	R	63-231
242.331	N	63-231
242.331(2)	A	63-400
242.34-242.36	R	63-231
242.38, 242.39	R	63-231
242.391	N	63-164
242.52(2)	A	63-400
242.62(1), (3)	A	63-52
243.141	N	63-427
246.04	A	63-400
247.20	A	63-512
250.37(1)	A	63-400
250.40(3)	A	63-400
252.221	N	63-544
*253.031	N	63-294
*253.032	N	63-294
253.122(5)	A	63-512
253.124	A	63-512
*253.41	A	63-294
255.05	A	63-437
256.011	N	63-227
257.01	A	63-39
257.02	A	63-39
257.02	A	63-400
257.03-257.08	A	63-39
257.10-257.16	A	63-39
257.22, 257.23	A	63-39
257.26	N	63-39
265.13	A	63-400
272.12(3)	N	63-28
272.18(1) (c)	A	63-400
272.19(2)	A	63-400
272.19(6)	A	63-150
282.01	N	63-300
282.011(1)	N	63-226
282.011(2)	N	63-265
282.011(3)	N	63-361
282.011(4)	N	63-366
282.011(5)	N	63-373
282.011(6) (a)	N	63-369
282.011(6) (b)	N	63-471
282.011(7)	N	63-402
282.011(8)	T	
by Stat. Rev. Dept. from 603.20, 616.20		
282.011(9)	N	63-410
282.011(10)	N	63-420
282.011(11)	N	63-458
282.011(12)	N	63-477
282.011(13) (a)	N	63-476
282.011(13) (b)	N	63-497
282.011(13) (c)	N	63-442
282.011(14)	N	63-525
282.011(15)	N	63-449
282.011(16)	N	63-548
282.011(17)	N	63-561
282.011(18)	N	63-571
*282.012	N	63-524
282.02(1) (a), (d)	A	63-372
282.021(15)	A	63-514
282.021(18)-(36)	N	63-514
282.051(3) (a), (b)	A	63-514
282.051(5)	A	63-542
282.071	A	63-337
282.081(1) (b)	A	63-539
282.092	N	63-375
283.12(4)	N	63-136
283.22	A	63-141
283.25(3)	A	63-141
287.041(2)	A	63-400
288.02(2)	A	63-400
288.031	T	
by Stat. Rev. Dept. from 215.421		
288.32	N	63-459
290.01, 290.05	A	63-474
290.06(2)-(6), (8)	A	63-474
290.20	R	63-474
290.32(1), (3)	A	63-474
291.04	A	63-319
291.25, 291.26	R	63-572
292.011	N	63-572

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** Repeal limited.

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Section No. Statutes	Key	Chapter No. 1963 Law
292.04	A	63-400
292.04	A	63-572
292.05	A	63-572
292.07(3)	A	63-400
292.08	A	63-572
295.02, 295.04	A	63-124
298.14	A	63-400
298.20, 298.32	A	63-400
298.34	A	63-559
309.01(3)	N	63-423
310.03	A	63-494
310.11	A	63-44
317.01-317.010	R	by Rev. 63-175
317.011(1)-(34)	N	63-175
317.011(35)	N	63-213
317.011(36)-(61)	N	63-175
317.012	N	63-175
317.012	A	63-279
317.021, 317.031	N	63-175
317.032	N	63-7
317.041-317.111	N	63-175
317.112	N	63-14
317.121-317.211	N	63-175
317.221(1)-(7)	N	63-175
317.221(2)	A	63-436
317.233	N	63-175
317.234	N	63-175
317.235(1)-(4)	N	63-175
317.235(4)	A	63-178
317.241-317.446	N	63-175
317.447	N	63-270
317.448	N	63-9
317.452-317.761	N	63-175
317.771(1)-(3)	N	63-175
317.771(3)	A	63-131
317.781	N	63-175
317.791(1)	N	63-175
317.791(2),(3)	N	63-278
317.801	N	63-175
317.802	N	63-1
317.811	N	63-175
317.811	A	63-280
317.821-317.903	N	63-175
317.911	N	63-175
317.911	A	63-213
317.921-317.981	N	63-175
317.982	N	63-127
317.991-317.0108	N	63-175
318.05	R	63-10
318.06	A	63-400
320.04(1)	A	63-143
320.06	A	63-490
320.063	N	63-418
320.07(1)	A	63-496
320.07(1),(3)	A	63-528
320.08, 320.081	A	63-528
320.082(4)	A	63-93
320.082	R	63-528
320.084(1)	A	63-277
320.11	R	63-175
320.13	A	63-173
320.22	R	63-10
320.27(1),(2)	A	63-349
320.272(3)	A	63-512
320.42, 320.43	R	63-175
320.45-320.48	R	63-175
320.54-320.56	R	63-175
320.58	A	63-400
321.04	A	63-169
321.04	A	63-400
321.07	A	63-361
321.222	N	63-390
321.23(3)	A	63-371
322.01(7)	A	63-156
322.02	A	63-34
322.03(1)(b)	A	63-156
322.201	N	63-371
322.211(6)	A	63-38
322.31	A	63-512
323.01(7)-(9), (17),(18)	A	63-496
323.02, 323.03	A	63-496
323.031	N	63-416
323.031	A	63-496
323.04, 323.042	A	63-496
323.05(1),(2)	A	63-496
323.051	N	63-416
323.051	A	63-496
323.051	A	63-569
323.06, 323.07	A	63-496
323.08(4)	N	63-416
323.08	A	63-496
323.09	A	63-496
323.09(1)	A	63-512
323.10(1),(2)	A	63-496
323.12	A	63-496
323.13(1)	A	63-496
323.14(1)	A	63-496
323.15	A	63-496
323.151	N	63-416
323.151	A	63-496
323.151	A	63-569
323.16(1)	A	63-496
323.17-323.19	A	63-496
323.191	N	63-377
323.191(1),(4)	A	63-496
323.21, 323.22	A	63-496
323.24, 323.25	A	63-496
323.27	A	63-496
323.28(2)	A	63-460
323.28(2)	A	63-496
323.29(1)	A	63-556
323.29(3)(c)	R	63-416
323.31(1)-(3),(4), (6)-(9)	A	63-496
323.36	N	63-92
324.271	R	63-572
325.01-325.10	N	63-518
330.09(2)	A	63-572
330.32	A	63-512
331.15(1),(2)	A	63-496
333.11(1)	A	63-512
334.03(13),(19)	A	63-27
334.05	A	63-330
334.09(1)	A	63-346
334.09(1)	A	63-400
334.10	A	63-89
334.19	A	63-87
334.24(2)	A	63-174
334.26	R	63-572
335.041	N	63-252
335.13(2)	A	63-501
336.03	A	63-572
337.15(2)	A	63-512
338.20(3)	A	63-512
338.21	A	63-88
339.08(2)(d)	A	63-219
339.09(1)	A	63-385
339.30(1)(e)-(i)	N	63-90
339.30(2)	N	63-90
340.05(2)	A	63-257
340.05(2)	A	63-400
340.30	A	63-257
340.35	N	63-257
344.11	A	63-572
344.29(1)	A	63-473
348.041	A	63-400
348.50-348.70	N	63-447
348.0100-348.0114	N	63-573
349.03	A	63-400
349.05(1)	A	63-272
350.01, 350.011	A	63-279
350.05, 350.12	A	63-279
350.15-350.23	A	63-279
350.25-350.32	A	63-279
350.34	A	63-279
350.36	A	63-279
350.36	A	63-559
350.37, 350.38	A	63-279
350.43	A	63-279
350.53-350.57	A	63-279
350.59, 350.60	A	63-279
350.62-350.631	A	63-279
350.64	A	63-559
350.641, 350.66	A	63-279
350.67, 350.76	A	63-279
350.77	A	63-279
350.78	N	63-296
350.78	A	63-279
351.05	A	63-208
352.06, 352.17	A	63-279
352.22	A	63-279
354.05	A	63-57
360.10, 360.12	A	63-277
360.13	A	63-279
364.01, 364.02	A	63-279
364.31-364.33	A	63-279
365.01, 365.08	A	63-279
365.12	A	63-279
365.12	A	63-512
365.15	N	63-54
365.16	N	63-51
366.04	A	63-279
366.04	A	63-288
367.02, 367.23	A	63-279
368.02, 368.05	A	63-279
368.07	A	63-279
370.01	A	63-40
370.02(2)	A	63-40
370.02(9)	N	63-40
370.112	N	63-84
370.13	A	63-3
370.131	N	63-579
370.15(6)	A	63-338
370.16(5),(8),(11)	A	63-512
370.16(9)	A	63-120
370.16(32)	A	63-396
370.162	N	63-42
370.21	N	63-202
371.021(11)	A	63-103
371.031(1)	A	63-103
371.032	N	63-13
371.032(2)	A	63-400
371.051(1),(6), (7)	A	63-103
371.051(9),(10)	N	63-103
371.121	R	63-550
371.161	A	63-103
371.171	A	63-105
371.172	N	63-194
371.49	N	63-105
371.50	A	63-105
371.501-371.504	N	63-105
371.51	A	63-105
371.521, 371.522	N	63-105
371.53-371.56	A	63-105
371.561	N	63-105
371.57, 371.58	A	63-105
371.581	N	63-105
371.59-371.61	A	63-105
371.0100-371.0108	N	63-550
372.001(24)	N	63-30
372.01(3)	A	63-400
372.02	A	63-400
372.022	A	63-382
372.57(3), (4)	A	63-30
372.57(18)	N	63-30
372.575	N	63-30
373.072	N	63-336
373.081	A	63-336
373.131(5)	N	63-210
373.141	A	63-336
373.142-373.144	N	63-336
373.151	A	63-336
373.161	R	63-336
373.161(1)(b)2.	A	63-512
373.171	A	63-336
373.172-373.174	N	63-336
373.181	A	63-336
373.182	N	63-336
373.192	N	63-307
373.193	N	63-407
373.194, 373.195	N	63-210
373.201-373.221	A	63-336
373.381(2)	A	63-512
374.151	A	63-400
374.351	A	63-216
374.351	A	63-400
374.96	N	63-574
375.011-375.041	N	63-36
375.042	N	63-228
375.051, 375.061	N	63-36
375.251	N	63-313
377.35	A	63-512
378.01(3)	A	63-224
378.01(4)	N	63-224
378.12(3)	A	63-512
378.16(2)	A	63-224
378.25	A	63-512
378.33	A	63-224
379.02(1)	A	63-400

TABLE OF SECTION CHANGES MADE IN THE FLORIDA STATUTES AS AMENDED, REPEALED, TRANSFERRED OR ADDED BY THE 1963 LEGISLATURE

Key: "A" indicates sections amended; "R" indicates sections repealed; "T" indicates sections transferred; "N" indicates sections added.

Section No. Statutes	Key	Chapter No. 1963 Law
382.35(7)	A	63-151
382.45	A	63-559
382.46, 382.47	A	63-151
386.03	A	63-64
386.04-386.13	R	63-64
386.041, 386.051	N	63-64
388.011, 388.101	A	63-236
388.141	A	63-400
388.162	N	63-236
388.201, 388.211	A	63-236
388.231	A	63-236
388.261-388.301	A	63-236
388.321	A	63-236
388.322, 388.323	N	63-236
388.331-388.361	A	63-236
388.371	R	63-236
388.381-388.401	A	63-236
388.42	N	63-443
391.03	A	63-400
392.01	A	63-400
392.28	A	63-559
393.01(1)	A	63-233
393.01(4)	N	63-62
393.013	N	63-367
393.013	A	63-233
393.12(4)	A	63-559
394.21	R	63-102
394.22(6)(a)	A	63-498
394.22(15)(f)	A	63-559
394.22(20)	N	63-551
394.251	N	63-455
394.45	N	63-121
395.10	A	63-400
395.14	A	63-512
396.031(3)	N	63-563
396.101	A	63-400
396.121	A	63-325
401.04	A	63-287
401.04	A	63-400
403.02(4)	N	63-392
403.07, 403.14	A	63-392
403.17, 403.18	A	63-392
403.19	A	63-512
403.19(2)	A	63-392
409.01	A	63-400
409.03(3)	N	63-449
409.09	A	63-400
409.16	A	63-364
409.17	A	63-364
409.17(6)	N	63-384
409.24	A	63-504
409.24(3)	N	63-449
409.36(1)	A	63-360
409.40	A	63-364
409.40(9)	R	63-384
409.411	N	63-353
409.45	N	63-132
412.011-412.101	N	63-461
413.011	A	63-400
416.08	A	63-400
417.01	A	63-400
418.08	A	63-489
421.53	N	63-557
440.13(1),(3)	A	63-91
440.14(5)	A	63-160
440.15(5)	A	63-235
440.32	A	63-283
440.44(2)	A	63-274
440.44(8)	A	63-400
440.45(1)	A	63-179
440.45(3)	A	63-275
440.47	A	63-400
440.49(4)	N	63-235
440.49(4)	A	63-512
440.56(8)(a)	A	63-512
443.03(5)(g)20.	N	63-56
443.03(7)(a),(h)	A	63-155
443.06(1)	A	63-327
443.06(7)	N	63-157
443.08(3)(a)	A	63-154
443.08(3)(e)	A	63-137
443.10(6)(a),(b)	A	63-276
443.11(1)	A	63-400
443.12(5)	A	63-400
446.011-446.081 from 446.06-446.13	T	63-153
446.041 from 446.09	T & A	63-400
446.06-446.13 to 446.011-446.081	T	63-153
446.09 to 446.041	T & A	63-400
446.091	N	63-153
447.04(1)	A	63-139
447.04(4)	N	63-139
449.01, 449.02	A	63-205
449.021-449.025	N	63-205
449.05(3),(5),(8),(9)	A	63-205
449.12	R	63-205
449.13	A	63-512
449.16	A	63-205
450.061(1)(r)	N	63-82
453.06	A	63-400
454.24-454.30	R	63-572
455.06(1)	A	63-499
456.14	A	63-509
458.06(7)	N	63-572
458.123	A	63-509
460.001	N	63-295
460.01, 460.02	A	63-295
460.031	N	63-295
460.04	A	63-295
460.05	R	63-295
460.06, 460.07	A	63-295
460.071-460.073	N	63-295
460.08, 460.09	A	63-295
460.10	R	63-295
460.12	A	63-295
460.13(3)	A	63-295
460.13(10)	A	63-509
460.131-460.139	N	63-295
460.14	A	63-295
460.141	N	63-295
460.15	A	63-295
460.18	R	63-295
460.19-460.21	A	63-295
460.211	N	63-295
460.22, 460.25	A	63-295
460.26	A	63-295
460.261, 460.262	N	63-295
460.27	A	63-295
460.33(1)	A	63-509
461.10	A	63-509
462.08	A	63-374
462.15	A	63-509
462.18	A	63-414
463.05	A	63-400
463.06	A	63-400
464.21(6)(c)	A	63-509
465.031(8)	N	63-424
465.031(9)	N	63-425
465.041(11)	A	63-400
465.041(13)	N	63-424
465.051	A	63-400
465.071(1)(c)	A	63-425
465.101(1)(c)	A	63-425
465.101(1)(e)	A	63-424
465.101(3)	N	63-424
465.102	N	63-425
465.18(1)	A	63-424
465.18(2),(5)	A	63-425
465.20	A	63-424
465.20	A	63-509
465.21(5)	R	63-424
465.22	N	63-424
466.17, 466.39	A	63-334
470.13(7)	A	63-509
470.14	A	63-509
470.30(1)	A	63-422
471.02(7)	A	63-310
471.02(8)	N	63-310
471.06	A	63-310
471.061	N	63-310
471.09, 471.13	A	63-310
471.20, 471.21	A	63-310
471.24	A	63-310
471.26	A	63-310
471.28	A	63-509
471.36	R	63-310
471.37-471.44	N	63-310
472.09	A	63-509
472.10, 472.11	A	63-258
475.35	A	63-509
475.36	R	63-509
475.39	A	63-559
475.42(1)(e)	R	63-129
475.44	A	63-400
475.50-475.55	R	63-129
476.05, 476.06	A	63-251
476.09-476.11	A	63-251
476.17, 476.18	A	63-251
476.221-476.223	N	63-483
477.01-477.06	A	63-195
477.07	A	63-195
477.07(1)(d)	A	63-388
477.08	A	63-195
477.09(4)	N	63-195
477.10-477.24	A	63-195
477.27, 477.28	A	63-195
477.29	N	63-195
478.011-478.211	N	63-129
479.04	A	63-237
479.05	A	63-512
479.07	A	63-237
479.08(2)	A	63-512
479.09	R	63-237
480.01(1)(b),(2)	A	63-172
480.02(5)	A	63-172
480.06(1)	A	63-172
480.09	A	63-172
480.11(1)(f)	A	63-172
480.11(1)(k)	N	63-172
480.13(1)	A	63-509
482.101(3)	A	63-400
482.132	A	63-48
482.181	A	63-509
483.18	A	63-509
484.10	A	63-509
487.04(5)	A	63-222
488.03(1)	A	63-21
489.03(2)	A	63-400
490.081(2)	A	63-509
493.01-493.24	N	63-340
494.02(2),(3),(5)	A	63-58
494.03(1),(2)	A	63-58
494.04(2),(4)-(6),(11)	A	63-58
494.05(1)	A	63-58
494.05(5)	A	63-512
494.08(1),(5)	A	63-58
494.08(7)	N	63-58
500.03(18)-(21)	N	63-259
500.10(1),(4)	A	63-259
500.11(5)	A	63-572
500.13	A	63-259
500.14(1)(d),(2)	A	63-158
500.15	A	63-158
500.151(1)	A	63-158
500.16	A	63-158
500.17(5)	A	63-158
500.18(5)	N	63-158
500.20(1)	A	63-259
500.201(1)	A	63-158
500.34, 500.35	R	63-73
500.38	R	63-73
501.03(2)	R	63-352
501.03(4)	A	63-513
501.04(12)	A	63-188
501.09(5)	A	63-512
501.13(7)	A	63-512
501.14	R	63-189
503.06	A	63-512
504.02(5)	A	63-400
509.032(2)	A	63-420
509.081	A	63-400
509.141(4)	A	63-96
509.151, 509.161	A	63-546
509.162	N	63-546
509.211(2)	A	63-67
509.211(4)	A	63-312
509.211(11)	N	63-426
509.251(3)	A	63-350
509.261(1)(c)	A	63-512
509.261(3)(d)	A	63-69
509.261(4)	N	63-68
509.261(5)	N	63-70
517.04	A	63-400
517.06(7)	A	63-564
517.06(15)	R	63-564
517.08(2)(d)	A	63-321

TABLE OF SECTION CHANGES MADE IN THE FLORIDA STATUTES AS AMENDED, REPEALED, TRANSFERRED OR ADDED BY THE 1963 LEGISLATURE

Key: "A" indicates sections amended; "R" indicates sections repealed; "T" indicates sections transferred; "N" indicates sections added.

Section No. Statutes	Key	Chapter No. 1963 Law
517.09(7)	A	63-321
517.091(3)	A	63-321
517.12(8)	A	63-321
517.16	A	63-344
517.19(7)	N	63-326
517.24	A	63-512
517.311	N	63-98
517.33	N	63-354
518.01(13)	N	63-111
519.14	A	63-512
520.02(1)	A	63-101
520.04(4)	A	63-512
520.11(4)	A	63-215
520.31(12)	N	63-547
520.32	A	63-547
520.33	R	63-547
520.331	N	63-547
520.332	N	63-547
520.34(4)	A	63-547
520.39(3)	A	63-547
520.50-520.57	N	63-244
527.17	A	63-512
536.22	A	63-359
543.28	A	63-400
550.01	A	63-264
550.03	A	63-400
550.03	A	63-444
550.069	N	63-261
550.08(1)	A	63-315
550.16(4)	A	63-314
550.26(4)	A	63-314
550.26(5)	N	63-314
550.37	N	63-130
550.38	N	63-161
552.15	A	63-512
554.02(2)	A	63-400
554.07(6)	A	63-197
554.07(6)	A	63-279
554.11	A	63-193
554.16	A	63-65
554.28	N	63-134
559.33	A	63-324
559.34	A	63-324
559.46	A	63-324
561.01(13)	A	63-32
561.11	A	63-26
561.14(4)	N	63-562
561.22	A	63-562
561.221	N	63-11
561.24	A	63-562
561.35(1)(l)	N	63-562
561.35(2),(3)	A	63-562
561.36(1)	A	63-562
561.37	A	63-562
561.38	A	63-562
561.41	A	63-562
561.43(1)	A	63-562
561.46(1)-(6)	A	63-531
561.46(2),(5),(6)	A	63-466
561.46(10)	R	63-485
561.46(10)	R	63-510
561.461	A	63-464
561.49	A	63-562
561.51	A	63-467
561.54-561.57	A	63-562
561.64	A	63-465
569.07	R	63-147
570.23(1),(3),(5)	A	63-395
571.01-571.10	N	63-378
573.06, 573.07	A	63-123
573.09, 573.10	A	63-123
573.14(2)	A	63-400
573.16	A	63-123
573.17(1)-(3)	A	63-123
573.21(6)	A	63-123
573.22(4)	A	63-123
573.22(5)	N	63-123
573.24	A	63-123
573.28, 573.29	N	63-123
573.50-573.76	N	63-126
573.0100-573.0126	N	63-292
578.011(28)	A	63-116
581.051(5)	A	63-117
581.131	A	63-115
581.142	N	63-260
581.152(2)	A	63-512
582.07, 582.19	A	63-400
585.15, 585.16	A	63-356
585.45	A	63-512
585.621	N	63-476
585.671	N	63-442
589.03	A	63-400
589.32	A	63-399
590.26	A	63-207
591.20	A	63-400
592.03	A	63-400
592.05	A	63-478
592.10	A	63-400
601.03(31)	A	63-71
601.06	A	63-400
601.071(1)	A	63-74
601.111	N	63-104
601.13(3)	A	63-80
601.15(3)(a)	A	63-320
601.15(3)(c)	A	63-79
601.15(7)	A	63-320
601.15(8)(b)	A	63-78
601.152	A	63-81
601.152(4)	A	63-400
601.28(1)(a)-(d)	A	63-108
601.291	N	63-76
601.32	A	63-400
601.50	A	63-100
601.601	N	63-75
601.61(2)	A	63-61
601.68	A	63-512
601.731	A	63-77
601.732	R	63-77
601.88	A	63-72
601.0105(3)	A	63-107
603.20	T & A to 616.20, 282.011(8)	63-393
603.21-603.23	T & A to 616.21-616.23	63-393
604.15(3)	A	63-291
604.16(2),(3)	N	63-351
604.19	A	63-351
608.041	N	63-357
608.13(14),(15)	N	63-286
608.131	N	63-304
608.21(1)	A	63-284
608.27(1)	A	63-240
608.32(1)	A	63-239
608.33(1)	A	63-487
608.36(3)	A	63-285
608.36(4)	N	63-285
608.0100-608.0107	N	63-379
609.051	N	63-488
609.07	N	63-171
616.001	N	63-247
616.03, 616.05	A	63-247
616.08, 616.09	A	63-247
616.091, 616.101	N	63-247
616.12	A	63-247
616.16	R	63-247
616.18	R	63-247
616.20	T & A from 603.20	63-393
616.20	T Stat. Rev. Dept. to 282.011(8)	
616.21-616.23	T & A from 603.21-603.23	63-393
617.012	A	63-405
617.52(2)(b)	A	63-329
617.67	N	63-329
624.0119(6)	N	63-125
624.0206(1)	A	63-29
624.0207, 624.0208	A	63-29
624.0210	A	63-19
624.0215(1)(a)	A	63-149
624.0229	N	63-149
624.0300(16)	N	63-491
624.0306	A	63-149
625.121(2)	A	63-400
625.0212	A	63-19
625.0213(4)	N	63-19
626.331(6)	N	63-17
626.531(2)	A	63-20
626.532	N	63-20
626.01071	N	63-20
626.0216(3)	A	63-20
626.0218	A	63-381
626.02181	N	63-20
626.0312	A	63-381
626.0313	N	63-20
626.0513(1)(c)	A	63-86
626.0514	A	63-86
626.0515(2)(b)	A	63-86
626.0515(2)(d)	A	63-209
626.0517(1)	A	63-86
626.0521	A	63-86
626.0524(7)	N	63-86
626.0528(2)	A	63-86
626.0534	A	63-86
626.0535(4)	A	63-86
627.0401(3)	A	63-187
627.0403(3)	A	63-187
627.0405	A	63-6
627.0406	A	63-201
627.0602(1)	A	63-218
627.0851(1)	A	63-148
627.0990-627.1012	N	63-16
627.1020-627.1023	N	63-16
628.071	A	63-18
631.021(5)	A	63-559
632.061(2)	A	63-149
632.442	N	63-85
633.02	A	63-400
633.07	A	63-512
634.201(2)	A	63-512
635.031(3)	N	63-428
638.211(2)	A	63-512
641.07	A	63-400
641.10(2)	A	63-512
656.22	A	63-254
657.06	A	63-289
657.09(1)	A	63-289
657.09(8)	N	63-289
657.10	A	63-289
657.11(2)	A	63-289
657.15, 657.16	A	63-289
657.161(1)(b),(4)	A	63-289
658.08	A	63-182
659.02(2)	A	63-181
659.17(1)	A	63-322
659.29	A	63-473
659.49	A	63-110
659.59-659.66	N	63-113
665.161	T from 668.09	63-318
665.21(4)	A	63-206
665.213	T & A from 668.11	63-318
665.31	A	63-400
665.43	A	63-163
665.44	A	63-162
668.01-668.08	R	63-318
668.09	T to 665.161	63-318
668.10	R	63-318
668.11	T & A to 665.213	63-318
674.76	A	63-109
676.55	A	63-323
683.08	N	63-419
689.071	N	63-468
697.04(1)	A	63-212
698.06, 698.07	R	63-212
698.08	A	63-212
699.10	A	63-212
702.02(2),(3)	A	63-46
705.01, 705.03	A	63-267
705.04	R	63-267
705.06	A	63-267
705.09-705.15	N	63-267
711.01-711.23	N	63-35
712.01-712.10	N	63-133
715.05	N	63-431
716.07	A	63-559
731.26	R	63-183
731.34	A	63-119
732.15	A	63-559
732.16-732.20	R	63-559
732.29(1),(2)	A	63-456
733.16(3)	N	63-309
733.18(2)	A	63-454
734.041	A	63-106
734.22	A	63-262
735.03(2)	A	63-572

TABLE OF SECTION CHANGES MADE IN THE FLORIDA STATUTES AS AMENDED, REPEALED, TRANSFERRED OR ADDED BY THE 1963 LEGISLATURE

Key: "A" indicates sections amended; "R" indicates sections repealed; "T" indicates sections transferred; "N" indicates sections added.

Section No. Statutes	Key	Chapter No. 1963 Law
735.10(2)	A	63-146
736.041	N	63-183
736.18	N	63-386
737.28	N	63-434
741.06	A	63-238
746.16	A	63-559
768.03	A	63-469
775.13(5) (e)	N	63-191
790.23	A	63-31
811.28	N	63-166
817.52	N	63-177
817.53	N	63-383
817.54	N	63-142
817.55	N	63-506
821.36	A	63-503
828.041	N	63-24
832.06	N	63-343
843.01	A	63-234
843.01-843.03	A	63-433
843.06, 843.08	A	63-433
843.13	A	63-128
849.06	A	63-303
849.092	N	63-553
849.42	A	63-559
860.15	N	63-203
901.25	N	63-515
909.18	T by Stat. Rev. Dept. to 925.04	
921.161	N	63-457
921.18	A	63-306
924.08	A	63-559
925.04	T by Stat. Rev. Dept. from 909.18	
925.05	N	63-263
925.06	N	63-180
932.52(15)	A	63-559
944.071	N	63-417
944.26	R	63-457
944.27, 944.28	A	63-243
944.511	N	63-450
945.05(3)	A	63-400
945.14(1)	A	63-176
945.16(1)	A	63-176
945.18	A	63-176
947.01	A	63-83
947.12	A	63-400
947.24	A	63-83
951.22	N	63-140
965.01(4) (b), (c)	A	63-233
965.03	A	63-25
965.04.(2)	A	63-400
965.09	N	63-214
965.10-965.15	N	63-368
965.16	N	63-305

Official
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1963

Prepared by
Statutory Revision Department

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TABLE OF CONTENTS

VOLUME 1

VOLUME 2

VOLUME 3

ACKNOWLEDGMENT

We acknowledge with appreciation the cooperation given by Mr. David V. Kerns, Director of the Legislative Reference Bureau, with the Statutory Revision and Bill Drafting Department of the Attorney General's office in exchange of indexes, summaries, and revision of sections and chapters, which have improved the field of continuous law reform.

We also acknowledge the fine service rendered by the following Special Assistants to the Attorney General before and during the 1963 Session of the Legislature in preparing either daily bill summaries for the Reference Bureau or drafting bills, resolutions and other statutory materials in the Statutory Revision and Bill Drafting Department.

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PREFACE

The official Florida Statutes printed in three volumes and published every two years following the regular session of the legislature, is the most efficient system known to keep all of the general laws in an up-to-date convenient form for speedy reference. This system was promoted by prominent members of The Florida Bar first in 1939 when the existing Florida statutory law was revised and adopted as the official statutory law of Florida, and again in 1949 when the system was reestablished. A conference with a committee of attorneys, representing The Florida Bar in 1948, convinced me that the legal profession in Florida and governmental agencies in particular, needed an improved method for quick access to Florida statutory law. A qualified director for the Statutory Revision Department was immediately appointed when I became Attorney General in 1949. The excellent response received from government officials and attorneys throughout the state upon the reactivation of the continuous revision system reflects a keen interest in the active use of this important legal tool.

The recommendation of the Florida Bar Committee on Revision that we print the statutes in three volumes has met with universal approval; therefore this policy will be continued. Numerous requests have influenced us to include the United States Constitution, the Florida Constitution, and other miscellaneous matter in Volume III along with the general index. This should be more convenient for reference purposes.

The efficient drafting of bills in statutory form by specially trained personnel in our office for members of the Legislature, and improved methods of editing coupled with experience on the part of a selected editorial staff, has already resulted, not only in expediting the preparation of material for publication, but has exerted considerable influence on improving the wording and the mechanical process of statutes.

The practicing attorneys, governmental departments, and the judiciary have contributed many helpful suggestions for continuous improvement in the index so necessary in finding the law. We appreciate the many letters received concerning the use of "The Official Florida Statutes" and the numerous comments since we are constantly seeking ways and means for making this publication more useful for those who use it.

I commend the personnel of the Statutory Revision Department for the excellence of their work, and the members of The Florida Bar and the Legislature for promoting and supporting Florida's efficient continuous revision plan for keeping our statutory law up-to-date.

RICHARD W. ERVIN
Attorney General

An explanation of the subject matter, purpose, plan, and the organization of

THE OFFICIAL FLORIDA STATUTES 1963

BIENNIAL PUBLICATION

The official Florida Statutes, in three volumes, are printed every two years in a completely new revision to keep the statutory law up-to-date.

The biennial plan of printing statutes is a plan which has been in successful use in some states for over fifty years. It is a preventive and a cure for the overgrowth of statutes. Since many of our statutes are short lived, the dead sections are removed and buried each two years. This procedure makes room for new statutes. The amendments and new laws of each succeeding legislature are meshed in with the standing statutes. Subject matter is gradually consolidated and often revised into single chapters, reducing the volume of reading matter.

The biennial edition of the statutes also affords members of the legislature a complete compilation of all the active general law enacted from 1885 through 1963 in a form convenient for study and improvement. Legislators can better acquaint themselves with what the law is and can amend or reject changes with understanding. A section or chapter method of revision with intelligent legislative judgment usually results in a gradual improvement of existing law.

The legislature has authorized the inclusion in this edition of the state-wide laws enacted at any special or regular session since 1961. These new laws have been edited but not changed. New decimal section numbers are assigned when the general law is converted into statutory form. History notes are added to record the legislative chapter and section of the law, which becomes a part of the general statutory law of the state.

The legislature at each session officially adopts all previously published session laws in statutory form. The 1963 laws included in statutory form are prima facie evidence of the existence of such laws until officially adopted by a subsequent legislative act in 1965.

FORMER REVISIONS AND COMPILATION

The laws of general application of the territory of Florida and of the State of Florida have either been compiled unofficially or revised under authority of law and adopted as official statutes in the following publications to wit: Duval's Compilation of Territorial Laws, 1840 (compilation); Thompson's Digest, 1847 (compilation); Bush's Digest, 1872 (compilation); McClellan's Digest, 1881 (compilation); Revised Statutes (R. S.) 1892 (revision enacted as a law); General Statutes (G. S.) 1906 (revision enacted as a law); Revised General Statutes (R. G. S.) 1920 (revision enacted as a law); Compiled General Laws (C. G. L.) 1927 (compilation unofficial); Official Revised Florida Statutes (F. S.) 1941 (revision enacted as a law); the Florida Statutes of 1949 (F. S. '49) (consolidation of '41 statutes and supplements); Florida Statutes of 1951, 1953, 1955, 1957, 1959 and 1961.

CONTENTS OF STATUTES

The Statutes of 1963 adopted by chapter 63-2, contain all the active Florida statutory law enacted since 1885, completely up-to-date through the regular session of 1963. It is the complete official edition of Florida statutory law. (Section 16.19 F.S.).

All amendments of the Florida Statutes together with new legislation enacted by the 1963 legislature, have been compiled and included in this edition (Section 16.44(6)(d), F.S.). The history notes following each section detail the source of the law from date of enactment to date of the present publication; including the section and chapter number as enacted.

ADOPTION OF STATUTES AND GENERAL LAW

All laws in this edition passed prior to 1963 have been officially adopted as statutory law in their present form. The effect of legislative adoption is to cure

any technical defect with reference to title, form, etc. (McConville v. Ft. Pierce Bank and Trust Co., 101 Fla. 727, 135 So. 392; Christopher v. Mugen, 61 Fla. 513, 55 So. 273; 63 Fla. 1, 58 So. 486, 89 Fla. 119, 103 So. 414, error dismissed 46 S. Ct. 23, 269 U.S. 594, 70 L.Ed. 430).

LOGICAL ARRANGEMENT OF TITLES AND CHAPTERS

The object of any arrangement of statutes is to facilitate the finding of the law. Two methods of arrangement are in general use in the United States namely: The "logical," grouping of related subjects together, as found in most digests, and the "alphabetical," as used in Corpus Juris and American Jurisprudence. A few states use a combination of both methods. A majority however prefer the "logical" arrangement which we have adopted and use in the Florida Statutes.

We have found it advisable to divide several chapters into parts (Part I, Part II, etc.) based on logical organization or related subject matter.

ALPHABETICAL CHAPTER INDEX

An alphabetical chapter index will be found in the fore of Volumes I and II. This index gives direct reference to all chapters. Chapters are alphabetically listed together with the chapter number.

NUMERICAL INDEX TO TITLES AND CHAPTERS

The "Analysis of Florida Statutes by Titles and Chapters" in all three volumes will afford a quick reference to the chapters grouped under the "logical organization" system. Familiarity with this index will save much time.

It lists by chapters groups of related subjects in a general subject field, in numerical order. Should a chapter be repealed, transferred, or expired by law, the chapter number is followed by the word (repealed), (transferred) or (expired). When vacancies occur in the numerical order, the unused numbers have been reserved for future use. A reference to this index will quickly inform one whether a chapter is still active.

Chapters have retained their original numbers except where transferred or revised.

NUMBERING SYSTEM

The decimal numbering system of identifying sections in each chapter is used in Florida.

All chapters are grouped by general subject matter and each is given a number. This chapter number appears in each section to the left of a decimal point. The section number appears to the right of the decimal point. Thus section 12 of chapter 16 would be section 16.12 in the chapter.

In adding a new section preceding section 1 (16.01) of chapter 16 it would become:

(New) Section 16.001
(Old) Section 16.01

In adding a new section between two already existing sections it would appear as:

(Old)	Section 16.01		(Old)	Section 16.12
(New)	**Section 16.011**	**Or**	**(New)**	**Section 16.121**
(Old)	Section 16.02		(Old)	Section 16.13

The system provides for vast expansion with addition of new sections as needed without necessity for a complete renumbering of existing sections or reorganization of titles and chapters.

INDEX TO SECTION SUBJECTS AT BEGINNING OF EACH CHAPTER

At the beginning of each chapter you will find a Numerical Index to section subjects within the chapter. Should skips appear in section numbers, the section has been repealed or deleted by law or transferred.

When sections have been deleted the section number together with history notes, giving the chapter number of the general session law authorizing the deletion, is transferred to the "Table of Repealed and Inactive Sections" in Volume III. Our policy is to assign new section numbers to new matter rather than reassign used section numbers. History notes will give full information on any deviation from this policy.

HISTORY NOTES AND CROSS REFERENCES

History notes have been carefully compiled, checked for accuracy with original session laws, and brought completely up-to-date. Beginning with the 1957 edition of the Statutes history notes will cite the researcher to the particular paragraphs or subsections affected by each amendment. The lawyer will find them dependable and convenient to use.

Immediately following history notes, related or qualifying laws are frequently noted in the form of cross references.

GENERAL INDEX

An index has never been prepared which has been entirely satisfactory to all members of the bench and bar. It is doubtful whether that Utopia will ever be reached.

No index can contain every possible entry. An index of such size would be incapable of practical use. On the other hand, to index the law only in those places where the user of statutes should logically look would not be sufficient because many persons are not logical in searching an index. We have attempted to reach a happy medium between the logical and the practical approach by selecting catch-words and titles that are commonly used. Cross references have been reduced to a minimum and a direct reference given to the chapter or section whenever possible in every cross reference.

We have revised the index so that it will be workable for the greatest number of persons. The checking plan which we follow insures that no section has been omitted. Every section has been properly indexed under several heads.

We have attempted to use a noun as a catch-word wherever possible instead of an adjective, preposition, a conjunction or an adverb.

The subject matter with which one is concerned will generally give a key to the spot in the index from which to begin the search.

The index is based on a logical arrangement of the statutes. The user will meet with greater success by looking in a place where it should logically be rather than relying upon alphabetical uncertainties of the index.

All indexes at best are inconvenient and time consuming. Continued improvement can and will be made through suggestions and cooperation of the bench and bar with your Statutory Revision Department.

TABLE OF STATUTORY CHANGES MADE BY THE 1963 LEGISLATURE

A table of statutory section changes made by the 1963 regular session of the legislature will be found on the inside fly leaf of Volume I printed on yellow paper. This table will give, (1) the number of the section when any change has been made in a section or subsection, (2) the type of change made whether amended, repealed, new or transferred, and (3) the number of the session law authorizing the change. This table provides a convenient method of quickly finding out whether the law has been changed in any section or chapter.

(If the section is not listed in this table the law was not changed.)

TRACING TABLE

A table, tracing the classification of general laws into the Florida Statutes, will be found in Volume III. This table indicates where a particular section of a law has been assigned in the statutes. The word "omitted" shown in place of a statute section number, indicates that the act is a local or special act or a general act of local application and is not in the statutes. To find an omitted chapter, consult the volumes of the General or Special Session Laws.

TABLE OF REPEALED AND INACTIVE SECTIONS

Preceding the General Index is a table showing repealed and inactive sections.

When a statutory law is repealed or transferred through revision to a new location in the statutes the former section number becomes inactive. All inactive section numbers have been removed from chapters in the statutes and placed in this table, along with history notes to repealed sections. Normally when a section becomes inactive the former assigned number is seldom used again. As new statutory material is added new section numbers are assigned. When a chapter is revised, consolidated or transferred and sections are reassigned a new location, generally the sections get new numbers.

The table provides a consolidated, ready source of statutory reference to all inactive sections along with useful data relating to the disposition of material formerly included therein.

TABLES OF COURTS

A new tabulation of state, district and county courts revised in 1959 and arranged according to jurisdiction beginning with the supreme court down to the small claims courts will be found in Volume III. It will give information concerning, the **date of term of court, and type of courts** in each county.

This tabulation is also arranged alphabetically by counties. A reference thereto will save time in determining the courts existing throughout Florida in each of the sixty-seven counties.

CENSUS AND MORTALITY TABLE

The 1960 Federal Census and the most recent mortality table will be found in Volume III.

FLORIDA CONSTITUTION

The Constitution of Florida in Volume III with index has been brought up-to-date through November 1963 amendments. The index has been meshed in with the General Index in order that a person searching for a subject may find references to both the constitution and the statutes in one index. The combined General Index has proven to be time saving and a convenient reference to statutory and constitutional provisions relating to the same general subject matter.

CONSTITUTION OF THE UNITED STATES

Upon the request of numerous lawyers and agencies, the Constitution of the United States with index is printed in Volume III.

COURT RULES, INTEGRATION RULES AND CODE OF ETHICS

The court rules, integration rules and code of ethics have been omitted from this edition. They have been printed both by the Supreme Court through West Publishing Company, and by the Florida Bar for distribution to attorneys, and this omission will eliminate a very substantial and unnecessary cost of duplication.

STATUTORY REVISION

Statutory revision technique works primarily with form rather than substance. The Statutory Revision Department of the Attorney General's Office often suggests a revision of chapters where improvements are desirable, but no change in an existing statute is made without legislative approval. The initiation of actual revision of substantive law should be sponsored by attorneys, judges, legislators, or administrators through specialized committees whose members are in close touch with the practice or enforcement of present law. The revisors always assist when called upon, and are interested in all projects and suggestions which eliminate unnecessary statutes, repetition of words and technical defects in the statutes.

Continuous revision places responsibility for ferreting out conflicts, duplications, and eliminating verbosity, circumlocution, obsolete sections, ambiguities, and many other technical faults generally found in session laws. Revision includes constant and continuous work toward the reclassification and consolidation of subject matter. It aims toward changing the wording of a law so

that essential clearness and harmony will exist in order that logical arrangement and compactness of the statutes may be obtained. Continuous revision aims toward simplicity in statement and understanding of meaning by the use of, and arrangement of, words and phrases. It helps avoid rhetorical flourishes and ornamentations as existed under the common law, and aims toward setting forth in clear cut and understandable language the present up-to-date law.

The revisor's office is a clearing house where lawyers, judges, legislators, and administrators may help make better statutory law. Persons calling attention to errors, omissions, conflicts and other defects found in the law, can materially help this department to improve our Florida Statutes.

Much valuable time can be saved in original research by reference to the improved General Index in the official Florida Statutes for subject matter reference and then reading the latest up-to-date complete statutory law on the subject in the volumes of the **"Florida Statutes."**

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ALPHABETICAL CHAPTER INDEX

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

ALPHABETICAL CHAPTER INDEX—(Cont.)

NUMERICAL TITLE AND CHAPTER INDEX

VOLUME 1—CHAPTERS 1-379

TITLE I

CONSTRUCTION OF STATUTES

TITLE II

STATE ORGANIZATION

TITLE III

LEGISLATIVE DEPARTMENT—COMMISSIONS

TITLE IV

EXECUTIVE DEPARTMENT

TITLE V

JUDICIARY DEPARTMENT

NUMERICAL TITLE AND CHAPTER INDEX

TITLE VI

CIVIL PRACTICE AND PROCEDURE

TITLE VII

EVIDENCE

TITLE VIII

LIMITATIONS

TITLE IX

ELECTORS AND ELECTIONS

TITLE XII

CITIES AND TOWNS

TITLE XIII

TAXATION AND FINANCE

TITLE XIV

HOMESTEAD AND EXEMPTIONS

TITLE XV

EDUCATION

TITLE XX

DRAINAGE

TITLE XXI

PORTS AND HARBORS

TITLE XXII

MOTOR VEHICLES

TITLE XXIII

AERONAUTICS

TITLE XXIV

HIGHWAYS, BRIDGES AND FERRIES

TITLE XXV

RAILROADS AND OTHER REGULATED UTILITIES

—— O ——

VOLUME 2—CHAPTERS 380-965

TITLE XXVII

PUBLIC HEALTH

TITLE XXXV

INSURANCE

TITLE XLV

CRIMINAL PROCEDURE

NUMERICAL TITLE AND CHAPTER INDEX

TITLE XLVI

CORRECTIONAL SYSTEM

TITLE XLVII

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

FLORIDA STATUTES

1963

TITLE I

CONSTRUCTION OF STATUTES

CHAPTER 1

DEFINITIONS

1.01 Definitions.

1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

(1) The singular includes the plural and vice versa.

(2) The masculine includes the feminine and neuter and vice versa.

(3) The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

(4) The word "writing" includes handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood, or other materials.

(5) The words "lunatic", "insane persons" and other like terms include idiots, lunatics, insane persons, non compos mentis and persons of deranged or unsound mind.

(6) The words "negro", "colored", "colored persons", "mulatto" or "persons of color", when applied to persons, include every person having one-eighth or more of African or negro blood.

(7) The word "oath" includes affirmations.

(8) Reference to any office or officer includes any person authorized by law to perform the duties of such office.

(9) Reference to the population or number of inhabitants of any county, city, town, village or other political subdivision of the state, shall be taken to be that as shown by the last preceding official decennial federal census, beginning with the federal census of 1950, which shall also be the state census and shall control in all population acts and constitutional apportionments, unless otherwise ordered by the legislature.

(10) The words "public body", "body politic" or "political sub-division" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state.

1.02 Legal time.

(11) Crude turpentine gum (oleoresin), the product of a living tree or trees of the pine species, and gum-spirits-of-turpentine and gum resin as processed therefrom, shall be taken and understood to be agricultural products, farm products and agricultural commodities.

(12) The term "natural barrier" when used with reference to the possession of real estate shall include any cliff, river, sea, gulf, lake, slough, marsh, swamp, bay, lagoon, creek, sawgrass area, or the like.

(13) The words "registered mail" shall include certified mail with return receipt requested.

(14) Whenever the terms "agriculture, agricultural purposes, agricultural uses" or words of similar import are used in any of the statutes of the state, such terms shall include horticulture and floriculture, horticultural purposes and floricultural purposes, horticultural uses and floricultural uses, and words of similar import applicable to agriculture shall likewise be applicable to horticulture and floriculture.

History.—§§1, 2064 RS 1892; GS 1, 2580; RGS 1, 8939; CGL 1, 5858; §1, ch. 16297, 1933; CGL 1936 Supp. 1(1); §1, ch. 17750, 1937; CGL 1940 Supp. 1365(43); subsection (12), §1, ch. 24139, 1947, transferred from §1.03; (13) n. by §1, ch. 57-98; (14) n. by §1, ch. 61-486; (9) §1, ch. 63-572.

1.02 Legal time.—In all laws, statutes, orders, rules and regulations of this state, relating to the time of performance of any act by any officer or department of this state, whether in the legislative, executive or judicial branches, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed, by any person subject to the jurisdiction of this state, it shall be understood and intended that the said time shall be the United States standard time of the zone within which the act is to be performed or the right shall accrue or determine.

History.—§1, ch. 3916, 1889; RS 1307; GS 1739, §1, ch. 6938, 1915; RGS 2954; CGL 4681.

CHAPTER 2

COMMON LAW IN FORCE; REPEALING STATUTES

2.01 Common law and certain statutes declared in force.—The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state.

History.—§1, Nov. 6, 1829; RS 59; GS 59; RGS 71; CGL 87.
cf.—§92.03, The unwritten law of the United States and of the several states, etc.
§678.52, Warehousemen and warehouse receipts.
§§775.01—775.03, Common law of England.

2.02 Certain laws abrogated saving vested rights.—All the laws and ordinances in force in this state to the 22nd day of July, 1822, are repealed: provided, nevertheless, that all causes of action arising under and founded on, any of said laws and ordinances, shall be judicially determined according to the principles and rules of said laws and ordinances, anything in these statutes to the contrary notwithstanding.

History.—§2, Nov. 6, 1829; RS 60; GS 60; RGS 72; CGL 88.

2.03 Certain proceedings valid.—All proceedings which have heretofore been had and done in the different courts of this state in accordance with the provisions of §§2.01 and 2.02 are declared to be good and valid.

History.—§3, Nov. 6, 1829; RS 61; GS 61; RGS 73; CGL 89.

2.04 Repealed statute not revived by implication.—No statute of this state which has been repealed shall ever be revived by implication; that is to say, if a statute be passed repealing a former statute, and a third statute be passed repealing the second, the repeal of the second statute shall in no case be construed to revive the first, unless there be express words in the said third statute for this purpose.

History.—Nov. 2, 1828; RS 62; GS 62; RGS 74; CGL 90.
cf—§16, Art. III, Const. 1885.

TITLE II

STATE ORGANIZATION

CHAPTER 6

ADMISSION INTO UNION, CONCESSIONS; STATE BOUNDARIES

6.01 Assent to terms of admission into the union.—The State of Florida assents as by the statute approved July 25, 1845, to the terms of admission of this state into the confederacy and union of the United States, and to the provisions of the acts of congress respecting the public lands of the United States in this state.

History.—Ch. 14, 1845; RS 6; GS 4; RGS 4; CGL 4.

6.02 United States authorized to acquire lands for certain purposes.—The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall seek to occupy and hold as sites on which to erect and maintain forts, magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided.

History.—§1, ch. 25, 1845; RS 7; GS 5; RGS 5; CGL 5.
cf.—§§6.06, 253.21, Swamp and forest lands.
§§264.06-264.10, Everglades National Park.

6.03 Condemnation of land when price not agreed upon.—If the officer or other agent employed by the United States to make such purchase and the owner of the land contemplated to be purchased, as aforesaid, cannot agree for the sale and purchase thereof, the same may be acquired by the United States by condemnation in the same manner as is hereinafter provided for condemnation of lands for other public purposes, and any officer or agent authorized by the United States may institute and conduct such proceedings in their behalf.

History.—§2, ch. 25, 1845; RS 8; GS 6; RGS 6; CGL 6.
cf.—Ch. 73 for uniform procedure in condemnation suits.

6.04 Jurisdiction over such lands; how ceded to the United States.—Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

History.—§3, ch. 25, 1845; RS 9; GS 7; RGS 7; CGL 7.

6.05 Transfer of title and jurisdiction over land owned by state.—Whenever a tract of land containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital or other public work, and the title to the said land shall be held by the state, then on application by the said officer or agent to the governor of this state, the said executive may transfer to the United States the title to, and jurisdiction over, said land; provided, always, that the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States, in and over the lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person amenable to the same, within the limits and extent of the lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States and be exempt from taxation as long as they shall be needed for said purposes.

History.—§§1, 2, ch. 630, 1855; RS 10; GS 8; RGS 8; CGL 8.
cf.—Ch. 17937, Acts 1937, for certain described land in Putnam County declared to be state property.

6.06 United States may acquire state lands for national forests.—The consent of the state is given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Florida as in the opinion of the federal government may be needed for the establishment, consolidation and extension of national forests in the state; provided, that the state shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this section had not been passed.

History.—§1, ch. 8564, 1921; CGL 9.
cf.—Ch. 17938, Acts 1937, for conveyance of land in Putnam County to United States.

6.07 Power conferred on congress to legislate with respect to state lands acquired for national forests.—Congress may pass such laws and make or provide for the making of such rules and regulations, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control, and protection of such lands as may be from time to time acquired by the United States under the provisions of §6.06.

History.—§2, ch. 8564, 1921; CGL 10.

6.08 Boundary between Florida and Alabama.—The line commencing on the Chattahoochee river near a place known as "Irwin's Mills", and running west to the Perdido, marked throughout by blazes on the trees, and also by mounds of earth thrown upon the line, at distances of one mile, more or less, from each other, and commonly known as the "Mound line" or "Ellicott's line", and by these names distinguished from another line above, running irregularly at different distances not exceeding one and a half miles from the "Mound line" and marked by blazes only, and known as the "Upper line", or "Coffee's line", is the boundary line between the States of Florida and Alabama.

History.—§2, ch. 165, 1848; RS 2; GS 2; RGS 2; CGL 2.
cf.—Art. I, Const., Boundaries of Florida.

6.081 Florida - Alabama boundary redefined.—

(1) The middle of the Perdido river at its mouth, as defined by the constitutions of the states of Alabama and Florida, is at latitude 30° 16′ 53″ north and longitude 87° 31′ 06″ west as the control point; the boundary line at the mouth of Perdido river is fixed, as nearly as may be, in the axis of the mouth of said river, passing through the control point and running north and south and having as its northern terminus a point of latitude 30° 17′ 02″ north and longitude 87° 31′ 06″ west, and as its southern terminus a point 1,000 feet due south of the control point; from the northern terminus of the boundary line at the mouth of the river, the boundary up the lower portion of said river be a straight line to a point at latitude 30° 18′ 00″ north, longitude 87° 27′ 08″ west, thence by a straight line to a point in the center line of the intracoastal canal at longitude 87° 27′ 00″ west; the seaward boundary between Florida and Alabama extends from the south end of the boundary line at the mouth of Perdido river, thence south 0° 01′ 00″ west to the seaward limit of each respective state; and shall be deemed, taken and declared, and is hereby deemed, taken and declared to be the boundary line between the states of Florida and Alabama, at the mouth of the Perdido river and adjacent thereto, and shall be deemed and taken as such by the authorities and people of this state.

(2) Nothing herein contained nor any operations of the provisions of this section shall prejudice the rights or claims of private individuals to any of the lands herein involved whether such rights or claims arise or exist upon the basis that the lands herein defined as being within the boundaries of the State of Alabama were previously a part of the State of Florida or included within the boundaries of the State of Florida or otherwise.

History.—Comp. § § 2 and 5, ch. 28141, 1953.
cf.—Boundary.—Consent given by Public Law 351—83rd Congress; House Joint Resolution 347.

6.09 Boundary between Florida and Georgia.—The line run and marked by B. F. Whitner, Jr., on the part of Florida, and G. J. Orr, on the part of Georgia, is the permanent bound-

ary line between the States of Georgia and Florida.

History.—Resolution No. 16, Feb. 8, 1861; RS 3; GS 3; RGS 3; CGL 3.
cf.—Art. I, Const., Boundaries of Florida.

6.10 Confirmation of certain grants of Georgia.—The titles of bona fide holders of land under any grant from the State of Georgia prior to December 22, 1859, in the territory formerly claimed by the said state, which land is within the State of Florida by the line specified in §6.09 remain confirmed so far as this state had the right and power to confirm the same as provided by the act of December 22, 1859.

History.—§2, ch. 1017, 1859; RS 456; GS 645; RGS 1229; CGL 1785.

6.11 Boundary of Florida, east coast.—Wherever the coast line of the state, both along the east coast of the mainland and along the Florida Keys, is in direct contact with the waters of the Atlantic ocean or the Florida straits, which latter is an arm of the Atlantic ocean, the seaward boundary of the state is hereby fixed, defined, and interpreted as, and is hereby extended to, a line three geographical miles distant from said coast line. The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

History.—Comp. §1, ch. 29744, 1955.

CHAPTER 7

COUNTY BOUNDARIES

7.01 Alachua county.—The boundary lines of Alachua county are as follows: Begin where the range line between ranges sixteen and seventeen east intersects the thread of the Santa Fe river; thence run south on said range line to the southwest corner of section seven, township eleven south, range seventeen east; thence run east along the south line of sections seven, eight, nine, ten, eleven and twelve to the northwest corner of section eighteen, township eleven south, range eighteen east; thence run south along the west line of sections eighteen, nineteen, thirty and thirty-one, township eleven south, range eighteen east to southwest corner of said section thirty-one; thence run east along south line of sections thirty-one, thirty-two, thirty-three and thirty-four to southeast corner of section thirty-four, township eleven south, range eighteen east outside of Arredonda grant; thence run north along east line of said section thirty-four to southwest corner of section thirty-four, township eleven south, range eighteen east inside said grant; thence run east along the township line between townships eleven and twelve, south, to its intersection with the west margin of Orange lake; thence following the western and southern margin of Orange lake to its intersection with the range line between range twenty-two and twenty-three east; thence run north along said range line to where same is intersected by the north and east margin of Santa Fe lake; thence run north following the east margin of said Santa Fe lake to its westernmost intersection with a line which is the prolongation of the north line of McManus subdivision as per plat book "A", page 117 of the public records of Alachua county; thence west along the north line of said subdivision to its intersection with the east line of government lot three of section twenty-one, township eight south, range twenty-two east; thence north along said east line to the southeast corner of the southwest quarter of the northwest quarter of said section twenty-one; thence north along the line between the east half and the west half of the northwest quarter of said section twenty-one to the north line of said section twenty-one; thence west along the north line of said section twenty-one to the southeast corner of section seventeen, township eight south, range twenty-two east; thence west to the southwest corner of the southeast quarter of the southeast quarter of said section seventeen; thence north to the southeast corner of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner

of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence north to the northwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the northwest quarter of the northeast quarter of said section seventeen; thence north to the half-mile corner of the south line of section eight, township eight south, range twenty-two east; thence west to the southwest corner of the east half of the southeast quarter of the southwest quarter of said section eight; thence north to the northwest corner of the east half of the northeast quarter of the northwest quarter of said section eight; thence north to the northeast corner of the west half of the southeast quarter of the southwest quarter of section five, township eight south, range twenty-two east; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section five; thence north along the west line of said section five to the northeast corner of the southeast quarter of the northeast quarter of section six, township eight south, range twenty-two east; thence west to the southwest corner of the northeast quarter of the northeast quarter of said section six; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section six; thence west along the north line of said section six to the northwest corner of said section six; thence north along the east line of section one, township eight south, range twenty-one east to the southeast corner of section thirty-six, township seven south, range twenty-one east; thence north along the east line of said section thirty-six to the northeast corner of the southeast quarter of the southeast quarter of said section thirty-six; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section thirty-six; thence north along the west line of said section thirty-six to its intersection with the thread of the Santa Fe river; thence northerly and westerly along the thread of the Santa Fe river to its intersection with the east line of the southwest quarter of the northwest quarter of section thirty-three, township seven south, range twenty-one east; thence north to the northeast corner of the southwest quarter of the northwest quarter of said section thirty-three; thence west to the northeast corner of the southeast quarter of the northeast quarter of section thirty-two, township seven south, range twenty-one east; thence west to the northwest corner of the southwest quarter of the northwest quarter of said section thirty-two; thence west to the southwest corner of the northeast quarter of the northeast quarter of section thirty-one, township seven south, range twenty-one east; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section thirty-one; thence west to the half-mile corner of the south line of section thirty, township seven south, range twenty-one east; thence north on the quarter section line of said section thirty to its intersection with the thread of the Santa Fe river; thence southerly and westerly along the thread of said Santa Fe river to its intersection with the south line of the southwest quarter of the northeast quarter of section twenty-eight, township seven south, range twenty east; thence west to the southwest corner of the northeast quarter of said section twenty-eight; thence north to the northwest corner of the northeast quarter of said section twenty-eight; thence west to the northwest corner of said section twenty-eight; thence north along the east line of section twenty, township seven south, range twenty east to the southeast corner of the northeast quarter of said section twenty; thence west on the quarter section line of said section twenty to its intersection with the thread of the Santa Fe river; thence northerly and westerly along the thread of the Santa Fe river to its southernmost intersection with the east line of section two, township seven south, range seventeen east; thence run south along the east line of said section two to the northeast corner of section eleven, township seven south, range seventeen east; thence run south along the east line of said section eleven to the northeast corner of government lot four in said section eleven; thence run west to the northwest corner of said government lot four; thence run south along west line of said government lot four to the southwest corner of said government lot four; thence run west along the south line of said section eleven to the northwest corner of section fourteen, township seven south, range seventeen east; thence run south along the west line of said section fourteen to the southwest corner of said section fourteen; thence run east along south line of said section fourteen to its intersection with the thread of the Santa Fe river; thence run southerly and westerly along the thread of said river to the point of beginning.

History.—Dec. 29, 1824; §3, Nov. 23, 1828; §1, Feb. 10, 1835; ch. 106, 1846; §1, ch. 923, 1859; ch. 1765, 1870; RS 38; GS 36; §1, ch. 6243, 1911; §1, ch. 6509, 1913; RGS 39; §1, ch. 11371, 1925, CGL 41; am. §1, ch. 28312, 1953.

7.02 Baker county—The boundary lines of Baker county are as follows: Beginning at a point at center of township four south, on range line dividing ranges eighteen and nineteen east; thence north on said range line to the Georgia line; thence easterly on said Georgia line to the St. Marys river, and then down said river, concurrent with the boundary line between the States of Georgia and Florida, to where the said river intersects with range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the center line of township four south; and then west on said township line to the point of beginning.

History.—Feb. 4, 1832; Mar. 15, 1844; §3, ch. 895, 1858; ch. 1039, 1859; §1, ch. 1185, 1861; RS 31; GS 29; §1, ch. 6244, 1911; RGS 31; CGL 33.

7.03 Bay county.—The boundary lines of Bay county are as follows: Beginning at the southwest corner of section eighteen in township two, north, range eleven, west; thence west on the section line to the southwest corner of section eighteen in township two, north, range twelve, west; thence south on the range line dividing ranges twelve and thirteen, west, to the Meridian base line; thence west on the base line to the thread of Pine Log creek in range sixteen, west; thence southwesterly along the thread of said creek into the Choctawatchee river to the thread of said river; thence southwesterly along the thread of said river to a point where said river intersects the range line dividing ranges seventeen and eighteen, west; thence south on said range line to the Gulf of Mexico; thence in a southeastwardly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, including all islands opposite the shore line to a point where range line dividing ranges eleven and twelve, west, intersects with said gulf; thence north on said range line to place of beginning.

History.—§1, ch. 6505, 1913; §§1, 2, ch. 6506, 1913; §1 ch. 6508, 1913; RGS 15; CGL 17.

7.04 Bradford county.—The county lines of Bradford county are as follows: beginning at a point where the thread of New river intersects the thread of the Santa Fe river; thence northeasterly concurrent with the east boundary of Union county following the meanderings of the said New river to where same is intersected by the middle township line of township four south, range twenty-two east; thence east on said middle township line to the range line between ranges twenty-two and twenty-three east; thence south on said range line to the southeast corner of section twelve, township nine south, range twenty-two east; thence west on the section line between section twelve and thirteen, township nine south, range twenty-two east to Santa Fe lake; thence northwesterly following the northeast shore of Santa Fe lake to its westernmost intersection with a line which is the prolongation of the north line of McManus subdivision as per plat book "A," page 117 of the public records of Alachua county; thence west along the north line of said subdivision to its intersection with the east line of government lot three of section twenty-one, township eight south, range twenty-two east; thence north along said east line to the southeast corner of the southwest quarter of the northwest quarter of said section twenty-one; thence north along the lines between the east half and the west half of the northwest quarter of said section twenty-one to the north line of said section twenty-one; thence west along the north line of said section twenty-one to the southeast corner of section seventeen, township eight south, range twenty-two east; thence west to the southwest corner of the southeast quarter of the southeast quarter of said section seventeen; thence north to the southeast corner of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence north to the northwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the northwest quarter of the northeast quarter of said section seventeen; thence north to the half-mile corner on the south line of section eight, township eight south, range twenty-two east; thence west to the southwest corner of the east half of the southeast quarter of the southwest quarter of said section eight; thence north to the northwest corner of the east half of the northeast quarter of the northwest quarter of said section eight; thence north to the northeast corner of the west half of the southeast quarter of the southwest quarter of section five, township eight south, range twenty-two east; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section five; thence north along the west line of said section five to the northeast corner of the southeast quarter of the northeast quarter of section six, township eight south, range twenty-two east; thence west to the southwest corner of the northeast quarter of the northeast quarter of said section six; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section six; thence west along the north line of said section six to the northwest corner of said section six; thence north along the east line of section one, township eight south, range twenty-one east to the southeast corner of section thirty-six, township seven south, range twenty-one east; thence north along the east line of said section thirty-six to the northeast corner of the southeast quarter of the southeast quarter of said section thirty-six; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section thirty-six; thence north along the west line of said section thirty-six to its intersection with the thread of the Santa Fe river; thence northerly and westerly along the thread of the Santa Fe river to its intersection with the east line of the southwest quarter of the northwest quarter of section thirty-three, township seven south, range twenty-one east; thence north to the northeast corner of the southwest quarter of the northwest quarter of said section thirty-three; thence west to the northeast corner of the southeast quarter of the northeast quarter of section thirty-two, township seven south, range twenty-one east; thence west to the northwest corner of the southwest quarter of the northwest quarter of said section thirty-two; thence west to the southwest corner of the northeast quarter of the northeast quarter of section thirty-one, township seven south, range twenty-one east; thence north to the northwest corner of the northeast quarter of

the northeast quarter of said section thirty-one; thence west to the half-mile corner on the south line of section thirty, township seven south, range twenty-one east; thence north on the quarter section line of said section thirty to its intersection with the thread of the Santa Fe river; thence southerly and westerly along the thread of said Santa Fe river to its intersection with the south line of the southwest quarter of the northeast quarter of section twenty-eight, township seven south, range twenty east; thence west to the southwest corner of the northeast quarter of said section twenty-eight; thence north to the northwest corner of the northeast quarter of said section twenty-eight; thence west to the northwest corner of said section twenty-eight; thence north along the east line of section twenty, township seven south, range twenty east to the southeast corner of the northeast quarter of said section twenty; thence west on the quarter section line of said section twenty to its intersection with the thread of the Santa Fe river; thence northerly and westerly along the thread of said Santa Fe river to the point of beginning.

History.—§3, ch. 895, 1858; ch. 1039, 1859; §1, ch. 1185, 1861; ch. 1765, 1870; RS 30; GS 28; ch. 8516, 1921; RGS 30; CGL 32; am. §2, ch. 28312, 1953.

7.05 Brevard county.—The boundary lines of Brevard county are as follows: Beginning in the thread of the St. Johns river where the line dividing townships twenty-one and twenty-two south, intersects said river; thence east on said township line to the range line dividing ranges thirty-three and thirty-four east; thence north on said range line to where the same intersects the line dividing townships nineteen and twenty south; thence east on said township line to the Atlantic Ocean; thence southward along the Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of Florida, to the intersection with the centerline of the Sebastian inlet produced eastwardly, said inlet being in section twenty of township thirty south range thirty-nine east; thence westerly on said centerline and continuing southwesterly along the centerline of the approach channel to said inlet from the Indian river to a point due east of the mouth of the St. Sebastian river; thence due west to the mouth of the St. Sebastian river; thence south along the thread of the St. Sebastian river and the thread of the south fork of the St. Sebastian river to a point where the line dividing townships thirty and thirty-one south intersects the thread of said south fork; thence west on said township line to the line dividing ranges thirty-four and thirty-five east; thence north on said range line to the northeast corner of township twenty-five south, range thirty-four east and the St. Johns river; thence northerly following the thread of said river to the point of beginning.

History.—Mar. 14, 1844; ch. 651, 1855; §2, ch. 1998, 1874; ch. 3175, 1879; §1, ch. 3768, 1887; RS 50; §§1, 19, ch. 5567, 1905; GS 48; §1, ch. 7801, 1917; RGS 53; §1, ch. 10148, 1925; CGL 55; §1, ch. 59-486.

7.06 Broward county.—The boundary lines of Broward county are as follows: Beginning on the east boundary of the State of Florida at a point where the south boundary of township forty-seven south of range forty-three east, produced easterly, would intersect the same; thence westerly on said township boundary to its intersection with the axis or center line of Hillsborough state drainage canal, as at present located and constructed; thence westerly along the center line of said canal to its intersection with the section line dividing sections twenty-six and thirty-five of township forty-seven south, of range forty-one east; thence westerly on the said section line dividing sections twenty-six, thirty-five and other sections to the northwest corner of said section thirty-one of township forty-seven south of range forty-one, east; thence south on the range line dividing ranges forty and forty-one east, of township forty-seven south, to the northeast corner of section twenty-five of township forty-seven, south, of range forty east, a distance of one hundred and six feet, more or less; thence due west on the north boundaries of the sections numbered from twenty-five to thirty, inclusive, of townships forty-seven south, of ranges thirty-seven to forty east, inclusive, as the same have been surveyed, or may hereafter be surveyed, by the authority of the trustees of the internal improvement fund of the State of Florida, to the northwest corner of section thirty of township forty-seven south, of range thirty-seven east; thence continuing due west to the range line between ranges thirty-four and thirty-five east; thence southerly on the range line dividing ranges thirty-four and thirty-five east, to the southwest corner of township fifty-one south, of range thirty-five east; thence east following the south line of township fifty-one south, across ranges thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty, to the southwest corner of township fifty-one south of range forty-one east; thence north on the range line dividing ranges forty and forty-one to the northwest corner of section thirty-one of township fifty-one south, of range forty-one east; thence east on the north boundary of section thirty-one and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence northerly along said eastern boundary to the point of beginning.

History.—§1, ch. 6934, 1915; RGS 60; CGL 66.

7.07 Calhoun county.—The boundary lines of Calhoun county are as follows: Beginning at a point in the thread of the Apalachicola river where the northern boundary of township two north, range seven west, crosses said river; thence west on said township line to the thread of the Chipola river; thence southerly down the thread of the stream of the said Chipola river to a point where a line drawn through the center of township two north, crosses said river; thence west on said middle township line to the range line be-

tween ranges eleven and twelve west; thence south on said range line, concurrent with the east boundary of Bay county, to the southwest corner of section nineteen, township three south, range eleven west; thence east on the south line of said section nineteen and other sections across ranges eleven west, ten west and a portion of nine west to where said section line intersects the thread of the Apalachicola river between sections twenty-three and twenty-six, township three south, range nine west; thence follow the thread of said river to the place of beginning.

History.—Jan. 26, 1838; ch. 1850, 1873; ch. 2061, 1875; RS 17; §1, ch. 4576, 1897; §1, ch. 4577, 1897; GS 15; §1, ch. 6506, 1913; RGS 17; §1, ch. 10132, 1925; CGL 19.

7.08 Charlotte county.—The boundary lines of Charlotte county are as follows: Beginning at the northeast corner of township forty south, range twenty-seven east; thence south on range line dividing ranges twenty-seven and twenty-eight east, to the township line dividing townships forty-two and forty-three south, and Lee county; thence west on said township line to the waters of the Gulf of Mexico; thence northerly and westerly along said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the intersection therewith of the township line dividing townships forty and forty-one south; thence east on said township line to the southeast corner of township forty south, range twenty east; thence north on the range line dividing ranges twenty and twenty-one east to the northwest corner of township forty south, range twenty-one east; thence east on township line dividing townships thirty-nine and forty south to the place of beginning.

History.—§3, ch. 3770, 1887; §1, ch. 8513, 1921; CGL 62.

7.09 Citrus county.—The boundary lines of Citrus county are as follows: Beginning at a point in the thread or center of the Withlacoochee river on the section line dividing sections twelve and thirteen, township twenty-one south, range twenty east; thence on said line west to the southwest corner of section nine, township twenty-one south, range nineteen east; thence north on said section line to township line dividing townships twenty and twenty-one south; thence west on said township line to the Gulf of Mexico; thence north along said gulf, including all islands along said gulf coast, and including the waters of said gulf within the jurisdiction of the State of Florida, to the most southern outlet of the Withlacoochee river at its mouth, leaving out all the islands in the mouth of said river; thence westerly along the north bank of the said Withlacoochee river to where range line dividing ranges seventeen and eighteen east, crosses the river; thence south on said range line to the thread of said river; thence along the thread of said river to point of beginning, including all the lands and islands which said river line may enclose.

History.—Ch. 107, 1847; ch. 415, 1850; ch. 3772, 1887; RS 44; GS 42; §1, ch. 6245, 1911; RGS 46; CGL 48.

7.10 Clay county.—The boundary lines of Clay county are as follows: Beginning at the west margin of the channel of the St. Johns river at the dividing line between townships three and four south, range twenty-six east; thence west on said line to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line, concurrent with the eastern boundary of Baker and Bradford counties, to the southeast corner of section twelve, township nine south, range twenty-two east; thence east on the line dividing sections seven and eighteen, eight and seventeen, township nine south, range twenty-three east to the Bellamy or federal road leading from St. Augustine to Tallahassee; thence east along the north margin of said road to its intersection with the south boundary line of township seven south; thence east along said line to the west margin of the channel of the St. Johns river; thence northerly along said west margin to the place of beginning.

History.—Ch. 866, 1858; §1, ch. 1039, 1859; §1, ch. 3469, 1883; RS 34; GS 32; §1, ch. 5978, 1909; RGS 34; §1, ch. 12489, 1927; CGL 36.

7.11 Collier county.—The boundary lines of Collier county are as follows: Beginning where the north line to township forty-eight south extended westerly intersects the western boundary of the State of Florida in the waters of the Gulf of Mexico; thence easterly on said township line to the northwest corner of section four of township forty-eight south of range twenty-five east; thence south to the northwest corner of section nine of said township and range; thence east to the eastern boundary line of range twenty-six east; thence north on said range line to the northwest corner of township forty-seven south of range twenty-seven east; thence east on the north line of township forty-seven south to the east line of range twenty-seven east; thence north on said range line to the north line of township forty-six south; thence east on the north line of township forty-six south to the east line of range thirty east; thence south on said range line to the north line of township forty-nine south; thence east on the north line of said township forty-nine south to the east line of range thirty-four east and the west boundary of Broward county; thence south on said range line, concurrent with the west boundary of Broward and Dade counties, to the point of intersection with the south line of township fifty-three south; thence west on the south line of said township fifty-three south to where that line extended intersects the western boundary of the State of Florida in the waters of the Gulf of Mexico; thence northwesterly and along the waters of said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—§1, ch. 9362, 1923; CGL 74.

7.12 Columbia county.—The boundary lines of Columbia county are as follows: Beginning at the mouth of the Ichetucknee river where it enters the Santa Fe river; thence up the thread

of the said Ichetucknee river to Ichetucknee spring; thence north on the range line dividing ranges fifteen and sixteen east to the section line dividing sections one and twelve and sections two and eleven, township six south, range fifteen east; thence west on said section line to the southwest corner of section two, township six south, range fifteen east; thence north on the section line dividing sections two and three, township six south, range fifteen east, across townships six, five, four, three, and two south, to the thread of the Suwannee river; thence northeast up the thread of said river to the Georgia line; thence along said line to the range line dividing ranges eighteen and nineteen east; thence south on said range line to Olustee creek; thence southerly down the thread of said creek to the Santa Fe river; thence southwesterly and northwesterly down the thread of said river to its southernmost intersection with the east line of section two, township seven south, range seventeen east; thence south along the east line of said section two to the northeast corner of section eleven, township seven south, range seventeen east; thence south along the east line of said section eleven to the northeast corner of government lot four in said section eleven; thence west along the north line of said government lot four to its northwest corner; thence south along the west line of said government lot four to its southwest corner; thence west along the north line of section fourteen, township seven south, range seventeen east to the northwest corner of said section fourteen; thence south along the west line of said section fourteen to its southwest corner; thence east along the south line of said section fourteen to the thread of the Santa Fe river; thence south and west along the thread of the Santa Fe river to the point of beginning.

History.—Feb. 4, 1832; §3, ch. 895, 1858; ch. 3948, 1889; RS 29; GS 27; §1, ch. 5979, 1909; RGS 29; CGL 31; §3, ch. 28312, 1953.

7.13 Dade county.—The boundary lines of Dade county are as follows: Beginning at the southwest corner of township fifty-one south, range thirty-five east; thence east following the south line of township fifty-one south, across ranges thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty east, to the southwest corner of township fifty-one south, range forty-one east; thence north on the range line dividing ranges forty and forty-one east to the northwest corner of section thirty-one, township fifty-one south, range forty-one east; thence east on the north boundary of said section thirty-one and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence southward along the coast, including the waters of the Atlantic Ocean and the gulf stream within the jurisdiction of the State of Florida, to a point on the reefs of Florida immediately opposite the mouth of Broad creek (a stream separating Cayo Lago from Old Rhodes Key); thence in a direct line through the middle of said stream to a point east of Mud Point, said point being located on the east line of the west one-half of section seven, township fifty-nine south, range forty east, at a distance of two thousand three hundred feet, more or less, south of the northeast corner of the west one-half of said section seven being a point on the existing Dade county boundary line as established by §7.13; thence run southerly along the east line of the west one-half of said section seven, township fifty-nine south, range forty east, to a point two thousand feet, more or less, north of the south line of said section seven; thence run westerly along a line parallel to the south line of said section seven, through the open water midway between two islands lying in the west one-half of said section seven to a point on the west line of section seven, township fifty-nine south, range forty east; thence run southerly for a distance of two thousand feet, more or less, to the southwest corner of said section seven; thence run southerly along the west line of section eighteen, township fifty-nine south, range forty east, to the southwest corner of said section eighteen; thence run in a southwesterly direction along a straight line to the southwest corner of section twenty-four, township fifty-nine south, range thirty-nine east; thence run southerly along the east line of section twenty-six, township fifty-nine south, range thirty-nine east, to the southeast corner of said section twenty-six; thence run southerly along the east line of section thirty-five, township fifty-nine south, range thirty-nine east, to a point of intersection with a line drawn parallel with the north line of said section thirty-five and through the open water midway between Main and Short Key; thence run westerly along a line parallel to the north line of said section thirty-five, through the open water midway between Main and Short Key to a point on the west line of section thirty-five and a point on the east line of section thirty-four, township fifty-nine south, range thirty-nine east; thence run southwesterly in a straight line to the southwest corner of the southeast quarter of said section thirty-four and the northeast corner of the northwest quarter of section three, township sixty south, range thirty-nine east; thence run southerly along the east line of the northwest quarter of said section three to the southeast corner of the northwest quarter of said section three; thence run westerly along the south line of the northwest quarter of said section three to the southwest corner of the northwest quarter of said section three; thence run westerly to a point on the northerly bank of Manatee creek at the easterly mouth of said Manatee creek; thence run westerly meandering the northerly bank of Manatee creek to the intersection thereof with the west right of way line of United States highway no. one, said right of way line being the east boundary of the Everglades national park and said north bank of Manatee creek being the southerly line of the mainland of the State of Florida and the existing boundary line between Dade county and Monroe county; thence along the mainland to

the range line between ranges thirty-four and thirty-five east, thence due north on said range line to place of beginning.

History.—Feb. 4, 1836; §1, ch. 1998, 1874; RS 53; GS 51; §1, ch. 5970, 1909; §1, ch. 6934, 1915; RGS 58; CGL 64. §1, ch. 61-16.

7.14 **DeSoto county.**—The boundary lines of DeSoto county are as follows: Beginning at the southeast corner of township thirty-nine south, range twenty-seven east; thence west on the township line dividing townships thirty-nine south and forty south to the southwest corner of township thirty-nine south, range twenty-three east; thence north on the range line dividing ranges twenty-two east and twenty-three east to the northwest corner of section nineteen, township thirty-six south range twenty-three east; thence east on the section lines to the northeast corner of section twenty-four, township thirty-six south, range twenty-seven east; thence south on the range line dividing ranges twenty-seven east and twenty-eight east to the southeast corner of township thirty-nine south, range twenty-seven east, the same being the place of beginning.

History.—§3, ch. 3770, 1887; RS 52; GS 50; RGS 57; §1, ch. 8513, 1921; CGL 63.

7.15 **Dixie county.**—The boundary lines of Dixie county are as follows: Beginning at a point where township line between townships seven and eight south, intersects the Suwannee river, thence southerly down the thread of the main stream of said Suwannee river to the Gulf of Mexico; thence along said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the mouth of the Steinhatchee river; thence northerly along the thread of the said Steinhatchee river to the point where it is intersected by the section line between sections fifteen and sixteen, in township eight, south of range ten east; thence north on said section line and other sections to the township line between townships seven and eight south; thence east on said township line dividing townships seven and eight south, to the point of beginning.

History.—Ch. 8514, 1921; CGL 69.

7.16 **Duval county.**—The boundary lines of Duval county are as follows: Beginning at the mouth of the Nassau river; thence up the thread of the main stream of said river to the run of Thomas swamp; thence up the run of said swamp to where same would intersect the prolongation of a line drawn from the southwest corner of township one north, of range twenty-five east, to the southwest corner of township two south, of range twenty-three east; thence on said last mentioned line in a southwesterly direction to where its extension would intersect the range line dividing ranges twenty-two and twenty-three east; thence south on said range line, concurrent with the Baker county line, to the dividing line between townships three and four south; thence east on said township line, concurrent with the north boundary of Clay county, to the west margin of the main channel of the St. Johns river; thence southerly along the west margin of the main channel of said river, concurrent with the east boundary of Clay county, to a point where a line drawn due west from the mouth of Julington creek would interect said western margin of the main channel of the St. Johns river; thence, concurrent with the north boundary of St. Johns county, due east to the mouth of Julington creek; thence along the thread of said Julington creek to the south bank of Durbin creek; thence eastwardly along the south bank of said Durbin creek to a point where the range line dividing ranges twenty-seven and twenty-eight east intersects said south bank; thence south on said range line to the southwest corner of township four south, range twenty-eight east; thence east on the township line dividing townships four and five south to the southeast corner of township four south, range twenty-eight east; thence north on the range line dividing ranges twenty-eight and twenty-nine east to a point where an extension of the section line between sections eight and seventeen and sections nine and sixteen, township three south, range twenty-nine east, would intersect said section line; thence east on said section line to the Atlantic Ocean; thence northward along the Atlantic coast, including the waters of said ocean within the jurisdiction of the State of Florida, to the point of beginning.

History.—Aug. 12, 1822; Dec. 29, 1824; Nov. 23, 1828; ch. 920, 1859; §1, ch. 1185, 1861; ch. 2068, 1875; RS 33; GS 31; RGS 33; CGL 35.

7.17 **Escambia county.**—The county of Escambia comprehends all that part of the state of Florida lying to the west and south of a line beginning at the Alabama line where said line crosses the Escambia river; running thence down the thread of said river to Escambia bay; thence along said bay to Deer point, at the intersection of Santa Rosa sound with said bay; thence up said Santa Rosa sound to a line parallel to and exactly three miles west of the range line dividing ranges twenty-five and twenty-six west, thence south along such parallel line to the waters of the gulf of Mexico; excluding only that area of Santa Rosa island and Santa Rosa sound comprising right of way of a bridge from the mainland of Santa Rosa county near Navarre to Santa Rosa island said right of way being two hundred feet wide plus such additional width as may be required for fills and other construction, and a road right of way on Santa Rosa island one hundred twenty feet wide, running from the west line of section twenty-seven in township two south, range twenty-six west, westerly to the west line of section thirty-six in township two south, range twenty-seven west on said island; providing that Escambia county shall have jurisdiction of offenses committed on the waters of the gulf of Mexico adjacent to the shores of Santa Rosa island which lie west of the parallel line three miles west of the range line between ranges twenty-five and twenty-six west; and the

counties of Escambia and Santa Rosa shall have concurrent jurisdiction over the waters of Santa Rosa sound and the area on Santa Rosa island comprising the right of way of the bridge and road heretofore described.

History.—July 21, 1821; Nov. 23, 1823; Feb. 18, 1842; RS 11; GS 9; RGS 9; CGL 11; §1, ch. 23867, 1947; §1, ch. 57-834. cf.—§§3, 4, ch. 23867, 1947.

7.18 Flagler county.—The boundary lines of Flagler county are as follows: Beginning on the township line between townships nine and ten south at a point directly north of Summer Haven; thence southwesterly to the mouth of Pellicer's creek; thence westerly along the middle of Pellicer's creek to a point where said creek intersects the range line between ranges twenty-nine and thirty east; thence south on said range line to the southeast corner of section thirteen, township ten south, range twenty-nine east; thence west on the south boundary of said section thirteen and other sections to the range line between ranges twenty-seven and twenty-eight east; thence south on said range line to the township line between townships eleven and twelve south; thence south and easterly through the middle of Crescent lake crossing Bear island on a line easterly of and parallel to the west line of section nineteen, township twelve south, range twenty-eight east, said line being ten thousand two hundred eighty feet easterly, measured at right angles from said west line of section nineteen, which line crosses approximately in the center of Bear island, then continuing south and easterly through the middle of said lake to the mouth of Haw creek; thence due east to a point where said creek is intersected by the range line between ranges twenty-eight and twenty-nine east; thence south on said range line to the southwest corner of section nineteen, township fourteen south, range twenty-nine east; thence east on the south line of said section nineteen and other sections to the southeast corner of section twenty-two, township fourteen south, range thirty-one east; thence north on the east line of said section twenty-two and other sections to the township line between townships twelve and thirteen south; thence east on said township line to a point where same is intersected by the King's road; thence northerly along said King's road to a point where the line dividing the Bulow and Ormond grants intersects said road; thence along the said line between the said two grants in a northeasterly direction across Bulow creek; thence following a continuance of this line, being the line dividing the lots seven and eight of the subdivision of the Bulow grant, to the intersection with the Haulover or Smith creek; thence along said Haulover or Smith creek to the intersection of the line running east between sections thirty and thirty-one, and twenty-nine and thirty-two, township twelve south, range thirty-two east; thence along said line to the Atlantic coast; thence northerly along the shore of the Atlantic Ocean, including the waters of said ocean within the jurisdiction of the State of Florida, to the point of beginning.

History.—§1, ch. 7399, 1917; RGS 36; CGL 38; §1, ch. 59-488.

7.19 Franklin county.—The boundary lines of Franklin county are as follows: Beginning at a point on the Apalachicola river, known as the mouth of Black or Owl creek; thence northerly up the western bank of said creek to where the same intersects the middle section line of section twenty-six, township five south, range eight west; thence due east on the middle section line to the eastern bank of the Ocklocknee river; thence south and easterly following the eastern bank of said river, including the islands in said river; to a point directly north of the easternmost point of James island; thence easterly to the boundary line of the State of Florida; thence south and westerly along said boundary line, including the waters of the Gulf of Mexico within the jurisdiction of the State of Florida, to the Forbes line, produced southerly; thence following the Forbes line until it crosses the waters of the Apalachicola river; thence northerly along the thread of said river to the place of beginning.

History.—Feb. 8, 1832; ch. 412, 1851; ch. 3624, 1885; RS 18; GS 16; RGS 18; CGL 20.

7.20 Gadsden county.—The boundary lines of Gadsden county are as follows: Beginning at a point in the thread of the Apalachicola river where said river is intersected by the boundary line between the States of Georgia and Florida; thence east on said boundary line to the thread of the Ocklocknee river; thence southerly along the thread of the said Ocklocknee river to a point where the north boundary line of section sixteen, township one south, range four west, intersects said thread of said river; thence due west to the western bank of said river; thence southerly along the western bank of said river to a point where same is intersected by the north line of section twenty, township one south, range four west; thence west to the northwest corner of section nineteen, township one south, range four west; thence north to the southeast corner of section one, township one south, range five west; thence west to the southwest corner of section two, township one south, range five west; thence north to the southeast corner of section twenty-two, township one north, range five west; thence west to the range line between ranges five and six west; thence north on said range line to the southeast corner of township two north, range six west; thence west to the southwest corner of section thirty-five, township two north, range six west; thence north to the northwest corner of said section thirty-five; thence west to the range line between ranges six and seven west; thence north, to the northwest corner of township two north, range six west; thence west to the thread of the Apalachicola river; thence north, following the thread of said river, to the place of beginning.

History.—June 24, 1823; Dec. 29, 1824; Nov. 23, 1828; §1, ch. 1046, 1859; RS 19; GS 17; §1, ch. 5966, 1909; RGS 19; CGL 21; §1, ch. 16436, 1933.

7.21 Gilchrist county.—The boundary lines of Gilchrist county are as follows: Beginning at a point where the range line between ranges sixteen and seventeen east, is intersected by the township line between townships ten and eleven south; thence west on the township line dividing townships ten and eleven south, to the range line dividing ranges fifteen and sixteen east; thence north on said range line to the northeast corner of section thirty-six, township ten south, range fifteen east; thence west to the northwest corner of said section thirty-six; thence north on the section line between sections twenty-five and twenty-six, township ten south, range fifteen east, one half mile, to the northeast corner of the southwest quarter of said section twenty-five; thence due west through the center of section twenty-six and other sections in township ten south, range fifteen east, to the range line dividing ranges fourteen and fifteen east; thence north on said range line one half mile to the northeast corner of section twenty-five, in township ten south, range fourteen east; thence due west on the north boundary line of said section twenty-five and other sections to the thread of the Suwannee river; thence northerly up the thread of the Suwannee river to the thread of the Santa Fe river; thence north and easterly up the thread of the said Santa Fe river to a point where the same is intersected by the range line dividing ranges sixteen and seventeen east; thence south on said range line to the place of beginning.

History.—§1, ch. 11371, 1925; CGL 78.

7.22 Glades county.—The boundary lines of Glades county are as follows: Beginning at the northwest corner of township forty south, range twenty-eight east; thence east on township line dividing townships thirty-nine and forty south to the southeast corner of township thirty-nine south, range thirty east; thence north on range line dividing ranges thirty and thirty-one east, to the northwest corner of township thirty-nine south, range thirty-one east; thence east on township line dividing townships thirty-eight and thirty-nine south, to the northeast corner of township thirty-nine south, range thirty-one east; thence north on range line dividing ranges thirty-one and thirty-two east, to the northwest corner of township thirty-eight south, range thirty-two east; thence east on township line dividing townships thirty-seven and thirty-eight south, to the intersection of the same with the Kissimmee river, and the western boundary of Okeechobee county; thence southerly along the thread of the Kissimmee river and the western boundary of Okeechobee county, to the mouth of said Kissimmee river; thence in a southerly direction in a straight course to the southeast corner of section twenty-five, being the northeast corner of section thirty-six, township forty south, range thirty-four east; thence southwesterly in a straight course to a point two miles east of the range line between ranges thirty-three and thirty-four east, on the line between townships forty-two and forty-three south; thence west on the township line dividing townships forty-two and forty-three south, to the southwest corner of section thirty-three, township forty-two south, range twenty-nine east; thence north on the section line to the northwest corner of said section thirty-three; thence west to the northwest corner of the northeast quarter of section thirty-one, township forty-two south, range twenty-nine east; thence south on the half section line to the township line dividing townships forty-two and forty-three south; thence west on said township line dividing townships forty-two and forty-three south to the southwest corner of township forty-two south, range twenty-eight east; thence north on the range line dividing ranges twenty-seven and twenty-eight east, concurrent with the eastern boundary of Charlotte county, to the place of beginning.

History.—§3, ch. 3770, 1887; §1, ch. 8513, 1921; §1, ch. 10596, 1925; §1, ch. 18568, 1937; CGL 61; §1, ch. 63-200.
cf.—7.501 Palm Beach county; distribution gasoline taxes.

7.221 Glades county, extension of boundary.—

(1) The existing boundaries of Glades county, Florida, be, and the same are enlarged and extended so as to comprise and include the following described additional territory now described as follows:

All that portion of the S½ of section 32, township 39 south, range 30 east lying east of federal highway no. 19 in Highlands county, Florida.

(2) Said territory herein and hereby added to Glades county, Florida, shall, after June 13, 1949, be as much a portion of said Glades county, as if originally incorporated therein.

History.—Comp. §1, ch. 25612, 1949.

7.23 Gulf county.—The boundary lines of Gulf county are as follows: Beginning at a point in the Apalachicola river where said river is intersected by the section line between sections twenty-three and twenty-six, township three south, range nine west; thence west on said section line and other section lines across the remainder of ranges nine west and ranges ten and eleven west to the southwest corner of section nineteen, township three south, range eleven west, at the Bay county line; thence south on the range line between ranges eleven and twelve west, concurrent with the eastern boundary of Bay county, to the Gulf of Mexico; thence south and easterly through said gulf, including the waters of the Gulf of Mexico within the jurisdiction of the State of Florida, to a point where the Forbes line would intersect said boundary line; thence northeasterly with said line until same crosses the waters of the Apalachicola river; thence northerly up the thread of said river to the place of beginning.

History.—Ch. 10132, 1925; CGL 75.

7.24 Hamilton county.—The boundary lines of Hamilton county are as follows: Beginning in the thread of the Withlacoochee river where the boundary line between the States of Geor-

gia and Florida intersects said river; thence southerly along the thread of said river to where it joins the thread of the Suwannee river; thence east and northerly following the thread of said Suwannee river where same is intersected by the boundary line between the States of Georgia and Florida; thence west along said boundary line to the place of beginning.

History.—Dec. 26, 1827; Nov. 23, 1828; RS 27; GS 25; RGS 27; CGL 29.

7.25 Hardee county.—The boundary lines of Hardee county are as follows: beginning at the northeast corner of township thirty-three south, range twenty-seven east; thence south on range line dividing ranges twenty-seven and twenty-eight east, to the southeast corner of section thirteen, township thirty-six south, range twenty-seven east; thence west following the section line to the southwest corner of section eighteen, township thirty-six south, range twenty-three east; thence north on range line dividing ranges twenty-two and twenty-three east to the northwest corner of township thirty-three south, range twenty-three east; thence east on township line dividing townships thirty-two and thirty-three east, to the place of beginning.

History.—§3, ch. 3770, 1887; §1, ch. 8513, 1921; CGL 59.

7.26 Hendry county.—The boundary lines of Hendry county are as follows: Beginning where the north line of township forty-three south, intersects the range line between ranges twenty-seven and twenty-eight east, at the line between Charlotte and Glades counties; thence south on said range line to the north line of township forty-six south; thence east on the north line of township forty-six south, to the east line of range thirty east; thence south on said east line of range thirty east, to the north line of township forty-nine south; thence east on said north line of township forty-nine south, to the east line of range thirty-four east, and the west boundary of Broward county; thence north on said east line of range thirty-four east, concurrent with the west boundary of Broward and Palm Beach counties, to where said east line intersects the south shore of Lake Okeechobee; thence due north on said east line of range thirty-four east, to the northeast corner of section thirty-six, township forty south, range thirty-four east; thence southwesterly in a straight course to a point two miles east of the range line between ranges thirty-three and thirty-four east, on the line between townships forty-two and forty-three south; thence west on the north line of township forty-three south, to the southwest corner of section thirty-three, township forty-two south, range twenty-nine east; thence north on the west line of said section thirty-three to the northwest corner of said section thirty-three; thence west on the north boundary line of sections thirty-two and thirty-one of township forty-two south, range twenty-nine east, to the northwest corner of the northeast quarter of section thirty-one in said township and range; thence south on the middle section line of said section thirty-one to the north line of township forty-three south; thence west on said township line to the place of beginning.

The existing boundaries of Hendry county are hereby enlarged and extended so as to comprise and include the following described additional territory: Begin on the County Line between Hendry and Glades County, on the South line of Section 36, Township 42 South, Range 29 East, at a point 2572.81 feet Westerly of the Southeast corner of said Section 36, thence from a tangent bearing of North 73°20′59″ East run Northeasterly along a curve concaved to the Southeast having a radius of 1196.28 feet through a central angle of 16°37′14″ for a distance of 347.02 feet to the end of curve; thence North 89°58′13″ East 2230.64 feet to East line of Section 36, Township 42 South, Range 29 East; thence North 89°58′13″ East 2563.80 feet; thence North 89°55′43″ East 1170.63 feet; thence North 89°57′23″ East 3029.37 feet; thence North 89°54′53″ East 3900.00 feet; thence North 89°56′53″ East 4114.17 feet; thence North 89°55′53″ East 2612.89 feet; thence North 89°54′08″ East 6272.94 feet; thence North 89°52′53″ East 3411.00 feet; thence South 89°45′26″ East 2789.00 feet; thence South 89°47′46″ East 700.00 feet; thence South 89°45′26″ East 1300.00 feet; thence South 89°53′26″ East 95.20 feet to the East line of Section 36, Township 42 South, Range 30 East, at a point 5259.75 feet South of the Northeast corner of said Section 36; thence continue South 89°53′26″ East 3340.50 feet; thence South 89°56′11″ East 4664.30 feet; thence South 89°57′11″ East 1500.00 feet; thence South 89°59′31″ East 2000.00 feet; thence South 89°57′11″ East 1064.05 feet; thence South 89°58′11″ East 2493.95 feet; thence North 89°53′49″ East 4142.00 feet; thence North 89°55′09″ East 2234.94 feet to the East line of Section 34, Township 42 South, Range 31 East, at a point 5229.50 feet South of the Northeast corner of said Section 34; thence continue North 89°55′09″ East 5.38 feet; thence South 89°43′31″ East 3859.68 feet; thence South 89°41′51″ East 1390.84 feet to the West line of Section 36, Township 42 South, Range 31 East, at a point 5251.30 feet South of the Northwest corner of said Section 36; thence continue South 89°41′51″ East 5083.59 feet to beginning of curve concaved to the Southwest having a radius of 1196.28 feet and a central angle of 18°05′19″; thence Southeasterly along said curve a distance of 377.67 feet to its intersection with the South line of Section 36, Township 42 South, Range 31 East on the County Line between Glades and Hendry Counties.

Such deletion from Glades county and addition to Hendry county shall not affect the computation of taxes on or from gasoline made pursuant to law.

History.—§1, ch. 9360, 1923; §1, ch. 10090, 1925; ch. 18568, 1937; CGL 72; §7, ch. 22858, 1945; §2, ch. 63-200; §§1, 2, ch. 63-391.

cf.—7.501 Palm Beach county; distribution of gasoline taxes.

7.27 Hernando county.—The boundary lines of Hernando county are as follows: Beginning at a point on the Withlacoochee river where the same is intersected by the section line dividing sections twelve and thirteen, township twenty-one south, range twenty east; thence southeasterly along the thread of said river to the juncture therewith of the Little Withlacoochee river; thence southeasterly along the thread of said Little Withlacoochee river to the head of same; thence east to the range line between ranges twenty-two and twenty-three east; thence south on said range line to the line dividing sections twenty-four and thirteen, township twenty-three south, range twenty-two east; thence west on said section line and other section lines to the line between ranges twenty and twenty-one east; thence south on said range line to the line dividing townships twenty-three and twenty-four south; thence west on said township line to the Gulf of Mexico; thence northerly, including the waters of said gulf within the jurisdiction of the State of Florida, to the township line dividing townships twenty and twenty-one south; thence east, concurrent with the south boundary line of Citrus county, on said township line to where same is intersected by the section line dividing sections four and five, township twenty-one south. range nineteen east; thence south on said section line and other section lines to the southwest corner of section nine, township twenty-one south, range nineteen east; thence east on the south line of said section nine and other sections to the place of beginning.

History.—Ch. 107, 1847; ch. 415, 1850; §§1, 8, ch. 3772, 1887; RS 45; GS 43; RGS 47; CGL 49.

7.28 Highlands county.—The boundary lines of Highlands county are as follows: Beginning at the northwest corner of township thirty-three south, range twenty-eight east; thence east on township line dividing townships thirty-two and thirty-three south, to the intersection of same with the Kissimmee river; thence southerly along the thread of said river and bordering Okeechobee county, to the intersection of the township line dividing townships thirty-seven and thirty-eight south with said river and boundary; thence west on said township line to the southwest corner of township thirty-seven south, range thirty-two east; thence south on range line dividing ranges thirty-one and thirty-two east to the southwest corner of township thirty-eight south, range thirty-two east; thence west on the township line dividing townships thirty-eight and thirty-nine south to the northwest corner of township thirty-nine south, range thirty-one east; thence south, on the range line dividing ranges thirty and thirty-one east, to the southwest corner of township thirty-nine south, range thirty-one east; thence west on the township line dividing townships thirty-nine and forty south, to the northwest corner of township forty south, range twenty-eight east; thence north on the range line dividing ranges twenty-seven and twenty-eight east to the place of beginning.

History.—§3, ch. 3770, 1887; §1, ch. 8513, 1921; CGL 60.
Cf.—§7.221 certain territory formerly included in Highlands County now included in boundaries of Glades County.

7.29 Hillsborough county.—The boundary lines of Hillsborough county are as follows: Beginning at the northeast corner of section one in township twenty-seven south, range sixteen east; thence east on the north line of township twenty-seven south to the line between ranges twenty-two and twenty-three east; thence south on said range line to the line between townships thirty-two and thirty-three south; thence west on said township line to the south bank of Tampa bay; thence in a direct line to a point midway between Egmont and Passage keys in the Gulf of Mexico; thence westerly to the boundary of the State of Florida; thence northerly on the boundary of the State of Florida to a point in the Gulf of Mexico due west of the northern shore of Mullet key; thence due east to a point one hundred yards due west of the northernmost shore of Mullet key; thence in a line one hundred yards from the shore line around the southern portion of Mullet key to a point one hundred yards due east of the easternmost shore of Mullet key; thence due north to a point due east of the northernmost shore of Mullet key; thence due east to the middle waters of Tampa bay; thence in a northerly direction through the middle waters of Tampa bay and Old Tampa bay to a point where the range line between ranges sixteen and seventeen east strikes said shore; thence north on said range line to the place of beginning.

History.—Jan. 25, 1834; §2, ch. 107, 1847; ch. 1201, 1861; RS 47; GS 45; §1, ch. 6247, 1911; RGS 49; CGL 51; §1, ch. 19058, 1939.

7.30 Holmes county.—The boundary lines of Holmes county are as follows: Beginning on the Alabama state line where it is intersected by the line dividing centrally range eighteen, west; thence south on the section lines to the line dividing townships two and three, north, in range eighteen, west; thence east on said township line to the thread of the Choctawhatchee river; thence up the thread of said river to a point where said river is intersected by the township line between townships four and five north; thence east on said township line to the northwest corner of section four, township four north, range fifteen west; thence south one mile on section line to the southwest corner of section four, township four north, range fifteen west; thence east one mile to the southeast corner of section four, township four north, range fifteen west; thence south on section lines two miles to the southwest corner of section fifteen, township four north, range fifteen west; thence east on section lines to the thread of Holmes creek; thence northward up the thread of Holmes creek to a point where said creek crosses the Alabama line; thence

west on said state line to the place of beginning.

History.—Ch. 176, 1848; RS 14; GS 12; §2, ch. 6935, 1915; RGS 13; CGL 15.

7.31 **Indian River county.**—The boundary lines of Indian River county are as follows: Beginning at the northwest corner of township thirty-one south, of range thirty-five east; thence east on the line dividing the townships thirty and thirty-one south, to the point where said line intersects the medial line of the south fork of the St. Sebastian river; thence northerly down the thread of said stream to the main stream of the St. Sebastian river; thence down the thread of the St. Sebastian river to its confluence with the Indian river; thence east to the intersection with the southwesterly extension of the centerline of the approach channel to the Sebastian inlet from the Indian river; thence northeasterly along said centerline and continue northeasterly and easterly along the centerline of the Sebastian inlet to the Atlantic Ocean; thence southward along the Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida to the township line between townships thirty-three and thirty-four south; thence west on said township line to range line dividing ranges thirty-five and thirty-six east; thence north between ranges thirty-five and thirty-six east to the northeast corner of section one, township thirty-three south, range thirty-five east; thence west on township line dividing townships thirty-two and thirty-three south, range thirty-five east to the range line dividing ranges thirty-four and thirty-five east; thence north on said range line to the northwest corner of township thirty-one south, range thirty-five east, being the place of beginning.

History.—§1, ch. 10148, 1925; CGL 76; §2, ch. 59-486.

7.32 **Jackson county.**—The boundary lines of Jackson county are as follows: Beginning at the point where the state line between the State of Florida and the State of Alabama crosses Holmes creek; thence southerly down the thread of said creek to the section line in the middle of township five north, range fourteen west; thence east on the section line to the northeast corner of section twenty-four, township five north, range thirteen west; thence south on range line between ranges twelve and thirteen west, to the township line between townships four and five north; thence east on said township line to the middle of range twelve west; thence south on the middle of said range to the middle of township two north, range twelve west; thence east on the middle of township two north, to the thread of the Chipola river; thence northerly up the thread of the Chipola river to the northern boundary line of said township two; thence east on the northern boundary line of township two north, to the thread of the Apalachicola river; thence northward up the thread of said river and the Chattahoochee river to the Alabama line; and thence westward along said state line to the place of beginning.

History.—Aug. 12, 1822; Dec. 29, 1824; ch. 1954, 1873; ch. 2061, 1875; RS 16; §1, ch. 4296, 1893; §1, ch. 4576, 1897; GS 14; §1, ch. 6935, 1915; RGS 16; CGL 18.

7.33 **Jefferson county.**—The boundary lines of Jefferson county are as follows: Beginning at the point on the Gulf of Mexico where the line between ranges two and three east strikes said gulf; thence north on said line to the base parallel line; thence in a direction northeast to the point where the sections twenty-one, and twenty-eight and twenty-nine of township one north, range three east, corner; thence north on the section line dividing sections twenty and twenty-one and other sections of township one north, range three east, to township line dividing townships one and two north, range three east; thence east on said township line to the waters of the Miccosukie; thence up Lake Miccosukie to the south boundary of township three north, range three east; thence on said township line to the east line of section thirty-four in said township three north, range three east; thence north on the east line of section thirty-four and other sections in said township and said range to the boundary line between the States of Georgia and Florida; thence east along said boundary line to the northwest corner of lot number one hundred eighty, township three north, range seven east, or the west boundary of Madison county; thence south to the southwest corner of said lot number one hundred eighty; thence east on the south boundary of said lot number one hundred eighty to the northeast corner of section twenty-seven, township three north, range seven east; thence due south to the southeast corner of section ten, township two north, range seven east; thence due west to the southwest corner of the said section ten; thence due south to the southeast corner of section sixteen, township two north, range seven east; thence due west to the southwest corner of said section sixteen; thence due south to the southeast corner of section twenty, township two north, range seven east; thence due west to the southwest corner of section nineteen, township two north, range seven east; thence due south to the southeast corner of section twenty-five, township two north, range six east; thence due west to the southwest corner of section twenty-six, township two north, range six east; thence due south to the southwest corner of section thirty-five, township two north, range six east; thence due west to the thread of the Big Aucilla river; thence southerly along the thread of said river, concurrent with the west boundary of Madison and Taylor counties, to the mouth of said Big Aucilla river; thence westerly through the waters of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—Jan. 20 1827; Nov. 23, 1828; ch. 3176, 1879; ch. 3304, 1881; RS 23; GS 21; RGS 23; CGL 25.

7.34 Lafayette county.—The boundary lines of Lafayette county are as follows: Beginning at a point where township line between townships seven and eight south intersects and crosses the Suwannee river; thence west on said township line to the southeast corner of section thirty-one, township seven south, range ten east; thence north on the east line of said section thirty-one and other sections to the southeast corner of the northeast quarter of section seven, township seven south, range ten east; thence due west to the range line dividing ranges nine and ten east; thence north on said range line to the northwest corner of township three south, range ten east; thence east on the township line dividing townships two and three south, to where same intersects the Suwannee river; thence southerly following the thread of said river to the place of beginning.

History.—§2, ch. 806, 1856; ch. 3766, 1887; RS 26; GS 24; §1, ch. 6246, 1911; ch. 8514, 1921; RGS 26; CGL 28.

7.35 Lake county.—The boundary lines of Lake county are as follows: Beginning at the intersection of the range line dividing ranges twenty-three and twenty-four east with the township line dividing townships twenty-four and twenty-five south; thence east on said township line to the range line dividing ranges twenty-four and twenty-five east; thence north on said range line to the section line dividing sections thirty and thirty-one, in township twenty-four south, range twenty-five east; thence east on the north line of sections thirty-one, thirty-two, thirty-three and thirty-four in said township twenty-four south, range twenty-five east, to the northeast corner of said section thirty-four; thence south on the east line of said section thirty-four to the township line dividing townships twenty-four and twenty-five south; thence east on said township line to the range line dividing ranges twenty-six and twenty-seven east; thence north to the south shore of Lake Apopka; thence north across the waters of Lake Apopka, taking in all islands and peninsulas along the west shore of said lake to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven east; thence north on said range line to the township line dividing townships nineteen and twenty south; thence east on said township line to the Wekiva river; thence north along the thread of the said Wekiva river to the St. Johns river; thence in a northerly and northwesterly direction through the thread of the St. Johns river to the southwest shore of Lake George; thence north along the west shore of Lake George to the range line dividing ranges twenty-six and twenty-seven east; thence south on said range line to the township line dividing townships seventeen and eighteen south; thence west on the said township line to the range line dividing ranges twenty-three and twenty-four east; thence south on the said range line to the place of beginning; and all of township twenty south, of range twenty-seven east, bounded on the south and east by the waters of Lake Beauclaire, shall be and are declared to be a part of the territory of Lake county.

History.—§1, ch. 3771, 1887; ch. 3944, 1889; ch. 4066, 1891; RS 42; GS 40; RGS 44; CGL 46.

7.36 Lee county.—The boundary lines of Lee county are as follows: Beginning where the north line of township forty-three south, intersects the range line between ranges twenty-seven and twenty-eight east, at the line between Charlotte and Glades counties; thence west on said township line to the Gulf of Mexico; thence southerly along said gulf, including all islands and the waters of said gulf within the jurisdiction of the State of Florida, to the north line of township forty-eight south, extended westward; thence east on said township line to the northwest corner of section four, township forty-eight south, range twenty-five east; thence south to the northwest corner of section nine of said township and range; thence east on the north boundary of said section nine and other sections to the eastern boundary of range twenty-six east; thence north on said range line to the northwest corner of township forty-seven south, range twenty-seven east; thence east on the north line of township forty-seven south, to the east line of range twenty-seven east; thence north on said range line to the place of beginning.

History.—§§1, 5, ch. 1998, 1874; §1, ch. 3769, 1887; §§ 2, 3, ch. 3770, 1887; RS 54; GS 52; RGS 61; ch. 9360, 1923; ch. 9362, 1923; CGL 67.

7.37 Leon county.—The boundary lines of Leon county are as follows: Beginning at a point where the range line between ranges two and three east leaves the Wakulla line at the northeast corner of Wakulla county, and the southeast corner of section twenty-five, township two south, range two east; thence north on said range line to the base parallel; thence in a direction northeast to the point where sections twenty-one, twenty-eight and twenty-nine of township one north, range three east, corner; thence north to where the township line between townships one and two north of range three east, is intersected; thence east on said line to the waters of the Miccosukie; thence up Lake Miccosukie to the south boundary line of township three north, range three east; thence on said township line to the line of section thirty-four in said township three; thence due north on the east line of section thirty-four and other sections in said township to the Georgia line; thence west along the Georgia line to where same intersects the thread of the stream of the Ocklocknee river; thence, concurrent with the east boundary line of Gadsden county, southerly along the thread of the stream of the said Ocklocknee river to where the north boundary line of section sixteen in township one south, range four west, intersects said thread of the stream of said Ocklocknee river; thence west to the west bank of said Ocklocknee river; thence southerly along the west bank of the Ocklocknee river to a point where same is

intersected by the north line of section twenty, township one south, range four west; thence, concurrent with the east boundary line of Liberty county, southerly along the west bank of said Ocklocknee river to a point where same is intersected by the middle township line of township two south; thence east, concurrent with the north boundary line of Wakulla county, on said middle township line across ranges five, four, three, two, one, west and range one east, to the railroad leading from Tallahassee to St. Marks; thence south along said railroad two sections to the south boundary of section twenty-eight, township two south, range one east; thence east on said south boundary and the south boundary of other sections across ranges one and two east, to the place of beginning.

History.—§5, Dec. 29, 1824; Feb. 13, 1831; ch. 3176, 1879; ch. 3304, 1881; RS 21; GS 19; RGS 21; CGL 23; ch. 16436, 1933.

7.38 **Levy county.**—The boundary lines of Levy county are as follows: Beginning at the mouth of the most southern outlet of the Big Withlacoochee river, running in an eastwardly direction, including all the islands in the mouth of said river, up the northern bank of said river to where the range line dividing ranges seventeen and eighteen east intersects said river; thence north on said range line to the township line between townships fourteen and fifteen south; thence west on said township line to the middle line of township fourteen south, range nineteen east; thence north on said middle line to the township line between townships eleven and twelve south; thence west on said township line to the range line between ranges seventeen and eighteen east; thence north on said range line to the northeast corner of section thirteen, township eleven south, range seventeen east; thence west on the north line of said section thirteen and other sections to the range line between ranges sixteen and seventeen east; thence north on said range line to the township line between townships ten and eleven south; thence west on said township line to the range line between ranges fifteen and sixteen east; thence north on said range line to the northeast corner of section thirty-six, township ten south, range fifteen east; thence west on the north boundary of said section thirty-six to the northwest corner of said section thirty-six, thence north one-half mile to the middle line of section twenty-six, township ten south, range fifteen east; thence west on the middle line of said section twenty-six and other sections to the range line between ranges fourteen and fifteen east; thence north to the northeast corner of section twenty-five, township ten south, range fourteen east; thence west on the north line of said section twenty-five and other sections to the thread of the Suwannee river; thence southerly along the thread of the main stream of said river to its mouth; thence south and easterly along the Gulf of Mexico, including all the islands, keys, and the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—§1, Mar. 10, 1845; §1, ch. 3060, 1877; RS 37; GS 35; §1, ch. 6243, 1911; §1, ch. 6509, 1913; RGS 38; ch. 10778, 1925; CGL 40.

7.39 **Liberty county.**—The boundary lines of Liberty county are as follows: Beginning on the Apalachicola river where the township line dividing townships two and three north intersects said river; thence southerly along the thread of said river to Black or Owl creek; thence northerly along the western bank of said creek to where same is intersected by the middle section line of section twenty-six, township five south, range eight west; thence due east on the middle section lines to the thread of the Ocklocknee river; thence northwesterly along the thread of said river to a point where the north boundary line of section twenty, township one south, range four west, intersects said river; thence west to the northwest corner of section nineteen, township one south, range four west; thence north to the southeast corner of section one, township one south, range five west; thence west to the southwest corner of section two, township one south, range five west; thence north to the southeast corner of section twenty-two, township one north, range five west; thence west to the range line between ranges five and six west; thence north on said range line to the southeast corner of township two north, range six west; thence west to the southwest corner of section thirty-five, township two north, range six west; thence north to the northwest corner of said section thirty-five; thence west to the range line between ranges six and seven west; thence north to the northwest corner of township two north, range six west; thence west to the place of beginning.

History.—Ch. 771, 1855; §1, ch. 949, 1859; §1, ch. 1046, 1859; ch. 3624, 1885; RS 20; GS 18; §2, ch. 5966, 1909; RGS 20; CGL 22.

7.40 **Madison county.**—The boundary lines of Madison county are as follows: Beginning at the point where the west boundary line of lot number one hundred forty-three of fifteenth district Georgia fractions intersects with the Georgia state line and run thence due south along the west boundary line of lots numbers one hundred forty-three and one hundred eighty to the southwest corner of lot one hundred eighty; thence easterly along the south line of lot number one hundred eighty to the east line of section twenty-seven, township three north, range seven east; thence due south to the southeast corner of section ten, township two north, range seven east; thence due west to the southwest corner of said section ten; thence due south to the southeast corner of section sixteen, township two north, range seven east; thence due west to the southwest corner of said section sixteen; thence due south to the southeast corner of section twenty, township two north, range seven east; thence due west to the southwest

corner of section nineteen, township two north, range seven east; thence due south to the southeast corner of section twenty-five, township two north, range six east; thence due west to the southwest corner of section twenty-six, township two north, range six east; thence due south to the southwest corner of section thirty-five, township two north, range six east; thence due west to the thread of the Big Aucilla river; thence southerly along the thread of said river to the middle line of township two south, range five east, or the north boundary line of Taylor county; thence east, concurrent with the north boundary line of Taylor county, on said middle township line to the range line dividing ranges eight and nine east; thence south on said range line to the township line dividing townships two and three south; thence east on said township line to the range line dividing ranges nine and ten east, or the northwest corner of Lafayette county; thence east, concurrent with the north boundary line of Lafayette county, on said township line to the thread of the Suwannee river; thence north and easterly, concurrent with the west boundary line of Suwannee county, along the thread of said Suwannee river to where it joins the thread of the Withlacoochee river; thence northerly, concurrent with the west boundary line of Hamilton county, along the thread of the said Withlacoochee river to the boundary line between the States of Georgia and Florida; thence west along said boundary line to the place of beginning.

History.—Dec. 26, 1827; Nov. 23, 1828; Feb. 5, 1844; ch. 806, 1856; RS 24; GS 22; RGS 24; ch. 9361, 1923; CGL 26.

7.41 Manatee county.—The boundary lines of Manatee county are as follows: Beginning on the south bank of Tampa bay where the line between townships thirty-two and thirty-three south strikes said bay; thence east on said township line to where same is intersected by the line dividing ranges twenty-two and twenty-three east; thence south on said range line, known as the Washington line, to the southeast corner of township thirty-seven south, range twenty-two east; thence west on the township line between townships thirty-seven and thirty-eight south to the southwest corner of township thirty-seven south, range twenty-one east; thence north on the range line between ranges twenty and twenty-one east to the southeast corner of township thirty-five south, range twenty east; thence west on the township line between townships thirty-five and thirty-six south to the Gulf of Mexico; thence northward along the said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to a point midway between Egmont and Passage Keys; thence in a direct line to the place of beginning.

History.—Ch. 628, 1855; §2, ch. 3770, 1887; RS 51; GS 49; ch. 8515, 1921; RGS 56; CGL 58.

7.42 Marion county.—The boundary lines of Marion county are as follows: Beginning in the thread of the Withlacoochee river, at the range line dividing ranges seventeen and eighteen east; thence north to the township line dividing townships fourteen and fifteen south; thence east on said township line to the middle of township fourteen south, range nineteen east; thence north to the line dividing townships eleven and twelve south; thence east on said township line to Orange lake; thence down said lake along its southern margin to Orange creek; thence northerly and easterly down the thread of said creek to its junction with the Ocklawaha river; thence northeasterly down the south side of the Ocklawaha river at low water mark to a point on the south side of the Ocklawaha river at low water mark, where the range line dividing ranges twenty-four and twenty-five east in township eleven south, crosses said river; thence south on said range line to where it intersects the township line dividing townships eleven and twelve south; thence east on said township line to where it intersects the section line dividing sections two and three, in township twelve south, of range twenty-five east; thence south on said section line and other section lines to the southwest corner of section twenty-three of said township twelve south, of range twenty-five east; thence east on the section line dividing sections twenty-three and twenty-six and other section lines to the range line dividing ranges twenty-five and twenty-six east; thence south on said range line to the southwest corner of section seven, township thirteen south, range twenty-six east; thence east on the section line dividing sections seven and eighteen, township thirteen south, range twenty-six east, and other section lines to the west shore of Lake George; thence southwardly along the shore of Lake George to the mouth of Sulphur spring; thence along the western bank of Lake George until it arrives at range line dividing ranges twenty-six and twenty-seven east; thence south on said range line to township line dividing townships seventeen and eighteen south; thence due west on the said township line to the thread of the Withlacoochee river; thence northwesterly down the thread of said last mentioned river to the place of beginning.

History.—Mar. 14, 1844; ch. 106, 1846; §1, ch. 548, 1853; ch. 923, 1859; §1, ch. 3060, 1877; ch. 3767, 1887; RS 89; GS 87; RGS 40; CGL 42.

7.43 Martin county.—The boundary lines of Martin county are as follows: Beginning at the northwest corner of township thirty-eight south, range thirty-seven east; thence east, concurrent with the south boundary line of St. Lucie county, to the southwest corner of section thirty-one, township thirty-seven south, range forty-one east; thence north on the west line of said section thirty-one and other sections to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence east on the north line of said section eighteen and other sections to the waters of the Atlantic ocean; thence easterly to the eastern boundary of the state of Florida; thence south-

ward along the coast, including the waters of the Atlantic ocean within the jurisdiction of the state of Florida, to the south line of section twenty, township forty south, range forty-three east, produced easterly; thence west on the south line of said section twenty, and other sections, to the southwest corner of section twenty-two, township forty south, range forty-two east; thence south on the east line of section twenty-eight, township forty south, range forty-two east, to the southeast corner of said section twenty-eight; thence west on the south line of said section twenty-eight and other sections to the east shore of Lake Okeechobee; thence continue west in a straight course to the northeast corner of section thirty-six, township forty south, range thirty-four east, being the southwest corner of section thirty, township forty south, range thirty-five east; thence northeasterly in a straight course to the line of normal water level on the boundary of Lake Okeechobee at its intersection with the line dividing ranges thirty-six and thirty-seven east, township thirty-eight south; thence north on said range line to the place of beginning.

History.—§1, ch. 10180, 1925; CGL 77; §3, ch. 63-200.
cf.—7.501 Palm Beach county; distribution of gasoline taxes.

7.44 Monroe county.—So much of the State of Florida as is situated south of the county of Collier and west or south of the county of Dade, constitutes the county of Monroe.

History.—July 3, 1823; §§1, 5, ch. 1998, 1874; ch. 3769, 1887; RS 55; GS 53; RGS 62; CGL 68.

7.45 Nassau county.—The boundary lines of Nassau county are as follows: Beginning at the mouth of the Nassau river; thence northwesterly up the thread of the main stream of said river to the run of Thomas swamp; thence southwesterly up the run of said swamp to where it would intersect the prolongation of a line drawn from the southwest corner of township one north, of range twenty-five east, to the southwest corner of township two south, of range twenty-three east; thence on said last mentioned line in a southwesterly direction to where its extension would intersect the range line dividing ranges twenty-two and twenty-three east and the eastern boundary of Baker county, all concurrent with the north boundary of Duval county; thence north on said range line and said eastern boundary of Baker county to the St. Marys river and the boundary line between the States of Georgia and Florida; thence north and easterly along the said river, concurrent with the said boundary line of the States of Georgia and Florida to the Atlantic Ocean; thence southerly, including the waters of said ocean within the jurisdiction of the State of Florida, to the place of beginning.

History.—Dec. 29, 1824; Nov. 23, 1828; Mar. 15, 1844; §3, 895, 1858; ch. 920, 1859; ch. 1185, 1861; RS 82; GS 80; §1, ch. 6244, 1911; RGS 32; CGL 34.

7.46 Okaloosa county.—The boundary lines of Okaloosa county are as follows: Beginning on the Alabama state line where same is intersected by range line dividing ranges twenty-five and twenty-six west; thence east on said state line to the intersection of said state line with the range line dividing ranges twenty-one and twenty-two west; thence south on said range line to the Gulf of Mexico; thence in a westerly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the line dividing ranges twenty-five and twenty-six west; thence north on said range line to the place of beginning; provided that the counties of Escambia, Santa Rosa and Okaloosa shall have concurrent jurisdiction of any offenses committed on the waters of Santa Rosa sound.

History.—§1, ch. 6937, 1915; RGS 12; CGL 14; §2, ch. 23867, 1947.
cf.—§§3, 4, ch. 23867, 1947.

7.47 Okeechobee county.—The boundary lines of Okeechobee county are as follows: Beginning at the northeast corner of section one, township thirty-four south, range thirty-six east; thence west six miles to the northwest corner of township thirty-four south, range thirty-six east; thence north to the northeast corner of township thirty-three south, range thirty-five east; thence west on the line dividing townships thirty-two and thirty-three south, to the Kissimmee river; thence in a southerly direction along the thread of the Kissimmee river to the normal water level on the boundary of Lake Okeechobee; thence southerly in a straight course to the southeast corner of section twenty-five, being the northeast corner of section thirty-six, township forty south, range thirty-four east; thence northeasterly in a straight course to the line of normal water level on the boundary of Lake Okeechobee at its intersection with the line dividing ranges thirty-six and thirty-seven east, township thirty-eight south, thence north between ranges thirty-six and thirty-seven east to the point of beginning.

History.—§1, ch. 7401, 1917; RGS 55; CGL 57; §4, ch. 63-200.
cf.—7.501 Palm Beach county; distribution of gasoline taxes.

7.48 Orange county.—The boundary lines of Orange county are as follows: Beginning at the intersection of the range line dividing ranges twenty-six and twenty-seven east, with the township line dividing townships twenty-four and twenty-five south; thence north to the waters of Lake Apopka; thence north across the waters of Lake Apopka and along the eastern boundary of Lake county to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven; thence north on said range line to the township line dividing townships nineteen and twenty south; thence east on said township line to Wekiwa river; thence through the thread of the Wekiwa river in a southerly direction to the northwest corner of section thirty-one, township twenty south, range twenty-nine east; thence south on the range line between ranges twenty-eight and twenty-nine east, to the southwest corner of section nineteen, township twenty-one south, range twenty-nine east; thence east to the southeast corner

of section twenty, township twenty-one south, range thirty east: thence south to the township line between townships twenty-one and twenty-two south, range thirty east; thence east on said township line to the thread of the St. Johns river; thence southerly down the thread of the said river to the northeast corner of township twenty-five south, range thirty-four east; thence west on said township line to the place of beginning; provided that all of township twenty south, range twenty-seven east, bounded on the south and east by the waters of Lake Beauclaire shall be and are declared to be a part of the territory of Lake county.

History.—Nov. 23, 1828; §1, Jan. 30, 1845; ch. 1764, 1870; §1, ch. 3768, 1887; §1, ch. 3771, 1887; ch. 3944, 1889; RS 41; GS 39; §1, ch. 6511, 1913; RGS 42; CGL 44; §1, ch. 61-483.

7.49 Osceola county.—The boundary lines of Osceola county are as follows: Beginning at the northwest corner of township twenty-five south, range twenty-seven east; thence east on said township line to the northeast corner of township twenty-five south, range thirty-four east; thence south on the range line dividing ranges thirty-four and thirty-five east, to the line dividing townships thirty-two and thirty-three south; thence west on said township line to the thread of the Kissimmee river; thence northerly up the thread of said river to Lake Kissimmee; thence meandering the southern and western banks of said lake to Lake Cypress, and meandering said Lake Cypress to the township line dividing townships twenty-seven and twenty-eight south; thence west on said line to the range line dividing ranges twenty-eight and twenty-nine east; thence in a direct line to a point where the range line dividing ranges twenty-seven and twenty-eight east intersects the line dividing townships twenty-five and twenty-six south; thence west on the said township line to the point where the dividing line between ranges twenty-six and twenty-seven east intersects the line dividing townships twenty-five and twenty-six south; thence north on the range line to the point of beginning.

History.—§2, ch. 1201, 1861; §2, ch. 1998, 1874; ch. 3177, 1879; §1, ch. 3768, 1887; RS 49; GS 47; §1, ch. 7401, 1917; RGS 52; CGL 54.

7.50 Palm Beach county.—The boundary lines of Palm Beach county are as follows: Beginning on the east boundary of Florida at a point where the south boundary of township forty-seven south, of range forty-three east, produced easterly would intersect the same; thence westerly on said township line to its intersection with the axis or center line of the Hillsborough state drainage canal as at present located and constructed; thence westerly along the center line of said canal to its intersection with the section line dividing sections twenty-six and thirty-five of township forty-seven south, range forty-one east; thence westerly on the section line dividing said sections twenty-six and thirty-five and other sections to the northwest corner of section thirty-one, of township forty-seven south, range forty-one east; thence south on the range line dividing ranges forty and forty-one, township forty-seven south, to the northeast corner of section twenty-five of township forty-seven south, range forty east, a distance of one hundred six feet more or less; thence due west on the north boundary of the sections numbered from twenty-five to thirty, inclusive, of townships forty-seven south, ranges thirty-seven to forty east, inclusive, as the same have been surveyed or may hereafter be surveyed by the authority of the trustees of the internal improvement trust fund of the state, to the northwest corner of section thirty, township forty-seven south, range thirty-seven east; thence continuing due west to the range line between ranges thirty-four and thirty-five east, and the east boundary of Hendry county; thence north on said range line, concurrent with the east boundary of Hendry county, to the south shore of Lake Okeechobee; thence continuing north on said range line to the northeast corner of section thirty-six, township forty south, range thirty-four east; thence easterly parallel to and one mile north from the township line dividing townships forty and forty-one south to where the south boundary of section twenty-six, township forty south, range thirty-seven east intersects the normal water level on the boundary of Lake Okeechobee; thence east on the south boundary line of said section twenty-six and other sections across ranges thirty-seven, thirty-eight and thirty-nine, forty, forty-one and forty-two east, to the east line of section twenty-eight, township forty south, range forty-two east; thence north on said east section line to the north line of said section twenty-eight; thence east on the section line between sections twenty-two and twenty-seven of township forty south, range forty-two east, and other sections to the waters of the Atlantic ocean; thence easterly to the eastern boundary of Florida; thence southward along the coast, including the waters of the Atlantic ocean within the jurisdiction of the state of Florida, to the place of beginning.

History.—§1, ch. 5970, 1909; §1, ch. 6934, 1915; §1, ch. 7401, 1917; ch. 10090, 1925; ch. 10180, 1925; ch. 10596; RGS 59; CGL 65, 73; §5, ch. 63-200.

cf.—7.501 Palm Beach county; distribution of gasoline taxes.

7.501 Palm Beach county; distribution of gasoline taxes.—The provisions of §§7.22, 7.26, 7.43, 7.47 and 7.50, to the extent that it affects the distribution of gasoline taxes accruing to the credit of the county of Palm Beach under the provisions of §16, Art. IX of the constitution, shall be suspended to the extent necessary to meet the debt service requirements of bonds heretofore issued by the county of Palm Beach, any special road and bridge district of the county of Palm Beach, or by the Florida development commission payable from said gasoline taxes and the comptroller is hereby authorized to carry out the provisions of this section.

History.—§6, ch. 63-200.

7.51 Pasco county.—The boundary lines of Pasco county are as follows: Beginning at the intersection of the section line between sections thirty-three and thirty-four of township twenty-six south, of range twenty-two east, with the

township line between townships twenty-six and twenty-seven south, of range twenty-two east; thence north along the section lines to the line dividing sections three and four of said township and to the township line dividing townships twenty-five and twenty-six; thence east on said township line to the range line dividing ranges twenty-two and twenty-three east; thence north on said range line to the line dividing sections twenty-four and thirteen of township twenty-three south, of range twenty-two east; thence west to the line dividing ranges twenty and twenty-one east; thence south to the line dividing townships twenty-three and twenty-four south; thence west on said line to the Gulf of Mexico; thence southerly along the gulf coast, including islands and the waters of said gulf within the jurisdiction of the State of Florida, to the north line of Pinellas county, the township line dividing townships twenty-six and twenty-seven south; thence east on said line to the place of beginning.

History.—Ch. 107, 1847; ch. 415, 1850; ch. 3471, 1883; §8, ch. 3772, 1887; RS 46; GS 44; RGS 48; CGL 50; §1, ch. 25440, 1949.

7.52 Pinellas county.—The boundary lines of Pinellas county are as follows: Beginning on the Gulf of Mexico at the line dividing townships twenty-six and twenty-seven south; thence east on said line to the northeast corner of section one in township twenty-seven south, range sixteen east; thence south to the shore of Old Tampa bay; thence in a southerly direction through the middle waters of Old Tampa bay and Tampa bay, to a point in Tampa bay due east of the north shore of Mullet key; thence due west to a point due north of a point one hundred yards due east from the easternmost point of Mullet key; thence in a line 100 yards from the shore line around the southern portion of Mullet key to a point 100 yards west of the northernmost shore of Mullet key; thence west to the Gulf of Mexico and northward, including the waters of said gulf within the jurisdiction of the State of Florida, to point of beginning; provided, however, that nothing herein contained shall now or at any time hereafter in any manner whatsoever repeal, amend, change or disturb in any manner whatsoever the apportionment, allotment, allocation, basis of computation, or other formula wherein and whereby the participation in the gas tax by both counties hereto under and by virtue of §§208.04 and 208.11 of these statutes, or any law hereafter enacted, is changed so that Hillsborough county would receive a lesser amount and Pinellas county would receive a greater amount of such gas funds or tax by reason of the change of the boundary line herein authorized.

History.—§1, ch. 6247, 1911; RGS 50; CGL 52; ch. 19058, 1939.
cf.—§208.04 Gas taxes imposed.
§208.11 Distribution of second gas tax to counties, etc.

7.53 Polk county.—The boundary lines of Polk county are as follows: Beginning at a point where the range line between ranges twenty-two and twenty-three east is intersected by the township line between townships thirty-two and thirty-three south; thence east on said township line to the thread of the Kissimmee river; thence northeasterly up the thread of said river to lake Kissimmee; thence meandering the southern and western banks of said lake to lake Cypress and meandering said lake Cypress to the township line between townships twenty-seven and twenty-eight south; thence west on said township line to the range line between ranges twenty-eight and twenty-nine east; thence in a direct line to a point where the range line between ranges twenty-seven and twenty-eight east intersects the township line between townships twenty-five and twenty-six south; thence west on said township line to the range line between ranges twenty-six and twenty-seven east; thence north on said range line to the township line between townships twenty-four and twenty-five south; thence west on said township line to the section line between sections thirty-four and thirty-five, township twenty-four south, range twenty-five east; thence north on said section line to the northeast corner of said section thirty-four; thence west on the north line of said section thirty-four and the sections to the west of it to the range line between ranges twenty-four and twenty-five east; thence south on said range line to the township line between townships twenty-four and twenty-five south; thence west on said township line to the range line between ranges twenty-three and twenty-four east; thence south on said range line to the thread of the Withlacoochee river; thence southerly and westerly following the thread of said river to where same is intersected by the range line between ranges twenty-two and twenty-three east; thence south on said range line to the township line dividing townships twenty-five and twenty-six; thence west on said township line to the section line dividing sections three and four in township twenty-six south, range twenty-two east; thence south, along the section lines, to the township line dividing townships twenty-six and twenty-seven south; thence east along said township line to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the place of beginning.

History.—§2, ch. 1201, 1861; ch. 1848, 1871; §§3, 6, ch. 1998, 1874; ch. 3177, 1879; ch. 3471, 1883; ch. 3932, 1889; §1, ch. 4066, 1891; RS 48; GS 46; RGS 51; CGL 53; §2, ch. 25440, 1949.

7.54 Putnam county.—The boundary lines of Putnam county are as follows: Beginning at a point on the south side of the Ocklawaha river at low water mark where the range line dividing ranges twenty-four and twenty-five east, township eleven south, crosses said river; thence south on said range line to where same intersects the township line dividing townships eleven and twelve south; thence east on said township line to where same intersects the section line dividing sections two and three, township twelve south, range twenty-five east; thence south on said section line and other section lines to the southwest cor-

ner of section twenty-three of said township twelve south, range twenty-five east; thence east on the section line dividing sections twenty-three and twenty-six and other sections to the range line dividing ranges twenty-five and twenty-six east; thence south on said range line to the southwest corner of section seven, township thirteen south, range twenty-six east; thence east on the south boundary of said section seven and other sections to the west shore of Lake George; thence southwardly along the shore of Lake George to the mouth of Sulphur spring; thence to a point on Lake George south of the Spanish grant, known as the Acosta grant of land, and on the northern boundary of Volusia county; thence in a direct line and along the northern boundary of Volusia county to the most southern part of Crescent lake; thence along said northern boundary of Volusia county, following the southeast shore of Crescent lake, to the mouth of Haw creek and the boundary of Flagler county; thence westerly and then northwardly along the boundary of Flagler county through the middle of Crescent lake crossing Bear island on a line easterly of and parallel to the west line of section nineteen, township twelve south, range twenty-eight east, said line being ten thousand two hundred eighty feet easterly, measured at right angles from said west line of section nineteen, which line crosses approximately in the center of Bear island, then continuing north and westerly through the middle of Crescent lake, to the range line dividing ranges twenty-seven and twenty-eight east; thence north on said range line to its intersection with Deep creek; thence west along the center of Deep creek to the mouth thereof; thence due west to the west margin of the main channel of the St. Johns river; thence northerly along the west margin of the main channel of said river to the intersection of the south boundary line of township seven south with said river; thence west on said township line to its intersection with the north margin of the Bellamy or federal road leading from St. Augustine to Tallahassee; thence south and westerly along the north margin of said road to where same intersects the north boundary of section seventeen, township nine south, range twenty-three east; thence west on the section line between sections eight and seventeen, seven and eighteen, township nine south, range twenty-three east, to the southeast corner of said section seven; thence continue west on the section line between sections twelve and thirteen, township nine south, range twenty-two east to Santa Fe lake; thence in a southeasterly direction to a point on the range line dividing ranges twenty-two and twenty-three east where said range line is intersected by the Bellamy road; thence south on said range line to where the same intersects the thread of Orange creek; thence westerly along the thread of said creek to the intersection of same with the Ocklawaha river; thence westerly along the south bank of said river at low water mark to the place of beginning.

History.—§1, ch. 280, 1849; §1, ch. 923, 1859, ch. 2068, 1875; ch. 3469, 1883; ch. 3767, 1887; RS 36; GS 34; ch. 5978, 1909; RGS 37; §1, ch. 12489, 1927; CGL 39; §2, ch. 59-488.

7.55 Santa Rosa county.—The boundary lines of Santa Rosa county are as follows: Beginning at the Alabama line, where said line crosses the Escambia river; thence down the thread of said river to Escambia bay; thence along said bay to Deer point, at the intersection of Santa Rosa sound with said bay; thence up said Santa Rosa sound to where the line dividing ranges twenty-five and twenty-six west, strikes said sound; thence running up said line to the dividing line between the State of Florida and the State of Alabama; thence with said line westwardly to the point of beginning; provided that the counties of Escambia, Santa Rosa and Okaloosa shall have concurrent jurisdiction of any offenses committed on the waters of Santa Rosa sound.

That part of Santa Rosa island and Santa Rosa sound comprising a right of way of a bridge from the mainland of Santa Rosa county near Navarre to Santa Rosa island said right of way being two hundred feet wide plus such additional width as may be required for fills and other construction and a road right of way on Santa Rosa island one hundred twenty feet wide running from the west line of section twenty-seven in township two south, range twenty-six west, westerly to the west line of section thirty-six, township two south, range twenty-seven west on the island, and that part of Santa Rosa island lying between a line dividing ranges twenty-five and twenty-six west and a parallel line exactly three miles west of such range line, together with adjacent waters, is hereby included in Santa Rosa county; provided that Santa Rosa and Escambia counties shall have concurrent jurisdiction of offenses committed in that area of the island comprising the road right of way.

History.—Feb. 18, 1842; ch. 411, 1851; ch. 571, 1853; ch. 3258, 1881; RS 12; GS 10; §1, ch. 6937, 1915; RGS 10; CGL 12; §1, ch. 26860, 1951; §2, ch. 57-834.

7.56 Sarasota county.—The boundary lines of Sarasota county are as follows: Beginning in the Gulf of Mexico at a point on a prolongation of the township line between townships thirty-five and thirty-six south; thence east on said prolongation and said line to the southeast corner of township thirty-five south, range twenty east; thence south on the range line between ranges twenty and twenty-one east to the southwest corner of township thirty-seven south, range twenty-one east; thence east on the township line between townships thirty-seven and thirty-eight south to the southeast corner of township thirty-seven south, range twenty-two east; thence south on the range line between ranges twenty-two and twenty-three east, to the southeast corner of township thirty-nine south, range twenty-two east; thence west on the township line between townships thirty-nine and forty south

to the southwest corner of township thirty-nine south, range twenty-one east; thence south on the range line between ranges twenty and twenty-one east to the southeast corner of township forty south, range twenty east; thence west on the township line between townships forty and forty-one south to the Gulf of Mexico; thence northerly along the coast of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—Ch. 8515, 1921; CGL 70.

7.57 **Seminole county.**—The boundary lines of Seminole county are as follows: Beginning in the center of Wekiwa river and in the center of the St. Johns river, at the place where the Wekiwa river discharges its waters into the St. Johns river; thence through the thread of the said Wekiwa river in a southerly direction to the northwest corner of section thirty-one, township twenty south, of range twenty-nine east; thence south on the range line beween ranges twenty-eight and twenty-nine east, to the southwest corner of section nineteen, township twenty-one south of range twenty-nine east; thence east to the southeast corner of section twenty, township twenty-one south of range thirty east; thence south to the township line beween townships twenty-one and twenty-two south of range thirty east; thence east on said township line to the thread of the St. Johns river; thence following the thread of the St. Johns river to and through Lake Harney, into the St. Johns river; thence following the thread of the St. Johns river to and through Lake Monroe, into the St. Johns river; thence following the thread of the St. Johns river to its juncture with the Wekiwa river at the point of beginning.

The common boundary line between the counties of Seminole and Volusia, from the place where the St. Johns river enters Lake Harney to the corner common to Volusia, Seminole, Orange and Brevard counties is more fully defined, located and described as beginning where the center line of the St. Johns river enters Lake Harney at a point approximately seven hundred feet west of the south half mile post of section twenty, township twenty south, range thirty-three east, thence southeasterly following the center line of the St. Johns river to Puzzle lake at a point one thousand feet south and three hundred feet west of the east half mile post of section four, township twenty-one south, range thirty-three east, thence southwesterly to a point in Puzzle lake six hundred sixty feet north of the southwest corner of the southeast quarter of the southeast quarter of said section four, thence south one and one-eighth miles through Puzzle lake to the south line of section nine, thence southeasterly to the point where the center line of the St. Johns river enters Puzzle lake in the southwest quarter of section fifteen, township twenty-one south, range thirty-three east, thence southeasterly along the center line of the St. Johns river and the easterly channel thereof to a point in the southeast quarter of section twenty-seven, township twenty-one south, range thirty-three east, where the two channels unite, thence following the center line of the St. Johns river southeasterly to a point approximately four hundred feet east of the south half mile post of section thirty-five, township twenty-one south, range thirty-three east. Said point being corner common to Volusia, Seminole, Orange and Brevard counties.

History.—§1, ch. 6511, 1913; RGS 43; CGL 45; §1, ch. 20888, 1941; §1, ch. 61-167.

7.58 **St. Johns county.**—The boundary lines of St. Johns county are as follows: Beginning at a point on the Atlantic coast, at a point where the section line between ten and fifteen, in township three south of range twenty-nine east, intersects the said Atlantic coast; thence west on the said section line to a point where said section line would intersect the range line between ranges twenty-eight and twenty-nine east; thence south on said range line to a point where said range line intersects the township line between townships four and five south; thence west on the township line between townships four and five south, in range twenty-eight east, to a point where said township line intersects the range line between ranges twenty-seven and twenty-eight east; thence north on said range line to where the same intersects Durbin creek; thence along the south bank of Durbin creek to Julington creek; thence along the thread of Julington creek to the mouth thereof; thence due west to the west margin of the main channel of the St. Johns river and boundary line of Clay county; thence southwardly along the west margin of the main channel of said river and boundaries of Clay and Putnam counties to a point due west of the mouth of Deep creek; thence due east to the mouth of Deep creek; thence up the center of Deep creek to the point of intersection of Deep creek with the range lines between ranges twenty-seven and twenty-eight east; thence south on said range line to a point where the south boundary line of section eighteen, in township ten south, range twenty-eight east, intersects said range line; thence east on said section line to the range line between ranges twenty-nine and thirty east; thence north on said range line to the middle of Pellicer's creek; thence easterly on an imaginary line down the middle of said creek to the mouth of said creek; thence northeasterly on an imaginary line extending from the mouth of Pellicer's creek to a point on the extension of township line between townships nine and ten south, range thirty-one east and immediately north of Summer Haven on the Atlantic coast; thence northwardly along said Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to place of beginning.

History.—Ord. July 21, 1821; Aug. 12, 1822; Dec. 29, 1824; ch. 2068, 1875; RS 35; GS 33; §1, ch. 5780, 1907; §1, ch. 7399, 1917; RGS 85; CGL 87.

7.59 St. Lucie county.—The boundary lines of St. Lucie county are as follows: Beginning on the eastern boundary of the State of Florida at a point where the north section line of section thirteen, township thirty-seven south, range forty-one east, produced easterly, would intersect the same; thence westerly on the north line of said section and other sections to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence south on the range line between ranges forty and forty-one east, to the township line between townships thirty-seven and thirty-eight south; thence west on the said township line to the range line dividing ranges thirty-six and thirty-seven east; thence north on said range line, concurrent with the east boundary of Okeechobee county, to the northwest corner of township thirty-four south, range thirty-seven east; thence east on the township line dividing townships thirty-three and thirty-four south, to the Atlantic Ocean; thence continuing easterly to the eastern boundary of the State of Florida; thence southerly along said east boundary, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the place of beginning.

History.—Mar. 14, 1844; §§1, 19, ch. 5567, 1905; §1, ch. 7401, 1917; ch. 10148, 1925; RGS 54; CGL 56.

7.60 Sumter county.—The boundary lines of Sumter county are as follows: Beginning at the intersection of the township line dividing townships seventeen and eighteen south, with the range line dividing ranges twenty-three and twenty-four east; thence west on said township line to the thread of the Withlacoochee river; thence southerly up the thread of said river to the junction therewith of the Little Withlacoochee river; thence southeasterly up the thread of the said Little Withlacoochee river to the head of the same; thence east to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the thread of the Withlacoochee river; thence easterly along the thread of the said river to its intersection by the range line dividing ranges twenty-three and twenty-four east; thence north on said range line to the place of beginning.

History.—Ch. 107, 1847; §1, ch. 548, 1853; ch. 1848, 1871; ch. 3771, 1887; ch. 3932, 1889; RS 43; GS 41; RGS 45; CGL 47.

7.61 Suwannee county.—The boundary lines of Suwannee county are as follows: Beginning in the thread of the Suwannee river where the section line dividing sections two and three in township two south, of range fifteen east, crosses said river; thence south on said section line across townships two, three, four and five in range fifteen east, to section line dividing sections two and eleven in township six in said range; thence on said section line due east to range line dividing ranges fifteen and sixteen; thence south to Ichetucknee spring; thence down the thread of the Ichetucknee river to the Santa Fe river to its junction with Suwannee river; thence up the thread of said river to the point of beginning.

History.—§2, ch. 895, 1858; ch. 3948, 1889; RS 28; GS 26; RGS 28; CGL 30.

7.62 Taylor county.—The boundary lines of Taylor county are as follows: Beginning in the mouth of the Big Aucilla river; thence northerly, concurrent with the east boundary of Jefferson county, along the thread of said river to where same is intersected by the middle line of township two south, range five east; thence east on said middle township line, concurrent with the south boundary line of Madison county, across ranges six, seven and eight east to the range line between ranges eight and nine east; thence south on said range line to the township line between townships two and three south; thence east on said township line to the range line between ranges nine and ten east; thence south on said range line, concurrent with the west boundary of Lafayette county to the middle line of section seven, township seven south, range ten east; thence east on said middle line to the east line of said section seven; thence due south on the east line of said section seven and other sections to the township line between townships seven and eight south; thence east on said township line to the east line of section four, township eight south, range ten east, or the northwest corner of Dixie county; thence south, concurrent with the west boundary of Dixie county, on the east line of said section four and other sections to where same intersects the thread of the Steinhatchee river; thence southerly along the thread of the said Steinhatchee river to the mouth of said river; thence northerly through the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—§3, ch. 806, 1856; ch. 3766, 1887; RS 25; GS 23; RGS 25; CGL 27.

7.63 Union county.—The boundary lines of Union county are as follow: Beginning at the mouth of the Olustee creek; thence northerly up the thread of said creek to a point where said creek is intersected by the middle line of township four south, range eighteen east; thence east on said middle township line, concurrent with the south boundary line of Baker county to a point where the bed of New river intersects said line; thence following the meanderings of the thread of said New river in a southwesterly direction to the thread of the Santa Fe river; thence northwesterly down the thread of said Santa Fe river to the mouth of Olustee creek and the place of beginning.

History.—Ch. 8516, 1921; CGL 71.

7.64 Volusia county.—The boundary lines of Volusia county are as follows: Beginning at a point where the south boundary of the Spanish grant, known as the Acosta grant, strikes Lake George; thence in a direct line to the most southerly part of Dunn's lake; thence following the southeast shore of Dunn's lake to the north bank of Haw creek; thence easterly along

said bank of said creek to the range line between ranges twenty-eight and twenty-nine east; thence south on said range line to the southwest corner of section nineteen, township fourteen south, range twenty-nine east; thence east on the south boundary of said section nineteen and other sections to the southwest corner of section twenty-two, township fourteen south, range thirty-one east; thence north on the east boundary of said section twenty-two and other sections to the township line between townships twelve and thirteen south; thence east on said township line to a point where said township line is intersected by the King's road; thence northerly along said King's road to the point where the line dividing the Bulow and Ormond grants intersects said King's road; thence on said line between said two grants in a northeasterly direction across Bulow creek; thence following a continuance of this line, being the line dividing lots seven and eight of the subdivision of Bulow grant, to the intersection with the Haulover or Smith creek; thence along said Haulover or Smith creek to the intersection of the line running east between sections thirty and thirty-one and twenty-nine and thirty-two, township twelve south, range thirty-two east; thence on said line to the Atlantic coast; thence south along said coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the township line between townships nineteen and twenty south; thence west on said line to the range line between ranges thirty-three and thirty-four east; thence south on said range line to the township line between townships twenty-one and twenty-two south; thence west on said township line to the thread of the St. Johns river; thence north along the thread of said St. Johns river, what is known as "Old River," running on the south and west sides of what is known on the maps of public surveys as "Huntoon's Island," and on the south and west shores of Lake George to the place of beginning.

History.—§4, Nov. 23, 1828; §1, Jan. 30, 1845; §1, ch. 624, 1854; §1, ch. 925, 1859; ch. 1764, 1870; ch. 2068, 1875; ch. 3175, 1879; RS 40; GS 38; §2, ch. 5730, 1907; §1, ch. 7399, 1917; RGS 41; CGL 43; §1, ch. 2088, 1941.
cf.—§7.57 Seminole county.

7.65 Wakulla county.—The boundary lines of Wakulla county are as follows: Beginning on the range line between ranges two and three east where the same strikes the Gulf of Mexico; thence north on said range line to the north boundary of section thirty-six, township two south, range two east; thence due west on the north line of said section thirty-six and other sections to the railroad leading from Tallahassee to St. Marks; thence north along said railroad two sections; thence west on the north line of section twenty, township two south, range one east, and other sections, to the thread of the Ocklocknee river; thence southerly along the thread of said river to where same is intersected by the middle section line running through sections twenty-eight and twenty-nine, township five south, range three west, same being the north boundary line of Franklin county; thence east on said middle section line to the east bank of the Ocklocknee river; thence southerly and easterly along the east bank of said river to the Gulf of Mexico; thence north and easterly along said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—§1, Mar. 11, 1843; ch. 414, 1851; RS 22; GS 20; RGS 22; CGL 24.

7.66 Walton county.—The boundary lines of Walton county are as follows: Beginning on the Alabama state line where same is intersected by the line dividing centrally range eighteen west; thence south on the section lines to the line dividing townships two and three north, in range eighteen west; thence east to the Choctawhatchee river; thence down the thread of the Choctawhatchee river to a point where said Choctawhatchee river intersects the range line dividing ranges seventeen and eighteen west; thence south on said range line to the Gulf of Mexico; thence in a westwardly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the range line dividing ranges twenty-one and twenty-two west; thence north on said line to the dividing line between Florida and Alabama; thence easterly along said state line to the place of beginning.

History.—Dec. 29, 1824; Nov. 23, 1828; ch. 176, 1848; ch. 411, 1851; ch. 571, 1853; ch. 3258, 1881; RS 13; GS 11; §1, ch. 6508, 1913; §1, ch. 6937, 1915; RGS 11; CGL 13.

7.67 Washington county.—The boundary lines of Washington county are as follows: Beginning on the Choctawhatchee river on the line dividing townships four and five north; thence east on said township line to northwest corner of section four in township four north, range fifteen west; thence south one mile on section line to the southwest corner of section four, township four north, range fifteen west; thence east one mile to southeast corner of section four, township four north, range fifteen west; thence south on section lines two miles to the southwest corner of section fifteen, township four north, range fifteen west; thence east on section lines to Holmes creek; thence northward along the thread of Holmes creek to a point where said creek intersects with section line running east and west between sections thirteen and twenty-four, fourteen and twenty-three in township five north, range fourteen west; thence east on said section line to the northeast corner of section twenty-four, township five north, range thirteen west; thence south on range line between ranges twelve and thirteen west to where said range line intersects with township line between townships four and five north; thence east on said township line to the southeast corner of section thirty-three, township five north, range twelve west; thence south on the section line to southwest corner of section fifteen, township two

north, range twelve west; thence west on the section line to the southwest corner of section eighteen, township two north, range twelve west; thence south on the range line between ranges twelve and thirteen west to the meridian base line; thence west on the base line to the thread of Pine Log creek in range sixteen west; thence down the thread of said creek into the Choctawhatchee river to the thread of said river; thence up the thread of said river to the place of beginning.

History.—Dec. 9, 1825; ch. 1950, 1873; §1, ch. 3258, 1881; RS 15; ch. 4326, 1893; §1, ch. 4577, 1897; GS 13; §1, ch. 6505, 1913; §§1, 2, ch. 6935, 1915; RGS 14; CGL 16.

CHAPTER 8

CONGRESSIONAL DISTRICTS

8.01 Division of state into congressional districts.—Effective at the times stated in §8.04, the state shall be and the same is hereby divided into twelve congressional districts, the same to be serially numbered, to be designated by such numbers, and to have the areas as follows, to-wit:

(1) The county of Pinellas shall constitute and compose the twelfth congressional district.

(2) The county of Duval shall constitute and compose the second congressional district.

(3) The counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Holmes, Gulf and Washington shall constitute and compose the first congressional district.

(4) A north portion of Dade county as described herein shall constitute and compose the third congressional district, said north portion being that part of Dade county lying north of a line described as follows:

Commencing at the pt. of intersection of the West county line of Dade County with the center line of the Tamiami canal; thence easterly along the center of the Tamiami canal to its intersection with the center line of NW 20th St; thence easterly along the center of NW 20th St to the center of NW 12th Ave; thence South along the center of NW 12th Ave to the center of NW 11th St; thence east along the center of NW 11th St to the mainline of the Fla. East Coast Railroad; thence north along the mainline of the Florida East Coast Railroad to the center of NE 15th St; thence east along the center of NE 15th St to the edge of the waters of Biscayne Bay; thence north along the waters of Biscayne Bay to the easterly extension of NE 21st St; thence east along the extension of NE 21st St to the east city limits of the City of Miami; thence north along the east city limits of the City of Miami to the South line of the 36th St Causeway; thence easterly along the South line of the 36th St Causeway & an extension of said line to Biscayne Waterway; thence along the center of Biscayne Waterway to the center of 34th St, Miami Beach; thence easterly along the center of 34th St to the Atlantic Ocean; said watercourses, railroad mainline, streets & city limits being referred to as the same existed on Nov 1, 1960.

(5) The counties of Pasco, Hernando, Citrus, Sumter, Marion, Lake, Seminole, Osceola and Volusia shall constitute and compose the fifth congressional district.

(6) The counties of Broward, Palm Beach, Martin, Collier, Hendry, Lee and Glades shall constitute and compose the sixth congressional district.

(7) The counties of Polk, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte and Okeechobee shall constitute and compose the seventh congressional district.

(8) The counties of Dixie, Levy, Gilchrist, Alachua, Columbia, Baker, Union, Bradford, Clay, Putnam, St. Johns, Nassau and Flagler shall constitute and compose the eighth congressional district.

(9) The counties of Jackson, Calhoun, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Suwannee and Lafayette shall constitute and compose the ninth congressional district.

(10) The county of Hillsborough shall constitute and compose the tenth congressional district.

(11) The counties of Orange, Brevard, Indian River, St. Lucie shall constitute and compose the eleventh congressional district.

(12) The fourth congressional district shall be constituted and composed of Monroe county and of that part of Dade county south of the line described in subsection (4).

History.—§§1-3, ch. 4913, 1901; GS 55-57; §§1-5, ch. 6472, 1913; RGS 64-68; §2, chs. 8513-8516, 1921; §2, chs. 9360, 9362, 1923; §2, chs. 10132, 10148, 10180, 11372, 1925; CGL 80-84; §§1-6, ch. 16876, 1935; CGL 1936 Supp. §84(1); §§1-7, ch. 21975, 1943; §1, ch. 26717, 1951; §1, ch. 61-302.

8.02 New counties.—When any new counties are created, such new counties shall become a part of the congressional district in which the territory for such new county is located.

History.—§6, ch. 6472, 1913; RGS 69; CGL 85; §7, ch. 16876, 1935; §8, ch. 21975, 1943; §10, ch. 26484, 1951.

8.03 Election of representatives to congress.—The districts hereinbefore named shall constitute and form the congressional districts of the state, and a representative to the congress shall be selected in and for each of said congressional districts, as now provided by law.

History.—§4, ch. 4913, 1901; GS 58; RGS 70; CGL 86; §9, ch. 16876, 1935.

8.04 Effective dates.—Candidates for the office of congressman for each of the districts provided in §8.01 shall be nominated in 1962 as provided by law, and a congressman shall be elected from each such district at the general election to be held in 1962. For all other purposes, §8.01 shall take effect at the expiration of the term of office of the congressmen now serving from the state.

History.—§10, ch. 21975, 1943; §2, ch. 26717, 1951; §2, ch. 61-302.

TITLE III

LEGISLATIVE DEPARTMENT

CHAPTER 10

SENATE AND HOUSE OF REPRESENTATIVES

10.01 Division of state into senatorial districts; apportionment of senate, etc.—(1) The representation in the senate of the Florida legislature shall consist of forty-three members, each representing a district. The counties of the state shall be apportioned into forty-two senatorial districts and one district shall be added by superimposing over district thirteen district forty-three representing Dade county. The forty-three districts shall be apportioned among the several counties of the state to provide equitable representation based upon similar economic interests, geographic area and population. If by this reapportionment the district of a member of the senate whose term of office expires with the general election of November 1964 shall be abolished, or the number of his district relocated outside of his present district, then such member shall continue as a senator for the county of his residence during the remainder of his term and shall have an equal vote with any other senator and the number of his senatorial district shall be indicated by adding the letter X after the number of the district to which he was elected even though it increases the maximum number of members herein provided for; no county except Dade shall be divided in creating a senatorial district. Every district shall consist of contiguous counties.

(2) Pursuant to this act forty-three senatorial districts shall be consituted as follows:

First district—Santa Rosa county
Second district—Escambia county
Third district—Walton county, Holmes county and Washington county
Fourth district—Jackson county and Calhoun county
Fifth district—Wakulla county, Liberty county, Gulf county and Franklin county
Sixth district—Gadsden county
Seventh district—Polk county
Eighth district—Leon county
Ninth district—Hernando county, Sumter county and Citrus county
Tenth district—Taylor county, Madison county and Jefferson county
Eleventh district—Pinellas county
Twelfth district—St. Lucie county
Thirteenth district—Dade county
Fourteenth district—Columbia county
Fifteenth district—Bradford county, Clay county and Union county
Sixteenth district—Nassau county and Baker county
Seventeenth district—Hamilton county, Suwannee county and Lafayette county
Eighteenth district—Duval county
Nineteenth district—Orange county
Twentieth district—Marion county
Twenty-first district—Dixie county, Levy county and Gilchrist county
Twenty-second district—Sarasota county
Twenty-third district—Lake county
Twenty-fourth district—Lee county, Hendry county and Collier county
Twenty-fifth district—Bay county
Twenty-sixth district—Putnam county
Twenty-seventh district—Hardee county, DeSoto county and Glades county
Twenty-eighth district—Volusia county
Twenty-ninth district—Indian River county
Thirtieth district—Broward county
Thirty-first district—St. Johns county and Flagler county
Thirty-second district—Alachua county
Thirty-third district—Osceola county, Okeechobee county and Martin county
Thirty-fourth district—Hillsborough county
Thirty-fifth district—Palm Beach county
Thirty-sixth district—Manatee county
Thirty-seventh district—Brevard county
Thirty-eighth district—Pasco county
Thirty-ninth district—Okaloosa county
Fortieth district—Charlotte county and Highlands county
Forty-first district—Monroe county
Forty-second district—Seminole county
Forty-third district—Dade county

History.—Ch. 3703, 1887; RS 56; GS 54; RGS 63; §2, chs. 8513, 8514, 8515, 8516, 1921; §2, chs. 9360, 9362, 1923; §2, chs. 10132, 10148, 10180, 1925; §3, ch. 10242, 1925; §2, ch. 11371, 1925; CGL 79; §3, ch. 16781, 1935; §§1-4, ch. 23614, 1945; §1, ch. 63-1(X).
cf.—Art. III, Const., Legislative department.

10.02 Term of office of senators.—All senators, except when vacancies are to be filled, are to be elected for four years.

History.—§§2, 3, ch. 3703, 1887; RS 63, 64; GS 63; RGS 75; CGL 91.
cf.—§2, Art. VII, Const., 1885.

10.03 Representation in the house of representatives.—

(1) Representation in the house of representatives shall consist of one hundred twelve representatives which shall be apportioned among the counties by the method of equal proportions; that is, each county shall have one representative and the remaining representatives shall be assigned to the counties in proportion to population.

(2) Pursuant to subsection (1), there shall be one hundred twelve members of the house of representatives apportioned among the several counties as follows:

County	Number of Representatives
Dade	14
Duval	7
Hillsborough	6
Pinellas	6
Broward	5
Orange	4
Palm Beach	4
Polk	3
Escambia	3
Volusia	2
Brevard	2
Sarasota	1
Leon	1
Alachua	1
Manatee	1
Bay	1
Okaloosa	1
Lake	1
Seminole	1
Lee	1
Marion	1
Monroe	1
Gadsden	1
St. Lucie	1
Pasco	1
Jackson	1
Putnam	1
St. Johns	1
Santa Rosa	1
Indian River	1
Highlands	1
Columbia	1
Clay	1
Osceola	1
Nassau	1
Martin	1
Collier	1
Walton	1
Suwannee	1
Madison	1
Taylor	1
Charlotte	1
Bradford	1
Hardee	1
Sumter	1
DeSoto	1
Washington	1
Hernando	1
Holmes	1
Levy	1
Gulf	1
Jefferson	1
Citrus	1
Hendry	1
Hamilton	1
Calhoun	1
Baker	1
Franklin	1
Okeechobee	1
Union	1
Wakulla	1
Flagler	1
Dixie	1
Liberty	1
Glades	1
Lafayette	1
Gilchrist	1

History.—§4, ch. 3703, 1887; RS 65; GS 65; RGS 76; chs. 8513-8516, 1921; §2, chs. 9360, 9362, 1923; §2, chs. 10132, 10148, 10180, 10242, 11375, 1925; CGL 92; §§2, 3, ch. 16781, 1935; §§1, 2, 4, ch. 23613, 1945; §1, ch. 31378, 1955; §2, ch. 63-1(X).

10.04 Legislative apportionment.—

(1) The 1963 legislature shall be composed of the legislators elected pursuant to the constitution of 1885, as amended, and of the additional legislators as provided for in §§10.01 and 10.03, as amended at this special session of the legislature. Any representative or senator elected in the 1962 general election pursuant to the constitution of 1885, as amended, shall serve in said office for the term for which he was elected. The terms of office of members of the senate shall be for four years and the terms of office of members of the house of representatives shall be for two years. Any senator now serving shall complete his term to which he was elected; provided that the resignation or death of any legislator elected at or prior to the 1962 general election shall create a vacancy. The additional legislative offices herein created shall be filled by and at a special election to be held in the affected counties or districts, as provided by law; provided, however, the registration books for the elections provided herein shall close at 5:00 p.m. on the fifteenth day before the first primary election and remain closed for the remaining second primary and general election. The senators elected from the new even-numbered districts shall be elected for a term ending with the general election of 1966 and the senators elected from the new odd-numbered districts shall be elected for a term ending with the general election of 1964; thereafter all senators shall be elected for four year terms.

(2) The legislature shall hereafter reapportion its representation in the state senate at such times as may be required by the constitution of Florida.

History.—§3, ch. 63-1(X).

CHAPTER 11

LEGISLATION

11.01 Commissioners for the promotion of uniformity of legislation in the United States.—The governor shall appoint, by and with the consent of the senate, three commissioners by the name and style of commissioners for the promotion of uniformity of legislation in the United States. The said board shall examine the subjects of marriage and divorce, insolvency, form of notarial certificates, descent and distribution of property, acknowledgment of deeds, execution and probate of wills, and other subjects; ascertain the best means to effect assimilation and uniformity in the laws of the state, and cooperate and advise with similar commissions appointed for a like purpose in other states of the union; and, if wise and practicable, draft uniform laws to be submitted for the approval and adoption of the several states, and devise and recommend such other course of action as shall best accomplish the purposes of this section. Said commissioners shall serve for four years and without compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

The director of the legislative bill drafting department of the attorney general's office shall be an associate member and secretary of the commission. He shall prepare and sign all vouchers authorized by law and keep such records as directed by the commissioners.

History.—§1, ch. 4447, 1895; GS 66; RGS 77; CGL 93; §1, ch. 61-142; §19, ch. 63-400.

11.02 Notice of special or local legislation.—The notice required to obtain special or local legislation shall be by publishing the same in some newspaper published in the county or counties where the matter or thing to be affected by such legislation shall be situated, one time at least thirty days before introduction of the proposed law into the legislature, or by posting the same at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties, where the matter or thing to be affected by such legislation shall be situated. Said notice shall state the substance of the contemplated law, as required by §21, Art. III of the constitution.

History.—§1, ch. 3708, 1887; RS 66; GS 67; RGS 78; CGL 94; §1, ch. 13791, 1929.
cf.—§§21, 24, 25, Art. III, Const., 1885.

11.03 Proof of publication of notice.—Affidavit of proof of publication of such notice of intention to apply therefor, may be made, in substantially the following general form, but such form shall not be exclusive:

STATE OF FLORIDA }
COUNTY OF_____ }

Before the undersigned authority personally appeared_____, who on oath does solemnly swear (or affirm) that he has knowledge of the matters stated herein; that a notice stat-

ing the substance of a contemplated law or proposed bill relating to

(here identify bill)

has been published at least thirty days prior to this date, by being printed in the issues of (here state day, month and year of issue or issues) of the_____, a newspaper or newspapers published in_____county or counties, Florida (or) there being no newspaper, by being posted for at least thirty days prior to this date at three public places in the _____county or counties, one of which places was at the courthouse of said county or counties, where the matter or thing to be affected by the contemplated law is situated; that a copy of the notice that has been published as aforesaid and also this affidavit of proof of publication are attached to the proposed bill or contemplated law, and such copy of the notice so attached is by reference made a part of this affidavit.

_____

Sworn to and subscribed before
me this_____19_____
(SEAL)

_____

Notary Public, State of Florida.
My commission expires_____

Such affidavit of proof of publication shall be attached to the contemplated law when it is introduced into the legislature. A true copy of the notice published or posted shall also be attached to the bill when introduced, but it shall not be necessary to enter said published or posted notice, or proof thereof, in the journals. The fact that such notice was established in the legislature shall in every case be recited upon the journals of the senate and of the house of representatives, and the notice published and affidavit of publication thereof shall accompany the bill throughout the legislature and be preserved as a part thereof in the office of the secretary of state.

History.—§2, ch. 3708, 1887; RS 67; GS 68; RGS 79; CGL 95; §1, ch. 13791, 1929; §1, ch. 21635, 1943.
cf.—§21, Art. III, Const., 1885.

11.031 Official census.—

(1) All acts of the Florida legislature based upon population and all constitutional apportionments shall be based upon the last federal decennial state-wide census.

(2) No special county or district census shall be effective for any purposes other than to ascertain the population for the purpose of interpreting an existing law relating to additional judges of the circuit court and additional county judges, but no existing population or apportionment act shall be affected by a special census.

(3) The last federal decennial state-wide census shall not be effective for the purpose of affecting acts of the legislature enacted prior thereto which apply only to counties of the state within a stated population bracket until July 1 of the year following the taking of such census.

History.—§§1, 2, ch. 57-126; (1) by §1, (3) N. by §2, ch. 59-28; (2) by §1, ch. 59-410; (4) N. by §1, ch. 59-264; (4) r. by §2, ch. 63-572.

11.04 Notices declared to be sufficient.— Any notice heretofore published, now being published, or hereafter published which conforms to the requirements of §11.02 shall be sufficient in manner, form and substance; provided, however, any notice by posting in the manner provided by this chapter, which has heretofore been posted in any county or counties having a newspaper, is sufficient in manner, form and substance.

History.—§2, ch. 13791, 1929; CGL 1936 Supp. 95(1).

11.05 Oath by lobbyist; penalty for false swearing.—Whenever any person shall appear before any committee of the legislature of the state for the purpose of advocating or opposing, proposed changes or amendments, or in any wise discussing a measure or matter being considered by such committee, such committee, or any member thereof, may require such person to state upon oath in writing whether or not he appears in his own individual interest or in the interest of some other person and if so the name of such person and if he has been or is to be paid a fee or any compensation, directly or indirectly, for such service, or as expenses or otherwise to so appear before such committee, and when such oath is required by a committee or any member thereof the chairman of the committee shall file the written oath with the secretary of the senate and the chief clerk of the house, and said oath shall at once be spread upon the journal of each house for the information of the members of the legislature.

Any person who shall swear falsely as to any material fact in such oath shall be deemed and held guilty of false swearing and shall be imprisoned in the state prison not exceeding twenty years.

History.—§§1, 2, ch. 5712, 1907; RGS 80, 5342; CGL 96, 7475.

11.06 Member of committee may administer oath.—For the purpose of §11.05 the chairman or any member of the committee before whom such person may appear, may administer the oath herein provided for.

History.—§3, ch. 5712, 1907; RGS 81; CGL 97.
cf.—§11.05, Penalty for false statement.

11.07 Method of enrolling bills, etc.—All bills and joint resolutions passed by the senate and house of representatives shall be duly enrolled in black record by typewriting machines or by photographing, on paper, by the enrolling clerk of the senate or the enrolling clerk of the house, accordingly as the bill or joint resolution may have originated in the senate or house, before they shall be presented to the governor or filed in the office of the secretary of state.

The size, style and quality of the paper to be used shall be prescribed by the secretary of state and furnished by him, in sufficient quantities, to the enrolling clerks of the senate and house, the cost of said enrolling paper shall be paid for from the appropriation for legislative expense.

History.—§§1, 2, ch. 7346, 1917; RGS 82; CGL 98; §1, ch. 25005, 1949; §1, ch. 29741, 1955.

11.08 Subpoena of witnesses; sheriff's costs; penalty for false swearing.—Whenever required by any committee duly constituted by the senate, or the house of representatives, or by the senate and house of representatives of the legislature of Florida, the chairman thereof, shall issue subpoena and other necessary process to compel the attendance of witnesses before such committee, and the chairman, or any other member of such committee, may administer all oaths and affirmations, in the manner prescribed by law, to witnesses who shall appear before such committee for the purpose of testifying in any matter about which such committee may desire evidence, and the sheriffs in the several counties in this state shall make such service and execute all process, or orders, when required by such committee, said sheriffs to be paid the same fees as are allowed them by law for similar services.

Whoever wilfully affirms or swears falsely in regard to any material matter or thing before any such committee of the legislature shall be deemed guilty of false swearing and shall be imprisoned in the state prison not exceeding twenty years.

History.—§§1, 2, ch. 8399, 1921; CGL 99, 7476.
cf.—§§9, 10, Art. III, Const., 1885.
§30.23, Fees and mileage of sheriff.

11.09 Pay of witnesses.—All witnesses summoned before any committee mentioned in §11.08, shall receive two dollars for each day's actual attendance and also five cents per mile for actual distance traveled to and from the place required to appear and give such testimony.

History.—§3, ch. 8399, 1921; CGL 100.
cf.—§10, Art. III, Const., 1885.

11.10 Subpoena duces tecum.—Any committee mentioned in §11.08 may compel by duces tecum the production of any books, letters, or other documentary evidence it may desire to examine, in reference to any matter before it.

History.—§4, ch. 8399, 1921; CGL 101.

11.11 Expenses of hearings paid.—All expenses incident to hearings or investigations by any committee mentioned in §11.08 and any expenses authorized in §11.09 shall be paid from the appropriation for legislative expenses authorized in §11.12. Such expenses to be paid by the comptroller upon vouchers certified by the chairman of such committee and approved as provided in §11.17.

History.—§5, ch. 8399, 1921; CGL 102; §1, ch. 63-232.

11.12 Salary, subsistence and mileage of members, expenses authorized by resolution, appropriation.—

(1) The state treasurer is authorized to pay the salary, subsistence and mileage of the members of the legislature, together with such expenses of the legislature as the same accrue and the per diem of employees of the senate and the house of representatives as the same accrues, also such expenses of the legislature as shall be authorized by a resolution of either house, upon the presentation to the state treasurer of an order of the comptroller, countersigned by the governor, for the stated amount, which order shall, at the close of the legislative session or in due course, be presented to the comptroller, who shall issue to the state treasurer a warrant, or warrants, therefor.

(2) There is hereby appropriated biennially out of the general revenue fund a sufficient sum to cover legislative expenditures between and during any regular, special or extraordinary sessions to be released by the budget commission as needed.

History.—§§1, 2, ch. 12077, 1927; CGL 103; am. §§1, 2, ch. 21933, 1943; §1, ch. 23638, 1947; §1, ch. 24997, 1949; sub §(2) §1, ch. 29627, 1955; (2) by §1, ch. 57-15.
cf.—§11.161 Legislative expenditures authorized.
§13.01(3) Commission on interstate commerce.

11.13 Compensation of members and committees.—

(1) The pay of members of the senate and house of representatives shall be twelve hundred dollars per annum and may be paid in twelve monthly installments of one hundred dollars each.

(2) During the time the legislature is in session, each legislator shall be paid for traveling expenses the per diem and mileage provided in §112.061. Said expenses to be paid to and from his home to the seat of government, for not more than one round trip per week, or fraction of a week, during any regular, special or extraordinary session of the legislature, or for the convening of either the house or senate for official business.

(3) Members of any interim committee authorized by bill or concurrent resolution to receive per diem and travel expenses shall be paid as provided in §112.061, from the appropriation for legislative expenses.

History.—§1, ch. 19626, 1939; CGL 1940 Supp. 103(1); §1, ch. 20839, 1941; §3, ch. 21933, 1943; §1, ch. 24999, 1949; §1, ch. 26539, 1951; §2, ch. 29627, 1955; (2) by §1, ch. 57-343; (3)(a) by §1, ch. 57-1988; (2) §1, ch. 62-7; (2), (3) §2, ch. 63-400.
cf.—§4, Art. III, Qualifications, salaries, etc., of legislators.

11.14 Compensation of officers and attaches.—The compensation of the several officers, secretaries, indexers, employees and attaches of the senate and house of representatives, required by existing laws, provided for by its rules and resolutions, or employed during any regular or extraordinary session shall be such as may be allowed by resolution of the senate and house of representatives, or either of them, for each day of the session during their employment, and such necessary additional time for required personnel as may be allowed by resolution of the senate and house of representatives, or either of them, for completing the journals and indexing same for publication. The compensation of employees serving both branches of the legislature shall be paid one-half on account of the senate and one-half on account of the house of representatives, unless otherwise directed by concurrent resolution.

History.—§2, ch. 19626, 1939; CGL 1940 Supp. 103(2); §2, ch. 20839, 1941; §4, ch. 21933, 1943; §2, ch. 23638, 1947; §1, ch. 24998, 1949.

11.15 Employment of personnel; compensation.—

(1) There is created the permanent office of chief clerk of the house of representatives.

(a) The chief clerk shall serve the members of the house of representatives in the dispatch of public business, performing such services as may be assigned from time to time by the speaker, or by the committee on house administration, or by law and house rule.

(b) The chief clerk shall be elected by the members of the house of representatives for a term of two years, commencing with the first Tuesday after the first Monday in April of the odd-numbered years so as to coincide with the convening of regular sessions of the legislature.

(c) The speaker and the committee on house administration shall approve a budget for the continuing operation of the office of chief clerk. This budget shall include the compensation, payable monthly, of the chief clerk and employees of the office. Sums provided in this budget shall be disbursed by the comptroller, upon requisition prepared by the chief clerk in the regular order and countersigned by either the speaker or the chairman of the committee on house administration, from the general appropriation for the expense of the legislature.

(d) The chief clerk shall, with the advice and consent of the committee on house administration, employ such persons as may be necessary to the efficient and economical management of the office in the performance of its assigned duties. The chief clerk and employees may, upon authorization by the speaker or the chairman of the committee on house administration, attend such meetings of duly constituted legislative committees or other groups as will be in the interest of the house. Such authorized trips may be compensated at the rate and manner prescribed by law for state employees.

(2) The sergeants-at-arms of the senate and of the house of representatives and the secretary of the senate, appointed under rules of the house or senate and other necessary personnel, shall be entitled to compensation preceding, during and following any regular or special session of the legislature, for such time as is necessary to open offices, to prepare stored property for use during the ensuing legislative session, to otherwise arrange for the orderly conduct of the business of the senate and house, to care for and store such property, and to carry out the details of their offices, as approved by the committee on legislative management of the senate or the committee on house administration of the house, respectively, or as provided for by resolutions adopted by the senate or the house, respectively.

(3) For the purposes of carrying on the financial business of the legislature the president of the senate, the speaker of the house, the chairman of the senate committee on legislative management, and the chairman of the house committee on house administration shall have the power to assign duties and to sign requisitions pertaining to legislative salaries and legislative expenses incurred as authorized. From the date of the general election next preceding the legislative session until and after their appointment during the legislative session, these duties shall be performed by the president and speaker designate and the chairmen designate of the senate and house.

(4) (a) There shall be created a permanent office of secretary of the senate. The secretary shall be appointed for a term of two years. The duties of the secretary, in addition to keeping open an office during the interim between sessions of the legislature, shall be to generally supervise all matters pertaining to senate business. Additional duties may be assigned to him by the president of the senate, or the president designate following his election, and he may be called on to assist any interim committee, either as secretary or in furnishing clerical assistance during the interim to any interim committee where appropriations provide payment for such employment.

(b) The secretary shall, with the advice and consent of the president and the chairman of the committee on legislative management and population, employ such persons as are necessary to the efficient and economical management of the office in the performance of its assigned duties. The secretary and employees, upon authorization by the president or the chairman of the committee on legislative management and population, may attend such meetings of interest to the legislature, or duly constituted legislative committees or other groups in the interest of the senate. Such authorized trips shall be compensated at the rate and manner as prescribed by law for state employees.

(c) The president of the senate, and the chairman of the legislative management and population committee, shall determine the salary of the secretary and the budget of the secretary's office, which shall be disbursed by the comptroller upon requisition prepared by the secretary in regular order and countersigned by either the president or the chairman of the committee on legislative management and population, from the general appropriation expense of the legislature.

(5) From the date of the general election next preceding the legislative session until and after their appointment during the legislative session, the president-designate of the senate and the speaker-designate of the house may authorize any committees which have been appointed by them in their respective houses to hold such public hearings or meetings as they may determine are necessary and authorize travel and per diem expenses incurred by the members in the amount provided in §11.13 (3), certified by the chairman of such committee and approved as provided in §11.17. The speaker-designate and president-designate are authorized to incur such travel and per diem as are necessary in preparation for the next session of the legislature. The expenses of such committees and for the speaker-designate and president-designate shall be a proper charge to the legislative expense appropriation for the ensuing session of the legislature.

(6) There shall be created a permanent office of sergeant-at-arms of the senate. The ser-

geant-at-arms shall be appointed for a term of two years. The duties and salary shall be determined by the president of the senate or the president-designate, following his election. The salary shall be paid from the general appropriation expense of the legislature.

(7) The office of sergeant-at-arms of the house of representatives shall be kept open twelve months in each year. The duties and salary of the sergeant-at-arms shall be determined by the speaker or speaker-designate for the house. The salary shall be paid from the appropriation for legislative expense. The sergeant-at-arms upon his election, shall serve at the pleasure of the house of representatives until his successor is appointed.

History.—§3, ch. 19626, 1939; CGL 1940 Supp. 103(3); §3, ch. 20839, 1941; §5, ch. 21933, 1943; §§1, 2, ch. 57-51; (4) by §1, ch. 59-462; (5) n. by §1, ch. 59-75; (6) n. by §1, ch. 61-524; (7) n. by §1, ch. 63-293.

11.151 Biennial legislative appropriation; house speaker-designate, senate president-designate.—From the date of the general election next preceding the legislative session there is created and appropriated for each biennium out of legislative expense an unrestricted discretionary contingent fund of five thousand dollars for the president-designate of the senate and five thousand dollars for the speaker-designate of the house to be used by each during the biennium and until the next regular general election in carrying on official duties.

History.—§1, ch. 63-328.

11.161 Legislative expenditures; rental equipment.—The comptroller is hereby authorized to pay such sums as are certified by the chairman of duly appointed committees in charge of legislative expenditures and contracted for on a rental basis as authorized by properly enacted resolutions passed by the house or senate. Such sums may be paid monthly or annually and charged to the legislative expense appropriated in §11.12(2).

History.—§1, ch. 26980, 1951.

11.17 Approval of vouchers for legislative expenses.—

(1) Salaries of members of the senate and house of representatives shall be prepared in payroll form by the comptroller and approved by the president or president-designate and certified by the secretary of the senate or approved by the speaker or speaker-designate and certified by the clerk of the house of representatives, as the case may be.

(2) Vouchers covering all other expenses of the senate and house of representatives and of all committees thereof, lawfully incurred, shall, unless otherwise provided by law, be approved by the president or president-designate and the chairman of the committee on legislative management and population and attested by the secretary of the senate, or approved by the speaker or speaker-designate and the chairman of the committee on house administration and attested by the clerk of the house of representatives, as the case may be.

(3) All vouchers covering legislative expenses shall be audited by the comptroller and, if found to be correct, state warrants shall be issued therefor.

History.—§5, ch. 19626, 1939; CGL 1940 Supp. 103(5); §5, ch. 20839, 1941; §7, ch. 21933, 1943; §2, ch. 63-232.

11.19 Legislative reference bureau created.—There is hereby created a legislative reference bureau for the use of the members of the legislature.

History.—§1, ch. 25369, 1949.

11.20 Same; purpose.—The general purpose of the legislative reference bureau shall be:

(1) To assist the legislature of this state in the proper performance of its official functions by providing its members with impartial and accurate information and reports concerning the problems presented to them as such members of the legislature and by providing digests showing the practices of other states and of foreign nations in dealing with similar problems.

(2) To secure information for the members of the legislature of this state by cooperating with the legislative reference services in other states, and with the existing interstate reference bureau maintained by the American legislator's association and by the council of state governments.

(3) To provide the legislature with staff facilities comparable in quality and adequacy to those which the legislature provides for other departments of state government, and to provide such other adequate, expert assistance as may be necessary to assist the legislature in performing its required functions.

(4) To conduct courses and prepare manuals for the enlightenment of officers and employees of various governmental units concerning their official duties and obligations. Fees and costs which may be assessed by the council in connection with such projects may be charged as an expense of the office of such officers or employees. Expenses of attending such courses may also be charged as an expense of the office.

(5) To perform such additional services for members of the legislature as may be required in assisting the members in performing their official duties.

History.—§2, ch. 25369, 1949.

11.21 Legislative council to administer.—

(1) The general administration and responsibility for the proper operation of the reference bureau shall be in the hands of a legislative council, composed as follows:

The speaker of the house of representatives of the state and the president of the senate of the state shall be members of the legislative council. The speaker of the house of representatives shall appoint one member of the house of representatives from each congressional district of the state as such congressional district existed on January 1, 1960, and the president of the senate shall appoint one member of the senate from each congressional district of the state, as such congressional district existed on January 1, 1960, which representatives and senators shall be members of the legis-

lative council, to serve at the pleasure of their respective branches of the legislature. In the event the state is represented in the house of representatives of the congress by a congressman or congressmen at large, the speaker of the house of representatives and the president of the senate shall appoint a representative and senator respectively from the state at large for each such congressman at large. In the event that either the president of the senate or the speaker of the house of representatives shall be incapable or ineligible to serve as heretofore designated, the president pro tempore of the senate or speaker pro tempore of the house of representatives shall serve in the place or stead of the president of the senate or the speaker of the house of representatives respectively.

(2) In the event of a vacancy occurring in the council, the same shall be filled as provided for original appointments, except that such vacancy occurring or continuing after any general election shall be filled by a majority of the remaining members of the legislative council as a whole.

(3) The legislative council shall meet at such times and at such places as shall be necessary to the proper exercise of its functions and shall have the power to adopt rules and regulations concerning its organization and the operation of the legislative reference bureau. The legislative council shall provide rules for the establishment and operation of select or standing committees of the council. The chairman of the council shall appoint the members of such committees from the membership of the council; in addition, each select committee may consist of not more than two members of the house not members of the council, appointed by the speaker and the chairman of the legislative council, and not more than two senators not members of the council, appointed by the president of the senate and the chairman of the legislative council. Each such additional member of a select committee of the legislative council shall be entitled to an equal vote in matters considered by such committee, but shall not be authorized to vote as a member of the legislative council.

(4) Action by a majority vote of the legislative council shall control and be conclusive on any matter properly concerning the legislative reference bureau or council.

(5) The members of the legislative council and members of committees of the council, whether members of the council or not, shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§3, 8, 10, ch. 25369, 1949; sub §§(1)-(3), §1, ch. 26333, 1949; §1, ch. 26770, 1951; sub §§(3), (5), §§1, 2, ch. 29673, 1955; (1) a. by §1, ch. 61-480; (5) §19, ch. 63-400.

11.22 Legislative reference bureau director; assistants.—

(1) The legislative reference bureau shall be in charge of a director employed by the legislative council, and his employment shall be at the pleasure of the council. He shall be chosen without reference to political affiliations, solely on the grounds of fitness to perform the duties assigned to him. The director and all other employees shall have been residents of the state for three of five years last preceding their appointment; but the legislative council may waive the residence requirements for citizens of the United States by a two-thirds vote of all members. The director shall be paid a salary to be fixed by the legislative council. The director shall be reimbursed for traveling expenses as provided in §112.061.

(2) The director shall employ such technical, clerical, and stenographic assistance as may be necessary to carry out the provisions of §§11.19-11.27 and shall fix the compensation of each, subject to the approval of the legislative council. Such employees shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§ 4, 5, ch. 25369, 1949; §1, ch. 28165, 1953; § 19, ch. 63-400.

11.23 Location of bureau; facilities available; interchange of research.—

(1) The legislative council and reference bureau shall be provided with adequate quarters in a state-owned building in the capitol center, conveniently accessible to the members of the legislature. The determination of such location and the adequacy of quarters within the capitol center shall be made by a committee composed of the secretary of state, the president of the senate, the speaker of the house, and the chairman of the legislative council. The bureau shall be kept open such hours as may be designated by the legislative council. The facilities of the state library and of the state institutions of higher learning and of any other libraries maintained by the state shall be available for the use of the bureau. Each state department shall, upon the request of the director, furnish to the legislative reference bureau such documents, material or certified copies thereof and other information as may be desired by the members of the legislature or as may be necessary for the legislative reference bureau to perform its functions.

(2) The legislative reference bureau shall cooperate with the legislative reference bureaus of the other states and shall interchange information and research material with them through the interstate reference bureau, and may, in the discretion of the legislative council, participate with other states in the maintenance of the interstate reference bureau, and any reasonable expenditures for its maintenance as determined by the legislative council shall be deemed a necessary expense of the legislative reference bureau of this state.

History.—§6, ch. 25369, 1949; sub §(1), am. §3, ch. 29673, 1955.

11.24 Services to be performed.—The legislative reference bureau shall perform the following services for the legislature:

(1) Provide a comprehensive research and reference service on legislative problems;

(2) Summarize and digest information re-

lating to legislative matters of the federal government, and also the states of this country, and their political subdivisions;

(3) Prepare reports setting forth the social and economic effects of statutes enacted in this and other states;

(4) Maintain a legislative reference room and a small working library, with a minimum of duplication of books and facilities provided by the state library;

(5) Assist and cooperate with any interim legislative committee or commission created by the legislature;

(6) Cooperate and maintain an exchange service with legislative reference bureaus and corresponding services of other states and, when desirable, exchange information with the federal government, foreign governments, and with local units of government in this state; cooperate with the interstate reference bureau maintained jointly by the American legislator's association and by the council of state governments, and also with other agencies which carry on research in governmental problems;

(7) Advise the presiding officers or members of either house of the legislature upon any question of parliamentary law or legislative procedure submitted by any of them;

(8) Upon request, advise members of the legislature as to the economic or social effect of any proposed legislation.

(9) To conduct courses and prepare manuals for the enlightenment of officers and employees of various governmental units concerning their official duties and obligations. Fees and costs which may be assessed by the council in connection with such projects may be charged as an expense of the office of such officers or employees. Expenses of attending such courses may also be charged as an expense of the office.

(10) To make special studies for counties and municipalities as the council may direct, the costs of which may be assessed against the county or municipality requesting the same and paid as a municipal or county purpose.

History.—§7, ch. 25369, 1949.

11.25 Disbursements; salaries and expenditures not subject to control of state budget commission.—

(1) No money hereafter appropriated or accruing to the legislative reference bureau may be disbursed by the comptroller except by warrant upon the state treasurer pursuant to vouchers approved by the legislative council or its duly authorized agent; all receipts by the legislative reference bureau as herein authorized shall be deposited in the state treasury to be disbursed only as authorized by §§11.19-11.27.

(2) The legislature hereby declares and determines that the legislative council has been and shall continue to be a committee of the legislature with interim powers and not an agency of government within the intention of the legislature as expressed in chapters 28115 and 28231, acts of 1953, and that no power shall rest in the budget commission to release or withhold funds appropriated to the legislative council in the general appropriations act or other acts of the legislature, but same shall be available for expenditure as provided by law and the rules or decisions of the legislative council.

(3) (a) The legislature hereby declares and determines that the legislative reference bureau has been and shall continue to be a group of employees selected by the legislative council, as provided by law, employed by the legislature and the legislative council to perform such services as may be provided by law or directed by the legislative council and is not an agency of government within the intention of the legislature as expressed in chapters 28115 and 28231, acts of 1953, and the state budget commission had and shall have no power to determine the number or fix the compensation of such employees or exercise any manner of control over such employees. The selection of such employees, the determination of qualifications and compensation of such employees, and the establishment of policies relating to the work of such employees, including hours of work, leave and other matters shall be the sole prerogative of the legislative council.

(b) The legislature hereby ratifies and confirms all action taken by the legislative council relating to the selection of employees in the legislative reference bureau and the fixing of salaries of such employees in stated amounts or by the adoption of a salary plan or schedule, including the salary of the director as provided in §11.22, as of the date of this determination of such matters by the legislative council.

(c) The provisions of this subsection shall be deemed retroactive to the extent necessary to carry out the intent of the legislature as expressed herein.

History.—§9, ch. 25369, 1949; sub. §§(2), (3) comp. §§1-4, ch. 29659, 1955.

11.26 Director; employees; restrictions on employment.—

(1) Neither the director nor any other employee of the legislative council or of the legislative bureau shall: (a) Reveal to any person outside of the bureau or council the contents or nature of any request for services made by any member of the legislative council, except with the written consent of the person making such request; (b) Urge or oppose any legislation; (c) Give legal advice on any subject to any person, firm or corporation, except members of the legislature; (d) During his employment by the council or the bureau, be associated or interested in the private practice of law in any manner, nor be personally engaged in any other business for profit.

(2) A violation of any provision of this section by any employee of the bureau shall be sufficient cause for his or her immediate dismissal; provided, that this section shall not be a limitation on the authority of the legislative council to dismiss or change its employees.

History.—§11, ch. 25369, 1949.

11.27 Appropriation.—A biennial appropriation shall be made for the uses and purposes

of the legislative reference bureau, to be expended only as herein authorized.

History.—§12, ch. 25369, 1949; §1, ch. 26869, 1951.

11.281 Permanent study committees of legislative council.—In order to provide a continuous development of information, the legislative council may maintain the following permanent study committees: Appropriations and auditing, education, finance and taxation, governmental organization, health and welfare, personnel and retirement, public safety, roads, and state institutions. When the council finds it warranted for special purposes or subjects, it may also appoint select committees as provided in §11.21.

History.—§1, ch. 61-290.

11.282 Membership and appointment of permanent study committees.—Each such permanent study committee shall be authorized to consider and make recommendations on any legislative problem arising in its subject area. Each such committee shall be composed of ten members, selected as follows: Three senators not members of the legislative council, two of whom shall have served in the session of the legislature prior to their appointment on a standing committee of the senate concerned with the subject area of the study committee; three representatives not members of the legislative council, two of whom shall have served in the session of the legislature prior to their appointment on a standing committee of the house of representatives concerned with the subject area of the study committee; and two senators and two representatives who are members of the legislative council. Noncouncil senators shall be appointed by the president of the senate and noncouncil representatives shall be appointed by the speaker of the house of representatives. Legislative council members shall be appointed by the chairman of the legislative council. Appointments to the permanent study committees shall be made within sixty days after the adjournment of each regular session of the legislature and vacancies occurring thereafter shall be filled by the person making the original appointment or his successor or successor-designate.

History.—§1, ch. 61-290.

11.283 Permanent study committees; officers meetings.—Each permanent study committee shall organize at a meeting called by the chairman of the legislative council for a date within ninety days after the adjournment of the regular session and shall elect from among its members a chairman and a vice-chairman. Said committees shall meet at such subsequent times as it shall determine, not less than twice prior to the next succeeding regular session and shall abide by the general rules and regulations adopted by the legislative council for the operation of the committees of the legislative council.

History.—§1, ch. 61-290.

11.284 Permanent study committees; powers and duties.—It shall be the duty of each continuing study committee to gather, compile, assemble and prepare for orderly, clear and concise presentation to the legislative council and the legislature such information as may assist the legislature in establishing sound, reasonable and judicious laws in their subject areas. Each such committee is authorized to invite public officials and employees and private individuals to appear before the committee for the purpose of submitting information to it. Each such committee shall be authorized to maintain a continuous review of the work of the state agencies concerned with its subject area and the performance of the functions of government within each such subject area, and for this purpose, to request reports, from time to time in such form as the committee shall designate, concerning the operation of any state agency and presenting any proposals or recommendation such agency may have with regard to existing laws or proposed legislation in its subject area. The committees shall review the constitution and statutes, court decisions, and attorney general's opinions as they may affect governmental functions in their respective subject areas, and may review administrative rules to determine whether they are consistent with legislative intent in interpreting, complementing or making specific the particular laws involved. In order to carry out its duties each such committee is empowered with the right and authority to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in this state.

History.—§1, ch. 61-290.

11.285 Appointment of advisory committees by permanent study committees.—Each such committee is authorized to designate such advisory committees as it determines to be needed, to be selected from or composed of such groups of individuals as it may determine and to submit such reports at such time and in such manner as the parent committee shall prescribe. Any advisory committee appointed hereunder shall conduct its operations, make its study, and submit its report in accordance with the general rules and regulations promulgated by the legislative council.

History.—§1, ch. 61-290.

11.286 Reports of permanent study committees.—Prior to the convening of each biennial regular session of the legislature each such committee shall prepare a report or reports of its findings, recommendations, and proposed legislation and submit same to the council, the speaker-designate of the house of representatives and the president-designate of the senate.

History.—§1, ch. 61-290.

11.287 Assistance to committees.—In accordance with §§11.19-11.27, the legislative reference bureau is hereby authorized and required to furnish to each such committee such technical and clerical assistance, within the limitations of appropriated funds, as may be necessary to carry out its duties and functions, including, when needed, the employment of technical specialists for the temporary assistance

of the legislature and the executive officers charged with the administration of a program or agency within the subject area of a committee. The legislative reference bureau shall assist the committees in the preparation of their reports, provide such assistance to their meetings as they shall direct, and maintain and preserve their reports and records, so as to provide a continuity of information from biennium to biennium. All costs incurred in the performance of the committees' studies shall be expenses of the legislature and of the legislative council and reference bureau.

History.—§1, ch. 61-290.

11.288 Special functions of permanent study committees.—The permanent study committees of the legislative council shall have the following special functions and special authorities, respectively:

(1) APPROPRIATIONS AND AUDITING COMMITTEE.—

(a) The appropriations and auditing committee shall meet with the state auditor from time to time, not less than three times each year, and review the work of the state auditing department and the completed audits of the department. It shall gather and compile such information as may assist the legislature in establishing a sound, reasonable and judicious appropriation for the operation and maintenance of each of the various state functions during the succeeding biennium.

(b) Not less that two members of the staff of the legislative reference bureau shall be assigned to the committee, one of whom shall be assigned to the appropriation committee of the house of representatives and one of whom shall be assigned to the appropriation committee of the senate as soon as they are needed by said committees and after said committees have been so designated by the speaker-designate and the president-designate of the respective bodies, to assist said appropriations committees prior to and during any session of the legislature.

(2) EDUCATION COMMITTEE.—During the 1961-63 biennium, the education committee shall make a thorough study of education at all levels and report its findings and recommendations, including proposals for corrective legislation, to all members of the legislature not later than March 1, 1963. The objectives of this study shall include:

(a) The goals, philosophies and responsibilities of public education,

(b) A re-examination of the state's responsibility for education at each level,

(c) The financing of education, fiscal problems, and needs in future years,

(d) An evaluation of the basic public school program which the state is supporting,

(e) The feasibility of consolidating all state school programs and appropriations into a single program,

(f) A complete rewriting of the state school law to simplify it, and

(g) Such other problems in education as become apparent during the course of the study.

(3) FINANCE & TAXATION COMMITTEE.—

(4) GOVERNMENTAL ORGANIZATION COMMITTEE.—The governmental organization committee shall gather and compile such information as may assist the legislature in establishing sound, reasonable and judicious laws for the economic and efficient operation and maintenance of the various functions of state government. It shall, upon request, work with and assist local government units and officers in resolving problems pertaining to them and their functions, powers, duties and operations.

(5) HEALTH AND WELFARE COMMITTEE.—

(6) PERSONNEL AND RETIREMENT.—

(a) The personnel and retirement committee shall maintain a general legislative review over the personnel practices of all state agencies, the administration of all state personnel systems, and all retirement systems supported by state funds. Its subject area shall include but not be limited to such conditions of state employment as attendance and leave regulations, job classification and pay plans, administrative policies governing pay raises, promotion and discharge, personnel procurement and training, and outside employment and to such matters relative to state retirement systems as membership requirements, authorized benefits, the present method and alternate methods of financing such systems and the present status of social security coverage of public employees. It shall keep the legislature informed regarding the state's responsibility relative to employment and retirement systems, the financial impact and the legal implications of present laws and proposed legislation in these fields. It shall act as a channel through which the administrators charged with administering public personnel and retirement systems, including those for law enforcement officers of the state and of the several counties of the state, may communicate to the legislature their plans, problems, and recommendations.

(b) In order to carry out the functions assigned it hereunder the committee is authorized to make continuous actuarial studies or to prepare annual actuarial balance sheets of the various retirement systems, or both, as it may deem necessary, and it is hereby granted the following specific authority:

As soon as practicable following its appointment for the 1961-63 biennium and at such later times as the legislature may direct, the committee shall cause an actuarial study to be made of all retirement systems supported by state funds. It is authorized, with the approval of the legislative council, to enter into appropriate contracts with such actuarial firms and under such terms and conditions as it may determine. The findings and recommendations of such an actuarial study shall be furnished by the committee to the members of the legislature. The cost of such actuarial studies shall be paid by the legislative council, but, by agreement arrived at between the council and the agencies administering the retirement systems, pro rata portions of such cost may be contributed from

the respective funds charged with the costs of administering such systems. This section shall be authority for such agreements and for the payments herein provided.

(7) PUBLIC SAFETY.—

(8) ROADS.—

(9) STATE INSTITUTIONS.—

History.—§1, ch. 61-290.

11.29 State personnel and retirement committee of the legislative council.—

(1) There is hereby created a standing committee of the legislative council to be known as the state personnel and retirement committee, composed of ten members to be appointed as follows: The president of the senate shall appoint three members of the senate; the speaker of the house of representatives shall appoint three members of the house of representatives; the chairman of the legislative council shall appoint four members of the legislative council, two of whom shall be members of the house of representatives and two of whom shall be members of the senate. Such appointments shall be made as soon as practicable after this act shall become law. When said appointments have been made for the 1961-63 biennium and each biennium thereafter, the committee shall meet at the call of the chairman of the legislative council, elect a chairman and vice-chairman, and shall organize in such manner as shall be necessary and compatible to carrying out the purposes of this law. The committee members shall be appointed at each biennial regular session of the legislature and shall serve from the end of the session in which they are appointed until the end of the next biennial regular session of the legislature. Vacancies occurring during the interim period shall be filled by the officer making the original appointment.

(2) The function of the state personnel and retirement committee shall be to serve the legislature by:

(a) Studying and having general legislative review over all state agencies with respect to their personnel practices and over the administration of all state personnel systems and all retirement systems supported by state funds;

(b) Acting as a channel by which the administrators concerned with administering the state's personnel and retirement systems may communicate their plans, problems, and recommendations to the legislature;

(c) Undertaking such studies and preparing such reports as may be needed to keep the legislature informed regarding its responsibilities relative to the state's employment and retirement systems, and advise the legislature regarding the financial impact and the legal implications of the present laws and any new legislation which may be proposed in these fields, including specifically, recommendations regarding retirement provisions for law enforcement officers of the state and of the several counties of the state.

(3) It shall be the duty of the committee:

(a) To gather, compile, assemble and prepare for orderly, clear and concise presentation to the legislature through the council, such information as may assist the legislature in establishing sound and judicious legislation covering the operations of the state's personnel and retirement systems. Provided further that an actuarial survey shall be made during the 1961-63 biennium. Such information shall include but not be limited to the following:

1. The conditions of employment existing in the various state agencies, such as:

a. Attendance and leave regulations.

b. Job classification and pay plans.

c. Administrative policies governing pay raises, promotion and discharge, personnel procurement and training, and outside employment.

2. The membership requirements and benefits authorized in existing state retirement systems, the present methods and alternate methods of financing these systems, and the present status of social security coverage of public employees.

3. The administrative rules, attorney general's opinions and court decisions which relate to the employment and retirement of state employees.

(b) As soon as practicable following its appointment for the 1961-63 biennium and at such later times as the legislature may direct, to cause an actuarial study to be made of all retirement systems supported by state funds. In order to carry out this assigned duty the committee is authorized, with the approval of the legislative council, to enter into appropriate contracts with such actuarial firms and under such terms and conditions as it may determine. The findings and recommendations of such an actuarial study shall be furnished by the committee to the members of the legislature. The cost of such actuarial studies shall be paid by the legislative council, but, by agreement arrived at between the council and the agencies administering the retirement systems, pro rata portions of such cost may be contributed from the respective funds charged with the costs of administering such systems. This section shall be authority for such agreements and for the payments herein provided.

(c) To meet from time to time, not less than twice each year, and review the work of the state agencies concerned with retirement and personnel administration. The administrators of these agencies shall be invited to appear before the committee and present reports in such form as the committee shall designate, reviewing the operations of their agencies and presenting any proposals or recommendations they may have concerning existing laws or proposed legislation in their fields.

(d) Prior to the convening of each biennial session of the legislature, to submit to the council, the speaker-designate of the house of representatives, and the president-designate of the senate, a report of the findings and recommendations of the committee.

(4) The committee may designate such advisory committees as it determines to be needed, to be composed of employees representing the various categories of employment (such as

teachers, state employees, county employees and fee officers, judges and justices, highway patrolmen, sheriffs, and constables) and other employee groups which ask to be heard or which have special employment or retirement problems or points of view which they desire to present to the legislature. The advisory committees shall submit their reports at such times and in such manner as the state personnel and retirement committee may prescribe.

(5) In accordance with §11.20, the legislative reference bureau is hereby authorized and required to furnish to the committee such technical and clerical assistance as may be necessary to carry out its duties and functions, including, when needed, the employment of a full time actuary to make continuous actuarial studies or to prepare annual actuarial balance sheets of the various retirement systems, or both, for the use of the administrators and of the legislature. All costs incurred in the performance of the committee's studies shall be expenses of the legislative council and reference bureau.

History.—§1, ch. 61-356.

CHAPTER 13

MISCELLANEOUS COMMISSIONS

PART I INTERSTATE COOPERATION (§§13.01-13.09)

PART II CONSTITUTIONAL GOVERNMENT (§§13.20-13.24)

PART III STATE QUADRICENTENNIAL (§13.60)

PART IV CITY AND COUNTY QUADRICENTENNIAL (§§13.61-13.73)

PART V FLORIDA AVIATION STUDY AND ADVISORY COMMISSION (§13.76)

PART I

INTERSTATE COOPERATION

13.01 Commission on interstate cooperation; composition.—

(1) There is hereby established the Florida commission on interstate cooperation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on interstate cooperation,

The five members of the house committee on interstate cooperation, and

The five members of the governor's committee on interstate cooperation.

(2) The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary nonvoting members of this commission. The chairman of the governor's committee on interstate cooperation shall be ex officio chairman of this commission. The chairman of the senate committee on interstate cooperation shall be ex officio first vice-chairman of the commission, and the chairman of the house committee shall be ex officio second vice-chairman of the commission.

(3) Its members and members of all special committees which it establishes shall serve without compensation for such service, but they shall be reimbursed for their traveling expenses incurred in carrying out their obligations under this law as provided in §112.061, from the appropriation for legislative expenses.

History.—§§1, 8, ch. 28292, 1953; (3) by §1, ch. 57-203; (3) §3, ch. 63-400.

13.02 Senate committee on interstate cooperation created; members.—There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on interstate cooperation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairman of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary nonvoting member of this committee.

History.—§2, ch. 28292, 1953.

13.03 House of representatives committee on interstate cooperation; members.—There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on interstate cooperation, and to consist of five members of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairman of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house of representatives shall be ex officio an honorary nonvoting member of this committee.

History.—§3, ch. 28292, 1953.

13.04 House and senate committees; terms; functions.—The said standing committee of the senate and the said standing committee of the house of representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American legislators' association. The incumbency of each administrative member of this commission appointed by the governor shall extend until his successor is appointed.

History.—§5, ch. 28292, 1953.

13.05 Governor's committee on interstate cooperation, members.—

(1) There is hereby established a committee of administrative officials and employees of this state to be officially known as the governor's committee on interstate cooperation, and to con-

sist of five members. Its members shall be:
(a) The budget director.
(b) The attorney general or an assistant attorney general designated by him.
(c) The director of the legislative reference bureau.
(d) Two other administrative officials or employees to be designated by the governor.
(2) The governor shall appoint one of the five members of this committee as its chairman. In addition to the regular members, the governor shall be ex officio an honorary nonvoting member of this committee.
History.—§4, ch. 28292, 1953.

13.06 Designation.—The committees and the commission established by this chapter shall be informally known, respectively, as the senate cooperation committee, the house cooperation committee, the governor's cooperation committee and the Florida commission on interstate cooperation.
History.—§9, ch. 28292, 1953.

13.07 Functions of commission.—It shall be the function of this commission:
(1) To carry forward the participation of this state as a member of the council of state governments.
(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.
(3) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating
(a) The adoption of compacts,
(b) The enactment of uniform or reciprocal statutes,
(c) The adoption of uniform or reciprocal administrative rules and regulations,
(d) The informal cooperation of governmental offices with one another,
(e) The personal cooperation of governmental officials and employees with one another, individually,
(f) The interchange and clearance of research and information, and
(g) Any other suitable process.
(4) In short, to do all such acts as will, in the opinion of this commission, enable Florida to do its part in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose.
History.—§6, ch. 28292, 1953.

13.08 Powers and duties of commission.—(1) The commission shall establish such committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions.
(2) Subject to the approval of the commission, the member or members of any special committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate cooperation may be appointed as members of any such special committee, but private citizens holding no governmental position in this state shall not be eligible.
(3) The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such special committee.
(4) The commission may provide for advisory boards for itself and for its various committees, and may authorize private citizens to serve on such boards.
(5) The commission shall report to the governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate.
(6) The commission, by contributions from the state to the council of state governments, may participate with other states in maintaining the said council's district and central secretariats and its other governmental services.
(7) The commission may appoint a secretary who shall serve without compensation except that he shall be reimbursed for traveling expenses as provided in §112.061. The secretary shall keep records of commission activities and assist in preparing the biennial reports.
History.—§§7, 8, ch. 28292, 1953; (7) N. by ch. 57-307; (7) §19, ch. 63-400.

13.09 Council of state governments as joint governmental agency.—The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.
History.—§10, ch. 28292, 1953.

PART II

CONSTITUTIONAL GOVERNMENT

13.20 Florida commission on constitutional government; legislative declaration.—It is declared:
(1) The most nearly perfect system of government for free men ever devised by human ingenuity is that embodied in the constitution of the United States, under which a central authority exercises those powers of government,

but only those powers of government, necessarily administered on a nation-wide basis, and the several states, responsive to the needs and desires of their people, exercise all of the other powers of sovereignty.

(2) For the protection of the liberties of the people and the orderly administration of public affairs it is necessary that the proper fields of authority exercised by the national government and those of the states be thoroughly understood by the people and clearly stated in national and state constitutions.

This was done at the foundation of the nation.

(3) Many persons have adopted and are active in propagating philosophies of government destructive of this principle.

(4) In recent years the growing complexities of the social order has indicated the wisdom of some expansion in the powers of the central government beyond those exercised, or properly permissible, under the constitution of the United States as originally conceived and written. Instead of awaiting the amendment of the constitution by the method therein provided, many of these powers have been exercised through the expedient of placing a warped and unjustified construction upon the federal constitution.

(5) Too often those actively opposing unjustified expansion of the powers of the federal government have been aroused by personal interest and for this reason their motives have been questioned and their effectiveness impaired.

(6) The tremendous expenditure of money by the national government begun for the purpose of relieving the emergency of a great depression started a trend by promoting a tendency of the people to look to that government for relief of all economic problems without a proper realization of the fact that the inevitable result of this practice is to increase the burden of taxation and enlarge the powers of the central government over the lives and destinies of the people.

(7) It is a duty of the state to its people to preserve, for the benefit of its citizens, the powers of the state; to protect its inhabitants from unjustified assumption of authority over them by any government, even that of the United States. To this end it is the duty of the state to keep the people informed of the activities of the state and national government to the extent necessary that they may wisely exercise their responsibilities as free men and women in a democratic community.

History.—§1, ch. 57-797.

13.21 Same; creation.—There is hereby created a commission of seven persons to be known as the "Florida commission on constitutional government." One member shall be a member of the state senate appointed by the president of the senate, one member shall be a member of the state house of representatives, appointed by the speaker of the house of representatives. The other members shall be appointed by the governor. The members shall be appointed for a term of four years. A vacancy in the membership of the commission shall be filled by appointment for the unexpired term in the same manner as the original appointment. The members of the commission shall elect from their number a chairman and secretary.

History.—§2, ch. 57-797.

13.22 Same; duties.—It shall be the duty of the commission to:

(1) Encourage an appreciation of the necessity of maintaining the proper scope of the respective powers of the government of the United States and of the several states.

(2) Call the attention of the people to all acts of the government of the United States and each of its departments which invade the proper fields of state sovereignty.

(3) Support the demand that all necessary expansion of the powers of the federal government not clearly within those granted to it by the constitution of the United States be provided for by amendment to that constitution adopted in the manner provided in that document.

(4) Assist in the preparation and submission to the congress of the United States of a proposed amendment to the constitution of the United States clarifying the rights of the states and the limitations upon the powers of the United States, and providing appropriate safeguards to the people from unwarranted assumption of authority by any department of the federal government.

(5) To cooperate with officers and citizens of other states in bringing about a better understanding of the dangers which threaten the system of government under which the people of the United States have enjoyed the greatest measure of freedom, of security, of progress in every field, that the world has ever witnessed.

History.—§3, ch. 57-797.

13.23 Same; powers.—In order to carry out these duties the commission shall have the power to:

(1) Utilize such means, without limitation, as it shall deem most expedient to acquire and disseminate detailed information designed to accomplish the end for which it was created.

(2) Organize, or cause to be organized, an agency of interstate or nation-wide character committed to the principles of:

(a) A strong central government endowed with all powers which are clearly and specifically granted by the constitution of the United States.

(b) The full protection of the rights of the sovereign states by amendment to the constitution rather than by judicial decree.

(c) Strong and truly sovereign states endowed with the inherent power to exercise state functions without federal interference.

History.—§4, ch. 57-797.

13.24 Same; compensation and traveling expenses of members.—Membership on the commission shall not constitute a state office, but a

designation of a distinguished citizen of the state to render a public service under authority of this law. Members of the commission shall not be paid any compensation but shall be reimbursed for their traveling expenses as provided in §112.061, upon requisitions to be approved by the governor. All expenses of the commission shall be paid from appropriations to be made by the legislature for that purpose.

History.—§5, ch. 57-797; §1, ch. 61-24; §4, ch. 63-400.

PART III

STATE QUADRICENTENNIAL

13.60 Creation, powers, duties, etc.—

(1)(a) There is hereby created the Florida quadricentennial commission, hereinafter referred to as the "commission." The commission shall be composed of fifteen members designated and appointed as follows: The speaker of the house of representatives and the president of the senate; ten commissioners shall be appointed by the governor of the state; the chairman of the quadricentennial commission of Pensacola, and two of the members of the Florida board of parks and historic memorials, shall perform the duties of the commission, in addition to their duties in connection with such commission and board, shall be selected by the governor to serve as members of this commission. It is recommended that the governor in appointing commissioners shall select, as far as possible, residents of counties or cities that have announced an intention to form or have organized a quadricentennial commission under general or special laws. Each commissioner appointed by the governor of the state shall serve for a term of four years. The speaker of the house of representatives and the president of the senate and the commission designated from the Florida board of parks and historic memorials, shall serve as members during their current terms, and upon expiration of such terms, their successors shall serve in their stead. The term of the chairman of the quadricentennial commission of Pensacola, as a commissioner hereunder, shall expire on December 31, 1959, and his successor shall be appointed by the governor.

(b) The commissioners shall not receive compensation for the performance of their duties, but shall receive per diem and travel expenses as provided in §112.061, when engaged in the performance of the duties of the committee.

(c) The commission, when organized, shall adopt rules, regulations and by-laws to govern its procedures and may amend and revoke the same; shall elect from its membership a chairman, first vice-chairman, second vice-chairman, secretary and treasurer, to serve for such periods as may be provided by the by-laws of the commission. The chairman shall be the chief executive officer of the commission and either vice-chairman may perform the duties of the chairman in his absence, or in event of his disability. The commission may appoint an assistant secretary and an assistant treasurer and such officers shall not be required to be selected from the membership of the commission.

(2) The commission shall promote and sponsor a state-wide quadricentennial public celebration commemorating the 400th anniversary of the permanent colonization of the state; and may stage historical festivals and shall assist county and city quadricentennial commissions in planning, staging and operating national and international expositions, industrial and agricultural displays and in operating trade fairs and the staging of educational, cultural, artistic and historical exhibits. The commission, when requested, shall make necessary research in connection with historic events and points of historic interest in the state and assist in the planning for fiestas, pageants and parades of the quadricentennial celebrations in the several cities and counties of the state during the period of such celebration. The commission shall coordinate the activities of the several cities and counties so as to provide progressive celebrations from city to city and county to county during the period commencing with 1959 and ending in 1965 so that each community in which a matter of historical significance or in which an historic shrine is located may be enabled to participate. The commission shall promote the trade and commerce of the state by scheduling celebrations and attractions in such a manner as to attract visitors, tourists and potential residents to the state.

(3) The commission is hereby declared to be a public body, exercising public and essential governmental functions as set forth in this law and having all powers necessary or convenient to carry out and effect the purposes and provisions of this law, including, without limitation, the following:

(a) To sue and to be sued; to adopt a seal and alter the same at pleasure; to exist until December 31, 1966; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and to make and from time to time amend and repeal by-laws not inconsistent with this law; to carry into effect the powers and purposes of this commission.

(b) To make and from time to time amend and repeal rules and regulations, with respect to any celebration, that uses or desires to use the word "quadricentennial" in its name, or in describing the celebration or festival.

(c) To grant licenses or permits to city and county quadricentennial commissions to stage a quadricentennial celebration in said county or city, as the case may be, and to prescribe the dates during which such celebrations may be conducted. No city or county, or agency or de-

partment thereof, and no quadricentennial commission, without a permit or license granted as above specified, shall advertise or purport to stage any celebration designated as a quadricentennial celebration.

(d) To approve, amend, modify, limit or restrict any plan submitted by a city or county quadricentennial commission with respect to the character of any celebration, and the event or events to be commemorated and to prohibit the use of the word "quadricentennial" in connection with any celebration or event commemorated which has not been approved by the commission.

(e) To own and acquire property, real and personal, and any interest therein or right pertaining thereto, by purchase, lease, donation, gift or transfer and to acquire, construct, reconstruct, improve, alter, repair, maintain, operate, sell, convey, lease and dispose of any building, structure or facility.

(f) To enter into contracts with any person, firm or corporation, and the state, the United States, and any foreign government or any agency or department thereof, and any county and municipality or any agency or department of either.

(g) To accept donations and contributions of public and private sources, and to enter into contracts with respect thereto, and to borrow money and pay interest thereon.

(h) To employ adequate personnel for the operation of the commission; provided, however, the merit system and pension laws, rules and regulations shall not be applicable to any such personnel.

(i) To prepare annual budgets and from time to time amend the same; to enter into agreements with consultants and others for the performance of services deemed necessary or desirable by the commission.

(j) To adopt an official flag, seal, or other emblems, and to copyright the same in the name of the commission. The commission may grant a lease or license to utilize such seals and other emblems and devices upon such terms and conditions as seem proper to the commission.

(4) All agencies and departments of the state and all political subdivisions shall cooperate with the commission in accomplishing the objectives of this law.

(5) Any state department or agency and any county, municipality or agency or department of either, and any public body corporate is authorized to contribute funds for the purpose of defraying, in whole or in part, the expenses and operations of the commission, and such commission shall be authorized to accept contributions from other public and private sources.

History.—§§1-5, ch. 59-510.

PART IV

CITY AND COUNTY QUADRICENTENNIAL

13.61 Legislative intent; definitions.—

(1) IT IS HEREBY DECLARED:

(a) That the state was discovered by Juan Ponce de Leon in 1513 and thereafter in 1521 he, as captain general and governor of "the island of Florida," financed and attempted to make a settlement on the west coast of the state, but upon landing, de Leon having been mortally wounded, a colony was not established and the project was abandoned; and

(b) That Lucas Vasquez Ayllon in 1524 sought to colonize an area on the Atlantic seaboard, called Chicora, and the settlers had scarcely landed when they were killed by hostile Indians, terminating this expedition; and

(c) Thereafter Panfilio de Narvaez was granted the right to explore and settle the area west of the Perdido river and east of Texas, but after marching through Florida in 1528 to the bay of Horses, he built and embarked on barges for New Spain (Mexico); he and all of the expedition were killed or lost at sea, except four who journeyed on foot to Mexico; and

(d) Thereafter Hernando de Soto, as captain general and governor of "La Florida," commanded and financed an exploratory expedition in 1539; the governor died on the banks of the Mississippi river, and his followers abandoned further exploration and moved forward to New Spain; and

(e) Thereafter in 1549 Father Cancer de Barbastro, a Dominican priest, sought with several other priests to enter La Florida and pacify the Indians by preaching the gospel, but he also lost his life at the time of landing and the project was abandoned; and

(f) That Philip II of Spain, being apprehensive that a settlement would be attempted on the Atlantic seaboard by France or Scotland, ordered the first governmental directed and financed expedition for the purpose of making two settlements, one at Achuse (Pensacola) and one at Point Elena on the Atlantic coast; and

(g) That on November 1, 1558, Don Tristan de Luna y Arellano, a man of great military stature (who was previously second in command of the Coronado expedition searching for

the seven cities of Cibola), was appointed captain general and governor of Florida; he landed on August 14, 1559 at Pensacola commanding 1500 colonists, 500 of whom were soldiers and the remainder were women, children, public officials, artisans, interpreters and servants; La Florida consisted of all of that territory east of a north and south line drawn 50 leagues west of the mouth of the Espiritu Santo (Mississippi) river; and

(h) That hurricanes, famine, sickness and other misfortunes befell this colony, and in April, 1561, Angel Villafane relieved Don Tristan de Luna, said Villafane becoming the fourth captain general and governor of La Florida; and

(i) That the settlement of Pensacola continued until late in 1561, or the early winter of 1562, at which time it was abandoned and the colonists were returned by Villafane to New Spain; and

(j) That in 1562 Ribault landed in a vessel at a point near Jacksonville, and claimed the territory for the king of France; and

(k) That in 1564 Fort Caroline was constructed near said point, but the garrison was destroyed in 1565 by Pedro Menendez de Aviles, Adelantado and captain general of Florida, and the fort was occupied by his Spanish troops; and

(l) That the period of permanent colonization by Spain that commenced in Pensacola in 1559 and culminated with the first permanent settlement in 1565 at St. Augustine, the oldest city in the United States and Canada; and

(m) That it is fitting that the 400th anniversary of the Spanish and French colonization should be celebrated in Florida, and in each county and city thereof; and

(n) That said celebration and the exhibits in connection therewith will be of great historical and educational value to the people of this state, and will attract many visitors to our state and will materially contribute to the educational, recreational, historical and economic welfare of the people of this state and the several counties and cities thereof; and

(o) That the city and county celebrations can be accomplished in a satisfactory manner only by the creation of a governmental agency to take charge of, manage and conduct these celebrations so that they may be maintained upon a high plane and with uniform standards throughout the state, so as to reflect credit upon each community and the state; and

(p) That such public bodies should exercise public and essential governmental functions in carrying out and effectuating the purpose and provisions of this law.

(2) DEFINITIONS.—The following terms, wherever used or referred to in this law, shall have the following respective meanings for the purposes of this law, unless a different meaning clearly appears from the context:

(a) "City" or "municipality" shall mean any city or municipality of the state duly incorporated under general or special law.

(b) "Commission" or "quadricentennial commission" shall mean any of the public governmental agencies created hereunder.

(c) "Facility" or "quadricentennial facility" shall mean and include, among other establishments not enumerated, any land, buildings, bridges, structures, equipment, machinery, installations, concessions, ships, airships, motor vehicles, amusement devises authorized to be owned, maintained, operated or sold by the commission, boardwalks, sea walls, breakwaters, bulkheads, causeways, wharves, docks, piers, yacht basins and jetties; sewerage systems, water systems, fire fighting systems and equipment, power lines and cables, gas systems and any other utilities desirable or convenient for the development and service of the area and persons, businesses and improvements thereon; streets, roads, alleyways, sidewalks and other public ways, parks, playgrounds, recreation, exhibition, museum and amusement buildings and centers, bathing beaches, bath houses, swimming pools, auditoriums, theaters, pavilions, athletic fields, golf courses, and other buildings which will contribute to the health, welfare and recreation of the public; hotels, restaurants, eating places, cottages, homes, dwellings, tourist camps, trailer parks and other places of lodging and eating places of all kinds, taxicabs, buses and transportation systems; office and store buildings, warehouses, depots, stations and all other kinds of business or commercial properties, and administration buildings and offices for use of the commission.

(d) "Governing body" or "legislative body" shall mean the city council, the city commission or other legislative body charged with legislative functions in the governing of any city and shall also include the board of county commissioners, if action is taken hereunder by it to authorize a commission to function in a county.

(e) "Mayor" shall mean the mayor of the city or municipality and chairman of the board of county commissioners, if action is taken to authorize a commission to function in a county.

(f) "Obligations" are defined to mean any promissory note, debenture, revenue certificate, certificate of indebtedness, time warrant, revenue bond and any other evidence of indebtedness or obligation, whether similar or dissimilar to those enumerated but shall not be construed to include any bond which requires approval by freeholders before the issuance thereof.

(g) "Site" or "quadricentennial site" shall mean any area described in a resolution adopted as provided in §13.62(2).

History.—§1, ch. 59-511.

13.62 Creation.—

(1) A quadricentennial commission for each municipality or county shall constitute a public body politic exercising public and essential governmental functions as set forth in this law and having all powers necessary or convenient to carry out and effect the purposes and provisions of this law, is hereby created, but no commission shall exercise such powers until the

provisions of paragraphs (a) or (b) have been complied with, as follows:

(a) In each municipality there is hereby created a public body corporate and politic to be known as "quadricentennial commission of the city of _____," provided, however, that such commission shall not transact any business nor exercise any powers hereunder until or unless the governing body of the city by proper resolution shall declare that there is need for a commission to function in such municipality. The determination as to whether there is such a need for such commission to function may be made by the governing body on its own motion; or shall be made by the governing body upon the filing of a petition signed by fifty residents of such municipality asserting that there is a need for a commission to function in such municipality and requesting that the governing body so declare; and

(b) In each county there is hereby created a public body corporate and politic to be known as "quadricentennial commission of _____ county"; provided, however, that such commission shall not transact any business or exercise its powers hereunder until or unless the governing body of the county by proper resolution shall declare there is need for a commission to function in such county. The determination as to whether there is such need for a commission to function may be made by the governing body on its own motion, or shall be made by the governing body upon the filing of a petition signed by fifty residents of the county asserting that there is need for a commission to function in such county and requesting the governing body to so declare.

(c) Notwithstanding the foregoing provisions, if a county quadricentennial commission is authorized to function prior to the authority being granted to any commission by a municipality located therein, then such county quadricentennial commission shall function throughout the entire county both within and without the corporate limits of the municipality therein and no quadricentennial commission of any municipality shall transact any business or exercise its powers so long as said county quadricentennial commission is functioning pursuant to resolution of the county, but if any municipality has adopted the required resolution to authorize a quadricentennial commission to transact business and exercise its powers within a municipality located in said county, prior to the adoption of a resolution by the governing body of the county, then in such event, the city quadricentennial commission may function throughout the county in which it is located and if both a city and county commission are authorized to function in any county, both commissions shall be authorized to transact business, and exercise their individual powers, but the activities of the commission authorized by the county to transact business, shall confine its activities to those parts of the county that are located without the corporate limits of any such municipality which has authorized the transaction of business by a city quadricentennial commission and such city quadricentennial commission shall exercise its activities to those within the corporate limits of the municipality for which it was created.

(d) The governing body, of either a municipality or county, may adopt a resolution declaring that there is need for a quadricentennial commission if it shall find that significant events during the history of the state occurred at any time within the borders and boundaries of the municipality or county; that the celebrating or emphasizing of such events will be of benefit to citizens of the community from a historical, recreational, educational, cultural and economic standpoint; and that the citizens of the city or county, as the case may be, will receive benefits by the holding of such a celebration and exhibition including the attraction of visitors and tourists and the settlement of persons within the municipal or county boundaries.

(e) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the appropriate governing body declaring the need for the commission. Such resolution or resolutions shall be sufficient if it declares that there is such a need for a commission and finds substantially the foregoing terms (no further detail being necessary), that any or all of the above enumerated conditions existed in the county or city. A copy of such resolution duly certified by the clerk of the circuit court or city clerk or officer occupying a similar position, shall be admissible in evidence in any suit, action or proceeding.

(2) Any quadricentennial commission duly authorized by resolution to transact business and exercise its power in the manner heretofore set forth, shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this law including without limitation the following:

(a) To sue and be sued; to adopt a seal and to alter the same at pleasure; to have perpetual existence and succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and to make and from time to time amend and repeal by-laws not inconsistent with this law, to carry into effect the powers and purposes of the commission.

(b) To make and from time to time amend and repeal rules and regulations which shall be effective within any areas, located within or without the limits of any incorporated city, depending upon the governing body that authorized the commission to transact business, selected and developed as a quadricentennial site or upon which facilities as herein defined shall be maintained and operated. The selection of any such site shall be evidenced by the adoption of

a resolution describing the boundaries of such area, and declaring the same to be a quadricentennial site. That the rules and regulations adopted and promulgated hereunder may include, without limitation, rules and regulations designed and intended:

1. To regulate and restrict the height, size, type of construction, location and use of buildings and other structures, and to establish and enforce a satisfactory building code.

2. To promote health and safety by adopting and enforcing rules and regulations relating to health, sanitation, and safety generally, and to sources of water supply; sewage, garbage, trash and waste disposal; and prohibiting or regulating the keeping of pets, animals, fowls and the like; and to provide for any or all of the foregoing and to require the use of services and facilities provided by public utilities for any of the foregoing at such reasonable charges as the commission may fix and to prohibit and prevent the use of private or other such services and facilities. The violation of any of such rules and regulations is hereby declared a nuisance and a menace to health and safety and may be suppressed or abated by any legal method.

3. To adopt and enforce rules for the regulation of traffic and the use of all improvements, projects and things placed on the project site.

4. To enforce all reasonable rules, regulations, building codes and the like by injunction or any other appropriate legal or equitable remedy.

5. To regulate the character of businesses, including without limitation the sale of alcoholic beverages (in counties where such sales are permitted) and the hours where any business can or must be operated and conducted, and to adopt such regulations as may be necessary for the protection of the lives of persons and property and for the preservation of peace and quiet.

(c) There shall be displayed in at least one public place on the project site or sites a copy of the rules and regulations; that all rules and regulations adopted under authority hereof shall have the force and effect of law and in event of violation thereof the offender shall be guilty of a misdemeanor and shall be punished as provided by law.

(d) To promote and sponsor a quadricentennial public celebration commemoration of the 400th anniversary of the permanent colonization of Florida during the period commencing January 1, 1959, and including December 31, 1969 and to assist cities and counties in connection with clebrations staged by them, and in the operation of national and international expositions, industrial and agricultural displays, trade fairs and educational, cultural, artistic and historical exhibits, fetes, fiestas, parades, pageants, athletic contests and contests of speed and skill, motor vehicle, motor boat, sail boat and airplane races and exhibitions; provided, however, if there shall be created by law a state commission or authority, vested with the power to license or regulate or to coordinate such municipal and county celebrations with each other, no quadricentennial celebration shall be conducted without a license or permit from such state commission or authority nor in any manner except in accordance with regulations adopted by such commission therefor.

(e) To own and acquire property, real and personal, and any interest therein or right pertaining thereto, by purchase, lease, donation, gift or transfer and to acquire, construct, reconstruct, improve, alter, repair, maintain, operate, sell, convey, lease and dispose of any building, structure or facility.

(f) To enter into concession contracts for the operation of the facilities and any activities specified in §13.62(2) (d) and (g).

(g) To improve and develop the property acquired by such commissions and in connection therewith to subdivide said property into lots and to acquire, construct and operate sewage and water facilities and facilities for the transmission of gas, water and electricity and for the disposition of sewage, to construct, manage and operate trailer courts, hotels and motels within the project site and to operate transportation facilities within and without the project site.

(h) To enter into contracts with any person, firm or corporation and the state, the United States and any foreign government or any agency or department thereof, and any county and municipality or any agency or department of either.

(i) To enter into development, operating and management of contracts and leases for the construction, maintenance and operation of facilities as may be necessary or desirable, or in the furtherance of the development of properties acquired.

(j) To invest any funds held in reserve or sinking funds not required for immediate disbursement, in property or securities of which industrial savings banks may legally invest funds subject to their control; to purchase its own obligations at a price not more than the principal amount and accrued interest; and all obligations so purchased may be cancelled if such cancellation is not prohibited by the terms of the obligations or any agreement, contract or indenture pertaining thereto.

(k) In event the commission shall determine the interests of the community so requires, to grant a lease, sublease or license to the United States, Florida, any county, any municipal or private corporation or any person for a nominal consideration or other consideration as it deems proper, in order to procure the establishment of a facility essential or desirable in the interest of the public.

(l) To accept donations and contributions of public and private sources, and to enter into contracts with respect thereto, and to borrow money and pay interest thereon.

(m) To employ adequate personnel for the operation of the commission; provided, however, merit system and pension laws, rules

and regulations, shall not be applicable to any such personnel.

(n) To acquire property by lease for a term of ninety-nine years or less and to grant leases for a term of occupancy of ninety-nine years or less and such leases may be granted upon such conditions as the commission shall deem proper.

(o) To buy and sell to consumers water, gas and electric power or to grant a concession and right to others so to do within the area of the project site or within the boundaries of any lands owned by the commission; and

(p) To adopt policies, rules and regulations for the award of contract, either negotiated or on competitive bidding, and no statute, rules, regulation or policy of any city, or county, or of the state, relating to or governing contracts by public bodies shall apply to contracts or the awarding thereof by any commission; but no contract shall be let by the commission to any officer, or any member or employee of the commission.

History.—§2, ch. 59-511.

13.63 Membership, organization and expenses.—

(1) A quadricentennial commission shall consist of a board of five commissioners, each of whom shall be appointed by the governor to serve for a term of four years or until a successor shall be appointed and qualified.

(2) The commission when appointed and organized shall elect a chairman, first vice-chairman, second vice-chairman, secretary and treasurer, each to serve for a term of two years; a majority of the commission shall constitute a quorum of the board at any regular or special meeting. No salary shall be paid to commissioners but they shall be reimbursed for traveling expenses as provided in §112.061. Each commissioner shall give bond for faithful performance of his duties in such amount as the commission shall determine, which shall be not less than ten thousand dollars, the premium on such bonds to be paid by the commission.

(3) The board of commissioners shall be charged with the general management of the affairs of the commission and shall exercise the powers and privileges granted to it by law.

History.—§3, ch. 59-511; (2) §19, ch. 63-400.

13.64 Duties.—The commission, with reference to the activities it is charged with conducting, shall:

(1) Prepare a program or proposal for the acquisition or construction or operation of facilities, considered necessary or desirable in accomplishing the objectives of this law.

(2) Supervise the construction, alteration, extension or repair of any facility.

(3) On or before July 1 of each year, prepare an annual budget containing an estimate of receipts and disbursements for its fiscal year, beginning October 1 and ending on September 30, and a separate budget for each facility operated by it. A copy of said budget shall be presented to the governing legislative body of any municipality or county contributing funds, property, exemptions or concessions to said commission. A summary of the budget containing the major items of estimated receipts and expenditures may be published by the commission or the board of county commissioners.

(4) Prepare and adopt amended budgets when required.

(5) Operate, as far as practicable, within any such budget.

(6) Submit periodic reports to the governing legislative body of any municipality or county contributing funds, property, exemptions or concessions to said commission.

(7) Establish bank accounts and special funds as required and withdraw from bank deposits and funds maintained by it such sums as may be necessary for the operation of the commission.

History.—§4, ch. 59-511.

13.65 Powers.—The commission shall have the power to issue obligations as herein defined for the purpose of obtaining funds in order to exercise the powers herein granted or to enable it to perform or better perform its duties hereunder and accomplish the objectives of this law, including, without limitation, the acquisition of property or procurement of operating funds, and when such obligations are issued, may covenant in the obligations or any contract or indenture pertaining thereto:

(1) To pledge all or any part of the gross or net revenues derived from the operation or ownership of facilities.

(2) To pledge all or any part of the rental received from the lease of facilities to any person, firm or corporation or revenues derived therefrom by contract or otherwise.

(3) To pledge all or any part of donations or contributions received from private and public sources.

(4) To pledge the excess revenues from the ownership or operation of its other facilities.

(5) To establish a sinking fund to be used exclusively for the payment of interest and the retirement of such securities or obligations.

(6) Against pledging all or any part of the rents, fees and revenues received by reason of the ownership or operation of any facility, or against mortgaging all or any part of its real or personal property to which its right then exists or may thereafter come into existence or against permitting or suffering any lien on such revenue or property.

(7) To limit its rights to sell, lease or otherwise dispose of any of its property or any or all of its facilities; and to covenant as to what other additional debts or obligations may be incurred by it.

(8) As to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds of such securities.

(9) To provide for the replacement of lost, destroyed or mutilated instruments, and against

extending the time for payment of its obligations or securities or interest thereon and to redeem the obligations and securities, and for their redemption, and to provide the terms and conditions thereof.

(10) As to the rents and fees to be charged in the operation of any facility, the amount to be raised each year or other period of time, by rents, fees and other revenue, and as to the use and disposition to be made thereof; to create or authorize the creation of special funds for moneys held for construction or operating costs, or debt services, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(11) To prescribe the procedure, if any, by which the terms of any contract with the holders of the obligations may be amended or abrogated, the amount of obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(12) As to the use of any or all of its real or personal property, the maintenance and replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys received; to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations issued under the provisions of this law shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(13) To designate a trustee or trustees and to vest in such trustee or trustees, or the holders of such obligations, or any proportion of them, with the right to enforce the payment of the obligations or any covenants securing or relating thereto; to vest in a trustee or trustees the right, in event of a default by the issuer to take possession and use, operate and manage the facility, or, any part of such facility or facilities and to collect the rents and revenues arising therefrom, and to dispose of such moneys in accordance with the agreement of the issue with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of such obligations, or any proportion of them, may enforce any covenant or rights securing or relating to the securities or obligations.

(14) That in event of default of payment of principal or interest of any obligations issued hereunder, upon application of the holders of not less than twenty-five per cent of the principal amount then outstanding for the holders of the obligations of any issue of obligations, or upon application of the trustee or trustees designated in any contract or agreement executed by the issuer, to consent to the appointment of a receiver for the facility or facilities which participated in the distribution of the proceeds of such obligations or securities and further consent that the court appointing said receiver shall include in any order appointing such receiver, in addition to such powers as the court may deem proper, the right to enter into and take possession of said facility and operate, maintain or repair the same, and to establish, levy, maintain, and collect fees, tolls, rentals, and other income from the ownership, control and operation of said facilities, and to receive all revenues in the same way as the issuer might itself have done and dispose and apply revenues so collected and received in such manner as may be directed.

(15) (a) That if the commission owns, constructs, acquires or operates more than one facility, it may issue the obligations and pledge to the payment thereof all or any part of the receipts from one or more than one facility; and

(b) Any obligations issued under authority of this law may be subordinated to any other obligation issued by an issuer without affecting the validity thereof.

(16) To include in any deed to property a provision that such property is conveyed subject to all of the rights, privileges, terms, provisions and conditions in the obligations (as defined herein) contained or in any obligation or resolution, contract or indenture authorizing the issuance of any such obligation, and any such rights, terms, privileges, provisions or conditions shall be covenants running with the title to the land, and that upon breach of any of the terms, provisions, or conditions contained therein all of the rights and privileges of the holders of the obligations or the trustees or trustee designated in any resolution, contract or agreement, adopted or executed by the commission in connection with the issuance of obligations may be exercised and enjoyed to the same extent as if the property described in said deed had not been conveyed by the commission.

History.—§5, ch. 59-511.

13.66 Obligations.—

(1) Obligations of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature in such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registered privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments, at such place or places, and be subject to such redemption (with or without premium) as any such resolution, contract, agreement or indenture may provide; provided, however, no obligation shall be issued which shall mature more than thirty years after the date of issue.

(2) Such obligations may be sold at not less than ninety-five per cent of the face value at public sale, held after publication of notice once at least ten days prior to the sale, in a

newspaper having general circulation in the city and county where the commission is authorized to function and may be sold to any other purchaser by a privately negotiated sale and without competitive bidding at not less than par value, provided not less than ten days public notice, by one publication in a newspaper having general circulation in the county, is given of the intention to make such private sale. Full information shall be made available to any citizen of the city or county wherein the commission is authorized to function, upon written demand, with respect to the terms, provisions, conditions, limitations, maturities, and interest rate of the obligation proposed to be issued and the terms of such proposed sale.

(3) In case any officer or officers of the issue whose signature appears on obligations or coupons shall cease to be an officer before the delivery of the obligations, such signature shall, nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any obligation issued pursuant to this law shall be fully negotiable.

(4) In any suit, action or proceeding involving the validity or enforceability of any obligation of an issue or the security therefor, any such obligation reciting in substance that it has been issued by the issuer to aid in the acquisition, construction, extension or repair of any facility or facilities, shall be conclusively deemed to have been issued for such public purposes.

(5) No officer, director, member or former director of the issuer, nor any person executing the obligation, shall be liable personally on the obligations by reason of the issuance thereof. The obligation (and such obligations shall so state on their face) shall not be a debt of the county, the state or any political subdivision, authority or commission (other than the commission created hereby) and neither the county, nor the state or any political subdivision thereof except the commission, shall be liable thereon, nor in any event shall the obligations be payable out of any funds or properties other than those of the issuer. The obligation shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction.

(6) Obligations of an issuer may be validated in the same manner and to the same extent as provided in chapter 75.

History.—§6, ch. 59-511.

13.67 Audit of accounts.—The books and accounts of the commission shall be audited annually and a copy thereof shall be maintained in the office of the commission. The audit shall be open for the examination of the public at all reasonable times. A copy of the audit will be forwarded to the governing legislative body of any municipality or county contributing funds, property, exemptions or concessions to said commission.

History.—§7, ch. 59-511.

13.68 City or county not liable for debts, etc.—The commission shall have no power, without the consent of the county or the municipality where said commission is authorized to operate to bind or commit such county or municipality in any manner for the debts, liabilities, obligations, acts or omissions of the commission or any of its officers or employees and all persons dealing with the said commission are hereby given full notice of this limitation.

History.—§8, ch. 59-511.

13.69 Directors or commissioners not liable personally.—No director or commissioner shall be held personally liable or accountable for any debts or liabilities, either ex contractu or ex delictu of the commission, resulting from the exercise of the power and authority herein granted.

History.—§9, ch. 59-511.

13.70 Cooperation between commissions.—The commission is hereby authorized to contract with any commission of an adjoining county or city to jointly exercise with respect to any facility or facilities herein defined, the powers and duties vested in said commission.

History.—§10, ch. 59-511.

13.71 Property of commissions; public property.—All property or rights therein owned by the commission shall be deemed to be public property held and owned for a county purpose if the commission is authorized to function within a county, and a municipal purpose if the commission is authorized to function only within a municipality; and in event of a conveyance of the property to either by a commission, or assignment of any lease or license of property upon which a facility is located, or the abolition of the commission without provision to the contrary, said property and ownership thereof shall be vested in the appropriate county or municipality based upon which authorized the particular commission to function; provided, however, if at the time of acquisition of said property all indebtedness of the commission has been paid or if the said indebtedness shall subsequently be paid, then the said county or municipality acquiring the property, when no such indebtedness exists, shall prorate the net income from such property between each other according to the amounts contributed to the commission by each, until the one not acquiring the property has been reimbursed in full for any contributions made to the commission, and after such reimbursement, all revenues shall inure to the benefit of the one acquiring the property; provided further, if any facility is constructed on leased property, the commission may transfer said facility and lease to the county or city and until the expiration or termination of said lease, said county or municipality may exercise all of the rights herein granted to a commission with respect to said facility.

History.—§11, ch. 59-511.

13.72 Repeals.—All laws and parts of laws in conflict herewith are repealed, provided,

however, §§13.61-13.71 shall not repeal chapter 57-2043, nor any special law creating a municipal or county quadricentennial commission or authority; provided further, the provisions of §13.62(2) (p) shall apply with equal force to the quadricentennial commission of Pensacola created under chapter 57-2043.

History.—§13, ch. 59-511.

13.73 Authority to appropriate and tax.—The board of county commissioners of any county in which a quadricentennial commission is authorized to transact business under any general or special law and any municipal corporation within any such county, may budget, appropriate, expend and contribute property, services and funds to any such quadricentennial commission and as an incident thereto, any such board of county commissioners and municipal corporation is authorized to assess ad valorem taxes therefor.

History.—§1, ch. 59-517.

PART V

FLORIDA AVIATION STUDY AND ADVISORY COMMISSION

13.76 Florida aviation study and advisory commission.—

(1) COMMISSION CREATED.—There is hereby created the Florida aviation study and advisory commission (hereinafter called the "commission").

(2) MEMBERSHIP DEFINED.—The commission shall be composed of two members of the Florida house of representatives to be appointed by the speaker of the house of representatives, two members of the Florida senate to be appointed by the president of the senate, and three members of the public at large to be appointed by the governor.

(3) POWERS AND DUTIES.—

(a) The commission shall, as soon as possible after being appointed, engage in a study of the field of aviation as it relates to Florida, including the collection and evaluation of facts, formulation of goals, and development of a long range program for the fostering and promotion of aviation in the state; and shall do all other acts and things necessary to be able to recommend possible changes in the laws governing and affecting aviation.

(b) The commission shall attempt to organize its recommendations into a comprehensive plan designed to aid the progress of aviation in the state, and shall report its findings and its plan of recommendations to the 1965 session of the legislature.

(c) The commission shall inquire into and make recommendations concerning any and all aspects of aviation; including, without limitation, ways and means of fostering and developing airports and aviation throughout Florida, methods of most effectively making use of such federal aid funds as may be available for purposes related to aviation, a thorough analysis of the relationships and delineations of responsibility and control of aviation between federal and state governments under existing laws, methods of financing the maintenance and upkeep of an adequate network of airports and aircraft facilities throughout the state, and methods which are now available or which may be developed for the financing of the acquisition of aircraft on a more widespread basis.

(4) ASSISTANCE.—The Florida development commission shall furnish the commission necessary technical, administrative, and clerical assistance.

(5) MISCELLANEOUS.—

(a) The members of the commission shall serve until the close of the 1965 session of the legislature at which time the commission shall cease to exist.

(b) The members of the commission shall serve without pay but shall be reimbursed for expenses pursuant to the provisions of §112.061.

(c) The members of the commission shall elect a chairman and a secretary from among their number, who shall be responsible for conducting the meetings and affairs of the commission and for keeping records thereof.

(d) Each member of the commission shall have an equal voice in the operations thereof and in the final formulation of a plan of recommendations to be presented to the 1965 session of the legislature. Any member or members disagreeing with such final plan of recommendations in any respect may file a minority plan of recommendations identified as such.

History.—§§1-5, ch. 63-492.

TITLE IV

EXECUTIVE DEPARTMENT

CHAPTER 14

GOVERNOR

14.01 Governor authorized to employ persons to protect life, liberty and property.—The governor may employ as many persons as he, in his discretion, may deem necessary to procure and secure protection to life, liberty and property of the inhabitants of the state, also to protect the property of the state.

History.—Ch. 1660, 1868; RS 68; GS 69; RGS 83; CGL 104.

14.02 Governor may preserve peace and order by military force.—The governor may, in cases of insurrection or rebellion, violence, disorder or insecurity of life, liberty and property, support and preserve the public peace and order by the military force of the state.

History.—§1, ch. 1745, 1870; RS 69; GS 70; RGS 84; CGL 105.
cf.—§250.28, Order for troops to aid civil authorities.

14.021 Governor; promulgation and enforcement of emergency rules and regulations.—

(1) The governor of Florida is hereby authorized and empowered to promulgate and enforce such emergency rules and regulations as are necessary to prevent, control, or quell violence, threatened or actual, during any emergency lawfully declared by him to exist. In order to protect the public welfare, persons and property of citizens against violence, public property damage, overt threats of violence, and to maintain peace, tranquillity and good order in the state, these rules and regulations may control public parks, public buildings, or any other public facility in Florida, and shall regulate the manner of use, the time of use, and persons using the facility during any emergency. These rules and regulations shall have the same force and effect as law during any emergency, and shall remain in effect during a period of time and in such manner, and shall affect such persons, public buildings and public facilities as in the judgment of the governor shall best provide a safeguard for protection of persons and property where danger, violence and threats exist, or are threatened among the citizens of Florida.

(2) Whenever the governor shall promulgate emergency rules and regulations, such rules and regulations shall be published and posted during the emergency in the area affected, and copies of the rules shall be filed with the secretary of state for public record.

(3) The governor shall have emergency power to call upon the military forces of the state or any other law enforcement agency, state or county, to enforce the rules and regulations authorized by this law.

(4) The powers herein granted are supplemental to and in aid of powers now vested in the governor of this state under the constitution, statutory laws and police powers of said state.

(5) This section shall take effect immediately upon its becoming a law and shall continue in full force and effect until July 1, 1965.

History.—§§1-4, 6, ch. 31389, 1956; (5) §1, ch. 61-239.

14.022 Governor; emergency powers to quell violence.—

(1) The governor of Florida is hereby authorized and empowered to take such measures and to do all and every act and thing which he may deem necessary in order to prevent overt threats of violence or violence, to the person or property of citizens of the state and to maintain peace, tranquillity and good order in the state, and in any political subdivision thereof, and in any area of the state designated by him.

(2) The governor when, in his opinion, the facts warrant, shall, by proclamation, declare

that, because of unlawful assemblage, violence, overt threats of violence, or otherwise, a danger exists to the person or property of any citizen or citizens of the state and that the peace and tranquillity of the state, or any political subdivision thereof, or any area of the state designated by him, is threatened, and because thereof an emergency, with reference to said threats and danger, exists. In all such cases when the governor shall issue his proclamation as herein provided he shall be and is hereby further authorized and empowered, to cope with said threats and danger, to order and direct any individual person, corporation, association or group of persons to do any act which would in his opinion prevent danger to life, limb or property, prevent a breach of the peace or he may order such individual person, corporation, association or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb, or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of society, and shall have full power by appropriate means to enforce such order or proclamation.

(3) The governor, upon the issuance of a proclamation as provided for in subsection (2) hereof shall forthwith file the same in the office of the secretary of state for recording, which proclamation shall be effective upon issuance and remain in full force and effect until revoked by the governor, and he is hereby authorized and empowered to take and exercise any, either or all of the following actions, powers and prerogatives:

(a) Call out the military forces of the state (state militia) and order and direct said forces to take such action as in his judgment may be necessary to avert the threatened danger and to maintain peace and good order in the particular circumstances.

(b) Order any sheriff or sheriffs of this state, pursuant to a proclamation as herein provided, to exercise fully the powers granted them, and each of them, under §30.15(7) (suppress tumults, riots and unlawful assemblies in their counties with force and strong hand when necessary) and to do all things necessary to maintain peace and good order.

(c) Order and direct the state highway patrol, and each and every officer thereof, to do and perform such acts and services as he may direct and in his judgment necessary in the circumstances to maintain peace and good order.

(d) Authorize, order or direct any state, county, or city official to enforce the provisions of such proclamation in each and every and all of the courts in the state by injunction, mandamus, or other appropriate legal action.

(4) The governor is hereby authorized and empowered to intervene in any situation where there exists violence, overt threats of violence to persons or property and take complete control thereof to prevent violence, or to quell violence or any disturbance or disorder which threatens the peace and good order of society.

(5) The powers herein granted are supplemental to and in aid of powers now vested in the governor under the constitution, statutory laws and police powers of said state.

(6) This law shall take effect immediately upon its becoming a law and shall continue in full force and effect until July 1, 1965.

History.—§§1-6, ch. 31390, 1956; (6)a. by §2, ch. 61-239.

14.03 Governor's private secretary.—The governor of this state may appoint and commission a fit and proper person to hold his office during the pleasure of the governor, as private secretary of the governor, and as clerk for the executive department, and who shall attend daily, during office hours, at the capitol, and perform such duties in the office of the governor as he may be directed by the governor to perform.

History.—§3, ch. 3, 1845; RS 71; GS 72; RGS 86; CGL 107.

14.05 Salary of officer upon whom duties of governor shall devolve.—When the powers and duties of governor shall devolve upon the president of the senate, or upon the speaker of the house of representatives, as provided in §19, Art. 4 of the constitution, the president of the senate or the speaker of the house of representatives, as the case may be, during the time that he shall exercise the powers and perform the duties of governor, as therein provided, shall receive the same salary as the governor would have received during said time.

History.—§1, ch. 19060, 1939; CGL 1940 Supp. 108(1).

14.051 Title of person upon whom duty of governor may devolve.—Whenever the duties of the office of governor has heretofore, or may hereafter, devolve upon the president of the senate, or upon the speaker of the house of representatives, he shall be deemed the governor of Florida and be designated and referred to as the governor of Florida.

History.—§1, ch. 61-442.

14.06 Governor authorized to employ clerical assistance for departments of state.—The governor of the state may employ clerical aid to work in any department of the state under the supervision and direction of the head of such department whenever in the judgment of the governor such additional help is necessary for the proper conduct of the business and affairs of such department, and when the same has become necessary by reason of the increase in the business of such department and was not foreseen and adequately provided for in the general appropriations bill. And the governor is further authorized to employ such persons as may be required from time to time to make such investigations as may, in the judgment of the governor, be necessary or expedient to efficiently conduct the affairs of the state government, especially to make investigation and report of matters concerning taxation and finance throughout the state.

History.—§1, ch. 11369, 1925; CGL 109.
cf.—§18.10 Deposit of money in the banks of the state.

14.14 Speaker of house of representatives disqualified while acting as governor; who to

act.—Should the powers and duties of governor devolve upon the speaker of the house of representatives, pursuant to §19, Art. IV, of the constitution of Florida, and at such time there be no duly qualified speaker of the house of representatives, or in case of the impeachment, removal from office, death, resignation or inability of the speaker of the house of representatives to discharge the powers and duties of governor, such powers and duties shall devolve upon the secretary of state.

History.—§1, ch. 23697, 1947.

14.15 Governor elect; inability to discharge duties; succession.—In the event of the death, resignation or inability to discharge his official duties of the governor-elect, the governor then in office shall continue until a successor is elected and qualified as hereinafter provided.

History.—§1, ch. 24291, 1947.

14.16 Special election for governor.—Within five days after receiving notice of the death or disqualification of the governor-elect, the secretary of state shall order a special election to be held on the first Tuesday in February next ensuing for the purpose of electing a governor. Candidates shall qualify ten days prior to the date of such election. At said election, should any candidate receive a majority of the votes cast, he shall be declared elected governor. If no candidate receives a majority of votes cast, a further special election shall be held on the third Tuesday of said month. The two candidates receiving the highest votes in the first special election shall be placed on the ballot for the second election and the candidate receiving the highest number of votes cast at said second election shall be declared elected governor.

History.—§2, ch. 24291, 1947.

14.17 Governor; term of office.—The governor so elected shall assume office on the first Tuesday in March next following his election, and shall hold office for the remainder of the term.

History.—§3, ch. 24291, 1947.

14.18 Governor; inability to discharge duties; succession.—In the event the person elected governor, pursuant to §14.16, shall die, resign or be unable to discharge his official duties, the powers and duties of governor until the next general election for members of the legislature shall devolve upon the president of the senate. If there be no president of the senate or the president of the senate be unable to discharge such duties, such powers and duties shall devolve upon the speaker of the house. If there be no legally qualified speaker of the house or if the speaker of the house be unable to discharge such duties, the powers and duties shall devolve upon the secretary of state. At the next general election for members of the legislature, the governor shall be elected for the residue of the term and shall take office upon election.

History.—§4, ch. 24291, 1947.

14.20 Citizens advisory committee on the aged.—There is created a standing committee, to be known as the "citizens' advisory committee on the aged," to be composed of nine persons to inquire into, examine and advise the governor on the needs and problems of the aged residents of the state. Members of the said committee shall be appointed and selected by the governor on the basis of their demonstrated interest in the health, welfare, and happiness and the maintaining of adequate living standards for elderly persons in the state. The members of the said committee shall serve at the pleasure of the governor. The governor shall designate the chairman, vice-chairman and secretary of the said committee. The said committee shall be advisory in character and shall not be delegated any administrative authority or responsibility. The members of the said committee shall serve without compensation but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§1-5, ch. 59-263; §19, ch. 63-400.

CHAPTER 15

SECRETARY OF STATE

15.01 Residence, office and duties.—The secretary of state shall reside at the seat of government and shall have his office in the capitol, perform the duties prescribed by the state constitution, and have the custody of the constitution and great seal of this state, and of the original statutes thereof, and of the resolutions of the legislature, and of all the official correspondence of the governor. He shall keep in his office a register and an index of all official letters, orders, communications, messages, documents and other official acts issued or received by the governor or himself, and record these in a book numbered in chronological order. The governor, before issuing any order or transmission of any official letter, communication or document from the executive office or promulgation of any official act or proceeding (except military orders) shall deliver the same or a copy thereof to the secretary of state to be recorded.

History.—§1, ch. 1, 1845; ch. 1845, 1871; RS 73; GS 74; RGS 88; CGL 110; §1, ch. 28086, 1953.
cf.—§§16, 20, 27, Art. IV; §10, Art. XVI; §12, Art. XVIII, Const., 1885.

15.02 Custodian of state flags; certain state papers, etc.—The secretary of state shall have custody of the state flag, of all books, papers, files and documents belonging to the office of secretary of state and of the laws of the state and books, papers, journals and documents of the legislature. He shall in addition to the duties prescribed by the constitution perform all the duties appertaining to the office of secretary of state not inconsistent with the state constitution.

History.—§3, ch. 1, 1845; RGS 89; CGL 111; §2, ch. 28086, 1953.

15.03 Seal.—

(1) The great seal of the state shall be of the size of the American silver dollar, having in the center thereof a view of the sun's rays over a highland in the distance, a cocoa tree, a steamboat on water, and an Indian female scattering flowers in the foreground, encircled by the words "Great Seal of the State of Florida: In God We Trust."

(2) The great seal of this state shall also be the seal of the office of the secretary of state, and the secretary of state may certify under said seal, copies of any statute, law, resolution, record, paper, letter or document, by law placed in his custody, keeping and care, and such certified copy shall have the same force and effect in evidence, as the original would have.

History.—§4, ch. 1, 1845; RS 75; GS 76; RGS 90; CGL 112; (1) §1, ch. 29841, 1955.
cf.—§§14 and 21, Art. IV; §12, Art. XVI, Const., 1885.

15.031 State tree designated.—

(1) The sabal palmetto palm, which is also known as the cabbage palm, and sometimes as the cabbage palmetto, a tree native to Florida, is hereby designated as the Florida state tree.

(2) Said state tree being now extensively used for commercial purposes, the provisions of this section shall not be construed to limit in any manner said use thereof in business, industry, commerce, for food, or for any other commercial purposes.

History.—§§1, 2, ch. 28126, 1953.

15.04 To have charge of capitol and appurtenances.—The secretary of state shall have full charge of the capitol buildings, grounds, including parks and vacant squares within the capitol center, appurtenances, fixtures and property belonging thereto, to be used alone for state purposes.

History.—§1, ch. 1882, 1870; RS 76; GS 77; RGS 91; CGL 113; §3, ch. 28086, 1953.
cf.—§21, Art IV, Constitution 1885.
§256.02 Certain officers to provide flag.
§272.03 Board of commissioners of state institutions to supervise capitol center buildings.

15.05 Repairs and assignments of rooms.—Under the direction of the board of commissioners of state institutions, the secretary of state shall make all alterations and repairs of the capitol which may be provided for by law, and assign their respective rooms to state officers who are required to keep their offices in the capitol.

History.—§2, ch. 1822, 1870; RS 77; GS 78; ch. 5713, 1907; RGS 92; CGL 114.
cf.—§§17 and 21, Art. IV, Const. 1885.
§272.03 Board of commissioners of state institutions to supervise capitol center buildings.

15.06 Rooms for legislature.—The secretary of state shall have a sufficient number of rooms in the capitol ready prior to each session of the legislature to be used as committee rooms for each house of the legislature. If any or all of said rooms shall be occupied by any officers or other departments when any session is about to be held, such officers shall, if necessary, procure other offices outside of the capitol at the expense of the state.

History.—§§1, 2, 3, ch. 5713, 1907; RGS 93; CGL 115; §4, ch. 28086, 1953.

15.07 Acts and papers of the legislature to be deposited with the secretary of state.—All original acts and resolutions passed by the legislature, and all other original papers acted upon thereby, together with the journal of the senate, and the journal of the house of repre-

sentatives, shall, immediately upon the adjournment thereof, be deposited with, and preserved in, the office of the secretary of state, by whom they shall be properly arranged, classified, and filed, provided that the journal of the executive session of the senate shall be kept free from inspection or disclosure except upon the order of the senate itself or some court of competent jurisdiction.

History.—§1, ch. 1904, 1872; RS 78; GS 79; §10, ch. 7838, 1919; RGS 94; CGL 116; §7, ch. 24337, 1947.
cf.—§21, Art. IV, Const., 1885.

15.08 Not to issue commission until tax therefor is paid.—The secretary of state is prohibited from affixing his signature and the seal of the state to the commission of any public officer until such officer has paid the amount of the tax required to be paid by said officer for the commission.

History.—§1, ch. 1936, 1873; RS 79; GS 80; RGS 95; CGL 117; §5, ch. 28086, 1953.
cf.—§§15.09, 113.01 Commission fees.

15.09 Fees.—The fees except as provided by law to be collected by the secretary of state are: Search of papers or records, one dollar; certificate with seal, two dollars; furnishing statistical information and for copying any document not mentioned, fifty cents per page or fraction thereof. For certifying copy of a corporation charter, three dollars unless charter is more than eight pages; if more than eight pages the fee shall be three dollars, plus fifty cents per page for each page over eight; provided where a copy is furnished and needs only to be verified and certified the fee shall be a total of three dollars. All fees arising from certificates of election or appointment to office and from commissions to officers shall be paid to the state treasurer for deposit in the general revenue fund.

History.—§1, ch. 2089, 1877; RS 80; GS 81; RGS 96; CGL 118; §6, ch. 28086, 1953; §2, ch. 29841, 1955.
cf.—§111.03, Accounting for fees.
§609.02, Declaration of trust.
§§47.32, 47.42, Service of process upon non-resident. Ch. 120 Administrative procedure act.
§§15.08, 113.01 Commission fees.

15.13 Administration of certain laws.—The secretary of state shall have general supervision and administration of the election laws, corporation laws and such other laws as are placed under his office by the legislature and shall keep records of same.

History.—Comp. §7, ch. 28086, 1953.

15.14 Biennial report.—The secretary of state shall not publish a report of the persons commissioned as a notary public. The biennial report the constitution requires to be made by the secretary of state shall be furnished upon request to all members of the legislature, all officials of the executive branch and all officials of the judicial branch of the state without charge. The expense of printing such report shall be paid from moneys appropriated to the secretary of state for the operation of his office.

History.—§8, ch. 28086, 1953; §1, ch. 61-201.

CHAPTER 16

ATTORNEY GENERAL

16.01 Residence, office and duties of attorney general.—The attorney general shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the constitution of this state, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the legislature; he shall, on the written requisition of the governor, secretary of state, treasurer, or comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the state, all suits or prosecutions, civil or criminal, or in equity, in which the state may be a party, or in any wise interested, in the supreme court and district courts of appeal of this state; he shall appear in and attend to such suits or prosecutions in any other of the courts of this state, or in any courts of any other state, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the governor of the state, and to the disposition of the legislature by act or resolution thereof.

History.—§2, ch. 2, 1845; ch. 1845, 1871; RS 85; GS 87; RGS 101; CGL 125; §7, ch. 22858, 1945; §7, ch. 59-1.
cf.—§§20, 22, 27, Art. IV; §10, Art. XVI, Const., 1885.

16.02 Appointment of person to act in case of disability of attorney general.—In case of the disability of the attorney general to perform any official duty devolving on him, by reason of interest or otherwise, the governor or attorney general of this state may appoint another person to perform such duty in his stead.

History.—§3, ch. 2, 1845; RS 85a; GS 88; RGS 102; CGL 126.

16.05 To report on laws.—The attorney general shall make a written report to the governor five days before the first day of every session of the legislature, as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the legislature by the governor with his first message.

History.—§5, ch. 2, 1845; RS 88; GS 91; RGS 105; CGL 129.

16.07 Not to receive fee for defending offender.—It shall be a misdemeanor in office for the attorney general to take or receive any fee for defending any supposed offender in any of the courts.

History.—§6, ch. 2, 1845; RS 89; GS 92; RGS 106; CGL 130.

16.08 To have superintendence and direction of state attorneys.—The attorney general shall exercise a general superintendence and direction over the several state attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the state attorneys, shall give them his opinion upon any question of law.

History.—§1, ch. 2098, 1877; RS 90; GS 93; RGS 107; CGL 131.

16.09 To prescribe regulations as to the reports of state attorneys.—The attorney general shall prescribe the time and manner in which regular quarterly reports shall be made to him by state attorneys, and they shall comply with his instructions in this respect.

History.—§3, ch. 2098, 1877; RS 91; GS 94; RGS 108; CGL 132.

16.10 To receive supreme court reports for office.—The clerk of the supreme court shall deliver to the attorney general a copy of each volume, or part of volume, of the decisions of the supreme court, which may be in the care or custody of said clerk, and which the attorney general's office may be without, and take the attorney general's receipt for the same. The attorney general shall keep the same in his office at the capitol, and each retiring attorney general shall take the receipt of his successor for the same and file such receipt

in the treasurer's office; provided that this shall not authorize the taking away of any book belonging to the supreme court library, kept for the use of said court.

History.—Ch. 3264, 1881; RS 92; GS 95; RGS 109; CGL 133.

16.19 Florida Statutes, 1963, adopted.—The accompanying revision, consolidation and compilation of the public statutes of 1961 of a general and permanent nature, excepting tables, rules, index and other related matter contained therein, prepared by the statutory revision department of the attorney general's office under the provisions of §16.44, together with the corrections, changes, amendments and repeals, is adopted and enacted as the official statute law of the state under the title of "Florida Statutes, 1963," which may be cited as "Florida Statutes, 1963," "Florida Statutes," or "F.S. '63."

History.—§1, ch. 20719, 1941; §1, ch. 22000, 1943; §1, ch. 22858, 1945; §1, ch. 24337, 1947; §1, ch. 25035, 1949; §1, ch. 26484, 1951; §1, ch. 27991, 1953; §1, ch. 29615, 1955; §1, ch. 57-1; §1, ch. 59-1; §1, ch. 61-1; §1, ch. 63-2.

16.20 Statutes repealed.—Every statute of a general and permanent nature enacted by the state or by the territory of Florida, and every part of such statute not included in Florida Statutes, 1963, as adopted by §16.19, as amended or recognized and continued in force by reference therein or in §§16.21 and 16.22, as amended, is repealed.

History.—§2, ch. 20719, 1941; §2, ch. 22000, 1943; §2, ch. 22858, 1945; §2, ch. 24337, 1947; §2, ch. 25035, 1949; §2, ch. 26484, 1951; §2, ch. 27991, 1953; §2, ch. 29615, 1955; §2, ch. 57-1; §2, ch. 59-1; §2, ch. 61-1; §2, ch. 63-2.

16.21 Laws or statutes not repealed.—

(1) No special or local statute, or statute, local, limited or special in its nature, shall be repealed by the Florida Statutes, now or hereafter adopted, and, for the purpose of this saving from repeal any statute of the following classes shall be taken to be included in such exception, namely:

(a) Any statutes for or concerning only a certain county or certain designated counties.

(b) Any statute for, or concerning or operative in only a portion of the state.

(c) Any statute for or concerning only a certain municipal corporation.

(d) Any statute for or concerning only a designated individual corporation or corporations.

(e) Any statute incorporating a designated individual corporation, or making a grant thereto.

(f) Any statute of such limited or local application as makes its inclusion in a general statute impracticable or undesirable.

(g) Road designated laws.

(h) Severability section in any law.

(2) The foregoing enumeration of classes of statutes not repealed shall not be construed to imply a repeal of other statutes which are local, limited or special in their nature.

History.—§3, ch. 20719, 1941; am. §3, ch. 22000, 1943; §3, ch. 22858, 1945; §3, ch. 24337, 1947; §3, ch. 25035, 1949; (1) §3, ch. 26484, 1951; §3, ch. 27991, 1953; (1) (h) §3, ch. 59-1.

16.22 1963 statutes not repealed.—Statutes enacted at the 1962 and 1963 extraordinary or special sessions of the legislature and at the 1963 regular session of the legislature are not repealed by the adoption and enactment of the Florida Statutes, 1963, by §16.19, as amended, but shall have full effect as if enacted after its said adoption and enactment, except those laws passed during the 1962 and 1963 extraordinary or special sessions and at the said 1963 regular session which are amendatory of laws omitted from said Florida Statutes.

History.—§4, ch. 20719, 1941; §4, ch. 22000, 1943; §4, ch. 22858, 1945; §4, ch. 24337, 1947; §4, ch. 25035, 1949; §4, ch. 26484, 1951; §4, ch. 27991, 1953; §3, ch. 29615, 1955; §3, ch. 57-1; §1, ch. 57-233; §4, ch. 59-1; §3, ch. 61-1; §3, ch. 63-2.

16.23 Rights reserved under repealed statutes.—The repeal of any statute by the adoption and enactment of Florida Statutes, 1963, by §16.19, as amended, shall not affect any right accrued before such repeal, nor any civil remedy where a suit is pending.

History.—§5, ch. 20719, 1941; §5, ch. 22000, 1943; §5, ch. 22858, 1945; §5, ch. 24337, 1947; §5, ch. 25035, 1949; §5, ch. 26484, 1951; §5, ch. 27991, 1953; §4, ch. 29615, 1955; §4, ch. 57-1; §5, ch. 59-1; §4, ch. 61-1; §4, ch. 63-2.

16.24 When statutes effective.—The Florida Statutes, 1963, shall take effect immediately upon its adoption at the 1963 session of the legislature. Until the publication of the Florida Statutes, 1963, incorporating the changes adopted as provided in §16.19, the Florida Statutes, 1961, shall be prima facie evidence of said statutes.

History.—§6, ch. 20719, 1941; §6, ch. 25035, 1949; §6, ch. 26484, 1951; §6, ch. 27991, 1953; §5, ch. 29615, 1955; §5, ch. 57-1; §6, ch. 59-1; §5, ch. 61-1; §5, ch. 63-2.

16.27 Conflict of laws.—If any section in the civil part of the Florida Statutes, creating a crime or prescribing a punishment, conflicts with any section in the part relating to crimes, the latter shall prevail.

History.—§9, ch. 20719, 1941; §7, ch. 25035, 1949; §7, ch. 26484, 1951.

16.43 Permanent statutory revision, legislative drafting and reference department created.—There is created a permanent statutory revision plan, and a legislative drafting service of this state, designated as the "statutory revision department," which department shall be under the supervision and control of the attorney general. In connection with the operation of this department, the attorney general shall select a duly qualified person and fix his compensation, who shall be designated as an assistant attorney general and have the direct supervision and control of the said department. The said director, with the advice of the said attorney general, shall select and employ the operating personnel of the said department and fix their compensation.

History.—§1, ch. 22012, 1943; §1, ch. 25034, 1949.

16.44 Powers, duties and functions of the attorney general in the statutory revision department.—The powers, duties and functions of the attorney general in the control and maintenance of the permanent statutory revision department shall be as follows:

(1) To conduct a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk,

removing inconsistencies, redundancies and unnecessary repetitions and otherwise improve their clarity; and to facilitate their correct and proper interpretation; and for the same purpose to prepare and submit to each regular session of the legislature reviser's bills, and bills for the amendment, consolidation, revision, repeal or other alterations or change in any general statute or laws or parts thereof of a general nature and application of the preceding session or sessions which may appear to be subject to revision. Any revision either complete, partial or topical, prepared for submission to the legislature, shall be accompanied by revision and history notes relating to the same, showing the changes made therein, and the reason for such recommended change.

(2) To carry on the arrangements and identification of the general statutes and laws of the state, as adopted in the Florida Statutes, and the contents of the same, by adding thereto, in the future and in proper place, all new matter belonging therein; this new material to be compiled, revised and republished biennially in continuation of the present systems, matters, tables and other material as contained in the Florida Statutes.

(3) Reviser's bills shall not deal with nor carry forward into the Florida Statutes, any statute of any of the following classes, namely:

(a) Statutes relating to, for or concerning only one or more counties or parts thereof, except in cases where the subject matter of the statute relates to the creation or jurisdiction of state or county courts;

(b) Statutes relating to, for or concerning and operative in only a portion of the state, except in cases where the subject matter of the statute relates to the creation or jurisdiction of state or county courts;

(c) Statutes relating to, for or concerning only a certain municipal corporation;

(d) Statutes relating to, for or concerning only one or more designated individuals or corporations;

(e) Statutes incorporating a designated individual corporation or making a grant thereto;

(f) Road designation laws.

(4) To make complete biennial revision of the general statutes and laws of the state, to conform with the numbering system, style, contents and other characteristics of the Florida Statutes, provided, such new revision shall be known as "Florida Statutes, 19_____," showing the year of its enactment.

(5) The published edition of the Florida Statutes, shall contain the following:

(a) The Florida Statutes, as adopted and enacted, together with the laws of a general nature enacted at any current session of the legislature and directed to be embodied in said edition.

(b) The Florida Constitution.

(c) Complete indexes of all the material in the volume.

(d) Such other matters, notes, data, and other material as may be deemed necessary or admissible by the statutory revision department for reference, convenience or interpretation.

(6) In carrying on the work of the statutory revision department and in preparing the Florida Statutes for publication:

(a) The Florida Statutes shall be continued in the form as adopted herein.

(b) All amendments made to any section or chapter, or any part thereof, of the Florida Statutes or session laws of this state by any current session of the legislature, wherever such amendments in express terms refer to sections or chapters of said statutes or session laws, shall be incorporated with the body of the text of the Florida Statutes.

(c) All sections, chapters or titles of the Florida Statutes or session laws of this state which are expressly repealed by any current session of the legislature shall be omitted.

(d) All laws of a general and permanent nature which are of general application throughout the state enacted by any current session of the legislature shall be compiled and included, assigning thereto in all appropriate places, such chapter and section identification, by the decimal system of numbering heretofore embodied in the Florida Statutes, as is appropriate and proper, but all chapters and sections so compiled shall be indicated with a history note, clearly showing that said section or chapter was not a part of the revision at the time of its adoption and indentifying such material by the abbreviation "comp." giving the proper legislative session law chapter and section number. The matter included under the authority of this subsection shall be incorporated as enacted in any current session and shall be prima facie evidence of such law in all courts of the state.

(e) Any two or more sections, chapters or laws, or parts thereof, may be consolidated;

(f) Any section, chapter or law, or part thereof, may be transferred from one location to another;

(g) The form or arrangement of any section, chapter or law, or part thereof, may be altered or changed by transferring, combining or dividing the same;

(h) Subsections, sections, chapters and titles may be renumbered and reference thereto may be changed to agree with such renumbering;

(i) Grammatical, typographical and like errors may be corrected and additions, alterations and omissions, not affecting the construction or meaning of the statute or laws, may be freely made;

(j) All statutes and laws, or parts thereof, which have expired, become obsolete, been held invalid by a court of last resort, have had their effect or have served their purpose, or which have been repealed or superseded, either expressly or by implication, shall be omitted;

(k) All statutes and laws general in form but of such local or limited application as to make their inclusion in the Florida Statutes or any revision or supplement thereof, impracticable, undesirable or unnecessary shall be

omitted therefrom, without effecting a repeal thereof;

(l) All things relating to form, position, order or arrangement of the revision, not inconsistent with the Florida Statutes system, which may be found desirable or necessary for the improvement, betterment or perfection of same, may be done.

(7) (a) To award contracts, from time to time, for setting type, for meshing existing type with new or existing type, for editorial work in the preparation of copy and other necessary material, for printing and binding, and pay expenses only of members of revision committees appointed by the attorney general to assist in revision of whole titles or chapters and pay for such other things as are authorized to be done and performed by the statutory revision department under the laws of this state.

(b) Contracts for printing and binding of any volume of the Florida Statutes shall only be awarded to the lowest and best responsible bidders who are equipped and qualified to do such printing and binding upon bids submitted pursuant to not less than twenty-eight days' notice thereof in one or more newspapers published in this state as defined by chapter 49.

(c) Each such bid for printing and binding shall be accompanied by a certified check, in an amount to be fixed by the statutory revision department but not less than five hundred dollars, to evidence the good faith of the bidder.

(d) The successful bidder shall be required to post a good and sufficient bond, in such sum as the statutory revision department may fix, to guarantee the prompt and faithful performance of the obligations under the said bid and contract made pursuant thereto.

(e) The contract for printing and binding aforesaid shall contain a provision that only the number of copies therein specified will be printed and that all copies printed will be delivered to the secretary of state.

(f) The contract may contain such other and further provisions as may be deemed necessary or proper by the statutory revision department to insure prompt, speedy and efficient execution of the said printing and binding.

(g) Publication of notices of intention to award contracts for work or services other than printing and binding aforesaid, is not required.

(8) To maintain a bill drafting department for the benefit of the members of the legislature and the state officials, boards and agencies.

(9) To exchange Florida Statutes, and other available publications, with the officers, boards and agencies of other states and of the United States.

(10) To prepare alphabetical indexes for the journals of the legislature and in this connection to employ competent indexers, who shall be attaches of the legislature to be paid as other attaches are paid.

(11) To exercise all other powers, duties and functions necessary or convenient for properly carrying out the provisions of this law and all other laws relating to the statutory revision department.

History.—§2, ch. 22012, 1943; §2, ch. 25034, 1949; §7, ch. 27991, 1953; §6, ch. 29615, 1955; (7), (8) r. and subsequent subsections renumbered by §12, ch. 59-1; (5)(c) r. and (9)a. §1, ch. 63-517. cf.—§11.14 Compensation of officers and attaches.

16.46 Publishing Florida Statutes; price, sale; revolving trust fund; disposal of obsolete statutes.—

(1) The statutory revision department shall continue the statutory revision system heretofore adopted in this state and shall bring the general acts of the legislature within the revision system, as promptly after the adjournment of the legislative session as possible.

All continuing and supplementary work contemplated in this chapter to be done by the statutory revision department shall include, operate upon and apply to new and additional matter belonging thereto from whatever source the same may originate and come, all new material to be issued following the regular legislative sessions of the legislature; provided, however, that reviser's bills shall be prepared for introduction in each convening regular session of the legislature.

(2) All Florida Statutes shall be delivered by the printer to the secretary of state, who shall distribute copies to state agencies and personnel as provided by law, and sell to purchasers at a price to be fixed by the statutory revision department upon the basis of actual cost per set for printing and binding, plus twenty per cent and plus postage costs. Any officially approved law school book store at any law school in Florida may purchase sets of the Florida Statutes from the secretary of state at cost for resale, provided that purchase of statutes for resale shall not exceed two hundred sets. All volumes shall be sold at the established state price.

(3) All moneys collected by the secretary of state from such sales shall be deposited in a revolving trust fund which shall be established by the comptroller for the purpose of paying the printers' contract cost for the preparation and publication of the statutes and cost of packaging and postage for mailing, and for contract costs of other legal indexes and publications prepared by the statutory revision department as required. Any payment on a contract entered into as provided in §16.44 from this fund shall be requested by the director of the statutory revision department approved by the attorney general and the request for payment approved by the budget commission.

(4) All moneys received for the sale of other books printed by the attorney general and paid for out of the revolving trust fund shall be deposited back in this fund. Free distribution of legal matter shall be determined by the attorney general based upon need and circumstances.

(5) The balance of money in the revolving trust fund at the beginning of each biennium shall not be in excess of seventy-five thousand dollars. Any excess of the balance shall be

transferred to the general revenue fund. An amount sufficient to bring the revolving trust fund up to seventy-five thousand dollars is appropriated and shall be transferred from the general revenue fund for the purposes set forth in this section.

(6) The secretary of state is directed to take inventory of obsolete statutes in his custody upon delivery of the latest official statutes following each regular legislative year and is authorized to destroy obsolete volumes in his possession reserving only five sets for reference.

History.—§4, ch. 22012, 1943; §4, ch. 25034, 1949; §8, ch. 27991, 1953; §1, ch. 29675, 1955; (2) §1, ch. 57-793; (5) §6, ch. 57-1; (3)-(5) §2, ch. 61-119; (5) §1, ch. 61-532; (2) §2, ch. 63-517.

16.47 Type and plates used in printing.—(1) All type and plates used in printing contracted for under the authority of this law shall become the property of this state and shall be preserved by the original caster, and stored in set-up form at the expense of such original caster to be insured by said caster against the hazards described in subsection (3) of this section and thereafter so insured by any printer using the same; and shall be at all times subject to the order and control of the statutory revision department, as long as such original caster or subsequent printer has the possession thereof; provided, however, that the statutory revision department may dispose of any such type when in its opinion advisable for lack of further practical use.

(2) All such type shall be available for use in making plates for printing by the state, its officers, departments and agencies; provided, that such use shall be done under the supervision of the statutory revision department for the purpose of regulating and controlling the same. The statutory revision department may withhold the use of its type and plates from other state departments when in its opinion the good quality of same will be deteriorated as a consequence thereof.

(3) The statutory revision department shall not permit such type and plates to remain in the custody of any printer for storage, except for a reasonable time, but shall keep the same in storage in a safe and suitable place at Tallahassee, insured against loss by fire, breakage or theft, and no department of the state government shall be permitted the use of same except upon conditions requiring it to transport the type or plates at its own expense, and to keep same insured against the losses aforesaid, while away from the regular state storage, and agreement to return the same to such regular state storage immediately after its use by said department.

History.—§5, ch. 22012, 1943; §5, ch. 25034, 1949.

16.48 Departmental appropriation.—A departmental appropriation shall be biennially appropriated by the legislature sufficient to pay for editing, revising, printing, publishing, binding, selling and distributing of the statutes and for other publications, prepared by the statutory revision department and published, and for the carrying out of the duties to be done by or under the direction of the statutory revision department, and all expenses in connection therewith, required or authorized from time to time, including regular salaries and necessary and regular expenses of the statutory revision department.

All sums received from the sale of such publications shall be paid into the general revenue fund of the state and shall become a part thereof.

History.—§6, ch. 22012, 1943; §1, ch. 22768, 1945; §7, ch. 24337, 1947; §2, ch. 26869, 1951.

16.50 Copyrights.—The statutory revision department shall have copyrighted, on behalf of the state, all editions of Florida Statutes and supplementary matter thereto. The use of such copyright material or data for publication by private persons, firms or corporations may be authorized by the statutory revision department only in event proper and adequate compensation is secured to the state, and upon such terms and contracts as are recommended to and approved by the attorney general. All revenue derived from this source shall be paid into and become a part of the general revenue fund of the state.

History.—§8, ch. 22012, 1943; §7, ch. 25034, 1949; §9, ch. 27991, 1953.

16.501 Distribution of free copies.—Copies of Florida Statutes and any supplementary matter thereto shall be furnished free only to the officials specifically designated.

(1) One set to:

(a) Each justice of the Florida supreme court; each judge of the district court of appeals; each judge of the circuit court; each judge of a criminal or a civil court of record; each judge of a county court or county judge's court; each judge of a separate juvenile court.

(b) Each justice of the supreme court of the United States; each judge of the fifth circuit court of appeals of the United States; each federal district judge residing within the state; the attorney general of the United States; each United States district attorney and assistant within the state; each Florida senator and representative in congress.

(c) Each prosecuting attorney and assistant in the circuit courts and courts of record; each prosecuting attorney in the county court; the clerk of the circuit court; the sheriff, the assessor of taxes, the tax collector, the superintendent of public instruction, and the supervisor of registration in each county.

(d) One set to each member of the senate and house of representatives.

(2) Sets of the Florida Statutes may be requisitioned as needed for official use:

(a) By the governor, the several cabinet officers of the state, by the legislative council for staff members, the statutory revision department for staff members, any board, bureau or commission under the jurisdiction of the governor or the cabinet, as required for the chief executive officers or department directors and attorneys in such offices, and one set to the

executive officer of any board, bureau, commission, institution or agency created by law.

(b) By the supreme court library, and one set to the general library of each state supported university or junior college.

(3) Copies to the law libraries respectively, of Florida agricultural and mechanical university for negroes, Stetson university, the university of Florida and the university of Miami heretofore designated a state depository by §283.23, upon requisition by the dean of the law college computed on the basis of one set for every ten students enrolled, during the previous school year, based upon the average enrollment as certified by the registrar.

(4) Copies, not exceeding one copy for each member of the faculty of the law colleges respectively, of Florida agricultural and mechanical university for negroes, Stetson university, the university of Florida, and the university of Miami as requisitioned by the dean of the law college.

History.—§1, ch. 29736, 1955; intro. para., (1), (2), §3, ch. 63-517.

16.51 Legislative advisory committee.—There shall be a joint legislative revision committee appointed by the president of the senate and the speaker of the house respectively for each regular session of the legislature, composed of four members from the senate and four members from the house of representatives. This committee shall assist the attorney general and work with the statutory revision department, in an advisory capacity, during each session of the legislature and between the regular sessions thereof, relative to the work of statutory revision and legislative drafting and the committee shall be reimbursed for traveling expenses as provided in §112.061.

History.—§9, ch. 22012, 1943; §3, ch. 26869, 1951; §19, ch. 63-400.

16.52 Participation in preserving constitutional integrity of state.—

(1) In order to provide for independent action and co-operative participation by the state in a program of concerted action among the states, and independent procedure to oppose any existing or proposed federal legislative encroachments upon constitutional state powers, it is hereby made a duty of the attorney general of this state to make a study of federal legislation—existing and proposed—to determine whether such legislation has resulted, or may result, in objectionable or harmful encroachments upon the constitutional integrity of state governments, and with due regard to this state's full contribution to the national war effort, in cooperation with the attorneys general of other states, or alone, to pursue that course best calculated in his opinion, to preserve and safeguard the constitutional state powers of the government of this state. He shall furnish to each of the several representatives in the congress from this state, a written statement giving the reasons for any action being considered, or about to be taken hereunder at the time; and if possible, shall procure the assistance of such representatives therein and therefor.

(2) It shall be the duty of the attorney general of this state to render opinions to the representatives in congress from this state, on any question arising within the scope of the subject matter of this act.

(3) In performing the duties imposed upon him under the provisions of this section, the attorney general is hereby authorized to employ therefor the services of the council of state governments, a national conference organization, or its successors in name or organization, or any other similar organization, in such manner not inconsistent with the powers and duties of his office, as he may deem desirable; provided, that the cost of such employment, if any, shall be paid from the attorney general's necessary and regular appropriation.

History.—§§1-3, ch. 21679, 1943.

CHAPTER 17

COMPTROLLER

17.01 The comptroller to give bond.—The comptroller of the state shall, before he enters upon the discharge of the duties of his office, give bond with at least four good and sufficient securities, payable to the state, in the penal sum of five thousand dollars, conditioned for the faithful discharge of all the duties of the said office; and said bond, before accepted shall be approved by the attorney general and also by the governor of the state, and filed and recorded when accepted in the office of the secretary of state.

History.—§1, ch. 8, 1845; RS 93; GS 97; RGS 110; CGL 140.
cf.—§282.01, Salary.
§113.07 Bonds of officials.

17.02 Place of residence and office.—The comptroller shall reside at the seat of government of this state, and shall hold his office in a room in the capitol.

History.—§2, ch. 8, 1845; ch. 1845, 1871; RS 94; GS 98; RGS 111; CGL 141.

17.03 To audit claims against the state.—The comptroller of this state shall examine, audit, and settle all accounts, claims and demands, whatsoever, against the state, arising under any law or resolution of the legislature, and issue his warrant to the treasurer directing him to pay out of the state treasury such amount as shall be allowed by said comptroller thereon.

History.—§1, ch. 146, 1848; RS 95; GS 99; RGS 112; CGL 142.
cf.—§17.20 To charge state attorneys with claims.
§27.08 et seq. Surrender of papers, etc. to successor.
§240.093 Board of Control, delinquent accounts.

17.04 To audit and adjust accounts of officers and those indebted to the state.—The comptroller of this state shall examine, audit, adjust and settle the accounts of all the officers of this state, and any other person in any wise intrusted with, or who may have received any property, funds or moneys of this state, or who may be in any wise indebted or accountable to this state for any property, funds or moneys, and require such officer, or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law.

History.—§4, ch. 8, 1845; RS 96; GS 100; RGS 113; CGL 143.
cf.—Ch. 21 State Auditing Department.
§1.01, Definition of "person."
§116.03, Fee officers to report to.
§128.05, County financial statements and reports.
§167.61, Municipal taxes and finances.
§658.07, et seq., Banks and trust companies examination.
§657.06, Credit unions, examination.
§665.08, et seq., Building and loan ass'n, examination.
§939.13, Costs against state in criminal cases.
§23, Art. IV, Const., 1885.

17.041 County and district accounts and claims.—

(1) It shall be the duty of the comptroller of this state to adjust and settle, or cause to be adjusted and settled, all accounts and claims heretofore or hereafter certified to him by the state auditor, against all county and district officers and employees, and other persons, firms and corporations, entrusted with, or who may have received any property, funds or moneys of a county or district, or may be in any wise indebted to or accountable to a county or district for any property, funds, moneys or other thing of value, and to require such officer, employee, person, firm or corporation to render full accounts thereof, and to yield up such property, funds, moneys or other thing of value according to law to the officer or authority entitled by law to receive the same.

(2) On the failure of such officer, employee, person, firm or corporation to adjust and settle such account, or to yield up such property, funds, moneys or other thing of value, the comptroller shall direct the attorney for the board of county commissioners, the county board of public instruction, or the district, as the case may be, entitled to such account, property, funds, moneys or other thing of value, to represent such county or district in enforcing settlement, payment or delivery of such account, property, funds, moneys or other thing of value.

(3) Should the attorney for the county or district aforesaid be disqualified or unable to act, and no other attorney be furnished by the

county or district, or should the comptroller otherwise deem it advisable, such account or claim may be certified to the attorney general, by the comptroller, to be prosecuted by him at county or district expense, as the case may be, including necessary per diem and travel expense in accordance with §112.061, as now or hereafter amended. Such expenses, when approved by the comptroller, shall be paid forthwith by such county or district.

(4) Should it appear to the comptroller that any criminal statute of this state has or may have been violated by such defaulting officer, employee, person, firm or corporation, such information, evidence, documents, and other things tending to show such a violation, whether in the hands of the comptroller, state auditor, county or district, shall be forthwith turned over to the proper state attorney or county solicitor for his inspection, study and such action as he may deem proper, or the same may be brought to the attention of the proper grand jury.

(5) No such account or claim, after it has been certified to the comptroller, may be settled for less than the amount due according to law without the written consent of the comptroller, and any attempt to make settlement in violation of this subsection shall be deemed null and void. A county or district board desiring to make such a settlement shall incorporate the proposed settlement into a resolution, stating that the proposed settlement is contingent upon the comptroller's approval, and shall submit two copies of the resolution to the comptroller. The comptroller shall return one copy with his action endorsed thereon.

(6) No settlement of account of any such officer, employee, person, firm or corporation, with the county or district, or any of their officers or agents, made in an amount or manner other than as authorized by law or for other than a lawful county or district purpose, shall be binding upon such county or district unless and until approved by the comptroller, or unless more than four years shall have elapsed from the date of such settlement.

(7) Nothing in this section shall supersede the continuing duty of the proper county and district officers to require any officer, employee, person, firm or corporation to render full accounts of and to yield up according to law to the officer or authority entitled by law to receive the same, any property, funds, moneys or other thing of value as to which such officer, employee, person, firm or corporation is in any wise indebted to or accountable to such county or district. The provisions of this section provide for collections and recoveries which the proper county or district officers have failed to make, and for correction of settlements made in an amount or manner other than as authorized by law.

History.—§1, ch. 59-145.

17.05 May examine under oath parties and privies to accounts.—The comptroller of this state may demand and require full answers on oath from any and every person, party or privy to any account, claim or demand against or by the state, such as it may be his official duty to examine into, and which answers he may require to be in writing and to be sworn to before himself or before any judicial officer, or justice of the peace, or clerk of any court of the state, so as to enable such comptroller to decide as to the justice or legality of such account, claim or demand.

History.—§5, ch. 8, 1845; RS 97; GS 101; RGS 114; CGL 144.

17.06 Disallowed items and accounts.—The comptroller shall erase from any original account all items disallowed by him; and when he shall reject the whole of any account he shall write across the face of it the word "disallowed," and the date, and file the same in his office or deliver it to the claimant.

History.—§2, ch. 146, 1848; RS 98; GS 102; RGS 115; CGL 145.

17.08 Accounts, etc., on which warrants drawn, to be filed.—All accounts, vouchers and evidence, upon which warrants have heretofore been, or shall hereafter be drawn upon the treasury by the comptroller shall be filed and deposited in the office of comptroller.

History.—Ch. 351, 1851; RS 100; GS 104; RGS 117; CGL 147.

17.09 Application for warrants for salaries.—All public officers who are entitled to salaries in this state, shall make their application for warrants in writing, stating for what terms and the amount they claim, which written application shall be filed by the comptroller as vouchers for the warrants issued thereupon.

History.—§1, ch. 1567, 1866; RS 101; GS 105; RGS 118; CGL 148.

17.10 Record of warrants paid.—The comptroller shall cause to be entered in the warrant register a record of the warrants paid during the previous month, and shall make such entry in the record so required to be kept as shall show the number of each warrant paid, in whose favor drawn, to whom paid and the date of payment.

History.—§1, ch. 1536, 1866; RS 103; GS 107; ch. 7270, 1917; RGS 119; CGL 149.

17.11 To report warrants paid.—The comptroller shall make in all his future annual reports an exhibit stated from the record of warrants paid during the fiscal year, and the several heads of expenditures under which said warrants were paid.

History.—§3, ch. 1536, 1866; RS 104; GS 108; RGS 120; CGL 150.

17.12 Authorized to issue warrants to tax collector or sheriff for payment.—Whenever it shall appear to the satisfaction of the comptroller of this state, from examination of the books of his office, that the tax collector or the sheriff for any county in this state has paid into the state treasury, through mistake or otherwise, a larger or greater sum than is actually due from said collector or sheriff, then the comptroller may issue a warrant to said collector or sheriff for the sum so found to be overpaid.

History.—Ch. 1762, 1870; RS 105; GS 109; RGS 121; CGL 151.

17.13 To duplicate warrants lost or destroyed.—The comptroller is required to duplicate any comptroller's warrants that may have been lost or destroyed, or may hereafter be lost or destroyed, upon the owner thereof, his agent or attorney, presenting the comptroller the statement, under oath, reciting the number, date and amount of any warrant or the best and most definite description in his knowledge, and the circumstances of its loss; provided, if the comptroller deems it necessary, the owner, his agent or attorney, shall file in the office of the comptroller a surety bond, or a bond with securities, to be approved by one of the judges of the circuit court or one of the justices of the supreme court, in a penalty of not less than twice the amount of any warrants so duplicated, conditioned to indemnify the state and any innocent holders thereof from any damages that may accrue from such duplication. Any duplicate comptroller's warrants issued in pursuance of the above provisions shall be of the same validity as the originals were before their loss.

History.—§§1, 3, ch. 1758, 1870; RS 106; GS 110; RGS 122; CGL 152; §1, ch. 24280, 1947.

17.14 To prescribe forms.—The comptroller of this state may prescribe the forms of all papers, vouchers, reports, returns, and the manner of keeping the accounts and papers to be used by the officers of this state, or other persons having accounts, claims or demands against the state, or intrusted with the collection of any of the revenue thereof, or any demand due the same, which form shall be pursued by such officer or other persons.

History.—§12, ch. 8, 1845; RS 107; GS 111; RGS 123; CGL 153.

17.16 Seal.—The seal of office of the comptroller of the state shall be the same as the seal heretofore used for that purpose.

History.—§7, ch. 8, 1845; RS 108; GS 112; RGS 124; CGL 154.

17.17 Examination by governor and report.—The office of comptroller of the state, and the books, files, documents, records and papers shall always be subject to the examination of the governor of this state, or any person he may authorize to examine the same; and on the first day of January of each and every year, or oftener if called for by the governor, the comptroller shall make a full report of all his official acts and proceedings for the last fiscal year to the governor, to be laid before the legislature with his message, and shall make such further report as the constitution may require.

History.—§8, ch. 8, 1845; RS 109; GS 113; ch. 7342, 1917; RGS 125; CGL 155.
cf.—§27, Art. IV, Const., 1885.

17.18 Statement of defaulters.—The comptroller in his annual reports to the governor shall make a full statement of all defaulters, showing the name of the defaulting officer or party against whom the claim exists, the name of the sureties upon the bond, the several heads under which the default arises, the total amount of the claim of the state, the state attorney to whom forwarded, and when forwarded, the amount realized therefrom, and, in case an execution has been delivered to the sheriff, he shall give the name of the sheriff as well as the report of the sum realized from him, or a statement of the reasons for his failure to realize in the event of such failure. A copy of the said tabulated statement of defaulters shall be published in a newspaper at Tallahassee.

History.—§1, ch. 2083, 1879; RS 110; GS 114; RGS 126; CGL 156.

17.19 Duty to examine as to the sufficiency of bonds of state officers.—The comptroller of the state, within ten days of the first day of January and June of each year, shall carefully examine as to the sufficiency of the bonds of the various state officials, and if by reason of the death, assignment, or insolvency of any of the sureties on the bonds of said officials, he has reason to believe that the sufficiency of said bond has become impaired, he shall at once report the same to the governor, who shall thereupon call upon and require such official or officials to execute and file with the proper officer a new bond for the same amount and under the same conditions as his former bond. If the comptroller shall fail to perform the duties required herein he shall be liable to the state for any loss that may be sustained by the state, by reason of such failure, such sum to be recovered by suit against such comptroller.

History.—§§1, 4, ch. 4413, 1895; GS 115; RGS 127; CGL 157.
cf.—§137.07, Liability for loss, neglect of duty.

17.20 To charge state attorneys with claims in their hands.—The comptroller of this state shall charge the several state attorneys of this state with all claims which he may place in their hands for collection of money for and on behalf of the state, or which he may otherwise require them to collect. Said charges shall be evidence of indebtedness on the part of any state attorney against whom any charge is made for the full amount of such claim to the state, until the same shall be collected and paid into the treasury, or the legal remedies of the state exhausted, or until said state attorney shall make it fully appear to the comptroller that the failure to collect the same did not originate from any neglect of his, and the comptroller shall have made proper entry of satisfaction of such charge against such state attorney.

History.—§§1, 2, ch. 1413, 1863; RS 112; GS 116; RGS 128; CGL 158.
cf.—§27.08, 27.10 et seq.

17.21 Not to allow any claim of state attorney against state until report made.—The comptroller shall not audit or allow any claim which any state attorney may have against the state for services who shall fail to make any report which by law he is required to make to the comptroller of claims of the state which it is his duty to collect.

History.—§3, ch. 1413, 1863; RS 113; GS 117; RGS 129; CGL 159.
cf.—§27.11 Report upon claims committed to state attorney.
§27.08 Surrender of papers, etc. to successor by state attorney.

17.22 To notify attorney general of forwarding claim to state attorney.—Whenever the comptroller forwards any bond or account or claim for suit to any state attorney, he shall advise the attorney general of the fact, giving him the amount of the claim and other necessary particulars for his full information upon the subject.

History.—§2, ch. 2083, 1877; RS 114; GS 118; RGS 130; CGL 160.

17.25 May certify copies.—The comptroller of this state may certify, under his seal of office, copies of any record, paper or document, by law placed in his custody, keeping and care; and such certified copy shall have the same force and effect as evidence as the original would have.

History.—§13, ch. 8, 1845; RS 117; GS 121; RGS 133; CGL 163.

17.26 Cancellation of state warrants not presented within one year.—

(1) If any state warrant issued by the comptroller, countersigned by the governor, against any fund in the state treasury, is not presented for payment within one year after issuance thereof, the comptroller may cancel the same and credit the amount of such warrant to the fund upon which it is drawn; provided, that if the warrant so canceled was issued against a fund which is no longer operative, then the amount of such warrant shall be credited to the general revenue fund. The state treasurer shall not honor any state warrant after same has been canceled.

(2) When the payee or person entitled to any warrant so canceled by the comptroller requests payment thereof, the comptroller may upon investigation, issue a new warrant therefor, to be paid out of the proper fund in the state treasury. There is appropriated a sufficient amount for the payment of any new warrant issued to replace a voided warrant charged against an expired appropriation or charged against a fund which is no longer operative.

History.—§§1, 2, ch. 22006, 1943; (1) §1, ch. 29645, 1955.

17.27 Microfilming and destroying records and correspondence.—

(1) The state comptroller may destroy general correspondence files over three years old and also any other records which are over ten years old and which the state comptroller may deem no longer necessary to preserve.

(2) The state comptroller may photograph, microphotograph or reproduce on film, in such manner that each page will be exposed in exact conformity with the original, the following records, and other records and documents as he may select: paid warrants, paid vouchers, warrant registers, general ledger, revenue ledger, appropriation ledger, treasurer's receipts, estate tax certificates, estate tax final clearance sheets, state retirement ledger, county retirement ledger, retirement membership records, register of cancellations and restorations, abstract of accounts ledger, tax certificate ledgers, tax assessors' and collectors' commission ledgers, depository ledgers, cash receipts, and jurors and witnesses advance register.

(3) The state comptroller may destroy any of said documents after they have been photographed and filed and after audit of his office has been completed for the period embracing the dates of said instruments.

(4) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§§1-3, ch. 23909, 1947.

CHAPTER 18

TREASURER

18.01 Bond of treasurer.—The state treasurer shall, within ten days before he enters upon the duties of his office, give a bond to the state, in the sum of one hundred thousand dollars, with not less than four sufficient sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office; which bond and oath or affirmation shall be deposited with the secretary of state; and after such bond shall have been given, upon the filing with the secretary of state of a certificate from the comptroller, that the retiring treasurer has turned over vouchers for all payments made as required by law, and that his account has been truly credited with the same, and that he has filed receipts from his successor for all vouchers paid since the end of last quarter, and for balance of cash, and for all bonds and other securities held by him as such treasurer, and a certificate from each board of which he is made by law ex officio treasurer, that he has satisfactorily accounted to such board as its treasurer; the bond given by such treasurer and his sureties shall be discharged and delivered up and shall be canceled by the comptroller. Such bond shall be deemed to extend to the faithful execution of the office of treasurer by the person giving such bond until his successor shall have qualified, and to the faithful performance of the duties of treasurer of each board or fund of which he is or may be made by law ex officio the treasurer.

History.—§3, ch. 9, 1845; §2, ch. 3684, 1887; RS 118; GS 123; RGS 134; CGL 164.
cf.—§282.01, Salary.
§113.07 Bonds of officials.

18.02 Moneys paid on warrants.—The treasurer shall pay all warrants on the treasury drawn by the comptroller and countersigned by the governor, and no moneys shall be paid out of the treasury except on such warrant.

History.—§5, ch. 9, 1845; RS 119; GS 124; RGS 135; CGL 165.
cf.—§24, Art. IV; §4, Art. IX, Const., 1885.

18.03 Residence and office.—The treasurer shall reside at the seat of government of this state, and shall keep his office in a room in the capitol. Said office shall be open every day, Sundays, holidays and public festivals excepted, from 8:00 a.m. to 5:00 p.m. Monday through Friday of every week.

History.—§12, ch. 9, 1845; ch. 1845, 1871; RS 120; GS 125; RGS 136; CGL 166; §8, ch. 29615, 1955.
cf.—§1, Art. XVI, Const., 1885.

18.05 Annual report to governor.—The treasurer shall make a report in detail to the governor as soon after the first day of July of each year as it is practicable to prepare same of the transactions of his office for the preceding fiscal year, embracing an itemized statement of the receipts and payments on account of each of the several funds of which he has the care and custody.

History.—§2, ch. 3563, 1885; RS 122; GS 127; RGS 138; CGL 168; §1, ch. 23094, 1945.

18.06 Examination by and monthly statements to the governor.—The office of the treasurer of this state, and the books, files, documents, records and papers thereof, shall always be subject to the examination of the governor of the state, or any person he may authorize to examine same. The treasurer shall exhibit to the governor on or before the tenth day of each month, a trial balance sheet from his books and a statement of all the credits, moneys or effects on hand on the day for which said trial balance sheet is made, and said statement accompanying said trial balance sheet shall particularly describe the exact character of funds or credits, and shall state in detail the amount in currency, coin, drafts, checks, orders, receipts, bonds, coupons or other credit memoranda which he may have representing cash and not yet entered upon the books of his

office, and such statement shall be certified and signed by the treasurer officially.

History.—§3, ch. 3563, 1885; RS 123; §1, ch. 4588, 1897; GS 128; RGS 139; CGL 169.

18.07 To keep record of warrants and coupons paid.—The treasurer shall keep a record of the warrants and coupons which he pays, which record shall contain a description of the same, date of payment and to whom such warrants were paid.

History.—§4, ch. 3563, 1885; RS 124; GS 129; RGS 140; CGL 170.

18.08 To turn over to the comptroller all warrants paid.—The treasurer shall turn over to the comptroller all warrants drawn by the comptroller and paid by the treasurer as soon after the close of each calendar month in which such warrants are received by the treasurer as the treasurer shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn; and when such warrants have been delivered to the comptroller, the comptroller shall credit the treasurer's accounts with the amounts thereof, giving the treasurer a certificate or receipt setting forth the amounts of such warrants and the dates of such credits.

History.—§5, ch. 3563, 1885; RS 125; GS 130; RGS 141; CGL 171; §1, ch. 23093, 1945.

18.09 Exhibit to legislature.—The treasurer shall exhibit to the legislature at its regular sessions, an exact statement of the balance in the treasury to the credit of the people of the state, with a summary of the receipts and payments of the treasury during the preceding two years.

History.—§6, ch. 9, 1845; RS 126; GS 131; RGS 142; CGL 172.

18.091 Legislative sessions; additional employees.—

(1) Hereafter during any period of time the legislature of Florida may be in actual session, the state treasurer is empowered to employ not more than two persons to assist in performing the services required of the state treasurer in connection with legislative expenses as provided in §11.12. The salaries to be paid such employees of the state treasurer shall not be in excess of the highest salary paid by the house of representatives or the state senate for secretarial services; and the salaries for said employees shall begin with the convening of the legislature in session and shall continue for not more than seven days after the close of the legislative session; provided, that recesses of the legislature not in excess of three days shall be considered as time during which the legislature is actually in session.

(2) In addition to the regular biennial appropriations for the state treasurer, there is hereby appropriated for use of the state treasurer from the general revenue fund, from time to time as necessary, sufficient sums to pay the salaries of the above-described employees of the state treasurer.

History.—§§1, 2, ch. 57-2.

cf.—§11.12 Salary, subsistence and mileage of members, expenses authorized by resolution, appropriation.

18.10 Deposits of money in the banks of the state.—The governor, comptroller, and state treasurer acting as the state finance committee may deposit the money of the state or any money in the state treasury in such banks of the state as will offer satisfactory collateral security; provided that a sufficient amount shall be maintained in demand accounts in banks designated by the committee for operational purposes; the excess above such required amount may be deposited in interest-bearing time deposits in banks of the state designated by the committee as state depositories under such terms and conditions and at rates that may be determined from time to time by the committee; and provided further that such rates shall be within the limits allowed by federal banking regulations. In determining the terms, conditions and interest rates of the time deposits the following factors shall be considered:

(1) The prevailing rate of U. S. treasury bills;

(2) The value of the services performed by the banks to the state;

(3) The value accruing to the economy of the communities of the state as a result of the state depositing its funds in banks of the state.

Provided, however, in the event the committee determines that a majority of the banks of the state are unwilling to accept the interest-bearing time deposits on the terms, conditions and rates determined, then by unanimous consent of the committee such funds may be invested in short term direct obligations of the U. S. treasury due within one year from date of purchase, and maturing on dates the funds are anticipated to be needed. Interest earned on any such investments shall be credited to the state general revenue fund. If at any time funds are found to be needed before the maturity dates of such investments, sufficient securities to meet such needs may be sold at current market rate, such sale to be authorized by vote of the majority of the committee. If any capital loss is experienced as the result of the sale of securities before maturity date as hereinbefore provided, then such loss shall be off-set by interest earned on such investment from the date of purchase to the date of sale. Nothing herein contained shall prohibit state officials from recognizing and accepting the insurance coverage afforded by the federal deposit insurance corporation.

(4) The fact that a municipal officer or a state officer, including an officer of any municipal or state agency, board, bureau, commission, institution and department, is a stockholder or an officer or director of a bank will not bar such bank from being a depository of funds coming under the jurisdiction of any such municipal officer or state officer, provided it shall appear in the records of the municipal or state office that the governing body of such municipality or state agency has investigated and determined that such municipal or state officer

is not favoring such banks over other qualified banks.

History.—§1, ch. 4586, 1897; GS 132; §1, ch. 7929, 1919; RGS 143; CGL 173; §1, ch. 17712, 1937; §1, ch. 23976, 1947; §1, ch. 57-354; (4) n. §1, ch. 63-114.
cf.—§18.11 Security to be given.
§18.112 Additional securities for deposits of public funds.
§518.15 Bonds or motor vehicle tax anticipation certificates legal investments and securities.
§659.21 Banking code; security of deposits.

18.101 Deposits of public money by boards, agencies, etc., not located in Tallahassee.—

(1) All state agencies, boards, bureaus, commissions, institutions and departments whose offices are located elsewhere than in Tallahassee, may, upon written approval of the state budget commission, deposit moneys which are collected by them in banks designated by the governor, comptroller and treasurer for such deposits. All banks so designated shall pledge sufficient collateral to be security for such funds, said securities to be the same type as those prescribed by law as eligible for the purpose of securing the deposits made by the state treasurer. Said collateral securities shall be deposited with, or pledged to, the state treasurer in the same manner as set out in §18.11. All such funds on deposit shall be remitted to the state treasurer at least once each month or oftener if directed by the budget commission so to do, and no check shall be drawn against nor paid from such bank accounts except payable to the state treasurer.

(2) Revolving funds authorized by the state budget commission for all state agencies, boards, bureaus, commissions, institutions and departments may be deposited by such agencies, boards, bureaus, commissions, institutions and departments in banks designated by the governor, comptroller and treasurer for such revolving fund deposits, and the banks in which such deposits are made shall pledge collateral security in an amount equal to or in excess of the total amount of such revolving funds, said collateral securities to be of the type and pledge in the manner as provided for the pledge of collateral security in subsection (1).

History.—§ § 1, 2, ch. 28133, 1953.
cf.—§381.191 Revolving fund.

18.102 Deposits of public money by boards, agencies, etc., located in Tallahassee.—All state agencies, boards, bureaus, commissions, institutions and departments whose offices are located in Tallahassee may, upon written approval of the state treasurer, deposit their funds in local banks to the credit of the state treasurer, provided evidence of deposit is forwarded immediately to the state treasurer with sufficient information to credit the proper fund.

History.—§1, ch. 61-71.

18.11 Security to be given.—

(1) The security to be given by such banks as may be designated under §§18.10 and 18.101 shall consist of bonds of the United States, bonds or certificates of the several states, county and municipal bonds or certificates, and county or county school time warrants, issued by any of the counties or cities of the state, or by any of the state agencies, departments or commissions authorized to issue bonds or certificates, or issued by authorities created by the state legislature. Such bonds or certificates may be general obligations of the issuing authority or they may be secured by utility revenues, or other revenues, or by excise taxes, or they may be secured by a limited ad valorem tax; provided, however, that none of the foregoing bonds or certificates shall be accepted as security for the funds herein mentioned unless they shall have qualities pertinent to bank investment; and provided further, that except as to bonds of the United States or bonds the payment of whose principal and interest is guaranteed by the United States or federal certificates of indebtedness, or state, county or municipal general obligation bonds, the bonds or certificates herein mentioned shall be rated in one of the highest four classifications by established nationally recognized investment rating services. The amount or value of such bonds or certificates shall be in such amount as may be agreed to by the governor, comptroller, and treasurer.

(2) In lieu of the actual depositing of said securities, the state treasurer may accept a safekeeping receipt issued by any federal reserve bank, or member bank thereof or by any bank incorporated under the laws of the United States, therefor, provided the member bank or bank incorporated under the laws of the United States shall have been previously approved and accepted for such purposes by the governor, comptroller, and treasurer. The safekeeping receipt shall substantially comply with the following form and provisions, to wit:

_____ _____
(Name of Bank) (Address)

SAFEKEEPING RECEIPT
NON-NEGOTIABLE

No._____

The undersigned _____
(Name of bank, address,
_____hereby acknowl-
(Accepting the securities)
edges that it holds for safekeeping the following described bonds, certificates, notes, or other securities, hereinafter referred to as securities, to wit:

(Specifically describing the securities)

The _____
(Name of bank depositing the securities)
for convenience, hereinafter referred to as the depositing bank, has made written application bearing date of _____, to the _____, re-
(Name of bank accepting the securities)
questing it to hold said securities for safekeeping only, and has represented in said application that said securities have been pledged or deposited by it with the STATE TREASURER OF THE STATE OF FLORIDA, for the purposes of indemnity or guaranty, pursuant to the laws of the State of Florida.

In said application under which said securi-

ties were lodged with the undersigned by the said depositing bank, the

_____ is
(Name of bank accepting the securities)
authorized and empowered to surrender, release or deliver said securities, or any part of them, only upon the sole written direction and authorization of said state treasurer, or his successors in office. It is recognized that said securities are to be held by said .....
(Name of bank accepting the securities)
for safekeeping only and solely as an accommodation to said depositing bank and state treasurer, or his successors in office, and that in no event is the said _____
(Name of bank accepting the securities for deposit)
_____ to rest under any liability or responsibility for or with respect to said securities or any of them, except such as may be involved in the safekeeping thereof.

This receipt is non-negotiable and any person into whose hands the same may come is hereby notified that the securities described above will only be delivered, surrendered, or otherwise disposed of, upon the written direction and authorization of said state treasurer or his successors in office.

Should the undersigned collect any interest accruing on said securities, or any of them, such interest may be disbursed to the depositing bank or its order, unless otherwise directed in writing by said state treasurer.

When and as thereunto directed and authorized in writing by said state treasurer, the _____ will
(Name of bank accepting the securities)
surrender, release and deliver said securities pursuant to such written direction and authorization, and in such event this receipt to be surrendered to

_____ for
(Name of bank accepting securities for deposit)
cancellation.

IN WITNESS WHEREOF, _____
(Name of bank acting by and accepting the securities for deposit)
_____ through its proper officers, has caused these presents to be duly executed this the ____ day of _____, 19____.

_____
(Name of bank accepting securities for deposit)
By _____
(Title of Officer)
ATTEST:
_____

(3) Provided, however, that a safekeeping receipt issued for the purpose contemplated above by any federal reserve bank shall not be required to comply as to form with the form of safekeeping receipt above set forth, if any such receipt which does not comply as to form with the above form has been authorized for the use of said bank by its governing authority and if the provisions thereof comply in substance with the provisions of the above form of safekeeping receipt; provided further, that the bank issuing the safekeeping receipt to the state treasurer pursuant to the provisions of subsection (2) shall not be required to have the securities described in its safekeeping receipt in its actual physical possession if such approved bank holds a safekeeping receipt therefor from another bank approved by the governor, comptroller and treasurer in the manner provided for approval and acceptance of the banks specified in subsection (2), provided such secondary safekeeping receipt authorizes and empowers the approved bank having the actual physical possession of said securities to surrender, release or deliver the same or any part thereof only to or upon the sole written direction and authorization of the bank issuing the safekeeping receipt to the state treasurer.

(4) The state treasurer may accept a telegram from an approved bank for a period not to exceed four working days pending the actual receipt of a safekeeping receipt; provided the telegram authorizes and empowers the approved bank having actual physical possession of the said securities to surrender, release or deliver the same or any part thereof only to the state treasurer upon the sole written direction and authorization of the bank issuing the telegram to the state treasurer.

(5) The state treasurer, with the approval of the state finance committee, may authorize the treasurer of the state board of administration and county treasurer ex officio to authorize a bank holding securities in safekeeping to liquidate said securities at a future date where such liquidation or maturity is predetermined for the purpose of reinvestment, the settlement date of the disposal and the purchase date being one and the same, without requiring the bank holding such investment in safekeeping to cover the transaction with an additional comparable safekeeping receipt of collateral.

History.—§2, ch. 4586, 1897; GS 133; RGS 144; §1, ch. 8529, 1921; CGL 174; am. §1, ch. 23938, 1947; (1) §24, ch. 57-1; (1) §1, ch. 59-25; (3) §1, ch. 59-26; (4) n. §2, ch. 61-71; (5) n. §1, ch. 61-518.

cf.—§660.08 Deposit of securities with state treasurer.
§240.10 Approval and payment of vouchers of the institutions under board of commissioners of state institutions and board of control, state plant board and state soil conservation board.
§240.101 Appropriation for revolving funds of institutions of higher learning.
§518.09 Housing bonds, legal investments and securities.
§518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security.

18.111 Collateral security for funds deposited by treasurer.—The state treasurer, acting as such or as ex officio treasurer of any county, board, commission, authority, agency or other instrumentality of the state, be, and he is hereby, authorized to accept as collateral security for any funds deposited by him, bonds, notes or certificates heretofore or hereafter issued by any county or any board, commission, authority, agency or other instrumentality of the state which contain a pledge of and are payable solely from the eighty per cent surplus two cents second gasoline tax accruing under §16, Art IX of the constitution of the state, provided that such securities have been ap-

proved by the state board of administration as to their legal and fiscal sufficiency.

History.—§1, ch. 26983, 1951.

18.112 Additional securities for deposits of public funds.—Notwithstanding any restrictions on securities for deposits of public funds contained in any law of this state, federal farm loan bonds issued by federal land banks pursuant to the federal farm loan act as amended, federal intermediate credit bank debentures issued by federal intermediate credit banks pursuant to the federal farm loan act as amended, and debentures issued by central bank for cooperatives and regional banks for cooperatives, organized under the farm credit act of 1933, or by any of such banks, shall be authorized securities for all deposits of public funds, provided there is no default in the payment of principal or interest on any such bonds or debentures at the time of the pledge of such bonds or debentures as security for such deposits.

History.—§1, ch. 28290, 1953; §1, ch. 29874, 1955.

18.12 May sell securities.—The governor, comptroller and treasurer may sell at public or private sale any or all of the bonds and securities that may be deposited in the state treasurer's office as collateral security for the deposit of any public funds whenever there shall be a failure or refusal on the part of the bank depositing such securities to pay any check drawn by the state treasurer on such bank.

History.—§3, ch. 4586, 1897; GS 134; RGS 145; CGL 175; §1, ch. 14653, 1931.

18.13 Notice of sale to be given.—Notice of the sale of bonds or securities under §18.12, shall be given for thirty days in the newspaper published in Tallahassee, and when a sale of bonds or securities is made by the governor, comptroller and treasurer, either at public or private sale under said section, the absolute ownership of said bonds or securities shall vest in the purchaser or purchasers upon payment of the purchase money to the state treasurer. Upon the sale of collateral securities as provided in §18.12 should there be any surplus after the state treasurer shall have paid the amount due by reason of such deposit and the expense of sale, such surplus shall be paid over to the bank making the deposit, or to the liquidator of such bank in case such bank is in the process of liquidation. In the case of settlement with a bank in liquidation, should the governor, comptroller and treasurer consider it to the best interest of the state they may take such collateral securities, or any part of the same, on a basis to be agreed upon in settlement of such account and to carry all assets thus received in such settlement in a suspense account that may be created for that purpose, such account to be credited from time to time, as dividends, interest or principal of such assets are realized upon, until final liquidation of the account in full, and should there be any surplus upon the final liquidation of such account, such surplus shall be transferred to and placed in the general revenue fund of the state. A copy of the notice of sale herein required shall be forwarded by the state treasurer by registered mail to the cashier or the liquidator of the bank or trust company by which the deposit of securities was made.

History.—§3, ch. 4586, 1897; GS 135; RGS 146; CGL 176; §2, ch. 14653, 1931.

cf.—§1.01(13) Defines registered mail to include certified mail with return receipt requested.

18.14 To exchange bonds of political subdivisions for refunding bonds.—The governor, comptroller and treasurer may exchange bonds of any city, town, municipality, county, school district, special tax school district, special road and bridge district, road district, drainage district or political subdivision located within the state for refunding bonds, which refunding bonds have been issued by any such city, town, municipality, county, school district, special tax school district, special road and bridge district, road district, drainage district or political subdivision, to take the place and stead of bonds which are now held by the governor, comptroller or treasurer and which bonds have been acquired, owned or held under and by virtue of §18.13, provided however, that prior to the exchange of such bonds the governor, comptroller and treasurer shall have first determined that they consider it to the best interest of the state to accept such refunding bonds.

History.—§1, ch. 17756, 1937; CGL 1940 Supp. 176(1); §24, ch. 57-1.

18.15 Interest on money deposited to be paid quarterly to treasurer.—Interest on the state moneys deposited in banks under §18.10, shall be payable to the state treasurer quarterly on the first days of January, April, July and October, and such interest money shall be credited on account of general revenue.

History.—§4, ch. 4586, 1897; GS 136; RGS 147; CGL 177.

18.16 Treasurer not to deposit money without the consent of governor and comptroller.—It is unlawful for the state treasurer to deposit or keep any money not deposited in accordance with §18.10, in any bank, without the consent of the governor and comptroller.

History.—§5, ch. 4586, 1897; GS 137; RGS 148; CGL 178.

18.17 Not to issue evidences of indebtedness.—It is not lawful for the treasurer of this state to issue any treasury certificates, or any other evidences of indebtedness, for any purpose whatever, and he is prohibited from issuing the same.

History.—§2, ch. 1737, 1870; RS 130; GS 138; RGS 149; CGL 179.

18.20 State treasurer to make reproductions of certain warrants, records and documents.—(1) All vouchers or checks heretofore or hereafter drawn by appropriate court officials of the several counties of the state against money deposited with the state treasurer under the provisions of §54.04, and paid by the state treasurer, may be photographed, microphotographed or reproduced on film by the state treasurer. Such photographic film shall be durable material and the device used to so re-

produce such warrants, vouchers or checks shall be one which accurately reproduces the originals thereof in all detail; and such photographs, microphotographs or reproductions on film shall be placed in conveniently accessible and identified files and shall be preserved by the state treasurer as a part of the permanent records of his office. When any such warrants, vouchers or checks have been so photographed, microphotographed or reproduced on film, and the photographs, microphotographs or reproductions on film thereof have been placed in files as a part of the permanent records of the office of the state treasurer as aforesaid, the state treasurer is authorized to return such warrants, vouchers or checks to the offices of the respective county officials who drew the same and such warrants, vouchers or checks shall be retained and preserved in such offices to which returned as a part of the permanent records of such offices.

(2) Such photographs, microphotographs or reproductions on film of said warrants, vouchers or checks shall be deemed to be original records for all purposes; and any copy or reproduction thereof made from such original film, duly certified by the state treasurer as a true and correct copy or reproduction made from such film, shall be deemed to be a transcript, exemplification or certified copy of the original warrant, voucher or check such copy represents, and shall in all cases and in all courts and places be admitted and received in evidence with the like force and effect as the original thereof might be.

(3) The state treasurer is also hereby authorized to photograph, microphotograph or reproduce on film, all records and documents of said office, as he may, in his discretion, select; and said treasurer is hereby authorized to destroy any of the said documents or records after they have been photographed and filed and after audit of his office has been completed for the period embracing the dates of said documents and records.

(4) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§§1, 2, ch. 22704, 1945; (1) §9, ch. 29615, 1955; (3), (4) n. §1, ch. 57-36.

18.21 Safekeeping receipts for bonds or securities.—From and after June 13, 1949, the state treasurer is authorized to accept safekeeping receipts issued by any federal reserve bank, or by any member bank thereof or by any bank incorporated under the laws of the United States approved and accepted by the governor, comptroller and treasurer of Florida, covering any bonds or securities for which the state treasurer is or shall be designated as custodian under the laws of the state. The type or types of safekeeping receipts to be accepted by the state treasurer for the purposes aforesaid shall follow the forms prescribed by §18.11.

History.—§1, ch. 25419, 1949.

CHAPTER 19

COMMISSIONER OF AGRICULTURE

(See title XXXIII (chs. 570-604) for laws relating to agriculture, horticulture and animal industry.)

19.12 Collection and publication of statistics.—The commissioner of agriculture shall arrange and adopt some plan for collecting and publishing agricultural, horticultural, pomological, and farm statistics in connection with his annual report, in such form and numbers as he may deem best, or the financial condition of the department will permit; and he shall, before the first day of January in each year, furnish the tax assessors of the several counties of the state with the necessary blanks, together with such instructions as will properly direct them in that work, and such blanks shall contain only such questions as relate to agriculture, horticulture and stock raising.

History.—§5, ch. 3857, 1889; RS 143; GS 153; RGS 164; CGL 196.

***19.13 Land office.**—There shall be a public land office for the state, to be kept in one of the rooms in the capitol; in which office shall be deposited and preserved all the records, surveys, plats, maps, field notes and patents, and all other evidence touching the title and description of the public domain, and all lands granted by congress to this state, or which may hereafter be granted, for whatever purpose the same may be given.

History.—§1, ch. 54, 1845; RS 144; GS 154; RGS 165; CGL 197.
*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, art. IV, state const. at 1964 general election.

19.14 Bond and oath of office.—The commissioner of agriculture shall, before he enters upon the duties of his office, give bond with good security to be approved by the governor of this state, in the sum of ten thousand dollars, conditioned for the faithful discharge of the duties of his office; and shall take the oath of office prescribed by the constitution of the state.

History.—§3, ch. 54, 1845; §3, ch. 236, 1849; RS 145; §1, ch. 4962, 1901; GS 155; RGS 166; CGL 198.
cf.—§2, Art. XVI, Const., 1885.
§113.07 Bonds of officials.

***19.15 To have custody of documents, etc., concerning public lands.**—The commissioner of agriculture shall have custody of all the records, surveys, plats, maps, field notes, patents, and all other evidence touching the title and description of the public domain.

History.—§3, ch. 54, 1845; RS 146; GS 156; RGS 167; CGL 199.
*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, art. IV, state const. at 1964 general election.

***19.16 Duties as to information, conveyances and accounts, concerning public lands.**—The commissioner of agriculture shall keep his office open from the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday of each week, Sunday and legal holidays excepted, for the information of the public, and all who may be interested in the sale, purchase, ownership, or occupancy of the public lands.

He shall draw all deeds and conveyances and deliver the same for all sales and transfers, and other disposition of the public domain, that may from time to time be ordered and made by authority of law, and keep a true and faithful record of the same. He shall keep accounts of the several grants or donations for "fixing the seat of government," for "seminaries of learning," "for common schools," "for internal improvements," or for any other purpose, in separate books, accounts, and reports, so that the rights and interests of one shall not be blended or mixed with the rights and interests of another, and each class of land shall pay the expenses of locating the same.

History.—§5, ch. 54, 1845; RS 147; GS 157; RGS 168; CGL 200; §11, ch. 29615, 1955.
*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art IV, state const. at 1964 general election.

***19.17 Moneys received, accounts, correspondence and sales concerning public lands; traveling expenses.**—The commissioner of agriculture shall, in behalf of this state, receive from the treasury of the United States the five per cent on sales of the public lands, or any other sums accruing from the general government to the seminary, common school, or internal improvement trust funds; and shall pay the same into the treasury of this state, or, if they shall belong to a fund, to the treasurer of such fund, keeping the same separate and distinct under their respective proper heads. He shall hold all needful correspondence with the several land offices of the United States in this state, or with the general land office at Washington, and shall attend the public land sales in this state, and visit the said land offices whenever, in his opinion, the interest of the state shall require it, and do and perform all things needful and proper to advance and promote the interests of the same, and when so engaged he shall have his traveling expenses defrayed out of any moneys in the treasury, to be approved

by the governor, and audited by the comptroller of public accounts as other accounts are audited and paid, independently of his stated salary.

History.—§6, ch. 54, 1845; RS 148; GS 158; RGS 169; CGL 201.

*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art. IV, state const. at 1964 general election.

*19.18 **To provide plats, etc.**—The commissioner of agriculture shall provide plats or maps of all lands selected and secured, and append thereto an accurate description of the quality, situation and location of the same, and whatever else may affect the value of each tract or body of land selected and secured, taking care to keep in separate books, and maps or plats, the lands belonging to each separate fund, which books and maps and plats, with the description thereof, shall be kept and preserved in his office.

History.—§6, ch. 54, 1845; RS 149; GS 159; RGS 170; CGL 202.

*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art. IV, state const. at 1964 general election.

*19.20 **To keep records of surveyor-general's office; secretary of state to provide place for keeping records.**—Upon the discontinuance by the federal authorities of the office of surveyor-general for the state, the commissioner of agriculture of the state may receive all of the field notes, surveys, maps, plats, papers and records (heretofore kept in the office of said surveyor-general, and the commissioner of agriculture carefully and safely keeps and preserves all of said field notes, surveys, maps, plats, papers and records) as part of the public records of his office, and shall at all times allow any duly accredited authority of the United States full and free access to any and all of such field notes, surveys, maps, plats, papers and records; and may make and furnish under his hand and seal certified copies of any or all of the same to any person making application therefor; provided, that the secretary of state under the direction of the board of state institutions shall provide some place suitable for keeping such records, maps and other papers.

History.—§1, ch. 5611, 1907; RGS 172; CGL 204; §12, ch. 29615, 1955.

*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art. IV, state const. at 1964 general election.

*19.21 **To keep records of U. S. land office.**—The commissioner of agriculture of the state may receive all of the tract books, plats and such records and papers heretofore kept in the United States land office at Gainesville, Florida, as may be surrendered by the secretary of the interior, and the commissioner of agriculture shall carefully and safely keep and preserve all of said tract books, plats, records and papers as part of the public records of his office, and at any time allow any duly accredited authority of the United States, full and free access to any and all of such tract books, plats, records and papers, and shall furnish any duly accredited authority of the United States with copies of any such records without charge.

History.—§1, ch. 15926, 1933; CGL 1936 Supp. 204(1).

*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art. IV, state const. at 1964 general election.

19.23 **Residence and office.**—The commissioner of agriculture shall reside at the seat of government in this state, and shall keep his office in a room in the capitol.

History.—§1, ch. 54, 1845; §2, ch. 1822, 1870; ch. 1845, 1871; RS 152; GS 162; RGS 174; CGL 206; §7, ch. 22856, 1945.
cf.—§21, Art. IV and §10, Art. XVI const. 1885.

*19.24 **Fees for certain matters.**—The fees of the commissioner of agriculture in the following matters shall be as follows:

For drawing township plats or maps, for each, three dollars; for each certificate with seal, one dollar; for search of papers or records, twenty-five cents; for drawing and transcribing records, for copying and furnishing statistical information, twenty cents for the first hundred words or fraction thereof, and ten cents for each succeeding hundred words.

History.—§3, ch. 1981, 1874; RS 153; GS 163; RGS 175; CGL 207.

*Note.—This section repealed by §6, ch. 63-294, subject to ratification of amendment to §26, Art. IV, state const. at 1964 general election.

19.52 **Stamps or tags.**—Whenever under the law, stamps are now required to be used in connection with inspection fees, the commissioner of agriculture is authorized to use and direct the use of either stamps or tags as he shall determine to be for the best interest of the state, and all laws or regulations now applicable to such stamps shall be applicable to tags whenever used instead of stamps under such direction of the commissioner of agriculture.

History.—§1, ch. 14671, 1931; CGL 1936 Supp. 222(1).

19.54 **Nathan Mayo building.**—The name of the state chemistry building in Tallahassee, Florida, is designated and declared to be "The Nathan Mayo Building," in tribute to the Honorable Nathan Mayo, commissioner of agriculture of the state.

History.—§1, ch. 22590, 1945.

CHAPTER 21

STATE AUDITING DEPARTMENT

21.021 Creation of state auditing department.—There is hereby created an independent state agency to be known and designated as the "state auditing department."

History.—§2, ch. 29887, 1955.
Note.—Formerly §21.01.

21.031 The state auditor.—The state auditing department shall be headed by a state auditor who shall be a certified public accountant and who, at the time of his appointment, shall have had not less than ten years active experience as a certified public accountant or not less than ten years active experience with the state auditing department. The state auditor shall be appointed by the governor, subject to confirmation by the senate. A list of not less than three persons eligible for such appointment shall be submitted by the legislative appropriations and auditing committee to the governor for his consideration in making such appointment. Vacancies in the office of state auditor shall be filled in the same manner as the original appointment. The term of office of the state auditor shall be for four years unless a longer term shall be authorized by the state constitution.

History.—§3, ch. 29887, 1955; §1, ch. 59-291.
Note.—Formerly §21.02.

21.041 Mandatory duties; removal from office.—The duties of the state auditor under this chapter are mandatory unless the context clearly indicates otherwise, and failure on the part of the state auditor to perform such mandatory duties shall constitute cause for removal from office. The state auditor shall be removed from office by the governor only for cause, by and with the consent of the senate.

History.—§§4, 18, ch. 29887, 1955.
Note.—Formerly §21.02.

21.051 Selection and qualification of personnel of the state auditing department.—

(1) To carry out the duties imposed upon him by this chapter, the state auditor shall select and employ qualified persons necessary for the efficient operation of the state auditing department and shall fix their duties and compensation; provided, that no person shall be employed as an auditor under this section who does not possess the qualifications to take the examination for a certificate as certified public accountant under the laws of this state.

(2) Each person who has been employed by the state auditing department for a period of one year or more prior to the effective date of this chapter and whose service rating is good or excellent shall continue in the same position with the department.

History.—§5, ch. 29887, 1955.

21.061 Oath and bond of auditors.—

(1) The state auditor, before entering upon the duties of his office, shall take and subscribe the oath of office required of state officers by the constitution.

(2) The state auditor shall give bond, with some surety company authorized to do business in Florida as surety, in the amount of ten thousand dollars, payable to the governor of the state and his successors in office and conditioned that he will well and faithfully discharge the duties of his office, promptly report any delinquency or shortage discovered in any accounts and records audited by him, and will promptly pay over and account for any and all funds that shall come into his hands as such auditor. If the state auditor, within thirty days after receiving notice of his appointment, shall fail to file with the secretary of state the required oath and bond, such appointment shall be of no effect and another appointment shall be made.

(3) All auditors employed by the department shall be covered by individual bonds or by a blanket position bond. Said bonds or bond shall meet, and contain the same conditions as are required of the state auditor under subsection (2) of this section. All bonds shall be filed with the secretary of state. If an auditor is not covered in the blanket position bond, an individual bond shall be filed within thirty days after such employee receives notice of his employment. The amount of any such bond shall be determined by the state auditor with the approval of the governor and the legislative appropriations and auditing committee. Failure thus to file such individual bond or to be covered in the blanket position bond shall terminate his employment.

(4) The annual premium of all bonds shall

be paid out of any funds provided for the operation of the department.

History.—§6, ch. 29887, 1955; (3) §1, ch. 61-23.
Note.—Formerly §21.03.

21.071 Salaries and expenses.—The salaries and expenses of the state auditing department shall be paid out of the general revenue fund appropriated biennially by the legislature for that purpose. The state auditor shall approve all bills for salaries and expenses before the same shall be paid.

History.—§7, ch. 29887, 1955.
Note.—Formerly §§21.08, 21.09, 21.12.

21.081 Headquarters; auditing districts.—The headquarters of the state auditor and the state auditing department shall be at the state capital, but to facilitate auditing and to eliminate unnecessary traveling the state auditor may divide the state into auditing districts and assign auditors to each district. Such districts shall be so created as to equalize and facilitate the work of auditing.

History.—§8, ch. 29887, 1955.
Note.—Formerly §21.04.

21.091 Legal advisor of state auditor.—The attorney general shall be the legal advisor of the state auditor.

History.—§9, ch. 29887, 1955.

21.101 Duties of state auditor; annual audits.—The state auditor shall have the power and duty to make an annual postaudit of the accounts and records of all state and county officers and all state and county boards, departments, commissions, institutions, or other such agencies. He shall make an annual postaudit of accounts and records of any other public body or political subdivision when required by law to do so. Each such annual audit, when practicable, shall be made and completed within not more than twelve months following the end of each fiscal year of the officer, office, department, commission, board, institution, or other such agency. As used herein the term "postaudit" means an audit made at some point after the completion of a transaction or a group of transactions.

History.—§10, ch. 29887, 1955.
Note.—Formerly §21.05.

21.111 Rules and regulations.—The state auditor may make and enforce reasonable rules and regulations necessary to facilitate audits authorized under the provisions of this chapter.

History.—§11, ch. 29887, 1955.
Note.—Formerly §21.05.

21.121 Assignments and audit reports.—

(1) The state auditor may, when in his judgment it shall be necessary, designate and direct any auditor employed by the department to audit any accounts or records within the power of the state auditor to audit. The auditor shall report his findings for review by the state auditor, who shall prepare the audit report.

(2) The audit report shall make special mention of: (a) any violation of the laws within the scope of the audit; and (b) any illegal or improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, and shortages.

(3) The audit report shall be a public record. At the conclusion of the audit, the state auditor or his designated representative shall discuss the audit with the state or county official whose office is subject to audit, and submit to him a list of his adverse findings which may be included in the audit report. If such official so desires, he may submit to the state auditor or his designated representative within ten days after the receipt of the said list of findings his written statement of explanation or rebuttal concerning any of the findings, and it shall be the duty of the state auditor to quote in the audit report the official's explanation or rebuttal to any of the findings included in the audit report. A copy of the report shall be submitted to the governor, to each member of the legislative appropriations and auditing committee, and to the officer or person in charge of the department, institution, agency, board, commission, or office audited. One copy shall be filed as a permanent record of the state auditing department. In the case of county reports, one copy of the report of each county office audited shall be submitted to the board of county commissioners of the county in which the audit was made and shall be filed in the office of the clerk of the circuit court of that county as a public record; provided, that when an audit is made of the records of the board of public instruction, a copy of the audit report shall be filed only with the county board of public instruction, and thereupon such report shall become a part of the public records of such board. Copies of such reports may also be furnished such other state and county officers as in the opinion of the state auditor may be directly interested in the audit or who may have some duty to perform in connection therewith.

History.—§12, ch. 29887, 1955; (3) §§1, chs. 61-23 and 61-490.
Note.—Formerly §21.11.

21.13 Assistant state auditors may be detailed to county; request.—It shall be the duty of the governor of the state, upon the request of the board of county commissioners of any county in this state, such request to be evidenced by certified copy of resolution duly adopted, to appoint and detail one assistant state auditor in addition to any other such assistant state auditors authorized by law, for continuous service in such county, with a population in excess of fifty thousand, for the purpose of examining and auditing the offices, books, records and accounts of all county officials, boards and other public institutions, except municipalities, of said county, and making periodical or other frequent reports thereon as may be necessary; such continuous service to continue during the time the compensation of such assistant state auditor is paid by such county as hereinafter provided.

History.—§1, ch. 21920, 1943.

21.14 Same; duty of assistant state auditor detailed.—It shall be the duty of said assistant state auditor to examine the financial accounts of all the offices during the first day of each cal-

endar month, so far as the same may be feasible, and to ascertain whether or not any of the officers, employees, boards or other public institutions of said county, except municipalities, are making prompt and correct deposits of all public moneys in the manner required in each case by law, and shall report the result of such examination to the state auditor and to the said board of county commissioners, from time to time, as the same shall be made; and shall, upon the request of the state auditor or the said board of county commissioners, make special examinations or audits of any of the offices indicated above whenever, in the opinion of said state auditor or the board of county commissioners, such special examination or audit is necessary or desirable; provided, it shall be the duty of said state auditor to cause each of said offices and boards to be audited at least twice in each calendar year and report thereof to be made to said auditor and board of county commissioners.

History.—§2, ch. 21920, 1943.

21.15 Same; compensation; how paid.—Such additional assistant state auditor shall receive the same salary per annum as that which may from time to time be provided by law for regular assistant state auditors provided by chapter 21, such salary to be paid by the board of county commissioners of the county to which such appointment is made, to the state comptroller, in monthly installments, for the period of time during which said additional assistant state auditor shall be performing such service.

History.—§3, ch. 21920, 1943.

21.16 Same; duty of county officers.—It shall be the duty of every such officer, employee, board or other public institution of said county, to turn over to said auditor, upon his demand, all their books, records and accounts in order that the same may be properly audited, and any person or board failing or refusing to turn over said books, records or accounts on demand shall be guilty of a misdemeanor and subject to removal from office by the governor of this state.

History.—§4, ch. 21920, 1943.

21.17 Same; employment of additional auditors.—Whenever, as herein provided, the state auditor shall be requested to so designate an additional assistant state auditor, said state auditor shall be authorized to employ one additional assistant auditor for each such county requesting such continuous service as herein provided.

History.—§5, ch. 21920, 1943.

21.18 Reports disclosing irregularities.—The state auditor shall report promptly to the governor, the legislative appropriations and auditing committee, and the comptroller all instances of shortages, defalcations and irregularities disclosed by an audit which the state auditor is by law authorized to perform.

History.—§13, ch. 29887, 1955; §1, ch. 61-23.
Note.—Formerly §21.11.

21.19 Special audits; subpoenas; issuance; service and enforcement.—

(1) The state auditor shall make special audits required by the governor or the legislative appropriations and auditing committee, and may conduct a special audit at any time of any officer or department, board, commission, institution, or other agency which he is authorized by law to audit.

(2) Reports of special audits shall be filed with the governor and the legislative appropriations and auditing committee. Upon receipt of such audit reports the governor or such committee may designate other persons to whom the state auditor shall supply copies thereof.

(3) If necessary, in connection with any special audit, the governor, the legislative appropriations and auditing committee, or the state auditor is authorized to issue subpoenas and subpoenas duces tecum, which shall be served by the sheriff of the county wherein the person subpoenaed resides or may be found, in the manner provided for service of subpoenas issued by courts of record. The subpoena shall command such person to be and appear before the governor, the legislative appropriations and auditing committee, the state auditor, or any person designated by the state auditor to represent him, at a time and place to be named therein. The subpoena duces tecum may direct such person to bring with him for examination such books, records, or other documents as may be specified therein.

(4) If any person who has been served with a subpoena fails or refuses to be or appear at the time and place named, or fails or refuses to answer any lawful question propounded or produce the books, records, or other documents required, or shall be quilty of disorderly or contumacious conduct at the hearing, the governor, the legislative appropriations and auditing committee, or the state auditor may present a petition to the circuit court of the county where any such person is served with the subpoena or resides, setting forth the facts, whereupon said court shall issue its rule nisi to such person requiring him to appear, answer, or explain his conduct, or show cause, and unless such person shall purge himself of such failure or refusal the court shall forthwith direct such person to obey the subpoena, and upon his failure or refusal to comply or to purge himself of such conduct, he shall be adjudged in contempt of court and shall be punished as the court may direct.

(5) Whenever making a special audit the state auditor may require that testimony be given under oath, which may be administered by him or by any other person authorized by law to administer oaths, and he may require that such testimony be reported by an official court reporter or deputy or by some other competent person, under oath, which report, when written and certified to by such person as being a correct transcript of the testimony and proceedings in the special audit, shall be prima facie a correct statement of such testimony and proceedings; provided, that such person's signature to such certificate be duly acknowledged by him before a notary public or some judicial official of this state.

(6) Witnesses who testify under subpoena shall be entitled to the same protection and immunities as are witnesses in judicial proceedings.

(7) Witnesses shall be entitled to the same fees and mileage as they may be entitled to by law for attending as witnesses in the circuit court, except where such examination is held at the place of business or residence of the witness.

(8) All lawful fees and expenses of officers and witnesses, expenses incident to taking testimony, and transcripts of testimony and proceedings requested by the governor, the legislative appropriations and auditing committee, or the state auditor, shall be a proper charge to the state auditing department. The estimated amount needed for this purpose shall be included in the legislative budget request of the department. If the amounts appropriated for these purposes are insufficient the state budget commission may release the necessary amounts from the deficiency appropriation. All payments for these purposes shall be on vouchers approved by the state auditor.

History.—§14, ch. 29887, 1955; §1, ch. 57-187; (1)-(4), (8) §1, ch. 61-23; (8) §1, ch. 63-536.
Note.—Formerly §21.10.

21.20 Prohibited activities.—No officer or full-time employee of the state auditing department shall actively engage in any other business or profession; nor shall he serve as the representative of any political party, or on any executive committee or other governing body thereof, or as an executive, officer, or employee of any political party committee, organization, or association, or be engaged on behalf of any candidate for public office in the solicitation of votes or other activities in behalf of such candidacy. No employee of the state auditing department shall become a candidate for election to public office.

History.—§15, ch. 29887, 1955.

21.21 Penalties.—

(1) The willful failure or refusal of the state auditor or any auditor employed by the department to make a proper audit in line with his duty, or the making of a false report as to any audit, or the willful failure or refusal to report a shortage or misappropriation of funds or property, shall be cause for removal from such office or employment, and upon conviction thereof shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months. No proceeding under this subsection shall preclude any proceeding against the bond of the state auditor or auditor employed by the state auditing department.

(2) Any person who shall willfully fail or refuse to furnish or produce any book, record, paper, document or data necessary to a proper audit which the state auditor is by law authorized to perform shall, upon conviction thereof, be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months.

History.—§16, ch. 29887, 1955, formerly §21.06.

21.22 Refusal to produce or furnish records, etc.—Any state or county officer who shall willfully fail or refuse to furnish or produce any book, record, paper, document or data necessary to a proper audit which the state auditor is by law authorized to perform, shall be subject to removal from office.

History.—§17, ch. 29887, 1955, formerly §21.07.

21.23 Uniform system of accounts; exceptions.—The state auditor shall prescribe a uniform system of accounts for all departments and branches of the state government, except the legislature and the legislative council and reference bureau, created by the constitution and statutes of the state, designed to fulfill the requirements of good accounting practices and in keeping with generally accepted accounting forms, methods and practices relating to colleges and universities, hospitals, penal institutions, and general government. It shall be the duty and the responsibility of the executive head of every department and branch of the state government to insure that the said uniform system of accounts is maintained and kept as prescribed by the state auditor. Upon a finding that the said uniform system of accounts as prescribed is not being employed effectively by any department or branch of the state government, then the state auditor shall immediately report his findings in detail to the governor and the legislative appropriations and audit committee.

History.—§1, ch. 29902, 1955; §2, ch. 61-23.

CHAPTER 22

EMERGENCY CONTINUITY OF GOVERNMENT

22.01 Short title.—§§22.01-22.10 shall be known and may be cited as the "emergency interim executive and judicial succession act."

History.—§1, ch. 59-447.

22.02 Declaration of policy.—Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices of its political subdivisions, in the event the incumbents thereof are unavailable to perform the duties and functions of such offices.

History.—§2, ch. 59-447.

22.03 Definitions.—Unless otherwise clearly required by the context, as used in §§22.01-22.10:

(1) "Unavailable" means either that a vacancy in office exists or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office.

(2) "Emergency interim successor" means a person designated pursuant to §§22.01-22.10, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the constitution, statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(3) "Office" includes all state and local offices, the powers and duties of which are defined by the constitution, statutes, charters, and ordinances, except the office of governor and the legislature.

(4) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

(5) "Political subdivision" includes counties, cities, towns, villages, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

History.—§3, ch. 59-447.

22.04 Additional successors to office of governor.—In the event that the governor, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of his office, or is unavailable, and in the event the president of the senate, and the speaker of the house of representatives be for any of the reasons specified in the constitution not able to exercise the powers and discharge the duties of the office of governor, or be unavailable, the secretary of state, attorney general, state comptroller, state treasurer, superintendent of public instruction and commissioner of agriculture shall, in the order named, if the preceding named officers be unavailable, exercise the powers and discharge the duties of the office of governor until a new governor is elected and qualified, or until a preceding named officer becomes available; provided however, that no emergency interim successor to the aforementioned offices may serve as governor.

History.—§4, ch. 59-447.

22.05 Enabling authority for emergency interim successors for local offices.—With respect to local offices, for which the legislative bodies of cities, towns, villages, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of §§22.01-22.10.

History.—§5, ch. 59-447.

22.06 Emergency interim successors for local officers.—The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to, cities, towns, villages, townships, and counties, as well as school, fire, power and drainage districts) not included in §22.05. Such officers, subject to such regulations as the executive

head of the political subdivision may issue, shall upon approval of §§22.01-22.10, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to §§22.01-22.10 to insure their current status. The officer will designate a sufficient number of persons so that there will be not less than three, nor more than seven, emergency interim successors or any combination thereof at any time. In the event that any officer of any political subdivision is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the constitution or statutes or until the officer (or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office.

History.—§6, ch. 59-447.

22.07 Formalities of taking office.—At the time of their designation, emergency interim successors and special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

History.—§7, ch. 59-447.

22.08 Period in which authority may be exercised.—Officials authorized to act as governor pursuant to §§22.01-22.10, emergency interim successors and special emergency judges are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as defined herein, has occurred. The legislature, by concurrent resolution, may at any time terminate the authority of said emergency interim successors and special emergency judges to exercise the powers and discharge the duties of office as herein provided.

History.—§8, ch. 59-447.

22.09 Removal of designees.—Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with §§22.01-22.10, including §22.08, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

History.—§9, ch. 59-447.

22.10 Disputes.—Any dispute concerning a question of fact arising under §§22.01-22.09 with respect to an office in the executive branch of the state government (except a dispute of fact relative to the office of governor) shall be adjudicated by the governor (or other official authorized under the constitution or §§22.01-22.09 to exercise the powers and discharge the duties of the office of governor) and his decision shall be final.

History.—§10, ch. 59-447.

22.15 Seat of government; emergency temporary location.—

(1) Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of state government at the normal location of the seat thereof in the city of Tallahassee, Leon county, the governor shall, as often as the exigencies of the situation require, by proclamation, declare an emergency temporary location, or locations, for the seat of government at such place, or places, within or without this state as he may deem advisable under the circumstances, and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of state government to such emergency temporary location, or locations. Such emergency temporary location, or locations, shall remain as the seat of government until the legislature shall by law establish a new location, or locations, or until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.

(2) During such time as the seat of government remains at such emergency temporary location, or locations, all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department or authority of this state, including the convening and meeting of the legislature in regular, extraordinary, or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.

(3) The provisions of this section shall control and be supreme in the event it shall be employed notwithstanding the provisions of any other law to the contrary or in conflict herewith.

History.—§§1-3, ch. 59-498.

22.20 Emergency continuity of government; political subdivision.—

(1) Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of the government of a political subdivision of the state at the normal location of the seat thereof, the governing body of such political subdivision shall, as often as the exigencies of the situation require, by proclamation, declare an emergency temporary location, or locations, for the seat of government at such place, or places within or

without the territorial limits of its political jurisdiction, as deemed advisable under the circumstances, and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of the government of the political subdivision to such emergency temporary location, or locations. Such emergency temporary location, or locations, shall remain as the seat of such government until a new seat of government is established by due processes of the law, or until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.

(2) During such time as the seat of government remains at such emergency temporary location, or locations, all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department or authority of the political subdivision, including the convening of the governing body thereof in regular, extraordinary or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.

(3) The provisions of this act shall control and be supreme in the event it shall be employed, notwithstanding the provisions of any other law to the contrary or in conflict herewith.

History.—§§1-3, ch. 61-352.

TITLE V

JUDICIARY DEPARTMENT

CHAPTER 25

SUPREME COURT OF FLORIDA

25.011 Number of justices; election.—The supreme court of Florida shall consist of seven justices, who shall be elected by the qualified electors of the state at the time and place of voting for members of the legislature, and shall hold their office for a term of six years, dating from the termination of the now existing terms.

History.—§1, ch. 57-274.
Note.—Formerly §25.01.

25.012 Filling vacancies.—When the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement or other cause created such vacancy.

History.—§1, ch. 57-274.

25.021 Terms of office.—The term of office of each of the justices of the supreme court, when elected for a full term, shall commence on the first Tuesday after the first Monday in January next succeeding the election.

History.—§1, ch. 57-274.
Note.—Formerly §25.02.

25.031 Supreme court authorized to receive and answer certificates as to state law from federal appellate courts.—The supreme court of this state may, by rule of court, provide that, when it shall appear to the supreme court of the United States, to any circuit court of appeals of the United States, or to the court of appeals of the District of Columbia, that there are involved in any proceeding before it questions or propositions of the laws of this state, which are determinative of the said cause, and there are no clear controlling precedents in the decisions of the supreme court of this state, such federal appellate court may certify such questions or propositions of the laws of this state to the supreme court of this state for instructions concerning such questions or propositions of state law, which certificate the supreme court of this state, by written opinion, may answer.

History.—§1, ch. 23098, 1945; §1, ch. 57-274.

25.032 Same; rules and regulations.—The supreme court of this state is hereby authorized and empowered to collaborate with any and

all other courts of last resort, of other states and of the United States, in the preparation and approval of uniform rules of court to make effective this and similar laws.

History.—§2, ch. 23098, 1945; §1, ch. 57-274.

25.041 Power to execute its decrees, etc.—The supreme court is vested with all the power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters before it, agreeable to the usage and principles of law.

History.—§1, ch. 57-274.
Note.—Formerly §25.04.

25.051 Regular terms.—The supreme court shall hold two terms in each year, in the supreme court building, commencing respectively on the first day of January and July, providing, that if such day be a Sunday or legal holiday, then on the first subsequent day which is not a Sunday or legal holiday.

History.—Comp. §1, ch. 57-274.
Note.—Formerly §25.05.

25.061 Chief justice.—The chief justice of the supreme court shall be chosen by the members of the court and shall serve for a term of two years. In the event of a vacancy, a successor shall be chosen within sixty days for a like term. During a vacancy or whenever the chief justice is unable to act for any reason, the justice longest in continuous service and able to act shall act as chief justice.

History.—§1, ch. 57-274.

25.071 Temporary assignment of judges.—The chief justice of the supreme court is vested with, and shall exercise in accordance with rules of that court, authority temporarily to assign justices of the supreme court to district courts of appeal and circuit courts, judges of district courts of appeal and circuit judges to the supreme court, district courts of appeal, and circuit courts, and judges of other courts, except municipal courts, to judicial service in any court of the same or lesser jurisdiction. Any retired justice or judge may, with his consent, be likewise assigned to judicial service.

History.—Comp. §1, ch. 57-274.

25.072 Special assignment former justice.—

(1) Any justice of the supreme court of Florida who shall have served as a circuit judge of the state and as justice of the supreme court for an aggregate period of ten or more years and who shall have been separated from judicial service subsequent to 1950, at a time when such justice was not eligible for retirement under the provisions of the law then in existence but who would now be eligible for such retirement under the present law if he were now a member of this court, shall be deemed to have retired from his office, notwithstanding the form of his separation documents, for the sole purpose of being assigned to temporary judicial service subject to his consent to serve and the approval of the chief justice. Such consent to serve shall be transmitted to the chief justice within twelve months after May 10, 1963.

(2) Such retired justice shall be eligible only to be assigned to temporary judicial service and shall not receive any retirement pay or be entitled to other benefits relating to retirement of justices of the supreme court; provided, however, that during any temporary assignment to judicial service, such retired justice shall be authorized to be reimbursed for all necessary expenses incurred in connection therewith on the same basis as are other retired justices who are temporarily assigned to judicial service.

History.—§§1, 2, ch. 63-33.

25.073 Retired justices or judges assigned to active judicial service; additional compensation; appropriation.—Any retired justice of the supreme court or retired judge of a district court of appeal or circuit court assigned to active judicial service in any of said courts, pursuant to Art. V of the state constitution, shall be compensated as follows:

(1) Any such justice or judge shall be paid as additional compensation the difference between the normal retirement benefits to which he was entitled to receive at the time of his retirement, usually referred to as option one, regardless of which option was selected at the time of retirement, and the total salary then currently paid by the state to active justices or judges of the court in which the retired justice or judge was serving at the time of his retirement.

(2) Such additional compensation shall be paid by the state at a daily rate and shall be computed on a basis of two hundred sixty one working days per annum; provided that such payments shall be computed on the basis of actual number of days worked.

(3) Necessary travel expense incident to the performance of duties required by assignment of such justices or judges to active judicial service shall be paid by the state in accordance with the provisions of §112.061.

(4) Payments required under this section shall be made from moneys to be appropriated for this purpose.

History.—§1, ch. 63-538.

25.081 Seal.—The seal of the supreme court shall be provided by rules of that court.

History.—§1, ch. 57-274.
Note.—Formerly §25.10.

25.091 Compensation of justices.—The salary of the justices of the supreme court shall be provided by law.

History.—Comp. §1, ch. 57-274.
Note.—Formerly §25.111.

25.101 Retirement of justices with pay.—Whenever any justice of the supreme court of Florida has attained the age of sixty-five years or more, and has been a justice of said supreme court under commission as such justice for a period of twenty years or more consecutively, such justice may voluntarily resign and retire from his office as such justice with the right to be paid, and he shall be paid on his own requisition, during the remainder of his natural life, the full amount of the annual or monthly

salary then, or from time to time, provided by law to be paid to the other justices of said court in office; and sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

History.—§1, ch. 57-274.
Note.—Formerly §25.12.
cf.—Ch. 123, Justices, circuit and appeal judges retirement system.

25.112 Right to retire; retirement pay.—Any justice of the supreme court of Florida who shall have served as a circuit judge of the state and as a justice of said supreme court for an aggregate period of twenty years or more and shall have elected to take the benefits of this law in accordance with the terms and provisions hereof, may resign and retire, or either, from his office as such justice with the right to be paid, and he shall be paid, on his own requisition, during the remainder of his natural life, from the supreme court justices' retirement trust fund herein established, two-thirds of the annual or monthly salary then, or from time to time thereafter, provided by law to be paid to the other justices of said court in office.

History.—§1, ch. 57-274; §2, ch. 61-119.
Note.—Formerly §25.121.
cf.—§123.13 Optional retirement benefits; Justices, circuit and appeal judges.

25.122 Notice by justice taking advantage of act; deductions from salary.—Any justice of the supreme court who may decide to take advantage of this law shall, within ninety days after this law takes effect, notify the state comptroller and the state treasurer to that effect, and thenceforward, so long as such justice shall hold office, two per centum shall be deducted from each installment of salary of such justice, and said amount so deducted shall be deposited into a special fund hereby established in the state treasury to be known as the supreme court justices' retirement trust fund. Any person who may hereafter qualify as justice of the supreme court shall be entitled to the benefits of this law upon giving notice to the state comptroller and the state treasurer within ninety days after taking office; and after the giving of such notice, so long as such justice shall hold office, two per centum shall be deducted from each installment of salary of such justice, and said amount so deducted shall be deposited into said supreme court justices' retirement trust fund.

History.—§2, ch. 23645, 1947; §1, ch. 57-274; §2, ch. 61-119.
cf.—Ch. 123.
§§123.17 and 123.18 Judicial retirement for disability; transfer of amounts contributed under other retirement laws.

25.131 Annual appropriations.—There is hereby appropriated annually and shall be paid into said supreme court justices' retirement trust fund out of any funds in the state treasury not otherwise appropriated sufficient money to meet the requirements of this law, taking into account the sum paid into said supreme court justices' retirement trust fund under §25.122.

History.—§1, ch. 57-274; §2, ch. 61-119.
Note.—Formerly §25.123.
cf.—Ch. 123.

25.141 Rights under law for retirement of circuit judges.—Nothing in this law shall affect any rights that a circuit judge subsequently becoming a justice of the supreme court may have theretofore acquired or may thereafter acquire under provisions of law, or any re-enactments thereof or amendments thereto, prior to the time that he retires from the supreme court; provided, however, that no person while accepting retirement compensation under the terms and provisions hereof shall at the same time receive retirement compensation under any other law.

History.—§1, ch. 57-274.
Note.—Formerly §25.124.
cf.—§§38.14-38.19 Retirement of circuit judges.
Ch. 123 Justices, circuit and appeal judges retirement system.

25.151 Practice of law.—No justice of the supreme court of Florida drawing retirement compensation as provided by any law shall engage in the practice of law.

History.—§1, ch. 57-274.
Note.—Formerly §25.125.

25.161 Rights under other laws.—Nothing herein contained shall affect the rights or status of any person under any other law who has heretofore resigned or retired or may hereafter resign or retire from the supreme court of Florida; and the provisions of §25.101 shall be preserved and remain in full force and effect.

History.—§1, ch. 57-274.
Note.—Formerly §25.126.

25.171 Automatic retirement.—All justices shall automatically retire upon reaching the age of seventy years; provided that this shall not apply to any justice holding such office on July 1, 1957.

History.—§1, ch. 57-274.

25.181 Record of territorial court of appeals.—The files, rolls and books of record of the courts of appeals of the late Territory of Florida, so far as the same, by the concurrence of the congress and of the legislature of this state, may relate to matters of appropriate state authority and jurisdiction, are placed in the custody and under the control of the supreme court of this state, and are files, rolls and records of the said supreme court; and the said court may lawfully have and exercise such judicial cognizance and power over them as it may lawfully have and exercise over its own files, rolls and records.

History.—§1, ch. 57-274.
Note.—Formerly §25.13.

25.191 Clerk of supreme court.—The supreme court shall appoint a clerk of the supreme court, who shall hold his office during the pleasure of the court. The said clerk, before entering upon the discharge of his duties, shall give bond in the sum of two thousand dollars, payable to the governor, or his successors in office, to be approved by a majority of the justices of the supreme court conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the office of the secretary of state.

History.—§1, ch. 57-274.
Note.—Formerly §25.14.
cf.—§113.07 Bonds of state officials.

25.201 Deputy clerk of supreme court.—The clerk may appoint a deputy, who, being duly sworn, may discharge all the duties of the office of clerk during his absence. The clerk shall in all cases be responsible for the acts of such deputy.

History.—§1, ch. 57-274.
Note.—Formerly §25.15.

25.211 Location of clerk's office.—The clerk shall have his office in the supreme court building.

History.—§1, ch. 57-274.
Note.—Formerly §25.16.

25.221 Custody of books, records, etc.—All books, papers, records, files and the seal of the supreme court shall be kept in the office of the clerk of said court and in his custody.

History.—§1, ch. 57-274.
Note.—Formerly §25.17.

25.231 Duties of clerk.—The clerk of the supreme court shall perform such duties as may be directed by the court.

History.—§1, ch. 57-274.
Note.—Formerly §25.18.

25.241 Clerk of supreme court; compensation; assistants; filing fees, etc.—

(1) The clerk of the supreme court shall be paid an annual salary, provided by law.

(2) The clerk of the supreme court is authorized to employ such deputies and clerical assistance as may be necessary. Their number and compensation shall be approved by the court. The compensation of such employees shall be paid from the biennial appropriation for the supreme court.

(3) The clerk of the supreme court is hereby required to collect, upon the filing of a certified copy of a notice of appeal or petition, twenty-five dollars for each case docketed, and for copying, certifying or furnishing opinions, records, papers or other instruments except as otherwise herein provided, the same fees that are allowed clerks of the circuit court; provided, however, no fee shall be less than one dollar.

(4) The clerk of the supreme court is hereby authorized, immediately after a case is disposed of, to supply the judge who tried the case and from whose order, judgment or decree, appeal or other review is taken and any court which reviewed it, a copy of all opinions, orders or judgments filed in such case. Copies of opinions, orders and decrees shall be furnished in all cases to each attorney of record and copies for publication in Florida reports shall be without charge and copies furnished to the law book publishers shall be at one-half the regular statutory fee.

(5) The clerk of the supreme court is hereby required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the state treasurer who shall place the same to the credit of the general revenue fund.

History.—§1, ch. 57-274.
Note.—Formerly §25.19.
cf.—§28.24 Fees of clerk of circuit court.
§696.05 Photographic recording authorized; clerk of circuit court.

25.251 Marshal of supreme court, appointment.—The supreme court shall appoint a marshal who shall hold office during the pleasure of the court. The said marshal shall execute to the governor of the state a bond in the penalty of two thousand dollars, with sureties to be approved by the supreme court, and conditioned that he shall faithfully discharge such duties as the court directs.

History.—§1, ch. 57-274.
Note.—Formerly §25.23.

25.262 Duties of marshal, process.—The marshal shall have the power to execute the process of the court throughout the state, and in any county he may deputize the sheriff or a deputy sheriff for such purpose.

History.—§1, ch. 57-274.
Note.—Formerly §25.24.

25.271 Custody of supreme court building and grounds.—The said marshal shall, under the direction of the supreme court, be custodian of the supreme court building and grounds and shall keep the same clean, sanitary and free of trespassers and marauders and shall maintain the same in good state of repair and cause the grounds to be beautified and preserved against depredations and trespasses.

History.—§1, ch. 57-274.
Note.—Formerly §25.25.

25.281 Compensation of marshal.—The compensation of the said marshal shall be provided by law.

History.—§1, ch. 57-274.
Note.—Formerly §25.26.

25.291 Marshal's contempt fund.—

(1) There shall be established what is known as the "marshal's contempt fund," which fund shall be comprised of moneys derived from the imposition of fines for contempt of the supreme court of the state.

(2) Any money on deposit in the marshal's contempt fund shall be secured as other public deposits are secured, and said moneys shall be used only for the purpose of paying incidental expenses as they occur from time to time of the supreme court of Florida, and shall be paid out only by vouchers signed by the marshal of the supreme court of the state, and countersigned by the chief justice.

History.—§1, ch. 57-274.
Note.—Formerly §25.261.
cf.—§§18.10 et seq. Deposits of money in the banks of the state.

25.301 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by said court or any justice thereof in relation to any action or proceeding pending in said court shall be filed and remain in the office of the clerk, and shall not be taken out except by order of the court; but said clerk shall at all times be required to furnish to any person who may desire the same certified copies

of such opinions and decisions, upon receiving his fees therefor.

History.—§1, ch. 57-274.
Note.—Formerly §25.28.
cf.—§25.241(3) Clerk of supreme court; filing fees.

25.311 Distribution of volumes.—Copies of the reports of the decisions of the supreme court and of the district court of appeals shall be distributed as follows: to the governor, and to each cabinet officer, except to the attorney general, to each of the justices of the supreme court, to each judge of the district courts of appeal, to each circuit judge, to each county judge, to each judge of county courts, to each solicitor of county courts, to each prosecuting attorney, to each judge of a criminal or civil court of record, to each state attorney, to each county solicitor of a court of record, to each state university and legal depository, and two bound copies thereof to the attorney general. A bound copy thereof shall be transmitted by mail or express to the governor of each state and territory which sends the reports of its courts to this state. A bound copy thereof shall be transmitted to the clerks of the United States district courts, for the use of the judges of said courts, in the northern and southern districts of Florida, in each city in the state where sessions of said courts are now appointed by law to be held, and three bound volumes to the clerk of the United States circuit court of appeals for the fifth circuit.

History.—§1, ch. 57-274; §2, ch. 63-570.
Note.—Formerly §25.38.

25.321 Volumes to be resupplied.—A copy of reports of decisions of the supreme court and district courts of appeal shall be supplied or resupplied to all public officers entitled to be furnished a copy thereof by law, where such copy has never been furnished to such officers, or any predecessors in office, or where the same shall have been lost or destroyed without the fault of the officer, provided that the fact that such officer or his predecessors have never been supplied with such copy, or the loss or destruction thereof be made to appear by an affidavit filed with the proper officer of this state.

History.—§1, ch. 57-274.
Note.—Formerly §25.39.

25.331 Reports to remain the property of the state.—All supreme court reports heretofore furnished to public officers of this state, or that may hereafter be supplied to them, shall continue to remain the public property of the state, and shall belong to the public office of the officer to whom they are supplied for the official use of their successors in office in perpetuam.

History.—§1, ch. 57-274.
Note.—Formerly §25.40.

25.341 Library of supreme court, custodian.—The library of the supreme court shall be in custody of the librarian appointed by the court, who shall be subject to its direction.

History.—§1, ch. 57-274.
Note.—Formerly §25.41.

25.351 Acquisition of books.—Books for the library of the supreme court may be acquired:

(1) BY PURCHASE.—As the supreme court shall direct.

(2) BY EXCHANGE.—Such number of reports, statutes and journals as shall be obtained by the chief justice upon his request from the secretary of state shall be exchanged by the librarian with appropriate authorities of the United States and other states and territories for corresponding numbers of their reports.

History.—§1, ch. 57-274.
Note.—Formerly §25.42.

25.361 Obtaining state publications for exchange purposes.—The supreme court is hereby authorized, for the purpose of making exchanges, to obtain copies of the report of the decisions of the supreme court and district courts of appeal, any of the Florida session laws, the Florida Statutes, or any other publication of the state available for distribution and exchange for any book or publication needed for use in the supreme court library.

History.—§1, ch. 57-274.
Note.—Formerly §25.441.

25.371 Rules, effect of.—When a rule is adopted by the supreme court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.

History.—§1, ch. 57-274.
Note.—Formerly §25.47.

25.381 Reports; publication; purchase and distribution.—The reports of the opinions of the supreme court and the district courts of appeal shall be known as Florida Cases. In July, 1963, and every second year thereafter until otherwise provided by law, the supreme court and the attorney general shall jointly enter into a contract with West Publishing Company, St. Paul, Minnesota, providing for the publication and distribution of such volumes of Florida Cases as necessary to furnish copies thereof to the officers and institutions as required or authorized by law.

The volumes of such reports purchased by the state under such contract shall be paid for from the circuit and other state court fund as appropriated from general state revenue.

History.—§1, ch. 57-274; §1, ch. 63-570.

CHAPTER 26

CIRCUIT COURTS, CIRCUITS, JUDGES, ETC.

26.01* Judicial circuits and judges.—The state is divided into sixteen judicial circuits, each of which embraces more than fifty thousand inhabitants according to the last preceding state or federal census, and the county or counties composing each of said circuits, together with the number of circuit judges therein, respectively, are as set forth in §§26.02-26.161.

History.—§1, ch. 5120, 1903; GS 1796; §1, ch. 6197, 1911; §1, ch. 6198, 1911; RGS 3026; CGL 4769; §§1, 5, ch. 17085, 1935; §10, ch. 27991, 1953.
cf.—§6, Art V, Const.

26.011 Census commission, judicial circuits.—

(1) APPOINTMENT OF COMMISSIONERS.—When it shall be deemed advisable by the governor that the population of any judicial circuit be determined, he may from time to time appoint three commissioners from such judicial circuit who shall obtain from the United States census bureau an outline of proper criteria other than by the actual counting of individuals, to be used by said commissioners for the purpose of determining the population of said circuit, and the commissioners shall thereupon forthwith proceed in accordance with said criteria to determine the number of inhabitants of such circuit. In making their determination the commissioners shall also, after public notice, hold a public hearing or hearings at such place or places in the circuit as they deem advisable to receive such further proof needed to assist them in determining the number of such inhabitants. After the conclusion of its study and after the public hearings to be held, as aforesaid, the commissioners shall make proof to the governor, first, of the establishment of criteria by the United States census bureau and second, its findings based thereon. It shall also forward to the governor certified transcript of the record taken at the public hearings to be held as aforesaid.

(2) PROCLAMATION BY GOVERNOR.—The findings by any such commission or commissioners as to the number of inhabitants or the population of any judicial circuit when proclaimed by the governor shall have the same force and effect in law as if according to a census taken pursuant to either federal or state law insofar as a census affects the number of circuit judges permitted by law but such determination shall not otherwise be effective for any purpose.

(3) The commissioners shall not be paid any

*Seventeenth judicial circuit created by ch. 63-470; Dependent upon ratification of amendment to §6, Art. V state const., adopted by the legislature of 1963, to take effect on December 1, 1964.

compensation but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§1-3, ch. 31395, 1956; (3) §19, ch. 63-400.

26.02 First circuit.—

(1) The first circuit is composed of Escambia, Okaloosa, Santa Rosa and Walton counties, and shall have one circuit judge for each 50,000 inhabitants or major fraction thereof, in said circuit according to the most recent official census. No two of said judges may be legal residents of the same county.

(2) This act shall take effect on the first Tuesday after the first Monday in January, 1957; provided however, that the vacancy hereby created shall be filled at the 1956 general election, nominations for which office may be made in the general primary elections in 1956.

History.—§2, ch. 5120, 1903; GS 1797; §1, ch. 6197, 1911; §2, ch. 6198, 1911; §2, ch. 6937, 1915; RGS 3027; CGL 4780; §1, ch. 17085, 1935; §1, ch. 22813, 1945; §§1, 2, ch. 29630, 1955.

26.03 Second circuit.—The second circuit is composed of Leon, Gadsden, Jefferson, Wakulla, Liberty, and Franklin counties, and shall have one circuit judge for each fifty thousand inhabitants or major fraction thereof, in said circuit, according to the most recent official census.

History.—RS 1360; §3, ch. 5120, 1903; GS 1798; §3, ch. 6197, 1911; §1, ch. 6198, 1911; RGS 3028; CGL 4781; §1, ch. 17085, 1935; §1, ch. 28260, 1953.

26.04 Third circuit.—The third circuit is composed of Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor counties, and shall have two circuit judges.

History.—RS 1361; §4, ch. 5120, 1903; GS 1799; §4, ch. 6197, 1911; §1, ch. 6198, 1911; RGS 3029; §2, ch. 8514, 1921; CGL 4782; §1, ch. 17085, 1935.

26.05 Fourth circuit.—The fourth circuit is composed of Clay, Duval and Nassau counties, and shall have three circuit judges in addition to the circuit judge of the circuit court of Duval county appointed under the provisions of §§6, 26(8), Art. V, of the Florida constitution.

History.—RS 1362; §5, ch. 5120, 1903; GS 1800; §5, ch. 6197, 1911; §1, ch. 6198, 1911; §2, ch. 7399, 1917; RGS 3030; §1, ch. 8486, 1921; §4, ch. 12437, 1927; CGL 4783; §1, ch. 17085, 1935.

26.051 Additional judges for fourth circuit.—

(1) There shall be two additional circuit judges of the fourth judicial circuit of Florida, composed of Clay, Duval and Nassau counties, in addition to the three circuit judges of said circuit heretofore provided for, and also in addition to the circuit judge of the circuit court of Duval county, as provided by §§6, 26(8), Art. V, of the Florida constitution.

(2) The additional circuit judge for the fourth judicial circuit of Florida shall have all the powers and perform all the duties that are or may be provided or prescribed by the Florida constitution or by Florida statute, for circuit judges, and all Florida statutes concerning circuit judges shall apply to him; and he shall receive the same compensation and allowances for expenses as other circuit judges of said circuit.

(3) The fourth judicial circuit, composed of Clay, Duval and Nassau counties, shall have one circuit judge for each 50,000 inhabitants or major fraction thereof, according to the last official statewide census, in said circuit, in addition to the additional judge for the fourth judicial circuit now provided in Art. V of the constitution of Florida. Nothing in this subsection shall disturb the terms of incumbent judges.

History.—§ § 1, 2, ch. 22618, 1945; (1) §1, ch. 28171, 1953; (3)n. §§1, 2, ch. 57-731.

26.06 Fifth circuit.—The fifth circuit is composed of Citrus, Hernando, Lake, Marion and Sumter counties, and shall have two circuit judges.

History.—RS 1363; §1, ch. 4227, 1893; §6, ch. 5120, 1903; GS 1801; §6, ch. 6197, 1911; §1, ch. 6198, 1911; §3, ch. 7847, 1919; RGS 3031; §§1, 3, ch. 9164, 1923; §1, ch. 12436, 1927; CGL 4784, 4795, 4803; §1, ch. 17085, 1935.

26.07 Sixth circuit.—The sixth circuit is composed of Pasco and Pinellas counties.

History.—RS 1364; §1, ch. 4227, 1893; §7, ch. 5120, 1903; GS 1802; §7, ch. 6197, 1911; §1, ch. 6198, 1911; §1, ch. 6975, 1915; RGS 3032; §2, ch. 8515, 1921; §1, ch. 9162, 1923; CGL 4785; §1, ch. 17085, 1935; §1, ch. 29993, 1955.

26.071 Judges for the sixth circuit.—The number of judges of the sixth judicial circuit shall be one for every 50,000 inhabitants, or major fraction thereof, as may be determined pursuant to law, providing, that one of the said circuit judges shall reside in and be appointed or elected from Pasco county.

History.—§§1-3, ch. 22943, 1945; (1) §1, ch. 26727, 1951; (3) §10, ch. 26484, 1951; §2, ch. 29993, 1955.

26.08 Seventh circuit.—

(1) The seventh circuit is composed of Flagler, Putnam, St. Johns, and Volusia counties, and shall have one circuit judge for each 50,000 inhabitants, or a major fraction thereof, in said circuit according to the latest official decennial census, whether the latter be by actual count or by a census commission appointed pursuant to general law. No two judges shall reside in the same county unless and until the total number of judges in the circuit shall exceed three in number, after which no more than three shall reside in the same county.

(2) A candidate for circuit judge residing in the county wherein the largest number of circuit judges reside shall not be eligible to qualify for election to the office of circuit judge in opposition to a circuit judge residing in any other county in said circuit.

History.—RS 1365; §8, ch. 5120, 1903; GS 1803; §8, ch. 6197, 1911; §1, ch. 6198, 1911; §§1, 2, ch. 7351, 1917; §2, ch. 7401, 1917; §2, ch. 7847, 1919; RGS 3033; §1, chs. 12434, 12437, 1927; CGL 4786, 4804; §1, ch. 17085, 1935; §1, ch. 26986, 1951; §1, ch. 29975, 1955; §1, ch. 61-521.

26.09 Eighth circuit.—The eighth circuit is composed of Alachua, Baker, Bradford, Gilchrist, Levy and Union counties, and shall have two circuit judges.

History.—§9, ch. 5120, 1903; GS 1804; §9, ch. 6197; §1, ch. 6198, 1911; RGS 3034; §1, ch. 8486; §2, ch. 8516, 1921; §2, ch. 11371, 1925; §4, ch. 12437, §§1, 2, ch. 12438, 1927; CGL 4787, 4805; §1, ch. 17085, 1935.

26.10 Ninth circuit.—

(1) The ninth judicial circuit is composed

of Brevard, Indian River, Martin, Okeechobee, Orange, Osceola, Seminole, and St. Lucie counties, and shall have one circuit judge for each fifty thousand inhabitants, or major fraction thereof, as may be determined pursuant to law. Each of said judges shall have all of the powers and perform all of the duties that are or may be provided or prescribed by the constitution or statutes of the state for circuit judges, and all Florida Statutes concerning circuit judges shall apply to each; and each shall receive the compensation and allowance for expenses as is or may be provided by law.

(2) For the purposes of this law the ninth judicial circuit is divided into divisions as follows:

Division A, consisting of Orange and Osceloa counties;

Division B, consisting of Seminole and Brevard counties;

Division C, consisting of Indian River, St. Lucie, Martin, and Okeechobee counties.

(3)(a) The eight judges now authorized for the circuit by pre-existing law shall reside as follows:

1. Four judges in division A;
2. One judge in Brevard county;
3. One judge in Seminole county;
4. Two judges in division C.

(b) Future judges authorized under the terms hereof shall reside as follows:

1. The ninth judge to which the circuit shall be entitled shall reside in Brevard county;
2. The tenth judge to which the circuit shall be entitled shall reside in division A;
3. The eleventh judge to which the circuit shall be entitled shall reside in division C; provided, no county in said division C shall have more than one resident circuit judge.
4. All judges over eleven to which the circuit shall be entitled hereunder shall reside in such divisions as may be necessary so that each division shall have one judge for each full 50,000 inhabitants.
5. In the event the circuit shall be entitled to one or more judges whose residence is not otherwise determined hereunder, then the first such judge shall reside in the division having the largest population after subtracting 50,000 inhabitants for each judge to which the division is otherwise entitled hereunder; the second such judge shall reside in the division having the second largest population after subtracting 50,000 inhabitants for each judge to which the division is otherwise entitled hereunder; the third such judge shall reside in the division having the third largest population after subtracting 50,000 inhabitants for each judge to which the division is otherwise entitled hereunder.

(4) When there are published but unofficial figures of the United States census bureau for the 1960 federal census available to the governor, for the counties of the ninth judicial circuit, he may, after consulting with the United States census bureau, make such deductions from such published but unofficial figures as he may find necessary to safely and reliably establish specific figures as minimum population figures from such census for such counties and for the circuit and may then proclaim such figures as minimum populations of such counties, and of the circuit as a whole, for purposes of this act. Upon such figures being proclaimed as minimum figures, he shall appoint the judge or judges for the additional judgeship or judgeships (if any) which would in any event be provided hereunder based on such minimum population figures. If later final figures of the United States census bureau for such census shall show the ninth judicial circuit to be entitled to a judgeship or judgeships additional to any to which it is entitled based on such minimum population figures, the governor shall, as soon as convenient after such final figures are published, proceed to appoint the additional judge or judges to which such circuit is entitled hereunder; provided, however, that in no event shall any official or unofficial figures of the 1960 United States census become effective for purposes of this act until December 1, 1960; and provided, further, that nothing herein contained shall preclude the governor from at any time, proceeding under §26.011.

(5) When there is no judge residing in Osceola county, the senior judge shall assign a judge for service one day each week in said county.

History.—§1, ch. 7847, 1919; §2, ch. 9164, 1923; §2, chs. 10079, 10148, 10180, 1925; §2, ch. 12434, 1927; CGL 4796, 4800, 4802; §1, ch. 26815, 1951; (2) n. §§1, 2, ch. 57-50; §§1-5, ch. 59-1005; §2, ch. 61-530.

26.11 Tenth circuit; census.—

(1) The tenth circuit is composed of Hardee, Highlands and Polk counties and shall have one circuit judge for each fifty thousand inhabitants or major fraction thereof, as may be determined pursuant to law. One of the circuit judges shall reside outside Polk county.

(2)(a) The official count of the population of the counties of the circuit as taken in the year 1950, or subsequent years thereto, whichever census is the last, by the federal bureau of the census, the commissioner of agriculture of the state, or by any other commission, commissioners, or census officially provided for by act of the legislature, as certified to the respective boards of county commissioners of said counties, is hereby provided for and shall be the official census of the inhabitants of each county. If the census of one or more of the counties of the circuit is taken and no new census is taken of the other county or counties then the official census of the circuit shall be the new census of the county or counties taken plus the latest official census of the other county or counties.

(b) The aforesaid census of each county shall be combined and the aggregate total population of said counties shall be recognized and is hereby declared to be the official census of the inhabitants of the tenth judicial circuit of the state.

(c) The aforesaid census population as to said counties and said tenth judicial circuit, shall entitle said tenth judicial circuit to the

benefit of the provisions of §6, Art. V of the state constitution and of §26.11.

History.—§1, ch. 6198, 1911; §1, ch. 6975, 1915; §1, ch. 7845, 1919; RGS 3036; CGL 4789; §2, ch. 10082, 1925; §1, ch. 17085, 1935; §§1, 2, ch. 28021, 1953; (1) §1, ch. 29974, 1955; §1, ch. 31417, 1956.

26.12 Eleventh circuit.—The eleventh circuit is composed of Dade county and shall have one circuit judge for each fifty thousand inhabitants, or major fraction thereof, in said circuit, according to the most recent official census.

History.—§1, ch. 6198, 1911; §1, ch. 6975, 1915; §3, ch. 7351, 1917; RGS 3037; §1, ch. 10084, 1925; CGL 4790, 4799; §1, ch. 17085, 1935; §1, ch. 17774, 1937; §1, ch. 26952, 1951.

26.13 Twelfth circuit.—The twelfth circuit is composed of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Manatee and Sarasota counties, and shall have one circuit judge for each 50,000 inhabitants, or major fraction thereof, in said circuit according to the latest official census.

History.—§1, ch. 6198, 1911; §1, ch. 6975, 1915; §2, ch. 7845, 1919; §1, ch. 8476, 1921; §2, ch. 8513, 1921; §2, ch. 8515, 1921; §2, chs. 9360, 9362, 1923; §2, ch. 10082, 1925; §1, ch. 12440, 1927; RGS 3032, 3036; CGL 4791, 4797, 4798, 4806; §1, ch. 17085, 1935; §1, ch. 29986, 1955.

26.14 Thirteenth circuit.—The thirteenth circuit is composed of Hillsborough county, and shall have five circuit judges.

History.—§2, ch. 6975, 1915; RGS 3038; §§1-3, ch. 9161, 1923; CGL 4779, 4792; §1, ch. 17085, 1935; §10, ch. 26484, 1951; §1, ch. 57-734.

26.15 Fourteenth circuit.—The fourteenth circuit is composed of Bay, Calhoun, Gulf, Holmes, Jackson and Washington counties and shall have one circuit judge for each 50,000 inhabitants or major fraction thereof, in said circuit, according to the most recent official census; provided that after beginning a tenure in office no two judges shall reside in the same county.

History.—§1, ch. 6198, 1911; §§1, 2, ch. 6976, 1915; RGS 3035, 3039; §1, ch. 10076, 1925; §1, ch. 12441, 1927; §1, ch. 17085, 1935; CGL 4788, 4793, 4794, 4807; §1, ch. 29946, 1955.

26.16 Fifteenth circuit; census approved.—(1) The fifteenth circuit is composed of Broward and Palm Beach counties. The number of judges of said circuit shall be one for every fifty thousand inhabitants, or mayor fraction thereof, as may be determined pursuant to law.

(2) (a) The official count of the population of the counties of Broward and Palm Beach as made and taken in the year 1955, or subsequent years thereto, whichever census is the last, by the federal bureau of the census, or the commissioner of agriculture of the state, as certified to the respective boards of county commissioners of said counties, is hereby provided for and shall be the official census of the inhabitants of each county.

(b) The aforesaid census of each county shall be combined and the aggregate total population of said counties shall be recognized and is hereby declared to be the official census of the inhabitants of the fifteenth judicial circuit of the state.

(c) The aforesaid census population as to said counties and said fifteenth judicial circuit, shall entitle said fifteenth judicial circuit to the benefits of the provisions of §6, Art. V, of the state constitution and of §26.16, Florida Statutes.

History.—§1, ch. 7351, 1917; RS 3040; §1, ch. 10079, 1925; §1, ch. 12433, 1927; RGS 3040; CGL 4794, 4801; §1, ch. 17085, 1935; §1, ch. 21637, 1943; (2) §§1-3, ch. 29633, 1955.

***26.16 Fifteenth circuit; census approved.**—(1) The fifteenth circuit is composed of Palm Beach county.

History.—§1, ch. 63-470.

*Note.—This amendment to §26.16 shall take effect on December 1, 1964, subject to ratification of an amendment to §6, Art. V, adopted by the legislature of 1963.

26.161 Sixteenth circuit.—The sixteenth judicial circuit is composed of Monroe county and shall have one circuit judge.

History.—§2, ch. 26952, 1951.

***26.162 Seventeenth circuit.**—The seventeenth judicial circuit is composed of Broward county.

The commission heretofore issued to a judge residing in a judicial circuit of which this new judicial circuit was a part, shall remain as the commission of such individual as judge of the new judicial circuit in which he resides. The term of the commission shall in nowise be affected by the creation of such new judicial circuit.

History.—§§2, 5, ch. 63-470.

*Note.—This new section shall take effect on December 1, 1964, subject to ratification of an amendment to §6, Art. V, adopted by the legislature of 1963.

26.17 Distribution of circuit judges.—In circuits of more than one county and only two circuit judges, except the sixth circuit, both judges shall not reside in the same county; in the second circuit one judge shall reside in Leon county, and the other judge in one of the other counties of said circuit; in the seventh circuit one judge shall reside in Volusia county, and the other judge in one of the other counties of said circuit; in the ninth circuit one judge shall reside in either Seminole or Brevard county, one judge in Orange or Osceola county and one judge in Indian River, Okeechobee, St. Lucie or Martin county; in the tenth circuit one judge shall reside in a county other than Polk, and the other judge shall reside in Polk county; in the twelfth circuit one judge shall be appointed from and be an actual bona fide resident of Lee county and shall reside in Lee county during the continuance of his term.

History.—§§1, 2, ch. 17085, 1935; CGL 1936 Supp. 4738(3), 4781; §2, ch. 22813, 1945; §14, ch. 29615, 1955.

26.18 Appointment of circuit judges.—No circuit judge shall ever be appointed to any vacancy or to any term of office except as authorized under the provisions of §6, art. V, of the constitution of Florida.

History.—§6, ch. 17085, 1935; CGL 1936 Supp. 4769(2).

26.19 Abatement of actions because of change of judge, etc.—No civil or criminal cases, suits in equity, actions at law, statutory or otherwise; and no writs, process, pleading, motion, information, presentment, indictment or other proceedings, order, finding, decree, judgment or sentence, shall abate, be quashed, set aside, reversed, qualified, dismissed, defeated, or held to be in error because of the changes in any circuit or circuits, or judge or judges, state attorneys or other prosecuting officers.

History.—§5, ch. 17085, 1935; CGL 1936 Supp. 4738(5).

26.20 Availability of judge for hearings in chambers.—In circuits having more than one circuit judge, at least one of said judges shall be available as nearly as possible at all times to hold and conduct hearings in chambers.

History.—§4, ch. 17085, 1935; CGL 1936 Supp. 4738(4).

26.21 Terms of circuit courts.—At least two regular terms of the circuit court shall be held in each county each year, as hereinafter provided, also such special term or terms that may be necessary from time to time. Regular and special terms of court may be held and be in session, in the same or different counties of any circuit, simultaneously; provided, that separate minutes of each term, whether regular or special, shall be kept by the clerk. The time for holding the terms of the circuit court in the several judicial circuits shall be as set forth in §§26.22-26.36.

History.—§1, ch. 1561, 1866; RS 1373; §1, ch. 5121, 1902; GS 1813; RGS 3041; CGL 4808; §1, ch. 6173, 1911; §§4, 4A, ch. 17085, 1935.

26.22 First judicial circuit.—

SPRING TERMS.

Escambia county, second Monday in June.
Okaloosa county, last Monday in April.
Santa Rosa county, second Monday after the second Monday in May.
Walton county, second Monday in May.

FALL TERMS.

Escambia county, second Monday in October.
Okaloosa county, last Monday in August.
Santa Rosa county, second Monday after the second Monday in September.
Walton county, second Monday in September.

WINTER TERMS.

Escambia county, second Monday in February.
Okaloosa county, second Monday in December.
Santa Rosa county, second Monday after the second Monday in January.
Walton county, second Monday in January.

History.—§1, ch. 5121, 1902; GS 1805; §2, ch. 6173, 1911; §2, ch. 6937, 1915; §§1, 2, ch. 7400, 1917; RGS 3042; §1, ch. 8522, 1921; §1, ch. 9342, 1923; §1, ch. 9364½, 1923; §1, ch. 10078, 1925; CGL 4809.

26.23 Second judicial circuit.—

SPRING TERMS.

Wakulla County, first Monday in March.
Franklin County, third Monday in March.
Gadsden County, first Monday in April.
Jefferson County, fourth Monday in April.
Liberty County, second Monday in May.
Leon County, first Monday in June.

FALL TERMS.

Wakulla County, second Monday in September.
Franklin County, fourth Monday in September.
Gadsden County, second Monday in October.
Jefferson County, first Monday in November.
Liberty County, third Monday in November.
Leon County, first Monday in December.

History.—RS 1367; §2, ch. 5121, 1902; GS 1806; §3, ch. 6173, 1911; §1, ch. 6459, 1913; RGS 3043; §1, ch. 8484, 1921; §1, ch. 9165, 1923; §1, ch. 11885, 1927; CGL 4810; §1, ch. 14695, 1931; §1, ch. 20230, 1941; §7, ch. 22858, 1945; §1, ch. 26988, 1951.

26.24 Third judicial circuit.—

SPRING TERMS.

Lafayette county, second Monday in January.
Dixie county, fourth Monday in January.
Hamilton county, second Monday in February.
Taylor county, first Monday in March.
Madison county, fourth Monday in March.
Suwannee county, third Monday in April.
Columbia county, second Monday in May.

FALL TERMS.

Lafayette county, third Monday in July.
Dixie county, first Monday in August.
Hamilton county, third Monday in August.
Taylor county, second Monday in September.
Madison county, first Monday in October.
Suwannee county, fourth Monday in October.
Columbia county, third Monday in November.

History.—§3, ch. 5121, 1902; GS 1807; §4, ch. 6173, 1911; RGS 3044; §1, ch. 7844, 1919; §22, ch. 8514, 1921; CGL 4811; §1, ch. 13582, 1929; §1, ch. 15912, 1933; §1, ch. 29631, 1955.

26.25 Fourth judicial circuit.—

SPRING TERMS.

Clay county, first Monday in April.
Duval county, first Monday in May.
Nassau county, third Monday in April.

FALL TERMS.

Clay county, first Monday in October.
Duval county, first Monday in November.
Nassau county, third Monday in October.

History.—§4, ch. 5121; GS 1808; §5, ch. 6173, 1911; §§1-4, ch. 7348, 1917; RGS 3045; §1, ch. 9282, 1923; §4, ch. 12437, 1927; CGL 4812. Former section r. §2, ch. 26326, 1949; §1, ch. 26326, 1949.

26.26 Fifth judicial circuit.—

SPRING TERMS.

Sumter county, second Tuesday in January.
Citrus county, first Tuesday in February.
Hernando county, first Tuesday in March.
Marion county, first Tuesday in April.
Lake county, first Tuesday in May.

FALL TERMS.

Sumter county, second Tuesday in July.
Citrus county, first Tuesday in August.
Hernando county, first Tuesday in September.
Marion county, first Tuesday in October.
Lake county, first Tuesday in October.

History.—§5, ch. 5121, 1902; GS 1809; §6, ch. 6173, 1911; §4, ch. 7847, 1919; RGS 3046; §1, ch. 8485, 1921; §4, ch. 9164, 1923; §1, ch. 10077, 1925; §1, ch. 11879, 1927; §1, ch. 12435, 1927; §3, ch. 12436, 1927; CGL 4813, 4824, 4832; §2, ch. 17765, 1937; §1, ch. 19059, 1939; §1, ch. 29632, 1955; §1, ch. 57-814.

26.27 Sixth judicial circuit.—

SPRING TERMS.

Pasco county, first Tuesday in April.
Pinellas county, first Monday in May.

FALL TERMS.

Pasco county, first Tuesday in October.
Pinellas county, first Monday in December.

History.—§6, ch. 5121, 1902; GS 1810; §7, ch. 6173, 1911; §1, ch. 6975, 1915; RGS 3047; §1, ch. 9162, 1923; §1, ch. 9277, 1923; CGL 4814.

26.28 Seventh judicial circuit.—

SPRING TERMS.

Flagler county, third Monday in May.
Putnam county, second Monday in March.
St. Johns county, first Monday in June.
Volusia county, second Monday in April.

FALL TERMS.

Flagler county, second Monday in December.
Putnam county, second Monday in October.
St. Johns county, second Monday in November.
Volusia county, third Monday in October.

History.—§7, ch. 5121, 1902; GS 1811; §8, ch. 6173, 1911; §§1-3, ch. 6462, 1913; §2, ch. 6901, 1915; §§1-5, ch. 7348, 1917; §1, ch. 7846, 1919; §2, ch. 7847, 1919; §2, ch. 8486, 1921; §1, ch. 9282, 1923; §1, ch. 9343, 1923; §2, ch. 10080, 1925; §2, ch. 12437, 1927; §1, ch. 15913, 1933; §1, ch. 17766, 1937; RGS 3045, 3048, 3049; CGL 4815, 4833.

26.29 Eighth judicial circuit.—

SPRING TERMS.

Alachua county, second Monday in April.
Baker county, second Monday in January.
Bradford county, second Monday in May.
Gilchrist county, first Monday in March.
Levy county, second Monday in March.
Union county, fourth Monday in May.

FALL TERMS.

Alachua county, second Monday in October.
Baker county, second Monday in July.
Bradford county, second Monday in November.
Gilchrist county, first Tuesday after the first Monday in September.
Levy county, second Monday in September.
Union county, fourth Monday in November.

History.—§8, ch. 5121, 1902; GS 1812; §9, ch. 6173, 1911; §§1-3, ch. 6462, 1913; §§1, 2, ch. 6901, 1915; §1, chs. 7846, 7945, 1919; RGS 3049; §2, ch. 8486, 1921; §25, ch. 8516, 1921; §1, ch. 9343, 1923; §2, ch. 10080, 1925; §18, ch. 11371, 1925; §2, ch. 12014, 1927; §3, ch. 12438, 1927; §1, ch. 12439, 1927; CGL 4816, 4834; §1, ch. 14497, 1929; §1, ch. 14699, 1931; §§1-3, ch. 15914, 1933; §2, ch. 16849, 1935; §§1, 2, ch. 17767, 1937; §2, ch. 26977, 1951; §1, ch. 57-45.

26.30 Ninth judicial circuit.—The regular spring and fall terms of the circuit court of the ninth judicial circuit of the state shall be held semiannually at the time hereinafter specified, to-wit:

SPRING TERMS.

Brevard county—fourth Tuesday in March
Indian River county—second Tuesday in March
Martin county—second Tuesday in June
Okeechobee county—second Tuesday in April
Orange county—first Monday in April
Osceola county—third Monday in March
Seminole county—third Tuesday in April
St. Lucie county—second Tuesday in February

FALL TERMS.

Brevard county—second Tuesday in October
Indian River county—second Tuesday in October
Martin county—second Tuesday in January
Okeechobee county—second Tuesday in November
Orange county—third Monday in October
Osceola county—third Monday in September
Seminole county—first Tuesday in November
St. Lucie county—second Tuesday in September

History.—§10, ch. 6173, 1911; §19, ch. 6511, 1913; §§2, 4, ch. 7351, 1917; §§1, 4, ch. 7847, 1919; RGS 3048, 3055; §1, ch. 8485, 1921; §1, ch. 8487, 1921; §2, ch. 9164, 1923; §§2, 3, ch. 10079, 1925; §1, ch. 10089, 1925; §22, ch. 10148, 1925; §22, ch. 10180, 1925; §§1, 2, ch. 11880, 1927; §1, ch. 11883, 1927; §1, ch. 11884, 1927; §1, ch. 12432, 1927; §3, ch. 12434, 1927; CGL 4852, 4829, 4831; §1, ch. 17768, 1937; §1, ch. 19080, 1939; §1, ch. 22056, 1943; §1, ch. 24165, 1947; §11, ch. 25035, 1949; §1, ch. 25439, 1949; §1, ch. 57-59.

26.31 Tenth judicial circuit.—

SPRING TERMS.

Hardee county, first Tuesday after the second Monday in February.
Highlands county, first Tuesday after the first Monday in April.
Polk county, first Tuesday after the second Monday in March.

FALL TERMS.

Hardee county, first Tuesday after the second Monday in September.
Highlands county, first Tuesday after the first Monday in November.
Polk county, first Tuesday after the second Monday in October.

History.—§11, ch. 6173, 1911; §1, ch. 6902, 1915; §2, ch. 7349, 1917; §1, ch. 7845, 1919; RGS 3051; §§2, 3, ch. 8476, 1921; §3, ch. 10082, 1925; CGL 4818, 4827; §§1-3, ch. 17769, 1937.

26.32 Eleventh judicial circuit.—

SPRING TERM.

Dade county, second Tuesday in May.

FALL TERM.

Dade county, second Tuesday in November.

History.—§12, ch. 6173, 1911; §1, ch. 6461, 1913; §3, ch. 7351, 1917; RGS 3052; §4, ch. 10084, 1925; RGS 3052; CGL 4819, 4828; §3, ch. 26952, 1951; §1, ch. 26517, 1951.

26.33 Twelfth judicial circuit.—

SPRING TERMS.

Charlotte county—third Monday in January
Collier county—second Monday in January
DeSoto county—second Monday in January
Glades county—fourth Monday in January
Hendry county—third Monday in January
Lee county—second Monday in January
Manatee county—second Monday in January
Sarasota county—third Monday in January

FALL TERMS.

Charlotte county—third Monday in June
Collier county—second Monday in June
DeSoto county—second Monday in June
Glades county—fourth Monday in June
Hendry county—third Monday in June

Lee county—second Monday in June
Manatee county—second Monday in June
Sarasota county—third Monday in June

History.—§11, ch. 6173, 1911; §1, ch. 6902, 1915; §1, ch. 6975, 1915; §2, ch. 7349, 1917; §1, ch. 7844, 1919; RGS 3047, 3051; §§2, 3, ch. 8476, 1921; §20, ch. 8515, 1921; §3, ch. 9162, 1923; §1, ch. 9277, 1923; §22, ch. 9360, 1923; §22, ch. 9362, 1923; §§1, 3, ch. 10082, 1925; §§1, 3, ch. 12440, 1927; CGL 4820, 4826, 4827, 4835; §§1, 2, ch. 17770, 1937; §1, ch. 21817, 1943; §1, ch. 61-211.

26.34 Thirteenth judicial circuit.—

SPRING TERM.

Hillsborough county, first Tuesday in April.

FALL TERM.

Hillsborough county, first Tuesday in October.

History.—§7, ch. 6173, 1911; §3, ch. 6975, 1915; RGS 3053; CGL 4821; §1, ch. 16850, 1935.

26.35 Fourteenth judicial circuit.—

SPRING TERMS.

Bay county—fourth Monday in February
Calhoun county—fourth Monday in April
Gulf county—second Monday in February
Holmes county—second Monday in April
Jackson county—second Monday in May
Washington county—fourth Monday in March

FALL TERMS.

Bay county—fourth Monday in August
Calhoun county—fourth Monday in September
Gulf county—second Monday in August
Holmes county—second Monday in October
Jackson county—second Monday in November
Washington county—fourth Monday in October.

History.—§10, ch. 6173, 1911; §1, ch. 6460, 1913; §4, ch. 6976, 1915; §2, ch. 7350, 1917; §§1, 2, ch. 7843, 1919; §§1, 4, ch. 7847, 1919; §§1, 2, ch. 7946, 1919; RGS 3050, 3054; §1, ch. 8485, 1921; §2, ch. 9164, 1923; §2, ch. 10076, 1925; §3, ch. 10079, 1925; §§1, 2, ch. 10089, 1925; §22, ch. 10132, 1925; §22, ch. 10148, 1925; §22, ch. 10180, 1925; §1, ch. 11360, 1925; §§1, 2, ch. 11880, 1927; §1, ch. 11883, 1927; §1, ch. 12432, 1927; §§3, 4, ch. 12441, 1927; CGL 4817, 4822, 4836; §§1, 2, ch. 17771, 1937; §1, ch. 17768, 1937; §1, ch. 21901, 1943.

26.36 Fifteenth judicial circuit.—

SPRING TERMS.

Broward county—second Tuesday in March
Palm Beach county—first Monday in June

FALL TERMS.

Broward county—second Tuesday in October
Palm Beach county—first Monday in October

WINTER TERM.

Palm Beach county—first Monday in February

History.—§12, ch. 6173, 1911; §1, ch. 6461, 1913; §22, ch. 6934, 1915; §3, ch. 7351, 1917; RGS 3055; §1, ch. 10079, 1925; §1, ch. 11882, 1927; §3, ch. 12433, 1927; CGL 4823, 4830; §1, ch. 25426, 1949; §1, ch. 57-138; §1, ch. 57-1994; §1, ch. 63-435.

***26.36 Fifteenth judicial circuit.**—The terms of court for the fifteenth judicial circuit shall be as follows:

SPRING TERM
Palm Beach County—first Monday in June

FALL TERM
Palm Beach County—first Monday in October

WINTER TERM
Palm Beach County—first Monday in February

History.—§3, ch. 63-470.

***Note.**—This new section shall take effect on December 1, 1964, subject to ratification of an amendment to §6, Art. V, adopted by the legislature of 1963.

26.361 Sixteenth judicial circuit.—

SPRING TERM.

Monroe county, third Monday in April

FALL TERM.

Monroe county, third Monday in October.

History.—§4, ch. 26952, 1951.

***26.362 Seventeenth judicial circuit.**—The terms of court for the seventeenth judicial circuit shall be as follows:

SPRING TERM
Broward County—second Tuesday in March

FALL TERM
Broward County—second Tuesday in October

History.—§4, ch. 63-470.

***Note.**—This new section shall take effect on December 1, 1964, subject to ratification of an amendment to §6, Art. V, adopted by the legislature of 1963.

26.37 Judge to attend first day of term.—Each judge of a circuit court is required, unless prevented by sickness or other providential causes, to attend on the first day of each term of the circuit court required by law to be held, and upon failure to do so, shall be subject to a deduction of one hundred dollars from his salary for each and every such default.

History.—§1, ch. 252, 1849; RS 1377; GS 1817; RGS 3062; CGL 4843.

26.38 Judge to state reason for non-attendance.—Whenever any judge as aforesaid shall make default as aforesaid in consequence of sickness or providential interposition, it shall be the duty of such judge to state the reasons of such failure, in writing, over his official signature, to be handed to the clerk of the court, who shall enter the same at length on the records of the court.

History.—§2, ch. 252, 1849; RS 1378; GS 1818; RGS 3063; CGL 4844.

26.39 Penalty for non-attendance of judge.—Whenever such default shall occur, the clerk of the court (unless such judge shall file his reasons for such default as hereinbefore provided) shall certify the fact, under his official signature and seal, to the comptroller of the state, who shall deduct from the warrants on the treasurer, thereafter to be issued in favor of the judge making such default, the sum of one hundred dollars as aforesaid for every such default.

History.—§3, ch. 252, 1849; RS 1379; GS 1819; RGS 3064; CGL 4845.

26.40 Adjournment of court upon non-attendance.—Whenever any judge shall not attend on the first day of any term, the court shall stand adjourned until twelve o'clock on the second day; and if said judge shall not then attend, the clerk at that time shall continue all causes, and adjourn the court to such time as the judge may appoint, or to the next regular term, by law established.

History.—§3, Nov. 23, 1828; RS 1380; GS 1820; RGS 3065; CGL 4846.

26.41 Circuit judges conservators of the peace.—The judges of the circuit courts, respectively, shall be ex-officio conservators of the peace, and have and exercise, whenever they may deem it fit and proper, all the duties and powers of justices of the peace in criminal cases, except the trial of such cases; and if they see fit, may admit prisoners to bail where it may have been refused by any justice of the peace.

History.—§4, Nov. 19, 1828; RS 1342; GS 1777; RGS 3001; CGL 4735.

26.42 Calling docket at end of term.—The judge, at each term of the court, after other business of the term shall have been disposed of, shall call over all the causes standing upon the dockets, and make such orders and entries therein as shall be found necessary in relation thereto.

History.—§19, Nov. 23, 1828; RS 1343; GS 1778; RGS 3002; CGL 4736.

26.43 Temporary assignment of judges.—When any circuit judge is unable to perform the duties of his office on account of absence, sickness, disqualification or other disability, or because of assignment to special duty, or when necessary for the prompt dispatch of the business of the court, said circuit judge or the presiding judge of such circuit shall so advise the chief justice of the supreme court of this state, who shall assign a justice of the supreme court, a judge of the district court, or judge of another circuit, to perform the duties of such judge; provided, however, that no order of assignment shall be necessary if there be another judge or judges of the circuit available to perform the duties of such judge, or the presiding judge may allocate the business of such judge to any judge or judges of the circuit; provided further, that should any judge be disqualified or recuse himself in any cause, such cause shall be reassigned to another judge in accordance with the local rules or practice of said circuit for assignment of business to the judges thereof.

History.—§2, ch. 1444, 1864; RS 1374; GS 1814; RGS 3057; CGL 4838; §3, ch. 63-572.

26.44 Penalty for failure of judge to obey orders.—The failure of any judge to perform the duty required of him by the governor under §26.43 shall be cause of impeachment of such judge.

History.—§3, ch. 1444, 1864; RS 1375; GS 1815; RGS 3058; CGL 4839.

26.45 Jurisdiction of assigned circuit judge.—When a circuit judge is by executive order assigned to hold one or more terms or parts of terms in a circuit where he does not reside, the judge so assigned shall, for the particular case or cases or class of cases or during the term or part of term named or specified in the assignment, have complete jurisdiction when in the county to which he is assigned as if he were a resident circuit judge; and such jurisdiction shall be additional to and concurrent with and not exclusive of the resident circuit judge's continued jurisdiction over the circuit wherein he resides; and such jurisdiction shall continue when necessary for the complete disposition of cases by motion in due course after verdict or in settling a bill of exceptions presented in due course.

History.—§1, ch. 6900, 1915; RGS 3060; CGL 4841.

26.46 Jurisdiction of resident judge after assignment.—When a circuit judge is assigned to another circuit, none of the circuit judges in such other circuit shall, because of such assignment, be deprived of or affected in his jurisdiction other than to the extent essential so as not to conflict with the authority of the temporarily assigned circuit judge as to the particular case or cases or class of cases, or in presiding at the particular term or part of term named or specified in the assignment.

History.—§2, ch. 6900, 1915; RGS 3061; CGL 4842.

26.47 Extra compensation of circuit judges.—Judges temporarily assigned pursuant to §26.43 shall in carrying out the duties of their orders of assignment be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 1444, 1864; RS 1376; GS 1816; RGS 3059; CGL 4840; §19, ch. 63-400; §4, ch. 63-572.
cf.—§26.52, Travel expenses.

26.49 Executive officer of circuit court.—The sheriff of the county shall be the executive officer of the circuit court of the county.

History.—§14, ch. 4, 1845; RS 1396; GS 1841; RGS 3086; CGL 4869.
cf.—§30.23, Compensation.

26.50 Sheriff to purchase articles for court.—The judge of the circuit court, at each term thereof, shall make a written requisition upon the sheriff attending upon said court for such stationery or other articles as he may deem necessary for the use of the court, and the sheriff shall procure the same, and in no other way shall the sheriff or other officer of the court be authorized to purchase articles at the expense of the state; the said requisition shall be a sufficient voucher to sustain the claim of any person furnishing articles as aforesaid against the state.

History.—§3, ch. 219, 1849; RS 1398; GS 1843; RGS 3088; CGL 4871.

26.51 Compensation of circuit judges.—(1) Beginning July 1, 1951, the salaries of the circuit judges of the state to be paid by the state shall be the sum of ten thousand dollars each per annum and warrants shall be drawn by the comptroller in equal monthly installments. Provided, however, that nothing contained herein shall be so construed as to reduce the salary of any circuit judge in any circuit of the state where the salary of said judges are supplemented by the counties of said circuit.

History.—§1, ch. 6912, 1915; RGS 3003; §1, ch. 8480, 1921; §1, ch. 11335, 1925; §1, ch. 11888, 1927; CGL 4737; §1, ch. 15720, 1931; §1, ch. 15859, 1933; §§1, 2, ch. 21760, 1943; §§1, 2, ch. 22546, 1945; (1) §2, ch. 26818, 1951; (2) r. §7, ch. 29615, 1955.

26.52 Traveling expenses, circuit judges.—Each circuit judge shall be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 6912, 1915; RGS 3004; §2, ch. 8480, 1921; CGL 4738; §19, ch. 63-400.

26.53 Jurisdiction in criminal cases.—The circuit courts have exclusive original jurisdiction in all criminal cases not cognizable by inferior courts and final appellate jurisdiction in all cases of misdemeanor arising in the criminal courts of record, the county courts, the county judge's courts, the courts of the justices of the peace and of all judgments or sentences of any municipal court.

History.—§§2796, 2797 RS 1892; GS 3847; RGS 5941, 5942; CGL 8207, 8208.
cf.—§932.01, Jurisdiction in general.
§932.52 et seq., Appeals from justice of peace and municipal courts.

26.55 Conference of circuit judges; report of attorney general to legislature.—

(1) For the purpose of implementing the provisions of subsection (5), §6, Article V of the constitution of Florida there is created and established the conference of circuit judges of Florida. The conference shall consist of the active and retired circuit judges of the several judicial circuits of the state. The conference shall elect biennially a chairman, whose duty it shall be to call all meetings and to appoint committees to effectuate the purposes of the conference. It is hereby declared to be an official function of each circuit judge to attend the meetings of such conference. It is also an official function of each circuit judge to participate in the activity of each committee to the membership of which such judge may be appointed. Not less than thirty days next before the convening of the regular session of the legislature the chairman of the conference shall report to the attorney general and also to the president of the senate and speaker of the house such recommendations as the conference may have concerning defects in the laws of Florida and such amendments or additional legislation as the conference may deem necessary. It is declared to be the responsibility of the conference to consider and make recommendations concerning:

(a) The betterment of the judicial system of the state and its various parts;

(b) The improvement of rules and methods of procedure and practice in the several courts; and

(c) To report to the attorney general and to the supreme court such findings and recommendations as the conference may have with reference thereto.

(2) The attorney general shall cause to be prepared copies of the findings and recommendations of the conference, and furnish a copy thereof to each member of the legislature upon the convening of each regular session of the legislature.

History.—§1, ch. 59-273.
Note.—Provisions formerly contained in §16.06.
cf.—§6(5), Art. V. Recommendations.

CHAPTER 27

STATE ATTORNEY; PUBLIC DEFENDER

PART I STATE ATTORNEY; POWERS, DUTIES, ETC. (§§27.01-27.33)

PART II PUBLIC DEFENDER; POWERS, DUTIES ETC. (§§27.50-27.58)

PART I

STATE ATTORNEY; POWERS, DUTIES, ETC.

27.01 State attorneys; number, election, terms.—There shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected, and who shall serve for a term of four years.

History.—§1, ch. 5120, 1903; GS 1796; §1, ch. 6197, 1911; §1, ch. 6198, 1911; RGS 3026; CGL 4769; §§1, 5-A, ch. 17085, 1935; §1, ch. 26761, 1951.

27.02 Duties before court.—The state attorney shall appear in the circuit court within his judicial circuit, and prosecute or defend on behalf of the state all suits, applications or motions, civil or criminal, in which the state is a party.

History.—§3, ch. 1661, 1868; RS 1344; GS 1779; RGS 3005; CGL 4739.
cf.—§6, Art. V, Const.

27.03 Duties before grand jury.—Whenever required by the grand jury, the state attorney shall attend them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them; and he shall prepare bills of indictment.

History.—§4, ch. 1661, 1868; RS 1345; GS 1780; RGS 3006; CGL 4740.
cf.—§§905.16, 905.19, 905.22, 932.17.

27.04 Summoning and examining witnesses for state.—The state attorney shall have summoned all witnesses required on behalf of the state; and he is allowed the process of his court to summon witnesses from throughout the state to appear before him in or out of term time at such convenient places in the state attorney's judicial circuit and at such convenient times as may be designated in the summons, to testify before him as to any violation of the criminal law upon which they may be interrogated, and he is empowered to administer oaths to all witnesses summoned to testify by the process of his court or who may voluntarily appear before him to testify as to any violation or violations of the criminal law.

History.—§2, ch. 2094, 1877; RS 1346; GS 1781; §10, ch. 7838, 1919; RGS 3007; CGL 4741; §1, ch. 22634, 1945; §1, ch. 57-290.

27.05 Assisting attorney general.—In addition to the duties now imposed upon the several state attorneys of this state, by statute, they shall assist the attorney general in the preparation and presentation of all appeals to the supreme court, from the circuit court of their respective circuits, of all cases, civil or criminal, in which the state is a party.

History.—§1, ch. 5399, 1905; RGS 3008; CGL 4742.

27.06 Habeas corpus and preliminary trials.—The several state attorneys of this state shall represent the state in all cases of habeas corpus arising in their respective circuits, and he shall also represent the state, either in person or by assistant, in cases of preliminary trials, of persons charged with capital offenses, in all cases where the committing magistrate shall have given him due and timely notice of the time and place of such trial, except that in such counties

where there shall be established a criminal court of record or county court, then such state attorney may not be required to represent such proceedings except in cases where a felony is charged. Notice of the application for the writ of habeas corpus shall be given to the prosecuting attorney of the court wherein the statute under attack is being applied, the criminal law proceeding is being maintained, or the conviction has occurred.

History.—§3, ch. 5399, 1905; RGS 3010; CGL 4746; §4, ch. 29737, 1955.

27.08 Surrender of papers, etc. to successor.—Upon the qualification of the successor of any state attorney, the state attorney going out of office shall deliver to his successor a statement of all cases for the collection of money in favor of the state under his control and the papers connected with the same, and take his receipt for the same, which receipt, when filed with the comptroller, shall release such state attorney from any further liability to the state upon the claims receipted for; and the state attorney receiving the claims shall be liable in all respects for the same, as provided against state attorneys in §17.20.

History.—§4, ch. 1413, 1863; RS 1347; GS 1782; RGS 3018; CGL 4754; §11, ch. 25035, 1949.

27.10 Obligation as to claims, how discharged.—The charges mentioned in §17.20, shall be evidence of indebtedness on the part of any state attorney against whom any charge is made for the full amount of such claim to the state until the same shall be collected and paid into the treasury or sued to insolvency, which fact of insolvency shall be certified by the circuit judge of his circuit, unless said state attorney shall make it fully appear to the comptroller that the failure to collect the same did not result from his neglect.

History.—§2, ch. 1413, 1863; RS 1348; GS 1783; RGS 3013; CGL 4749; §11, ch. 25035, 1949.
cf.—§17.20 To charge state attorneys with claims in their hands.

27.11 Report upon claims committed to him.—The state attorney shall make a report to the comptroller on the first Monday in January and July in each and every year of the condition of all claims placed in his hands or which he may have been required to prosecute and collect, whether the same is in suit or in judgment, or collected, and the probable solvency or insolvency of claims not collected, and shall at the same time pay over all moneys which he may have collected belonging to the state; and the comptroller shall not audit or allow any claim which any state attorney may have against the state for services until he makes the report herein required.

History.—§3, ch. 1413, 1863; RS 1349; GS 1784; RGS 3014; CGL 4750.
cf.—§17.21 State attorney's report necessary prior to compensation.

27.12 Power to compromise.—The state attorney may, with the approval of the comptroller, compromise and settle all judgments, claims and demands in favor of the state in his circuit against defaulting collectors of revenue, sheriffs and other officers, and the sureties on their bonds, on such terms as he may deem equitable and proper.

And any such compromise or settlement may be made with any of the sureties of such defaulting officer as to his individual liability, and a receipt to such surety shall be a discharge of his obligation; but the discharge of one or more of the sureties so compromised and settled with shall not operate as a discharge of the principal or other sureties from the judgment, claim or demand in favor of the state.

History.—§1, ch. 3236, 1881; RS 1351; GS 1786; RGS 3016; CGL 4752.

27.13 Completion of compromise.—The state attorney shall, on agreeing to any compromise or settlement, report the same to the comptroller of the state for his approval; and, on his approving such compromise or settlement, the said state attorney, on a compliance with the terms of such compromise or settlement shall give a receipt to the collector of revenue, sheriff or other officer, or the sureties on their bonds, or to the legal representatives, which receipt shall be a discharge from all judgments, claims or demands of the state against such collector of revenue or other officer, or the sureties on their bonds.

History.—§2, ch. 3236, 1881; RS 1352; GS 1787; RGS 3017; CGL 4753.

27.14 Assigning state attorneys to other circuits.—If any state attorney shall be disqualified to represent the state in any case pending in the circuit court of his circuit, or if for any reason the governor of the state thinks that the ends of justice would be best subserved by an exchange of state attorneys, the governor may require an exchange of circuits or of courts, in any of the counties of this state between such state attorney and any other state attorney of the state, or may assign any state attorney of the state to the discharge of the duties of state attorney in any circuit of the state, at any regular or special term of the circuit court.

History.—§2, ch. 5399, 1905; RGS 3009; CGL 4743.

27.15 State attorneys to assist in other circuits.—The governor of the state may whenever he deems it expedient to do so, require any state attorney in the state to proceed to any place in the state and to assist the state attorney holding office in the circuit where such place is located in the discharge of any of the duties of such state attorney, and any state attorney in this state, who shall be directed by the governor to go and assist any other state attorney in the discharge of his duties, shall immediately proceed to the place designated, and then and there assist the state attorney of the circuit in which such place is located in the performance of his duties.

When any state attorney is required to go beyond the limits of his circuit in which he holds office, to comply with the provisions of this section, all expenses while complying with the directions of the governor as herein provided, shall be borne by the state, and shall be

paid by the warrant of the comptroller drawn on the requisition of such state attorney, which requisition shall have first been approved by the governor; and to carry out the provisions of this section such sum of money as may be required to pay such expenses is hereby appropriated out of any funds in the state treasury not otherwise appropriated.

History.—§§1, 2, ch. 8571, 1921; CGL 4744, 4745; §24, ch. 57-1.

27.16 Appointment of acting state attorney.—Whenever there shall be a vacancy in the office of state attorney in any of the judicial circuits of this state, either by non-appointment or otherwise, or if a state attorney shall not be present at any regular or special term of the court, or being present, shall from any cause be unable to perform the duties of his office, the judge of said circuit court shall have full power to appoint a prosecuting attorney from among the members of the bar, with the consent of the member so appointed, to whom shall be administered an oath to faithfully discharge the duties of state attorney, and who shall have as full and complete authority, and whose acts shall be in all respects as valid as a regularly appointed state attorney. He shall sign all indictments and other documents as "acting state attorney." The power of the said appointee shall cease upon the arrival of the state attorney or the cessation of his inability.

History.—§1, ch. 1726, 1869; §2, ch. 1996, 1874; RS 1354; §1, ch. 4899, 1901; GS 1789; RGS 3019; CGL 4755.

27.17 Compensation of acting state attorney.—The said acting state attorney shall receive for his services the sum of ten dollars per day while in attendance upon the court, which shall be paid out of the appropriation for the payment of state attorneys, and deducted from the salary of the state attorney for whom he acted.

History.—§2, ch. 1726, 1869; §2, ch. 1996, 1874; §2, ch. 4899, 1901; GS 1790; RGS 3020; CGL 4756.

27.18 Assistant to state attorney.—The state attorney, by and with the consent of court, may procure the assistance of any member of the bar when the amount of the state business renders it necessary, either in the grand jury room to advise them upon legal points and framing indictments, or in court to prosecute criminals; but, such assistant shall not be authorized to sign any indictments or administer any oaths, or to perform any other duty except the giving of legal advice, drawing up of indictments, and the prosecuting of criminals in open court. His compensation shall be paid by the state attorney and not by the state.

History.—§1, ch. 2099, 1877; RS 1355; GS 1791; RGS 3021; CGL 4757.

cf.—§§27.222, 27.223 and 27.231 Salaries of state attorneys and assistant state attorneys; exceptions.

27.19 Assistant state attorneys.—In all judicial circuits of Florida composed of seven or less counties, except the sixth judicial circuit, and the seventh judicial circuit, there shall be one assistant state attorney and in all judicial circuits composed of more than seven counties there shall be two assistant state attorneys. The state attorney and assistant state attorney of the first judicial circuit shall not reside in the same county.

History.—§1, ch. 16784, 1935; CGL 1936 Supp. 4759(1); §1, ch. 24167, 1947; §6, ch. 26727, 1951; §1, ch. 26809, 1951; §1, ch. 57-832.

27.20 Apportionment of assistants.—In the circuits composed of two or more counties the state attorney and the assistant state attorney shall not reside in the same county; provided, however:

(1) In the fourth judicial circuit either the state attorney or the assistant state attorney shall reside in Nassau or Clay county;

(2) In the sixth judicial circuit either the state attorney or the assistant state attorney shall reside in Pasco county;

(3) In the seventh judicial circuit no assistant state attorney may reside in the same county as the state attorney or any other assistant state attorney until there is at least a state attorney or an assistant state attorney residing in each county in said circuit;

(4) In the ninth judicial circuit the apportionment of appointments of the state attorney and the two assistant state attorneys shall conform to the limitation of appointment of circuit judges as determined by the required places of residence of appointees in said circuit;

(5) In the fifth judicial circuit the state attorney and one, but not more than one, assistant state attorney may reside in the same county within the fifth judicial circuit;

(6) In the fifteenth judicial circuit two assistant state attorneys, but no more than two, shall reside in a different county within the fifteenth judicial circuit than the county in which the state attorney resides;

(7) In the eighth judicial circuit the state attorney and either or both of his assistants may reside in the same county.

History.—§2, ch. 16784, 1935; CGL 1936 Supp. 4759(2); §1, ch. 21843 and §1, ch. 22132, 1943; (3) §2, ch. 57-832; (5) n. §1, ch. 59-277; (6) n. §1, ch. 61-526; §1, ch. 63-439.

27.21 Assistants, appointments, terms, in circuits of one hundred ninety-two thousand or less population; exception.—

(1) In all judicial circuits having a population of less than 192,000, according to the last state census, the governor by and with the consent of the senate shall appoint assistant state attorneys, except that in the sixth judicial circuit and the seventh judicial circuit the governor by and with the consent of the senate shall appoint two assistant state attorneys, whose terms of office shall be for four years and who are hereby vested with all the powers and shall discharge all the duties of the state attorney, including the right to sign indictments, information and other documents, which he shall sign as assistant state attorney and when the same are so signed they shall have the same force and effect as if signed by the state attorney. The division of work and duties of such assistant state attorneys shall be under and upon the direction of their respective state

attorneys in each judicial circuit, with the consent of the judges of such circuit.

History.—§3, ch. 16784, 1935; CGL 1936 Supp. 4759(3); §§3, 4, ch. 26727, 1951; (1) §3, ch. 57-832; (2) r. §1, ch. 57-831.

27.22 Assistants; appointment, terms, in circuits of more than one hundred ninety-two thousand population.—In all judicial circuits of the state having a total population of more than one hundred ninety-two thousand, according to the last state census, and having four or more circuit judges in said judicial circuit, and wherein one of the counties in said circuit shall have a total population of more than one hundred eighty thousand people, according to the last state census, the governor, by and with the consent of the senate, shall appoint two assistant state attorneys to assist the state attorney of such circuits, and said assistant state attorneys are hereby vested with all the powers and shall discharge all the duties of the state attorney, under his direction. The term of office of said assistant state attorneys shall expire with that of the state attorney. One of such assistant state attorneys shall be a resident of the county having the largest population, and the other assistant state attorney shall be a resident of the county having the next largest population.

History.—§5, ch. 16784, 1935; CGL 1936 Supp. 4759(5); §1, ch. 21695, 1943.

27.222 Salaries, state attorneys and assistant state attorneys.—The salary of the state attorney for each judicial circuit of this state shall be eight thousand four hundred dollars per year, and the salary of each assistant state attorney for each judicial circuit shall be five thousand dollars per year, which salaries shall be paid in equal monthly installments by the state treasurer on warrants issued by the state comptroller; provided, however, that nothing contained in this section shall be construed to reduce the salary of any state attorney or assistant state attorney nor to affect, amend or repeal any law of this state not particularly mentioned in this section providing for salaries of state attorneys or assistant state attorneys in excess of the salaries herein provided.

History.—§1, ch. 29891, 1955.

27.223 Salaries of state attorneys and assistant state attorneys.—

(1) The salary of the state attorney for each judicial circuit of the state shall be ten thousand five hundred dollars per year, and the salary of each assistant state attorney for each judicial circuit shall be six thousand five hundred dollars per year, which salaries shall be paid in equal monthly instalments by the state treasurer on warrants issued by the state comptroller; provided, however, that nothing contained in this section shall be construed to reduce the salary of any state attorney or assistant state attorney nor to affect, amend or repeal any law of this state not particularly mentioned in this section providing for salaries of state attorneys or assistant state attorneys in excess of the salaries herein provided.

(2) The provisions of this section shall apply to the third judicial circuit in lieu of any local laws concerning salaries of states attorney or assistants, passed during the regular session of 1957.

History.—§§1, 1A, ch. 57-376.

27.231 Same; additional exceptions.—

(1) In each judicial circuit of the state, which embraces and includes a county having a population of more than two hundred sixty thousand, according to the last preceding state census, the salary of the state attorney for such judicial circuit shall be ten thousand dollars per annum, payable in equal monthly installments by the state treasurer on warrants issued by the state comptroller.

(2) The salary of each of the assistant state attorneys, for such judicial circuits, shall be seven thousand five hundred dollars per annum, excepting in such judicial circuits having, embracing and including more than one county, the assistant state attorney residing and domiciled in the county having the smallest population shall receive a salary of six thousand dollars per annum. The salary of each assistant state attorney for such judicial circuits shall be payable in equal monthly installments by the state treasurer on warrants to be issued by the state comptroller.

History.—§1, ch. 23640, 1947; §§1, 2, ch. 25225, 1949.

27.24 Fees for conviction.—The state attorney shall receive for a conviction of murder in the first degree, thirty dollars; ten dollars for each conviction in other cases of felony, and five dollars for each conviction in cases of misdemeanor; such fees to be taxed as costs against the person convicted, and to be paid to him by the several sheriffs of the respective counties of such circuit, and said fees shall be paid over by the state attorney to the county depository of the respective counties, to be placed to the fine and forfeiture fund.

History.—Ch. 3000, 1877; RS 1356; §2, ch. 4353, 1895; GS 3023; RGS 3023; CGL 4766.

27.25 Stenographers for state attorneys.—

(1) (a) The state attorney in each judicial circuit of the state is hereby authorized to employ one stenographer to be used in the conduct of his office as state attorney. The salary of each such stenographer is fixed at two hundred fifty dollars per month, to be paid by the state treasurer on warrants issued by the state comptroller; provided, that nothing in this section shall be construed to affect any law of this state not particularly mentioned in this chapter providing for salaries of stenographers for state attorneys in excess of the salaries herein provided.

(b) Any such stenographer shall be subject to call for, and authorized to perform, court reporter service in the circuit where employed, in the event no regular court reporter shall be available, and for performing such service, said stenographer shall be entitled to receive the per diem and fees provided by law for court reporters engaged in like work.

(2) The state attorney in each judicial cir-

cuit of the state composed of only one county is authorized to expend for telephone service, office supplies and equipment, and investigations, in connection with his office, a sum to be determined by him, not exceeding five hundred dollars per annum, which shall be paid by the board of county commissioners of such county out of the general revenue fund of the county.

History.—§§1, 2, ch. 17261, 1935; CGL 1936 Supp. 4759(9); §1, ch. 18147, 1937; §1, ch. 18148, 1937; (3) §1, ch. 22188, 1943; (1), §1, ch. 22905, 1945; (1), (2), §§2, 3, ch. 25243, 1949; (1) §1, ch. 29952, 1955; (1)(a), §1, ch. 57-301.
cf.—§§29.03, 29.04 Compensation of court reporters.

27.271 Per diem, mileage and expenses; state attorneys and assistant state attorneys.—

(1) State attorneys and assistant state attorneys shall receive the per diem and mileage provided by §112.061, for travel on official business within the state, whether such travel be in their home counties or within their judicial circuits or without their judicial circuits, but this section shall not be construed to allow mileage or per diem for travel between their homes and the courthouses of the counties in which they reside or per diem for time spent at the county seats of the counties in which they reside.

(2) State attorneys and assistant state attorneys shall recieve the per diem and mileage provided by §112.061, for travel on official business outside of the state where the governor either authorizes such travel or approves the expense accounts therefor.

(3) State attorneys and assistant state attorneys shall be reimbursed for all necessary expenses incurred in the performance of their official duties for stationery, stamps, the printing of necessary legal forms, and telephone and telegraph service.

(4) The foregoing items of expense shall be paid to the state attorneys and assistant state attorneys entitled thereto as provided in §112.061.

History.—§§1-4, ch. 29951, 1955; (4) §19, ch. 63-400.

27.29 Appointment and salary of additional assistant in fourteenth judicial circuit.—

(1) The governor shall appoint one additional assistant state attorney for the fourteenth judicial circuit. Such additional assistant state attorney shall be appointed from a different county of residence from the state attorney and from a different county of residence of any other assistant state attorney, so that none of the foregoing officers shall reside within the same county of the fourteenth judicial circuit and, hereafter, the state attorney and any assistant state attorneys respectively, shall each separately reside within different counties of the fourteenth judicial circuit.

(2) The additional assistant state attorney provided for by this section is vested with all the powers, duties, and responsibilities of the office of the state attorney, which he shall exercise under the supervision of the state attorney for the fourteenth judicial circuit.

(3) The salary of such assistant state attorney shall be equal to that received by other assistant state attorneys for the fourteenth judicial circuit.

(4) The term of office of the assistant state attorney provided for by this section together with the terms of office of all other assistant state attorneys of the fourteenth judicial circuit shall expire with the term of office of the state attorney for the fourteenth judicial circuit.

(5) Nothing in this section shall be construed to extend or diminish the terms of office of any assistant state attorneys now holding office within the fourteenth judicial circuit.

History.—§§1-5, ch. 57-737.

27.30 Appointment and salary of additional assistant state attorneys in fifth judicial circuit.—

(1) The governor shall appoint two additional assistant state attorneys for the fifth judicial circuit; provided however, that one such assistant state attorney shall be appointed from either Hernando, Citrus or Sumter county and shall reside in either of the said counties; provided further however, that no assistant state attorney appointed from Hernando, Citrus or Sumter county may reside in the same county in which a circuit judge resides.

(2) The additional assistant state attorneys provided for by this section are vested with all the powers, duties, and responsibilities of the office of the state attorney, which each shall exercise under the supervision of the state attorney for the fifth judicial circuit.

(3) The salary of such assistant state attorneys shall be equal to that received by other assistant state attorneys for the fifth judicial circuit.

(4) The term of office of the assistant state attorneys provided for by this section together with the terms of office of all other assistant state attorneys of the fifth judicial circuit shall expire with the term of office of the state attorney for the fifth judicial circuit.

(5) Nothing in this section shall be construed to extend or diminish the terms of office of any assistant state attorneys now holding office within the fifth judicial circuit.

History.—§§1-5, ch. 57-839; §1, ch. 59-276.

27.31 Appointment, salary, term of office of additional assistant, term of other assistant, eighth judicial circuit.—

(1) The governor shall appoint one additional assistant state attorney for the eighth judicial circuit of Florida.

(2) The additional assistant state attorney provided for by this act is vested with all the powers, duties and responsibilities of the office of the state attorney of said eighth judicial circuit, which he shall exercise under the supervision of said state attorney.

(3) The salary of such additional assistant state attorney shall be equal to that received by the other assistant state attorney for the eighth judicial circuit and shall be paid in equal monthly installments by the state treasurer upon warrants issued by the state comptroller.

(4) The term of office of such additional assistant state attorney shall always expire with the term of office of the state attorney for the eighth judicial circuit.

(5) After the expiration of the term of office being served by the assistant state attorney now holding office in said judicial circuit, all future terms of said office shall expire with the terms of office of the state attorney for said judicial circuit.

History.—§§1-5, ch. 57-1996.

27.32 Ninth judicial circuit; additional assistants; terms; salaries.—

(1) The governor shall appoint two additional assistant state attorneys for the ninth judicial circuit of Florida, one of whom shall be for division A and the other for division C, and each of whom shall reside in his respective division.

(2) The additional assistant state attorneys provided for by this act are vested with all the powers, duties and responsibilities of the office of the state attorney of said ninth judicial circuit, which they shall exercise under the supervision of the state attorney.

(3) The salary of the additional assistant state attorneys shall be equal to that received by the other assistant state attorneys for the ninth judicial circuit and shall be paid in equal monthly installments by the state treasurer upon warrants issued by the state comptroller.

(4) The term of office of each additional assistant state attorney shall always expire with the term of office of the state attorney for the ninth judicial circuit.

History.—§1, ch. 63-516.

27.33 Submission of annual budget.—

(1) On or before November 15, biennially, prior to the meeting of the legislature, each state attorney shall submit to the state budget director a written report containing an estimate in itemized form showing the amount needed for operational expenses for the two years beginning July 1, thereafter. Each such estimate shall itemize the expenditures required for the state attorney submitting it and for his assistants, as follows:

(a) Salary of state attorney.
(b) Salaries of assistant state attorneys.
(c) Salaries of stenographers.
(d) Salaries and travel expenses of investigators.
(e) Travel expenses of state attorney and assistant state attorneys.
(f) Office equipment.
(g) Stationery, stamps, telephone and telegraph service, and the printing of necessary legal forms.
(h) Other necessary expenses of state attorney and his assistants.
(i) Reserve for contingencies.

(2) The form of such reports shall be prescribed by the budget director and shall be as nearly uniform as may be.

(3) No such report shall include any amount for any expense which is required by statute to be paid from county funds.

(4) Each state attorney shall forthwith submit to the state budget director a written report containing an estimate in itemized form showing the amount needed for operational expenses for himself and for his assistants for the two years beginning July 1, 1963, which report shall be itemized in the manner required by subsections (1) through (3) for subsequent reports, and the state budget commission is hereby authorized to consider all such reports and make its recommendations with respect thereto to the legislature during its current session.

(5) After this act takes effect as law, all of the provisions of chapter 216, which relate to the budgets and expenses of state officers shall be applicable to state attorneys and their budgets and expenses.

History.—§§1-3, ch. 63-440.

PART II

PUBLIC DEFENDER; POWERS, DUTIES, ETC.

27.50 Public defender; qualifications; election.—There shall be a public defender, who shall be a member of the Florida bar in good standing, for each of the judicial circuits. The public defender shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected and shall serve for a term of four years.

The governor shall make an interim appointment until such general election; provided, however, in those counties of the state having a public defender appointed pursuant to legislation passed prior to July 1, 1963, preference for the initial interim appointment shall be given to such public defenders as the public defender for the circuit embracing such counties.

History.—§1, ch. 63-409.

27.51 Duties of public defender.—

(1) The public defender shall represent any person who is determined to be insolvent as provided in this act, who is under arrest for, or is charged with, a noncapital felony if such person requests it or if the court, on its own motion, so orders and such person does not knowingly, understandingly, and intelligently waive the opportunity to be so represented. The clerk of the court conducting such proceedings

is directed to make such proceedings a matter of record.

(2) The public defender may, with the consent of the trial court, but without compensation by the state, accept the voluntary services of members of the Florida bar in good standing in the defense of an insolvent person.

(3) The public defender shall give priority and preference to his duties under the provisions of this act and may engage in the private practice of law only to the extent that it will not interfere with or prevent performance of his duties as public defender and shall not otherwise engage in the practice of criminal law.

History.—§2, ch. 63-409.

27.52 Determination of insolvency.—

(1) The determination of insolvency of any accused person shall be made by the court and may be done at any stage of the proceedings. The public defender shall be allowed process of the court to summon witnesses to testify before the court concerning the financial ability of any accused person to employ counsel for his own defense.

(2) If the trial court shall determine and adjudge, within one year after the determination of insolvency, that any accused was erroneously or improperly determined to be insolvent the state attorney may, in the name of the state, proceed against such accused for the reasonable value of the services rendered to the accused and including all costs paid by the state or county in his behalf. Any amount recovered shall be deposited in the general revenue fund to the account from which the expenses of the office of public defender are paid.

History.—§3, ch. 63-409.

27.53 Appointment of assistants and other staff; method of payment.—

(1) The public defender may also hire assistant public defenders, investigators, secretaries, and other clerical help as funds available may permit and as otherwise provided by law. Each of the counties of this state is empowered to expend moneys in furtherance of the provisions of this act.

(2) In addition, any member of the bar in good standing may register his or her availability with the public defender of each judicial circuit for acceptance of special assignments without salary to represent insolvent defendants. Such persons shall be listed and referred to as special assistant public defenders and may in the discretion of the trial judge be paid a fee; such fee shall be fixed by the trial judge and shall be paid in the same manner as counsel fees are paid in capital cases or as otherwise provided by law. In addition, defense counsel may be assigned and paid pursuant to any existing or future local act or general act of local application.

History.—§4, ch. 63-409.

27.54 Expenditures for public defender's office.—All payments for the salary of the public defender and the necessary expenses of his office, including salaries of his deputies, assistants and staff, shall be considered as being for a valid public purpose. The salary and necessary travel expenses of the public defender as provided in §112.061, shall be paid from state funds as appropriated by the legislature.

History.—§5, ch. 63-409.

27.55 Compensation of public defender in newly created circuit.—In the event new judicial circuits are created, the budget commission is authorized to release the necessary moneys for the payment of the salary of the public defender in such newly created circuit in an amount not to exceed the annual salary paid to the public defender in the judicial circuit of which the new circuit was formerly a part; provided, further, that if there is an assistant public defender in the pre-existing circuit such position shall be abolished upon the creation of the new judicial circuit.

History.—§2, ch. 63-410.

27.56 Assistance; claim against recipient's estate.—There is hereby created a lien, enforceable as hereinafter provided, upon all the property, both real and personal, of any person who is receiving or has received any assistance from any public defender of the state. Such assistance shall constitute a claim against the applicant and his estate, enforceable according to law in an amount to be determined by the court in which such assistance was rendered. Immediately after such assistance is rendered and upon determination of the value thereof by the court, a statement of claim showing the name and residence of the recipient shall be filed for record in the office of the clerk of the circuit court in the county where the recipient resides and in each county in which such recipient then owns or later acquires any property. Said liens shall be enforced on behalf of the state by the several public defenders, and shall be utilized to reimburse the state to defray the costs of the public defender system. The lien herein created shall be a continuing obligation, irrespective of any statute of limitations.

History.—§3, ch. 63-410.

27.57 Reports.—The public defender shall file with the presiding judge of his judicial circuit and with the attorney general of Florida quarterly reports of the activities of his office.

History.—§6, ch. 63-409.

27.58 Existing laws.—This act shall not repeal but shall be supplementary to any local law or ordinance heretofore providing for a public defender or assigned defense counsel in any county or counties of the state, and the public defender in such county or counties may continue to operate under such prior act or ordinance to the extent determined by the board of county commissioners thereof; provided, however, that the public defender of each judicial circuit of the state shall be the chief administrator of all public defender services within the circuit whether such services are rendered by the state or county public defenders.

History.—§7, ch. 63-409.

CHAPTER 28

CLERK OF THE CIRCUIT COURT

28.01 Bond of circuit court clerks, small counties.—In each county of the state, having a population of one hundred fifty thousand or less according to the last state census, the clerk of the circuit court shall, before being commissioned, give bond in a penalty which shall not be less than one thousand dollars nor more than five thousand dollars to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—§§1, 3, ch. 3724, 1887; RS 1381; GS 1821; RGS 3066; CGL 4847; §1, ch. 20719, 1941.

28.02 Bond of circuit court clerks, large counties.—In each county of the state, having a population in excess of one hundred fifty thousand according to the last state census, the clerk of the circuit court shall, before being commissioned, give bond in a penalty which shall not be less than five thousand dollars nor more than one hundred thousand dollars to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—§§1, 3, ch. 3724, 1887; RS 1381; GS 1821; RGS 3066; CGL 4847; §1, ch. 17754, 1937.

28.03 Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

History.—§9, ch. 3724, 1887; RS 1382; GS 1822; RGS 3067; CGL 4848, 4850(1); §2, ch. 17754, 1937; §1, ch. 20719, 1941.

28.04 Justification of sureties.—Each surety upon such bond shall make affidavit that he is a resident of the county for which the clerk is to be commissioned, and that he has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his bond.

History.—§10, ch. 3724, 1887; RS 1892; GS 1823; RGS 3068; CGL 4849, 4850(1); §3, ch. 17754, 1937; §1, ch. 20719, 1941.

28.05 Surety companies.—The provisions of §§28.01-28.04 as to number of sureties, affidavits of residence and justification of same, shall not apply to solvent surety companies authorized to do business and execute bonds in this state.

History.—§1824, GS 1906; RGS 3069; CGL 4850, 4850(1); §4, ch. 17754, 1937; §1, ch. 20719, 1941.

28.06 Power of clerk to appoint deputies.—The clerk of the circuit court may appoint a deputy or deputies, for whose acts he shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise, excepting the power to appoint a deputy or deputies.

History.—§1, Feb. 12, 1834; §1, ch. 254, 1849; RS 1384; GS 1825; RGS 3070; CGL 4851; am. §1, ch. 21956, 1943.

28.07 Place of office.—The clerk of the circuit court shall keep his office at the county seat of the county; however, in those counties in which the clerk feels such offices to be necessary, he may establish branch offices in other places than the county seat and may provide such offices with a deputy clerk authorized to

issue process; provided, that all permanent official books and records shall be kept at the county seat of the county.

History.—§3, Feb. 12, 1834; RS 1385; GS 1826; RGS 3071; CGL 4852; §1, ch. 57-281.

28.08 Place of residence.—The clerk of the circuit court, or a deputy, shall reside at the county seat or within two miles thereof.

History.—§1, ch. 1851, 1871; RS 1386; GS 1827; RGS 3072; CGL 4853.

28.09 Clerk ad interim.—In the case of vacancy occurring in the office of a clerk of the circuit court by death, resignation or other cause, the judge of that court shall appoint a clerk ad interim, who shall assume all the responsibilities, perform all the duties and receive the same compensation for the time being as if he had been duly appointed to fill the office; and he shall give such bond and security for the faithful performance of his duties as is prescribed by law.

History.—§1, ch. 722, 1855; RS 1393; GS 1838; RGS 3083; CGL 4866.

28.10 Duties of clerk; reports to comptroller.—The clerk of the circuit court shall, within twenty days after the end of each term of the circuit court, forward to the comptroller a full abstract of all fines, fees, costs, forfeitures or other moneys adjudged to or rendered in favor of the state at such term, stating in such report the name of the person against whom the same is adjudged, and in what capacity, on what account, the amount so adjudged, the process or order of court issued to enforce payment, and the name of the officer into whose hands the process is placed, and such remarks as may be necessary to inform the comptroller of the exact amount to be collected and paid over to the state treasurer.

History.—§1, ch. 217, 1849; RS 1387; GS 1828; RGS 3073; CGL 4854.

28.11 To issue process on state judgments.—The clerk of the circuit court shall, immediately after the rendition of any judgment as aforesaid, issue and place in the hands of the sheriff a capias, or other proper process, for the collection of the amount so adjudged or rendered.

If he shall fail to perform the duties imposed upon him as above, he shall be subject to a fine of twenty dollars to be recovered upon motion before the circuit court in the county where he shall reside, after ten days' notice of such motion.

History.—§§2, 3, ch. 217, 1849; RS 1388; GS 1829; RGS 3074; CGL 4855.

28.12 Clerk of the board of county commissioners.—The clerk of the circuit court shall be clerk of the board of county commissioners.

History.—§1836, RS 1892; GS 1836; RGS 3081; CGL 4864.

28.13 To keep papers.—The clerk of the circuit court shall keep all papers filed in his office with the utmost care and security, arranged in appropriate files (endorsing upon each the time when the same was filed), and all the pleadings in such cause shall be attached together with tape or ribbon, and kept distinct from other papers in the cause; and papers of different kinds shall not be mixed up and folded loosely together, but each description of papers shall be kept on file with other papers of the same class; and he shall not permit any attorney, or other person, to take papers once filed out of the office of the clerk without leave of the court, except as is hereinafter provided by law.

History.—§59, Nov. 18, 1828; RS 1389; GS 1830; RGS 3075; CGL 4856.

28.14 Judgments, decrees, orders, etc. prior to circuit courts.—All the records, judgments, orders and decrees of the several circuit courts, in the respective counties, made and entered before July 28th, 1868, shall be taken and held to be the records, judgments, orders and decrees of the circuit courts as established in said counties July 28th, 1868, and may be amended and enforced according to law and the practice of said courts.

History.—§9, ch. 1629, 1869; RS 1402; GS 1853; RGS 3098; CGL 4882.

28.15 Records from superior courts.—The files, rolls and books of record of the superior courts of the several districts of the Territory of Florida remaining in the clerk's offices of the respective counties, so far as the same, by the concurrence of the congress and the legislature of this state, may relate to matters of appropriate state authority and jurisdiction, are placed in the custody and under the control of the circuit courts of this state in the respective counties thereof, where the said superior courts were held and the records kept, and shall be deemed, held and taken to be files, rolls and records of the said circuit courts; and the said circuit courts may lawfully have and exercise such judicial cognizance and power over them as the said courts may lawfully have and exercise over their own files, rolls and records.

History.—§2, ch. 520, 1853; RS 1403; GS 1854; RGS 3099; CGL 4883.

28.16 Certain records from prior county courts.—All the records, judgments and orders in the several county courts, in the respective counties, made and entered prior to May 4th, 1875, where the amount sued upon exceeded the sum of one hundred dollars, shall be held, deemed and taken to be files, rolls and records of the circuit court and the said circuit court may lawfully have and exercise such cognizance and power over them as said courts may lawfully have and exercise over its own files, rolls and records.

History.—§1, ch. 3004, 1877; RS 1404-1406; §1, ch. 4725, 1899; GS 1855-1858; RGS 3100-3103; CGL 4884-4887.

28.17 Verification.—Clerks of the circuit court, judges of probate, and all other officers charged with the duty of recording deeds and other instruments of writing in this state, shall carefully compare the originals of such deeds, mortgages and other instruments of writing with the record of same as made by them on the record books under their charge, in order

that any errors committed in such record may be corrected; and after such comparison and correction of the record the said officer shall endorse upon such original document the words, "Record verified," and sign his name thereto.

History.—§1, ch. 4139, 1893; GS 1834; RGS 3079; CGL 4862.

28.18 **Recording discharges of veterans.**—The clerk of the circuit court shall keep a record book for the exclusive purpose of recording certificates of discharge, reports of separation, and certificates of service of all citizens of this state who have heretofore or may hereafter serve with the military or naval forces of the United States, and all such certificates shall be recorded free of any cost whatsoever to the veteran, the clerk receiving from the board of county commissioners the fee prescribed by law therefor.

History.—§§1, 2, ch. 7918, 1919; CGL 4859, 4860; §1, ch. 21656, 1943; §1, ch. 28205, 1953; §1, ch. 29749, 1955.

28.19 **Fees.**—The fees for recording any instrument of writing entitled to record under the laws of this state shall not be payable to any officer who may have recorded the same until he has verified the record and endorsed the original instrument as aforesaid.

Such records shall always be open to the public, under the supervision of the clerk, for the purpose of inspection thereof, and of making extracts therefrom; but the clerk shall not be required to perform any service in connection with such inspection or making of extracts without payment of the compensation fixed by law.

History.—§2, ch. 4139, 1893; GS 1835; RGS 3080; CGL 4863.

28.20 **Recording federal liens.**—The clerk of the circuit court in each county of this state may file in his office notices of liens for taxes payable to the United States, and certificates discharging, partially discharging or releasing such liens. When such notice is so filed such clerk shall enter the same in an alphabetical federal tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the internal revenue collector's serial number of such notice, the date and hour of filing, and the amount of tax with interest, penalties and costs. The clerk shall file and keep all such original notices so filed in numerical order in a file or files and designated federal tax lien notices. When a certificate of discharge, partial discharge or release of any such tax lien, issued by the collector of internal revenue or other proper officer, is filed in the office of the clerk where the original notice of lien is filed, the clerk shall file such certificate and enter the same with the date of filing in said federal tax lien index on the line where the notice of such lien is entered, and shall permanently attach such certificate to the original notice of such lien.

The purpose of this section is to authorize the filing of notice of liens in accordance with the provisions of the statutes of the United States and any acts or parts of acts amendatory thereto.

History.—§§1, 2, ch. 14757, 1931; CGL 1936 Supp. 894(1).

28.21 **To keep records and dockets.**—The clerk of the circuit court shall keep:

(1) MINUTE BOOKS, in which he shall keep regular and fair minutes of all the proceedings of the circuit court, and of the judge, in term, which shall be signed by the judge before the adjournment of each term;

(2) A PROGRESS DOCKET, in which he shall note the filing by each party to any cause, at common law or in equity, of any appearance, or pleading therein, and of any step taken in the clerk's office in connection with said cause, such noting to be at the time of such filing and of taking such step;

(3) A DEFAULT DOCKET, in which shall be entered in full all defaults and final judgments by default taken in his office;

(4) A JUDGMENT AND EXECUTION DOCKET, in which, respectively, he shall index all judgments rendered, in term time or vacations; and all executions issued thereon, stating therein the names of the parties, the amount of judgment and costs, and the date of rendition of the same, the page of the record upon which it shall have been entered and the date of the issuance of execution.

(5) A CHANCERY ORDER BOOK, in which shall be entered all orders and decrees taken in chancery, including those required to be signed by the judge, exclusively.

(6) A TRIAL DOCKET, which shall be kept in court during all terms thereof while in session, upon which shall be entered, before each term of court: All cases of law triable at that term; all cases of claims to property and alleged illegality of seizures under execution; all cases in equity pending; all writs of error, appeals and certioraris from lower courts pending; all criminal cases; one copy of each trial docket shall be made up for the court and for members of the bar.

(7) A SUBPOENA DOCKET, in which he shall enter the name of each witness in each cause subpoenaed, with the date of the issuance of the subpoena.

(8) A MOTION DOCKET, upon which shall be entered by attorneys all motions to be submitted to the court.

(9) A JUDGMENT ASSIGNMENTS AND SATISFACTION RECORD, in which shall be entered at length all assignments and satisfactions of judgments, decrees or orders rendered or of record in said court. No assignment or satisfaction shall be entered elsewhere than in said book, and any assignment or satisfactions shall, to entitle it to record, be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. He shall enter a note of the satisfaction on the margin of the record of the judgment, decree or order. No satisfaction by an alleged assignee of a judgment shall be entered until an assignment as hereinbefore provided shall have been produced to the clerk and entered.

(10) A LIS PENDENS DOCKET, in which shall be recorded all notices of lis pendens.

(11) A JUDGMENT LIEN RECORD and record of foreign judgments, in which shall be

recorded all certified transcripts of judgments and decrees of the circuit courts and all other courts of this state, and judgments and decrees of the United States district courts held in this state, which may be presented for such record. The date, hour and minute of recording shall be noted at the bottom of such records.

(12) INDEXES, alphabetical, direct and inverse, to all of the foregoing books.

History.—§§9, 59-61, Nov. 18, 1828; §2, Nov. 12, 1834; §1, ch. 4399, 1895; RS 1390; ch. 4399, 1895; GS 1831; §1, ch. 7335, 1917; RGS 3076; CGL 4857, 4865(3); §1, ch. 19270, 1939.

28.22 Record book to be kept.—The circuit court clerk shall be, in the county in which he is clerk, the recorder of deeds and of all other papers not pertaining to the circuit court which he may be required by law to record.

For the purposes of such recording, he shall keep:

(1) A RECORD OF DEEDS, in which he shall record all deeds, and all leases of lands, and all powers of attorney to execute any such instruments, and all agreements relating to conveyance of land which may be in form entitled to record.

(2) A RECORD OF MORTGAGES on real or personal property and powers of attorney, embracing a power to execute mortgages which may be in form entitled to record.

(3) A RECORD OF LIENS, in which he shall record all statutory liens required or permitted to be recorded.

(4) A MORTGAGE AND LIEN ASSIGNMENT BOOK, in which shall be recorded all assignments of mortgages or statutory liens presented to him for record. No assignment shall be entered elsewhere than in such book, and any assignment shall, to entitle it to record, be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. He shall enter a note of assignment upon the margin of the record of the mortgage or lien.

(5) A MORTGAGE LIEN AND SATISFACTION BOOK, in which shall be recorded satisfaction of mortgages and liens. No such satisfaction shall be entered elsewhere than in such book, and any satisfaction, to entitle it to record, shall be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. No satisfaction by an alleged assignee of a mortgage or lien debt shall be entered until an assignment as hereinbefore provided shall have been presented to the clerk and entered. He shall enter a note of satisfaction on the margin of the record of the mortgage or lien.

(6) A REGISTER, in which he shall, at the time of filing any instrument for record, enter the names of the parties to such instrument, with the number thereof, under the respective heads of "Grantor" and "Grantee," the kind of instrument and date and hour of filing.

(7) AN INCORPORATION BOOK, in which he shall record all articles of incorporation required by law.

(8) A RECORD OF ARMY AND NAVY DISCHARGES, in which he shall record all certificates of discharges from the army or navy of the United States.

(9) A FEDERAL TAX LIEN INDEX, in which he shall index all federal tax lien notices filed.

(10) A BILL OF SALE AND CHATTEL MORTGAGE BOOK, in which shall be recorded bills of sale, conditional bills of sale, retain title contracts, chattel mortgages and any other instrument affecting the title to personal property. The boards of county commissioners shall furnish the clerk of the circuit court in their respective counties such books as may be necessary for the recording and indexing of the last above mentioned instruments and the clerk shall properly record all such instruments and index the same, both direct and inverse, in the record books provided as aforesaid.

(11) INDEXES, alphabetical, direct and inverse, to all of the foregoing books.

History.—§1391 RS 1892; GS 1832; §2, ch. 7335, 1917; RGS 3077; CGL 4858; §§1, 2, ch. 16079, 1933; CGL 1936 Supp. §§476(1), 4865(1); §1, ch. 19270, 1939.

cf.—§116.08, County commissioners to furnish books.
§319.15 Title certificate, notice of lien.
§319.27 Notation of certificates.
§701.03 Cancellation of mortgages.

28.221 Same; alternative method.—

(1) In lieu of the separate books now required to be kept by the clerks of the circuit courts for the purpose of recording each kind or class of instrument which they are or hereafter may be required by law to record, said clerks of the circuit courts may record any or all of these instruments in one general series of books to be called "Official Records". The series shall be numbered consecutively beginning with number one.

(2) In lieu of separate indexes for each kind or class of instrument, a general alphabetical index, direct and inverse, to any or all kinds or classes of instruments may be kept by the clerks of the circuit courts.

(3) The recording of instruments in "Official Records" as set forth in subsection (1) imparts notice in like manner and effect as if the instruments were recorded in separate books.

(4) Certified transcripts of judgments and decrees recorded in "Official Records" shall become liens on the real estate of the defendants in the county where the same are recorded in the same manner as if said certified transcripts had been recorded in the judgment lien record.

(5) The recording of all judgments heretofore made under §28.221, is hereby validated and confirmed and they are hereby declared to be liens on the real property of the defendants in the counties where the same are recorded in the same manner as if certified transcripts thereof had been recorded in the judgment lien record.

(6) The clerk of the circuit court may make notations of mortgage assignments and satisfactions on the margin of the record of the mortgage or lien satisfied or assigned.

History.—§§1-4, ch. 28033, 1953; (5) n. §1, ch. 29995, 1955; (6) n. §1, ch. 61-383.

28.23 Two sets of indexes in certain cases.—When furnished by the board of county commissioners, the clerk of the circuit court shall keep two sets of books of index in and for his county; one of which sets shall refer to lands which have been platted, the other to lands which have not been platted. In the direct index the books shall embrace, at least, the following features, and should be so ruled: Grantor, grantee, consideration, instrument, date of filing, where recorded, volume, page, brief abstract of description. Upon the requisition of said clerk, the board of county commissioners, if they deem it advisable, shall furnish the necessary books. Whenever deemed advisable, the board of county commissioners shall have the books indexed to date as is indicated herein, or in a manner similar thereto. In the direct index, the names of the grantors shall be arranged alphabetically. In the inverse index, the names of the grantees shall be indexed alphabetically and made to contain only the names of the grantees and grantors.

History.—§1, ch. 4140, 1893; GS 1833; RGS 3078; CGL 4861.

28.24 Compensation of clerk of the circuit court.—The compensation of the clerk of the circuit court, as clerk or recorder, shall be entirely by fees and, unless otherwise provided, shall be as follows:

Approving bond	$ 1.00
Copying, by other than photographic process, and certifying, any instrument recorded in the public records:	
First page of record or fraction thereof	1.00
Each additional page or fraction thereof	.50
Court attendance by Clerk or deputy clerk, per diem	15.00
Court minute book writing, per page	2.00
Entering other matters required in the records of courts (except as herein otherwise provided):	
For the first 100 words or less	.25
For each additional 100 words or less	.15
Examining, comparing, correcting, verifying, and certifying transcripts of record, in appellate proceedings or otherwise, prepared by attorney for appellant, or someone else other than clerk, per page	.50
Plus, for recopying or remaking any part found incorrect, per page	1.00
Filing any paper required to be filed, not otherwise provided for herein	.25
For certifying copies of any instrument recorded in the public records	.50
For filing any renewal affidavit and reindexing instrument so renewed and making the necessary marginal notation	1.50
Grand jury, calling or swearing each time	1.00
Recording of	.50
Jurors, certifying to state comptroller as to each	.20
Jurors, paying of, and making and reporting payrolls of to state comptroller, per copy	1.00
Making, by photographic process, copies of any instrument recorded in the public records, per page of not more than 14 inches by 8½ inches	1.00
Making marginal notation on the record of satisfaction or assignment of mortgage or judgment, each notation in excess of one	.50
Making transcripts of record, in appellate proceedings or otherwise:	
Original certified transcript, page	1.00
Each uncertified carbon copy, per page	.12½
Moneys, received into registry of court and paying out:	
First $500.00, per cent	1
Each subsequent $100.00, per cent	½
Oath, administering, attesting and sealing, not otherwise provided for herein	.50
Plats, examining, certifying, and recording:	
First page	15.00
Each additional page	10.00
Recording any instrument other than by photographic process	
First page or fraction thereof	2.25
Each additional page or fraction thereof	1.00
Recording by photographic process, for each necessary exposure not more than 14 inches by 8½ inches as follows:	
For instruments consisting of not more than one page or fraction thereof	2.00
For instruments consisting of more than one page:	
First page	2.00
Each additional page	1.00
Recording veteran's certificate of discharge, report of separation, or certificate of service	.50
Reporting deeds to tax assessor, each deed (to be collected from person filing deed for record)	.25
Seal, affixing to any paper other than those herein specifically mentioned	.25
Searches of records, for each year's search	.25
Subpoena for witnesses, not otherwise provided for herein, issuing, docketing, and filing	1.00
Validating certificates, any authorized bonds, each	.25
Venire facias, issuing	1.00
Plus, for each name included	.10
Witnesses, paying of and making and reporting payroll to state comptroller, per copy	1.00
Plus, for certifying to each name	.20
Writing any paper other than herein specifically mentioned, same as for copying; indexing each entry	.15

The word "issuing," when used in this section, shall be construed to include the writing, signing, and sealing of such instrument. The fees set forth above shall be the entire compensation of the clerk for all his services in connection with the documents, instruments, and performance of the duties enumerated above.

History.—§1, ch. 3106, 1879; RS 1394; GS 1839; RGS 3084; §1, ch. 11893, 1927; CGL 4867; §2, ch. 29749, 1955; §1, ch. 63-45.
cf.—Additional fees, §§28.18, 32.12, 36.17, 47.36, 298.08, 298.09, 298.67, 534.03, 534.06, 707.15, 865.09.

28.241 Filing fee for trial and appellate proceedings.—

(1) The party instituting any civil action, suit or proceeding in the circuit court shall pay to the clerk of said court a fee of twelve dollars in all cases where there are not more than five defendants, and an additional fee of twenty-five cents for each defendant in excess of five. An additional fee of five dollars shall be paid by the party seeking each severance that is granted. Fees in excess of those herein fixed may be imposed by special or local law, and such excess, together with not more than twenty per cent of the fees herein fixed, shall be expended as provided by any special or local law, now or hereafter in force, in providing and maintaining facilities, including a law library, for the use of the courts of the county wherein the fees are collected. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties in excess of two shall be paid by the party at whose instance the same is served. That part of the within fixed or allowable fees as is not by local or special law applied to the special purposes herein specified shall constitute the total fees of the clerk of said court for all services performed by him in civil actions, suits or proceedings.

(2) The clerk of the circuit court of any such county in the state shall be paid as fees for all services to be performed by him in any criminal action or proceeding in said court in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of ten dollars for each defendant; provided, however, that in cases involving capital punishment the fee shall be fifteen dollars. Except, in any county where a law creates a law library fund or other special fund this fee may be increased for the purpose.

(3) Upon the institution of any appellate proceeding from any inferior court to the circuit court of any such county, or from the circuit court to the supreme court of the state, there shall be charged and collected by the clerk from the party or parties instituting such appellate proceedings, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of three dollars and fifty cents.

(4) All laws and parts of laws in conflict with the provisions of subsection (1) of this section are hereby repealed.

(5) Nothing in this section shall be construed to include the fees of the clerk for preparing or verifying transcript of record in appellate proceedings, or for furnishing copies of any record or paper, or for receiving into and paying out moneys from the registry of the court, or for recording any certified transcripts of judgments in the judgment lien record as required by §55.10, or fees for holding mortgage foreclosure sales under §702.02(2).

(6) This section shall not apply to any suit or proceeding pending on the day it goes into effect.

History.—§§3-9, ch. 26931, 1951; §§3-5, ch. 29749, §(7)r. §8, ch. 29749, 1955; (1), (4) §§1, 2, ch. 57-322; (1) §1, ch. 63-47; (5) §1, ch. 63-43.

28.25 Compensation as clerk of board of county commissioners.—The compensation of the clerk of the circuit court as clerk of the board of county commissioners shall be fixed by the said board of county commissioners, and upon a basis proportionate to the compensation allowed by law for other services.

History.—§1, ch. 1882, 1872; RS 1395; §1, ch. 4909, 1901; GS 1840; RGS 3085; CGL 4868.

28.26 To keep record of criminals.—The clerk of the circuit court shall provide a book in which the names of all persons convicted of crimes in any of the courts of the county having criminal jurisdiction shall be properly recorded, with a statement of the crime for which conviction was had. Such book shall be properly indexed, with the names recorded therein, for easy reference of all persons concerned.

History.—§1, ch. 3726, 1887; RS 2798; GS 3848; RGS 5943; CGL 8209.

28.27 Clerks and justices to certify names of convicts to circuit clerk.—The clerks of all other courts in the county, having criminal jurisdiction, or the county judge or justice of the peace, shall certify to the clerk of the circuit court the names of all persons convicted of crimes in their respective courts, with a statement of the crime for which conviction was had, within twenty days after the date of conviction.

History.—§2799, RS 1892; GS 3849; RGS 5944; CGL 8210.

28.28 Recording certified copies of petitions in bankruptcy.—A certified copy of a petition, with schedules omitted, commencing a proceeding under the Bankruptcy Act of the United States, or of the decree of adjudication in such proceeding, or of the order approving the bond of the trustee appointed in such proceeding, may be filed, indexed and recorded in the office of the clerk of the circuit court in the same manner as deeds. It shall be the duty of the clerk of the circuit court to file, index under the name of the bankrupt, and record such certified copies filed for record in the same manner as deeds, for which services he shall be entitled to the same fees as are provided by law for filing, indexing and recording deeds.

History.—§1, ch. 20227, 1941.

28.29 Written orders, judgments, or decrees not to be recorded.—

(1) No written order, judgment or decree, except an order of dismissal, a final judgment

or a final decree, in any action at law or suit in equity in any of the several courts of the state, shall be recorded in the minutes of the court or the chancery order book, unless the court, on oral or written motion of any party to the cause, or of its own motion, shall order its recordation. Every order of dismissal, final judgment and final decree shall be recorded.

(2) Orders, judgments and decrees not recorded pursuant to the provisions of this section shall be equally valid as if recorded.

(3) The incorporation in any such written order, judgment or decree, except an order of dismissal, a final judgment or a final decree, or substantially the following words, to wit: "To be recorded," shall be a sufficient compliance with the foregoing adjudication to require such order, judgment or decree to be recorded.

History.—§1-3, ch. 23825, 1947.

28.30 Destruction, photographing, etc., certain records.—

(1) The purpose of §§28.30-28.31 is to make available for the use of the clerks of the circuit court of the several counties of the state sufficient space to enable them to efficiently administer the affairs of office.

(2) The clerk of the circuit court of each county of the state is hereby authorized to destroy all vouchers and cancelled warrants as hereinafter provided.

(3) The clerk of the circuit court of each county of the state is hereby authorized, in his discretion, to destroy all vouchers and cancelled warrants which are over five years old and after audit of his office by the state auditing department has been completed for the period embracing the dates of said instruments.

(4) Each clerk of the circuit court is authorized to photograph, microphotograph or reproduce on film such of the vouchers and cancelled warrants as he, in his discretion, may select, and photographs, microphotographs or other reproductions on film shall be admissible in evidence with the same force and effect as the originals. Duly certified or authenticated reproductions of such photographs, microphotographs or other reproduction on film shall be admitted in evidence equally with the original photographs, microphotographs or other reproductions on film.

History.—§§1-4, ch. 25433, 1949.

28.31 Notice to county commissioners of intent to destroy; approval of board.—The clerk of the circuit court shall notify the board of county commissioners of his county in writing a reasonable time in advance of his intention to destroy such records and if for any reason the board of county commissioners of such county shall request the clerk to withhold destruction of such records the clerk shall refrain until such time as he obtains approval of such board.

History.—§5, ch. 25433, 1949.

28.32 Destruction of certain instruments.—After the expiration of twenty years from the date of the execution of any bond or other instrument held by the clerk of the circuit court or a sheriff of any of the several counties of the state, which said instrument was executed to secure the performance or non-performance of any act or matter and no proceeding of any type is pending involving said instrument any of the several clerks of the circuit courts or sheriffs of the state are hereby authorized, empowered and directed to cancel said instruments and to destroy the same upon making appropriate notation of the destruction and disposition thereof upon any remaining records pertaining thereto.

History.—§1, ch. 25502, 1949.
cf.—Chapter 30, sheriffs.

CHAPTER 29

OFFICIAL COURT REPORTERS

29.01 Official court reporter.—There shall be, whenever the presiding judge or judges shall deem it necessary in any judicial circuit in this state, an official court reporter of testimony and proceedings in trials at law in the circuits. Such reporter shall be an efficient reporter, experienced in reporting judicial proceedings, and shall be appointed by the governor upon the recommendation of the circuit judge or judges of the circuit, provided that where by law such reporter is also the official reporter of any criminal court of record in any county in the circuit such recommendation shall be by the judge or judges of said criminal court as well as by the circuit judge or judges. Such reporter when appointed shall hold office during the pleasure of the governor.

History.—§1, ch. 5122, 1903; GS 1844; RGS 3089; §1, ch. 11976, 1927; CGL 4872.

29.02 Duties of court reporter.—The official court reporter shall, upon the request of the presiding judge, or that of the state attorney or defendant, report the testimony and proceedings, with objections made, the ruling of the court, the exceptions taken, and oral or written charges of the court in the trial of any criminal case in the circuit court, and the testimony in any preliminary hearing when so requested by the circuit judge or state attorney of that circuit, and shall report the testimony and proceedings with objections made, the rulings of the court, the exceptions taken, and oral or written charges of the court in the trial of any civil case in said court upon the demand or request of the attorney for either party.

History.—§2, ch. 5122, 1903; GS 1845; RGS 3090; §2, ch. 11976, 1927; CGL 4873.

29.03 Compensation for services.—The official circuit court reporter shall be entitled to receive for each day or fraction of a day in which such reporter shall be engaged in reporting testimony and proceedings in any civil case not less than ten dollars a day, nor less than ten dollars in any one case, for each day or fraction of a day in which such reporter shall be engaged; and said reporter shall also, when ordered by either party in a criminal case or by the presiding judge report the arguments of counsel arguing the facts to the jury, and shall receive as compensation therefor not less than ten dollars for reporting each such argument. Such reporter shall receive for each typewritten transcript of his notes of the testimony and proceedings taken at the trial of any civil or criminal cause, and furnished on demand of either party to the suit for which the testimony and proceedings are taken, the amount of fifty cents per page for the original and the amount of twenty-five cents per page for each carbon copy thereof; and each such transcript page shall consist of not less than twenty-five lines of double-spaced pica typing. Such reporter shall receive the same fees as provided in this section when rendering similar service in criminal or other courts of this state. There shall be no more official circuit court reporters in each judicial circuit than there are circuit judges therein.

History.—§3, ch. 5122, 1903; GS 1846; RGS 3091; §3, ch. 11976, 1927; CGL 4874; §1, ch. 28275, 1953.

29.04 Salaries, expenses, etc., of official circuit court reporters.—

(1) Each official circuit court reporter shall receive an annual salary of three thousand dollars, payable in twelve equal monthly installments by the state treasurer, upon requisition of such court reporter, provided, however, that in counties having a population of more than two hundred thousand inhabitants according to the latest official census the compensation of such court reporters shall be one thousand eight hundred dollars per annum payable in equal monthly installments. Such reporter, when in attendance upon the trial of any cause in any county of his circuit, shall be reimbursed for traveling expenses as provided in §112.061. Said reporter shall at all times be subject to the call and order of the circuit judge to perform any service required by this chapter. No reporter shall report for more than one judicial circuit except in cases where the reporter of such circuit is incapacitated.

(2) The provisions of this section and §29.03 shall not apply to the court reporter in Volusia county, but shall apply to the constitutional court of record of Escambia county.

History.—§4, ch. 5122, 1903; GS 1847; RGS 3092; §4, ch. 11976, 1927; CGL 4875; §1, ch. 15720, 1931; §1, ch. 15859, 1933; §1, ch. 19218, 1939; CGL 1940 Supp. 4875(1); §1, ch. 22853, 1945; (1) §2, (2) §3, ch. 28275, 1953; (1) §19, ch. 63-400.

Subsection (2) held unconstitutional in state ex rel Lynch v. Gay, 72 So. 2d 274 as to court reporter in Volusia county.

cf.—§27.25(1)(b) Stenographers authorized to perform court reporter service.
§29.07 Special court reporter.

29.05 Transcripts in criminal cases.—Upon the demand of the state attorney, or the presiding judge in any criminal case, or the defendant within the time allowed for taking an appeal and for the purpose of taking an appeal in a criminal case, such reporter shall furnish with reasonable diligence a typewritten transcript of the testimony and proceedings, together with the charges of the court, and shall receive therefor the same fees for such transcript as provided in §29.03, and the costs for same shall be taxed as costs in the case.

History.—§4, ch. 5122, 1903; RGS 3092; §5, ch. 11976, 1927; CGL 4876; §1, ch. 57-223.

29.06 Transcript prima facie evidence.—The report of such official stenographer, when written out in long-hand writing or printed in type and certified to by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings; provided, that his signature to such certificate be duly acknowledged by him before a notary public or some judicial official of this state.

History.—§5, ch. 5122, 1903; GS 1848; RGS 3093; CGL 4877.

29.07 Special court reporter.—In case any official reporter shall not have been appointed in any circuit, or where the official reporter is disqualified or unable to perform his duties, it shall be within the discretion of the judge to appoint a special reporter in any case, civil or criminal, upon demand of any of the parties therefor; said special reporter shall perform the same services and receive the same pay in the same manner as the official reporter.

History.—§1850 GS 1906; RGS 3095; CGL 4879.

29.08 Appointment of deputies.—Official reporters may appoint one or more deputies. Such deputies shall have the power to perform any duty that the official reporter might perform, but such official reporter shall be responsible for the action of the deputy.

History.—§1851 GS 1906; RGS 3096; CGL 4880.

29.09 Women eligible as court reporters.—Women, filling the requirements of this chapter, shall be eligible for appointment by the governor, as official court reporters.

History.—§6, ch. 5122, 1903; GS 1849; RGS 3094; CGL 4878.

29.10 Assistant court reporters, first judicial circuit.—In the first judicial circuit there shall be four assistant court reporters and one official court reporter to be appointed by the governor upon the recommendation of the circuit judge or judges of the county in which there is a vacancy in the office of court reporter or assistant court reporter and when appointed such reporters shall hold office during the pleasure of the governor.

Whenever the official court reporter shall reside in the largest county of the circuit one assistant court reporter shall also reside in such county. Whenever the official court reporter shall not reside in the largest county of the circuit two assistant court reporters shall reside in the largest county of the circuit. The official court reporter when residing in the largest county of the circuit shall be a secretary of the circuit judge or judges residing in said county. The assistant court reporters shall work under the supervision of the official court reporter and the direction of the circuit judge or judges. When the official court reporter shall not reside in the largest county in the circuit the assistant court reporter having the longest period of continuous service in the circuit and residing in the largest county shall be a secretary of such circuit judge or judges residing in said county. Of the court reporters hereinabove provided for, there shall be a court reporter resident in each of the remaining three counties of said circuit who shall also serve as a secretary to the circuit judge or judges residing in each such county. The compensation of the assistant court reporters and the official court reporter shall be the same and shall be paid at the same time and in the same manner.

History.—§1, ch. 29697, 1955; §1, ch. 57-69; §1, ch. 59-71; §1, ch. 63-394.

CHAPTER 30

SHERIFFS

30.01 Bond of sheriffs; small counties.—In each county of the state, having a population of one hundred fifty thousand or less according to the last state census, the sheriff shall, before being commissioned, give bond in a penalty which shall not be less than two hundred dollars nor more than ten thousand dollars, to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—§1, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; §1, ch. 20719, 1941.

30.02 Bond of sheriffs; large counties.—In each county in the state, having a population in excess of one hundred fifty thousand according to the last state census, the sheriff shall, before being commissioned, give bond in a penalty which shall not be less than ten thousand dollars nor more than twenty-five thousand dollars to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—§§1, 4, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; §1, ch. 17754, 1937.

30.03 Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties may bind themselves shall not be less than the penalty of the bond.

History.—§9, ch. 3724, 1887; RS 1238; GS 1667; RGS 2872; CGL 4569; §2, ch. 17754, 1937; §1, ch. 20719, 1941.

30.04 Justification of sureties.—Each surety upon such bond shall make an affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein, unencumbered and not exempt from sale under legal process, to make good his bond.

History.—§10, ch. 3724, 1887; RS 1239; GS 1668; RGS 2873; CGL 4570; §3, ch. 17754, 1937; §1, ch. 20719, 1941.

30.05 Surety companies.—The provisions of §§30.01-30.04, as to number of sureties, affida-

vits of residence and justification of same shall not apply to solvent surety companies authorized to do business and execute bonds in this state.

History.—§4, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; §4, ch. 17754, 1937; §1, ch. 20719, 1941.

30.06 Liability of sureties.—The sureties shall be liable for all fines and amercements imposed upon the principal, or sheriff.

History.—§4, ch. 987, 1859; RS 1240; GS 1669; RGS 2874; CGL 4571; §1, ch. 20719, 1941.

30.07 Deputy sheriffs.—Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.

History.—§4, ch. 1659, 1868; RS 1247; GS 1675; RGS 2881; CGL 4578.

30.08 Name and address of deputy to be filed.—The name and number of the voting precinct of each deputy sheriff, appointed by the sheriff, shall be filed with the board of county commissioners, at their first regular meeting after such appointment, and the same shall become a part of the minutes of said board of county commissioners.

History.—§1, ch. 6209, 1911; RGS 2882; CGL 4579; §1, ch. 22790, 1945.

30.09 Qualification of deputies; special deputies.—

(1) BOND, SURETIES, PERFORMANCE OF SERVICES.—Each deputy sheriff, appointed as aforesaid, shall be required to give bond in the penal sum of one thousand dollars, payable to the governor of Florida and his successors in office, with two or more good and sufficient sureties, to be approved by the board of county commissioners and filed with the clerk of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of his office. No deputy sheriff shall be allowed to perform any services as such deputy until he shall subscribe to the oath now prescribed for sheriffs and until the approval of his bond. The aforesaid sureties shall be liable for all fines and amercements imposed upon their principal.

(2) SURETY COMPANIES.—The requisite of two sureties and justification of same shall not apply where surety is by a solvent surety company authorized to do business in this state.

(3) LIABILITY OF SHERIFF.—The giving of said bond by said deputy shall not in any manner relieve the sheriff of the liability for the acts of his deputies.

(4) EXCEPTIONS.—The provisions of this section, and of §30.08, shall not apply to the appointment of special deputy sheriffs when appointed by the sheriff, under the following circumstances:

(a) On election days, to attend elections;

(b) To perform undercover investigative work;

(c) For specific guard or police duties in connection with public sporting or entertainment events, not to exceed thirty days; or, for watchman or guard duties, when serving in such capacity at specified locations or areas only.

(d) For special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners;

(e) To aid in preserving law and order, or to render necessary assistance in the event of any threatened or actual hurricane, fire, flood, or other natural disasters, or in the event of any major tragedy such as an airplane crash, train or automobile wreck, or similar accident;

(f) To raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy.

(g) The appointment of any such special deputy sheriff shall be recorded in a register maintained for such purpose in the sheriff's office, showing the terms and circumstances of such appointment.

(5) REMOVAL FOR VIOLATION.—A violation of this section shall subject the offender to removal by the governor.

History.—§§1-4, 6, ch. 6478, 1913; RGS 2883; CGL 4580; §2, ch. 22790, 1945; (4) by §1, ch. 57-93.

30.10 Place of office.—The place of office of every sheriff shall be at the county seat of the county.

History.—§3, Feb. 12, 1834; RS 1248; GS 1676; RGS 2884; CGL 4581.

30.11 Place of residence.—The sheriff, or his deputy, shall reside at the county seat or within two miles thereof.

History.—§1, ch. 1851, 1871; RS 1249; GS 1677; RGS 2885; CGL 4582.

30.12 Power to appoint sheriff, etc.—Whenever any sheriff in the state shall fail to attend in person, or by deputy, any term of the circuit court, court of record, civil court of record, county court or criminal court of his county, from sickness, death or other cause, the judge attending said court may appoint a sheriff, who shall assume all the responsibilities, perform all the duties, and receive the same compensation as if he had been duly appointed sheriff, for said term of court and no longer.

History.—§1, ch. 1394, 1863; RS 1243; GS 1672; RGS 2877; CGL 4574; §3, ch. 22790, 1945.
cf.—§47.12, Process; by whom served.

30.13 Disposition of papers, etc., of deceased sheriff.—Whenever any sheriff shall die, his executors, administrators or other representatives shall hand over to his successor in office, taking a receipt for the same, all the papers in the possession of and belonging to such decedent as sheriff; and if in any case, a successor should not be qualified in due time to serve or execute the process of the court, the deputy of such deceased sheriff, if there should be one, or some other person, shall be employed by an order from the judge of the circuit court to receive from the representatives of the decedent and execute all process which remained in his possession at the time of his decease.

History.—§15, Nov. 23, 1828; RS 1253; GS 1681; RGS 2889; CGL 4586.
cf.—§28.32, Destruction of certain instruments.

30.14 Expiration of term.—The sheriff shall, at the expiration of his term of office, turn over to his successor by schedule (taking a receipt for the same) all such writs and processes as shall remain in his hands unexecuted, and his successor in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and his sureties, shall be liable to make such satisfaction by damage and costs to the party aggrieved as he shall sustain by reason of such neglect or refusal; and the succeeding sheriff shall sell and carry into effect any levy made by any predecessor in office in like manner as the former sheriff could have done had he continued therein, and shall make titles to the purchaser for all the property sold under execution or other process and not conveyed by any predecessor.

History.—§16, Nov. 23, 1828; RS 1254; GS 1682; RGS 2890; CGL 4587; §7, ch. 22858, 1945.

30.15 Powers, duties and obligations.—Sheriffs, in their respective counties, in person or by deputy, shall:

(1) Execute all process of the supreme court, circuit courts, courts of record, civil courts of record, county courts, criminal courts and boards of county commissioners, of this state, to be executed in their counties;

(2) Execute such process of the county judges' courts and justice of the peace courts, as may come to their hands to be served in their counties; and,

(3) Execute such other writs, processes, warants and other papers directed to them, as may come to their hands to be executed in their counties.

(4) Attend all terms of the circuit court, court of record, civil court of record, county court, criminal court and county judge's court held in their counties; and,

(5) Attend all meetings, and execute all orders, of the boards of county commissioners of their counties; for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper.

(6) Be conservators of the peace in their counties.

(7) Suppress tumults, riots and unlawful assemblies in their counties with force and strong hand when necessary.

(8) Apprehend, without warrant, any person disturbing the peace, and carry him before the proper judicial officer, that further proceedings may be had against him according to law.

(9) Have authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office; and, whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding one year, or by fine not exceeding five hundred dollars.

(10) Be, ex officio, timber agents for their counties.

(11) Perform such other duties as may be imposed upon them by law.

History.—§14, ch. 4, 1845; §§1, 4, ch. 157, 1848; §9, ch. 1626, 1868; §§1, 2, ch. 1659, 1868; RS 650, 651, 653, 1241, 1242, 2583; GS 991, 992, 994, 1670, 1671, 3503; RGS 1804, 1805, 1807, 2875, 2876, 5388; CGL 2856, 2857, 2859, 4572, 4573, 7527, §4, ch. 22970, 1945.

cf.—Execution of process; §§11.08, 34.07, 47.12, 350.60.
Executive officer; §§26.49, 34.07, 36.11, 37.16.

Note.—Formerly §§144.01, 144.02, 144.03, 30.16.

30.17 To keep an execution docket.—The sheriff shall keep an execution docket, which shall contain a list of all executions, orders and decrees directed to him, in relation to the collection of moneys, and a statement of all moneys credited on such orders, executions and decrees, and when and to whom and by whom paid.

Said docket shall be laid before the court at each term, and be subject to the inspection of all parties interested.

His failure to keep said docket, to lay it before the court or to allow inspection of the same, shall be considered a contempt of court, and subject him to a fine not exceeding one hundred dollars, at the discretion of the court.

History.—§§1-3, ch. 1553, 1866; RS 1245; GS 1673; RGS 2878; CGL 4575.

30.19 Failure to execute process.—Every sheriff or deputy failing to execute any writ or other process, civil or criminal, to him legally issued and directed within his county and make due return thereof, where such process shall be delivered to him in time for execution, shall forfeit one hundred dollars for each neglect, to be paid to the party aggrieved, by the order of the court, upon motion and proof of such delivery, unless such sheriff or deputy can show sufficient cause for such failure or neglect to the court.

History.—§1, ch. 907, 1859; RS 1250; GS 1678; RGS 2886; CGL 4583.

30.20 False return.—For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved, and the other moiety to him who will sue for the same, to be recovered with costs by action of debt; and the said sheriff shall be further liable to an action of the party aggrieved.

History.—§2, ch. 907, 1859; RS 1251; GS 1679; RGS 2887; CGL 4584.

30.21 Failure to pay over money.—If any sheriff shall fail to collect or pay over fines, fees, costs or other moneys adjudged to the state which he shall have been by proper process directed to collect, he shall forfeit his commissions and also be liable to a fine of fifty dollars, to be recovered by motion before the circuit court, after ten days' notice, and his sureties shall also be liable for the amount of such moneys upon his bond as sheriff.

History.—§9, ch. 217, 1849; RS 1252; GS 1680; RGS 2888; CGL 4585.

cf.—§28.10 Duties of clerk; reports to comptroller.

30.22 When sheriff may accept service.—Sheriffs, when sued in their official capacity, may accept service, and when so sued with others may serve their codefendants and receive

the fees allowed by law, except no fees shall be allowed for acceptance of service.

History.—§1, ch. 4411, 1895; GS 1674; RGS 2879; CGL 4576; §6, ch. 22790, 1945.

30.23 Fees of sheriffs and constables; amounts; payment.—The fees to be charged by the sheriffs and constables of the state shall be as follows:

Advertising property for sale under process $2.00
Arrest of prisoner 7.50
Safekeeping and punishment of prisoners (not otherwise provided for) actual and necessary expense, bill to be approved by the judge under whose jurisdiction the case shall come.
Attendance on all courts for each court per day 8.00
Bailiffs, all courts, per day 8.00
Bonds, writing, taking and approving 2.00
Commissions on money collected under process:
Without sale: on first $1,000.00 ..... 2%
$1,000.00 to $3,000.00 ..... 1%
Over $3,000.00 ..... ½ of 1%
Upon actual sale; on first $100.00 ..... 5%
$100.00 to $1,000.00 ..... 2%
$1,000.00 to $3,000.00 ..... 1%
Over $3,000.00 ..... ½ of 1%
He shall after levy be entitled to collect said fees, notwithstanding payment of debt to plaintiff.
On moneys collected for the state as fines, fees, costs or other moneys adjudged to the state the fee shall be 5%
Commitment to jail of prisoner $1.50
Recommitment under order ..... .75
Copy of process, one hundred words or less ..... .25
Every subsequent one hundred words ..... .10
Coroner's inquest, attending 8.00
And mileage, per mile each way ..... .15
Docketing and indexing executions, which the sheriff shall cause to be indexed alphabetically as to each defendant in the execution and cross indexed alphabetically as to each plaintiff for each execution 1.50
For each plaintiff or defendant in excess of two, each ..... .25
Deed of real estate and bill of sale of personal property, executing paid by purchaser 2.00
Fieri facias, or other process, levy 2.00
Fingerprinting, for each prisoner 1.50
Guards, not more per day than 8.00
Habeas corpus, executing 2.00
Investigation of crime when made under the direction of the judge of any court having criminal jurisdiction, or of the state's attorney, county solicitor or other prosecuting officer, per day for sheriff or per day per deputy (to be approved by the court) 6.00
Jurors or talesmen or bystanders, summoned under venire or by order, each ..... .20
Jury, petit calling ..... .20
Mileage, distance to be estimated from courthouse door to point of execution or process, per mile each way ..... .15
Personal property, levying and safekeeping of actual and necessary expense to be allowed, bill to be approved by the judge under whose jurisdiction the case shall come
Release of prisoner ..... .50
Removal of prisoner to or from jail, per mile, each way ..... .15
Removal of prisoner to or from hospital or treatment center for examination or treatment, for one prisoner, per day 3.00
For all in excess of one, per prisoner, per day, at each place 1.00
And mileage, per mile, each way ..... .15
Sale of real or personal property in addition to commissions 2.00
Servants, not more per day than 3.00
State hospital and industrial schools for boys and girls; conveying prisoner to per day for himself 8.00
per day for each guard actually necessary 8.00
and mileage, per mile each way ..... .15
Provided, transportation is not furnished by the state or state institution to which the prisoner is to be conveyed
Stock, taken under process, keeping such allowance as the judge may fix
Subpoena for witness, service on each witness ..... .25
Return on same for each witness ..... .10
Return on warrants ..... .25
Return on writs, executions and other process ..... .25
Venire, grand or petit jury executing 5.00
And mileage, per mile, each way ..... .15
Writing inventories and other papers not otherwise mentioned, first 100 words ..... .25
Every subsequent 100 words ..... .10
Writs in action at law and equity, for execution at each place 2.00

History.—§7, ch. 1981, 1874; §3, ch. 2089, 1877; §3, ch. 3106, 1879; RS 1255; GS 1683; ch. 7886, 1919; RGS 2891; §1, ch. 10091, 1925; CGL 4588; §1, ch. 20943, 1941; §1, ch. 22587, 1945; §1, ch. 26821, 1951.

cf.—§37.20 Constables' fees.
§39.06(9) Transportation cost of children to industrial school.
§955.24 Sheriff's expenses.

30.231 Service of summons and subpoenas.—(1) In all counties of this state the fee charged in civil cases for each service of a summons or writ, except witness subpoenas and executions shall be five dollars. The fee charged in civil cases for the service of witness subpoenas shall be three dollars fifty cents for each witness subpoenaed. The flat fees established herein shall supplant the civil fees for service, mileage, copy and return otherwise provided for in §30.23, and further providing that this act shall not affect the fees now being collected in any county under a special act. Fees for executions shall remain unchanged by this act.

(2) All fees collected under the provisions of this act shall be paid into the fine and forfeiture fund of the county, monthly.

History.—§§1, 2, ch. 63-41.

30.24 Mileage and necessary expenses when required to go out of state.—The sheriffs of the several counties, when required to go beyond the limits of this state to bring back a prisoner charged with any offense, or who has been convicted of any crime in this state, and has escaped, shall charge the sum of seven cents per mile for the actual distance traveled beyond the limits of this state, together with the same mileage for his prisoner, and in addition thereto he shall receive the actual and necessary expense on account of returning the prisoner to the state.

History.—§1, ch. 5407, 1905; §§2, 5, ch. 7886, 1919; RGS 2893; §2, ch. 10091, 1925; CGL 4591; §2, ch. 20943, 1941.

30.25 Compensation for feeding prisoners.—For feeding prisoners the sheriff shall receive one dollar and twenty-five cents per day for each prisoner fed.

History.—§1, ch. 3253, 1881; RS 3031; §9, ch. 4323, 1895; §5, ch. 4389, 1895; §§1, 2, ch. 4527, 1897; GS 976, 4108; §1, ch. 6898, 1915; ch. 7745, 1918; RGS 1787, 6212; §§1, 3, ch. 10091, 1925; CGL 2838, 8544, 1927; §2, ch. 22587, 1945; §2, ch. 26821, 1951.

30.26 Fees for services in lunacy proceedings.—The sheriffs of the several counties of the state shall receive the same fees for services in lunacy proceedings as are prescribed for like services in criminal cases.

History.—§1, ch. 5457, 1905; RGS 2892; CGL 4590.

30.27 Constructive mileage not to be charged.—No sheriff, constable or coroner shall charge constructive mileage. The mileage charged for must be actually traveled by the nearest and most direct route by the public highway.

History.—§2, ch. 3106, 1879; RS 1256; GS 1684; RGS 2894; CGL 4592.
cf.—See also §§939.09, 939.10.

30.28 To deliver prisoners to successor.—Every sheriff at the expiration of his term shall deliver up to his successor the bodies of all persons whom he holds in confinement by legal process, with the precepts, warrants, or causes of such confinement.

History.—§16, Nov. 23, 1829; RS 2801; GS 3850; RGS 5945; CGL 8211.

30.29 Sheriffs may furnish guard service against sabotage, etc.—

(1) The sheriffs of the respective counties of the state be and they are hereby authorized and empowered to furnish adequate guard service to vital war industries if requested to so do by such industries; provided, such industries reimburse said sheriffs the actual cost of such guard service; that the furnishing of guard service by said sheriffs to vital war industries is and shall be an official act of the various sheriffs and said guards shall be deemed to be in the employ of the various sheriffs as an instrumentality of the state.

(2) Such guards shall be regular or special deputy sheriffs, residents of the state, citizens of the United States, and bonded, with no prior criminal record, and shall be always under the control of the respective sheriffs who employ said guards. All orders to said guards shall emanate from the respective sheriffs; provided, however, that industry shall have the right to supervise said guards and make recommendations in connection with the guarding of its property to said sheriffs.

(3) The term "industry," as used in this section, shall be construed to include any person, firm or corporation engaged, directly or indirectly, in the manufacture or furnishing of any materials, equipment, commodities or services which contribute to the prosecution of the war effort.

(4) The said guards employed by the various sheriffs hereunder shall be acceptable to the particular industry involved at all times and shall receive such pay as is agreeable to the sheriff, industry, and the guard to be employed.

(5) All guards heretofore employed by sheriffs and used in connection with the guarding of industry, shall be deemed to have been employed according to the terms and conditions of this section and the employment by the various sheriffs in this connection is hereby ratified, confirmed and held to be employment in their official capacities as an instrumentality of the state.

(6) The powers given to the various sheriffs of the various counties of this state herein shall not be deemed to be limiting the powers of the sheriffs already existing but shall be deemed to be cumulative.

History.—§§1-5, 7, ch. 21798, 1943.

30.291 Closing of public facilities upon threat of violence.—

(1) The sheriff of any county of the state is hereby authorized to temporarily close any public beach, park or other public recreation facility within his jurisdiction when in his discretion conditions exist which present a clear and present or probable threat of violence, danger or disorder, or at any time a disorderly situation exists which in his opinion warrants such action.

(2) The power of the sheriff in exercising the authority conferred herein shall be full, complete and plenary.

(3) Any public recreation facility closed pursuant to the provisions of this section shall be reopened by the sheriff when the conditions upon which such closing was predicated have abated.

History.—§§1, 2, ch. 59-377.

30.30 Writs, process, etc.; duties and liabilities in levying.—

(1) Whenever any writ, issuing out of any court of this state, shall be delivered to a sheriff, commanding him to levy upon property specifically described therein, it shall be his duty to levy upon such property; and, if no property is specifically described, then he shall levy upon any property assessed against the defendant on the current tax rolls of the county or registered in his name under any law of the United States or of the state.

(2) No sheriff shall be liable in damages to anyone whomsoever for making a wrongful levy whenever the same has been made as required under subsection (1).

(3) If the sheriff, in attempting to execute

any writ describing specific property, shall find it in the possession of anyone, other than the defendant, who is claiming the ownership or the right to the possession thereof, the sheriff, in his discretion, may require the plaintiff suing out the writ to furnish a bond, payable to such sheriff, in a sum not exceeding the reasonable value of the described property, as fixed by such sheriff, with sureties satisfactory to him conditioned to hold him harmless against liability for any loss or damage that might be sustained by anyone whomsoever by reason of his levying upon such described property, and indemnifying him for any expense (including reasonable attorney's fees) incurred by reason of any such claim.

(4) If the sheriff, in attempting to execute any writ not describing specific property, shall be requested to levy upon any property other than that described in subsection (1), he may require the plaintiff suing out the writ to furnish a bond upon the terms and conditions prescribed in subsection (3).

(5) Whenever a party suing out any writ shall demand that the sheriff levy upon specific property and anyone, other than the defendant, shall claim the ownership or right of possession thereof, the sheriff, at his option, may file a petition in the court out of which the writ issued and procure a rule to issue to the plaintiff and to the party so claiming the property or the right to possession thereof, to show cause why the levy should or should not be made; provided, that if the issue shall involve the titles or boundaries of real estate, the petition shall be filed in the circuit court. The judge of such court, after due notice to all parties in interest, shall determine whether or not such property is subject to levy under the writ. Any party aggrieved by such ruling, including the sheriff, may appeal therefrom, as from a final decree in a chancery cause, and may have a supersedeas upon such terms and conditions as the judge shall fix. In the event the property is ultimately held to be subject to the writ, the plaintiff's writ shall have priority over any writs levied subsequent to the date upon which the plaintiff's writ was delivered to the sheriff.

(6) No sheriff shall be liable for making any levy pursuant to the specific order of a court of competent jurisdiction.

History.—§§1-6, ch. 22019, 1943.

30.31 Fingerprinting persons charged with crime.—

(1) It is the duty of the sheriffs of the state to fingerprint all persons hereafter charged with or convicted of a felony upon so being charged or convicted and to submit such prints to the federal bureau of investigation and the Florida sheriffs bureau. The sheriffs of the state may fingerprint all persons charged with or convicted of any criminal offense when in their opinion it is necessary for the protection of the public.

(2) The sheriffs of the respective counties are hereby required to furnish a copy of all fingerprints made by them to the federal bureau of investigation.

History.—§§1, 2, ch. 22047, 1943; (2) §10, ch. 26484, 1951; (1) §1, ch. 63-170.

30.32 Duties as timber agent.—The sheriffs, as timber agent, shall inquire diligently into all cases of trespass upon the public lands that come to his knowledge, and make complaint thereof before the court or any officer having jurisdiction, that the parties offending may be arrested and dealt with according to law; and may, in his county, arrest any person trespassing upon public lands, and seize all timber that shall have been cut upon the public land of the state, or removed therefrom, and sell the same at such places within the district as he may deem most convenient, after giving thirty days' notice by one publication in the newspaper published nearest the place of sale, and posting the notice at three public places in the county where the sale is to take place.

History.—§4, ch. 3020, 1877; RS 655; GS 996; RGS 1809; CGL 2861; formerly §144.05 tr. §7, ch. 22790, 1945.

30.33 Proceedings on claim to timber.—When timber shall be seized by a timber agent, under the provisions of §30.32, and any person shall claim the same, and that said timber was not cut upon or removed from the public lands of the state, such claimant may file his petition under oath, in the office of the clerk of the circuit court of the county in which the timber is lying, and, upon motion, the judge of the circuit court shall appoint three proper persons to appraise such timber. On return of such appraisement, if the claimant shall, with one or more sureties, to be approved by the judge, execute a bond to the governor and his successors in office, for the payment of a sum equal to the sum at which the timber was appraised, the judge shall order the timber delivered to the claimant, and the bond shall be lodged with the proper officer of the court. At the next term of the circuit court the evidence shall be heard, and if judgment shall pass in favor of the claimant, the court shall order said bond canceled, but if judgment shall pass against the claimant as to the whole or any part of such timber, and the claimant shall not at once pay into the court the amount of the appraised value of such timber, with the costs, judgment shall be granted upon the bond, on motion, in open court, without further delay.

History.—§6, ch. 3020, 1877; RS 656; GS 997; RGS 1810; CGL 2862; formerly §144.06 tr. §8, ch. 22790, 1945.

30.34 Certificate of reasonable cause for seizure.—When any claim, on account of the seizure of timber, shall be tried, and judgment shall be given for the claimant, if it shall appear to the court that there was a reasonable cause of seizure, the court shall cause a proper certificate of entry to be made thereof, and in such case the agent who made the seizure shall not be liable to action, suit or judgment, on account of such seizure.

History.—§7, ch. 3020, 1877; RS 657; GS 998; RGS 1811; CGL 2863; formerly §144.07 tr. §9, ch. 22790, 1945.

30.35 Compensation as timber agent.—The sheriff, as timber agent for his county, shall receive, as pay for his services, one-fourth of the net proceeds arising from all seizures, and of all net amounts recovered from trespassers reported by him upon the lands of the state or of any fund of the state.

History.—§3, ch. 3020, 1877; RS 654; GS 995; RGS 1808; CGL 2860; formerly §144.04 tr. §10, ch. 22790, 1945.

30.36 Florida sheriffs' bureau.—There is hereby created the Florida sheriffs' bureau. Said bureau shall be constituted by the governor, as chairman, the attorney general, and five sheriffs of the counties of Florida, to be selected by the governor, each for a term of two years, commencing October 1, 1955; except that three of the first five sheriffs designated October 1, 1955, shall serve terms expiring October 1, 1956, at which time new selections for a regular two year term shall be made. Any vacancy on the bureau shall be filled for the remainder of the unexpired term by selection of the governor. Such additional ex officio duty of said sheriffs in serving on said bureau is hereby declared a dual state and county purpose to more effectively cope with law enforcement problems which are primarily intercounty or statewide in scope.

History.—§1, ch. 29842, 1955.

30.37 Same; general powers and duties.—The bureau shall have the power to recommend cooperative policies for the coordination of the law enforcement work of all state and county agencies and officials having law enforcement duties, in seeking to promote cooperation between all state and local law officers, in securing efficient and effective law enforcement, in eliminating duplication of work, and in promoting economy of operation in such agencies.

History.—§2, ch. 29842, 1955.

30.38 Same; executive secretary.—The bureau shall employ an executive secretary, and such other clerical and technical personnel as are required, at salaries to be fixed by the bureau, to perform such duties as the bureau may prescribe.

History.—§3, ch. 29842, 1955.

30.39 Florida sheriffs' bureau investigators; selection and assignment; authority.—The bureau may select and assign investigative personnel from any state law enforcement agency with the consent of the agency concerned, or from any county law enforcement agencies or officials with the consent of the county agency or county official concerned, or may employ its own personnel to assist it in carrying out the purposes of §§30.36-30.44. Such investigative personnel shall be known as Florida sheriffs' bureau investigators. Under appropriate rules and regulations, and under the supervision of the bureau, any of said investigators may, upon request of the sheriff in any county, investigate crime in such county and shall have authority to bear arms.

History.—§4, ch. 29842, 1955.

30.40 Salaries and expenses of personnel.—All salaries and expenses of personnel of the bureau shall be borne by the state or county law enforcement agency from which the person is selected; provided, however, any state or county law enforcement agency or official may in addition provide from its funds so much of the costs and expenses of the bureau as it deems appropriate; provided further, that if appropriations of state funds are made available to the bureau, the same may be used to defray said salaries and expenses.

History.—§5, ch. 29842, 1955.

30.41 Headquarters; criminal analysis laboratory; miscellaneous powers and duties of bureau.—The bureau shall establish headquarters, may operate and maintain a criminal analysis laboratory, and shall require and obtain monthly reports on crime statistics and other necessary data from all sheriffs and other law enforcement officers of the state, and shall engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity. The secretary of state shall furnish the bureau with proper housing for the operations of the bureau.

History.—§6, ch. 29842, 1955.

30.42 Training of peace officers approved by the bureau.—The bureau either by contract or agreement may authorize any state university in Florida or any other organization to provide training for peace officers, which training shall embrace police techniques in detecting crime, apprehending criminals, securing and preserving evidence. All law enforcement officers selected by the various law enforcement agencies, if their selection is approved by the bureau, shall receive such training free with the exception of actual cost of housing and meals.

History.—§7, ch. 29842, 1955.

30.43 Purchase of equipment and supplies; facilities of other state agencies to be available to bureau.—The bureau shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies, and may enter into contracts with other state agencies to make photographs and photostats, to transmit information by teletype, and to perform the services consonant with the purposes of §§30.36-30.44. It may use without charge the technical personnel and equipment of any state agency.

History.—§8, ch. 29842, 1955.

30.44 Construction of law.—The provisions of §§30.36-30.44 shall be deemed an exercise of state police power for the protection of the welfare, health, peace, safety and morals of the people, and shall be liberally construed.

History.—§9, ch. 29842, 1955.

30.45 Sheriff's fee.—The sheriffs of counties in the state having a population in excess of four hundred seventy-five thousand according to the last official state-wide census shall charge a fixed, non-refundable fee to be paid at the time of filing with the sheriff or con-

stables, documents that are to be served or docketed according to the following schedule:

(1) A fee of three dollars and fifty cents for each defendant to be served in all service of civil process other than witness subpoenas and writs of execution.

(2) A fee of one dollar and fifty cents for each witness subpoena filed for service, and for docketing each writ of execution, regardless of the number of persons involved.

History.—§1, ch. 57-72.

30.46 Sheriffs; motor vehicles color combination; badges; simulation prohibited; penalties.—

(1) The color combination of forest green and white is adopted as the official color for use on the motor vehicles and motorcycles used by the various sheriffs of Florida and their deputies.

(2) For purposes of uniformity and in aid of the recognition of their official identity by the public, a badge in the shape of a five-pointed star with a replica of the great seal of Florida with the map of Florida superimposed thereon inscribed in the center is designated as the official badge to be worn by the sheriffs and deputy sheriffs of all counties of the state.

(3) It shall be unlawful for any person other than the sheriffs of Florida and their deputies, to color or cause to be colored any motor vehicle or motorcycle the same or similar color combination prescribed herein; provided, however, that any municipal police department or other law enforcement agency or any private person or concern using the same or similar color combination as of the date of this act shall be permitted to continue to use such colors until such time as new colors are adopted by such agencies, or private person or concern.

(4) It shall be unlawful for any person other than sheriffs and deputy sheriffs to wear an official sheriff's badge as prescribed herein, or to wear a badge or insignia of such similarity to the official sheriff's badge as to be indistinguishable therefrom at a distance of twenty feet; provided, nothing therein shall be construed to prevent members of any military, fraternal, or similar organization or any other law enforcement officer from wearing any insignia officially adopted or worn prior to the effective date of this section.

(5) Violation of any of the provisions of this act shall be a misdemeanor and subject to a fine of not more than $500 or imprisonment in the county jail not to exceed 6 months, or both such fine and imprisonment.

History.—§§1-5, ch. 57-3.

30.48 Salaries.—

(1) On and after October 1, 1957, each sheriff shall receive for the performance of his official duties as sheriff an annual salary, which shall be due and payable on the first day of the month after the month in which it accrued; provided, that compensation for service in office for a part of a calendar month shall be paid in the proportion that the days served bear to the number of days in that month.

(2) The annual salary of each sheriff shall be fixed by the legislature; provided, however, that until otherwise so fixed, the annual salary of each sheriff shall be equal to the compensation earned by such officer or his predecessor in office and payable to him in the year 1958.

History.—§2, ch. 57-368; (2) §1, ch. 59-216.

30.49 Budgets.—

(1) At the time fixed by law for preparation of the county budget, each sheriff shall certify to the board of county commissioners a proposed budget of expenditures for the carrying out of the powers, duties, and operations of his office for the ensuing fiscal year of the county. The fiscal year of the sheriff shall henceforth commence on October 1 and end on September 30 of each year.

(2) The sheriff shall submit with the proposed budget his sworn certificate, stating that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the office for the ensuing year. Each proposed budget shall show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail other than construction, repair, or capital improvement of county buildings during the said fiscal year. The expenditures shall be itemized as follows:

(a) Salary of the sheriff.
(b) Salaries of deputies and assistants.
(c) Expenses, other than salaries.
(d) Equipment.
(e) Investigations.
(f) Reserve for contingencies.

(3) The sheriff shall furnish to the board of county commissioners of the budget commission, if there is a budget commission in the county, all relevant and pertinent information concerning expenditures made in previous years and to the proposed expenditures which said board or commission shall deem necessary except that the board or commission may not require confidential information concerning details of investigations.

The board of county commissioners or the budget commission, as the case may be, may require the sheriff to correct mathematical, mechanical, factual and clerical errors and errors as to form in the proposed budget. No later than August 1 of each year, the said board or commission, as the case may be, may amend, modify, increase or reduce any or all items of expenditure in the proposed budget and, as amended, modified, increased, or reduced, shall approve said budget, giving written notice of their action to the sheriff specifying in such notice the specific items so amended, modified, increased or reduced; the budget shall include the salaries and expenses of the sheriff's office, cost of operation of the county jail, purchase, maintenance and operation of equipment, including patrol cars, radio systems, transporting prisoners, court duties, and all other salaries, expenses, equipment and investigation expenditures of the entire sheriff's office for the previous year. The sheriff, within ten days after receiving written notice of such ac-

tion by the board or commission (either in person or in his office) may file an appeal to the board of appeals of county officers' budgets, which board is hereby created and which shall be composed of the governor, the state comptroller and the attorney general. Such appeal shall be by petition to such board of appeals, which petition shall set forth the budget proposed by the sheriff and the budget as approved by the board of county commissioners or the budget commission, as the case may be, and shall contain the reasons or grounds for the appeal. Such petition shall be filed with the state comptroller and a copy of said petition shall be served upon the board or commission from whose decision appeal is taken by delivering the same to the chairman or president thereof, or to the clerk of the circuit court. The board of county commissioners or the budget commission, as the case may be, shall have five days from delivery of a copy of any such petition, as above, to file with the board of appeals a reply thereto and shall deliver a copy of such reply to the sheriff.

The board of appeals, within thirty days of the filing of the petition, shall consider the petition and may require a hearing thereon. The board of appeals shall by majority vote, within said thirty days, either: approve the action of the board or commission as to each separate item; or approve the budget as proposed by the sheriff as to each separate item; or amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget, as approved, amended, or modified by the board of appeals of county officers' budgets, shall be final. The repeal of §§30.47 and 30.54 and amendments to §§30.48(2) and 30.49(3) by chapter 59-216 shall take effect October 1, 1959, provided that budgeting procedures shall be instituted in accordance with existing law.

(4) The board of county commissioners and the budget commission, if there is a budget commission within the county, shall include in the county budget the items of proposed expenditures as set forth in the budget required by this section to be submitted, after the said budget has been reviewed and approved as provided herein; and the said board or commission, as the case may be, shall include the reserve for contingencies provided herein for each budget of the sheriff in the reserve for contingencies in the budget of the appropriate county fund.

(5) The reserve for contingencies in the budget of a sheriff shall be governed by the same provisions governing the amount and use of the reserve for contingencies appropriated in the county budget, except that the reserve for contingency in the budget of the sheriff shall be appropriated upon written request of the sheriff.

(6) The items placed in the budget of the board of county commissioners pursuant to this law shall be subject to the same provisions of law as the county annual budget; provided, that no amendments may be made to the appropriations for the sheriff's office except as requested by the sheriff.

(7) The proposed expenditures in the budget shall be submitted to the board of county commissioners or budget commission, if there is a budget commission within the county, by July 1 each year, except that for 1957, the budget shall be submitted on or before July 15, and the said budget shall be included by the said board or commission, as the case may be, in the budget of either the general fund or the fine and forfeiture fund, or in part of each.

(8) If in the judgment of the sheriff an emergency should arise by reason of which the sheriff would be unable to perform his duties without the expenditure of larger amounts than those provided in the budget, he may apply to the board of county officers' budget appeals for the appropriation of additional amounts. The sheriff shall at the same time deliver a copy of his application to the board of county commissioners, and to the budget commission if there is a budget commission within the county. The board of county officers' budget appeals shall hold a hearing on the application, after due notice to the sheriff and to the boards, and may grant or deny an increase or increases in the appropriations for the sheriff's offices. If any increase is granted, the board of county commissioners, and the budget commission, if there is a budget commission in the county, shall amend accordingly the budget of the appropriate county fund or funds. Such budget shall be brought into balance, if possible, by application of excess receipts in the said county fund or funds. If such excess receipts are not available in sufficient amount, the county fund budget or budgets shall be brought into balance by adding an item of "Vouchers unpaid" in the appropriate amount to the receipts side of the budget, and provision for paying such vouchers shall be made in the budget of the county fund for the next fiscal year.

History.—§3, ch. 57-368; (3) §§3, 4, ch. 59-216.

30.50 Payment of salaries and expenses.—(1) The sheriff shall requisition and the board of county commissioners shall pay him, at the first meeting in October of each year, and each month thereafter, one-twelfth of the total amount budgeted for the office; provided, that at the first meeting in January of each year, the board shall, at the request of the sheriff, pay one-sixth of the total appropriated, and one-twelfth each month thereafter, which payments shall be not more than the total appropriation. Provided further that any part of the amount budgeted for equipment shall be paid at any time during the year upon the request of the sheriff.

(2) The sheriff shall deposit the county warrant or warrants in his official bank account as provided in §30.51 (3) and draw his own checks thereon in payment of the salaries of himself and his deputies, clerks and em-

ployees and the expenses of his office. All salaries paid shall be supported by payrolls, and all expenses paid shall be supported by approved bills; provided, that the sheriff may draw a check to himself for the expense of an investigation, and may note on the voucher only the information that he may consider proper to divulge.

(3) The sheriff may set up a revolving fund for payment in cash of small items. The revolving fund shall be reimbursed from time to time by payment of the vouchers representing the cash payments.

(4) The sheriff shall keep necessary budget accounts and records, and shall charge all paid bills and payrolls to the proper budget accounts. The reserve for contingencies, or any part thereof, may be transferred to any of the budget appropriations, in the discretion of the sheriff. With the approval of the board of county commissioners, or of the budget commission if there is a budget commission in the county, the budget may be amended as provided for county budgets in §129.06(2).

(5) All expenses incurred in the fiscal year for which the budget is made shall be vouchered and charged to the budget for that year, and to carry out this purpose the books may be held open for thirty days after the end of the year.

(6) All unexpended balances at the end of each fiscal year shall be refunded to the board of county commissioners, and deposited to the county fund or funds from which payment was originally made.

History.—§4, ch. 57-368.

30.51 Fees and commissions.—

(1) No bills shall be rendered to the county for any services, nor shall any fees, commissions, or other remuneration for official services as sheriff be paid by the board of county commissioners of any county to the sheriff of the county except as provided by this section. All fees, commissions and other remuneration provided by law for services other than criminal shall be charged by the said sheriff to other authorities and parties doing business with their offices, and shall be paid over to the county as provided in this section.

(2) The fees authorized, or a deposit sufficient to cover them, shall be collected in advance from the party who requests the service; provided, that services may be performed for any governmental agency or unit without advance payment, and the officer shall bill and collect the fees earned from such agency after the service is performed or when the amount due is determined.

(3) Deposits for fees shall be placed in a depository trust account. The officer who receives the deposit shall keep an account with the depositor, and shall withdraw monthly from the deposits the fees earned and shall remit them to the county fund or funds as provided by this section.

(4) Fees or commissions commingled when received with other official collections may be deposited with such other collections in the trust account or accounts and distributed to the county fund or funds at the time that the other collections, with which they were received, are distributed.

(5) All fees, commissions, or other funds collected by the sheriff for services rendered or performed by his office shall be remitted monthly to the county, in the manner prescribed by the state auditor.

(6) No sheriff shall render to another county a bill for service of process in any criminal matter.

History.—§5, ch. 57-368; (6) n. §1, ch. 59-365.

30.52 Handling of public funds.—The sheriff shall keep public funds in his custody, either in his office in an amount not in excess of the burglary, theft, and robbery insurance provided, the cost of which is hereby authorized as an expense of the office, or in a depository in an amount not in excess of the security provided pursuant to §659.24, and the comptroller's regulations. The title of the depository accounts shall include the word "sheriff" and the name of the county, and withdrawals from the accounts shall be made by checks signed by the duly qualified and acting sheriff of the county, or his designated deputy or agent.

History.—§6, ch. 57-368.

30.53 Independence of constitutional officials.—The independence of the sheriffs shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to §34 Art. XVI, of the constitution of Florida, provided, further that noting contained in §§30.48-30.53 shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

History.—§7, ch. 57-368.

30.55 Liability insurance.—

(1) The sheriffs of the counties are hereby authorized in their discretion to secure and provide for insurance to cover liability for damages arising out of claims for false arrests, false imprisonment, false or improper service of process, or other claims growing out of the performance of the duties of the sheriffs or their deputies, or their employees; and to pay the premiums therefor from the funds appropriated and made available for the necessary and regular expenses of the offices without the necessity of specific appropriation or specification of expenses with respect thereto.

(2) In consideration for the premiums for such insurance, it shall be the part of any insurance contract providing such coverage that the insured shall not be entitled to the benefit defense of government immunity in any suit resulting against the sheriff, his deputies or employees, or in any suit brought against the

insurers to enforce collection under such contract.

History.—§§1, 2, ch. 61-337.

30.56 Release of traffic violator on recognizance or bond; penalty for failure to appear.—In all cases of arrest for traffic violations, by a sheriff or a deputy sheriff the person arrested may in the discretion of such officer be released upon his own recognizance or upon bond provided said officer shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested. Any person so arrested and released on his own recognizance by an officer and given a written summons to appear before the proper tribunal of such county to answer the charge for which he has been arrested, and who shall fail to appear or respond to such summons shall upon conviction therefor be deemed guilty of a misdemeanor.

History.—§1, ch. 59-97.
Note.—Formerly §146.08.

CHAPTER 31

CIRCUIT COURT COMMISSIONERS

31.01 Court commissioners; appointment.—Upon the application of two-thirds of the practicing attorneys of any county within this state, to the judge of the circuit court in and for the judicial circuit in which the county represented by said attorneys is located, the judge of said court shall immediately appoint some suitable practicing attorney in said county as court commissioner, whose duties are now and may hereafter be prescribed by law. The appointment of such court commissioner shall be made in writing, signed by the judge, and recorded in the book of minutes of the court in the county where the commissioner resides, and the commissioner must file his oath of office with the clerk of the circuit court of said county.

History.—§1565 RS 1892; §1, ch. 4908, 1901; GS 2028; RGS 3303; CGL 5130.
cf.—§6, Art. V, Const.

31.02 Proceedings.—Proceedings before a court commissioner shall be in like manner and under the same rules and regulations as are provided by law for such proceedings before a circuit judge. After rendering his decision in writing in any proceeding before him, he shall immediately file all the papers in the case in the clerk's office.

History.—§1566 RS 1892; GS 2029; RGS 3304; CGL 5131.

31.03 Effect and record of orders.—The orders of court commissioners shall be of like force as if allowed by the judge and the same may, on motion, be confirmed, qualified, or set aside by the circuit judge, of which motion such notice must be given as the judge may deem sufficient.

History.—§1567 RS 1892; GS 2030; RGS 3305; CGL 5132.

31.04 Power to administer oaths.—Court commissioners may administer oaths in causes before them.

History.—§1568 RS 1892; GS 2031; RGS 3306; CGL 5133.

31.05 Compensation.—The fees and compensation of court commissioners shall be as follows: For attendance upon hearing (each) case, each day $5.00
Habeas corpus, issuing writ of 1.00
Injunction (examining bill and), allowing or disallowing 5.00
Testimony, taking in cases before him.
Writing, and filing papers, or making copies, like fees as are allowed other officers for like services.

History.—§1569 RS 1892; GS 2032; RGS 3307; CGL 5134.

31.06 Costs.—Costs in injunction cases shall be paid by the party applying for the writ and shall be taxed in the bill of costs.

Costs in cases of habeas corpus shall be paid by the party applying for writ in case he shall not be discharged from the arrest and imprisonment complained of, and the clerk of the circuit court shall, upon demand of the commissioner issue execution therefor; but if the party shall prove to the satisfaction of the court commissioner that he has not property or means sufficient to pay said costs, said commissioner shall so certify, and such costs shall be paid by the county in which said proceedings are had. If said petitioner shall be discharged, the costs shall be paid by said county.

History.—§1570 RS 1892; GS 2033; RGS 3308; CGL 5135.

CHAPTER 32

CRIMINAL COURT OF RECORD

32.01 Criminal courts of record established; jurisdiction; seal; process; rules of procedure, etc.—

(1) There is established in Broward, Dade, Duval, Hillsborough, Monroe, Orange, Palm Beach and Polk counties, Florida, a criminal court of record, as defined in §§1-9, of Art. V, of the state constitution.

(2) The said courts shall have jurisdiction of all criminal cases not capital which shall arise, and which have heretofore arisen and have not been finally determined, in the counties wherein such courts are established.

(3) The said courts shall be courts of record with a seal to be furnished by the board of county commissioners of the counties wherein such courts are established, which seal shall be designated as "The Criminal Court of Record of _____County, Florida."

(4) The same rules of procedure and process which obtain in the trials of criminal cases in the circuit courts shall obtain in the criminal courts of record, except where otherwise expressly provided by law.

(5) The said courts shall have and exercise the same power in issuing warrants, attachments, summons and other process as may be exercised by the circuit courts in criminal cases.

(6) All process shall run throughout the state and may be executed in the same manner and by the same officers as process of the circuit courts in criminal cases.

History.—§1, ch. 3731, 1887; RS 2815; GS 3865; RGS 5960; CGL 8226; §1, ch. 24107, 1947; §1, ch. 25066, 1949.
cf.—§§1-9, Art. V, Const.
§932.01, Jurisdiction in criminal cases.

32.02 Establishment of court; appointment of officers; transfer of pending cases.—

(1) When there exists a vacancy in the office of judge, clerk, county solicitor or other officer of a criminal court of record, the governor may fill such vacancy by appointment and the person so appointed shall hold office until the first Tuesday after the first Monday in January following the next general election. The establishment of a criminal court of record in any county between general elections shall be deemed to create such vacancies.

(2) All cases pending in other courts of the county wherein a criminal court of record may hereafter be established, of which the said criminal court of record shall be given jurisdiction, shall be transferred by the clerks of such courts or by the judge thereof if there be no clerk, to the clerk of the criminal court of record, transmitting at the same time to said clerk all papers and records connected with such cases, or certified copies thereof, and the county solicitor shall proceed with the prosecution of said cases in accordance with law.

History.—§2816 RS 1892; GS 3866; RGS 5961; CGL 8227; §1, ch. 24107, 1947.

32.03 Terms of criminal courts of record; special terms; time for holding, etc.—

(1) There shall be six regular terms of the criminal court of record in each of the above counties in each year.

(2) The judge of the criminal court of record shall have power to call such special terms of such court as the business of the court may require.

(3) When a special term of court is called, a special venire summoning jurors to serve at such special term may be issued.

(4) The time for holding the regular terms of the criminal courts of record in the above counties shall be as follows:

(a) In Broward county:
First Monday in January
First Monday in March
First Monday in May
First Monday in July
First Monday in September

First Monday in November

(b) In Dade county:
Second Tuesday in February
Second Tuesday in April
Second Tuesday in June
Second Tuesday in August
Second Tuesday in October
Second Tuesday in December

(c) In Duval county:
Fourth Tuesday in February
Fourth Tuesday in April
Fourth Tuesday in June
Fourth Tuesday in August
Fourth Tuesday in October
Fourth Tuesday in December

(d) In Hillsborough county:
First Monday in February
First Monday in April
Second Monday in June
First Monday in August
First Monday in October
Fourth Monday in November

(e) In Monroe county:
Second Monday in January
Second Monday in March
Second Monday in May
Second Monday in July
Second Monday in September
Second Monday in November

(f) In Orange county:
Second Monday in January
Second Monday in March
Second Monday in May
Second Monday in July
Second Monday in September
Second Monday in November

(g) In Palm Beach county:
First Monday in January
First Monday in March
First Monday in May
First Monday in July
First Monday in September
First Monday in November

(h) In Polk county:
Third Monday in January
Fourth Monday in March
Third Monday in May
Third Monday in July
Third Monday in September
Third Monday in November

History.—§2817 RS 1892; GS 3867; RGS 5962; CGL 8228; §1, ch. 24107, 1947; §2, ch. 25066, 1949; (4)(f) §1, ch. 57-46.

32.04 Place of holding.—The terms shall be held in the circuit courtroom of the courthouse of the county, unless the circuit court be in actual session at the time of holding of said criminal court of record. Provided, however, that the board of county commissioners may provide or appoint some other place for the holding of said court, which need not be in the county courthouse.

History.—§4, ch. 3731, 1887; RS 2818; GS 3868; RGS 5963; CGL 8229; §1, ch. 24107, 1947.

32.05 Judge; qualifications, powers, duties, etc.; term of office.—

(1) There shall be one judge for each criminal court of record, who shall be elected by the qualified electors of their respective counties for terms of four years each, as provided in and by §9, Art. V, of the state constitution.

(2) The said judge shall not be younger than twenty-five years of age, and shall have been an attorney in legal practice at the bar of this state for not less than one year at the time of his election.

(3) The said judge shall have the same powers, duties and obligations in the administration of the criminal laws as are exercised by, and imposed upon, the judges of the circuit courts.

(4) Special and local laws, and laws of limited application, prohibiting or limiting the right of the judge of a criminal court of record to practice law, shall not be repealed or in any way affected by the revision of this chapter.

History.—§7, ch. 3731, 1887; RS 2819; GS 3869; RGS 5964; CGL 8230; §1, ch. 24107, 1947.

32.07 Salaries of judges.—

(1) Salaries of the judges of the criminal courts of record in this state shall be as follows:

(a) In counties having a population of not less than:

1. Two hundred sixty thousand according to the last official census, eight thousand five hundred dollars per annum. Judges of the criminal courts of record whose salaries are affected by this subparagraph shall not be permitted to practice law.

2. One hundred twenty thousand nor more than one hundred fifty thousand according to the last official census, nine thousand dollars per annum.

(b) In counties having a population of one hundred seventy-five thousand to two hundred sixty thousand: six thousand dollars per annum.

(c) In counties having a population of one hundred thousand to one hundred seventy-five thousand: five thousand dollars per annum.

(d) In counties having a population of fifty thousand to one hundred thousand: four thousand two hundred dollars per annum.

(e) In counties having a population of less than fifty thousand: three thousand six hundred dollars per annum.

(f) The salary of the judge of the criminal court of record for Monroe county, Florida, shall be five hundred dollars per month.

(2) The above populations to be determined by the last preceding state or federal census and all salaries above mentioned to be paid in equal monthly installments by the county.

History.—§8, ch. 3731, 1887; RS 2820; GS 3870; §§2, 4, ch. 6912, 1915; RGS 5965; §1, ch. 8493, 1921; §1 ch. 9279, 1923; §1, ch. 10075, 1925; CGL 8231, 8232; §1, ch. 14746, 1931; §1, ch. 16054, 1933; §1, ch. 17080, 1935; §1, ch. 17081, 1935; §1, ch. 17082, 1935; CGL 1936 Supp. 8232(2), 8232(4)-8232(6); (1), (2) §1, ch. 24107; (3) §1, ch. 23703; (4) §1, ch. 23710; (5) §§1, 2, ch. 23689, 1947; §1, ch. 25306, 1949; (1)(g), §1, ch. 26535, 1951; §10, ch. 27991, 1953; (1)(a) §1, ch. 29994, 1955; (1)(a) §1, ch. 31408, 1956; (1)(f) r. §1, ch. 61-212.

32.08 To be open for voluntary pleas of guilty.—All county courts and criminal courts of record in this state, in addition to their regular trial terms as now provided by law, shall, at all times, Sundays excepted, be considered open for the reception of voluntary pleas of guilty in all criminal cases pending therein on information or indictments and for the rendition of

judgments and passing of sentences, the same to be entered of record by the respective clerks of said courts as directed by said judges. And the judges of said courts, at all times, Sundays excepted, may receive such pleas of guilty, when voluntarily offered by the accused, and thereupon at once pronounce judgment of conviction and sentence upon such pleas and direct the entry of the same of record by the clerks of said courts.

History.—§2, ch. 4398, 1895; GS 3872; RGS 5967; CGL 8234; §1, ch. 24107, 1947.

32.09 Bail bonds.—The judges of the several criminal courts of record of this state shall enter upon the back of all capiases issued by the clerk of said court under his signature, when there has been no arrest made, the amount of the bond to be taken and approved.

History.—§1, ch. 4921, 1901; GS 3873; RGS 5968; CGL 8235; §1, ch. 24107, 1947.

32.10 Clerk; election, term of office; filling vacancy.—

(1) There shall be a clerk for each criminal court of record, who shall be elected by the qualified electors of their respective counties for terms of four years each.

(2) The judge of the criminal court of record shall have the same power and authority to appoint a clerk ad interim as does the circuit judge under the provisions of §28.09.

History.—§17, ch. 3731, 1887; RS 2822; GS 3874; RGS 5969; CGL 8236; §1, ch. 24107, 1947.

32.11 Duties of clerks.—The clerk shall be custodian of the dockets, books and papers of the court, and shall have the same powers, duties and obligations that are exercised by and imposed on the clerks of the circuit courts.

History.—§15, ch. 3731, 1887; RS 2823; GS 3875; RGS 5970; CGL 8237; §1, ch. 24107, 1947.

32.12 Compensation of clerk when not otherwise provided.—

(1) When not otherwise provided, the compensation of the clerk of the criminal court of record shall be in fees, which shall be the same as the fees of the clerk of the circuit court in like cases. Such fees shall be paid by the county in criminal cases when the defendant is insolvent, as prescribed by law.

(2) Special and local laws, and laws of limited application, relating to the compensation and fees to be charged by or paid to the clerk of the criminal court of record shall not be repealed or in any way affected by the revision of this chapter.

History.—§16, ch. 3731, 1887; RS 2823; GS 3875; RGS 5971; CGL 8238; §1, ch. 24107, 1947.
cf.—§28.24 Clerk of circuit court, compensation.

32.13 Compensation of clerk, small counties.—

(1) The clerk of the criminal court of record in all counties having a population of less than fifty thousand, according to the last preceding federal or state census, shall receive the sum of one hundred seventy-five dollars per month salary, payable monthly out of the fine and forfeiture fund of the county.

(2) All fees and costs collected by the said clerk shall be paid over by him to the county depository to the credit of the fine and forfeiture fund and the county shall not be liable for any costs to the said clerk adjudged against it upon the conviction of any party in the said criminal court of record.

(3) The compensation allowed clerks of the criminal courts of record under this section shall be in lieu of all fees or other compensation otherwise allowable under any other statute or law.

History.—§§1, 2, ch. 9173, 1923; CGL 8239, 8240; §1, ch. 24107, 1947.

32.14 Compensation of clerk, large counties.—The clerk of the criminal court of record in all counties having a population of more than eighty-five thousand according to the last preceding state or federal census shall be paid as follows:

(1) As fees for all services to be performed by him in any criminal action or proceeding in said court, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of nine dollars for each defendant in said action.

(2) Upon the institution of any appellate proceeding or upon the issuance of any writ of error, there shall be charged and collected by the said clerk, from each party instituting such appellate proceeding in said court or securing such writ of error, the sum of four dollars in lieu of all other fees heretofore charged in such appellate proceeding.

(3) Upon the discharge of a defendant as provided in §902.18, and upon the transmittal to the clerk of the criminal court of record of the affidavit, warrant and order of discharge, the said clerk shall receive as a fee for indexing, docketing, and filing same, a sum not exceeding four dollars for each discharged defendant.

(4) For his service as such clerk of the criminal court of record in such actions, and in all other cases and in all matters not hereinabove specifically included, the same fees as the clerk of the circuit court receives for similar services at the time such services are rendered.

(5) This section shall not be construed to include the fees of such clerk for furnishing or certifying copies of any record or paper or for preparing or verifying transcripts of record in appellate procedures.

(6) This section shall become effective, as to all counties hereafter attaining the above population, on the first day of January next after the official publication of the census showing such population.

History.—§§1-4, ch. 15924, 1933; §§1, 2, ch. 16874, 1935; CGL 1936 Supp. 8240(1); §1, ch. 22612, 1945; §1, ch. 23720; §1, ch. 24107, 1947; §1, ch. 25159, 1949.

32.15 Bond of clerk in large counties.—In each county in the state having a population in excess of one hundred fifty thousand, according to the last state census, the clerk of the criminal court of record, before being commissioned, shall give bond in a penalty which shall not be less than five thousand dollars nor more than fifty thousand dollars, to be fixed by

the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which bond shall be conditioned upon the faithful discharge of the duties of his office. Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties shall bind themselves shall not be less than the full penalty of the bond. Each surety upon such bond shall make affidavit that he is a resident of the county for which the respective officer is to be commissioned and that he has sufficient visible property therein, unencumbered and not exempt from sale under legal process, to make good his bond. The above provisions as to number of sureties, affidavit or residence and justification of same, shall not apply to solvent surety companies authorized to do business and execute official bonds in this state.

History.—§§1-4, ch. 17754, 1937; §1, ch. 24107, 1947.

32.16 County solicitor; election, term, powers, duties, etc.—

(1) There shall be a prosecuting attorney for each criminal court of record to be designated as the county solicitor, who shall be elected by the qualified electors of their respective counties for terms of four years each, as provided in and by §9, Art. V, of the state constitution.

(2) The county solicitors shall have and exercise the same powers, duties and obligations in the criminal courts of record as are exercised by, and imposed upon, state attorneys in the circuit courts, except when otherwise expressly provided.

History.—§9, ch. 3731, 1887; RS 2825; GS 3877; RGS 5972; CGL 8241; §1, ch. 24107, 1947.

32.17 Appointment of solicitor by the judge.—Whenever there shall be a vacancy in the office of county solicitor in any of the counties of this state in which a criminal court of record is established, either by reason of nonappointment or otherwise, or if a county solicitor shall not be present at any term of the court, or, being present, shall from any cause be unable to perform the duties of his office, the judge of said court shall have full power to appoint a county solicitor from among the members of the bar with the consent of such member so appointed, to whom shall be administered an oath to faithfully discharge the duties of county solicitor, and who shall have as full and complete authority, and whose acts shall be in all respects as valid, as a regularly appointed county solicitor. He shall sign all informations and other papers as acting county solicitor. The power of said appointee shall cease upon the filling of said office by appointment or upon the ability of the county solicitor to perform the duties of his office, a note of which shall be entered upon the minutes of the court. The compensation of such appointee shall be the same as that of the regularly appointed county solicitor, and shall be paid by the regular county solicitor, and not by the county or state, in those cases in which the temporary appointment is made by reason of the absence, inability or disqualification of the regular county solicitor.

History.—§1, ch. 4224, 1893; GS 3879; RGS 5974; CGL 8247; §1, ch. 24107, 1947.

32.18 Method of prosecution; rules of pleading and practice.—

(1) All offenses triable in the criminal courts of record shall be prosecuted upon information under oath, to be filed by the county solicitor.

(2) The grand jury of the circuit court for the county in which a criminal court of record is established may indict for offenses triable in the criminal court of record.

(3) Upon the finding of such indictment, the circuit judge shall commit or bail the accused for trial in the criminal court of record, which trial shall be upon information filed by the county solicitor.

(4) Upon the finding of such indictment, the circuit judge, or the clerk of the circuit court upon direction of the circuit judge, shall certify such indictment and deliver the same to the clerk of the criminal court of record or to the county solicitor. Such indictment shall be sufficient basis for the filing of an information by the county solicitor.

History.—§13, ch. 3731, 1887; RS 2830; GS 3881; RGS 5976; CGL 8257; §1, ch. 24107, 1947
cf.—§§932.47, 932.48, Filing information.
§§906.01 to 906.26, Information, forms and requisites.

32.19 Informations may be filed in vacation.—Informations may be filed with the clerk of the criminal court of record in vacation, without leave of the court being first had and obtained, and upon information so filed the clerk of said court shall docket cases and issue any and all necessary process, the same as if filed in term time by leave of the court.

History.—§1, ch. 4398, 1895; §3, ch. 4406, 1895; GS 3882; RGS 5977; CGL 8258; §1, ch. 24107, 1947.

32.20 To have process.—The county solicitor is allowed the process of his court to summon witnesses to appear before him in or out of term time, at such convenient places and time as may be designated in the summons, to testify before him as to any violation of the criminal law upon which they may be interrogated.

History.—§11, ch. 3731, 1887; RS 2827; GS 3883; RGS 5978; CGL 8259; §1, ch. 24107, 1947.

32.21 Praecipe for process.—No writ of attachment or subpoena for witnesses for the state shall be issued from said court, unless the county solicitor shall first file with the clerk a praecipe in writing for same.

History.—§10, ch. 3731, 1887; RS 2828; GS 3884; RGS 5979; CGL 8260; §1, ch. 24107, 1947.

32.22 May administer oath.—The county solicitor may administer oaths to all witnesses summoned to testify by the process of his court, and to all witnesses who may voluntarily appear before him to testify as to any violation or violations of the criminal law.

History.—§12, ch. 3731, 1887; RS 2829; GS 3885; RGS 5980; CGL 8261; am. §1, ch. 22728, 1945; §1, ch. 24107, 1947.

32.23 Compensation of county solicitor, generally.—Except where otherwise provided, the county solicitor of the criminal court of record shall be paid two dollars per diem, quarterly, by the county, and conviction fees of ten dollars for each felony and five dollars for each misdemeanor, to be paid in like manner as other criminal costs, and the said conviction fees shall be paid in cases where new trials are granted and appeals taken, the same as in other cases of conviction.

History.—§14, ch. 3731, 1887; §6, ch. 4055, 1891; RS 2826; GS 3878; RGS 5973; CGL 8242; §1, ch. 24107, 1947.

32.24 Compensation of county solicitor in large counties.—

(1) In the following counties the county solicitor of the criminal court of record shall receive the following compensation, in lieu of all other compensation, the same to be paid by the county in equal monthly installments, to wit:

(a) In counties having a population of not less than seventy thousand and not more than one hundred thousand: four thousand two hundred dollars per annum.

(b) In counties having a population of more than one hundred thousand but less than one hundred eighty thousand: six thousand dollars per annum.

(c) In counties having a population of one hundred eighty thousand or more: seven thousand five hundred dollars per annum.

(d) In all counties in the state having a population of two hundred sixty thousand or more, according to the last preceding census of the state, the county solicitors of the criminal courts of record therein may employ not to exceed four assistants to such solicitor, to be designated as the first assistant, second assistant, third assistant and fourth assistant, respectively, and such assistants so employed shall hold office during the pleasure of the county solicitor.

(e) All employment of assistants to the county solicitors of the criminal courts of record, as provided for in paragraph (d) of this law, shall be made in writing, which writing shall designate the assistants as "first assistant," "second assistant," "third assistant" or "fourth assistant," as the case may be, and a record of such writing shall be entered in the minutes of the criminal court of record, and when such employment shall be revoked such revocation shall be made in writing and a record of that such writing shall be entered in said minutes of said court.

(f) The compensation of such assistant county solicitors, as provided for in paragraph (d) of this law, shall be as follows: the first assistant, six thousand dollars per annum, the second assistant, five thousand dollars per annum, and the third and fourth assistants, four thousand dollars per annum each, each payable in equal semi-monthly installments by the county.

(2) The above populations to be determined by the last preceding state or federal census except where otherwise provided. In all counties hereafter attaining the above populations, this section shall take effect on the first day of January next after the official publication of the census showing such population.

(3) No special or local law, or law of limited application, relating to the compensation of county solicitors of particular counties, shall be repealed or in any way affected by the revision of this chapter.

History.—§1, ch. 11961, 1927; CGL 8245; ch. 15989, 1933; §1, ch. 16109, 1933; §1, ch. 16935, 1935; CGL 8246(1)-8246(7); §1, ch. 17859, 1937; §1, ch. 17860, 1937; §1, ch. 24107; §§1-3, ch. 23667, 1947.

32.25 Assistant county solicitor, generally.—

(1) The county solicitor, except where otherwise provided, may appoint assistant county solicitors, to whom shall be administered an oath to faithfully perform the duties of assistant county solicitor, and who shall have the same powers and perform the same duties as the county solicitor appointing them, and for whose neglect and default the county solicitor shall be responsible. A note of the appointment of an assistant county solicitor shall be entered upon the minutes of the court. An assistant county solicitor shall sign all information and other papers filed or issued by him as such "assistant county solicitor." His compensation shall be paid by the county solicitor and not by the county or state.

(2) No special or local law, or law of limited application, providing for assistant county solicitors for any of the criminal courts of record and relating to their appointment, employment or selection and their compensation, shall be repealed or in any way affected by the revision of this chapter.

History.—§2, ch. 4224, 1893; §1, ch. 5126, 1903; GS 3880; RGS 5975; CGL 8248, 8249-8252, 8256(1), 8256(4), 8256(7), 8256(8); §2, ch. 11815, 1927; §§2-5, ch. 16109, 1933; §§1-4, ch. 17861, 1937; §1, ch. 19388, 1939; §1, ch. 19677, 1939; §7, ch. 22858, 1945; §1, ch. 24107, 1947; §11, ch. 25035, 1949.

32.26 Sheriff of the county as executive officer.—The sheriff of the county in which the criminal court of record is established shall be the executive officer of said court, and his powers, duties and obligations shall be the same as those of the sheriff while acting as executive officer of the circuit court.

History.—§18, ch. 3731, 1887; RS 2831; GS 3886; RGS 5981; CGL 8262; §1, ch. 24107, 1947.

32.27 Sheriff authorized to take and approve bail bonds.—The sheriffs of the several counties of this state, where such endorsements are made as provided in §32.09, and capiases are placed in their hands for execution, and the persons against whom such capiases are issued are arrested, and such persons desire to give bond, may take and approve such bond for the amount set forth as provided in §32.09, when duly signed by such persons as are in his judgment good and sufficient sureties, as provided by law.

History.—§2, ch. 4921, 1901; GS 3887; RGS 5982; CGL 8263; §1, ch. 24107, 1947.

32.28 Fee for approving bail bonds.—The sheriff shall receive the fees provided in §30.23 for taking and approving bail bonds, the same to be paid as other costs in criminal cases are paid.

History.—§3, ch 4921, 1901; GS 3888; RGS 5983; CGL 6264; §1, ch. 24107, 1947.

32.29 Sheriff's compensation.—The sheriff's compensation shall be in fees, which shall be the same as those allowed for like services in the circuit courts, and shall be paid by the county when the defendant is insolvent, as provided by law.

History.—§19, ch. 3731, 1887; RS 2832; GS 3889; RGS 5984; CGL 8265; am. §1, ch. 24107, 1947.

32.30 Juries, jurors and witnesses in criminal courts of record.—The provisions of chapter 40 and §§932.19-932.23 and 932.25-932.37, and such other sections of said statutes as may have application to juries, jurors and witnesses in criminal courts of record, shall be applicable under this chapter.

History.—§1, ch. 24107, 1947.

32.31 Detectives or special investigators.—Laws, whether special or local or of limited application, providing for the employment of detectives or special investigators by or for county solicitors, or criminal courts of record, shall not be repealed or in any way affected by the revision of this chapter.

History.—§1, ch. 24107, 1947.

32.32 Official court reporters.—Laws, whether special or local or of limited application, providing for the employment, election or appointment of court reporters for criminal courts of record, shall not be repealed or in any way affected by the revision of this chapter.

History.—§1, ch. 24107, 1947.

32.33 Stenographers, bailiffs, offices, etc.—Laws, whether special or local or of limited application, providing for the employment or other selection of stenographers, secretaries, bailiffs or other personnel for the county solicitor or the criminal court of record or its judge, and providing for office rooms and office expense for the said county solicitor, judge or court, shall not be repealed or in any way affected by the revision of this chapter.

History.—§1, ch. 24107, 1947.

32.34 Probation and parole officers.—Laws, whether special or local or of limited application, providing for and relating to probation and parole officers for the criminal courts or record, shall not be repealed or in any way affected by the revision of this chapter.

History.—§1, ch. 24107, 1947.

CHAPTER 33

CIVIL COURT OF RECORD

33.01 Civil courts of record established.—There shall be a court to be known as the civil court of record in each county in this state, which has or shall have a population of more than nine hundred thousand, according to the latest official decennial census; provided that civil courts of record hereafter established pursuant hereto shall be established on May 1 next succeeding the year of which such census is taken.

History.—§1, ch. 11357, 1925; CGL 5156; §1, ch. 20739, 1941; §1, ch. 21819, 1943; §1, ch. 23688, 1947; §1, ch. 61-40; §1, ch. 63-4.

33.02 Jurisdiction.—All such civil courts of record for each county respectively shall have exclusive original jurisdiction in all cases at law, including writs of attachment and garnishment where the matter in controversy does not exceed, exclusive of interest and cost, the sum or value of five thousand dollars, and also where (a) the cause of action in whole or in part, arose or accrued in the county, or (b) the property involved in whole or in part, is in the county, or (c) the defendant or one of the defendants is found in the county. Where the jurisdiction sum of value first above stated is alleged, jurisdiction of such civil courts of record shall be prima facie presumed. Such civil courts of record shall not have jurisdiction of cases in equity, nor jurisdiction of cases involving the legality of any tax, assessment or toll, or of the action of ejectment, or of actions involving the title or boundaries of real estate, nor jurisdiction of proceedings relating to forcible entry or unlawful detention of lands and tenements, nor jurisdiction in cases at law in which the demand or value of the property involved does not exceed five hundred dollars.

History.—§1, ch. 11357, 1925; CGL 5156.
cf.—§33.14 Jurisdiction in counties of 260,000 or more inhabitants.

33.03 Judge; appointment, term, etc.—There shall be a judge for each of said courts who shall be appointed by the governor and confirmed by the senate, and who shall hold office for four years. He must be at least twenty-five years of age, an attorney at law, and he must have been a resident of the state for at least five years prior to date of his appointment. Each judge of said court shall receive a salary of six thousand dollars per annum, payable in monthly installments of five hundred dollars each, and his salary shall be paid from the general revenue of the county in which such civil court of record is established. He shall not exercise the profession or employment of counsel or attorney at law, or engage in the practice of law during his term of office, except in matters of chancery.

History.—§2, ch. 11357, 1925; CGL 5157.

33.04 Clerk of the court.—In all such counties where there is a criminal court of record, the clerk of the criminal court of record shall also be clerk of the civil court of record, and he shall have the same powers and perform the same duties in the civil court as are performed by and required of the clerk of the circuit court in said court, and as compensation for his services he shall receive the same fees as the clerks of circuit court receive for similar work.

Where there is no criminal court of record in any county which shall have such civil court of record, the clerk of the circuit court for such county shall be the clerk of such civil court of record.

History.—§§3, 4, ch. 11357, 1925; CGL 5158, 5159.

33.05 Seal.—The seal of all such civil courts of record shall be provided, approved, paid for, and an impression thereof deposited as are the seals of circuit courts. In the case of the loss or destruction of such seal, the private seal of the clerk shall suffice until an official seal is provided.

History.—§5, ch. 11357, 1925; CGL 5160.

33.06 Terms of court.—There shall be six terms of such civil court of record held each year, commencing on the second Monday in January, March, May, July, September and November.

History.—§6, ch. 11357, 1925; CGL 5161.

33.07 Disqualification, transfer of cases.—Whenever any judge of such civil court of record is disqualified to try any case pending in his court, he shall make an order transferring said case to the circuit court of the same county and the civil court clerk shall forthwith deliver to the clerk of the circuit court of such county all papers, files, and copies of records of such suit, and the clerk of the circuit court shall have jurisdiction of the suit so transferred, the same as if there was no civil court of record in said county, and the said suit was instituted in said circuit court.

History.—§7, ch. 11357, 1925; CGL 5162.

33.08 Judgments, liens.—Judgments of such civil courts of record shall be liens on real estate in like manner as judgments of county courts when recorded according to law with

the clerk of the circuit court in the judgment lien record.

History.—§8, ch. 11357, 1925; CGL 5163.

33.09 Rules of procedure.—The rules of pleading, practice, procedure and evidence and the laws of this state prescribing rules of pleading, practice, procedure and evidence, and prescribing issuance, service and return of process for circuit courts, shall, so far as they are applicable, govern such civil courts of record.

History.—§9, ch. 11357, 1925; §1, ch. 14664, 1931; CGL 5164.

33.10 Application of general laws.—All the provisions of the general statutes of Florida, and all laws amendatory thereof or supplementary thereto, which can be applied to such civil courts of record, or to any proceedings therein, or to any officer thereof shall be applicable thereto in all cases except where they are inconsistent with the provisions of this law.

History.—§10, ch. 11357, 1925; CGL 5165.

33.11 Appellate jurisdiction.—

(1) Final orders or judgments of civil courts of record are reviewable by appeal to the appropriate district court of appeal unless review by the supreme court is authorized by Art. V of the state constitution. Review by said courts shall be in the manner and within the time prescribed by the Florida appellate rules.

(2) The filing fee of the appellate court shall be as prescribed by law or the Florida appellate rules. The fee of the trial court shall be two dollars.

History.—§11, ch. 11357, 1925; CGL 5166; §1, ch. 20361, 1941; §1, ch. 63-559.

33.13 Pending cases when court established.—When a civil court of record is established in any county, the circuit court in such county shall retain complete jurisdiction of all cases therein pending, until the same are finally determined by the circuit court, and nothing shall be so construed as to require that any case in the circuit court shall be transferred to the civil court of record.

History.—§13, ch. 11357, 1925; CGL 5168.

33.14 Civil courts of record; jurisdiction.—

(1) In all counties having a population of two hundred sixty thousand or more according to the latest census taken pursuant to law, every civil court of record established pursuant to statute shall have original jurisdiction of all cases at law where the matter in controversy does not exceed, exclusive of interest and cost, the sum of five thousand dollars, and proceedings relating to forcible entry and unlawful detention of lands and tenements, including any statutory remedy relating to landlord and tenant, except when some other court under the constitution shall have exclusive original jurisdiction of any such actions; and all such courts in such counties shall have three judges who shall draw the same compensation.

(2) All acts and proceedings heretofore had or taken in all civil courts of record not jurisdictional are hereby validated.

History.—§§1, 2, ch. 21868, 1943; (1) §1, ch. 27003, 1951.
cf.—§33.02 Jurisdiction of civil courts of record generally.

CHAPTER 34
COUNTY COURTS

34.01 Jurisdiction of county courts.—County courts shall have jurisdiction of the following matters and things, to-wit:

(1) Of all cases at law where the demand or value of the property in question does not exceed five hundred dollars.

(2) Of proceedings in relation to the forceful entry and unlawful detention of lands.

(3) Of proceedings for the removal of delinquent tenants.

(4) Of all misdemeanors, except in counties where criminal courts of record are established, in which counties the county courts shall have no criminal jurisdiction.

(5) Of attachments, garnishments, forceful entry and unlawful detainer, replevin, enforcement of statutory liens and proceedings between landlord and tenant. The proceedings in such cases to be as provided by law.

(6) To hear and determine all causes for removal of delinquent tenants arising under and by virtue of law, and such county courts shall at all times be open to hear and determine such causes.

History.—§6, ch. 3730, 1887; RS 1572, 2833; GS 2034, 3890; §1, ch. 6463, 1913; RGS 3325, 3326, 5985; CGL 5169, 5170, 8278; (5)r. by §3, ch. 63-559.
cf.—§8, Art. V, Const.

34.02 Terms.—The terms of the county courts now existing, or which may hereafter exist under the laws of this state, shall be held four times a year at such times as the act or acts creating such courts shall designate; provided, that in cases of misdemeanors, where the defendant and prosecuting attorney may agree to waive trial by jury, such cases may be heard in vacation.

History.—§1, ch. 4406, 1895; GS 2035; RGS 3327; CGL 5171.

34.03 Clerk.—The clerk of the circuit court in counties in which there is no criminal court of record established, shall be clerk of the county court, and shall hold his office at the office of the clerk of the circuit court. In counties where a criminal court of record is established, the clerk of said criminal court shall be the clerk of the county court and shall hold his office in the county court house.

Such clerk of the county court shall sign all papers required to be signed pertaining to said county court as "County Clerk."

History.—§4, ch. 3730, 1887; RS 1574; GS 2036; RGS 3328; CGL 5172.
cf.—§6, Art. V, Const.

34.04 Compensation of clerk, generally.—Unless otherwise provided, the clerk of the county court shall receive as compensation for his services the same fees as the clerk of the circuit court receives for similar services at the time such services are rendered.

History.—Supplied to complete apparent omission in statutes.

34.041 Filing fees of clerk for trial and appellate proceedings.—

(1) Upon the institution of any civil or criminal action, suit, or proceeding in the county court of any county of the state, there shall be paid by the party or parties so instituting such action, suit or proceedings, as fees of the clerk of said court, for all services to be performed by him therein, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of seven dollars and fifty cents.

(2) Upon the institution of any appellate proceeding from the county court to the circuit court of the state, there shall be charged and collected by the clerk from the party or parties instituting such appellate proceedings, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of three dollars fifty cents.

(3) Nothing in this section shall be construed to include the fees of the clerk for preparing or verifying transcripts of record in appellate proceedings, or for furnishing copies of any record or paper.

(4) This section shall not apply to any suit or proceeding pending on the day it goes into effect.

(5) This section shall not be applicable to counties having a population of more than three hundred thousand but less than three hundred ten thousand.

History.—§§1, 2, 6, 7, 9, ch. 26931, 1951; (2) §4, ch. 63-559.

34.05 Compensation of clerk, large counties.—In all counties having a population of more

than one hundred fifty thousand according to the last preceding state or federal census and having a county court, the clerk of said court, as compensation for his services, shall receive fees as follows:

(1) IN CIVIL CASES.—Upon the institution of any civil action, suit, or proceeding, except suit for the removal of delinquent tenants, there shall be paid by the party or parties so instituting such action, suit, or proceeding, as fees for the clerk of the county court for all services to be performed by him in such action, suit, or proceeding, except as herein provided, the sum of six dollars.

(2) DELINQUENT TENANT CASES.—Upon the institution of any suit for the removal of delinquent tenants there shall be paid by the party or parties so instituting such action, suit, or proceeding, as fees for the clerk of the county court for all services to be performed by him in such action, suit, or proceeding, except as hereinafter provided, the sum of four dollars.

(3) ALL OTHER CASES.—In all other cases and matters the said clerk shall receive as compensation for his services as clerk of the county court, not hereinabove specifically included, the same fees as the clerk of the circuit court receives for similar services at the time such services are rendered.

Nothing herein shall be construed to include the fees of the clerk of the county court for furnishing or certifying a copy of any record or paper, or for preparing and verifying transcripts of records in appellate proceeding.

As to counties hereafter attaining such population, this section shall take effect on the first day of the month next after the official publication of the census showing such population.

History.—§§1-3, 7, ch. 16873, 1935; CGL 5172(1).

34.06 Records.—The clerk shall keep for each county court minute books, bench dockets, bar and motion dockets, and judgment and execution dockets, which shall be kept in the same manner as such dockets are kept for the circuit courts.

History.—§7, ch. 3730, 1887; RS 1577; GS 2039; RGS 3331; CGL 5175.
cf.—§28.21 et seq., Records of circuit court.

34.07 Sheriff to be executive officer.—The sheriff of the county shall serve and execute all civil and criminal processes of said court and do and perform all duties in and about said court, which are required to be performed by an executive officer.

History.—§12, ch. 3730, 1887; RS 1575, 2838; GS 2037, 3896; RGS 3329, 5993; CGL 5173, 8287.
cf.—§30.15, Execution of process.

34.08 Compensation of sheriff.—The compensation of the sheriff for serving processes in cases in the county court, and for other services in connection therewith, shall be the same as that for like services in the circuit court.

History.—§2839 RS 1892; GS 3897; RGS 5994; CGL 8288.
cf.—§30.23 Fees of sheriffs and constables.

34.09 Seal.—The seal of the county court shall be provided, approved, paid for, and an impression thereof deposited as are seals of the circuit court. In the case of the loss or destruction of such seal the private seal of the clerk shall suffice until an official seal is provided.

History.—§4, ch. 3730, 1887; RS 1576; GS 2038; RGS 3330; CGL 5174.

34.10 Prosecuting attorney for county court.—The prosecuting attorney for the county court shall be elected at the same time that the county judge is elected and his term of office shall be for four years.

History.—§14, ch. 3730, 1887; RS 2834; GS 3891; RGS 5986; CGL 8279.

34.11 Compensation.—The prosecuting attorney shall be paid eight hundred dollars per annum and five dollars for each conviction and shall also receive ten per cent of each cash bond estreated in his court in connection with which an investigation is made, and an information is filed, provided that in the event the defendant whose cash bond has been estreated is subsequently arrested, tried and convicted, he shall receive as compensation for said conviction, the difference between the amount received on account of said bond estreature and the conviction fee hereinbefore set forth.

History.—§15, ch. 3730, 1887; RS 2835; GS 3892; RGS 5987; CGL 8280; §1, ch. 19321, 1939.
cf.—§125.04 Compensation of prosecuting attorney.

34.12 Duties.—The prosecuting attorney shall prosecute all criminal cases before the county court, and shall sign all informations filed in said court by him, and do and perform all the duties required of a prosecuting officer.

History.—§14, ch. 3730, 1887; RS 2836; GS 3893; RGS 5988; CGL 8282.

34.13 Method of prosecution.—All persons tried in the county court on any criminal charge shall be tried upon indictment by the grand jury, or upon information filed by the prosecuting attorney. Upon the finding of indictments by the grand jury for crimes cognizable by the county court, the clerk of the circuit court without any order therefor shall docket the same on the trial docket of the county court on or before the first day of its next succeeding term.

History.—§9, ch. 3730, 1887; RS 2837; GS 3894; RGS 5989; CGL 8283.

34.14 Witnesses before prosecuting attorney.—The prosecuting attorney of the county court shall be allowed the process of said court to summon witnesses to appear before him, in or out of term, at such convenient place and time as may be designated in the summons, to testify before him as to any violation of the criminal law upon which they may be interrogated; and he is hereby empowered to administer oaths to all witnesses summoned to testify by the process of the court and to all witnesses who may voluntarily appear before him, and he shall have authority to take recognizances of all witnesses summoned before him and of all witnesses who voluntarily appear before him and

are administered an oath by him, when he deems that their evidence is material on behalf of the state, to be and appear on the first day of the next term of the said county court.

The compensation and mileage provided by law for witnesses in county courts shall be paid to each witness who is compelled to appear before said prosecuting attorney under the provisions of this section, and to each witness who voluntarily appears before him and is administered an oath by him.

History.—§1, ch. 4907, 1901; GS 3895; RGS 5990; CGL 8284; §1, ch. 59-279.
cf.—§90.14 Witnesses; pay.

34.15 When prosecuting attorney unable to perform duties judge may appoint acting prosecuting attorney.—When any prosecuting attorney of any county court is sick and unable to perform the duties of such prosecuting attorney, or is disqualified to perform such duties by reason of being formerly employed in the defense of any person charged with a violation of the law within the jurisdiction of such court, or is absent from the county wherein such county court is or may be established, the judge of the county court shall appoint a competent attorney, admitted to practice in such court, to be acting prosecuting attorney of such court during the absence or the disability of the prosecuting attorney. Such acting prosecuting attorney shall have and exercise all the duties and powers of the prosecuting attorney during such appointment. The powers and duties of an acting prosecuting attorney shall cease as soon as the disability of the prosecuting attorney ceases or as soon as the prosecuting attorney returns to the county of which he is prosecuting attorney.

History.—§1, ch. 5903, 1909; RGS 5991; CGL 8285; §1, ch. 57-1984; §1, ch. 59-416.

34.16 Compensation of acting prosecuting attorney.—Acting prosecuting attorneys appointed under the provisions of the preceding section shall receive the same compensation for the service and time of performing the duties of the prosecuting attorney as is paid to prosecuting attorneys, and prosecuting attorneys shall receive no compensation for service or time in which the duties of the office are performed by acting prosecuting attorneys. Acting prosecuting attorneys shall sign all papers as "Acting Prosecuting Attorney."

History.—§2, ch. 5903, 1909; RGS 5992; CGL 8286; §2, ch. 57-1984; §2, ch. 59-416.

34.18 Rules of practice.—The rules of pleading and practice adopted by the supreme court for the government of the circuit courts shall be the rules of practice, pleading and procedure in civil causes for the county courts, so far so applicable and not otherwise provided for.

History.—§1579 RS 1892; GS 2041; RGS 3333; CGL 5177.

34.19 General provisions.—All the provisions of chapters 30, 37 to 43, and 45 to 59, inclusive, 90, 92 and 95, which can be applied to the county courts, or to any proceeding therein, or to any officer thereof, shall be applicable thereto in all cases except where they are expressly or impliedly restricted to courts other than the county courts, and except where they are inconsistent with the provisions of this chapter.

History.—§1580 RS 1892; GS 2042; RGS 3334; CGL 5178.

34.20 Salary of judge of county court.—The salary of the judge of county court shall be eighteen hundred dollars per annum, payable in monthly installments. He shall also have a docket fee of one dollar in civil cases. Provided, however, that this section shall not apply to any county court in the state wherein the judge of such county court is receiving compensation as such judge of the county court under a special act or under a general act of local application, nor to any county having a population of more than twenty-four thousand according to the latest state or federal census.

History.—§3, ch. 4406, 1895; GS 2043; RGS 3335; CGL 5179; §§ 1, 1A, ch. 17996, 1937; §1, ch. 24037, 1947.

34.21 Compensation where population exceeds twenty-two thousand.—In each county where the population exceeds twenty-two thousand people, the judge of the county court shall receive an annual salary of twelve hundred dollars payable quarterly by the county treasurer. This compensation shall exclude all salary, fees, or other compensation which the said judge of the county court as such might receive or be entitled to, under or by virtue of any other laws, but it shall not exclude or affect any salary, fees, or other compensation which the county judge, as such, may receive, or be entitled to.

History.—GS 2044; §1, ch. 7333, 1917; RGS 3336; CGL 5180; r. chs. 61-1154 and 61-1338; reenacted §7, ch. 63-572.

34.22 Substitution of a circuit judge for the county judge as judge of the county court.—

(1) WHEN TO BE SUBSTITUTED.—Whenever the county judge shall be disabled or disqualified to act as judge of the county court because of illness, interest, or absence from his jurisdiction, or other cause, any circuit judge of the judicial circuit in which the county is located is authorized and empowered to discharge the duties and functions appertaining to such county judge as judge of the county court.

(2) NOTIFICATION OF DISQUALIFICATION.—When the county judge shall be so disabled or disqualified to act as judge of the county court, the circuit judges of the judicial circuit in which such county is located shall be notified of the interest, absence, illness, or other cause of disability of the county judge by certificate of the county judge or by the clerk of said court or by one of the clerks of the county judge appointed and acting according to law.

History.—§1, ch. 57-359.

34.23 Appointment of census commissioners; county judges; proclamation by governor.—

(1) When it shall be deemed advisable by the governor, or when requested by the board of county commissioners of any county, that the population of any county be determined, the governor shall appoint three commissioners from such county who shall obtain from the

United States census bureau an outline of proper criteria other than by the actual counting of individuals, to be used by said commissioners for the purpose of determining the population of said county, and the commissioners shall thereupon forthwith proceed in accordance with said criteria to determine the number of inhabitants of such county. In making their determination the commissioners shall also, after public notice, hold a public hearing or hearings at such place or places in the county as they deem advisable to receive such further proof needed to assist them in determining the number of such inhabitants. After the conclusion of its study and after the public hearings are held, as aforesaid, the commissioners shall make proof to the governor, first, of the establishment of criteria by the United States census bureau and second, its finding based thereon. It shall also forward to the governor certified transcript of the record taken at the public hearings to be held as aforesaid.

(2) The findings by any such commission or commissioners as to the number of inhabitants or the population of any county when proclaimed by the governor shall have the same force and effect in law as if according to a census taken pursuant to either federal or state law insofar as a census affects the number of county judges permitted by law but such determination shall not otherwise be effective for any purpose.

(3) The commissioners shall not be paid any compensation.

(4) The making of any such census is declared to be a county purpose and the board of county commissioners of any county is authorized and directed to pay the expenses necessary to make any census under this act.

History.—§§ 1-4, ch. 63-266.

CHAPTER 35

DISTRICT COURTS OF APPEAL

35.01 District courts of appeal; districts.—The district courts of appeal are created and the state is divided into three appellate districts of contiguous counties as provided in this chapter.

History.—§1, ch. 57-248.

35.02 First appellate district.—The first appellate district is composed of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Putnam, St. Johns, Santa Rosa, Suwannee, Taylor, Union, Volusia, Wakulla, Walton and Washington counties.

History.—§1, ch. 57-248.

35.03 Second appellate district.—The second appellate district is composed of Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, Sarasota, Seminole and Sumter counties.

History.—§1, ch. 57-248.

35.04 Third appellate district.—The third appellate district is composed of Dade and Monroe counties.

History.—§1, ch. 57-248.

35.041 Gift of land for courthouse, third district.—The board of commissioners of state institutions is hereby authorized and empowered to accept a gift of land from the university of Miami for the purpose of constructing a courthouse to house the district court of appeal in district three in Dade county.

History.—§1, ch. 57-794.

35.05 Headquarters.—The headquarters of the first appellate district shall be in Tallahassee, Leon county; of the second appellate district in Lakeland, Polk county; and of the third appellate district in Dade county.

History.—§1, ch. 57-248.

35.06 Organization of district courts of appeal.—There shall be three judges of each district court of appeal.

(1) The district courts of appeal shall be organized in each of three appellate districts to be named "District Court of Appeal, _____ District."

(2) The judges shall be appointed by the governor between June 1 and July 1, 1957, to assume office on July 1, 1957.

(3) Judges shall be appointed to assume office and serve for terms to be designated by the governor as follows:

(a) One judge in "Group A" in each appellate district shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1959.

(b) One judge in "Group B" in each appellate district shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1961.

(c) One judge in "Group C" in each appellate district shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1963.

(4) The successors of the original judges of the district courts of appeal shall be elected at the general election next preceding the expiration of their respective terms of office to serve for a full term of six years.

History.—§1, ch. 57-248.

35.061 Additional district courts of appeal judges.—

(1) In addition to the district court of appeal judges provided for in §35.06, there shall be one additional judge in the first district and two additional judges in the second and third districts.

(2) The additional judge for the first district shall be appointed to assume office and serve for a term to be designated by the governor as follows:

One judge in group D shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1967.

(3) The additional judges for the second

and third districts, two for each district, shall be appointed to assume office and serve for terms to be designated by the governor as follows:

(a) One judge in group D in each appellate district shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1967.

(b) One judge in group E in each appellate district shall be appointed to serve a term to expire on Tuesday after the first Monday in January, 1965.

(4) The successors of the original judges of the district courts of appeal and these additional judges of the district courts of appeal, shall be elected at the general election next preceding the expiration of their respective terms of office to serve for a full term of six years.

History.—§§1-4, ch. 61-512.

35.07 Power to make rules and regulations.—Subject to the power of the supreme court to make rules of practice and procedure, the district courts of appeal may make such regulations as necessary for the internal government of the court.

History.—§1, ch. 57-248.

35.08 Power to execute its judgments.—Each district court of appeal is vested with all the power and authority necessary for carrying into complete execution all of its judgments, decrees, orders and determinations in the matters before it agreeable to the usage and principles of law.

History.—§1, ch. 57-248.

35.09 Seal of the court.—Each district court of appeal shall have an official identifying seal as prescribed by the supreme court.

History.—§1, ch. 57-248.

35.10 Regular terms.—The district court of appeal shall hold two regular terms each year at its headquarters, commencing respectively on the second Tuesday in January and July. The court may adjourn from time to time as may be deemed necessary for the dispatch of business.

History.—§1, ch. 57-248.

35.11 Special terms.—The district court in each district may hold special terms at such times and places as may be deemed necessary for the public interest, provided that each district court of appeal shall hold at least one special term every year in each judicial circuit wherein there is ready business to be transacted. Each district court of appeal shall have the power to hear and decide at any regular or special term, causes arising anywhere within the district.

History.—§1, ch. 57-248.

35.12 Chief judge.—There shall be a chief judge of each of the district courts of appeal to be selected by the members of the court.

History.—§1, ch. 57-248.

35.13 Quorum.—Three judges shall consider each case and the concurrence of a majority shall be necessary to a decision.

History.—§1, ch. 57-248.

35.15 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the district courts of appeal or any judge thereof in relation to any action or proceeding pending in said court shall be filed and remain in the office of the clerk, and shall not be taken therefrom except by order of the court; but said clerk shall at all times be required to furnish to any person who may desire the same certified copies of such opinions and decisions, upon receiving his fees therefor.

History.—§1, ch. 57-248.

35.16 Reports; distribution.—The reports of the decisions of the district courts of appeal shall be distributed as provided by contract between the board of commissioners of state institutions and the publisher upon recommendation and approval of the supreme court or by law.

History.—§1, ch. 57-248.

35.18 Same; appropriations.—The costs of publication of said reports, including copies thereof for exchange with other states and courts as provided in this chapter, shall be paid from the appropriation and in the manner provided in §25.401.

History.—§1, ch. 57-248; §2, ch. 61-38.

35.19 Compensation of district judges.—The salary of the judges of the district courts of appeal shall be as provided by law.

History.—§1, ch. 57-248.

35.20 Retirement of district court of appeal judge.—Retirement of a district court of appeal judge shall be as provided by law.

History.—§1, ch. 57-248.

35.21 Clerk of district court.—Each district court of appeal shall appoint a clerk of such district court who shall hold his office during the pleasure of the court. The said clerk before entering upon the discharge of his duties, shall give bond in the sum of two thousand dollars payable to the governor, or his successors in office, to be approved by a majority of the judges of the court conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the office of the secretary of state.

History.—§1, ch. 57-248.

35.22 Clerk of district court; appointment; compensation; assistants; filing fees.—

(1) The clerk of each of the district courts of appeal shall be appointed and paid an annual salary as fixed by law.

(2) The clerk is authorized to employ such deputies and clerical assistance as may be necessary. Their number and compensation shall be approved by the court, and paid from the biennial appropriation for the district courts of appeal.

(3) The clerk is required to collect a fee for each case docketed at the time of filing the

petition or the notice of appeal, as established by the supreme court. The opinions of the district court of appeal shall not be recorded, but the original as filed shall be preserved with the record in each case.

(4) The clerk is authorized immediately after a case is disposed of, to supply the judge who tried the case and from whose order, judgment, or decree, appeal or other review is taken, a copy of all opinions, orders or judgments filed in such case. Copies of opinions, orders, and decrees shall be furnished in all cases to each attorney of record and for publication in Florida reports to the authorized publisher without charge, and copies furnished to other law book publishers at one-half the regular statutory fee.

(5) The clerk of the district court of appeal is required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the state comptroller who shall place the same to the credit of the general revenue fund.

History.—§1, ch. 57-248.

35.23 Location of clerk's office.—Each clerk shall keep his records at the headquarters of the district court of appeal.

History.—§1, ch. 57-248.

35.24 Custody of books, records, etc.—All books, papers, records, files and the seal of each district court of appeal shall be kept in the office of the clerk of said court.

History.—§1, ch. 57-248.

35.25 Duties of clerk.—Duties of clerk shall be as prescribed by the rules of the court.

History.—§1, ch. 57-248.

35.26 Marshal of district court, appointment, duties.—

(1) Each of the district courts of appeal shall appoint a marshal who shall hold office during the pleasure of the court. The said marshal shall execute to the governor of the state a bond in the sum of two thousand dollars, with sureties to be approved by the district court of appeal and conditioned that he shall faithfully discharge such duties as the court directs.

(2) He shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

(3) The marshal shall, under the direction of the district court of appeal be custodian of the headquarters occupied by the court and shall perform such other duties as directed by the court.

History.—§1, ch. 57-248.

35.27 Compensation of marshal.—The compensation of the said marshal shall be as provided by law.

History.—§1, ch. 57-248.

35.28 District courts of appeal libraries.—The library of each of the district courts of appeal and its custodian shall be provided for by rule of the supreme court. Payment for books, equipment, supplies, and quarters as provided for in such rules shall be paid from funds appropriated for the district courts, on requisition drawn as provided by law.

History.—§1, ch. 57-248.

CHAPTER 36

COUNTY JUDGE'S COURT

36.01 Jurisdiction of county judge.—The county judge shall have:

(1) Original jurisdiction in all cases at law in which the demand or value of property involved shall not exceed one hundred dollars, said jurisdiction to extend throughout the county;

(2) Original jurisdiction of proceedings relating to the forcible entry and unlawful detention of lands and tenements which shall include actions for forcible entry and unlawful detainer and proceedings against delinquent tenants;

(3) Jurisdiction of the settlement of estates of decedents and minors; to take probate of wills; to order the sale of real estate of minors; to grant letters testamentary, of administration and of guardianship; and to discharge the duties usually pertaining to courts of probate;

(4) Original jurisdiction, in counties where there are no county courts or criminal courts of record, to try and determine all misdemeanors committed in his county.

(5) The power of a committing magistrate.

History.—§23, ch. 1627, 1868; §1, ch. 3889, 1889; RS 1585, 1593, 1597, 2847; §1, ch. 4729, 1899; GS 2049, 2057, 2061, 3903; RGS 3341, 3348, 3352, 5995, 6001; CGL 5194, 5201, 5205, 8289, 8295; §1, ch. 18002, 1937; (4) §1, ch. 28080, 1953.
cf.—§26.53, Appeals from county judge's court.
§932.01, Original criminal jurisdiction.

36.02 General powers.—County judge's courts shall be courts of record, and county judges shall have authority to make all orders or decrees, and to issue every and all process necessary to maintain and carry out their constitutional jurisdiction, or to enforce their authority, and to enter and enforce their judgments and decrees in all matters wherein they have jurisdiction.

History.—§2, ch. 1627, 1868; RS 1581; GS 2045; RGS 3337; CGL 5183.
cf.—§125.03 Prosecuting attorney, county judge's court.

36.03 Bond.—Each county judge shall give bond in a sum to be fixed by the board of county commissioners of his county, which shall not be less than one thousand dollars nor more than five thousand dollars. Such bond shall be otherwise governed by the provisions governing bonds to be given by clerks of the circuit courts. Said bond may be sued upon from time to time, in the name of the governor, for the use of any person interested or aggrieved.

History.—§2, ch. 3724, 1887; RS 1582; GS 2046; RGS 3338; CGL 5184.
cf.—§§28.01-28.05, Bonds of circuit court clerks.

36.04 Clerks.—Every county judge shall have power to appoint a clerk of his court, and as many additional clerks of his court deemed necessary by the judge for the proper execution of the duties of that office, and the said clerk or clerks so appointed shall be paid by the said judge, and each may exercise all nonjudicial functions which the judge may perform, and shall serve as such clerk or clerks at the pleasure of the county judge making such appointment.

History.—§3, ch. 3889, 1889; RS 1583; GS 2047; RGS 3339; §1, ch. 11368, 1925; CGL 5185; §1, ch. 22559, 1945; §1, ch. 29922, 1955.

36.05 Seal.—The seal of the county judge shall be provided, approved, paid for, and an impression thereof be deposited as are seals of the circuit court. In case of the loss or destruction of such seal his private seal shall suffice until an official seal be provided. The use heretofore of the seal of the county courts by county judges is validated.

History.—§§1, 4, 5, ch. 1657, 1868; RS 1584; GS 2048; RGS 3340; CGL 5186.

36.06 Disqualification and transfer of judges.—When it is made to appear to the chief justice of the supreme court that any county judge of the state is disqualified to act in any civil or criminal cause pending before said judge, the said chief justice shall enter an order of assignment as provided by §25.071 and the Florida appellate rules. Any judge so transferred shall be entitled to the fees in said cause for services performed by him as are allowed by law, and in addition thereto shall be reimbursed for traveling expenses as provided in §112.061. Said expenses shall be taxed as part of the costs in the case. Any county judge ordered transferred to another county to hear and try any civil causes, may, before being compelled to comply with said order of transfer, require of either, or both parties in his discretion, a deposit sufficient to cover his expenses and costs in said cause.

History.—§§1-3, ch. 8483, 1921; CGL 5187-5189; §8, ch. 63-572; §19, ch. 63-400.
cf.—§36.16, Substitution of circuit court judges.
§§38.01-38.10, 38.12, 38.13, Disqualification of judges generally.

36.07 Sickness and transfer of judges.—

(1) Whenever it shall appear to the governor of this state that any county judge is incapacitated, by reason of sickness, from the performance of his duties as county judge, and

that the interest of the citizens of the county will be served by the transfer and assignment of another county judge, the governor may assign any other county judge of any county in the state to a particular county for the purpose of conducting the county judge's office in the county to which assigned.

(2) Such assignment shall be by executive order, and shall be effective for a period not longer than thirty days; if the resident county judge be unable to resume his duties at the end of thirty days from the date of the executive order, other and further assignments may be made.

(3) The county judge so assigned and transferred shall have the same power and authority and jurisdiction as if he were the duly elected county judge of the county, and may hold terms of the county court and of the county judge's court, and perform all of the acts which by law the duly elected county judge of the particular county may perform. Such jurisdiction shall be additional to and concurrent with and not exclusive of the jurisdiction of the duly elected county judge.

(4) Any county judge so transferred and assigned to another county shall receive the same compensation that the resident county judge would have received had such resident county judge been acting. Such compensation shall be paid to the transferred and assigned county judge in the first instance by the board of county commissioners of the county to which he is transferred and assigned, but said board shall deduct any sums that have been paid in such cases from the fees and emoluments which may afterward become payable to the resident county judge.

History.—§§1-3, ch. 16919, 1935; CGL 1936 Supp. 5189(1)-5189(3).
cf.—Art. V, §2, assignment of judges.

36.08 Court always open for probate matters.—The court of the county judge as a court of probate shall be open at all times for the transaction of its business.

History.—§16, ch. 1627, 1868; RS 1586; GS 2050; RGS 3342; CGL 5195.

36.09 Powers, practice and pleadings in civil cases.—In all civil matters, the powers, terms and duties of the county judge shall be the same as those of a justice of the peace, and the rules of practice and pleading in his court, and in appellate proceedings therefrom, shall be the Florida rules of civil procedure as may now and hereafter be adopted by the supreme court.

History.—§23, ch. 1627, 1868; §1, ch. 3888, 1889; §1, chs. 3889, 1889; RS 1594; GS 2058; RGS 3349; CGL 5202; §31, ch. 29737, 1955.

36.10 Records in civil cases.—The county judge shall keep separate dockets for all causes brought before him in his jurisdiction concurrent with that of a justice of the peace.

History.—§24, ch. 1627, 1868; RS 1595; GS 2059; RGS 3350; CGL 5203.

36.11 Executive officer.—The sheriff of the county or any constable shall be the executive officer of the county judge's court, but if the sheriff or constable shall for any reason be disqualified or unable to act, the county judge may appoint any individual, not interested in the case on trial, to serve process and perform all duties of such executive officer.

History.—RS 2848; §2, ch. 4385, 1895; GS 3904; RGS 6002; CGL 8296.

36.14 Records of county judge.—Every county judge shall record, or cause his clerk to record, in a book or books to be kept for that purpose, distinctly and at full length all appointments of and accounts rendered by guardians and settled by him, orders and decrees for the sale of minors' real estate, all orders and decrees for the assignment or admeasurement of dower; and all other orders or decrees; to every such book or books he shall keep an index of the subjects therein, which, together with such book or books, shall be open to the inspection of any person under his supervision.

History.—§4, ch. 6, 1845; RS 1859; GS 2053; RGS 3345; CGL 5198.

36.15 Records of former courts.—All records, judgments and orders of any court in this state heretofore exercising the powers of probate courts shall be taken and held to be the records, judgments and orders of the county judge, subject to the like amendment, enforcement and execution as though the same had been made and rendered by the county judge.

History.—§8, ch. 1629, 1868; RS 1589; GS 2053; RGS 3345; CGL 5198.

36.16 Substitution for county judge of circuit judge.—

(1) WHEN TO BE SUBSTITUTED.—Whenever the county judge shall be disabled or disqualified because of illness, interest, absence from his jurisdiction or other cause, the circuit judge of the county is authorized to discharge the duties and functions appertaining to said county judge in all matters under the probate and guardianship laws of Florida and may enter all proper orders with reference to the custody, preservation, sale or distribution of the estates in connection therewith; and in case of such disability or disqualifications of the county judge, the circuit judge is authorized to discharge all the duties appertaining to said county judge in connection with proceedings relating to forcible entry and unlawful detention of lands, proceedings against delinquent tenants, and all other judicial duties and functions of the county judge as set forth under §36.01.

(2) NOTIFICATION OF DISQUALIFICATION.—When the county judge shall be so disabled or disqualified to act, the circuit judge shall be notified of such disqualification by certificate of the county judge or his duly appointed clerk. In no instance shall any county judge act in any matter in which he is interested, and should he presume so to do his acts shall be void.

(3) COUNTY JUDGE TO MAKE SETTLEMENTS WITH CIRCUIT JUDGE.—The county judge shall, when he is executor, administrator or guardian, make his settlements as such with

the judge of the circuit court of his county in the same manner and form as other executors, administrators or guardians are required by law to make their settlements with the county judge.

History.—§1, ch. 154, 1848; §2, ch. 628, 1855; §1, ch. 1876, 1877; RS 1590; GS 2054; RGS 3346; CGL 5199; §1, ch. 26685, 1951.

cf.—§36.06, County judge, disqualification.
§§38.01-38.10, 38.12, 38.13, Disqualification of judges generally.

36.17 Fees of county judges generally.—

(1) The fees to be charged by the county judges of the various counties for the following services, except where otherwise provided, shall be:

For filing and docketing of each paper not required to be recorded ..... 25¢
For each claim, which shall include costs of writing and oath, where such service is desired, and cost of filing and docketing $1.00
This fee must be paid by claimant before claim may be filed and may be added to the amount of the claim.
For each order entered, which includes cost of writing, issuing and affixing seal $1.00
Warrant of appraisement $1.00
For drawing or approving each bond $2.00
For issuing letters $3.00
For auditing returns or settlement of accounts $3.00
For filing each voucher ..... 10¢

(2) In addition to the above charges, the following charges shall be made for recording, which shall include both manual and photostatic recording and includes filing, docketing, indexing, recording and affixing certificate of recordation:

One page instrument $1.50
Instruments of more than one page,
First page $1.00
For each additional page ..... .75
For making and certifying copies of the record:
First page $1.25
Each additional page ..... .75

(3) When not otherwise specified, the county judge's fees shall be the same as charges made for like services by the clerk of the circuit court.

(4) Recording generally shall be required for all petitions opening and closing an estate, and regarding real estate, and all orders, letters, bonds, oaths, wills, proofs of wills, returns and such other papers as the judge shall deem advisable to record, or that shall be required to be recorded under the Florida probate law.

History.—§5, ch. 1981, 1874; §2, ch. 3888, 1889; RS 1592, 1596; GS 2056, 2060; RGS 3347, 3351; CGL 5200, 5204; §1, ch. 19174, 1939; CGL 1940 Supp. 2877(115); §1, 21960, 1943; §1, ch. 28152, 1953.

cf.—§28.24 Compensation of clerk of circuit court.

36.18 Certain fees of county judges, large counties.—

(1) Upon the institution of any civil action, suit or proceeding in the county judge's court of any county of the state having a population of more than one hundred seventy-five thousand according to the last federal or state census, whichever is the later, there shall be paid by the party or parties instituting such action, suit or proceeding, as and for fees of the county judge of any such county, for all services to be performed by him therein, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of five dollars.

(2) Upon the institution of any criminal action or proceeding before the county judge of any county of the state having a population of more than one hundred seventy-five thousand according to the last federal or state census, whichever is the later, there shall be paid to the county judge of any such county as and for fees for all such services to be performed by him in such criminal action or proceedings, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of five dollars. In all such criminal actions or proceedings the county judge of any such county shall require pre-payment of said sum by the person making application for the warrant, unless such person shall make an affidavit of insolvency and of substantial injury to person or property in which case process shall issue and all costs therefor shall be paid by the board of county commissioners of such county. If the person applying for such warrant is a law enforcement officer of the state, then the fee hereinbefore provided shall be paid by the board of county commissioners of such county immediately upon the institution of such proceeding before said county judge, without regard to whether an information is filed or an indictment found against the defendant in such case.

(3) Upon the institution of any insanity proceeding in the county judge's court of any county in the state having a population of more than one hundred seventy-five thousand according to the last federal or state census, whichever is the later, there shall be paid to the county judge of any such county by the board of county commissioners of such county, as and for his fees for all services performed by him in any such insanity proceeding, in lieu of all other fees heretofore allowed said county judge, except as hereinafter provided, the sum of five dollars. Whenever it shall be made to appear to the county judge that any such insane patient is not indigent, the county judge shall direct the guardian of said insane person to repay the fees advanced by the board of county commissioners, to said board.

Nothing in this section shall be construed to include the fees of such county judge for preparing and certifying any transcript of record of such proceedings or a copy of any document filed in said office, and said section shall not apply to actions or proceedings pending in such county judge's court on July 1st, 1939.

History.—§§1-5, ch. 19633, 1939.

36.19 Institution of civil action; fixed fee.—

(1) Upon the institution of any civil action, suit or proceeding in the county judge's court of any county of the state, there shall be paid by the party or parties so instituting such action, suit or proceeding, as and for fees of the

county judge, for all services to be performed by him therein, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of five dollars.

(2) The term "suits and proceedings" as used in §§36.19-36.21 shall be construed to apply to those civil actions, and only those, defined in §36.01(1).

(3) The civil fees provided by §§36.19-36.21 shall be considered as earned by the county judge on the day the suit, proceeding or action is instituted and no further charge shall be made, except as provided in §§36.19-36.21 by the county judge or his successors in office, and the payment of said fees shall be a condition precedent to the institution of the suit or proceeding and the issuance of process.

History.—§§1-3, ch. 25070, 1949.

36.20 Fee in criminal action.—

(1) The county judge of every county having a county judge's court in the state, shall be paid as fees for all services to be performed by him in any criminal action or proceeding in said county, in lieu of all other fees heretofore charged, except as hereinafter provided, the sum of seven dollars and fifty cents.

(2) The criminal fees provided by §§36.19-36.21 shall be considered as earned by the county judge upon the entry of final judgment order therein, in the county judge's court, and no further charge shall be made, except as provided in §§36.19-36.21, by the county judge or his successors in office.

History.—§§4, 5, ch. 25070, 1949.

36.21 Construction.—

(1) Nothing in §§36.19-36.21 shall be construed as applying to the fees of the county judge for preparing or verifying transcripts of record in appellate proceedings, or for furnishing certified copies of any record or paper.

(2) Nothing in §§36.19-36.21 shall be construed as applying to the fees of the county judge in matters of probate, wills and administration, guardianship, or to the fees for the issuance of search warrants or the holding of inquests of the dead.

(3) Sections 36.19-36.21 shall only apply to county judges' courts but shall not apply to county courts or criminal courts of record.

(4) Sections 36.19-36.21 shall not apply to any suit, proceeding or criminal action pending on the day it goes into effect.

History.—§§6-9, ch. 25070, 1949.

CHAPTER 37

JUSTICE OF THE PEACE COURTS

37.01 Justice of the peace, jurisdiction.—Each justice of the peace in this state shall have:

(1) Jurisdiction in cases at law in which the demand or value of the property involved does not exceed one hundred dollars and in which the cause of action accrued or the defendant resides in his district, including:

(a) In actions arising on contracts for the recovery of money only, where the sum demanded does not exceed one hundred dollars.

(b) In actions for damages for injury to rights pertaining to the person, or to personal or real property, when the damages claimed do not exceed one hundred dollars.

(c) In actions for penalties not exceeding one hundred dollars.

(d) In actions upon bonds conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceeds that sum, the judgment to be given for the sum actually due. When payments are to be made by installments, an action may be brought for each installment as it becomes due, when the installments do not exceed one hundred dollars each.

(e) In actions upon judgments rendered in courts of justices of the peace or by justices or other inferior courts in cities; but no such action shall be brought in the same county within five years after the rendition of the judgment, except where the docket or record of such judgment shall be lost or destroyed.

(f) To take and enter judgment on the confession of the defendant, when the amount confessed does not exceed one hundred dollars, exclusive of costs.

(g) In actions for damages for fraud on sale, purchase or exchange of personal property, where the damages claimed do not exceed one hundred dollars.

(h) Of proceedings in attachment, garnishment, replevin, enforcement of liens and distress for rent, when the amount of property involved does not exceed in value one hundred dollars. The proceedings in all such cases shall be as provided by law.

(i) To foreclose mortgages and enforce liens on personal property, where the debt secured does not exceed one hundred dollars.

(2) Jurisdiction, in counties having a population of over fifty thousand according to the last preceding state census and no county court or criminal court of record, to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months.

(3) Jurisdiction, in counties having a population of over fifty thousand according to the last preceding state census and a county court, to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding one hundred dollars or by imprisonment not exceeding three months.

(4) Jurisdiction, in counties having a population of not less than thirty thousand and not more than forty-five thousand according to the last preceding state census and a county court, to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding one hundred dollars or by imprisonment not exceeding three months.

(5) After July 1, 1953, each justice of peace, in counties of this state having a population of not less than twenty-three thousand six hundred twenty-five and not more than twenty-four thousand five hundred inhabitants according to the latest official census, who holds his court a distance of thirty-five or more miles from the county seat, shall have jurisdiction to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months or both; provided, however, that after July 1, 1953, no justice of peace shall change his place of holding court with intent to bring his court within the purview of this subsection.

History.—§1, ch. 2095, 1877; §1, ch. 3586, 1885; RS 1609; 2840; §1, ch. 4729, 1899; GS 2073, 3898; §1, ch. 6218, 1911; RGS 3364, 5995, 5996; CGL 5217, 8289, 8209; §§1-3, ch. 18002, 1937; §1, ch. 26342, 1949; (1)(d) §10, ch. 27991, 1953; (5) n. §1, ch. 28320, 1953.

cf.—§775.06, Alternative punishment.
§37.24, Jurisdiction in counties having a criminal court of record.
§38.22 Contempts, punishment.

37.011 Justice of the peace courts; jurisdiction.—In all counties in the state having a population of more than four hundred thousand inhabitants according to the latest official state-

wide decennial census, every justice of the peace court shall have concurrent jurisdiction in all cases at law relating to landlord and tenant, wherein the matter in controversy does not exceed, exclusive of interest and cost, the sum of one hundred dollars.

History.—§1, ch. 59-284.

37.02 Justice of the peace, no jurisdiction.—No justice of the peace shall have jurisdiction of civil actions:

(1) In which the state is a party, except for penalties not exceeding one hundred dollars.

(2) Where the title to or boundaries of real estate shall come into question. If it appear on the trial that title to or boundary of real estate is in question, and such title or boundary shall be disputed by the defendant, the justice shall dismiss the action and render judgment against the plaintiff for the costs.

(3) For false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction.

History.—§2, ch. 2095, 1887; RS 1611; GS 2075; RGS 3366; CGL 5219.

37.03 Justice of the peace, committing magistrate.—Each justice of the peace may issue process for the arrest of all persons charged with felonies and misdemeanors not within their jurisdiction to try, and make the same returnable before himself or the county judge for examination, discharge, commitment or bail of the accused. Said justice of the peace may also hold inquests of the dead.

History.—§11, Art. V, Florida constitution.
cf.—§§902.01-902.19, Preliminary examination in criminal cases.

37.05 Districts, evidence of.—The boundaries or limits of the said justice districts, so laid off and established, shall be spread upon the minutes of the county commissioners, and such minutes shall be conclusive evidence thereof.

History.—§3, ch. 3722, 1887; RS 1603; GS 2067; RGS 3358; CGL 5211.

37.06 Districts, enlargement of.—In all counties where there shall be any justice of the peace district in and for which no justice of the peace shall be elected, qualified or commissioned, the county commissioners of such county shall attach the territory of such justice of the peace district to the territory of some adjacent justice of the peace district which has a justice of the peace, and make it a part thereof by an order to be recorded in the minutes of the proceedings of such county commissioners, which territory shall thereafter, unless otherwise ordered by the board of county commissioners, be considered as part of the justice's district to which it has been attached; a copy of which order shall be posted at the court house of the county.

History.—§1604 RS 1892; §1, ch. 3893, 1899; GS 2068; RGS 3359; CGL 5212.

37.07 Districts, alteration of.—If any new district be made, so that the boundaries of a district or districts existing at the time shall be abolished, or if any district shall be abolished, the county commissioners, at the time of such abolition or obliteration, shall designate the district in which shall preside the justice who shall be successor to the justice presiding in the obliterated or abolished district or districts.

History.—§1605 RS 1892; GS 2069; RGS 3360; CGL 5213.

37.08 General provisions respecting.—All the provisions of law which can be applied to courts of justices of the peace, or to any proceeding therein, or to any officer thereof, shall be applicable thereto in all cases except when they are expressly or impliedly restricted to courts other than justice of the peace courts, and except when they are inconsistent with the provisions of this chapter.

History.—§1598 RS 1892; GS 2062; RGS 3353; CGL 5206.

37.09 Oaths.—Each and every justice of the peace shall, before he enters upon the duties of his office, take and subscribe an oath to faithfully perform the duties of his office, and shall file the same with the clerk of the circuit court.

History.—§6, Nov. 28, 1828; RS 1599; GS 2063; RGS 3354; CGL 5207.

37.10 Bond, in small counties.—Each justice of the peace in counties having a population of one hundred fifty thousand or less according to the last preceding state census, shall give bond in the sum of five hundred dollars, which shall be governed by the provisions governing bonds to be given by the clerk of the circuit court.

History.—§8, ch. 3724, 1887; RS 1600; GS 2064; RGS 3355; CGL 5208; §1, ch. 20719, 1941.
cf.—§§28.01 to 28.05, Bond of circuit court clerk.

37.11 Bond, in large counties.—In each county in the state, having a population in excess of one hundred fifty thousand according to the last preceding state census, the justice of the peace, before being commissioned, shall give bond in a penalty which shall not be less than five hundred dollars, nor more than twenty-five hundred dollars, to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the comptroller, and to be filed with the secretary of state, which bond shall be conditioned upon the faithful discharge of the duties of his office. Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties shall bind themselves shall not be less than the full penalty of the bond. Each surety upon such bond shall make affidavit that he is a resident of the county for which the respective officer is to be commissioned and that he has sufficient visible property therein, unencumbered and not exempt from sale under legal process, to make good his bond. The above provisions as to number of sureties, affidavit of residence and justification of same, shall not apply to solvent surety companies authorized to do business and execute official bonds in this state.

History.—§§1-4, ch. 17754, 1937; CGL 5208(1).

37.12 Seal.—Each justice of the peace shall provide himself with a seal, upon which shall be impressed around the margin the words, "State of Florida, _____ County," and in the center "(Number) Justice's District," and it shall have nothing else thereon.

History.—§1601 RS 1892; RGS 3356; CGL 5209.

37.13 Terms.—Trial terms of justice of the peace courts shall be held on such day as the judge or justice thereof shall designate therefor in the manner provided in §37.14.

History.—§1606 RS 1892; §2, ch. 1438, 1895; GS 2070; RGS 3361; CGL 5214.

37.14 Written notice to be given.—Whenever the day of trial term shall be fixed upon for any justice of the peace court by the judge or justice thereof, written notice of the same shall be made and given by such judge or justice to (and filed in the office of) the clerk of the circuit court of the county.

History.—§1607 RS 1892; §3, ch. 1438, 1895; GS 2071; RGS 3362; CGL 5215.

37.15 Docket.—Every justice of the peace shall keep a docket book, in which he shall make fair and accurate entries of all causes brought before him, and a minute of all the proceedings, including the service and return of process, the appearance of such parties as may appear, the fact of trial, whether by the court or jury, the verdict of the jury or finding by the justice, the judgment, including damages and costs separately stated, the issuing of execution and to whom issued, with the date thereof and the return thereon, and a marginal memorandum of the items of all costs, including justice's fee, sheriff's or constable's fees, and witnesses' fees; which docket, or certified copy thereof, shall be evidence of the matters therein stated.

History.—§13, ch. 2040, 1875; RS 1608; RGS 3363; CGL 5216.
cf.—§81.31, Turning over docket to successor.

37.16 Executive officer.—The sheriff or any constable of the county shall be the executive officer of the courts of justice of the peace but if the sheriff or constable shall, for any reason, be disqualified or unable to act, the justice of the peace may appoint any individual, not interested in the case on trial, to serve process and to perform all duties of such executive officer. Any constable of the county in which the process issued may serve the process of the county judge's court and justice of the peace courts in any district of said county where the same may be lawfully served, provided he shall not be entitled to greater mileage in any case in serving writs from courts of justice of the peace than he would be if the writ issued from such court in the district in which such constable resides and for which he was elected.

History.—§41, Nov. 12, 1828; §32, ch. 2093, 1877; RS 1259, 2846; §1, ch. 4384, 1895; §1, ch. 4989, 1901; GS 1687, 3902; RGS 2897, 3368; CGL 4595, 5221.

37.17 Constables, bond.—Every constable shall give bond in the sum of five hundred dollars, which shall be governed by the provisions governing bond to be given by the clerk of the circuit court.

History.—§§1, 8, ch. 3724, 1887; RS 1257; GS 1685; RGS 2895; CGL 4593.
cf.—§§28.01 to 28.05, Bond of clerk of circuit court.

37.18 Constables, duties.—Constables in the several counties shall serve all summonses and warrants, and levy all executions placed in their hands, agreeably to the tenor thereof, and make due returns of the same to the court to which they may be made returnable; and if any constable shall fail to pay over money collected by him on any execution or other process to the person entitled to receive the same on demand, he shall be liable to a penalty of twenty-five per cent upon the amount so collected for such failure; and it shall be the duty of the court issuing such execution or other process, upon application of the plaintiff, upon his making it appear that said constable has received the amount of said execution or other process, or any part thereof, and has failed to pay over the same on demand, to issue an execution against said constable and his sureties for the same, together with the penalty herein prescribed; which execution shall be levied, and the money raised by some other constable of the county, out of the property of said defaulting constable and his sureties.

History.—§42, Nov. 21, 1828; RS 1258; GS 1686; RGS 2896; CGL 4594.

37.19 Constables, resignation, death and removal.—Whenever any constable resigns or is removed from office, he shall deposit all papers and unfinished business in the court to which the same is made returnable; and if any constable going out of office shall fail to deposit his papers and unfinished business as aforesaid, he and his sureties shall be liable to the action of any person injured by such failure; and if any constable shall die, his executor or administrator shall deposit his papers as aforesaid, and the court in which the said papers and unfinished business are deposited shall cause the same to be acted upon.

History.—§49, Nov. 21, 1828; RS 1260; GS 1688; RGS 2898; CGL 4596.

37.20 Constables, fees.—The fees of constables shall be the same as are at this time allowed sheriffs for like service.

History.—§4, ch. 3106, 1879; RS 1261; GS 1689; RGS 2899; CGL 4597; §1, ch. 14673, 1931; §10, ch. 26484, 1951.
cf.—§30.23 Fees of sheriffs and constables.

37.21 Justice may bind over to keep the peace.—After an affidavit is made before any justice of the peace by any person that he has reason to believe, and does believe, that he will suffer personal violence at the hands of another, he shall issue his warrant for the arrest of the party against whom the affidavit has been made, commanding the officer into whose hands the warrant has been placed, to bring the said person against whom the warrant has issued before him, and if, after a full and thorough examination, he shall have reason to believe, from evidence produced before him, that there is just cause for said complaint, he shall bind the person so arrested over by bond, with two or more

good and sufficient sureties, said bond to be approved by the justice, for one year, to keep the peace, and, upon failure of said person to give bond as aforesaid, he shall commit such person to jail until the required bond is given, but the said commitment shall not be for more than three months.

History.—§1, ch. 3270, 1881; RS 2841; GS 3899; RGS 5997; CGL 8291.
cf.—§§923.04-923.08, Forms of proceedings.

37.22 Disqualification.—In case a justice of the peace be disqualified or unable from any cause to try any criminal case, the same may be tried before any other justice of the peace of the county, or before the county judge.

History.—§2836 RS 1892; GS 3900; RGS 5998; CGL 8292.

37.23 Subpoena, oaths.—Any justice of the peace may issue subpoenas to compel the attendance of witnesses before any court held by a justice of the peace, and may administer all necessary oaths in proceedings before such court.

History.—§2, ch. 1949, 1873; RS 2845; GS 3901; RGS 5999; CGL 8293.

37.24 Justice of the peace; criminal jurisdiction in certain counties.—

(1) After the passage of this section, justice of the peace courts located a distance of forty or more miles from the county seat in counties having a criminal court of record shall have power to hold a court to try and determine misdemeanor cases in which the penalty is not more than one hundred dollars fine or ninety days in jail, or both such fine and imprisonment; provided, however, should the defendant, after having been duly advised of his constitutional rights, demand a trial by jury, then and in that event he, the defendant, shall be bound over to the criminal court of record, the county court, or the county judge's court as the case may be, and required to furnish good and sufficient bond to secure his appearance before such court; provided, further, that all defendants arraigned before such justice of the peace courts, who elect to waive jury trial or enter a plea of guilty, shall be required to sign a formal waiver certified to by the judge of said court, and the formal waiver so executed shall be filed as other papers in such trial.

(2) Provided, further, that nothing in this section shall be construed as affecting the present powers of the various boards of county commissioners in changing boundaries, reducing the number of districts of their respective counties or any other power now held by the boards of county commissioners under the constitution of the state.

(3) Provided, that each justice of the peace coming within the purview of this section shall, within thirty days after June 14, 1943, appear before the clerk of the circuit court and make a certificate setting forth the exact distance by the nearest traveled route from the county seat to his place of holding court, to which the clerk of the circuit court shall certify, and for which the justice shall pay the clerk his legal fee. Provided, further, that no justice of the peace shall, after June 5, 1943, change his place of holding court with intent to bring his court within the purview of this section.

(4) Nothing in this section shall be construed as affecting counties of the state in which justice of the peace courts now or hereafter have trial jurisdiction of misdemeanors as provided by law.

(5) Each justice of the peace coming within the provisions of this section shall procure from the clerk of the circuit court four certified copies of the certificate as provided in subsection (3), and forthwith file one each with the following state officers: State auditor, attorney general, state comptroller, and the clerk of the supreme court of the state.

(6) No justice of the peace shall exercise the powers vested in his court by the provisions of this section until he shall have complied with the requirements herein provided.

History.—§§1-6, ch. 22118, 1943.
cf.—§37.01 Jurisdiction generally.

CHAPTER 38

JUDGES

38.01 Disqualification when judge party; effect of attempted judicial acts.—Every judge of this state who appears of record as a party to any cause before him shall be disqualified to act therein, and shall forthwith enter an order declaring himself to be disqualified in said cause. Any and all attempted judicial acts by any judge so disqualified in a cause, whether done inadvertently or otherwise, shall be utterly null and void and of no effect. No judge shall be disqualified from sitting in the trial of any suit in which any county or municipal corporation is a party by reason that such judge is a resident or taxpayer within such county or municipal corporation.

History.—§2, ch. 16053, 1933; CGL 1936 Supp. 4155(1); §1, ch. 59-43.

38.02 Suggestion of disqualification; grounds; proceedings on suggestion and effect.—In any cause in any of the courts of this state any party to said cause, or any person or corporation interested in the subject matter of such litigation, may at any time before final judgment, if the case be one at law, and at any time before final decree, if the case be one in chancery, show by a suggestion filed in the cause that the judge before whom the cause is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto, or is interested in the result thereof, or that said judge is related to an attorney or counsellor of record in said cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to said cause, but such an order shall not be subject to collateral attack. Such suggestions shall be filed in the cause within thirty days after the party filing the suggestion, or his attorney, or attorneys, of record, or either of them, learned of such disqualification, otherwise the ground, or grounds, of disqualification shall be taken and considered as waived. If the truth of any suggestion appear from the record in said cause, the said judge shall forthwith enter an order reciting the filing of the suggestion, the grounds of his disqualification, and declaring himself to be disqualified in said cause. If the truth of any such suggestion does not appear from the record in said cause, the judge may by order entered therein require the filing in the cause of affidavits touching the truth or falsity of such suggestion. If the judge finds that the suggestion is true, he shall forthwith enter an order reciting the ground of his disqualification and declaring himself disqualified in the cause; if he finds that the suggestion is false, he shall forthwith enter his order so reciting and declaring himself to be qualified in the cause. Any such order declaring a judge to be disqualified shall not be subject to collateral attack nor shall it be subject to review. Any such order declaring a judge qualified shall not be subject to collateral attack but shall be subject to review by the court having appellate jurisdiction of the cause in connection with which the order was entered.

History.—§3, ch. 16053, 1933; CGL 1936 Supp. 4155(2); §1, ch. 26890, 1951; §6, ch.. 63-559.

38.03 Waiver of grounds of disqualification by parties.—The parties to any cause, or their attorneys of record, may, by written stipulation filed in the cause, waive any of the grounds of disqualification named in §38.02 and such waiver shall be valid and binding as to orders previously entered as well as to future acts of the judge therein; provided, however, that nothing herein shall prevent a judge from disqualifying himself of his own motion under §38.05.

History.—§4, ch. 16053, 1933; CGL 1936 Supp. 4155(3).

38.04 Sworn statement by judge holding himself qualified.—Whenever any judge shall enter an order under §38.02 declaring himself qualified to act in said cause, he shall contemporaneously therewith file therein a sworn statement that to the best of his knowledge and belief the ground or grounds of the disqualification named in the suggestion do not exist.

History.—§5, ch. 16053, 1933; CGL 1936 Supp. 4155(4).

38.05 Disqualification of judge on own motion.—Any judge may of his own motion disqualify himself where, to his own knowledge, any of the grounds for a suggestion of disqualification, as named in §38.02, exist. The failure of a judge to so disqualify himself under this section shall not be assignable as error or subject to review.

History.—§6, ch. 16053, 1933; CGL 1936 Supp. 4155(5); §6, ch. 63-559.

38.06 Effect of acts where judge fails to disqualify himself.—In any cause where the grounds for a suggestion of disqualification, as set forth in §38.02, appear of record in the cause, but no suggestion of disqualification is filed therein, the orders, judgments and decrees entered therein by the judge shall be valid. Where, on a suggestion of disqualification the judge enters an order declaring himself qualified, the orders, judgments and decrees entered therein by the said judge shall not be void and shall not be subject to collateral attack.

History.—§7, ch. 16053, 1933; CGL 1936 Supp. 4155(6).
cf.—§58.05(2) Cost; prohibition against unlawful exaction.

38.07 Effect of orders, etc., entered prior to disqualification; petition for reconsideration.—Where orders have been entered in any cause by a judge prior to the entry of any order of disqualification under §38.02 or §38.05, any party to the cause may, within thirty days after the filing in the cause of the order of the chief justice of the supreme court, as provided for in §38.09, petition the judge so designated by said chief justice for a reconsideration of the orders entered by the disqualified judge prior to the date of the entry of the order of disqualification. Such a petition shall set forth with particularity the matters of law or fact to be relied upon as grounds for the modification or vacation of the said orders. Such a petition shall be granted as a matter of right. Upon the granting of the petition, notice of the time and place of the hearing thereon, together with a copy of the petition, shall be mailed by the attorney, or attorneys, of record for the petitioners to the other attorney, or attorneys of record, or to the party or parties if they have no attorneys of record. This notice shall be mailed at least eight days prior to the date fixed by the judge for the said hearing. The judge before whom the cause is then pending may, after hearing had, affirm, approve, confirm, re-enter, modify or vacate said orders.

History.—§8, ch. 16053, 1933; CGL 1936 Supp. 4155(7); §10, ch. 63-572.

38.08 Effect of orders where petition for reconsideration not filed.—If no petition for reconsideration is filed, as provided for in §38.07, all orders entered by the disqualified judge prior to the entry of the order of disqualification shall be as binding and valid as if said orders had been duly entered by a qualified judge authorized to act in the cause. The fact that an order was entered by a judge who is subsequently disqualified under §§38.02 or 38.05, shall not be assignable as error or subject to review by the appropriate appellate court unless a petition for reconsideration as provided for in §38.07, was filed by the party urging the matter as error, and the judge before whom the cause was then pending refused to vacate or modify said order.

History.—§9, ch. 16053, 1933; CGL 1936 Supp. 4155(8); §6, ch. 63-559.

38.09 Designation of judge to hear cause when order of disqualification entered.—Every judge of this state shall upon the entry of an order of disqualification advise the chief justice of the supreme court of the entry of said order who shall enter an order of assignment as provided by the Florida appellate rules and §25.071. In the event any judge shall be disqualified as herein provided, upon application for any temporary writ of injuction or habeas corpus, he shall immediately enter an order of disqualification, whereupon said cause may be presented to any other judge of a court of the same jurisdiction as the court in which said cause is pending, and it shall be the duty of any such judge to hear and determine such matters until such substitute judge is so designated.

History.—§10, ch. 16053, 1933; CGL 1936 Supp. 4155(9); §11, ch. 63-572.

38.10 Disqualification of judge for prejudice; application; affidavits; etc.—Whenever a party to any action or proceeding, shall make and file an affidavit that he fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of said court against the applicant, or in favor of the adverse party, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes where the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists, and such affidavit shall be filed not less than ten days before the beginning of the term of court, or good cause shown for the failure to so file same within such time. Any such affidavit so filed shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith, and the facts stated as a basis for making the said affidavit shall be supported in substance by affidavit of at least two reputable citizens of the county not of kin to defendant or counsel for the defendant; provided, however, that when any party to any action shall have suggested the disqualification of a trial judge and an order shall have been made admitting the disqualification of such judge and another judge shall have been assigned and transferred to act in lieu of the judge so held to be disqualified the judge so assigned and transferred shall not be disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge shall admit and hold that it is then a fact that he, the said judge, does not stand fair and impar-

tial between the parties, and if such judge shall hold, rule and adjudge that he does stand fair and impartial as between the parties and their respective interests he shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error, and be reviewed as are other rulings of the trial court.

History.—§4, ch. 7852, 1919; RGS 2674; §1, ch. 9276, 1923; CGL 4341.
cf.—§911.01, Criminal cases, change of judge for prejudice.

38.12 Resignation, death or removal of judges; disposition of pending matters and papers.—Upon the resignation, death or impeachment of any judge, all matters pending before him shall be heard and determined by his successor, and parties making any motion before such judge shall suffer no detriment by reason of his resignation, death or impeachment. All judges, other than justices of the peace, upon resignation or impeachment shall file all papers pending before them with the clerk of the court in which the cause is pending; and the executor or administrator of any judge who dies pending any matter before him, shall file all papers found among the papers of his intestate or testate with the said clerk.

History.—§§1, 2, ch. 3007, 1877; RS 971, 972; GS 1341, 1342; RGS 2529, 2530; CGL 4156, 4157.

38.13 Judge ad litem; when may be selected in the circuit or county court.—When from any cause, the judge of a circuit or county court is disqualified from presiding in any civil case, the parties may agree upon an attorney-at-law, which agreement shall be entered upon the record of said cause, who shall be judge ad litem, and shall preside over the trial of, and make orders in said case, as if he were the judge of the court.

Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be, or they may have the case submitted to a referee.

History.—§1, ch. 3713, 1887; RS 974; GS 1344; RGS 2533; CGL 4160; §7, ch. 22858, 1945.

38.14 Voluntary retirement of circuit judges.—Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof, and has served as such judge for twelve years or more or who is serving the twelfth continuous year as such judge, continuously or otherwise, and has attained the age of sixty years or more, or has served as such judge for twenty years or more, continuously or otherwise, such judge may voluntarily resign and retire from his office, and upon such retirement he shall be paid, during the remainder of his natural life, on his own monthly requisition, from the circuit judges' retirement trust fund hereinafter established, two-thirds of the compensation being paid to such judge at the time of his resignation and retirement; and there is hereby appropriated annually out of said circuit judges' retirement trust fund sufficient money to meet the requirements of this section.

History.—§§1, 3, ch. 19000, 1939; CGL 1940 Supp. 4779 (1), 4779(3); §7, ch. 22000, 1943; §2, ch. 61-119.
cf.—§§25.101, 25.112, 25.122, 25.131 and 25.141.
Ch. 123, Retirement system of justices and judges of higher courts.

38.15 Retirement of disabled judges.—(1) Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof and has served as such circuit judge for ten years or more, continuously or otherwise, and shall, while holding such office, become totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service as such judge, such judge may voluntarily resign and retire from his office, and upon such retirement he shall be paid, during the remainder of his natural life, on his own monthly requisition, from the circuit judges' retirement trust fund hereinafter established one-half of the compensation being paid to such judge at the time of his resignation and retirement; and there is hereby appropriated annually out of said circuit judges' retirement trust fund sufficient money to meet the requirements of this section.

(2) No such judge shall be permitted to retire and resign under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians or surgeons, to be selected by the governor for that purpose, and found to be disabled in the degree and in the manner specified herein.

History.—§2, ch. 19000, 1939; CGL 1940 Supp. 4779(2); §7, ch. 22000, 1943; (1)a. §2, ch. 61-119.

38.16 Retired judge prohibited from practicing law.—No judge drawing retirement compensation as provided in this charter shall engage in the practice of law.

History.—§4, ch. 19000, 1939; CGL 1940 Supp. 4779(4).

38.17 Deductions from salary; election.—Two per cent shall be deducted from each installment of the salary of each circuit judge heretofore electing to come under the retirement provision of chapter 19000, acts of 1939, as provided in §5 thereof, and said amount so deducted shall be deposited in the special fund established in the state treasury, which is and shall be known as the "Circuit judges' retirement trust fund." Any person who may hereafter qualify as circuit judge shall be entitled to the benefits of these retirement provisions upon giving notice to the state comptroller and the state treasurer within ninety days after taking office, and, after the giving of such notice, so long as such circuit judge shall hold office, two per cent shall be deducted from each installment of salary of such circuit judge and the said amount so deducted shall be deposited into said circuit judges' retirement trust fund. The word "salary" shall be deemed to mean the total salary received by any circuit judge including therein all amounts paid by any county of this state.

History.—§5, ch. 19000, 1939; CGL 1940 Supp. 4779(5); §2, ch. 61-119.

38.18 Retirement, circuit judge; Duval county.—Two per cent shall be deducted from each installment of salary of the judge of the circuit court of Duval county, holding office pursuant to the provisions of §26(8) of Art. V of the constitution of Florida, provided said judge has heretofore taken advantage of the provisions of chapter 19000, acts 1939, as provided in §6 thereof, and said amount so deducted shall be deposited in the aforesaid circuit judges' retirement trust fund. Any person who may hereafter qualify as circuit judge pursuant to the provisions of §26 (8) of Art. V of the constitution of Florida shall be entitled to the benefits of these retirement provisions upon giving notice, each and severally, to the state comptroller, the state treasurer, the chairman of the board of county commissioners of Duval county and the clerk of the circuit court in and for Duval county within ninety days after taking office, and after the giving of such notice, so long as such circuit judge shall hold office, two per cent shall be deducted from each installment of salary of said circuit judge, and said amount so deducted shall be deposited into the circuit judges' retirement trust fund.

History.—§6, ch. 19000, 1939; CGL 1940 Supp. 4779(6); §2, ch. 61-119.

38.19 Appropriation.—There is hereby appropriated annually and shall be paid into said circuit judges retirement trust fund out of any funds in the state treasury, not otherwise appropriated, sufficient moneys to meet the requirements of these retirement provisions, taking into account the sum paid into the circuit judges retirement trust fund aforesaid.

History.—§7, ch. 19000, 1939; CGL 1940 Supp. 4779(7); §2, ch. 61-119.

38.22 Power to punish.—Every court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact, but the punishment imposed by a justice of the peace shall not exceed twenty dollars fine, or twenty-four hours' imprisonment.

History.—§1, Nov. 23, 1828; RS 975; GS 1345; RGS 2534; CGL 4161; §1, ch. 23004, 1945.

38.23 Contempts defined.—A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

History.—§2, Nov. 23, 1828; RS 976; GS 1346; RGS 2535; CGL 4162.

CHAPTER 39

JUVENILE COURTS

39.01 Definitions.—When used in this chapter:

(1) "Juvenile court" means any court the name of which includes the word "juvenile", heretofore or hereafter established in any county or in any district consisting of two or more counties, and the county judge's court in every county in which no separate juvenile court is established either for that county or for a district including that county within its limits. If any separate juvenile court is hereafter established, each county judge's court in the county or district wherein the separate juvenile court is established shall cease to be a juvenile court, and if any separate juvenile court heretofore or hereafter established shall be abolished, each county judge's court within the county or district wherein the separate juvenile court was established shall become a juvenile court.

(2) "Separate juvenile court" means a juvenile court other than one presided over by a county judge acting as juvenile court judge.

(3) "Judge" means the judge of the juvenile court, unless the context shows that the judge of another court is meant.

(4) "Counselor" means the counselor of the juvenile court.

(5) "Assistant counselor" means an assistant counselor of the juvenile court.

(6) "Child" means any married or unmarried person under the age of seventeen years, or any person who is charged with a violation of law occurring prior to the time that person reached the age of seventeen years.

(7) "Adult" means a person other than a child.

(8) "Parent" means the father or mother of a child or the natural mother but not the natural father of an illegitimate child. If a child has been legally adopted, the term "parent" means the adoptive rather than the natural mother or father.

(9) "Legal custodian" means the legal guardian of a child, or the person who stands in loco parentis to and has the custody of a child.

(10) "Dependent child" means a child who, for any reason, is destitute, homeless, dependent upon the public for support, or has not proper parental support, maintenance, care, or guardianship; or who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological or other care necessary for the well-being of the child; or who is abandoned by the child's parent or other custodian; or whose condition or environment are such as to injure or endanger the welfare of the child or the welfare of others; or whose home, by reason of neglect, cruelty or depravity, or other adverse condition, on the part of the parents, legal custodians, guardian or other person in whose care the child may be, is an unfit place for the child.

(11) "Delinquent child" means a child who commits a violation of law, regardless of where the violation occurred; or is incorrigible; or is a persistent truant from school; or who is beyond the control of the child's parent or other legal custodian; or who associates with criminals, reputed criminals, or vicious or immoral persons; or is growing up in idleness or crime; or whose occupation, behavior, or associations are such as to injure or endanger the welfare of the child or the welfare of others; or who is found in a place predominantly used for selling intoxicating drinks for consumption on the premises.

(12) "Violation of law" means violation of any law of the United States, the state, or another state within the United States, or a city or town ordinance of a city or town within the United States. "Federal law" means a law of the United States.

(13) "Licensed child caring institution" means a person, society, association, or institution licensed by the state welfare board to care for, receive, or board children.

(14) "Licensed child placing agency" means a person, society, association, or institution licensed by the state welfare board to care for, receive, or board children, and to place children in a licensed child caring institution or a foster or adoptive home.

(15) "County children's committee" means the county committee referred to in §417.03.

(16) "Juvenile court merit board" means those members of the county children's committee described as "a member of the district welfare board, a member of the board of county commissioners, the county school superintendent or a member of the county school board, and the director of the county health unit where one exists," and the county board of visitors referred to in §416.07.

(17) "Florida Bar" means the Florida Bar referred to in the opinion of the supreme court integrating the Florida Bar, filed June 7, 1949, in re Petition of Florida State Bar Ass'n. et al., 40 So. (2d) 902, and in the rules of that court relating thereto approved and adopted on February 27, 1950, and March 4, 1950.

(18) "Industrial school" means the Florida industrial school for boys or the state industrial school for girls referred to in chapters 955 and 956, or any similar school the state may establish.

(19) "Detention home" means the detention room, house of detention, or detention home referred to in chapter 416, and such similar detention quarters for delinquent or dependent children as may have been or may hereafter be established under general laws or under special acts applying only to particular counties.

(20) "Juvenile court fund" means the sum appropriated for the expense of operating the juvenile court as set forth in this chapter.

History.—§1, ch. 26880, 1951.

39.02 Jurisdiction.—

(1) The juvenile court shall have exclusive original jurisdiction of dependent and delinquent children domiciled, living or found within the county or district in which the court is established. The juvenile court of the county or district in which the child is found shall assume jurisdiction of the child, which jurisdiction shall be exclusive unless the judge thereof, upon approval of the judge of the juvenile court of the county or district in which is located the domicile or usual residence of the child, shall transfer the case and child to the latter court, before or after hearing, in which event the latter court shall thereafter exercise exclusive jurisdiction; provided, however, if the judge shall find that any child brought into juvenile court who, if an adult, would be charged with violating a federal law, state law, or city ordinance relating to the operation or use of a motor vehicle, the judge may enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult.

(2) All proceedings against a child for alleged violation of law must be brought in the juvenile court, except as provided in subsection (6) of this section.

(3) If during the pendency of any criminal charge in any other court of the state of Florida or of any city or town therein, against any person presumed to be an adult, it shall be ascertained that the person is a child, or was a child at the time the offense was committed, that court shall forthwith transfer the case, together with the physical custody of the child and all physical evidence, papers, documents, and testimony, original and duplicate, connected therewith, to the appropriate juvenile court; provided, that this shall not apply to any case certified to that court by the juvenile court judge as provided in subsection (6) of this section. The juvenile court is exclusively authorized to assume jurisdiction over any delinquent child arrested and charged with violating a federal law or a law of the District of Columbia, who is found or living or domiciled in the county or district in which the juvenile court is established, when the child is surrendered to the juvenile court as provided in Title 18, U.S.C., section 5001.

(4) The judge of the juvenile court shall have the jurisdiction of a committing magistrate.

(5) When jurisdiction of any child shall have been obtained, the court shall retain jurisdiction, unless relinquished by order, until the child reaches twenty-one years of age; provided, that this shall not prevent the exercise of jurisdiction of any other court having jurisdiction in case the child, after becoming an adult, commits a violation of law.

(6) If the judge deems that any child brought into juvenile court as a delinquent child, who is fourteen years of age or older, and who, if an adult, would be charged with a violation of Florida law constituting a felony, should be transferred to the court which would have jurisdiction of the child if the child were an adult, or if any child brought into juvenile court as a delinquent child, and who, if an adult, would be charged with a violation of the laws of Florida, so demands prior to or at the commencement of the hearing before the court, the judge shall enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult; provided, that a child sixteen years of age or older who, if an adult, would be charged with a capital offense, shall be so transferred; provided, further, that jurisdiction over any child transferred under the provisions hereof shall revert to and be reinvested in the juvenile court making the transfer in the event that no criminal charge is brought against such child in the court to which he is transferred by the end of the next term of said court which commences after such transfer, or in the event that a criminal

charge brought within that time is nolle prosequied or dismissed, and no further charge is brought in said court within sixty days thereafter; providing further, that any child, irrespective of age, who, if an adult, would be charged with a violation of Florida law punishable by death or life imprisonment and such offense is presented to the grand jury who returns an indictment against said child, then the juvenile court shall waive its jurisdiction of said child for said offense and shall transfer the child to the proper court having jurisdiction to try said offense.

(7) Nothing in this chapter shall be deemed to take away from the juvenile court any jurisdiction or duties conferred upon it by §§232.19, 391.07, 409.03, 416.03, 416.06, 416.07, 416.08, and 417.03.

Nothing in this chapter shall be deemed to take away from the separate juvenile courts heretofore established in the counties of Broward, Dade, Pinellas and Polk any additional juvenile court or domestic relations jurisdiction which may be conferred upon them by chapter 22709, acts of 1945, laws of Florida, as amended (as to Broward); chapter 19597, acts of 1939, laws of Florida, as amended (as to Dade); chapter 11972, acts of 1927, laws of Florida (as to Pinellas); and house bill No. 1234 passed by the legislature at the 1951 session (as to Polk).

History.—§1, ch. 26880, 1951; (6) §1, ch. 28172, 1953; (1), (6) §§1, 2, ch. 29900, 1955; (1) §1, ch. 63-12.

39.03 Taking a child into custody; detention.—

(1) No child shall be taken into custody without an order of the judge of the juvenile court of the county or district wherein the child is found, living, or domiciled, unless (a) the child is in such condition or surroundings that the welfare of the child requires that the child be immediately taken into custody, or (b) the child shall be alleged to have committed a violation of law. In case either of those special circumstances shall exist, any law enforcement officer whose duty it would be to do so if the child were an adult, and any counselor or assistant counselor, may take the child into custody without order of the judge.

(2) Unless otherwise ordered by the judge, the person taking the child into custody shall, whenever practicable, release the child to a parent or legal custodian of the child upon agreement of the parent or legal custodian to produce the child in juvenile court at such time as the court may direct, and shall forthwith make a full written report to the court, stating the facts by reason of which the child was taken into custody.

(3) The person taking and retaining a child in custody shall notify the parents or legal custodians of the child and the principal of the school in which said child is enrolled at the earliest practicable time, and shall, without delay for the purpose of investigation or any other purpose, deliver the child, by the most direct practicable route, to the court of the county or district where the child is taken into custody, or, if the judge has so ordered, to a detention home or licensed child caring institution or county or city jail, within the county or district, designated by the judge, and shall at the earliest practicable time report in writing to the court the facts by reason of which the child was taken into custody. The child shall not under any circumstances be placed in any police or other vehicle which at the same time contains an adult under arrest, nor in a jail, police station, or other place of detention, except on general or special order of the judge; providing, however, where the child is involved in the same offense or transaction with adults, then such child may be transported in the same vehicle with the adults so involved.

(4) The judge shall not make any order directing the delivery of a child to a jail unless neither a detention home nor a licensed child caring institution exists within the county or district, or neither is able to receive the child, or neither is a proper place therefor in the opinion of the judge; and the judge shall, at monthly intervals, inform the board of county commissioners and the county children's committee, in writing, of the number of and reasons for deliveries of children to jail, identifying children by initials and juvenile court case numbers but not by names.

(5) Whenever a child shall, pursuant to order of the judge, be delivered over to any jail, the child shall, in every case without exception, be placed and kept in a part of the jail entirely separate and apart from adult inmates.

(6) No child taken into custody shall be fingerprinted or photographed except by special order of the juvenile court judge, and no original nor any copy of any so taken shall be filed or recorded in any place other than the juvenile court, but all originals and copies thereof shall be delivered over to the juvenile court at the time directed in the order and promptly destroyed; provided, that this shall not apply to the photographing of children at an industrial school. Any record of the child made by any law enforcement officer or other person except the officers and employees of the juvenile court shall be made in a separate record kept for that purpose, identifying the child only by the initials and juvenile court case number of the child; shall not be a public record; and shall not be open to inspection by anyone other than the officers and employees of the juvenile court and by the child, the parents or legal custodians of the child, and their attorneys; provided however, that the records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations.

(7) No child taken into custody who has not been adjudicated to be a dependent or delinquent child shall be detained in custody longer than two days, excluding Sundays and legal holidays, unless a special order so directing is made by the judge, finding that the

release of the child would be inimical to the welfare of the child or of the public, stating the reasons for such finding. The reasons for such finding shall be reviewable by appeal or in habeas corpus proceedings.

History.—§1, ch. 26880, 1951; (3), (6) §§3, 4, ch. 29900, 1955; (3) §1, ch. 59-441; (6) §1, ch. 61-54.

39.04 Investigation.—Upon receiving reliable information that a child within the county or district wherein the juvenile court is established is a dependent or delinquent child, the counselor or an assistant counselor shall investigate and, if the investigation discloses reasonable ground for belief that the child is a dependent or delinquent child, and no petition with reference to the child has been filed in that juvenile court, shall file such a petition.

History.—§1, ch. 26880, 1951.

39.05 Petition.—

(1) The counselor, any assistant counselor, or any other person may file in the juvenile court a petition stating that a child within the county or district wherein the juvenile court is established is a dependent or delinquent child.

(2) The petition must be in writing, signed and verified by the affidavit of the person signing it, made before the judge, counselor, or an assistant counselor of the court in which the petition if filed. The affidavit may be upon information and belief.

(3) The petition, all orders and other papers filed in the official records in any case shall be entitled "In the interest of _____, a child."

(4) The petition shall set forth the name, age, and residence of the child; the names and residence of the parents or legal custodians of the child; and the facts which are alleged to constitute the child a dependent or delinquent child. If any such information shall be unknown to the person signing the petition, the petition shall so state. The petition shall be sufficient if it clearly, fairly, and concisely states the substance of the facts which, if true, constitute the child a dependent or delinquent child, in such manner as to apprise the parents or legal custodians of the child, and to apprise the child if the child is of sufficient age and understanding, of the nature thereof, couched in narrative terms and not in the usual language of criminal informations and indictments.

History.—§1, ch. 26880, 1951.

39.06 Process and service.—

(1) Personal appearance of any person in a hearing before the juvenile court shall obviate the necessity of serving process upon that person.

(2) Upon the filing of a petition containing allegations of facts which, if true, would constitute the child therein named a dependent or delinquent child found, living or domiciled within the county or district wherein the court is established, the court shall investigate and, if those facts appear to be true, a summons reciting briefly the substance of the petition shall be issued out of the juvenile court by the judge, counselor, or an assistant counselor, to the parents and legal custodians of the child named in the petition if their names and residences are ascertainable, and if not ascertainable then to any relative of the child whose name and residence is ascertainable, directing them to appear personally before the juvenile court at a time and place stated in the summons, which time shall not be less than twenty-four hours after service of the summons, and to bring the child before the juvenile court at that time and place if the child is not in custody by order of the juvenile court.

(3) If it appears from the petition that the child named therein is in such condition or surroundings that the welfare of the child requires that the child be taken into custody upon the filing of the petition, or if the petition alleges that the child has committed a violation of law, and the judge deems it advisable to do so, the judge may, by endorsement upon the summons, order that the child shall be taken into custody immediately, and in such case the person serving the summons shall forthwith take the child into custody.

(4) Witness subpoena shall be issued to any other person who will not otherwise appear and whose presence at the hearing is deemed necessary by the judge, counselor, or assistant counselor, or is requested by the child or the parent or legal custodian of the child.

(5) It shall not be necessary to the validity of any juvenile court proceedings concerning a child that the parents or legal custodians of the child be present, if diligent search and inquiry have been made without success by the court to ascertain their identity and residences, or if the parents and legal custodians evade service of or ignore summons, but in that event the judge, counselor, or assistant counselor who made the search and inquiry shall file in the case a certificate as to those facts, and the judge may appoint a guardian ad litem for the child. This subsection shall not modify the provisions of subsection (4) of §39.11.

(6) The jurisdiction of the juvenile court shall attach to the child and case when the summons is served upon a parent or legal custodian of the child, or when the child is taken into custody with or without service of summons and before or after filing of a petition, whichever first occurs, and thereafter the juvenile court may control the child and case in accordance with this chapter.

(7) The process, summons, warrant, and orders of the juvenile court shall run throughout the state, as fully and effectively as the process of the circuit court.

(8) All process, orders, commitments to an industrial school, and other papers issued out of the juvenile court or by the judge thereof in the capacity of committing magistrate may be served or executed, as the judge may direct, by the counselor or an assistant counselor of

that juvenile court, or in the same manner as process issued out of a circuit court.

(9) No fee shall be paid for service of any process, orders, or other papers by a counselor or assistant counselor, but any expense incurred therein shall be paid out of the juvenile court fund, except expense incident to transportation of children to an industrial school, which expense shall be paid out of the fine and forfeiture fund of the county wherein the child was found. If any process, orders, or other papers are served or executed by any sheriff or constable, the sheriff or constable shall be compensated in accordance with law out of the funds of the county set aside for that purpose, and not out of the juvenile court fund.

History.—§1, ch. 26880, 1951; (6) §10, ch. 27991, 1953.
cf.—§30.23 Transportation cost of children to industrial school. §955.24 Sheriffs expenses in taking offenders to industrial schools.

39.07 No answer required.—No answer to the petition, nor any other pleading, need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose.

History.—§1, ch. 26880, 1951.

39.08 Medical, psychiatric, and psychological examination and treatment.—After a petition has been filed, the judge may order the child named in the petition to be examined by a physician, psychiatrist, or psychologist willing to do so. After a child has been adjudicated to be a dependent or delinquent child, and before such adjudication with the consent of any parent or legal custodian of the child, the judge may order the child to be treated by a physician, psychiatrist, or psychologist willing to do so. For the purpose of either examination or treatment, the judge may order the child to be placed in a suitable place.

History.—§1, ch. 26880, 1951.

39.09 Hearing.—

(1) The hearing shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation or procuring counsel upon request of the child or a parent or legal custodian of the child shall whenever practicable be granted.

(2) Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases in the circuit courts, and adjourning the hearings from time to time as necessary. All such hearings, except as hereinafter provided, shall be open to the public and no person shall be excluded therefrom except on special order of the judge, who, in his discretion may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. In any event, all hearings involving unwed mothers, custody or placement of illegitimate children shall remain confidential and closed to the public as heretofore. Hearings in such cases involving more than one child may be held simultaneously where the several children involved are related to each other or were involved in the same transactions. The child and the parents or legal custodians of the child may be examined separately and apart from each other. This subsection shall not be applicable to hearings before the judge as committing magistrate.

History.—§1, ch. 26880, 1951; (2) §1, ch. 57-257.

39.10 Adjudication.—

(1) If the judge shall find that the child named in a petition is not a dependent or delinquent child, the judge shall enter an order so finding and dismissing the case.

(2) If the judge shall find that the child named in a petition is a dependent or delinquent child, the judge shall incorporate that finding in an order entered in the case, briefly stating the facts upon which the finding is made, and the juvenile court shall thereafter have full jurisdiction to deal with the child as a dependent or delinquent child.

(3) An adjudication by a juvenile court that a child is a dependent or delinquent child shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, nor to disqualify or prejudice the child in any civil service application or appointment.

History.—§1, ch. 26880, 1951.

39.11 Powers with reference to dependent or delinquent children.—

(1) When any child shall be adjudicated by a juvenile court to be a dependent or delinquent child, the juvenile court having jurisdiction of the child shall have the power, by order, to:

(a) Place a child, under the supervision of the counselor, either in the child's own home, or, the prospective custodian being willing, in the home of a relative of the child, or in some other suitable place, under such reasonable conditions as the judge may direct.

(b) Commit the child to a detention home, or to a licensed child caring institution willing to receive the child.

(c) Commit the child to an industrial school, if the board of commissioners of state institutions is willing to receive the child thereat.

(d) Permanently commit the child to a licensed child placing agency, *or the state department of public welfare, willing to receive the child, for subsequent adoption, if the juvenile court finds that the child has been abandoned by the natural parent or parents, and legal guardian if any, of the child; or that the parent or parents, and legal guardian if any, have substantially and continuously or repeatedly refused, or though financially able have neglected, to give the child parental care and protection; or that the parent or parents, and legal guardian if any, are unfit by reason of their conduct or condition, which is

seriously detrimental to the child's welfare; and if the court finds that it is manifestly to the best interest of the child to do so.

(e) Order the natural or adoptive parents of such child, or guardian of such child's estate, if possessed of assets which under law may be disbursed for the care, support and maintenance of such child, to pay the person or institution (not including the state industrial schools for boys and girls) having custody of such child reasonable sums of money at such intervals as the court may consider adequate and proper for the care, support, maintenance, training, or education of such child. The court, in making such order, shall consider the circumstances and ability of such parents to pay, and to the value of assets of the guardianship estate of such child, and where such order affects the guardianship estate, a certified copy of such order shall be delivered to the county judge having jurisdiction of such guardianship estate.

(2) Any order made pursuant to subsections (1) (a) or (1) (b) may thereafter be modified or set aside by the juvenile court.

(3) Any commitment made to an industrial school shall be for an indeterminate period of time, any child so committed to be released when directed by the board of commissioners of state institutions rather than upon the order of the juvenile court committing the child, but no child shall be held in an industrial school under a commitment from a juvenile court after becoming twenty-one years of age. The juvenile court, in committing a child, shall not lose jurisdiction, but shall discontinue exercising active control over the child while the child is committed to the school. The board of commissioners of state institutions shall notify the juvenile court which committed the child to the school, at least thirty days before releasing the child, and the juvenile court may thereupon resume control and thereafter make orders for the supervision of the child as may be proper.

(4) Before the juvenile court may permanently commit a dependent or delinquent child to a licensed child placing agency *or the state department of public welfare for subsequent adoption, in addition to the other requirements set forth in this chapter the following requirements shall be met:

(a) Notice must be served upon the known living parents and legal custodians of the child, and if all of these persons be dead or unknown then upon a relative of the child, in the manner prescribed by law for service of summons in chancery, specifically notifying them that a petition has been filed for the permanent commitment of the child to a licensed child placing agency *or the state department of public welfare for subsequent adoption, and commanding them to appear in that court on a day named in the notice not less than fifteen nor more than sixty days after service of the notice, and to show cause why the petition should not be granted.

(b) In the event that those persons cannot be personally served with notice in the manner prescribed in paragraph (a), the judge or counselor shall cause the notice to be published once each week for four consecutive weeks (four publications being sufficient) prior to the return date, in some newspaper published in the county or district in which the juvenile court is established. The published notice shall command those persons to appear in court on a day named in the notice not less than twenty-eight nor more than sixty days from the date thereof, and the notice shall otherwise be identical with the form of notice prescribed in paragraph (a). If the natural parents, legal custodians, and relatives be unknown or dead, the published notice shall be directed to "whom it may concern." The judge or counselor shall mail a copy of the published notice to each person to whom the notice is directed for whom an address can be obtained after diligent search and inquiry, and shall file in the case a certificate of constructive service. Service by publication as specified herein shall be as effectual as personal service within this state of the notice. The cost of publishing the notice shall be paid out of the juvenile court fund upon approval of the judge or counselor, or the judge may require the cost thereof to be paid by the licensed child placing agency *or state department of public welfare desiring entry of the order.

(c) Notice as prescribed by this section may be waived, in the discretion of the judge, where the living parents, and any legal guardian, of the child, execute, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child placing agency *or the state department of public welfare.

(5) A licensed child placing agency *or the state department of public welfare to which a child is permanently committed for subsequent adoption in accordance with this chapter may place the child in a family home for prospective subsequent adoption, and may thereafter become a party to any proceeding for the legal adoption of the child and may appear in any court where the adoption proceeding is pending and consent to the adoption, and that consent alone shall in all cases be sufficient. A permanent order of commitment, whether pursuant to consent or after notice served as herein prescribed, shall permanently deprive the parents and legal guardian of any right to the child. In any subsequent adoption proceedings the parents and legal guardian shall not be entitled to any notice thereof, nor shall they be entitled to knowledge, at any time after the permanent order of commitment is entered, of the whereabouts of the child or the identity or location of any person having the custody of or having adopted the child, and in any habeas corpus or other proceeding involving the child brought by any parent or legal guardian of the child no agent of the licensed child placing agency *or state department of public welfare shall be compelled to divulge that information, but may be compelled to produce the child before a court of competent jurisdiction if the child is still subject to the guardianship of the

licensed child placing agency *or state department of public welfare. The entry of the permanent order of commitment shall not entitle the licensed child placing agency *or state department of public welfare to guardianship of the estate or property of the child, but the licensed child placing agency *or state department of public welfare shall be the guardian of the person of the child, and the juvenile court shall no longer exercise jurisdiction over the child after entry of such order.

(6) The juvenile court may at any time enter an order ending its jurisdiction over any child.

History.—§1, ch. 26880, 1951; (1) §5, ch. 29900, 1955; §7, ch. 63-449.

*Note.—Word "or" added by statutory revision department.

cf.—§955.22 Board may for certain reasons, refuse to receive person committed, etc.; see also §956.02.

39.12 Seal; records; privileged information.—

(1) The juvenile court is a court of record, having a seal, and the judge, counselor, and assistant counselors thereof shall each have power to administer oaths and affirmations. The seal shall be prescribed and furnished by the board of county commissioners of the county in which the court is established, or, in case of a district juvenile court, by the board of county commissioners of the county in which the court is principally held.

(2) The juvenile court shall make and keep records of all cases brought before it, and shall preserve the records pertaining to a child until ten years after the last entry was made, and may then destroy them, except that records of cases where orders were entered permanently depriving a parent of the custody of a child shall be preserved permanently. The juvenile court shall make official records, consisting of all petitions and orders filed in a case and any other pleadings, certificates, proofs of publication, summons, warrants and other writs which may be filed therein and shall make social records, consisting of records of investigation and treatment and other confidential information not forming part of the official records. In addition to the foregoing, the judge of each juvenile court shall keep a record to be designated "juvenile court statistical card" as to each child on whom a petition has been filed in the court, setting forth full statistical data concerning such child and the grounds for the proceedings involved. The statistical card shall be in such form as provided by the Florida children's commission and approved by the state organization of juvenile court judges, and until such card is so provided, the card now designated as "Form JC 1" of the department of public welfare shall be used as the statistical card herein required. Said card shall on or before the tenth day of each month be delivered to the department of public welfare of this state and shall be used by said department only for the purpose of obtaining the statistical information and shall be returned without undue delay to the juvenile court when such information is obtained. Such cards shall not be public records and shall be confidential information while in the possession of said department, and said department shall not take or retain any names or addresses from any such cards or other information that would identify a child; nor shall such department release or publish any statistical data of a particular county or group of counties except it may publish the combined or integrated statistical data so obtained as to all counties reporting under this law. Said department and any juvenile judge shall permit duly authorized representatives of other state departments to inspect and make abstracts necessary for compilation of statistics in relation to child dependency and delinquency in this state.

(3) Juvenile court records except records of traffic violations, shall not be open to inspection by the public. All records, except those for traffic violations, shall be inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child. The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the judge may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained in discharge of official duty by any judge, counselor, assistant counselor, or employee of any juvenile court shall be privileged, and shall not be disclosed to anyone other than the authorized personnel of the juvenile court and others entitled under this chapter to receive that information, except upon order of the judge.

(5) All orders of the court shall be in writing and signed by the judge, except that the counselor or assistant counselor may sign a summons, witness subpoenas, or notice to appear.

(6) No juvenile court record shall be admissible in evidence in any civil or criminal proceeding in any other court, except that:

(a) Orders permanently depriving a parent of the custody of a child and committing the child to a licensed child placing agency *or the state department of public welfare for adoption shall be admissible in evidence in subsequent adoption proceedings relating to the child;

(b) Orders transferring a child to another court for trial shall be admissible in evidence in the other court, but shall create no presumption as to the guilt of the child, nor shall same be read to or commented upon in the presence of the jury in any trial in the other court.

(c) Orders binding an adult over for trial on a criminal charge, made by the judge as a committing magistrate, shall be admissible in evidence in the court to which the adult is bound over;

(d) Juvenile court records forming a part of the record on appeal shall be used in the

appellate court in the manner hereinafter provided;

(e) Juvenile court records necessary therefor shall be admissible in evidence in other courts in any case where a person is being tried upon a charge of having committed perjury in testifying in the juvenile court.

History.—§1, ch. 26880, 1951; (2) §6, ch. 29900, 1955; (3) §2, ch. 61-54; (6) §7, ch. 63-449.

*Note.—Word "or" added by statutory revision department.

39.13 Contempt.—The juvenile court shall have the same power to punish for contempt as do the circuit courts, and may punish for contempt any person interfering with the administration of or violating any provision of this chapter or order of the court relative thereto.

History.—§1, ch. 26880, 1951.

39.14 Appeal.—

(1) Any child and any parent or legal custodian of any child affected by an order of the juvenile court, excluding such order as the judge may make as committing magistrate, may appeal to the appropriate district court of appeal.

(2) Notice of appeal shall be filed in writing in the juvenile court within ten days after entry of the order appealed from, accompanied by the fee required by law to be paid to the clerk of the district court of appeal upon filing an appeal.

(3) Within ten days after the filing of the notice of appeal in the juvenile court, the judge or counselor shall transmit the notice of appeal, together with all original papers filed in the official record of the case, and any narrative statement of the evidence which the juvenile court judge may desire to prepare and file therein, the stenographic report of the testimony if any was made, and the appeal fee deposited by the appellant, to the clerk of the district court of appeal.

(4) On appeal no new evidence may be presented, but the appeal shall be heard upon the law and the facts as shown by the official records of the juvenile court.

(5) The attorney general shall represent the state and the juvenile court upon appeal, and shall be notified of the appeal by the judge or counselor when the notice of appeal is filed in the juvenile court.

(6) The taking of an appeal shall not operate as a supersedeas in any case, except that a permanent order of commitment to a licensed child-placing agency or department of public welfare for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

(7) On appeal, the district court of appeal shall decide only whether a lawful order has been entered by the juvenile court, and shall not substitute its judgment for that of the juvenile court in descretionary matters.

(8) No briefs or papers other than the juvenile court file need be filed in the district court of appeal unless the said court shall specially so direct, but briefs may be filed by the appellant or the attorney general if either desires to do so. At any time after the juvenile court file shall have been received by the clerk of the district court of appeal, the appellant or the attorney general, after notice to the other, may apply to the said court to set a date for the argument on the appeal and the court shall dispose of the proceedings as expeditiously as possible.

(9) The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled, with the initials but not the name of the child and the juvenile court case number, and the papers shall remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and shall not be open to public inspection. The decision of the appellate court shall be likewise entitled, and shall refer to the child only by initials and juvenile court case number.

(10) The original order of the appellate court, with all papers filed in the case on appeal, shall remain in the office of the clerk of the said court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the juvenile court all papers transmitted to the said court from the juvenile court, together with a certified copy of the order of the appellate court.

(11) The juvenile court, upon receipt of the certified copy of the order of the appellate court, shall forthwith take action in accordance with the order and decision of the appellate court by either dismissing the case and returning the child to the person previously in custody or by making further orders as may be appropriate.

History.—§1, ch. 26880, 1951; §7, ch. 63-449; §7, ch. 63-559.

39.15 Qualifications, selection, and term of office of judges of separate juvenile courts.—

(1) Each judge of a separate juvenile court shall be a qualified elector in the county or district in which is established the court over which that person is to preside, shall be not less than twenty-five years of age at the time of taking office as judge, and shall either have served as judge of a separate juvenile court in Florida or shall be a member of the Florida bar; to the end that the judge shall be a person of high moral character and selected with reference to experience in and understanding of problems of child and family welfare, juvenile delinquency, and community organization.

(2) The judge of each separate juvenile court shall be elected by the qualified electors of the county or district in which the court is established, as other county and state officials are elected, for a term of four years.

(3) All persons serving as judge of separate juvenile courts on October 1, 1951, shall continue to serve in that capacity during the terms for which they were appointed or elected. At the general election next preceding the expiration of each of those terms, the incumbent or a successor shall be elected, to take office upon the expiration of that term and serve for four years, and thereafter, in like manner, the judge shall be elected every four

years, taking office upon the date of expiration of the term as fixed by the special acts relating to those separate juvenile courts.

(4) In the event a vacancy occurs in the office of judge of a separate juvenile court prior to the expiration of the term for which the judge was elected or appointed, the governor shall appoint a person who is qualified as prescribed in subsection (1) of this section, selecting that person with reference to that person's high moral character and experience in and understanding of problems of child and family welfare, juvenile delinquency, and community organization, to serve until the first Tuesday after the first Monday in January following the next general election, and the vacancy shall be filled at the next general election for the unexpired term, whether or not a successor for a full four-year term is also being elected at the same general election to take office at the expiration of the unexpired term.

(5) If any separate juvenile court shall be created or established in addition to those existing upon the effective date of this chapter, the governor shall appoint as judge thereof a person qualified as provided in subsection (1) of this section, selecting that person with reference to the qualities mentioned in subsection (4) of this section, to serve until the first Tuesday after the first Monday in January following the next general election, and at the next general election and every four years thereafter the judge shall be elected for a full four-year term, taking office on the first Tuesday after the first Monday in January following the general election.

(6) In the event that the judge of any separate juvenile court shall be temporarily unable to act, or shall be absent from the county or district in which the court is established, the county judge of the county, or in the case of a district court the county judge of the county wherein the separate juvenile court is principally held, or any circuit judge of the circuit wherein the separate juvenile court is established, shall act as juvenile court judge without compensation therefor. In any county in which no separate juvenile court is established, and the county judge is juvenile court judge, in the event that the county judge shall be temporarily unable to act as juvenile court judge or be absent from the county, any circuit judge of the circuit including the county shall act as juvenile court judge without compensation therefor.

History.—§1, ch. 26880, 1951.

39.16 Qualifications, selection and tenure of personnel other than judges.—

(1) Each counselor and assistant counselor of a separate juvenile court shall either have served as counselor or assistant counselor of a juvenile court in Florida, or shall have a bachelor's degree from a college or university of recognized standing, or shall have four years of experience in work with children. Each counselor and assistant counselor of a juvenile court presided over by a county judge shall have as nearly as possible equivalent qualifications.

(2) The counselor shall be selected and appointed by the judge, and each assistant counselor shall be selected and appointed by the counselor with the approval of the judge, in each instance from a list of not less than three applicants for the position to be filled, qualified as prescribed in subsection (1) of this section, approved by the juvenile court merit board for the county wherein the court is established, or in the case of a district court wherein the court is principally held; provided, that if the juvenile court merit board shall fail to approve and submit a list of at least three applicants within two weeks after being requested to do so, any person qualified as prescribed in subsection (1) of this section may be appointed.

(3) In determining whether to approve an applicant, the juvenile court merit board shall require the applicant to submit a written application, and may require an applicant to submit to written examination and an oral interview, to the end that counselors and assistant counselors shall be selected on merit, with reference to their academic and professional training, experience, and ability in and understanding of problems of family and child welfare, juvenile delinquency, and community organization, and their qualifications of personality to work well with children, parents, and the community. The reasonable expenses of the juvenile court merit board in so doing shall be paid out of the juvenile court fund upon approval of the judge.

(4) With the approval of the judge, the juvenile court merit board for the county in which the court is established or principally held shall adopt rules governing the discharge of counselors and assistant counselors, to the end that those personnel shall be discharged for good cause only, which rules shall be filed in the juvenile court records and may be amended prospectively but not retroactively at any time.

(5) Employees of the juvenile court, other than counselors and assistant counselors, shall be selected and employed by the counselor with the approval of the judge if their duties are performed primarily under the supervision of the counselor, and shall be selected and employed by the judge if their duties are performed primarily directly under the supervision of the judge.

(6) In any county where a civil service law may be in effect as to county employees, the provisions of that civil service law shall be applicable to the counselor, assistant counselors, and other employees of the juvenile court established or principally held in that county, except persons performing the duties of counselor or assistant counselor under gubernatorial appointment upon the effective date of this act during the terms for which such persons were so appointed. The juvenile court merit board shall not function in those counties, but counselors and assistant counselors shall be qualified, and appointments shall be made, as specified in this section, from a list of eligible applicants

approved by the civil service board in accordance with that civil service act.

(7) The provisions of the state or county officers and employees retirement system, whichever may be applicable, shall continue to apply to the counselor, assistant counselors, and other employees of the juvenile court, as well as to the judge thereof.

(8) All persons serving as chief or head or assistant probation officers of juvenile courts, by whatever titles they may be called or known, performing the duties of counselor or assistant counselor thereof upon the effective date of this chapter, who were appointed for definite terms pursuant to special or general acts, shall continue to serve during the terms for which the appointments were made, performing the duties and using the titles of counselor or assistant counselor as the case may be, and at the end of each term the selection and appointment of counselors and assistant counselors for the courts in which they perform duties shall thereafter be in accordance with this chapter, any of those personnel being automatically eligible for appointment under this chapter as specified in subsection (1) of this section.

(9) The number and salaries of assistant counselors, and the number, salaries, titles and duties of other employees, shall be designated by the counselor with the approval of the judge, or by the judge in the case of those employees whose duties are performed primarily directly under the supervision of the judge, within the limits of the juvenile court fund.

History.—§1, ch. 26880, 1951.

39.17 Duties of counselor, assistant counselors, and other employees.—

(1) The counselor, under the general supervision of the judge, shall organize, direct and develop the administrative work of the juvenile court, perform such other duties as the judge shall direct, and act as clerk of the juvenile court.

(2) Assistant counselors shall perform the duties assigned to them by the judge or counselor, and shall act as deputies clerk of the juvenile court.

(3) Other employees of the juvenile court shall perform duties as the judge and counselor shall direct.

(4) If approved by the judge, a counselor or assistant counselor may be appointed a deputy sheriff by the sheriff of the county wherein the court is established, or in the case of a district court by the sheriff of any county within the district.

History.—§1, ch. 26880, 1951.

39.18 Appropriation for juvenile court expenses; compensation of judge and counselor.—

(1) The board of county commissioners of each county shall appropriate each fiscal year commencing October 1, 1955, from the general fund or other fund of the county as the board may choose, reasonable and adequate funds for the expense of operating the juvenile court in that county. In the event that any separate juvenile court shall be created or established by the legislature in and for any district composed of two or more counties, the board of county commissioners of each county within the district shall appropriate each fiscal year reasonable and adequate funds for their proportionate share in operating the juvenile court in that district. The sum appropriated shall be known as the juvenile court fund.

(2) Out of the juvenile court fund the board of county commissioners of each county may pay such annual salaries to the judge as shall not exceed the amounts specified in this subsection, in twelve equal monthly payments, and in case of a district juvenile court, each county paying only its proportionate share of such salary.

(a) In counties or districts having a population of 30,999 or less, the judge may be paid an annual salary not exceeding an amount equal to one hundred twenty dollars for each full 1,000 population in the county or district.

(b) In counties or districts having a population of at least 31,000 but not exceeding 50,999, the judge may be paid an annual salary not exceeding an amount equal to thirty six hundred dollars plus fifty dollars for each full 1,000 population over 30,000 in the county or district.

(c) In counties or districts having a population of at least 51,000 but not exceeding 200,999 the judge may be paid an annual salary not exceeding an amount equal to forty six hundred dollars plus twenty dollars for each full 1,000 population over 50,000 in the county or district.

(d) In counties or districts having a population of at least 201,000, the judge may be paid an annual salary not exceeding an amount equal to seventy six hundred dollars plus twelve dollars for each full 1,000 population over 200,000 in the county or district.

(e) The population of a county or district, for the purpose of this subsection (2), shall be the population thereof according to the latest preceding county, state or federal census; and reference to "each full 1,000 population" means that fractional parts of one thousand shall be disregarded in computing the population of a county or district, e.g., a county with a population of 30,999 shall be considered as having a population of 30,000.

(f) The counselor shall be paid an annual salary fixed by the juvenile judge and approved by the board of county commissioners and shall be paid in twelve equal monthly installments.

(3) Out of the juvenile court fund the board of county commissioners of each county may pay the annual or monthly salaries of assistant counselors and other employees of the juvenile court specified by the counselor with the approval of the judge, and may pay the travel and office expense of the juvenile court specified by the counselor with the approval of the judge, within the limits of the total appropriation.

(4) The salaries of the judge and counselor herein specified, the salaries paid to the assistant counselors and other employees, and the travel and other expenses paid to any juvenile

court personnel in accordance with this section, shall be the entire compensation of those persons for their services in those capacities, and none of them shall receive or charge any fees in addition thereto for those services.

(5) In counties where the county judge is juvenile court judge, the salary of the juvenile court judge may be paid to the judge in addition to compensation received in the capacity of county judge.

(6) Any change in the maximum permissible appropriation for the juvenile court fund or in the maximum permissible salaries of the judge or counselor which is occasioned by a new state or federal census shall become effective at the beginning of the next fiscal year, on the first day of October following immediately after the taking of the census.

(7) Notwithstanding any other provisions in this section, no judge of a separate juvenile court shall be paid, as salary for service as juvenile court judge, an annual sum larger than the annual salary paid to the circuit judge drawing the largest annual salary in the judicial circuit in which the separate juvenile court is established, and no county judge acting as juvenile court judge shall be paid, as salary for service as juvenile court judge, an annual sum which, together with the compensation of that county judge for services as county judge, will exceed the annual salary paid to the circuit judge drawing the largest annual salary in the judicial circuit in which that county judge is acting as juvenile court judge. For the purposes of this subsection, the circuit judge's salary includes any sums paid as salary by any county or by the state.

(8) The appropriation specified in subsection (1) of this section shall not include such items as office rent, operation of parental homes or detention quarters, payment of sheriff's fees for service of juvenile court process or writs, or other items of similar nature, but that appropriation shall include salaries and travel expense of juvenile court personnel, ordinary office expense of the juvenile court, and other items of expense provided in this chapter to be paid for out of the juvenile court fund.

(9) The board of county commissioners of each county may levy taxes necessary to raise the money appropriated in subsection (1) of this section, for the fiscal year commencing October 1, 1951, and for each subsequent fiscal year.

(10) If any special act now or hereafter in effect shall prescribe the salary or travel expense to be paid to a judge, counselor, assistant counselor, or other employee of any juvenile court, or any other item of the expense of operation of any juvenile court, nothing in this section shall be construed to require or permit the payment of any lesser amounts than are prescribed by that special act, and no lesser amounts than as prescribed in that special act shall be paid, but larger amounts than as prescribed in that special act may be paid if in accordance with the other subsections of this section, the counselor being paid no lesser amounts than may be provided by that special act to be paid to the chief or head probation officer, and assistant counselors being paid no lesser amounts than may be provided by that special act to be paid to assistant probation officers, regardless of the titles by which such personnel may be called in that special act.

History.—§1, ch. 26880, 1951; (2)(a) §10, ch. 27991, 1953; (1), (2) §§7, 8, ch. 29900, 1955.

39.181 Laws not affected.—No provision of §39.18(1), (2) shall be construed to affect any provisions of a special act or general act of local application of the legislature heretofore enacted or hereinafter enacted relating to any juvenile court or juvenile and domestic relations court in the state.

History.—§9, ch. 29900, 1955.

39.19 Court and witness fees.—

(1) In all proceedings under this chapter except those proceedings held before the judge in the capacity of committing magistrate, no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons. Other witnesses shall be paid the witness fees fixed by law, out of funds of the county appropriated for that purpose and not out of the juvenile court fund.

(2) In proceedings before the judge in the capacity of committing magistrate, the fees provided by law shall be paid to witnesses, and for service of process and other functions performed by the sheriff, out of county funds appropriated for that purpose and not out of the juvenile court fund.

History.—§1, ch. 26880, 1951.

39.20 Purpose.—The purpose of this chapter is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of children who violate the laws; to assure to children the care, guidance and control, preferably in each child's own home, which will conduce to the child's welfare and the best interests of the state; to assure that a child removed from the control of the child's parent shall receive care, custody, and discipline as nearly as possible equivalent to that which should have been given to the child by the parent, and in all cases where a child must be permanently removed from the custody of the parents of the child, that the child be placed in an approved family home and be made a member of the family by adoption.

To this end, it is the expressed intent of the legislature that this chapter be liberally interpreted and construed in conformity with its declared purpose.

History.—§1, ch. 26880, 1951.

39.25 Interstate compact on juveniles; implementing legislation; legislative findings and policy.—

(1) It is hereby found and declared:

(a) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to

endanger their own health, morals and welfare, and the health, morals and welfare of others;

(b) That the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

(2) It shall therefore be the policy of this state, in adopting the interstate compact on juveniles, to cooperate fully with other states:

(a) In returning juveniles to such other states whenever their return is sought; and

(b) In accepting the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles.

History.—§1, ch. 57-298.

39.26 Execution of compact.—The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

ARTICLE I

FINDINGS AND PURPOSES.—Juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II

EXISTING RIGHTS AND REMEDIES.—All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III

DEFINITIONS.—For the purposes of this compact, "delinquent juveniles" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV

RETURN OF RUNAWAYS.—

(1) The parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he is returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or de-

pendent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exits to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(3) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V

RETURN OF ESCAPEES AND ABSCONDERS.—

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped the court or the executive authority to whom the requistion is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall

find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI

VOLUNTARY RETURN PROCEDURE.—Any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV(1) or of article V (1), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII

COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.—

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned, without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII

RESPONSIBILITY FOR COSTS.—

(1) The provisions of articles IV(2), V(2) and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV(2), V(2) or VII(4) of this compact.

ARTICLE IX

DETENTION PRACTICES.—To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X

SUPPLEMENTARY AGREEMENTS.—The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI

ACCEPTANCE OF FEDERAL AND OTHER AID.—Any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII

COMPACT ADMINISTRATORS.—The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII

EXECUTION OF COMPACT.—This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV

RENUNCIATION.—This compact shall continue in force and remain binding upon each executing state until renounced by it. Renun-

ciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months renunciation notice of the present article.

ARTICLE XV

SEVERABILITY.—The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XVI

ADDITIONAL ARTICLE.—This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

ARTICLE XVII

ADDITIONAL ARTICLE.—

(1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

History.—§2, ch. 57-298.

39.27 Juvenile compact administrator.—Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History.—§3, ch. 57-298.

39.28 Supplementary agreements.—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History.—§4, ch. 57-298.

39.29 Financial arrangements.—The compact administrator, subject to the approval of the chief state fiscal officer, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History.—§5, ch. 57-298.

39.30 Responsibilities of state departments, agencies and officers.—The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of

its purposes and intent which may be within their respective jurisdictions.

History.—§6, ch. 57-298.

39.31 Additional procedures not precluded.—In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History.—§7, ch. 57-298.

CHAPTER 40

JURORS AND JURY LISTS

40.01 Qualifications and disqualifications of jurors.—

(1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties; provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list.

(2) No person who shall have been convicted of bribery, forgery, perjury, or larceny within this state or under the laws of any other state, government or country, or who shall have been convicted within this state of a felony, or under the laws of any other state, government or country of a crime which, if committed within this state, would be a felony, shall be qualified to serve as a juror unless restored to civil rights.

(3) In the selection of jury lists only such persons as the selecting officers know, or have reason to believe, are law abiding citizens of approved integrity, good character, sound judgment and intelligence, and who are not physically or mentally infirm, shall be selected for jury duty.

(4) Where in the laws of Florida pertaining to jurors and the preparation of jury lists reference is made to male persons, such reference shall in each instance be taken and construed to mean male and female persons.

(5) Provided that the foregoing provisions hereof are subject to the exception that the jury in an eminent domain proceeding shall be composed of men.

(6) That wherever jurors are required by law or by order of court, to be kept together during the conduct of a trial, or while considering their verdict, or whenever by order of court lodging is required to be furnished juries, separate lodging and rest room facilities shall be provided for jurors of different sexes, and under contemplation of law jurors shall be deemed to have been kept together whenever the jurors of different sexes occupy the accommodations provided for their respective sexes.

(7) That whenever female persons are sitting on any jury, and it becomes necessary that said jurors be committed to the charge of an officer, a female bailiff or deputy sheriff shall be provided to attend said jury in addition to the male officer to whom such juries are customarily committed, and all existing laws relating to the powers, duties and obligations of such male officer shall apply with like force and effect to such female officer.

History.—§2, ch. 4015, 1891; §§1, 2, ch. 4122, 1893; GS 1570, 1571; §1, ch. 6531, 1913; RGS 2771, 2772; §§1, 2, ch. 12068, 1927; CGL 4443, 4444; §1, ch. 25126, 1949; (1) §1, ch. 26514, 1951; (2) §1, ch. 26581, 1951; §1, ch. 26848, 1951.

40.02 Selection of jury lists by county commissioners.—

(1) SELECTION OF LISTS, GENERALLY. —In all counties, except those having a jury commission, the county commissioners shall hold a meeting during the first week in January of each year, or as soon thereafter as practicable, and at such other times as the circuit judge may order, for the purpose of selecting jury lists. At such meeting said commissioners shall personally select, from the lists of male persons who are qualified to serve as jurors under the provisions of §40.01, and make out a list of, not less than two hundred fifty nor more than fifteen hundred persons properly qualified

to serve as jurors, which list shall be signed and verified by said commissioners as having been personally selected as aforesaid and as possessing the prescribed qualifications according to their best information and belief. Said list shall be forthwith delivered to the clerk of the circuit court and by him recorded in the minute book of the board of county commissioners.

(2) SELECTION OF LIST WHERE CRIMINAL COURT OF RECORD.—In counties where criminal courts of record may exist, the county commissioners shall make out a list of not less than four hundred fifty nor more than seven hundred fifty names of persons who are qualified to serve as jurors under §40.01.

(3) SELECTION OF LESS THAN MINIMUM NUMBER.—If, in any county of this state, the county commissioners shall not be able to select the number required by this section they shall be authorized to select a less number.

(4) ADDITIONAL LISTS.—The circuit judge may require the county commissioners to select additional jury lists from time to time as may appear to such judge to be necessary to avoid the names selected becoming exhausted.

(5) DISQUALIFICATION, EFFECT OF.—If any person so selected shall be ascertained to be disqualified or incompetent to serve as a juror, such disqualification shall not effect the legality of such list or be cause of challenge to the array of any jury chosen from such list, but any person ascertained to be disqualified to serve as a juror, shall be subject to challenge for cause, as defined by law.

(6) EFFECT OF PRIOR JURY SERVICE.—The fact that any person so selected had been on a former jury list or had served as a juror in any court at any time shall not be grounds for challenge of such person as a juror.

History.—§2, ch. 4015, 1891; §2, ch. 4122, 1893; GS 1571; §1, ch. 6531, 1913; RGS 2772; §2, ch. 12068, 1927; CGL 4444; (1) §1, ch. 28281, 1953.

40.03 Selection of jury lists in large counties.—In each county, except those counties having a jury commission, which has or may have a population exceeding eighty-five thousand, according to the last preceding state or federal census, the county commissioners, in selecting and making up the lists of persons to serve as jurors as provided by law, shall select and make out a list of not less than one thousand nor more than two thousand persons qualified to serve as jurors.

History.—§1, ch. 7753, 1918; RGS 2773; §3, ch. 12068, 1927; CGL 4445; §1, ch. 21740, 1943.

40.04 Selection of jury lists in small counties.—In each county which has a population of less than six thousand inhabitants, according to the last preceding state census, the board of county commissioners at the time and in the manner provided by law shall select and make out a list of not less than two hundred nor more than two hundred and fifty persons properly qualified to serve as jurors.

History.—§1, ch. 7840, 1919; CGL 4446.

40.05 Selection of jury lists in new counties.—The county commissioners of any new county hereafter created, at the first meeting of such board of county commissioners provided for in the act creating such new county, or as soon thereafter as practicable, shall select from the male persons who are qualified to serve as jurors under the provisions of §§40.01 and 40.02, and shall make a list as provided by §40.02, which list shall be signed and recorded as provided by §40.02. The clerk of the circuit court shall write the said names on pieces of paper and place such pieces of paper in a box and shall close and seal such box as provided by §40.06 and shall otherwise comply with all the provisions of said §40.06.

History.—§§1, 2, ch. 8519, 1921; CGL 4447, 4454; §7, ch. 22858, 1945.

40.06 Transcription and preservation of lists.—On receiving the list of persons selected as qualified to serve as jurors, as provided for in §40.02, the clerk of the circuit court, in the presence of the county judge or a circuit judge in the absence, sickness or disability of the county judge and the sheriff, shall write the names of the persons contained in said list on separate pieces of paper and shall roll or fold such pieces of paper so that the names written thereon will not be visible and shall deposit such pieces of paper in a box so constructed that it may be tightly closed; said box shall then and immediately after the drawing of the jury, as hereinafter provided, be closed and securely locked and across the opening thereof shall be placed a label or seal containing the signature of the clerk and the date of the closing of such box. The clerk shall keep such box in his custody but the key thereof shall be delivered to and kept by the sheriff.

History.—§4, ch. 4122, 1893; GS 1574; RGS 2776; §4, ch. 12068, 1927; CGL 4453; §1, ch. 59-89.

40.061 Addresses of persons on jury lists.—In the preparation, selection, transcription, preservation, certification and issuance of jury lists and the venire of jurors, as prescribed by chapter 40, all persons responsible for administering such duties and functions shall, in addition to including the names of qualified persons on such lists and jury slips, also cause to be included thereon the last known addresses of all such persons.

History.—§1, ch. 59-78.

40.07 Persons disqualified.—

(1) BY CRIME.—No person who is under prosecution for any crime, or who shall have been convicted in this state or any federal court, or any other state, territory, or country, of bribery, forgery, perjury, larceny or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2) BY OFFICIAL POSITION.—Neither the governor, nor his cabinet officers, nor any sheriff or his deputy, assessor of taxes, collector of revenue, county treasurer, clerks of courts, judges, justice of the peace, county commissioners or United States officials shall be qualified to be jurors.

(3) BY INFIRMITY.—No person not of sound mind and discretion shall be qualified to be a juror.

(4) BY INTEREST IN THE SUBJECT MATTER OF THE CAUSE.—No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state, or such county or municipal corporation.

History.—§3, ch. 3010, 1877; §1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; ch. 4574, 1897; §1, ch. 20904, 1941; RGS 2775; CGL 4452; §(1) §2, ch. 26848, 1951.

40.08 Persons exempt from jury duty.—The following persons, and none others, shall be exempt from jury duty:

(1) BY REASON OF AGE OR BODILY INFIRMITY.—All persons more than sixty-five years of age, and all persons subject to any bodily infirmity amounting to disability.

(2) BY REASON OF POSITION OR OCCUPATION.—Attorneys and counsellors, editorial and news department workers of daily and weekly newspapers, and those who gather, prepare, edit and broadcast news for radio and television stations, officers of the university, officers of colleges, preceptors and teachers of incorporated academies, teachers of common schools, practicing physicians and surgeons, pharmacists, ministers of the gospel, Christian Science practitioners and readers, one miller to each grist mill, one ferryman to each licensed ferry, telegraph operators, all superintendents, engineers and train dispatchers of any canal or railroad in operation, ten active members of any hand fire company, six active members of any hose company, either paid or voluntary, twenty active members of any hook and ladder company, all members of the state militia when in active service under call by the sheriff of the county or by the governor. The officers of each fire, hose and hook and ladder company shall, on the first day in January, file with the clerk of the circuit court of the county a list of the members of their respective companies, which said companies have been respectively selected to be exempt for the ensuing year, and the county commissioners shall omit the said names from the list to be selected by them. Only the persons named on such lists shall be exempt, and if no list be filed before the selection by the county commissioners, there shall be no exemption. Provided the exemption of any person or class of persons within the exemptions provided by this subsection may be revoked and such person or class of persons shall be subject to jury duty at a term of court when deemed necessary within the discretion of the court.

(3) EMPLOYEES OF CERTAIN STATE INSTITUTIONS.—The employees of all insane, deaf and dumb and other asylums and hospitals established and maintained by the state as state institutions, for the care, maintenance, treatment, etc., of the afflicted of the state, shall be and are hereby exempt from serving as grand and petit jurors in the courts of the state.

(4) SUPERINTENDENT TO FILE CERTIFIED LIST.—On the first Monday in January, April, June and September in each calendar year the superintendent or person having charge of such institution shall file in the office of the clerk of the circuit court of the county where such institution is situated, a certified list of all adult male employees of the same. Any and all officers having the duty of selecting the names of persons to serve as jurors shall exclude from the box, or collection of names from which such selection is to be made, the names contained in the list certified and filed as provided in foregoing section: Provided, such officers may, at or within ten days prior to the opening of any regular or special term of any court in the county, require the superintendent of such institution to certify whether any particular person has left the employ of the same since the date of the list of employees last certified by him, and persons thus certified as having left the employ of the institution shall, by the clerk of the circuit court, be striken from the superintendent's last certified list of employees, and shall no longer be exempt from jury duty.

History.—§1150 RS 1892; §§1-3, ch. 4574, 1897; GS 1573; RGS 2775; CGL 4452; §1, ch. 20904, 1941; (2) §1, ch. 57-95.
cf.—§231.05, School teachers or staffs.
§250.50, National guardmen.
§470.27, Funeral directors and embalmers.
§466.21, Dentists.

40.09 Jury commissions, counties exceeding one hundred twenty thousand.—There shall be a jury commission, in each county having a population exceeding 120,000 by the last federal census, consisting of two members, appointed by the governor for terms of two years, each of whom shall be a resident of such county. This provision shall become effective in all counties hereafter attaining the above population on January 1 next following the publication of the census showing such population and as early as practicable after becoming effective in such counties, the governor shall appoint a jury commission for such county, one for a term of one year from the effective date of this provision and one for a term of two years from said effective date. All successor commissioners shall be appointed by the governor and shall hold their offices for terms of two years each.

History.—§1, ch. 16058, 1933; §1, ch. 18001, 1937; CGL 1936 Supp. 4450(4); §1, ch. 29973, 1955.

40.10 Duties of commissioners; jury lists.—The jury commissioners in counties described in §40.09, shall select and list not more than

10,000 inhabitants of such county known or believed to be qualified under the law to be jurors who, even if exempt, have not filed a written claim of exemption from jury duty as hereinafter provided, the exact number to be determined by the senior circuit judge of the circuit; provided, however, that when no number is fixed by the circuit judge the commission shall select a list of 10,000 jurors. In making the selections and preparation of said lists, the jury commissioners may confer with the judge or one or more of the judges of the circuit court of such county, and shall have the power, without charge or cost, to examine at any reasonable time all documents and records in the office of the clerk of the circuit court and of any other county officials as to persons who have been listed, summoned, not found, served or excused as jurors, and all books, records, and lists in the office of the supervisor of registration or other county official containing the names of electors of such county. The clerk of the circuit court shall furnish or cause to be furnished the necessary clerical aid to the commission.

History.—§2, ch. 16058, 1933; CGL 1936 Supp. 4450(5); §1, ch. 28042, 1953; §1, ch. 29696, 1955; §1, ch. 57-321.

40.11 Certification of jury lists.—Such list of jurors in each county shall be completed by the jury commissioners and certified by them before the end of June of each year, and at such other period or periods during the year as may be ordered by a judge of the circuit court of such county; provided, that when so ordered by such judge at a time other than the end of June, the jury commissioners need not select and list 10,000 such inhabitants, but shall select and list such number of such inhabitants not less than 1,000 as shall be specified by such judge in such order. Every such list shall be submitted to and approved by the circuit judge or one of said circuit judges, such approval to be evidenced by his signature thereon. Said list so certified and approved, although it may be defective or irregular in form, certification, approval or other formal requirement, or in the number or qualification of the persons so named, shall be the basis for copying the listed names on separate pieces of paper to be deposited and preserved in the box whence the names of persons for jury duty are to be drawn as prescribed by law. It shall not affect the validity of such list or any listed or copied name if there should be any error or irregularity in either, each person so procured or listed as a juror being presumed to be the one intended to be listed as a juror. When the annual jury list or special jury list prepared pursuant to the order of a circuit judge is certified and approved the box containing the names of jurors previously listed shall be emptied and all names removed therefrom before such newly listed names are placed in such jury box. If, notwithstanding this provision, some names or papers containing names remain in the jury box, such error or irregularity shall not invalidate the contents of the box or the procurement of any jurors by drawing names therefrom or any subsequent proceeding or jury.

History.—§3, ch. 16058, 1933; CGL 1936 Supp. 4450(6); §2, ch. 29973, 1955; §1, ch. 57-320; §1, ch. 61-148; §1, ch. 63-217.

40.12 Exemption from jury duty.—Every person claiming to be exempt from jury duty in any county described in §40.09 shall annually, on or before the 31st day of December of each year, file with the clerk of the circuit court an affidavit claiming exemption from jury duty and stating the grounds therefor, which affidavit shall be filed by the clerk and transmitted promptly to said jury commissioners. If any person claiming any such exemption shall fail or refuse to file such affidavit of exemption from jury duty within the time above stated, he shall not be entitled to have the privilege of exemption from jury duty during the calendar year succeeding that during which he was required to file his affidavit of exemption as aforesaid. In preparing the jury list, the jury commissioners shall examine all written claims of exemption from jury duty which were filed on or before the preceding December 31st, and shall omit from such jury list the names of all persons who shall be entitled to exemption from jury duty and who have filed such written claims of exemption within the time stated hereinabove. If any claim of exemption from jury duty shall be disallowed by the jury commissioners, the person claiming exemption, having filed his written claim therefor as aforesaid, may renew his claim of exemption in any court in which he may be summoned as a juror.

History.—§4, ch. 16058, 1933; CGL 1936 Supp. 4450(7).

40.13 Compensation of jury commissioners.—Each jury commissioner shall be paid out of the general fund of the county an annual salary of one hundred dollars, and shall be reimbursed for traveling expenses as provided in §112.061, upon his requisition therefor which shall be approved by one of the judges of the circuit court of such county before being entitled to payment.

History.—§5, ch. 16058, 1933; CGL 1936 Supp. 4450(8); §19, ch. 63-400.

40.20 Deficiency in county.—Whenever it shall appear that there is not a sufficient number of qualified jurors to form a grand and petit jury, the judge of the circuit court, upon ascertaining such, may order all cases pending for trial in the circuit court of any such county transferred to some other county within his circuit for trial, and indictments may be obtained (against persons charged with crimes committed in any county not having a sufficient number of qualified jurors to form a grand and petit jury) in any county within the circuit to which such county is attached or belongs.

History.—§1, ch. 1857, 1871; RS 1159; GS 1583; RGS 2785; CGL 4462.

40.22 Insurance of venire.—The clerk of the circuit court, criminal court of record, county court, court of record in and for Escambia county, Florida, or the county judge, as the

case may be, shall, at least ten days before the first day of court, issue and deliver to the sheriff a venire for the petit jury, under the seal of the court, commanding him to summon the persons named in the venire.

History.—§6, ch. 1628, 1868; RS 1154; GS 1584; RGS 2786; CGL 4463; §1, ch. 16410, 1933.

40.23 Summoning petit jurors.—The sheriff shall summon the persons named in such venire to attend such court as petit jurors at least seven days previous to the sitting of such court, by registering to each person so named in the venire a written notice, addressed to his place of residence, and placing such notice in the United States mail with sufficient postage to carry the same and with return receipt requested, unless otherwise directed by the court. If otherwise directed by the court, then the sheriff shall summon such jurors in the manner directed, making the same returnable as directed by the court.

History.—§8, ch. 1628, 1868; RS 1155; GS 1585; RGS 2787; §1, ch. 9167, 1923; CGL 4464; §1, ch. 22766, 1945; §2, ch. 16410, 1933.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

40.24 Pay of jurors.—Grand and petit jurors of the regular panel and jurors summoned to complete a jury after the regular panel is exhausted in all the courts of the state as well as jurors summoned upon inquest of the dead, shall receive for each day of active attendance upon the court or inquest, five dollars. Jurors summoned to complete a panel after the regular panel is exhausted, and who are not accepted and not required to serve on the jury, shall receive compensation of five dollars per day, and all fractional parts of a day shall be counted as a day. In addition to the compensation above provided, all jurors shall receive five cents per mile for every mile necessarily traveled in going to and returning from court by the nearest practicable route. Jurors who attend on any of the days of the term when the presiding judge is absent, or being present, does not hold the session of the court, shall be entitled to receive the same compensation as if the court was in session.

History.—§1, ch. 3853, 1889; RS 1161; §1, ch. 4385, 1895; GS 1586; §1, ch. 5647, 1907; §1, ch. 5900, 1909; §1, ch. 6219, 1911; RGS 2788; CGL 4473; §7, ch. 22858, 1945; §1, ch. 26868, 1951; §1, ch. 28247, 1953.

40.25 Pay of jurors in vacation.—The mileage and per diem of jurors summoned specially to try any issue of facts arising in a civil cause under the laws of this state, before any court or judge in vacation, shall be taxed as costs, and paid by the party to the cause as other costs are paid; and before such jury is summoned, the party demanding the same may be required by the court or judge to deposit an amount sufficient to cover the cost of such jury trial.

History.—§1, ch. 4127, 1893; GS 1588; RGS 2790; CGL 4476.

40.26 Meals for jurors.—The sheriff, when required by order of the court, shall provide juries with meals and lodging, the expense to be taxed against and paid by the state.

History.—§1, ch. 3860, 1889; RS 1162; GS 1587; §10, ch. 7838, 1919; RGS 2789; CGL 4475.
cf.—§919.01(3) Meals for jurors.

40.27 Failure of jurors to attend; penalty.—If any person, duly drawn and summoned to attend as a juror in any court, shall neglect to attend without any sufficient excuse, he shall pay a fine not exceeding twenty dollars, which shall be imposed by the court to which the jury was summoned, and shall be paid into the county treasury.

History.—§8, ch. 1628, 1868; RS 1164; GS 1590; RGS 2792; CGL 4478.

40.28 Failure to draw or summon jurors; punishment.—When, by neglect of any of the duties required by this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall be not duly drawn and summoned to attend court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars (to be imposed by the court) into the treasury of the county in which the offense is committed.

History.—§29, ch. 1628, 1868; RS 1163; GS 1589; RGS 2791; CGL 4477.

40.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.—Within four weeks of the commencement of any term of the circuit court, criminal court of record, civil court of record, or county court, in and for any county in this state, whether the same be a regular, special or adjourned term, the clerk of any of such courts of such county shall make an estimate of the amount necessary for the payment by the state of jurors in the circuit court and witnesses before the grand jury, and jurors in the criminal court of record, civil court of record and county court, at said term of court, and shall forward such estimate to the comptroller of this state; and at the time of the forwarding such estimate the clerk of any of said courts shall make his requisition upon the comptroller for the amount of such estimate, and the comptroller may reduce the amount, if in his judgment the requisition is excessive.

History.—§1, ch. 4121, 1893; GS 1591; §1, ch. 7262, 1917; RGS 2793; CGL 4479.
cf.—§41.09 Compensation of jurors in certain county judge's court.

40.30 Requisition endorsed by comptroller and countersigned by governor.—Upon receipt of such estimate and the requisition from the clerk of the circuit court, or the criminal court of record, or civil court of record, or the county court of any county, the comptroller shall endorse the amount that he may deem necessary for the pay of said jurors in any of said courts and witnesses before the grand jury which endorsement shall be countersigned by the governor and the state treasurer shall transmit that amount to the clerk making such requisition.

History.—§2, ch. 4121, 1893; GS 1592; §2, ch. 7262, 1917; RGS 2794; CGL 4480; §7, ch. 57-1; §8, ch. 59-1.

40.31 Comptroller may apportion appropriation.—If the comptroller shall have reason to believe that the amount appropriated by the legislature is insufficient to meet the expenses of jurors in all the courts at the next ensuing term of the circuit court, criminal court of record, civil court of record, or county court, of any county, he may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors in each county at the last regular term of said courts; and in such case the state treasurer shall remit only the amount so apportioned to each county, and when the amount so apportioned to any county is insufficient to pay in full all the jurors at any term of the said courts, the clerk of the circuit court, criminal court of record, civil court of record, or county court, shall apportion the money received by him pro rata among the jurors entitled to pay at such term, and shall give to each juror a certificate of the amount of compensation still due, which certificate shall be held by the comptroller as other demands against the state.

History.—§3, ch. 4121, 1893; GS 1593; §3, ch. 7262, 1917; RGS 2795; CGL 4481.

40.32 Clerks to disburse money.—All moneys drawn from the treasury under the provisions of this chapter by the clerk of the circuit court, criminal court of record, civil court of record, or county court of any county, shall be disbursed by the clerk of said court as far as needed in payment of jurors for the legal compensation for service at the term of the court for which said moneys were drawn, and for no other purposes. Jurors shall be paid by the appropriate clerk either in cash as now permitted under this chapter or by warrant within ten days of jury service. Whenever the clerk pays a juror by cash said juror shall sign the pay roll in the presence of the clerk, a deputy clerk or some other person designated by the clerk. Whenever the clerk pays a juror by warrant he shall endorse on the pay roll opposite the juror's name the words: "Paid by warrant" giving the number and date of the warrant. Should any of the said moneys remain in the hands of said clerks unexpended after the payment of all of said jurors properly on the pay roll at any term of the circuit court, criminal court of record, civil court of record, or county court, the clerk of any such court shall transmit the same to the comptroller within ten days after the adjournment of such court, and upon failure to do so shall be suspended from office by the governor until the next meeting of the legislature, when the governor shall report his action to the senate.

History.—§4, ch. 4121, 1893; GS 1594; §4, ch. 7262, 1917; RGS 2796; CGL 4482; §1, ch. 59-88; §1, ch. 61-494.

40.33 Deficiency.—Should the compensation of jurors at any term of the circuit court, criminal court of record, civil court of record, or county court, exceed the amount estimated by the clerk, and therefore be insufficient to pay in full said jurors, said clerk shall make his further requisition upon the comptroller for the amount necessary to pay such default, and the amount required shall be transmitted to the clerk in the same manner as the original requisition or order.

History.—§5, ch. 4121, 1893; GS 1595; §5, ch. 7262, 1917; RGS 2797; CGL 4483.

40.34 Clerks to make triplicate pay roll.—(1) The clerks of the several courts of record in this state whose jurors are paid from state funds, and whose witnesses before the grand jury or prosecuting attorney are paid from state funds, shall make out a pay roll in triplicate, which shall contain (a) the name of each juror and witness, entitled to be paid with state funds, who attended any session of such court, or appeared before the grand jury or before the prosecuting attorney, (b) the number of days such jurors and witnesses are entitled to be paid for, (c) the number of miles traveled by each, (d) and the total compensation each such juror or witness is entitled to receive.

(2) The form of such pay roll shall be prescribed by the state comptroller. Each juror and witness paid in cash by the clerk shall sign the pay roll in the presence of the clerk, a deputy clerk or some other person designated by the clerk. Whenever the clerk pays a juror or witness by warrant he shall endorse on the pay roll opposite the name of the juror or witness the words: "Paid by warrant" giving the number and date of the warrant. The pay roll shall be approved by the signature of the clerk, or his deputy, except as to witnesses appearing before the prosecuting attorney which shall be approved by the signature of said prosecuting attorney, or an assistant.

(3) The clerks of the courts aforesaid shall forward two copies of such pay rolls to the state comptroller, within ten days after each adjournment of such courts, who shall audit them.

(4) If upon audit as aforesaid the said pay rolls are found correct the state comptroller shall draw his warrant on the state treasury for the amount due thereon, and shall deliver the same to the state treasurer, together with all amounts returned by the said clerks, taking up the requisition of the clerk given the treasurer.

History.—§6, ch. 4121, 1893; GS 1596; §6, ch. 7262, 1917; RGS 2798; CGL 4484; §1, ch. 25091, 1949; (2) §1, ch. 61-494.

40.35 Accounting and payment to the comptroller.—The clerk of any of said courts shall, within two weeks after the adjournment of any term, render to the comptroller a full statement of his accounts for moneys received and disbursed by him under the provisions of this chapter, and pay over any balance in his hands; and should any such clerk fail to account for and pay over promptly all moneys so paid him, the sureties on his official bond shall be held liable and responsible for same; and the comptroller shall report to the governor any failure on the part of the clerk to report and faithfully account for any such moneys; and the

governor may, on account of such report from the comptroller, suspend from office any such defaulting clerk until the next session of the legislature.

History.—§8, ch. 3108, 1879; RS 1170; GS 1597; §7, ch. 7262, 1917; RGS 2799; CGL 4485; §7, ch. 22858, 1945.

40.36 Drawing jury venire; petit and grand; term and vacation.—A judge of any court of record in the presence of the sheriff or any deputy sheriff and the clerk or any deputy clerk of the court of which he is judge, in term time or in vacation, shall draw from the jury box the names of such number of persons as he shall deem necessary or expedient for a jury venire, to be returnable at such time as he shall specify, from which such venire or venires so drawn any jury may be organized, including a grand jury when drawn by or upon order of a judge of the circuit court. All such drawings shall be done publicly and in the courtroom where the trials of such court are usually had, and a list of such jurors so drawn shall be made by the judge or the clerk, or a deputy clerk of such court, and signed by the judge drawing same, which list of names of persons so drawn, together with the slips containing the names drawn from the jury box, shall be delivered to the clerk, who shall keep same in some secure place throughout the term.

History.—§1, ch. 21973, 1943.

40.37 Drawing by other judges.—Upon order of any judge of any such court of record having jurisdiction, it shall be the duty of the county judge, or in his absence, a justice of the peace of the county, in the presence of the clerk of such court or his deputy, and the sheriff of the county or his deputy, to, in like manner, draw the number of names from the jury box for a venire as such judge's order shall specify and said venire shall be issued by the clerk of such court and be made returnable as said judge's order shall specify, and said drawing for said venire shall have the same force and effect as if done by the judge of such court.

History.—§2, ch. 21973, 1943.

40.38 Court of record.—For purposes relating to the drawing of jurors from the jury box a court of record shall be taken and construed to mean any court other than that of a justice of the peace or a county judge's court.

History.—§3, ch. 21973, 1943.

40.39 Clerk of court; duty.—It shall be the duty of the clerk of such court of record to make a list of said names and issue to the sheriff of the county wherein said term of court is to be held, a venire commanding him to summon the persons so drawn, to appear at the time specified before said court to serve as jurors therein.

History.—§4, ch. 21973, 1943.

40.40 Drawing grand jurors.—

(1) Whenever a grand jury is to be organized it shall be the duty of the judge to place the names of so many of said persons as shall appear and qualify in response to said summons, in a box or hat and draw therefrom the names of eighteen persons, who shall serve as grand jurors for said regular or special term, and the persons whose names shall remain in said box or hat shall serve as petit jurors.

(2) If at any time sufficient qualified persons are found not available to serve as jurors, additional venires may issue for additional persons and any jury, including a grand jury, may be impaneled and organized from such persons as are available.

History.—§5, ch. 21973, 1943.

40.41 Petit jurors; length of service.—Petit jurors shall serve for one week only, unless the circumstances, in the opinion of the judge, require such jurors to serve for a longer time.

History.—§6, ch. 21973, 1943.

40.42 Deficiency of jurors.—When the venire is exhausted and when the names in the jury box become exhausted during a term of court, then the court may direct the sheriff to summon from the body of the county a sufficient number of qualified jurors to complete the panel.

History.—§7, ch. 21973, 1943.

40.43 Deficiency or excess in jury box; omissions, etc.—Any deficiency or excess of names placed in a jury box by the county commissioners, jury commission or other authorized body, or the omission of any clerical duty, or the commission of any other error in the selection, serving, drawing or impaneling of grand or petit jurors, shall not affect the legality of the organization of any jury, unless it shall appear that such error has resulted in a miscarriage of justice.

History.—§8, ch. 21973, 1943.

CHAPTER 41

JURORS AND JURY LISTS FOR CERTAIN COUNTY JUDGES' COURTS

41.01 Jury lists.—The several boards of county commissioners of the several counties of this state in which there is no county court, criminal court, a jury commission or court of record, shall annually at a meeting to be held the first week in July, or as soon thereafter as practicable, select from a list of persons who are qualified to serve as jurors under the laws of Florida, and make out a list of not less than two hundred nor more than five hundred persons qualified to serve as jurors, which persons shall have the same qualifications required by jurors for the circuit courts of the state, and which list shall be signed by the same persons and in the same manner, and shall be delivered to the clerk of such board, and be recorded in the same manner as required by law for the list of jurors selected by such boards for the circuit courts in the said counties.

History.—§1, ch. 10167, 1925; CGL 4465; §1, ch. 59-480.

41.02 Depositing names of jurors in box.—The clerk of the circuit court of each of such counties on receiving the list of jurors selected by the county commissioners as provided herein, shall in the presence of the sheriff of such county, or deputy sheriff, write the names of the persons contained thereon on separate pieces of paper and shall roll up or fold up such pieces of paper so that the names written thereon shall not be visible and shall deposit such pieces of paper in a box so constructed that it may be tightly closed, which box shall be labelled "County Judge's Court." The said box shall be then, and immediately after the drawing of any jury as hereinafter provided, closed and securely locked, and across the opening thereof shall be placed a label or seal containing the signatures of the clerk and sheriff, or deputy sheriff, and the date of the closing of such box. The clerk shall thereupon deliver such box into the care and custody of the county judge of the said county to be kept by him, but the key thereof shall be delivered to and kept by the sheriff of the said county.

History.—§2, ch. 10167, 1925; CGL 4466.

41.03 Drawing jurors.—The county judge of such county, at every regular or special term of the county judge's court thereof, shall in open court and in the presence of the sheriff of the county, or of one of his deputies, proceed to draw from such box the names of not less than twelve nor more than twenty-four persons to serve as jurors at the next succeeding regular or special term of said county judge's court. The county judge shall make a list in his own handwriting of the names of the persons so drawn and deposit the said list, together with the slips containing the names of the persons drawn from the said box, in an envelope, and securely seal the same and write his name at least twice across the flap of the envelope; this envelope shall then be kept in the custody of the said county judge in some secure place until at least ten days before the opening of the said next term of the said county judge's court, at which time the said county judge shall, in the presence of the clerk of the circuit court, or in his absence, in the presence of a justice of the peace, and in the presence of the sheriff of the county, or of one of his deputies, open said envelope and issue and deliver to the sheriff of the county a venire under the seal of the said county judge's court commanding him to summon the persons so drawn as jurors to appear before the court at the next ensuing term thereof.

History.—§3, ch. 10167, 1925; CGL 4467; §1, ch 21898, 1943; §1, ch. 23818, 1947; §11, ch. 25035, 1949.

41.04 Summoning jurors.—The sheriff shall thereupon proceed to summon the said persons named in said venire in the same manner as required by law for serving summons on jurors for the circuit courts, and he shall be allowed the same compensation for such services as provided by law for similar services in the circuit courts of the state.

History.—§4, ch. 10167, 1925; CGL 4468.

41.05 Procedure where no jury drawn.—If in case no jurors shall have been drawn as provided in this chapter for any term of the county judge's court, the county judge may, upon convening such term of court immediately proceed to draw from the box in the same manner as heretofore provided in this chapter the names of not less than twelve nor more than twenty-four persons to serve as jurors for such term of such court, and immediately issue and deliver to the sheriff in open court the venire herein provided for; and the said judge shall, during that term of court, also draw the list of jurors as provided herein for the next term of such court.

History.—§5, ch. 10167, 1925; CGL 4469; §2, ch. 23818, 1947.

41.06 Completion of panel in case of challenges, etc.—That when it shall appear to the court that by reason of challenges or otherwise a sufficient number of jurors of those drawn and summoned cannot be obtained for the trial of any cause in the county judge's court, the court shall draw from the box, to be immediately summoned by the sheriff, or shall direct the sheriff to summon from the bystanders, or

from the body of the county, a sufficient number of qualified jurors to complete the panel for the trial of such cause.

History.—§6, ch. 10167, 1925; CGL 4470.

41.07 Application of other laws.—Where not otherwise provided by this chapter the drawing, summoning and empaneling of all juries in the county judge's court of such counties shall be as provided by law for juries in the circuit courts.

History.—§7, ch. 10167, 1925; CGL 4471.

41.09 Compensation of jurors in county judges' courts in counties having a civil court of record.—Whenever any party to any proceeding in the county judge's court of any county of this state, in which there is a civil court of record, shall be entitled to a trial by jury, and shall make written demand therefor, the mileage and per diem of the jurors summoned to try such cause, shall be paid in the same manner as jurors in the civil courts of record of such counties are now paid.

History.—§1, ch. 19635, 1939; CGL 1940 Supp. 4476(1).
cf.—§40.29 Requisition by clerk for jurors' and witnesses' pay.

41.10 Estimates to be furnished comptroller.—Not less than thirty days before the beginning of any fiscal year, the judge of any such court shall make an estimate of the amount necessary for the payment by the state of jurors in such court for the fiscal year next ensuing, and shall forward such estimate to the comptroller of this state and make his requisition upon the comptroller for the amount of such estimate, and thereafter the comptroller and the state treasurer shall take such steps as now provided by law for county courts to transmit said amount to the judge making such requisition, but the comptroller may reduce the amount, if in his judgment the requisition is excessive.

History.—§2, ch. 19635, 1939; CGL 1940 Supp. 4476(2).
cf.—§40.29 et. seq. Requisition by clerk for jurors' and witnesses' pay.

41.11 Disbursement of funds.—The money transmitted from the treasurer under the provisions of §41.10, to the judge of any such court, shall be disbursed by the judge of such court as needed in payment of per diem and mileage fees of jurors lawfully summoned during the fiscal year, and for no other purpose, and should any moneys remain in the hands of said judge, unexpended, after the payment of all such jurors, at the end of such fiscal year, the judge of such court shall transmit the same to the comptroller within fifteen days after the end of each fiscal year. Should the amount necessary for payment of jurors in any fiscal year exceed the amount estimated by such judge, the said judge shall make further requisition upon the comptroller for the amount necessary to pay jurors for the remainder of such year, and the amount required shall be transmitted to said judge in the same manner as hereinbefore provided.

History.—§3, ch. 19635, 1939; CGL 1940 Supp. 4476(3).

41.12 Records and reports.—The judge of said court shall keep such records and make such reports regarding said funds, as now provided by law for clerks of the civil court of record, except that such reports shall be made at the close of each fiscal year.

History.—§4, ch. 19635, 1939; CGL 1940 Supp. 4476(4).
cf.—§40.34 Preparation of pay roll by clerks.
§40.35 Accounting and payment to comptroller.

CHAPTER 42

SMALL CLAIMS COURTS

42.01 Small claims courts established.—There is established in each county a court to be known as the small claims court.

History.—§1, ch. 26920, 1951.

42.02 Method of activation.—No small claims court shall be activated unless and until the board of county commissioners of the respective counties shall determine that there is sufficient local need for such court and shall evidence such need by the adoption of a resolution setting forth such need either:

(1) On its own motion, or

(2) By petition, signed by not less than twenty-five registered voters of such county requesting such activation, in which case said board may pass the necessary resolution activating said court. The board shall, within seven days after the adoption of a resolution under this subsection, file a certified copy of such resolution with the secretary of state.

History.—§2, ch. 26920, 1951.

42.03 Jurisdiction.—Said courts shall have civil jurisdiction in cases at law in which the demand or value of the property involved does not exceed two hundred fifty dollars, said jurisdiction to be concurrent with the jurisdiction of any other court established in said counties; provided, however, that in counties having populations in excess of 400,000 according to the most recent official census, said courts shall have civil jurisdiction in cases at law in which the demand or value of the property involved does not exceed three hundred dollars, said jurisdiction to be concurrent with the jurisdiction of any other court or courts established in such counties.

History.—§3, ch. 26920, 1951; §1, ch. 28278, 1953.

42.04 Judge; election; term of office, etc.—Upon the activation of a small claims court in any county, the governor shall appoint a judge of said court, who shall serve as such judge until his successor shall have been elected and duly qualified. Beginning with the general election following the activation of such court, the judge thereof shall be elected by the electors of such county and shall hold office for four years. The judge of said court shall be a member of the bar of such county; provided, in all counties having a population in excess of 400,000 according to the most recent census, one additional judge shall be appointed by the governor, who shall serve as the judge of the small claims court until the election and qualification of a successor at the next general election, who shall serve a term of four years; provided, further, that in any county having a population of more than 900,000, according to the latest official decennial census, a second additional judge shall be appointed by the governor, who shall serve as judge of the small claims court in any such county until the election and qualification of a successor at the next general election, who shall serve a term of four years. In all counties having a population in excess of 400,000, according to the most recent census, the judge longest in continuous service and able to act shall be the presiding judge for administrative purposes, and said presiding judge of such court shall provide by local rule for the distribution of the work of such court to the judges thereof, and for the supervision of the clerk's office.

History.—§4, ch. 26920, 1951; §1, ch. 29636, 1955; §1, ch. 63-168.

42.05 Compensation of judge.—

(1) All fees collected by the judge as authorized by §42.11, after deducting costs, shall be retained by him as his sole remuneration, but in no event shall the sum to be retained exceed seven thousand five hundred dollars.

(2) All moneys collected by the judge in excess of seven thousand five hundred dollars after deducting costs shall be paid annually into the general county funds.

(3) In all counties having a population in excess of 400,000 according to the most recent official census, all moneys collected by the judges of the small claims court in excess of costs, shall be retained by such judges in an amount not to exceed an annual compensation of ten thousand dollars per annum to each judge and the balance of such receipts shall be paid annually into the general county funds, each judge to receive the same annual compensation.

History.—§5, ch. 26920, 1951; (3) n. §2, ch. 29636, 1955.

42.06 Clerk and assistants; compensation.—The judge shall appoint a clerk and such assistants as may be necessary for the proper operation of his office. Said clerk and assistants to be compensated from the fees herein authorized.

History.—§6, ch. 26920, 1951.

42.07 Court open continuously; trials; calendar; notice.—It is the purpose of this act to provide a forum for the speedy trial of small claims cases. Said court shall be in session continuously from day to day. Cases may be set for trial at any time. The clerk of said court shall keep and maintain a trial calendar and the placing of any case on said trial calendar with the date of trial shall be notice to all persons.

History.—§7, ch. 26920, 1951.

42.08 Docket book; material included; evidence.—The clerk shall keep a docket book, in which he shall make fair and accurate entries of all causes brought before the court, and minutes of all the proceedings, including the service and return of process, the appearance of such parties as may appear, the fact of trial, whether by court or jury, the verdict of the jury or finding by the judge, the judgment, including damages and costs separately stated, the issuing of execution and to whom issued, with the date thereof and the return thereon, and a marginal memorandum of the items of all costs, including witness' fees; which docket or certified copy thereof, shall be evidence of the matters therein stated.

History.—§8, ch. 26920, 1951.

42.09 Substitution of judge.—Whenever the judge of the small claims court shall be unable, from absence, sickness, or other cause, to discharge any duty whatever appertaining to his office, he may by order call in one of the justices of the peace to act in his place and stead, and such justice shall perform such duties and hear and determine all such matters as may be submitted to the judge of the small claims court.

History.—§9, ch. 26920, 1951.

42.10 Commencement of actions; service of notice; failure of defendant to appear.—

(1) Action shall be commenced by the filing of a statement of claim including the last known address of the defendant, in concise form and free from technicalities. The plaintiff, or his agent, shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The judge or clerk of said court shall, at the request of any individual, prepare a statement of claim and other papers required to be filed in any action.

(2) A notice to appear shall be served on the defendant, to which shall be attached a copy of the verified statement of claim, and such service shall be sufficient to give the court jurisdiction in the premises. The time for appearance, at which time a hearing on the claim shall be had, shall be not less than five nor more than fifteen days from the date of the service of said notice. The mode of service shall be by the sheriff or constable as provided by law; or by registered mail with return receipt; or by any person not a party to or otherwise interested in the suit, especially appointed by the judge for that purpose.

(3) When notice is to be served by registered mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, at his last known address, prepay the postage from the filing fee provided for in §42.11 and mail the same forthwith, noting on the record the day and hour of mailing. When such receipt is returned, the clerk shall attach the same to the original statement of claim and it shall constitute prima facie evidence of service upon the defendant.

(4) When service is by a private individual, as above provided, he shall make proof of service of an affidavit, showing the time and place of service on the defendant.

(5) When served by the sheriff or constable, the actual cost of service shall be paid in addition to the filing fee as provided for in §42.11.

(6) The plaintiff shall be entitled to a judgment by default, without further proof, upon failure of defendant to appear, when the claim of the plaintiff is for a liquidated amount; when the amount is unliquidated, plaintiff shall be required to present proof of his claim.

(7) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing.

History.—§10, ch. 26920, 1951.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

42.11 Filing fees; costs; waiver.—The plaintiff, when he files his claim, shall deposit with the court the sum of three and one-half dollars, except proceedings of garnishment, attachment, replevin and distress, when the fee shall be ten dollars, which shall cover all costs of the proceedings, including the service of notice. The judge shall have full discretionary power to waive the prepayment of costs or the payment of costs accruing during the action upon the sworn written statement of the plaintiff and upon other satisfactory evidence of his inability to pay such costs. When costs are so waived the notation to be made on the records shall be "prepayment of costs waived," or "costs waived." The term "pauper" or "in forma pauperis" shall not be employed. If a party shall fail to pay accrued costs, though able to do so, the judge shall have power to deny said party the right to file any new case while such costs remain unpaid, and likewise to deny such litigant the right to proceed further in any case pending. The award of other court costs shall be according to the discretion of the judge who may include therein the reasonable costs of bonds and undertakings, and other reasonable court costs incident to the suit incurred by either party; provided, how-

ever, that in all counties having a population in excess of 400,000 inhabitants by the last census, the plaintiff shall deposit with the court upon the filing thereof of all claims in excess of one hundred dollars, the sum of six and one-half dollars; and in all claims in addition to the foregoing filing fees, deposit an amount sufficient for payment of postage for mailing of notices and other documents as provided in §42.10, except proceedings of garnishment, attachment, replevin and distress, when the fee shall be ten dollars, which shall cover all costs of the proceeding, exclusive of the service of notice.

History.—§11, ch. 26920, 1951; §3, ch. 29636, 1955.

42.12 Trial; procedure; settlement.—

(1) On the return day or within ten days thereafter, as the judge may designate, the trial shall be had. Immediately prior to the trial of any case, the judge shall make earnest effort to settle the controversy by conciliation. If the judge fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits.

(2) The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and all rules and regulations relating to pleading, practice and procedure shall be liberally construed so as to administer justice.

(3) If the plaintiff fails to appear, the suit may be dismissed for want of prosecution, or defendant may proceed to a trial on the merits, or the case may be continued as the judge may direct. If both parties fail to appear, the judge may continue the case, or order the same dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice may require.

History.—§12, ch. 26920, 1951.

42.13 Statement of setoff; jurisdiction exceeded.—If any defendant has any claim against the plaintiff the judge may require a statement of setoff to be filed, or same may be waived. If plaintiff requires time to prepare his defense against such claim the judge may continue the case for such purpose. If any defendant has any claim against the plaintiff which exceeds the jurisdiction of the court he may use a part thereof to offset the claim of the plaintiff.

History.—§13, ch. 26920, 1951.

42.14 Stay of judgment; payment of claim.—When the judgment is to be rendered and the party against whom it is to be entered requests it, the judge shall inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay an entry of judgment, and to stay execution, and upon such terms, as shall seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied.

History.—§14, ch. 26920, 1951.

42.15 Rules of procedure; forms.—The judge of said court shall forthwith from time to time make rules for a simple inexpensive, and speedy procedure to effectuate the purposes of this chapter and shall have power to prescribe, modify and improve the forms to be used therein, including forms of writs of attachment, garnishment and replevin. All rules and forms authorized by this section shall be effective upon approval by a judge of the circuit court of the circuit in which the county is located.

History.—§15, ch. 26920, 1951.

42.16 Jury trials.—Jury trials may be had upon demand of the plaintiff at the time of the commencement of his suit or by the defendant within five days after service of notice of suit by depositing with the judge or his clerk such sum as the judge may fix as reasonable to secure the payment of cost incurred by reason of a jury trial, or otherwise jury trial shall be deemed waived.

History.—§16, ch. 26920, 1951.

42.17 Judgments; when effective; execution.—

(1) Judgments of small claims courts shall become a lien on the real estate of a defendant, situated in any county, from the time of the filing in the office of the clerk of the circuit court for said county, of a transcript of such judgment and the entry thereof by the clerk in a book to be kept by him for such purposes.

(2) Upon judgment being entered in any cause execution shall thereupon be issued against the party against whom the judgment is rendered for the amount of such judgment and costs, and such execution shall be directed to all and every, the sheriffs and constables of the state, and shall be of full force throughout the state.

History.—§17, ch. 26920, 1951.

42.18 Appeals.—Appeals may be had from judgments returned in a small claims court, to the circuit court, and the same provisions now provided for by law for appeal from county judges court to the circuit court, shall be applicable to appeals from the small claims court of the circuit court.

History.—§18, ch. 26920, 1951.

42.19 Forms.—Until otherwise provided by rules of court the statement of claim, verification, and notice shall be in the following or equivalent form, and shall be in lieu of any forms now employed and of any form of summons now provided by law:

SMALL CLAIMS COURT

_____ County, Florida

Address

_____, Florida

_____

Plaintiff

_____

Address

vs.

_____

Defendant

No._____

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the court, will insert a statement of the plaintiff's claim, and the original to be filed with the court, may if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

State of Florida)
_____County)

_____being first duly sworn on oath, says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all setoffs and just grounds of defense.

_____
Plaintiff (or agent)

Sworn and subscribed to before me this _____ day of _____, 19_____.

_____
Notary Public

NOTICE

TO_____
Defendant

_____
Home Address

_____
Business Address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars ($_____), as shown by the foregoing statement. The court will hold a hearing upon this claim on _____ at_____ M. at (address of court).

You are required to be present at the hearing in order to avoid a judgment by default against you.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the court at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

_____
Clerk of the Small Claims Court

History.—§19, ch. 26920, 1951.

42.20 Quarters for court; equipment; supplies.—The board of county commissioners shall furnish within a reasonable time after the activation of the small claims court suitable quarters to house such court and shall provide such necessary equipment, maintenance and supplies to enable it to function in accordance with this act, and the amount so expended shall be a first charge upon excess earnings of the court which shall be paid into the county general fund.

History.—§20, ch. 26920, 1951.

42.21 Appropriation.—Section 42.20 shall have the effect of an appropriation of county funds for the purpose therein stated and shall be immediately effective, notwithstanding any lack of appropriations or absence of provisions therefor in the county budget and notwithstanding any budgetary restrictions.

History.—§21, ch. 26920, 1951.

42.22 Forms, docket books, etc., to be furnished.—All forms, docket books, file jackets, and the like, required by this chapter shall be furnished by the county commissioners.

History.—§22, ch. 26920, 1951.

CHAPTER 43

PROVISIONS RELATING TO COURTS, GENERALLY

43.011 County solicitor; court of record; compensation; office personnel.—

(1) The compensation of the county solicitor of Escambia county shall be ten thousand five hundred dollars per annum, payable in equal monthly installments. The county solicitor of Escambia county shall have two assistants and a criminal investigator, to be appointed by the county solicitor, and the compensation of each of the assistants shall be seven thousand two hundred dollars per annum, payable in twelve equal monthly installments. The compensation of the criminal investigator shall be determined in accordance with the laws and regulations governing those in classified service under the applicable provisions of the civil service law relating to Escambia county, except the compensation of anyone employed as a criminal investigator by said county solicitor as of April 1, 1963, shall not be less than seven thousand two hundred dollars per annum payable in twelve equal monthly installments. Any person employed as a criminal investigator by said county solicitor of Escambia county on April 1, 1963, and who has served in this position for a period of six months or longer, shall be retained without preliminary or performance test and shall not suffer any loss of pay as the result of this act, but shall in all other respects thereafter be subject to the civil service act.

(2) Nothing in chapter 63-403 shall be construed to prevent the county solicitor of Escambia county from appointing other assistants or criminal investigators when their compensation is not to be paid out of the public funds.

History.—§§1, 2, ch. 63-403.

43.012 Assistant county solicitors.—All assistant county solicitors when so appointed by the county solicitor shall hold office at the pleasure of the county solicitor. All appointments of said assistants to the county solicitor shall be made in writing and a record thereof entered in the minutes of the court of record of Escambia county, and when such appointments shall be revoked, such revocation shall be made in writing and shall be made a part of the minutes of said court.

History.—§1, ch. 63-403.

43.013 Criminal investigator.—Any criminal investigator who is now or shall hereafter be employed under the provisions of this act shall work under the direction and immediate supervision of the county solicitor of Escambia county in the enforcement of all criminal laws and procuring evidence, information and facts pertaining to any and all matters relating to crimes committed within the county in which said criminal investigator is employed. Said criminal investigator shall be a peace officer, shall have authority to bear arms and make arrests and serve legal process in Escambia county.

History.—§1, ch. 63-403.

43.014 County solicitor; office expenses.—

(1) On or before August 1 of each year, or sooner if requested by the board of county commissioners, the county solicitor of Escambia county shall make up and present to the board of county commissioners a list and estimate of expenses of such county solicitor's offices, including salaries of the county solicitor, assistant county solicitors and criminal investigator, stenographic help, telephone, automotive and travel expenses and all other necessary office expenses for the ensuing fiscal year, and shall certify that such estimate, list of expenses and amount provided for such expenses are necessary, reasonable and just, and the county commissioners shall forthwith consider the same and shall include such items as shall be approved by them in the general county budget and said county commissioners are authorized and directed and shall make provision for and pay all such approved expenses out of the general fund of Escambia county.

(2) The county solicitor of Escambia county shall certify on all bills presented for payment for the expenses of such county solicitor's office in Escambia county, as herein mentioned, that the same is just, due and correct and that such things, commodities and services have been actually delivered or rendered.

History.—§1, ch. 63-403.

43.03 Office expense; judges of courts of record.—

(1) The judges of all constitutional courts of record and the judge of the court of record of Escambia county, Florida, shall be entitled to authorize and expend a sum not to exceed three hundred dollars per year for office furniture, furnishings, supplies, equipment and expenses of the office of such judges.

(2) It is the intention of this law that all expenses of the offices of judges of all constitu-

tional courts of record of the state and of the court of record of Escambia county, Florida, are to be paid by the county and nothing herein contained shall limit the power of any county, through its proper officers, to expend any amount it sees fit, over and above the said sum of three hundred dollars, for office expenses of and in connection with the operation of the offices of such judges.

(3) The moneys for such expenses shall be paid to the person performing the services or furnishing material or supplies out of the general funds of the county upon the requisition and approval of such judges, and the approval of the board of county commissioners of such counties.

History.—§1, ch. 21681, 1943.

43.04 Interchange of judges between circuit court and court of record.—

(1) At the request of either of the judges of the circuit court of the first judicial circuit of Florida, in and for Escambia county, the judge of the court of record in and for said county may assume and perform in every respect the duties of either of such circuit judges in said county, and upon the request of the judge of the court of record in and for Escambia county, either of said circuit judges may assume and perform in every respect the duties of such judge of the court of record in and for Escambia county.

(2) The request of the several judges for interchange of their respective jurisdictions as hereinbefore provided shall not be required to appear of record, but the fact of assumption of jurisdiction in any proceeding shall be conclusive evidence of the legality of the exercise of such jurisdiction unless the contrary is made to appear by protest in writing filed in the cause by any party or by the judge or judges whose jurisdiction is assumed, whereupon the judge so assuming jurisdiction outside his own court shall proceed no further without securing authority so to do from the governor of the state, as hereinafter provided.

(3) The governor of the state may direct an exchange of judges between the circuit court of the first judicial circuit of Florida in and for Escambia county, and the court of record in and for Escambia county, Florida, in the manner now authorized for the transfer of circuit judges from one circuit to another circuit of the state.

(4) This section shall be liberally construed to effectuate its purpose, which purpose is now declared to be the full and free interchange of jurisdiction between the judge of the court of record in and for Escambia county, Florida, and the several judges of the circuit court of the first judicial circuit of Florida in and for Escambia county, to the extent that same may be accomplished under the constitution and laws of the state, for the furtherance of public convenience and more efficient administration of public justice.

(5) If any provision of this section be declared unconstitutional, or if any power which may be included in the language thereof exceed that which may constitutionally be delegated to either of such substituted judges, such unconstitutionality shall not affect the remainder thereof, but it shall be so construed as not to grant such unconstitutional power.

History.—§§1-5, ch. 21770, 1943.

43.05 Reporter of testimony and proceedings.—There shall be a reporter of testimony and proceedings in trials at law in all constitutional courts of record in the state, including without limitation the court of record of Escambia county, Florida. Such reporter shall be an expert stenographer and typist, appointed by the governor upon recommendation of the judge of the court wherein such court reporter shall perform his duties, and such court reporter shall hold office during the pleasure of the governor. Females possessing the requisite qualifications shall be eligible for appointment.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §1, ch. 11977, 1927; CGL 5137; §1, ch. 23768, 1947; §11, ch. 25035, 1949.

43.06 Report of testimony and proceedings.—The court reporter in the discretion of the judge or upon request of either attorney shall report the testimony and proceedings in the trial of any criminal case in any court described in §43.05 and shall report the testimony and proceedings in the trial of any civil case in any said courts, upon demand in writing filed in the cause by the attorney for either party.

History.—§1, ch. 8037, 1919; ch. 9170, 1923; §2, ch. 11977, 1927; CGL 5158; §2, ch. 23768, 1947.

43.07 Cost upon conviction.—In all criminal cases reported, in event of conviction, there shall be taxed as costs, against the person convicted, the sum of ten dollars which shall, when collected, be paid to the board of county commissioners of the county concerned to be placed in the fine and forfeiture fund of said county.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §4, ch. 11977, 1927; CGL 5139; §3, ch. 23768, 1947.

43.08 Reporter's salary.—In lieu of a per diem in the trial of misdemeanor cases in any of said courts, the said reporter shall receive a salary in the sum of one thousand eight hundred dollars per annum, payable in twelve equal monthly installments to be paid by the board of county commissioners, out of the fine and forfeiture fund of the county wherein such constitutional courts of record shall exercise jurisdiction, including without limitation Escambia county, when approved and certified by the presiding judge of said court. Upon demand of the county solicitor, or the defendant in any criminal case, or the judge of said court, said reporter shall furnish with a reasonable diligence a typewritten transcript of the testimony and proceedings together with charge of the court and shall receive therefor the same fee for such transcript as is provided in §29.03, and the cost of such transcript shall be taxed as costs in the case.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §4, ch. 11977, 1927; CGL 5140; §4, ch. 23768, 1947; §1, ch. 63-521.

43.09 Reporter to act as judge's secretary; assistant reporter; Escambia county.—

(1) The court reporter in addition to the duties prescribed by law shall perform secretarial services for the judges of such court and such other duties as may be required by said judges. Such court reporter, in addition to the compensation for reporting the trial of criminal cases as provided by §29.04 and §43.08, shall be entitled to receive as compensation for the performance of such secretarial services for such judges a salary in the sum of one thousand eight hundred dollars per annum, payable in twelve monthly installments from the general fund of the county wherein such official court reporter is required to perform his duties, including without limitation Escambia county.

(2) The court reporter of the constitutional court of record of Escambia county is authorized to employ an assistant court reporter at a salary not to exceed four thousand two hundred dollars per annum, which shall be payable from the fine and forfeiture fund of the county.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §3, ch. 11977, 1927; CGL 5141; §5, ch. 23768, 1947; §§1, 2, ch. 57-680; §3, ch. 61-530; §2, ch. 63-521.

43.10 Appropriation.—Sections 43.05-43.09 shall have the effect of an appropriation of county funds for the purpose herein stated and shall be immediately effective, notwithstanding any lack of appropriations or absence of provisions therefor in any county budget and notwithstanding any budgetary restrictions.

History.—§7, ch. 23768, 1947.

43.12 Report prima facie correct transcript.—The report of such official stenographer when written out in longhand writing or printed in type and certified to by him, as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings; provided, that his signature of such certificate be duly acknowledged by him before a notary public or some judicial officer of this state.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §7, ch. 11977, 1927; CGL 5143.

43.13 Special reporter; appointment.—In case any official reporter shall not have been appointed, or where the official reporter is disqualified or unable to perform his duties, it shall be within the discretion of the judge to appoint a special reporter in any cases, civil or criminal, upon demand of any of the parties therefor; said special reporter shall perform the same services as the official reporter and shall receive the same pay provided for in §29.03. In all criminal cases said compensation shall be paid by the county commissioners out of the fine and forfeiture fund of said county when approved and certified by the presiding judge of said court that said service has been rendered.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §8, ch. 11977, 1927; CGL 5144; §3, ch. 63-521.

43.14 Deputy reporters.—Said official reporter may, with the approval of the presiding judge, appoint one or more deputies; such deputies shall have the power to perform any duty that the official reporter might perform, but such official reporter shall be responsible for the action of the deputy. Such appointment of said deputy or deputies shall be spread upon the minutes of the court.

History.—§1, ch. 8037, 1919; §1, ch. 9170, 1923; §9, ch. 11977, 1927; CGL 5145.

43.15 Judicial council created; powers, duties; members, terms.—

(1) There is hereby created a judicial council to be known as the judicial council of Florida. The council shall have the powers and shall be charged with the following duties:

(a) To make a continuous survey and study of the organization, procedure, practice, rules, and methods of administration and operation of each and all of the courts of this state, the volume and condition of business in said courts, the work accomplished and the results obtained.

(b) To collect, compile, analyze and publish statistics showing the work of the courts. The judges, clerks of the various courts, and other officials thereof, shall make to the council such reports, from time to time, as the council may prescribe.

(c) To receive, consider, and in its discretion, investigate criticisms and suggestions from any source pertaining to the administration of justice and to make recommendations in reference thereto.

(d) To recommend, from time to time, to the legislature any changes in the organization, jurisdiction, operation, procedure and methods of conducting the business of the courts which might be put in effect only by legislative action, and to recommend to the courts any changes in the rules and practice or methods of administering judicial business therein, which, in the judgment of the council, would simplify and expedite or otherwise improve the administration of justice. The council shall file with the Governor an annual report of its proceedings and recommendations and the results thereof.

(2) The judicial council of Florida shall be composed of a justice or a retired justice of the supreme court of Florida, who shall be the presiding officer of the council; a judge of a circuit court; a judge of a court having probate jurisdiction; the attorney general or one of his assistants; four members of the bar of the state; and nine laymen; all to be appointed by the governor. Five members shall be appointed to the council for a period of one year, six members for a period of two years, and six members for a period of three years; and all appointments made thereafter shall be for a period of three years; except that, in the case of a vacancy, the appointment shall be made to fill the unexpired term.

History.—§§1, 2, ch. 28062, 1953.

CHAPTER 44

COUNTY JUDGES, SALARIES; BUDGETS

44.01 Legislative intent.—It is the intent of the legislature to abolish the fee system for the compensation of county judges and the expense for the operation of their offices and to establish a comprehensive salary scale for the county judges so that the intent of Art. III, §20 of the state constitution, that the regulation of the fees of county officers should be done by general legislation and not by local or special act, will be carried out. It is also the intent of the legislature to establish a uniformity of budgeting procedure to promote more efficient and accurate auditing and handling of county finances.

History.—§1, ch. 63-365.

44.02 Salaries.—

(1) On and after October 1, 1963, each county judge shall receive for the performance of his official duties as county judge an annual salary, payable out of the general fund of the county, which shall be due and payable on the last day of the month in which it accrued; provided, that compensation for service in office for a part of a calendar month shall be paid in the proportion that the days served bear to the number of days in that month.

(2) The annual salary of each county judge is hereby fixed by the legislature to be the compensation earned by such officer or his predecessor in office and paid to such officer or such predecessor in office during the year 1962, unless otherwise provided by an act of the legislature becoming law in 1963 or subsequent thereto; provided, however, that the compensation of each county judge for the period beginning January 1, 1963, and ending September 30, 1963, shall not be less than three quarters of the compensation earned by such officer or his predecessor in office and paid to such officer or his predecessor in office during the year 1962. If the income of the office of county judge for that period is insufficient for the payment of the compensation of the county judge for the period beginning January 1, 1963, and ending September 30, 1963, as herein provided, the board of county commissioners shall pay to the county judge from the general fund of the county, an amount sufficient to provide the county judge the compensation contemplated by this section for such period.

History.—§2, ch. 63-365.

44.03 Budgets.—

(1) At the time fixed by law for preparation of the county budget, each county judge shall certify to the board of county commissioners a proposed budget of expenditures for the carrying out of the powers, duties, and operations of his office for the ensuing fiscal year of the county. The fiscal year of the county judge shall henceforth commence on October 1 and end on September 30 of each year.

(2) The county judge shall submit with the proposed budget his sworn certificate, stating that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the office for the ensuing year. Each proposed budget shall show the estimated amounts of all proposed expenditures for operating and equipping the county judge's office other than construction, repair, or capital improvement of county buildings during the said fiscal year. The expenditures shall be itemized as follows:

(a) Salary of the county judge.
(b) Salaries of assistants and clerks.
(c) Expenses, other than salaries.
(d) Equipment.
(e) Reserve for contingencies.

(3) (a) The board of county commissioners or the budget commission, if there is a budget commission within the county, may require from the county judge whatever reasonable information it may deem desirable concerning the expenditures of prior years. The said board or budget commission, as the case may be, may require the county judge to correct errors in form and mathematical and mechanical errors in his budget. No later than August 1 of each year, the said board or commission, as the case may be, may amend, modify, increase, or reduce any or all items of expenditure in the proposed budget and, as amended, modified, increased, or reduced, shall approve said budget promptly, giving written notice of their action to the county judge specifying in such notice the specific items so amended, modified, increased, or reduced; the budget shall include the salaries and expenses of the county judge, purchase, maintenance, and operation of equipment, and all other salaries, expenses, equipment and expenditures of the county judge for the ensuing year. The county judge, within ten days after receiving written notice of such action by the board or commission (either in person or in his office) may file an appeal to the board of appeals of county officers' budgets. Such appeal shall be by petition to such board of appeals, which petition shall set forth the budget proposed by the county judge and the budget as approved by the board of county commissioners or the budget commission, as the case may be, and shall contain the reasons or grounds for the appeal. Such petition shall be filed with the state comptroller and a copy of said petition shall be served upon the board or commission

from whose decision appeal is taken by delivering the same to the chairman or president thereof, or to the clerk of the circuit court. The board of county commissioners or the budget commission, as the case may be, shall have five days from delivery of a copy of any such petition, as above, to file with the board of appeals a reply thereto and shall deliver a copy of such reply to the county judge.

(b) The board of appeals, within thirty days of the filing of the petition, shall consider the petition and may require a hearing thereon. The board of appeals shall by majority vote, within said thirty days:

1. Approve the action of the board or commission as to each separate item, or;

2. Approve the budget as proposed by the county judge as to each separate item, or;

3. Amend or modify said budget as to each separate item within the limits of the proposed expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be.

The budget, as approved, amended, or modified by the board of appeals of county officers' budgets, shall be final.

(4) The board of county commissioners and the budget commission, if there is a budget commission within the county, shall include in the county budget the items of proposed expenditures as set forth in the budget required by this section to be submitted, after the said budget has been reviewed and approved as provided herein; the said board or commission, as the case may be, shall include the reserve for contingencies provided herein for each budget of the county judge in the reserve for contingencies in the budget of the appropriate county fund.

(5) The reserve for contingencies in the budget of a county judge shall be governed by the same provisions governing the amount and use of the reserve for contingencies appropriated in the county budget, except that the reserve for contingencies in the budget of the county judge shall be appropriated upon written request of the county judge.

(6) The items placed in the budget of the board of county commissioners pursuant to this law shall be subject to the same provisions of law as the county annual budget; provided that no amendments may be made to the appropriations for the county judge's office except as requested by the county judge.

(7) The proposed expenditures in the budget shall be submitted to the board of county commissioners or budget commission, if there is a budget commission within the county, by July 1 of each year, except that for 1963 the budget shall be submitted on or before July 15, and the said budget shall be included by the said board or commission, as the case may be, in the budget of either the general fund or the fine and forfeiture fund, or in part of each.

(8) If in the judgment of the county judge an emergency should arise by reason of which the county judge would be unable to perform his duties without the expenditure of larger amounts than those provided in the budget, he may apply to the board of county officers' budget appeals for the appropriation of additional amounts. The county judge shall at the same time deliver a copy of his application to the board of county commissioners, and to the budget commission if there is a budget commission within the county. The board of county officers' budget appeals shall hold a hearing on the application, after due notice to the county judge and to the boards, and may grant or deny an increase or increases in the appropriations for the county judge's offices. If any increase is granted, the board of county commissioners, and the budget commission, if there is a budget commission in the county, shall amend accordingly the budget of the appropriate county fund or funds. Such budget shall be brought into balance, if possible, by application of excess receipts in the said county fund or funds. If such excess receipts are not available in sufficient amount, the county fund budget or budgets shall be brought into balance by adding an item of vouchers unpaid in the appropriate amount to the receipts side of the budget, and provision for paying such vouchers shall be made in the budget of the county fund for the next fiscal year.

History.—§3, ch. 63-365.

44.04 Payment of salaries and expenses.—(1) The county judge shall requisition and the board of county commissioners shall pay him, at the first meeting in October of each year, and each month thereafter, one twelfth of the total amount budgeted for the office; provided, that at the first meeting in October of each year, the board shall, at the request of the county judge, pay one sixth of the total appropriated, and one twelfth each month thereafter, which payments shall be not more than the total appropriation; provided further, that any part of the amount budgeted for equipment shall be paid at any time during the year upon the request of the county judge.

(2) The county judge shall deposit the county warrant or warrants in his official bank account as provided in §44.05(3) and draw his own checks thereon in payment of the salaries of himself and his clerks and employees and the expenses of his office. All salaries paid shall be supported by pay rolls, and all expenses paid shall be supported by approved bills.

(3) The county judge may set up a revolving fund for payment in cash of small items. The revolving fund shall be reimbursed from time to time by payments of the vouchers representing the cash payments.

(4) The county judge shall keep necessary budget accounts and records, and shall charge all paid bills and pay rolls to the proper budget accounts. The reserve for contingencies, or any part thereof, may be transferred to any of the budget appropriations, in the discretion of the county judge. With the approval of the board of county commissioners, or of the budget commission, if there is a budget commis-

sion in the county, the budget may be amended as provided for county budgets in §129.06(2).

(5) All expenses incurred in the fiscal year for which the budget is made shall be vouchered and charged to the budget for that year, and to carry out this purpose the books may be held open for thirty days after the end of the year.

(6) All unexpended balances at the end of each fiscal year shall be refunded to the board of county commissioners, and deposited to the county fund or funds from which payment was originally made.

History.—§4, ch. 63-365.

44.05 Fees and commissions.—

(1) No bills shall be rendered to the county for any services, nor shall any fees, commissions, or other remuneration for official services as county judge be paid by the board of county commissioners of any county to the county judge of the county except as provided by this act. All fees, commissions, and other remuneration provided by law for services shall be charged by the said county judge to other authorities and parties doing business with their offices, and shall be paid over to the county as provided in this section.

(2) The fees authorized or deposit sufficient to cover them, shall be collected in advance from the party who requests the service; provided, that services may be performed for any governmental agency or unit without advance payment, and the officer shall bill and collect the fees earned from such agency after the service is performed or when the amount due is determined.

(3) Deposits for fees shall be placed in a depository trust account. The officer who receives the deposit shall keep an account with the depositor, and shall withdraw monthly from the deposits the fees earned and shall remit them to the county fund or funds as provided by this act.

(4) Fees or commissions commingled when received with other official collections may be deposited with such other collections in the trust account or accounts and distributed to the county fund or funds at the time that the other collections with which they were received, are distributed.

(5) All fees, commissions, or other funds collected by the county judge for services rendered or performed by his office shall be remitted monthly to the county, in the manner prescribed by the state auditor.

History.—§5, ch. 63-365.

44.06 Handling of public funds.—The county judge shall keep public funds in his custody, either in his office in an amount not in excess of the burglary, theft, and robbery insurance provided, the cost of which is hereby authorized as an expense of the office, or in a depository in an amount not in excess of the security provided pursuant to chapter 36, and the comptroller's regulations. The title of the depository accounts shall include the words county judge and the name of the county, and withdrawals from the accounts shall be made by checks signed by the duly qualified and acting county judge of the county, or his designated agent.

History.—§6, ch. 63-365.

44.07 Independence of constitutional officials.—The independence of the county judges shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to Art. XVI, §34 of the state constitution provided, further, that nothing contained in this act shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

History.—§7, ch. 63-365.

44.08 Severability clause.—If any section, subsection, sentence, clause, phrase or word of this act is for any reason held or declared to be unconstitutional, invalid, inoperative, ineffective, inapplicable, or void, such invalidity or unconstitutionality shall not be construed to affect the portions of the act not so held to be unconstitutional, void, invalid, or ineffective, or affect the application of this act to other circumstances not so held to be invalid, it being hereby declared to be the express legislative intent that any such unconstitutional, illegal, invalid, ineffective, inapplicable, or void, portion or portions of this act did not induce its passage and that without the inclusion of any such unconstitutional, illegal, invalid, ineffective, or void portions of this act, the legislature would have enacted the valid and constitutional portions thereof.

History.—§8, ch. 63-365.

44.09 Exemptions.—The provisions of this act shall not apply to the county judge of any county of the state having a constitutional amendment requiring the legislature to set, by local or special act, the salaries of all county officers; nor shall the provisions of this act apply to any county having a population of three hundred fifty thousand or more according to the latest official decennial census. The following counties are excluded herefrom: Walton, Holmes, Washington, Highlands, Bay, Palm Beach, Gulf, Liberty, Franklin, Wakulla, Leon, Jefferson, Hardee, DeSoto, Lake, Gadsden, Volusia, Santa Rosa, St. Johns, Flagler, Pinellas, Polk, Levy, Dixie, Gilchrist, Sumter, Putnam, Hendry, Glades, Taylor, Madison, Okaloosa, Pasco, Marion, St. Lucie, Jackson, Union, Columbia, Osceola.

History.—§9, ch. 63-365.

44.10 Laws not affected.—The provisions of this act shall in no way affect, repeal, or modify the provisions of any other law becom-

ing effective in 1963, or subsequent thereto, relating to the salary of a county judge; nor shall it apply to any county wherein the disposition of the fees of county officers is governed by Art. VIII, §23 of the state constitution.

History.—§10, ch. 63-365.

44.11 Effective date.—This act shall take effect October 1, 1963, provided that the provisions of §44.03 shall become effective as provided in subsection (7) thereof.

History.—§11, ch. 63-365.

TITLE VI

CIVIL PRACTICE AND PROCEDURE

CHAPTER 45

PARTIES AND ABATEMENT

45.02 Plaintiffs; commencement of suits by infants, idiots and lunatics.—

(1) An infant may sue by his next friend or by guardian appointed by court of competent jurisdiction in all cases whatsoever, and idiots and lunatics by their guardians.

(2) In all suits now pending or hereafter brought by or on behalf of an infant to recover for injury to the person or damage to personal property, no settlement on behalf of said infant shall be effective unless the same is approved by an order of the judge of said court. In the event of such settlement, or in the event of a judgment or decree in favor of said infant, where the amount of such settlement or judgment or decree does not exceed the sum or value of two thousand dollars, exclusive of costs, the judge of such court may authorize either or both of the natural parents, or, in the event such infant is an adopted child, either or both of the adopting parents without bond, or a guardian if there be one appointed by a court of competent jurisdiction, to collect the amount of such settlement, judgment, or decree, and to execute a release or satisfaction therefor. Provided, however, that a guardian appointed by a court of competent jurisdiction may collect and satisfy any such decree or judgment in favor of an infant without securing authorization of such court as herein provided.

History.—§32, Nov. 23, 1828; RS 982; GS 1366; RGS 2562; CGL 4202; §1, ch. 22720, 1945.

45.03 Plaintiffs; married women.—A married woman may interpose a claim to her personal property levied upon under legal process, and may prosecute an action concerning her land and rights therein, with all the rights, powers and privileges of a feme sole.

History.—§9, Feb. 17, 1833; §1, Mar. 15, 1844; RS 1197; GS 1367; RGS 2563; CGL 4203.

45.04 Plaintiffs; deserted wife, etc.—A married woman whose husband has become insane or has deserted her for six months may prosecute or defend any action at law or in equity as if she were a feme sole.

History.—§1368 GS 1906; RGS 2564; CGL 4204.

45.05 Plaintiffs; sureties, etc., for contribution.—When any person shall execute any bond, note, draft, or bill of exchange in this state, and any two or more persons shall also execute the same jointly with him, and merely as his sureties, or shall endorse any note or draft or bill of exchange as sureties for the maker or drawer thereof, for his accommodation, and without any consideration, said persons shall be bound each to the other for a proportional contribution of the amount of said bond, note, draft or bill of exchange; and if any person be compelled to pay any part of said bond, note, draft or bill of exchange, he shall have his remedy by suit against his cosurety for contribution, and may sue separately or jointly to enforce the payment of the same; and the defendants, whether sureties, accommodation joint makers, or accommodation indorsers, may be sued separately or jointly. Where it may be necessary the person claiming contribution may proceed by attachment as in other cases.

History.—§1, Feb. 14, 1835; RS 983; GS 1369; §1, ch. 6210, 1911; RGS 2565; CGL 4205.

45.11 Actions; surviving death of party.—No action for personal injuries and no other action shall die with the person, and all actions shall survive and may be instituted, maintained, prosecuted and defended in the name of the personal representative of the deceased, or in the name of such other person as may be provided by law.

History.—§30, Nov. 23, 1828; RS 989; GS 1375; RGS 2571; CGL 4211; §1, ch. 26541, 1951.

45.18 Abatement; marriage of feme sole.—The marriage of a woman, plaintiff or defendant, shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and such judgment shall be rendered against or for the wife alone, and the execution thereon be levied upon her property alone. In case of a judgment for the wife,

execution may issue thereon by the authority of the husband without suggestion.

History.—§47, ch. 1096, 1861; RS 996; GS 1382; RGS 2578; CGL 4218.

45.19 Abatement; actions or suits pending; failure to prosecute.—

(1) All actions at law or suits in equity pending in the several courts of the state, and instituted subsequent to 12:00 noon, October 1, 1947, in which there shall not affirmatively appear from some action taken by filing of pleadings, order of court, or otherwise, that the same is being prosecuted, for a period of one year, shall be deemed abated for want of prosecution and the same shall be dismissed by the court having jurisdiction of the cause, upon its own motion or upon motion of any person interested, whether a party to the action or suit or not, with notice to opposing counsel, provided that actions or suits dismissed under the provisions hereof may be reinstated by petition upon good cause shown to the court filed by any party in interest within one month after such order of dismissal.

(2) All actions at law or suits in equity pending in the several courts of the state, and which were instituted prior to 12:00 noon, October 1, 1947, in which there shall not affirmatively appear from some action taken by the filing of pleadings, order of court, or otherwise, that the same is being prosecuted, for a period of three years, shall be dismissed by the court having jurisdiction of the cause, upon its own motion or upon motion of any person interested, whether a party to the action or suit or not, with notice to opposing counsel; provided that actions or suits dismissed under the provisions hereof may be reinstated by petition, upon good cause shown to the court filed by any party within six months after such order of dismissal.

History.—§1, ch. 14554, 1929; CGL 1936 Supp. 4218(1); §§1, 2, ch. 23965, 1947; §1, ch. 28201, 1953; §32, ch. 29737, 1955; §1, ch. 59-65.

45.20 Civil action against parents; wilful destruction of property by minor.—

(1) Any municipal corporation, county, school district and department of Florida or any person, partnership, corporation or association, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in an amount not to exceed three hundred dollars in a court of competent jurisdiction from the parents of any minor under age of eighteen years, living with the parents, who shall maliciously or wilfully destroy property, real, personal or mixed, belonging to such municipal corporation, county, school district, or department of the state, or person, partnership, corporation or association, or religious organization.

(2) The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars in addition to taxable court costs.

History.—§§1, 2, ch. 31400, 1956.

VENUE, JOINDER, ETC., OF ACTIONS

CHAPTER 46

46.01 Where suits may be begun.—Suits shall be begun only in the county (or if the suit is in the justice of the peace court in the justice's district) where the defendant resides, or where the cause of action accrued, or where the property in litigation is located.

History.—§7, Nov. 21, 1829; §1, ch. 3721, 1887; RS 998; GS 1383; RGS 2579; CGL 4219; §24, ch. 57-1; §12, ch. 63-572.
cf.—§53.17, Transfer of cases laid in wrong venue.

46.02 Suits against defendants residing in different counties or districts.—Suits against two or more defendants residing in different counties (or justices' districts) may be brought in any county or district in which any defendant resides.

History.—§10, Nov. 23, 1828; RS 999; GS 1384; RGS 2580; CGL 4220.

46.03 Suits upon several causes of action.—Suits upon several causes of action may be brought in any county (or justice's district) where either of the causes of action arose.

History.—§1000 RS 1892; GS 1385; RGS 2581; CGL 4221.

46.04 Suits against corporations.—Suits against domestic corporations shall be commenced only in the county (or justice's district) where such corporation shall have or usually keep an office for the transaction of its customary business, or where the cause of action accrued, or where the property in litigation is located; and in the case of companies incorporated in other states or countries, and doing business in this state, suits shall be commenced in a county or justice's district wherein such company may have an agent or other representative, or where the cause of action accrued, or where the property in litigation is situated.

History.—§24, ch. 1639, 1869; RS 1001; §1, ch. 5221, 1903; GS 1386; RGS 2582; CGL 4222.

46.05 Venue of action upon promissory notes, etc.—All promissory notes, negotiable or non-negotiable, the payment of which is not secured by a mortgage or pledge of real or personal property, shall conclusively be deemed to have been completely executed, delivered and accepted in the county, or justice of peace district, in which actually signed and the maker resides, or in any county, or justice of peace district, in which actually signed by one or more of several makers, or one or more of several makers resides, regardless of the county, or justice of peace district, in which such instrument might be accepted or approved by the payee, and regardless of any stipulation in such instrument as to the place of payment; and the cause of action thereon shall also conclusively be determined to have arisen, and suit thereon shall be brought, only in the county, or justice of peace district, in which such instrument was actually signed by the maker, or one of several makers, or in which the makers reside, or one or more of several makers resides; and where suit is brought on any such instrument that was signed by the makers thereof in more than one county, or justice of peace district, or in any county, or justice of peace district, in which it was actually signed and delivered, whether by one maker, or one or more of several makers, whether by all of them or not, in any county, or justice of peace district, in which a signer resides, or several signers reside, no suit shall ever be brought thereon in any other county, or justice of peace district. This section shall be liberally construed in favor of the makers of the above mentioned instruments.

History.—§1, ch. 17134, 1935; CGL 1936 Supp. 4223(1).

46.06 Jurisdiction over navigable waters.—Whenever the territorial jurisdiction of any court in any county shall extend to one bank of any navigable water, such court shall have jurisdiction across such navigable water from shore to shore; and if the territorial jurisdiction of different courts, whether of the same county or not, extend to the opposite banks of any navigable water, such courts shall have concurrent jurisdiction across said navigable water from shore to shore.

History.—§1002 RS 1892; GS 1387; RGS 2583; CGL 4223.

46.08 Causes may be joined.—Causes of action, of whatever kind, by and against the same parties in the same rights, may be joined in the same suit, except that replevin and ejectment shall not be joined together nor with other causes of action.

When two or more causes of action so joined arise in different counties, the venue may be laid in either of such counties, but the court may prevent the trial of different causes of action together, if such trial would be inexpedient, and in such cases such court may order separate records to be made up and separate trials to be had.

History.—§12, ch. 1096, 1851; RS 1004; GS 1389; RGS 2585; CGL 4225.

46.09 Actions by husband and wife, parent or guardian and child.—In any action

brought by a man and his wife, parent or guardian and child for an injury done to the wife or child, in respect of which the wife or child is necessarily joined as co-plaintiff, the husband, parent or guardian may add thereto claims in their own right which said claims shall mean and include any and all claims of whatever kind and nature, including claims for personal injury, property damage and the like, and separate actions brought in respect of such claims may be consolidated if the court shall think fit. In case of the death of either plaintiff, such suit, so far as it relates to the causes of action, if any, which do not survive shall abate, but to that extent only.

History.—§11, ch. 1096, 1851; RS 1005; GS 1390; RGS 2586; CGL 4226; §1, ch. 21886, 1943; §1, ch. 28283, 1953.

46.10 Married woman's right to bring suit for real estate.—A married woman shall have the right to bring suits or actions for or concerning her real estate, without joining her husband or next friend.

History.—§2074 RS 1892; RS 2074; GS 2592; RGS 3951; CGL 5870.

46.11 Joinder of certain makers, endorsers, etc., of negotiable instruments.—The makers of promissory notes or other negotiable instruments, and all other persons who at or before the execution and delivery thereof, endorsed, guaranteed, or became surety for the payment thereof, or are otherwise secondarily liable for the payment of the same, may be sued in one and the same action.

In every action authorized by this section the final judgment shall specify and indicate the defendants who are liable for payment only as endorser, surety, guarantor or otherwise secondarily liable.

In every case where a final judgment authorized by the provisions of this section is paid by one or more defendants who are responsible only in the capacity of endorser, surety, guarantor, or otherwise secondarily liable, the holders of such judgment shall, upon request, transfer and assign such judgment to the defendants so paying the same, and such defendants shall be entitled to all the rights and remedies of the original plaintiff in such judgment or under execution thereon to enforce the collection of the same from the defendants who are liable as makers of the instruments sued upon.

History.—§§1-3, ch. 6486, 1913; RGS 4733-4735; CGL 6819-6821.

46.12 Military, naval or other service as residence.—Any person in any branch of service of the government of the United States, including military and naval service, and the husband or the wife of any such person, if he or she be living within the borders of the state, shall be deemed prima facie to be a resident of the state for the purpose of maintaining any suit in chancery or action at law.

History.—§1, ch. 21966, 1943.

CHAPTER 47

COMMENCEMENT OF SUITS AT LAW AND PROCESS

47.03 Rule days in justices' courts.—The first Monday and the third Monday in each month shall be rule days in the several justice of the peace courts in the state.

History.—§1, ch. 5922, 1909; RGS 2588; CGL 4228.

47.08 Summons; how directed.—In all civil causes, summons, subpoenas and other process, when issued out of any circuit court of this state, shall run throughout the state, and be directed to all and singular the sheriffs of the state.

History.—§1, ch. 4397, 1895; GS 1397; RGS 2594; CGL 4234; §2, ch. 29737, 1955.

47.09 Process in civil causes in which the state is a party.—Subpoenas, summons, and other process, when issued in behalf of the state, shall run throughout the state, and be directed as in §47.08.

History.—§1, ch. 4027, 1891; GS 1398; RGS 2595; CGL 4235; §2, ch. 29737, 1955.

47.10 Process; how returnable.—All process, upon the institutions of any suit, shall be returnable as provided for by the Florida rules of civil procedure as may now and hereafter be adopted by the supreme court, provided that all returns of process against the United States, where it is permitted by the laws of the United States to sue the United States in the courts of this state, shall be made returnable in conformity with the provisions of the laws of the United States governing the appearance of the United States in such actions.

History.—§5, ch. 1938, 1873; RS 1012; §1, ch. 5148, 1903; §1, ch. 28301, 1953; §5, ch. 29737, 1955.

47.12 Process; by whom served.—All process, except that issuing from a justice of the peace court, shall be served by the sheriff or any constable of the county in the district in which it is to be served. Process of a justice of the peace court may be served by a sheriff of the county or by a constable. A justice of the peace or a constable, in the respective counties, may serve all process in cases where the sheriff is interested, and in case of necessity the judge of the circuit court may appoint an elisor to act instead of the sheriff.

All writs or process issued upon the institution of a suit which may be begun in a county where the defendant does not reside, and all writs, process, or notices requiring service upon a defendant not in the county where the suit is pending, may be served by the sheriff of the

county or the constable of the justice district in which the defendant is to be found.

History.—§16, July 22, 1845; §1, ch. 3721, 1887; RS 1014, 1246; GS 1401; RGS 2598; §1, ch. 9318, 1923; CGL 4238.
cf.—§30.12, Power to appoint sheriffs, etc.

47.13 Service of process, generally.—Service of the original writ or summons shall be effected by delivering to the party to be served a copy thereof, together with a copy of the complaint, affidavit, petition, or other initial pleading; or by leaving such copies at his usual place of abode with some person of the family above fifteen years of age, and informing such person of their contents.

History.—§5, Nov. 23, 1828; RS 1015; GS 1402; RGS 2599; CGL 4246; §6, ch. 29737, 1955.
cf.—§230.21, Service of process upon county board of public instruction.
§447.11, Service of process on labor organizations and unions.

47.14 Service of process upon defendant removing from county.—If the defendant shall remove out of the county where an action has been commenced, and the officer to whom the process was directed shall so return, it is lawful to issue an alias writ of summons, and every other legal process necessary to enforce the appearance of such defendant, directed to the proper officer of any county in this state.

History.—§64, Nov. 23, 1828; RS 1016; GS 1403; RGS 2600; CGL 4247.

47.15 Service of process upon copartnership.—When any original process is sued out against several persons composing a mercantile or other firm, the service of said process on any one member of said firm shall be as valid as if served upon each individual member thereof; and the plaintiff may, after service upon any one member as aforesaid, proceed to judgment and execution against them all.

History.—§13, Nov. 23, 1828; RS 1017; GS 1404; RGS 2601; CGL 4248.

47.16 Service of process upon nonresident engaging in business in state.—

(1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, shall be deemed equivalent to an appointment by such persons and foreign corporations of the secretary of state of the state as the agent of such persons or foreign corporations upon whom may be served all lawful process in any action, suit or proceeding against them, or either of them, arising out of any transaction or operation connected with or incidental to such business or business venture, and the acceptance of such privilege shall be signification of the agreement of such persons and foreign corporations that any such process against them or either of them, which is so served shall be of the same legal force and validity as if served personally on such persons or foreign corporations. Service of such process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provision of §47.30. Provided that if a foreign corporation has a resident agent in the state, service of process shall be had upon such resident agent as now provided by statute.

(2) Any person, firm or corporation which through brokers, jobbers, wholesalers or distributors sells, consigns, or leases, by any means whatsoever, tangible or intangible personal property, to any person, firm or corporation in this state, shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business or business venture in this state.

History.—§1, ch. 6224, 1911; RGS 2602; CGL 4249; §1, ch. 26657, 1951; (2) n. by §1, ch. 57-747.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.
§620.30 Service of process on limited partnership.

47.161 Service of summons and process on nonresident persons and partnerships doing business in this state.—When any natural person or partnership not residing or having their principal place of business in this state shall engage in business in this state, in any action against such person or partnership arising out of such business, the summons or other process may be served by leaving a copy thereof with the complaint with the person who, at the time of service, is in charge of any business in which the defendant is engaged within this state, including agents soliciting orders for goods, wares, merchandise or services, and any summons or process so served shall be of the same legal force and validity as if served personally on such nonresident person or partnership so engaging in business in this state within the territorial jurisdiction of the court from which the summons or process issues, provided that a copy of such summons or process and complaint, together with a notice of such service upon such person in charge of such business according to the provisions of this section, shall be forthwith sent to such nonresident person or partnership by registered or certified mail, return receipt requested.

History.—§1, ch. 59-280.

47.162 Service of process upon nonresidents operating a watercraft in the state.—

(1) The operation, navigation or maintenance by a nonresident or nonresidents of a boat, ship, barge or other watercraft in the state, either in person or through others, and the acceptance thereby by such nonresident or nonresidents of the protection of the laws of the state for such watercraft, or the operation, navigation or maintenance by a nonresident or nonresidents of a boat, ship, barge or other watercraft in the state, either in person or through others, other than under the laws of the state, shall be deemed equivalent to an appointment by each such nonresident of the secretary of state, or his successor in office or some other person in his office during his absence he may designate, to be the true and

lawful attorney of each such nonresident for service of process, upon whom may be served all lawful process in any suit, action or proceeding against such nonresident or nonresidents growing out of any accident or collision in which such nonresident or nonresidents may be involved while, either in person or through others, operating, navigating or maintaining a boat, ship, barge or other watercraft in the state; and such acceptance or such operating, navigating or maintaining in the state of such watercraft shall be a signification of each such nonresident's agreement that any such process against him which is so served shall be of the same legal force and effect as if served on him personally.

(2) Service of such process shall be made by leaving a copy of the process with a fee of two dollars in the hands of the secretary of state, or in his office, and such service shall be sufficient service upon a defendant who has appointed the secretary of state as his agent for the service of such process; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt and the affidavit of the plaintiff, or his attorney of compliance herewith are filed with the papers in the case on or before the return day of the process or within such further time as the court may allow, or that such notice and copy are served upon the defendant, if found within the state, by an officer duly qualified to serve legal process, or, if found without the state, by a sheriff or deputy sheriff of any county of this state or by any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found; and the officer's return showing such service to have been made is filed in the case on or before the return day of the process or within such further time as the court may allow.

History.—§1, ch. 59-148.

47.17 Service of process on private corporation.—Process against any corporation, domestic or foreign, may be served:

(1) Upon the president or vice-president, or other head of the corporation; and in the absence of such head:

(2) Upon the cashier, treasurer, secretary or general manager; and in the absence of all the above:

(3) Upon any director of such company; and in the absence of all of the above:

(4) Upon any officer or business agent, resident in the state.

(5) If a foreign corporation shall have none of the foregoing officers or agents in this state, service may be made upon any agent transacting business for it in this state.

(6) This section shall not apply to service of process upon insurance companies.

(7) The provisions of this section shall be cumulative to all existing laws.

History.—§8, Nov. 21, 1829; §2, Feb. 11, 1834; §1, ch. 3590, 1885; §1, ch. 6908, 1915; §1, ch. 7752, 1918; RGS 2604; CGL 4251; r. §1, ch. 57-97; reenacted (1)-(5), (6), (7) n. by §§1-3, ch. 59-46.

47.171 Service of process; domestic and foreign corporations.—When any domestic or foreign corporation shall fail to comply with §§47.34 and 47.35 relating to the designation of the place for service of process, or in the alternative, with §47.36 relating to the designation of the office of the clerk of the circuit court as a place for service of process, then process directed to any domestic corporation failing to comply with said sections may be served upon any officer or agent of such domestic corporation resident in the state or transacting business for it in the state. Process directed to any foreign corporation failing to comply with said sections may be served upon any agent of such foreign corporation transacting business for it in Florida.

History.—§2, ch. 57-97.

47.18 Effect of service upon a corporation.—After service upon a corporation, the same proceedings to final judgment shall be had against such corporation as are had in other suits at law after the return of execution of summons.

History.—§2, Feb. 11, 1834; RS 1023; GS 1410; RGS 2608; CGL 4255.

47.19 Service of process; incorporated college or academy.—Process against an incorporated college or academy may be served upon the president or chief officer, or any visitor or trustee thereof.

History.—§2, Feb. 11, 1834; RS 1020; GS 1407; RGS 2605; CGL 4252.

47.20 Service of process; municipal corporations.—Process against a municipal corporation may be served:

(1) Upon the mayor or chief magistrate; or in his absence:

(2) Upon the recorder; or, in the absence of all of above:

(3) Upon any alderman or equivalent officer.

Service upon any officer of a municipal corporation shall be good only when made while he is in the limits of such corporation.

History.—RS 1021; GS 1408; RGS 2606; CGL 4253.

47.21 Service of process upon a county.—Process against a county shall be served upon the chairman of the board of county commissioners, or, in his absence, upon two other members of said board.

History.—§§1, 2, ch. 3242, 1881; RS 581, 1022; GS 774, 1409; RGS 1494, 2607; CGL 2203, 4254.

47.22 Service of process upon directors of dissolved corporations as trustees.—Process against the directors of any corporation which has been or shall hereafter be dissolved under the laws of the state, as trustees of such dissolved corporation, may be served upon any one or more of the directors of such dissolved corporation, as trustees of such dissolved corporation, and such personal service shall be binding upon all of the directors of such dissolved corporation as trustees of such dissolved corporation.

History.—§1, ch. 19064, 1939; CGL Supp. 1940, 4251(1).

47.23 Service of process upon minors.—The courts of this state shall obtain jurisdiction of minors when the original writ of subpoena in chancery or summons in common law actions, as the case may be, is served by reading the writ or summons to be served to the minor to be served, and also to the guardian or other person in whose care or custody such minor may be, or by a delivery of a copy thereof to such minor and to his guardian or other person in whose care or custody such minor may be, and by further serving the writ or summons upon the guardian ad litem thereafter appointed by the court to represent said minor; provided, that service of process on the guardian ad litem may be dispensed with where such guardian ad litem voluntarily appears in any proceeding in which he may have been appointed to act as guardian ad litem for any minor.

History.—§1, ch. 7853, 1919; CGL 4273; §2, ch. 29737, 1955.

47.24 Service of process; validating prior service upon minors.—In all cases heretofore adjudicated, where process has been served upon a minor, as prescribed in §47.23, the same shall be deemed and held lawfully made and no proceeding shall be declared irregular or illegal when a duly appointed guardian ad litem has appeared and answered for a minor in such cause.

History.—§2, ch. 7853, 1919; CGL 4274.

47.25 Service of process upon insane and incompetent persons.—The courts of this state shall obtain jurisdiction of insane persons and of such weak-minded and physically incapacitated persons as have been found and for whom the court shall have appointed a curator of the estate or a guardian of the person of such incompetent, when the original writ of summons in chancery or summons in law actions, as the case may be, is served (1) by reading the writ or summons to be served to the insane or incompetent person to be served and also to the guardian or other person in whose care or custody such insane or incompetent person may be, (2) or by delivery of a copy thereof to such insane or incompetent person and to his guardian, or other person in whose care or custody such insane or incompetent person may be, and by further serving the writ or summons upon the guardian ad litem thereafter appointed by the court to represent said insane or incompetent person; provided, that service of process on the guardian ad litem may be dispensed with where such guardian ad litem voluntarily appears in any proceeding in which he may have been appointed to act as guardian ad litem for any insane or incompetent person.

History.—§1, ch. 19175, 1939; CGL Supp. 1940, 4274(13); §2, ch. 29737, 1955.

47.26 Service of process upon state prisoners.—All process to be served upon a state prisoner shall be directed to and served upon such prisoner and a copy of such process shall be served, by registered mail, upon the director of the department of corrections.

History.—§30, ch. 3883, 1889; RS 3043; GS 4124; RGS 6243; CGL 8580; §1, ch. 21992, 1943; §1, ch. 25041, 1949; §44, ch. 57-121.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

47.27 Service of process upon state road department.—Service of process in suits against the state road department shall be made upon the chairman of the said department, or, in his absence, upon two other members of said department.

History.—§§1-4, ch. 15022, 1931; Supp. 1936, CGL 1651(1).
cf.—§337.20 Service of process upon department.

47.28 Service of process; writs of scire facias.—Where writs of scire facias are issued for the purpose of reviving judgments and obtaining execution thereon, such writs may be served in the manner provided for the service of summons, or, upon the conditions mentioned in chapter 48, such writs may be served by publication as provided in said chapter.

History.—§1, ch. 4132, 1893; GS 1412; RGS 2610; CGL 4272; §7, ch. 24337, 1947; §2, ch. 29737, 1955.

47.29 Service of process upon nonresident motor vehicle owners, etc.—

(1) Any nonresident of this state, being the operator or owner of any motor vehicle, who shall accept the privilege extended by the laws of this state to nonresident operators and owners, of operating a motor vehicle or of having the same operated, or permitting any motor vehicle owned, or leased, or controlled by them to be operated with their knowledge, permission, acquiescence or consent, within the state, or any resident of this state, being the licensed operator or owner of or the lessee, or otherwise entitled to control any motor vehicle under the laws of this state, who shall subsequently become a nonresident or shall conceal his whereabouts, shall, by such acceptance or licensure, as the case may be, and by the operation of such motor vehicle, either in person, or by or through his, her, or its servants, agent, or employee, or by person with his, her or its knowledge, acquiescence and consent, within the state make and constitute the secretary of state, his, her, its or their agent for the service of process in any civil suit or proceeding instituted in the courts of the state against such operator or owner, lessee or other person entitled to control of such motor vehicle, arising out of or by reason of any accident or collision occurring within the state in which such motor vehicle is involved.

(2) If any person upon whom service of process is authorized by subsection (1) shall die, service shall be made upon his administrator, executor, curator or personal representative in the manner prescribed by §47.30.

History.—§1, ch. 17254, 1935; CGL Supp. 1936, 4274(7); (1) §1, ch. 25003, (2) n. §2, ch. 25003, 1949.
cf.—§101(13) defines registered mail to include certified mail with return receipt requested.

47.30 Method of service upon nonresident.—Service of such process shall be made by the plaintiff or his attorney by either leaving a copy of the process with a fee of two dollars

in the hands of the secretary of state, or in his office, or by mailing a copy of such process with a fee of two dollars to the secretary of state; and such service shall be sufficient service upon a defendant who has appointed the secretary of state as his agent for the service of such process; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt and the affidavit of the plaintiff, or his attorney, of compliance herewith are filed with the papers in the case on or before the return day of the process or within such further time as the court may allow, or that such notice and copy are served upon the defendant, if found within the state, by an officer duly qualified to serve legal process, or, if found without the state, by a sheriff or deputy sheriff of any county of this state or by any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found; and the officer's return showing such service to have been made is filed in the case on or before the return day of the process or within such further time as the court may allow. Proof of service of process on the secretary of state shall be by a copy of notice of said secretary accepting such process.

History.—§2, ch. 17254, 1935; CGL Supp. 1936, 4274(8); §1, ch. 59-382.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

47.32 Fee of secretary of state, etc.—The fee of two dollars paid by the plaintiff to the secretary of state shall be taxed in his costs if he prevail in the action or proceeding. The secretary of state shall keep a record of all such processes served upon him, which shall show the day and hour of service.

History.—§4, ch. 17254, 1935; CGL Supp. 1936, 4274(10).

47.33 Optional methods of service of process upon certain persons.—In addition to the methods of service of process provided in this chapter, service upon the following mentioned classes of persons may also be made as provided in the following sections of these statutes, to-wit: foreign surety corporations or companies, §624.0221; fraternal benefit societies, §632.501; corporations, associations, firms or individuals doing an insurance business in this state, §624.0221; corporations, partnerships or individuals doing a reciprocal or interinsurance business in this state, §§624.0221 and 624.0222; issuers of securities under the uniform sale of securities act of this state, §517.10.

Revision Note.—This section has been supplied as information and as a reference to special or specific instances where other methods of service of process is specifically provided. It is also the purpose of this section to clear up any possible question as to whether or not service may be had under the provisions of this chapter as well as under specifically mentioned sections.
cf.—§447.11, Labor unions.

47.34 Corporations; designation of place for service of process.—Every Florida corporation, now existing or hereafter organized, and every foreign corporation now qualified or hereafter qualifying to transact business in this state, except the corporations mentioned in §47.45 of these statutes, shall file with the secretary of state, unless heretofore filed, within thirty days from the effective date of these statutes or within thirty days from the filing of its certificate of incorporation or its qualification to transact business in this state, if a foreign corporation, a certificate designating an office, place of business or domicile for the service of process within this state, stating therein the county, city or town within this state where such office is located, which designation shall, whenever possible, include the street and number of the building wherein such office is located, the name of such building and the number of such room or rooms in which said office, place of business or domicile within this state is located. In the event any such corporation shall desire to change its office, domicile or place of business for the service of process, herein specified, it shall, at least ten days before making such change, file with the secretary of state an amendment to its certificate hereinbefore provided for, specifying such change and designating its new office, domicile or place of business for the service of process in the manner aforesaid.

History.—§1, ch. 11829, 1927; CGL 4257.

47.35 Corporations; place where process may be served to be kept open during certain hours.—Each and every corporation mentioned in §47.34 shall keep its office, place of business or domicile, as provided in §47.34, open from 10:00 a.m. to 12:00 noon upon each and every day during each and every calendar year, save and except Sundays and legal holidays, and keep at such office during such hours one or more officers or agents upon whom process may be served. Within ten days after designating such officer or agent, it shall be the duty of such corporation to file with the secretary of state the name and a written acknowledgment of acceptance by each officer or agent upon whom service of process may be served as mentioned in this section.

History.—§2, ch. 11829, 1927; CGL 4258; §1, ch. 63-241.

47.36 Corporations; designation of office of clerk of circuit court as place for service of process.—Any corporation mentioned in §47.34, in lieu of designating its office, place of business or domicile, and keeping the same open, and keeping at such place of business or domicile one or more officers or agents upon whom process may be served, and keeping posted at such office, place of business or domicile, a sign bearing the name of such corporation and the names of its officers or agents for the service of process as provided in §§47.34 and 47.35, may designate the office of the clerk of the circuit court in any county of this state as its office, domicile or place of business for the service of process within this state, and may then designate the clerk of such circuit court as an agent upon whom process may be served.

If any corporation elects to designate the office of a clerk of a circuit court as its office, domicile or place of business for the service of process within this state, and to designate

the clerk of such court as an agent for the service of process, as in this section provided, it shall do so by filing with such clerk and also with the secretary of state, certificates to that effect, which certificates shall contain the post office address of such corporation. Upon the filing of such certificates as in this section provided, the office of the clerk of the circuit court, so designated shall, for the service of process only, be deemed the office, place of business or domicile of such corporation, and said clerk and each of his deputies shall be deemed thereby to be designated as an agent of said corporation for the service of process. When any process against any such corporation shall be served upon such clerk or any of his deputies, such clerk shall immediately mail a copy of such process to such corporation at the address given in the certificate or any amendment thereto so filed with the clerk. The clerk shall retain the copy of such process which was served upon him or his deputy and endorse thereon his certificate that he has mailed a copy thereof to such corporation as herein provided. When such process shall have been served and a copy thereof mailed and the certificate of such mailing executed, all as herein provided, process shall be deemed to have been regularly and duly served upon such corporation. For mailing a copy of each process and making a certificate of such mailing as herein provided, such clerk shall receive a fee of one dollar, which fee shall be advanced and paid, in the first instance, by the plaintiff in such cause, but shall be taxed as costs.

Any corporation may, at its pleasure, change its address by filing amended certificates with the secretary of state and with a clerk of a circuit court, showing such change of address. Any corporation which shall have made a clerk of a circuit court its agent as herein provided, may withdraw such designation at its pleasure, provided said corporation shall thereupon designate another clerk's office and the clerk thereof or shall designate an office, place of business or domicile for the service of process and appoint officers or agents, and comply in all respects with the provisions of §§47.34 and 47.35. Whenever the office of a clerk of the circuit court is designated as the office, domicile or place of business for the service of process as in this section provided, and such clerk is designated as the agent for the service of process, it shall be unnecessary to post the name of such corporation, together with the names of its officers or agents for the service of process, as provided in §47.35. If any corporation shall designate a clerk's office and the clerk, under this section, but shall omit to file a certificate of such designation with the clerk so designated, then the plaintiff or complainant in any cause shall have the right to obtain from the secretary of state a certified copy of the certificate of designation filed with him and to file such certified copy with said clerk, and when such certified copy has been so filed it shall have the same full force and effect for all purposes as if the certificate had been originally filed with such clerk by the corporation itself. For receiving and filing each certificate mentioned in §47.34 and this section to be filed with the secretary of state, said secretary of state shall be paid a fee of one dollar; and for receiving and filing the certificate mentioned in this section or for receiving and filing any certified copy of any certificate mentioned in this section, the clerk of the circuit court so receiving and filing the same shall be paid a fee of one dollar.

History.—§3, ch. 11829, 1927; CGL 4259; §24, ch. 57-1.

47.37 Corporations; manner of serving civil process.—Civil process against a corporation issuing from any court in this state may be served on such corporation by serving a copy of the summons ad respondendum or of the summons in chancery or other civil process, as the case may be, upon any officer or agent of such corporation, found at such office, place of business or domicile, and designated under §§47.34 and 47.35, or in case a clerk of a circuit court has been designated, as provided in §47.36, then by serving such process upon such clerk or any of his deputies.

History.—§4, ch. 11829, 1927; CGL 4260.

47.41 Corporation service record, to be kept by clerks of the circuit courts.—All the clerks of the circuit courts of the state shall keep in their respective offices a record book or books, each to be known as "Corporation Service Record," which book or books shall be properly indexed, and in which promptly upon being served with process, the clerk shall enter the date of such service, the name of the plaintiff or complainant, the name of the defendant corporation served, and a number which the clerk shall thereupon assign to the particular cause, which number shall correspond with the number to be placed upon the copy of civil process served upon the said clerk, and which copy as a permanent public record shall at all times thereafter be subject to inspection.

History.—§10, ch. 11829, 1927; CGL 4266.

47.42 Records to be kept by secretary of state.—The secretary of state of Florida shall maintain an accurate record of the agents, offices, places of business or domiciles for the service of process as the same may be disclosed by certificates provided for in §§47.34 and 47.36 and shall furnish promptly from time to time upon request, in the form of a certificate or otherwise as requested, any and all information disclosed by such record with respect to any corporation, and as a fee for complying with each request and as to each corporation, the said secretary of state shall receive the sum of one dollar, which fee shall be advanced and paid in the first instance by the plaintiff or complainant in such cause, but shall be taxed as costs.

History.—§11, ch. 11829, 1927; CGL 4267; §1, ch. 29873, 1955; §24, ch. 57-1.

47.43 No actions to be maintained by corporations failing to comply with requirements.—No foreign corporation which has heretofore

or shall hereafter qualify to transact business in this state, nor any foreign corporation which is now carrying on business in this state or shall hereafter carry on business within this state without having qualified to do so, and no domestic corporation now or hereafter incorporated shall be permitted to maintain any action in any court of this state until such corporation shall have complied with the provisions either of §§47.34 and 47.35 or of §47.36 and shall also have paid to the state a penalty of one dollar for each day after it should have qualified to do business within this state and should have complied with the provisions of this law until it does so qualify to do business and comply with the provisions of this law; provided, however, that whenever a corporation shall have paid a penalty under the provisions of this law amounting to two hundred fifty dollars, it shall not be required to pay any other or further penalty.

History.—§13, ch. 11829, 1927; CGL 4269.

47.44 Service of process; cumulative provisions.—The provisions of §§47.34-47.37, 47.41, 47.42, shall be deemed cumulative of all other provisions of law, and shall not prevent the service of process upon any corporation in accordance with any other statute or law of this state.

History.—§9, ch. 11829, 1927; CGL 4265; §7, ch. 22858, 1945.

47.45 Corporations and classes of corporations exempted.—The provisions of §§47.34-47.37, 47.41-47.44 shall not be deemed to apply to the following named corporations and classes of corporations, to-wit: Banking companies, trust companies, safe deposit companies, building and loan associations, insurance companies, mutual fire insurance associations, surety companies, express companies, railroad and canal companies, sleeping car companies, telegraph and telephone companies, co-operative associations, fraternal benefit societies, state fairs or expositions, cemetery companies, or corporations not for profit.

History.—§14, ch. 11829, 1927; CGL 4270.

47.46 Service of process, etc., on Sunday.—Service or execution upon Sunday, of any writ, process or warrant, order, judgment or decree, shall be void to all intents and purposes whatever; and the person so serving or executing, or causing to be served or executed, the same shall be liable to the suit of the party aggrieved, and to answer damages to him for so doing, as if he had done the same without any process, writ, warrant, order, judgment or decree; however, if information shall be made by the oaths of two respectable persons to any judge or justice of the peace or magistrate of any corporate town, that they have good reason to believe that any person liable to have any such process, warrant, order, judgment or decree served upon him intends to withdraw himself, and escape from this state under cover of protection of Sunday, any officer duly authorized may, being furnished with a certificate of such information upon oath as aforesaid, under the hand of the judge, justice of the peace or magistrate as aforesaid, serve or execute such process, warrant, order, judgment or decree, on Sunday, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week.

History.—§44, Nov. 23, 1828; RS 1025; GS 1413; RGS 2611; CGL 4275.

47.47 Return of execution of process.—All officers to whom process shall be directed shall note upon the same the time when it comes to hand, the time when it was executed, the manner of execution, and the name of the person upon whom it shall be executed, and if such person be served in a representative capacity, the position occupied by him. A failure to set forth the foregoing facts shall invalidate the service, but the return shall be amendable so as to state the truth at any time upon application to the court from which the process issued, and upon such amendment the service shall be as effective as if the return had originally stated such facts. A failure to state said facts in the return shall subject the officer so failing to a fine not exceeding ten dollars, at the discretion of the court.

History.—§18, Nov. 23, 1828; RS 1026; GS 1414; RGS 2612; CGL 4276.

47.48 Return of non-execution of process.—When an officer shall, for any cause, fail to execute process directed to him, he shall return the same "not executed," with the reason for such failure; and if such reason be insufficient, he shall be liable to a fine not exceeding fifty dollars, at the discretion of the court; and shall also be liable to the party injured for all costs and damages thereby incurred and sustained.

History.—§9, Nov. 23, 1828; RS 1027, GS 1415; RGS 2613; CGL 4277.

47.49 Lis pendens in state and federal courts; requirements, beginning, duration, dissolution, etc.—

(1) No proceeding in any of the state or federal courts in this state, including actions at law, suits in equity and special statutory proceedings, shall operate as a lis pendens as to any property, real or personal, involved therein or to be affected thereby, until there shall have been filed in the office of the clerk of the circuit court of the county where the property is situated, and shall have been recorded in a book to be kept by him for that purpose, a notice of the institution of such proceedings, containing the names of the parties, the time of the institution of the proceeding, the name of the court in which it is pending, a description of the property involved or to be affected, and a statement of the relief sought as to such property.

(2) No notice of lis pendens shall extend or be effectual for any purpose beyond the period of one year from the institution of the proceeding unless the relief sought is disclosed by the initial pleading of the plaintiff to be founded upon an instrument of writing properly of record, or upon a materialman's or mechanic's lien claimed against the property involved in such

suit; unless the judge of the court in which the said proceeding is pending shall upon reasonable notice and for good cause shown extend the time. And the said judge may impose such terms for the extension of said time as justice may require.

(3) In all equity causes where the initial pleading of the complainant does not show that the suit is founded upon an instrument of writing properly recorded, or upon a mterialman's or mechanic's lien, the court in which the cause is pending may control and discharge the notice of lis pendens as the said court may grant and dissolve injunctions.

(4) The provisions of this section shall apply to all causes now or hereafter pending in any of the state or federal courts in this state, but the period of time above mentioned shall not be taken to include the period of pendency of any cause in an appellate court.

History.—RS 1220; GS 1649; RGS 2853; §§1-3, ch. 12081, 1927; CGL 4550; §1, ch. 24336, 1947.

47.50 Resignation of resident agents.—

(1) Any individual or corporation that has been designated by a corporation as agent upon whom process may be served, may resign such agency by filing with the secretary of state a signed notice that he or it is unwilling to continue to act as such agent of such corporation, together with an affidavit signed by said resident agent that a copy of such notice has been mailed to the principal business office of such corporation. Upon the expiration of thirty days after the filing of such notice and affidavit with the secretary of state, the capacity of such individual or corporation as such agent shall terminate. Upon the filing of such notice and affidavit and the payment to the secretary of state of a filing fee of one dollar the secretary of state forthwith shall also give written notice, by mail, to the corporation which has designated such agent, of the filing of such notice and the effect thereof, which notice shall be addressed to such corporation at its principal place of business as shown by the records in the office of the secretary of state.

(2) Within thirty days from the date the secretary of state mails notice to such corporation that its agent has resigned, such corporation shall, in accordance with law, designate another agent upon whom process may be served.

History.—§§1, 2, ch. 20842, 1941.

47.51 Alien property custodian; notices.—In every action or proceeding, in any court or administrative board of this state, involving real, personal or mixed property, or any interest therein, where service of process or notice is required or directed to be made upon any person, firm or corporation located, or believed to be located, within any country or power, or within territory in the possession of or under the control of any country or power, between which and the United States a state of war exists, in addition to the giving of such notice or service of process, a copy of such notice or process shall be sent by registered mail to the alien property custodian, addressed to him at Washington, District of Columbia; provided, however, failure to mail a copy of such notice or process to the said alien property custodian shall not be held to have invalidated the said action or proceeding.

History.—§1, ch. 22074, 1943.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

CHAPTER 48

CONSTRUCTIVE SERVICE OF PROCESS

48.01 Service of process by publication, in what cases.—Service of process by publication may be had, in any of the several courts of this state, and upon any of the parties mentioned in §48.02 in any suit or proceeding:

(1) To enforce any legal or equitable lien upon or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party upon whom process can be served within this state.

(2) To quiet title or remove any encumbrance, lien or cloud upon the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party upon whom process can be served within this state.

(3) For the partition of real or personal property within the jurisdiction of the court;

(4) For divorce or annulment of marriage;

(5) For the construction of any will, deed, contract or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest thereunder;

(6) For the reestablishment of lost instruments or records which have or should have their situs within the jurisdiction of the court;

(7) In which there shall have been issued and executed any writ of replevin, garnishment or attachment;

(8) In which any other writ or process shall have been issued and executed so as to place any property, fund or indebtedness in custodia legis;

(9) In scire facias to revive a judgment;

(10) In any other suit or proceeding, not hereinabove expressly mentioned, wherein personal service of process or notice is not required by the statutes or constitution of this state or by the constitution of the United States.

History.—§1, ch. 20452, 1941.
cf.—§66.18 Quieting title; additional remedy; bill; notice, etc.

48.02 Service of process by publication, upon whom.—Where personal service of process cannot be had, service of process by publication may be had upon any party, natural or corporate, known or unknown, including:

(1) Any known or unknown natural person, and, when described as such, the unknown spouse, heirs, devisees, grantees, creditors or other parties claiming by, through, under or against any known or unknown person who is known to be dead or is not known to be either dead or alive;

(2) Any corporation or other legal entity, whether its domicile be foreign, domestic or unknown, and whether dissolved or existing, including corporations or other legal entities not known to be dissolved or existing, and, when described as such, the unknown assigns, successors in interest, trustees, or any other party claiming by, through, under or against any named corporation or legal entity;

(3) Any group, firm, entity or persons who operate or do business, or have operated or done business, in this state, under a name or title which includes the word "corporation," "company," "incorporated," "inc." or any combination thereof, or under a name or title which indicates, tends to indicate or leads one to think that the same may be a corporation or other legal entity; and,

(4) All claimants under any of such parties.

Unknown parties may be proceeded against exclusively or together with other parties.

History.—§2, ch. 20452, 1941; §7, ch. 22858, 1945.

48.03 Sworn statement as condition precedent.—

(1) As a condition precedent to service by publication, there shall be filed in the cause a statement executed by the plaintiff, his agent or attorney, setting forth substantially the matters hereafter required, which statement may be contained in the initial or other pleading, if sworn to, or in any affidavit or other sworn statement.

(2) The word "plaintiff" as used in this chapter shall extend to any party in the cause who may be entitled to service of original process upon any party to the cause or any person who may be brought in or allowed to come in as a party by any lawful means. The word "defendant" as used in this chapter shall extend to any party on whom service by publication is authorized by this chapter, without regard to his designation in the pleadings or position in the cause.

(3) After the entry of a final judgment or decree in any cause no sworn statement shall ever be held defective for failure to state a required fact if the said fact otherwise appears from the record of the cause.

History.—§3, ch. 20452, 1941; (2) §2, ch. 28301, 1953.

48.04 Sworn statement, natural person as defendant.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against a natural person, shall show:

(1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and,

(2) Whether such person is over or under the age of twenty-one years, if his age is known, or that his age is unknown; and,

(3) In addition to the above, that the residence of such person is, either:

(a) Unknown to the affiant; or,

(b) In some state or country other than this state, stating said residence if known; or,

(c) In the state, but that he, has been absent from the state for more than sixty days next preceding the making of the sworn statement, or conceals himself so that process cannot be personally served upon him, and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.

History.—§4, ch. 20452, 1941.

48.05 Sworn statement, corporation as defendant.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against a corporation, shall show:

(1) That diligent search and inquiry have been made to discover the true name, domicile, principal place of business and status (that is, whether foreign, domestic or dissolved) of the corporate defendant, and that the same is set forth in said sworn statement as particularly as is known to the affiant, and that diligent search and inquiry have also been made, to discover the names and whereabouts of all persons upon whom the service of process would bind the said corporations and that the same is specified as particularly as is known to the affiant; and

(2) Whether or not the corporation has ever qualified to do business in this state, unless shown to be a Florida corporation; and

(3) That all officers, directors, general managers, cashiers, resident agents and business agents of the corporation, either:

(a) Are absent from the state; or

(b) Cannot be found within the state; or

(c) Conceal themselves so that process cannot be served upon them so as to bind the said corporation; or

(d) That their whereabouts are unknown to the affiant; or

(e) That said officers, directors, general managers, cashiers, resident agents and business agents of the corporation are unknown to affiant.

History.—§5, ch. 20452, 1941.

48.06 Sworn statement, parties doing business under a corporate name as defendants.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against parties who have or may have done business under a corporate name, shall show:

(1) The name under which said parties have operated or done business; and

(2) That, after diligent search and inquiry, he has been unable to ascertain whether or not the organization operating under said name was a corporation, either domestic or foreign; and

(3) The names, and places of residence if known, of all persons known to have been interested in such organization, and whether or not other or unknown persons may have been interested in such organization; or that, after diligent search and inquiry, all persons interested in such organization are unknown to the affiant, and, unless all such persons are unknown to the affiant,

(4) That the known persons interested in such organization, either:

(a) Are absent from this state; or

(b) Cannot be found within this state; or

(c) Conceal themselves so that process cannot be personally served upon them; or

(d) That their whereabouts are unknown to the affiant.

History.—§6, ch. 20452, 1941.

48.07 Sworn statement, unknown parties as defendants.—If relief is prayed against unknown parties, the sworn statement of the plaintiff, his agent or attorney, for service of process by publication against such unknown parties, shall show:

(1) That the affiant believes that there are persons who are or may be interested in the subject matter of the suit or proceedings whose names, after diligent search and inquiry, are unknown to the affiant; and

(2) Whether said unknown parties claim as heirs, devisees, grantees, assignees, lienors, creditors, trustees, or other claimants:

(a) By, through, under or against a known person who is dead or not known to be dead or alive; or,

(b) By, through, under or against some corporation, domestic or foreign, that has been dissolved or which is not known to be existing or dissolved; or

(c) By, through, under or against some organization which operated or did business under a name indicating a corporation; or

(d) Otherwise as the case may be.

(3) In any case alleged against a named defendant, natural or corporate, who is stated, either in the pleadings or in the sworn statement, to be either dead or dissolved, or not known to be dead or alive, or dissolved or existing, any judgment, decree or order rendered against such defendant shall be as good,

valid and effectual as if it had not been so stated.

History.—§7, ch. 20452, 1941.

48.08 Notice of suit, form.—Upon filing the sworn statement, and otherwise complying with the foregoing requirements, the plaintiff shall be entitled to have issued by the clerk or judge, not later than sixty days after the filing of the sworn statement, a notice of suit which notice shall set forth:

(1) The names of the known natural defendants; the names, status and description of the corporate defendants; a description of the unknown defendants who claim by, through, under or against a known party which may be described as "all parties claiming interests by, through, under or against (name of known party)" and a description of all other unknown defendants which may be described as "all parties having or claiming to have any right, title or interest in the property herein described";

(2) The nature of the suit or proceeding in short and simple terms (but neglect to do so shall not be construed as jurisdictional);

(3) The name of the court in which the suit or proceedings were instituted and an abbreviated title of the case;

(4) The description of real property, if any, proceeded against.

History.—§8, ch. 20452, 1941; (1) §3, ch. 28301, 1953; §2, ch. 29737, 1955.

48.09 Notice of suit, return day.—The notice of suit shall require the defendant to file his answer with the clerk of the court and to serve a copy thereof upon the plaintiff or plaintiff's attorney, whose name and address shall appear in, or be annexed to, said notice not later than the date fixed in said notice, which date shall be not less than twenty-eight nor more than sixty days after the first publication of the notice.

History.—§9, ch. 20452, 1941; §4, ch. 28301, 1953; §2, ch. 29737, 1955.

48.10 Notice of suit, publication, proof and recording thereof.—

(1) All such notices of suit shall be published once during each week for four consecutive weeks (four publications being sufficient) in some newspaper published in the county where the court is located, said newspaper to meet such requirements as may be prescribed by law for such purpose.

(2) Proof of such publication shall be made by affidavit of either the owner, publisher, proprietor, editor, business manager, foreman or other officer or employee of such newspaper having knowledge of such publication, which affidavit shall set forth or have attached a copy of said notice, shall set forth the dates of each publication and otherwise comply with the requirements of law, and shall be recorded in the chancery order book or minute book of the court wherein the suit or proceeding is pending, unless a certificate thereof be made as provided in §48.12.

History.—§10, ch. 20452, 1941; sub. §(1) am. §5, ch. 28301, 1953; §2, ch. 29737, 1955.

48.11 Notice of suit, posting, proof and recording thereof.—If there be no newspaper published in such county then three copies of said notice shall be posted at least twenty-eight days prior to the return day thereof in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county; the proof of posting shall be made by affidavit of the person posting the same, which affidavit shall include a copy of the notice posted and the date and places of posting the same; said affidavit shall be recorded in the chancery order book or minute book of the court in which the proceeding is pending, unless a certificate thereof be made as hereinafter provided.

History.—§11, ch. 20452, 1941; §2, ch. 29737, 1955.

48.12 Notice of suit, certificate of publication or posting in lieu of recording.—In lieu of the recording of the proof of publication or posting as provided in §§48.10 and 48.11, there may be filed in such proceeding a certificate executed by the clerk or judge stating that such proof of publication was filed, the name of the newspaper in which such notice of suit was published, that such newspaper is qualified under the law as one in which to publish legal notices and the dates upon which the proof of publication states that the notice was published; or if such notice of suit was posted, then such certificate shall state that such notice was posted at the front door of the courthouse in such county and in two other conspicuous places in the county for at least twenty-eight days prior to the return day thereof.

History.—§12, ch. 20452, 1941; §6, ch. 28301, 1953; §2, ch. 29737, 1955.
cf.—Ch. 49 Legal and official advertisements.

48.13 Notice of suit, mailing of.—If the residence of any defendant or other party to be served by publication shall be stated in the sworn statement with more particularity than the name of the state or country in which the defendant resides, the clerk, or the judge if there be no clerk of such court, shall mail a copy of such notice by United States mail, with postage prepaid, to each such defendant within ten days after the making of the notice, the date of mailing to be noted on the docket. A copy of the complaint shall be mailed to nonresident defendants.

History.—§13, ch. 20452, 1941; §7, ch. 29737, 1955.

48.15 Guardian ad litem.—If any defendant or other party to whom such notice of suit was addressed, who appears from the record to be insane or under the age of twenty-one years, shall fail to answer or otherwise respond as required by law on or before the return day specified in said notice, the plaintiff shall apply for appointment of a guardian ad litem to represent such defendant or other party and all unknown defendants and no default or decree pro confesso need be entered in such case. Such guardian ad litem shall be required to file an answer and make such defense as he may deem necessary or proper

to protect the substantial interests, if any, of such defendants or other party. It shall not be necessary for him to file an oath, and the filing of his answer or any other pleading shall be taken as an acceptance of such appointment and as an undertaking on his part to discharge faithfully the duties of such office. His fees shall be fixed by the court and shall be paid by the plaintiff in the first instance, but may be taxed as costs.

History.—§15, ch. 20452, 1941; §7, ch. 28301, 1953; §2, ch. 29737, 1955; §24, ch. 57-1.

46.18 **Rules of court, forms, etc.**—The supreme court of Florida may, from time to time, make, adopt, promulgate, amend, modify or annul rules of practice, and adopt forms, for use in the practice and proceedings under and in administration of this act, and such court rules and forms shall have the force and effect of law.

History.—§16, ch. 20452, 1941.

48.17 **Construction of law.**—Nothing in this act shall be construed as amending or modifying the provisions of the probate law of Florida, or chapters 731-734.

History.—§17, ch 20452, 1941.

48.18 **Short title.**—This act shall be known and may be cited as the "1941 constructive service law."

History.—§19, ch. 20452, 1941.

CHAPTER 49

LEGAL AND OFFICIAL ADVERTISEMENTS

49.01 Where and in what language legal notices to be published.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least twenty-five per cent of its words in the English language, entered or qualified to be admitted and entered as second-class matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

History.—§2, ch. 3022, 1877; RS 1296; GS 1727; §1, ch. 5610, 1907; RGS 2942; §1, ch. 12104, 1927; CGL 4666, 4901; §1, ch. 63-387.

49.02 Publication when no newspaper in county.—When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

History.—RS 1297; GS 1728; RGS 2943; CGL 4667.

49.03 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been continuously published at least once each week and shall have been entered as second class mail matter at a post office in the county where published for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

History.—§§1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); §7, ch. 22858, 1945.

49.04 Proof of publication; uniform affidavits required.—All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements, shall be uniform throughout the state.

Each such affidavit shall be printed upon white bond paper containing at least twenty-five per cent rag material and shall be eight and one-half inches in width and of convenient length, not less than five and one-half inches. A white margin of not less than two and one-half inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

In all counties having a population in excess of four hundred fifty thousand according to the latest official decennial census in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there shall be a charge of one dollar for the preparation and execution of each such proof of publication or publisher's affidavit.

History.—§1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); §1, ch. 63-49.
cf.—§66.32 Constructive service of summons.

49.05 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER
Published (Weekly or Daily)
(Town or City) (County) FLORIDA

STATE OF FLORIDA
COUNTY OF_____:

Before the undersigned authority personally appeared_____, who on oath says that he is_____of the_____, a_____newspaper published at_____ in_____County, Florida; that the attached copy of advertisement, being a_____ in the matter of_____ _____in the_____Court, was published in said newspaper in the issues of_____ _____.

Affiant further say that the said_____ is a newspaper published at_____, in said _____County, Florida, and that the said newspaper has heretofore been continuously published in said_____County, Florida, each_____ and has been entered as second class mail matter at the post office in_____, in said_____ County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed
before me this_____ _____
day of_____, A. D. 19_____

_____
(SEAL) Notary Public

History.—§2, ch. 19290, 1939; CGL 1940 Supp. 4668(2).

49.06 Amounts chargeable.—

(1) The publisher of any newspaper publishing any and all official public notices or legal advertisements shall charge therefor the rates specified in this section without discount, rebate, commission or refund.

(2) The charge for publishing each such official public notice or legal advertisement shall be seventy cents per square inch for the first insertion and forty cents per square inch for each subsequent insertion, except that:

(a) In all counties having a population of more than three hundred four thousand according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be eighty cents per square inch for the first insertion and sixty cents per square inch for each subsequent insertion.

(b) In all counties having a population of more than four hundred fifty thousand according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be eighty-five cents per square inch for the first insertion and sixty-five cents per square inch for each subsequent insertion.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, including notices of all governmental bodies or agencies.

(4) Any person violating provision of this section, either by allowing or accepting any discount, rebate, commission or refund, shall be guilty of a misdemeanor, upon conviction thereof shall be punished by imprisonment of not more than 60 days or by fine not to exceed $300.00 or by both such fine and imprisonment in the discretion of the court.

(5) All official public notices and legal advertisements shall be charged and paid for on the basis of six-point type on six-point body.

(6) The provisions of this section, however, shall not be construed as in anywise affecting the provisions of law concerning the publication of delinquent tax lists.

(7) Failure to charge the rates prescribed by this section shall in no way affect the validity of any official public notice or legal advertisement and shall not subject same to legal attack upon such grounds.

History.—§3, ch. 3022, 1877; RS 1298; GS 1729; RGS 2944; §1, ch. 12215, 1927; §§1-2B, ch. 20264, 1941; CGL 4668; §1, ch. 23663, 1947; (2) by §1, ch. 57-160; §1, ch. 63-50.

CHAPTER 50

DEFAULTS

50.11 Default and final judgment upon personal service.—Upon the entry of any default for want of proper pleading in any suit for the recovery of money founded upon contract, if the action is on a written instrument for the payment of money, the plaintiff at any time after such default may on the production and filing of such instrument cause final judgment to be entered for the amount thereof, with interest, and the clerk of the court (or the judge, if the court has no clerk), shall assess the amount which the plaintiff is entitled to recover for the principal and interest, and enter up judgment for the same, upon which judgment execution shall issue immediately unless otherwise ordered by the court. And if the action is upon an open account, or other contract for the payment of money not in writing, upon the entry of a default as aforesaid, the clerk (or the judge, if the court has no clerk), shall ascertain the amount which the plaintiff is entitled to recover in such action from the examination of the plaintiff under oath, or other proofs by affidavit or otherwise, and enter up judgment for the amount so assessed or ascertained, upon which judgment execution shall issue as aforesaid.

History.—§7, ch. 1938, 1873; RS 1035; GS 1425; RGS 2622; CGL 4288; §2, ch. 29737, 1955.

50.12 Default and final judgment upon constructive service.—In actions where the service of the summons or a notice of the institution of the suit is by publication, the plaintiff, at the date set in the publication for the answer of the defendant, may enter a default if the defendant shall fail to answer the complaint as may be required, and thereupon he may apply to the court for final judgment; and the court must thereupon require proof to be made, either by the production of the cause of action, if in writing, and if not, then by examination under oath of the plaintiff, or other proof by affidavit or otherwise; and if the defendant is a nonresident of the state must require the plaintiff or his agent to be examined on oath respecting any payments that may have been made to the plaintiff, or to any one for his use, on account of the demand sued on, and may render judgment for the amount which the plaintiff is entitled to recover, upon which an execution may issue as in other cases.

History.—§8, ch. 1938, 1873; RS 1036; GS 1426; RGS 2623; CGL 4289; §2, ch. 29737, 1955.

CHAPTER 51

ACTIONS AT LAW; PLEADINGS OF THE PLAINTIFF

51.02 Complaint; forms, generally.—Forms set forth in Rule 1.8(a),(b) of the 1954 rules of civil procedure shall be sufficient in the statement of the complaint. They and like forms may be used with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

History.—§38, ch. 1096, 1861; RS 1058; ch. 4935, 1901; GS 1450; RGS 2648; CGL 4314; §2, ch. 29737, 1955.
cf.—Ch. 26962, 1951.

51.05 Complaint; statement of causes in libel and slander cases.—In actions of libel and slander the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and when the words or matter set forth, with or without the alleged meaning, show a cause of action, the complaint shall be sufficient.

History.—§21, ch. 1096, 1861; RS 1057; GS 1449; RGS 2647; CGL 4313.

51.12 Complaint; negligent operation of vehicle by person other than owner.—In any action brought by a person for damages claimed to have been sustained by reason of the negligent operation of a motor vehicle by a person other than the owner thereof, with respect to the element of liability of such owner for any such negligence of such driver of said vehicle, it shall be sufficient in the complaint filed in such action to allege operation of said vehicle by the driver thereof and the name of the owner thereof, without the necessity of alleging the legal relationship existing between such owner and driver or any other averments of fact related to authority or consent of such owner with respect to the operation of said motor vehicle by the driver thereof. In any such action, should the owner of any such motor vehicle desire to urge as a defense therein a denial of liability for the alleged negligent acts of any such driver in the latter's operation of said vehicle, such defense shall be set forth in the answer, particularly alleging the facts upon which said owner relies for his denial of liability for such acts of said driver. Upon trial of any such action, the plaintiff therein, with respect to the element of liability of said owner for such acts of said driver, shall be required only to prove by competent evidence the ownership of said vehicle and the driver thereof at the time of the alleged negligent operation of the same, to establish a presumption of liability of said owner for any such negligent acts of said driver in his operation of such vehicle, said presumption being subject to rebuttal by said owner by competent evidence within the limits of the facts set forth in the answer.

History.—§1, ch. 24199, 1947; §2, ch. 29737, 1955.

CHAPTER 52

ACTIONS AT LAW; PLEADINGS OF THE DEFENDANT

52.08 Actions upon negotiable and other instruments; consideration, etc.—All bonds, notes covenants, deeds, bills of exchange, and other instruments of writing not under seal, shall have the same force and effect (so far as the rules of pleadings and evidence are concerned) as bonds and instruments under seal.

The assignment or endorsement of any such instruments of writing shall vest the assignee or endorsee with the same rights, powers and capacities as might have been possessed by the assignor or endorser. And he may bring suit thereon, and it shall not be necessary for the plaintiff in any suit upon an instrument assignable by law to set forth in the complaint the consideration upon which the instrument was given, or upon which such assignment or endorsement was made, nor to prove such consideration or the execution of such instrument, unless the same shall be impeached by the defendant under oath. An executor or administrator, however, may deny the execution or consideration aforesaid by answer not under oath.

History.—§§24, 33, 36, Nov 23, 1828; RS 1073; GS 1465; RGS 2664; CGL 4330; §2, ch. 29737, 1955.

52.12 Transfer of cause if any demand beyond jurisdiction of court.—

(1) Should the demand of any compulsory counterclaim exceed the jurisdiction of the court wherein the suit is pending, the said suit shall be forthwith transferred to the court of the same county having jurisdiction of the demand in the said counterclaim mentioned, with only such alterations in the pleadings as shall be essential. In such case, an order shall be made by the court for the transfer of the suit and the transmission of all papers therein to the proper court and thereupon the originals of all such papers shall be transmitted and filed, together with a certified or attested copy of the order of transfer and transmissal. The court to which transferred shall have full power and jurisdiction over the demands of both the defendant and the plaintiff in the said suit and may adjudicate the same and enter judgment thereon.

(2) CONSOLIDATION OF CAUSES ARISING OUT OF SAME TRANSACTION.—If, because of transfers of suits from other courts, or otherwise, there shall at any time be two or more suits pending in the same court upon claims or demands arising out of the same transaction or occurrence, between or including the same parties, the court wherein said suits are pending may by order consolidate said suits with such alterations in the pleadings as may be essential. In the said order of consolidation, the court may provide that the consolidated causes shall preserve their separate existence or be merged into a single suit.

History.—§§2, 3, ch. 20426, 1941.

52.16 Answers; forms in particular cases.—The forms of answers set forth in §52.17 and §52.18 shall be sufficient in the cases to which they shall be respectively applicable. And they and the like forms may be used with such modifications as may be necessary to suit the facts of the case, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance be expressed without prolixity.

History.—§38, ch. 1096, 1861; RS 1075; GS 1467; RGS 2666; CGL 4333.

52.17 Forms in actions on contracts.—

(1) DENIAL OF DEBT.—That he never was indebted as alleged.

(2) DENIAL OF CONTRACT.—That he did not promise as alleged. (This is applicable to other declarations on contracts, and not on bills and notes.)

(3) DENIAL OF DEED.—That the alleged deed is not his deed.

(4) STATUTE OF LIMITATIONS.—That the alleged cause of action did not accrue within ---------- years before this suit.

(5) PAYMENT.—That before action he discharged and satisfied plaintiff's claim by payment.

(6) SET-OFF.—That the plaintiff, at the commencement of this suit, was, and still is, indebted to the defendant in an amount equal to the plaintiff's claim, for (here state the cause of set-off as in a declaration), which amount the defendant is willing to set-off against the plaintiff's claim.

(7) RELEASE.—That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

History.—§38, ch. 1096, 1861; RS 1075; GS 1467; RGS 2666; CGL 4333.

52.18 Forms in actions not on contracts.—

(1) NOT GUILTY.—That he is not guilty.

(2) LEAVE AND LICENSE.—That he did what is complained of by the plaintiff's leave.

(3) SELF-DEFENSE.—That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defense.

(4) RIGHT OF WAY.—That the defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof for twenty years before this suit enjoyed as of right, and without interruption, a way, on foot and

with cattle, from a public highway, over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said highway, at all times of the year, for the more convenient occupation of the said land of the defendant, and that the alleged trespass was a use by the defendant of the said way.

History.—§38, ch. 1096, 1861; RS 1075; GS 1467; RGS 2666; CGL 4333.

52.19 Operation of plea of not guilty in tort actions.—In action for torts, the plea of not guilty shall operate as a denial only of the breach of duty or wrongful act alleged to have been committed by defendant, and not of the facts stated in the inducement, and no other defense than such denial shall be admissible under that plea; all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration; and where in the declaration the breach of duty or wrongful act is alleged to have been committed by defendant through the agency of any other person or thing the alleged relationship between the defendant and that other person or thing shall not be put in issue by the answer of not guilty.

History.—§1, Senate Bill 131, 1921; CGL 4333.

52.20 Defenses upon equitable grounds.—The defendant in any cause in any of the courts of this state, in which if judgment were obtained he would be entitled to relief against such judgment on equitable grounds, may plead in his answer the facts which entitle him to such relief by way of defense.

Such answer shall begin with the words "for defense on equitable grounds," or words to the like effect.

Any such matter which, if it arose before or during the time of pleading would be sufficient for an answer to the action, may be set up by way of audita querela, if it arises after the lapse of the period during which it could be pleaded.

History.—§§69, 70, ch. 1096, 1861; RS 1047; GS 1438; RGS 2635; CGL 4301; §8, ch. 29737, 1955; §8, ch. 57-1.

52.21 Pleadings upon equitable grounds; reply.—The plaintiff may reply to the answer of the defendant facts which would avoid such answer upon equitable grounds.

Such reply shall begin with the words "for reply on equitable grounds," or to the like effect.

History.—§71, ch. 1096, 1861; RS 1048; GS 1439; RGS 2636; CGL 4302; §9, ch. 29737, 1955.

52.24 Voluntary payment; pleading.—(1) Whenever, in any court in this state, a suit is instituted by a party to a contract, to recover a payment made pursuant to said contract, and, by the terms of the contract, there was no enforceable obligation to make the payment, or the making of such payment was excused, the defense of voluntary payment may not be interposed by the person receiving such payment, to defeat recovery of the payment.

History.—§§1, 2, ch. 21902, 1943; (2) r. §1, ch. 29737, 1955.

CHAPTER 53

CHANGE OF VENUE AND TRANSFER OF CAUSES

53.01 Change of venue; power to grant.—Judges of all courts in this state shall have power and it shall be their duty to grant changes of venue of all cases pending before them, under the circumstances and in the manner hereinafter provided by this chapter.

History.—§1, ch. 373, 1851; RS 1077; GS 1469; RGS 2668; CGL 4335.
cf.—§911.02, Removal of cause, criminal cases.

53.02 Change of venue; when to be granted.—A change of venue shall be granted in all cases in the circuit courts, county courts, county judges' courts, and the courts of the justice of the peace, upon either party presenting a sufficient application praying for such change.

History.—§3, ch. 373, 1851; GS 1470; §1, ch. 7852, 1919; RGS 2669; CGL 4336.
cf.—§911.02, Removal of cause, criminal cases.

53.03 Change of venue; application, affidavits, etc.—In the event either party to cause desires a change of venue he shall make application therefor on oath stating that he fears he will not receive a fair trial in the court where the suit is pending (1) on account of the adverse party having an undue influence over the minds of the inhabitants of the county, or justice district, (2) or on account of applicant being so odious to the inhabitants of the county, or justice district, that he could not receive a fair trial.

Such application shall be filed not less than ten days before the beginning of the term of the court, or good cause shown for failure to so file same within such time, and shall fully and distinctly set forth the facts upon which the application for a change of venue is founded, and the same shall be accompanied by a certificate of counsel of record that such affidavit and application is made in good faith; said application shall also be supported by affidavits as to the facts stated in application by at least two reputable citizens of the county or justice district not of kin to defendant nor to counsel for the defendant.

History.—§37, Nov. 23, 1828; RS 1079; GS 1471; §10, ch. 7838, 1919; §2, ch. 7852, 1919; RGS 2670; CGL 4337.
cf.—§911.03, Application for removal of cause, criminal cases.

53.04 Change of venue; traverse of application.—In all applications for a change of venue the adverse party shall have the right to traverse the allegations of the application, and the court shall hear the evidence produced by either party and decide the matter accordingly.

History.—§1474 GS 1906; §3, ch. 7852, 1919; RGS 2673; CGL 4340.

53.05 Change of venue; when unable to obtain jury.—Such change of venue shall be granted whenever it shall appear in any circuit court or county court in any case, that it is impracticable to obtain a qualified jury for the trial of such case in the county where the same is pending.

History.—§1, ch. 4137, 1893; GS 1472; RGS 2671; CGL 4338.

53.06 Change of venue; second change, when permitted.—Whenever it shall appear to the judge of any court to which a case shall have been taken by a change of venue, that any of the grounds presented by law for change of venue exist in the county or justice district to which the case has been so taken, it shall be within the power and discretion of said judge to order a second change of venue of said case; provided, that the same shall not be returned to the county from which it was originally transferred.

History.—§2, ch. 4394, 1895; GS 1473; RGS 2672; CGL 4339.

53.07 Change of venue; to what jurisdiction.—The order granting change of venue shall remove the case to some circuit court in the next nearest circuit if the same be in a circuit court, or some next nearest county court if the case shall be in a county court, or to the next nearest county judge when the case shall be in a county judge's court, or to the next nearest justice of the peace of same county or county judge of same county when the case is in the court of a justice of the peace. If the judge of such nearest circuit court or county court, or justice of the peace court, or the county judge be disqualified, some other circuit, county or justice's district shall be selected.

History.—§1077 RS 1892; §1, ch. 4724, 1899; GS 1475; RGS 2675; CGL 4342; §12, ch. 17171, 1935.
cf.—§911.02, Removal of cause, criminal cases.

53.08 Change of venue; to another county of circuit.—If a change of venue be granted upon grounds other than the disqualification or preju-

dice of the judge of the circuit court, said cause may be removed to any other county within the same circuit.

History.—§1, ch. 4394, 1895; GS 1476; RGS 2676; CGL 4343.
cf.—§911.02, Removal of cause, criminal cases.

53.09 Change of venue; never to residence of a party.—No change of venue shall be directed so as to have the case removed to any county or to any justice's district where either of the parties reside, unless by consent of parties.

History.—§37, Nov. 23, 1822; RS 1079; GS 1477; RGS 2677; CGL 4344.

53.10 Change of venue; transfer of papers, etc.—Upon the removal of any case the clerk of the court (or the judge, if there be no clerk) in which such cause was pending shall transmit all papers in such court filed in said cause, and a certified copy of all entries of record in the same, including a copy of the order of transfer to the court to which said cause is transferred, which court is vested with full power to hear and determine same.

History.—§3, ch. 373, 1851; RS 1077; GS 1479; RGS 2679; CGL 4346.
cf.—§911.06, Removal of cause, transfer of records.

53.11 Change of venue; testimony of witnesses.—Upon such removal, the testimony of witnesses residing in the county from which it is removed, if it be removed from the county, may be taken in the manner provided by law for taking the testimony of witnesses residing out of the county in which any suit is pending.

History.—§2, ch. 373, 1851; RS 1077; GS 1480; RGS 2680; CGL 4347.

53.12 Change of venue; payment of costs.—No change of venue shall be granted in civil cases except upon condition that the applicant therefor shall pay all costs that have accrued in said cause, and shall not be effective until said costs are paid.

History.—§3, ch. 373, 1851; RS 1077; GS 1478; RGS 2678; CGL 4345.

53.13 Transfer of causes; from circuit to criminal court of record.—In all counties wherein criminal courts of record have been or may hereafter be established, the circuit courts, unless otherwise provided, may and are authorized to make orders removing all suits and causes pending in the circuit courts over which the criminal court of record has jurisdiction, to the said criminal court of record.

History.—§1, ch. 4128, 1893; GS 1482; RGS 2682; CGL 4349.

53.14 Transfer of causes; from circuit to county court.—In all counties wherein county courts have been or may hereafter be established, the circuit courts, unless otherwise provided, may and are authorized to make orders removing all suits and causes pending in the circuit court over which said county court has jurisdiction, to the said county court.

History.—§2, ch. 4128, 1893; GS 1483; RGS 2683; CGL 4350.

53.15 Transfer of causes; time for.—The orders above provided for may be made by the circuit courts, or judges thereof, at term time, or in vacation, upon the motion of the plaintiff or defendant, or their respective attorneys having the cases in charge, in the courts wherein the same properly belong.

History.—§3, ch. 4128, 1893; GS 1484; RGS 2684; CGL 4351.

53.16 Transfer of causes; method of transfer.—Removel of causes from circuit courts to criminal courts of record and to county courts shall be effected by the clerk of the circuit court transmitting the original papers in said cause to the court wherein the same is removed to, and certifying that the same are all the original papers in said suit or cause filed in his office. Said clerk shall also at said time transmit a certified copy of all entries of record made in the circuit court in said case.

History.—§4, ch. 4128, 1893; GS 1485; RGS 2685; CGL 4352.

53.17 Transfer of cases laid in a wrong venue.—

(1) Any court in this state in which is filed a case (including actions at law, suits in equity and statutory proceedings) laying venue in a wrong county or district may transfer such case to the proper court in any county or district of this state where it might have been brought in accordance with the venue statutes of this state. Where the venue of the case might have been brought under the venue statutes in two or more counties or districts the person bringing such case may select the county or district to which the case may be transferred; but if no such selection be made the matter shall be determined by the court or judge.

(2) Where a case is laid in a wrong venue and no timely objection is made thereto by one or more of the parties the court may proceed to a final disposition of the cause which shall be binding on the parties.

(3) The fees earned by the clerk or judge of the court wherein a case is laid in the wrong venue shall, upon the transfer thereof hereunder, be retained by him. Where a court is operating under a flat fee system, the fee received by the clerk or judge upon the filing of the case shall be deemed earned by him as of the time of filing, and another fee shall be required of the person filing the cause, in accordance with the statutes applicable in the county or district to which transferred, which if not paid within thirty days from the said transfer, shall justify dismissal without prejudice of the cause.

(4) Nothing herein shall apply to any criminal prosecution.

History.—§1, ch. 59-300.
cf.—§46.01, Where suits may be begun.

CHAPTER 54

TRIAL PRACTICE AND PROCEDURE

54.01 Loss of negotiable instrument; indemnity.—The court may order that the loss of a negotiable instrument shall not be set up in any action to recover on the same, if an indemnity be given to the satisfaction of the court, or the clerk thereof, against the claims of any other person on such instrument.

History.—§73, ch. 1096, 1861; RS 1080; GS 1486; RGS 2686; CGL 4353.

54.04 Moneys paid into court; disposition.—All moneys paid into any court of the state and received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the treasurer of the state or in a designated depositary of funds for the state, in the name and to the credit of such court, and every such depositary that shall receive such moneys shall forthwith furnish security, to be approved by, and deposited with, the treasurer of the state, in an amount necessary to fully protect the full amount of such deposit at all times; and in the event such depositary shall not, within five days from the date of each and every such deposit, advise such court that such security has been deposited with, and approved by, the treasurer of the state, such court shall forthwith enter its order, withdrawing all of such funds from such depositary, and shall forthwith redeposit the same with the treasurer of the state or some other designated depositary which shall furnish the security herein provided for; provided, however, that nothing herein contained shall be construed to prevent the delivery of any such moneys upon security according to agreement of parties under the direction of the court.

History.—§1, ch. 15996 1933; CGL 1936 Supp. 4355(1).
cf.—§18.10 et. seq. Designation of state depositories.
§18.20 Reproduction of certain warrants.

54.05 Money paid into court; withdrawal.—No moneys deposited as provided in §54.04, shall be withdrawn except upon the voucher or check signed by the clerk of the court if the court has an authorized clerk; if not, by the judge of the court, and every voucher or check shall state the cause in, or on account of which, it is drawn.

History.—§2, ch. 15996, 1933; CGL 1936 Supp. 4355(2); §1, ch. 29655, 1955.

54.06 Money paid into court; unclaimed funds.—

(1) In every case in which the right to withdraw money so deposited, as hereinbefore provided, has been adjudicated, or is not in dispute, and such money has remained so deposited for five years or more unclaimed by the person, firm or corporation entitled thereto, it shall be the duty of the judge, or one of the judges of such court, or its successor, on or before the first day of December each year, to direct that such money be deposited with the state treasurer to the credit of the state school trust fund, to become a part of said fund, subject however to the right of the person, firm or corporation entitled thereto to receive the same as provided in subsection (3) hereof.

(2) The direction that such money be deposited as provided in subsection (1) hereof shall be by written order, and a copy of such order shall be filed in the cause in which such money was originally deposited under §54.04, and such order shall also be noted in the progress docket in which said cause is entered, if such a docket is maintained by the court in which said cause is pending or was adjudicated.

(3) Any person, firm or corporation entitled to any such money, may, on written petition to the court from which the money was deposited or its successor, and upon written notice to the state attorney of the circuit wherein such court is situate, whether or not such court be a circuit court, and full proof of right thereto, obtain an order of court, directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments by the treasurer of the state in obedience of such orders.

(4) All interest and income that may accrue from said money while on deposit with the state treasurer to the credit of the state school trust fund shall belong to said fund.

History.—§3, ch. 15996, 1933; CGL 1936 Supp. 4355(3); §1, ch. 21993, 1943; §1, ch. 24351, 1947; (1), (4) §2, ch. 61-119.

54.07 Adjournment of trial.—The court may at the trial of any cause where it may deem it right for the purposes of justice, order an adjourment for such time, and subject to such terms and conditions as to costs and otherwise, as it may see fit.

History.—§51, ch. 1096, 1861; RS 1083; GS 1489; RGS 2689; CGL 4356.

54.08 Continuance of certain causes for term of legislature and period of time prior thereto and subsequent thereto.—All pending litigation before the courts of this state shall stand continued during any session of the legislature and for a period of time fifteen days prior to any session of the legislature and fifteen days subsequent to the conclusion of any session of the legislature where either attorneys representing the litigants are members of the legislature, when motion to that effect is made by such member.

History.—§1, ch. 15995, 1933; CGL 1936 Supp. 4356(1); §1, ch. 61-176.

54.09 Non-suit; right of plaintiff to take.—No plaintiff shall take a non-suit on trial unless he do so before the jury retire from the bar.

History.—§70, Nov. 23, 1828; RS 1084; GS 1490; RGS 2690; CGL 4357.

54.11 Challenge of jurors; peremptory.—On the trial of any civil cause in any court, each party shall be entitled to three peremptory challenges of jurors empaneled in said cause; provided, that where the number of parties on opposite sides of the cause are unequal, the party or parties plaintiff and the party or parties defendant, shall be entitled to the same aggregate number of peremptory challenges, to be determined on the basis of three peremptory challenges to each party of the side with the greater number of parties, and the additional peremptory challenges thereby accruing to multiple parties plaintiff or multiple parties defendant shall be divided equally between them, and any additional peremptory challenges not capable of equal division shall be exercised separately or jointly as determined by the presiding judge in his discretion.

History.—§§24, 32, ch. 1628, 1868; §7, ch. 3010, 1877; RS 1086; GS 1492; §1, ch. 5902, 1909; §1, ch. 7851, 1919; RGS 2692; CGL 4359; §1, ch. 25042, 1949.
cf.—§54.15, Additional challenge to alternate jurors.

54.12 Challenge of jurors; for cause.—The judge of any justice of the peace court, county judge's court, county court, civil court of record, court of record, circuit court or any other court wherein trial by jury is had, shall, on motion of either party in any cause, examine on oath any person who is called as a juror therein to know whether he is related to either party, or to the attorney of either party, within the third degree, or is related to any person alleged to have been wronged or injured by the commission of the wrong for the trial of which the juror is called, or has any interest in the cause, or has formed or expressed any opinion, or is sensible of any bias or prejudice therein; or is an employee or has been an employee of either party to the cause of action within thirty days previous to the trial thereof, and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent to the cause, or any of the foregoing grounds of objection exist, or that he is otherwise incompetent, another shall be called in his stead for the trial of that cause. If any person selected for jury duty from bystanders or the body of the county, and not from a jury list lawfully selected, shall have served as a juror in the court in which he is called at any other time within one year the same shall be grounds of challenge for cause.

When the nature of any civil case requires a knowledge of reading, writing and arithmetic, or either, to enable a juror to understand the evidence to be offered on the trial, it shall be cause of challenge if he does not possess such qualifications, to be determined by the judge presiding at the trial.

History.—§§24, 32, ch. 1628, 1868; §7, ch. 3010, 1877; RS 1086; GS 1492; §1, ch. 5902, 1909; §1, ch. 7851, 1919; RGS 2692; §2, ch. 12068, 1927; CGL 4359.
cf.—§913.03, Challenge in criminal cases.

54.13 Oral examination of jurors by parties.—In the trial of any cause, civil or criminal, before a jury in any court of this state, the respective parties to said cause, either by themselves or through their attorneys, shall have the right to orally examine jurors upon their voir dire.

History.—§1, ch. 4718, 1899; GS 1493; RGS 2693; CGL 4360.

54.14 Number of jurors in civil trial jury.—In the trial of all civil causes in any and all of the several courts of this state, where a jury is or may be required or empaneled, a jury of six qualified jurors shall be sufficient and requisite for the trial and disposition of said cause.

History.—§1, ch. 4717, 1899; GS 1494; RGS 2694; CGL 4361.

54.15 Alternate jurors may be called.—In all cases triable either in the circuit courts, criminal courts of record, or the court of record in and for Escambia county in this state, the presiding judge of such court may direct that one or two jurors, in addition to the regular panel, be called and empaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination, shall take the same oath and shall have the same functions, powers, facilities and privileges as the principal jurors. An alternate juror, who does not replace a principal juror, shall be discharged at the time the jury retires to consider its verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law for each alternate juror so called. The additional peremptory challenge may be used only against the alternate juror and the other peremptory challenges allowed by law shall not be used against the alternate jurors.

History.—§1, ch. 18000, 1937; §1, ch. 19030, 1939; CGL 1940 Supp. 4361(1).

54.16 View of premises by the jury.—The jury may, in any case, upon motion of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that view is

necessary to a just decision; but the party making the motion shall advance a sum sufficient to defray the expenses of the jury and the officer who attends them in taking the view, which expense shall afterward be taxed like other legal costs, if the party who advanced them shall prevail in the suit.

History.—§28, ch. 1628, 1868; RS 1087; GS 1495; RGS 2695; CGL 4362.

54.17 Court's charge to jury; direction of verdict.—

(1) Upon the trial of all cases at law in the several courts of this state, the judge presiding at such trials shall charge the jury only upon the law of the case; that is, upon some point or points of law arising in the trial of said cause. If, however, after all the evidence shall have been submitted on behalf of the plaintiff in any civil case, it be apparent to the judge that no evidence has been submitted upon which the jury could lawfully find a verdict for the plaintiff in such civil case, the judge shall, upon motion of the defendant, direct the jury to find a verdict for the defendant; and if, after all the evidence of the parties shall have been submitted, it be apparent to the judge that no sufficient evidence has been submitted upon which the jury could legally find a verdict for one party, the judge may direct the jury to find a verdict for the opposite party.

(2) At the trial of any civil action or proceeding at law in the courts of this state, the judge presiding shall charge the jury on the law of the case in the trial at the conclusion of the argument of counsel.

History.—§1, ch. 2096, 1877; RS 1088; GS 1496; §1, ch. 6220, 1911; RGS 2696; §1, ch. 9364, 1923; §1, ch. 10163, 1925; CGL 4363; §1, ch. 21888, 1943.
cf.—§918.08, Directing acquittal of defendant (criminal cases). §918.10, Charge to jury; request for instructions (criminal cases).

54.18 Court's charge to jury; when reduced to writing.—Every charge to a jury shall be oral, except when, in the circuit, civil courts of record or county court, either party, or his attorney, shall request in writing before the evidence is closed that it be in writing, when the judge shall commit it to writing. When delivered it shall be filed in the case and become a part of the record.

History.—§1, ch. 2096, 1877; RS 1089; §1, ch. 4388, 1895; GS 1497; RGS 2697; CGL 4364.
cf.—§918.10, Charge to jury in criminal cases.

54.22 Further deliberation of jury; sending back.—When a jury, after due and thorough deliberation upon any cause, shall return into court without having agreed on a verdict, the court may explain to them anew the law applicable to the case, and may send them out again for further deliberation; but if they shall return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

History.—§27, ch. 1628, 1868; RS 1093; GS 1501; RGS 2701; CGL 4368.

54.23 Harmless error; effect.—No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

History.—§1, ch. 6223, 1911; RGS 2812; CGL 4499.

54.28 Release or convenant not to sue.—

(1) A release or covenant not to sue as to one tort-feasor for property damage to, personal injury of, or the wrongful death of any person shall not operate to release or discharge the liability of any other tort-feasor who may be liable for the same tort or death.

(2) At any trial, if any defendant shall make it appear to the court that the plaintiff, or any person lawfully on his behalf, has delivered a release or covenant not to sue to any person, firm or corporation in partial satisfaction of the damages sued for, the court shall, at the time of rendering judgment, set-off such amount from the amount of any judgment to which the plaintiff whould be otherwise entitled and enter judgment accordingly.

(3) The fact of such a release or convenant not to sue, or that any defendant has been dismissed by order of the court, shall not be made known to the jury.

History.—§§1-3, ch. 57-395.

CHAPTER 55

JUDGMENTS AND EXECUTIONS

55.01 Judgments; general form.—In all actions where either party recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages.

History.—§40, ch. 1096, 1861; RS 1711; GS 1598; RGS 2800; CGL 4486.

55.02 Judgments upon bonds for the payment of money.—In all actions which shall be brought upon any bond for payment of money, wherein the plaintiff shall recover, judgment shall be entered for the principal and interest due thereon, and the costs of suit, and execution shall issue thereon accordingly.

History.—§1172 RS 1892; GS 1599; RGS 2801; CGL 4487.

55.03 Judgments; rate of interest, generally.—All judgments (and decrees) shall bear interest at the rate of six per cent per annum; provided however, that when such judgment or decree shall be obtained or rendered on a written contract or obligation providing for interest at a less rate than six per cent per annum then such judgment or decree shall bear interest at the rate specified in such written contract or obligation.

History.—§1, ch. 1562, 1866; RS 1176; GS 1604; RGS 2806; CGL 4493; §1, ch. 16051, 1933.

55.04 Judgments; rate of interest, bonds of county, etc.—All judgments and decrees obtained or rendered on any bonds or other written evidence of indebtedness of any county, special road and bridge district or any county for the use and benefit of any special road and bridge district or incorporated city or town or taxing district shall bear interest at the rate of five per cent per annum. When such judgment or decree shall be obtained or rendered on a bond or other written evidence of indebtedness providing for a less rate of interest than five per cent per annum then such judgment or decree shall bear interest at the rate specified in such bond or other written evidence of indebtedness.

History.—§1, ch. 16835, 1935; CGL 1936 Supp. 4493(1).

55.05 Judgments; power of attorney to confess invalid.—All powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error, heretofore made or to be made hereafter by any person whatsoever within or without this state, before such action brought, shall be absolutely null and void.

History.—§67, Nov. 23, 1828; RS 1178; GS 1606; RGS 2808; CGL 4495; §1, ch. 59-321.

55.07 Judgments; effect of failure to record.—The failure to record any order, judgment or decree shall not affect the validity of any proceedings had thereon when collaterally attacked; provided, rendition of such order, judgment or decree is shown by the progress docket in the cause.

This section shall apply to all proceedings heretofore had as well as to those hereafter had.

History.—§§1, 2, ch. 12114 1927; CGL 4496(1).

55.071 Judgments and decrees; effect of invalid affidavit or oath.—No order, judgment or decree of any court of record of the state, heretofore, now or hereafter made or entered, including decree or decrees pro confesso, and judgment or judgments by default, and final decree or decrees, judgment or judgments consequent thereon, which has been now is/are, or shall hereafter be, made or entered, which has heretofore been, is now, or shall hereafter be, predicated or consequent upon a sworn statement, affidavit or oath, including a sworn statement, affidavit or oath, heretofore, now or hereafter made before or administered by any officer of the state authorized by the law or laws of the state to administer oaths or take acknowledgments, including sworn statements, affidavits, or oaths for constructive service, shall be set aside or vacated or held or declared to be either void or voidable, by reason of the officer before whom such sworn statement or affidavit was, is or shall be made, or such oath was, is or shall be administered, being the attorney of record or otherwise attorney for the person making such sworn statement or affidavit or taking or making such oath; provided, however, this section shall not bar any suit or action brought to set aside any judgment or decree based on sworn statement, affidavit or oath made or administered, as aforesaid, in the event such suit or action is brought within one year from the effective date of this section; provided, further, this section shall not create any new right in the party bringing such suit or action referred to in the foregoing saving clause to set aside any decree or judgment which does not already exist in equity or law.

History.—§1, ch. 22843, 1945.

55.08 Judgments entered prior to June 5, 1939; liens.—Every judgment at law and decree in equity, which was entered in any circuit court of this state prior to June 5th, 1939, created a lien and became binding upon the real estate of the defendant in the county where rendered. Such judgments and decrees shall create a lien upon real estate of the defendant situated in counties, other than where rendered, when a certified transcript of the said judgment or decree shall have been recorded in the county in which the real estate sought to be bound is situated.

History.—§§1, 2, Feb. 12, 1834; RS 1173, 1174; GS 1600, 1601; RGS 2802, 2803; CGL 4488, 4489.

55.081 Statute of limitations, lien of judgment.—No judgment, order or decree of any court shall be a lien upon real or personal property within the state after the expiration of twenty years from the date of the entry of such judgment, order or decree.

History.—§1, ch. 29954, 1955.

55.09 Judgments of inferior courts entered prior to June 5, 1939; lien.—Judgments of county courts, county judges' courts and justices of the peace, entered prior to June 5th, 1939, shall become a lien on the real estate of the defendant situated in any county, from the time of the filing in the office of the clerk of the circuit court for said county of a transcript of such judgment and the entry thereof by the clerk in a book to be kept by him for such purpose.

History.—§43, ch. 2040, 1875; RS 1175; GS 1602; RGS 2804; CGL 4490.

55.10 Judgments; lien of all, generally.—No judgment or decree hereafter rendered by the circuit courts or any other courts of this state shall be or become a lien on real estate until a certified transcript of said judgment or decree is recorded in the judgment lien record as provided by §28.21, subsection (11) of these statutes. Upon being so recorded said judgment or decree shall become a lien on the real estate of the defendant only in the county

where the same is recorded in the manner provided by said §28.21.

History.—§1, ch. 10166, 1925; §1, ch. 14749, 1931; §§1-3, ch. 17998, 1937; §2, ch. 19270, 1939; CGL 1940 Supp. 4865(3).

55.11 Judgments; no lien against municipalities.—No money judgment or decree against a municipal corporation shall be a lien upon its property nor shall any fieri facias or any writ in the nature of a fieri facias based upon any such judgment be issued or levied.

History.—§1, ch. 17125, 1935; CGL 1936 Supp. 4492(4).

55.13 Judgments; rights of sureties, etc.—Any person paying money as surety for the principal in any bond or note, which he has signed as surety, upon which judgment has been obtained, shall have the same right to control the said judgment and collect the same, with principal, interest and costs, as the plaintiff creditor would have had if the debt had not been paid.

Such judgment, and execution thereon, shall have the same lien on property of the principal as though the surety were the original plaintiff.

History.—§§1, 2, ch. 765, 1855; RS 1177; GS 1605; RGS 2807; CGL 4494.

55.14 Executions; capias ad satisfaciendum abolished.—In no case shall a capias ad satisfaciendum be issued upon a judgment, nor shall the body of any defendant be subject to arrest or confinement for the payment of money, except it be for fines imposed by lawful authority.

History.—§53, Nov. 23, 1828; RS 1184; GS 1612; RGS 2816; CGL 4503.

55.15 Executions; right to and life of.—The plaintiff shall be entitled to his execution at any time within three years after the rendition of any judgment or decree, and upon the issuance of his execution, shall be entitled to renew the same upon the return to the clerk's office of the original execution, from time to time for twenty years, unless the same be sooner satisfied.

History.—§8, Mar. 15, 1844; RS 1185; GS 1613; RGS 2817; CGL 4504.

55.16 Executions; issuance and return, alias, etc.—In all the courts of this state, upon the rendition of any final judgment the party in whose favor such judgment shall have been rendered, shall be entitled, upon oral request therefor, by himself, his agent or attorney, to execution thereon, and when issued and delivered, such execution shall be valid and effective during the life or effective period of the judgment on which issued, and all necessary actions and proceedings may be had thereon in the collection thereof, and, when fully paid, shall be fully returned on the back thereof, and filed in the court of issue, by the officer or officers executing the same. Upon the loss or destruction of any such writ, the party entitled thereto may have an alias, pluries or other copies thereof, upon making proper proof by affidavit of such loss, and filing it in the court of issue.

History.—§1187 RS 1892; GS 1615; RGS 2819; CGL 4506; §§1, 2, ch. 17904, 1937; CGL 1940 Supp. 4505(1).

55.17 Executions; teste and direction.—All writs of execution shall bear date as of the day on which they shall be issued, and shall be directed to all and every the sheriffs of the state, and shall be of full force throughout the state.

History.—§1, Feb. 17, 1833; RS 1186; GS 1614; RGS 2818; CGL 4505.

55.18 Executions; collection and return.—All writs of fieri facias shall be made returnable when satisfied, and the officer to whom the same shall come shall proceed to collect the amount thereof by the next succeeding term of the court after the receipt of such execution if the same can be done consistently with law; and shall on the first day of every succeeding term of the court after the receipt of the execution, make a return of his doings thereon in a book to be kept in the records of the court issuing the same, and all receipts shall be endorsed on the execution.

History.—§2, Mar. 15, 1844; RS 1188; GS 1616; RGS 2820; CGL 4507.

55.19 Executions; collection when against principal and sureties.—Where there are executions against principals and sureties, or an execution against a principal and surety or sureties, it shall be the duty of the sheriff or other officer to make the money out of the property of the principal, unless he be insolvent or has no property, in which case the execution may proceed against the property of the sureties.

History.—§7, Mar. 15, 1844; RS 1189; GS 1617; RGS 2821; CGL 4508.

55.20 Property subject to execution.—Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution. Likewise, the interest in personal property in possession of a vendee under a retained title contract or conditional sale contract shall be subject to levy and sale under execution to satisfy a judgment against the vendee. This shall be done by making the levy on such personal property.

History.—§1, Mar. 15, 1844; §1, ch. 44, 1845; §1, ch. 3917, 1889; RS 1190; GS 1618; RGS 2822; CGL 4509; §1, ch. 61-199.

55.21 Executions upon equities of redemption; discovery of value.—Upon application made by the party causing a levy upon an equity of redemption, the court from which the execution issued shall cause the mortgagor, mortgagee, and all other persons whom the said mortgagor or mortgagee shall state upon oath to be interested in said mortgaged property so levied upon, to come into court and answer upon oath what amount remains due and owing upon said mortgage, what amount has been paid, and to whom and when paid, that the value of said equity or legal right of redemption may be ascertained before the same shall be sold. Likewise, when a levy has been

made on the interest in personal property in possession of a vendee under a retained title contract or a conditional sale contract, the court, upon application made by any party claiming an interest therein, shall cause the vendor, vendee, and all other persons whom the said vendor or vendee shall state upon oath to be interested in said property so levied upon, to come into court and answer upon oath what amount remains due and owing upon said contract, what amount has been paid and to whom and when paid, that the value of the interest of the vendor and vendee in said property may be ascertained and priorities determined, before the same shall be sold.

History.—§2, ch. 44, 1845; RS 1208; GS 1638; RGS 2842; CGL 4529; §1, ch. 61-191.

55.22 Executions upon equities of redemption; protection of mortgagee of personalty.—The officer selling the equity of redemption in personal property shall require of the purchaser of such equity a bond with two good and sufficient sureties, to be approved by him, in a sum double the amount of the value to be placed by him upon each item of the personal property so levied upon and sold, payable to the mortgagee, and conditioned that such property shall not be removed beyond the state, and that it shall be forthcoming to answer any judgment or decree of foreclosure made against it. Likewise, the officer making the sale of the interest in personal property in possession of a vendee under a retained title contract or conditional sale contract shall require the purchaser to made a bond payable to the conditional vendor, conditioned that such property shall not be removed beyond the state, and that it shall be forthcoming to answer any judgment or decree of foreclosure made against it; or, the purchaser may pay the conditional vendor the full amount of money found to be due on the conditional sale contract and the conditional vendor shall thereupon convey title to the purchaser as was provided by the original retained title contract.

History.—§3, ch. 44, 1845; RS 1209; GS 639; RGS 2843; CGL 4530; §1, ch. 61-202.

55.23 Executions against corporations; generally.—Upon any judgment against any corporation, a plaintiff may sue out a fieri facias, and the writ of fieri facias may be levied as well on the current money as on the goods and chattels, lands and tenements of said corporation.

History.—§4, Feb. 11, 1834; RS 1210; GS 1640; RGS 2844; CGL 4531.

55.24 Executions against corporations, proceeding for receivership.—If such writ cannot be satisfied in whole or in part, for want of property of the defendant subject to levy and sale out of which to satisfy the same, upon petition of the judgment creditor, or of his agent or attorney, the circuit court sitting in chancery within whose circuit such corporation may have been doing business, or in which any of its effects are to be found, may by order sequestrate the property, things in action, goods and chattels, of such corporation for the purpose of enforcing such judgment, and may appoint a receiver for the same, and the receiver so appointed shall be subject to the rules prescribed by law for receivers of the property of other judgment debtors. His power shall extend throughout the state.

History.—§1, ch. 1870, 1872; RS 1211; GS 1641; RGS 2845; CGL 4532.

55.25 Executions against corporate stock.—Shares of stock in any corporation incorporated by the laws of this state shall be subject to levy of attachments and executions, and to sale under executions on judgments or decrees of any court in this state.

History.—§1, ch. 3917, 1889; RS 1212; GS 1642; RGS 2846; CGL 4533.

55.26 Executions against corporate stock; manner of levy.—Attachments or executions may be levied on such shares by the sheriff, or other officer holding such process, exhibiting the same to the president, vice-president, general manager, or other chief officer, or to the officer having custody of the stock books or transfer books of the corporation in which the attachment or judgment debtor may own shares of stock, and by informing such officers that a levy is thereby made upon such debtor's shares of stock in such a corporation, and such sheriff or other officer shall endorse such levy on such process.

History.—§2, ch. 3917, 1889; RS 1213; GS 1643; RGS 2847; CGL 4534; §13, ch. 59-1.

55.27 Executions against corporate stock; requiring statement of stock; penalty.—At the time of making such levy as aforesaid, the officer holding such process shall demand of the officer of the corporation to whom the process shall be exhibited a statement in writing of the number of shares of stock owned by such debtor in said corporation, together with the amount still due thereon. It shall be the duty of the said officer to furnish said statement at once to the said sheriff or other officer (who shall endorse the same on the said process); and any officer of any corporation refusing or failing to make such statement upon such demand, or making an untrue statement in response to such demand, shall be guilty of a misdemeanor, and shall, upon conviction, be fined a sum of not less than one hundred dollars or be imprisoned in the county jail not less than ten days.

History.—§3, 3917, 1889; RS 1214; GS 1644; RGS 2848; CGL 4535.

cf.—§775.06, Alternative punishment.

55.28 Executions against corporate stock; ascertaining amount of stock owned by execution debtor; penalty.—If such attachment or execution creditor shall believe that the debtor owns shares of stock in said corporation at the time of the levy aforesaid, which do not appear in the answer of the officers of the corporation to the demand of the sheriff or other officer holding the process to belong to the said debtor, he may propound interrogatories to the officers of said corporation or any of them,

and to the said debtor, touching the ownership of any shares of stock in said corporation by said debtor at the time of said levy; and the persons to whom such interrogatories are propounded shall be required to file their answers under oath to the same within ten days in the office of the clerk of the circuit court of said county. And if any person shall refuse to answer such interrogatories, or shall answer any of them untruly, he shall be guilty of misdemeanor, and shall be fined not less than one hundred dollars or be imprisoned not less than ten days in the county jail. If the answers to said interrogatories shall state the ownership by the said debtor of stock in said corporation not disclosed by the answers of the officers of the said corporation made under §55.27, the sheriff or other officer holding the said process shall endorse thereon description of said stock.

History.—§4, ch. 3917, 1889; RS 1215; GS 1645; RGS 2849; CGL 4536.

cf.—§775.06, Alternative punishment.

55.29 Executions against corporate stock; creditor may furnish description of stock.—If the creditor shall believe the answers of the officers of such corporation to the sheriff or other officer holding the process as aforesaid, and the answers of such officers of the corporation and the debtor to such interrogatories, to state untruly the stock owned by such debtors, he may furnish to the sheriff or other officer holding the process a description of the stock which he believes the debtor to own; and it shall be the duty of the sheriff or other officer to proceed to sell the debtor's interest in such stock as hereinafter provided.

History.—§5, ch. 3917, 1889; RS 1216; GS 1646; RGS 2850; CGL 4537.

55.30 Executions against corporate stock; effect of levy of writ; penalty.—From the time of the levy of said process as provided in §55.26 all the shares owned by the said debtor in such corporation, no matter how the description of it may be thereafter ascertained, shall be bound thereby, and no transfer of the same not then entered upon the transfer book of the said corporation shall be valid and effectual as against the levy of the said process. And if any person shall antedate or procure to be antedated any entry upon the books of said corporation for the purpose of avoiding the effect of the said levy he shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred dollars or imprisonment in the county jail not less than ten days.

History.—§6, ch. 3917, 1889; RS 1217; GS 1647; RGS 2851; CGL 4538.

cf.—§775.06, Alternative punishment.

55.31 Executions against corporate stock; manner of sale of stock.—Shares of stock levied upon as hereinbefore provided shall be sold in the same manner as other property levied upon. The notice of such sale shall contain a statement of the number of shares to be sold, the corporation in which said shares are held, the amount paid in thereon, and the amount unpaid. The sheriff or other officer conducting said sale shall execute to the purchaser thereat a bill of sale of said shares, and such bill of sale shall vest in the purchaser all of the title of the judgment debtor; and upon the presentation of such bill of sale to the secretary or other officer controlling the transfer books of such corporation, it shall be his duty to transfer the said stock from the judgment debtor to the purchaser.

History.—§7, ch. 3917, 1889; RS 1218; GS 1648; RGS 2852; CGL 4539.

55.32 Executions, from county courts when to be levied against real estate.—Executions on judgments of county courts shall be a lien and may be levied upon real estate subject to levy, in any county, when a transcript of the judgment of said courts is filed and recorded in the office of the clerk of the circuit court of said county, and the real estate so levied upon may be sold under such executions in the same manner as under executions from the circuit courts.

History.—§1, ch. 4725, 1899; GS 1619; RGS 2823; CGL 4510.

55.33 Executions; levy, substitution of property.—The defendant in execution, his agent or attorney, shall at all times have it in his power to release any property which may have been levied on by surrendering other property of a value equivalent, in the opinion of the officer levying the execution, to that released.

History.—§1191 RS 1892; GS 1620; RGS 2824; CGL 4511.

55.34 Executions; levy, forthcoming bond.—If a defendant in execution desires to retake into his possession any property levied upon he may do so, by executing a bond with two good and sufficient sureties payable to the plaintiff, to be approved by the officer making the levy, in a sum double the value of the property retaken, which value shall be fixed by the officer holding the execution, conditioned for the forthcoming of the property retaken on the day of sale designated in said bond.

History.—§1192 RS 1892; GS 1621; RGS 2825; CGL 4512.

55.35 Executions; forfeiture of forthcoming bond.—Should the execution remain unpaid, and the parties to the bond fail to produce such property by the day specified, said bond shall be returned to the court from which the execution issued, as forfeited; and the clerk, or the court if it has no clerk, shall enter up judgment forthwith against the sureties for the value fixed as aforesaid of the property so bonded, or if the value of the property exceed the amount of the execution, then for the amount of the execution, and execution shall issue therefor. Such proceedings shall not affect the liability of the principal upon the original judgment.

History.—§1193 RS 1892; GS 1622; RGS 2826; CGL 4513.

55.36 Executions upon forthcoming bond, levy.—No bonds, as hereinbefore provided, shall be allowed to be given for property seized upon the execution on the judgment upon the forfeited bond.

History.—§1, ch. 727, 1855; RS 1194; GS 1623; RGS 2827; CGL 4514.

55.37 Executions; stay of illegal writs.—If any execution shall issue illegally, the defendant in execution, his agent or attorney, may procure a stay of the same by making and delivering to the officer having the execution an affidavit stating the illegality and whether any part of the execution be due, and a bond payable to the plaintiff with two good and sufficient sureties in double the amount of the execution or the part of which a stay is sought. Upon receipt of such affidavit and bond the officer shall stay any proceeding on the execution and return the bond and affidavit to the court from which the execution issued, and such court shall pass upon the question of illegality as soon as possible. If the execution be adjudged illegal in any part the court shall make an order staying it as to such part, but if it be adjudged legal in whole or in part, the court shall (or if it has a clerk, shall direct such clerk to) enter up judgment against the principal and sureties on such bond for the amount of so much of the execution as shall be adjudged to be legal, and execution shall forthwith issue thereon.

History.—§§2, 3, Feb. 15, 1834; RS 1195; GS 1624; RGS 2828; CGL 4515.

55.38 Executions; stay of upon motion.—The court before which an execution is returnable may, on a motion and notice to the adverse party, for good cause, upon such terms as the court may impose, direct a stay of the same, and the suspension of proceedings thereon.

History.—§6, Mar. 15, 1844; RS 1196; GS 1625; RGS 2829; CGL 4516.

55.39 Executions; claims of third parties to property levied upon.—If any person other than the defendant in execution shall claim any property levied upon, he may obtain possession of such property by filing with the officer having such execution an affidavit made by himself, his agent or attorney, that the property claimed by him belongs to him, and a bond payable to the plaintiff with two good and sufficient sureties to be approved by such officer in double the value of the goods claimed, such value to be fixed by the officer, conditioned to deliver said goods and chattels upon demand of said officer if the same shall be adjudged to be the property of the defendant in execution, and to pay the plaintiff all damages which the jury on the trial of the right of property may find in his favor if it should appear to the jury that such claim was interposed for the purpose of delay.

History.—§9, Feb. 17, 1833; §1, Mar. 15, 1844; RS 1197; GS 1626; RGS 2830; CGL 4517.

55.40 Executions; duty of officer upon claim of third person being filed.—Upon receipt of such bond and affidavit, the said officer shall deliver the property to the claimant and desist from any further proceedings under such levy until the right of property shall have been tried; and shall, unless directed in writing by the plaintiff in execution, his agent or attorney, to dismiss the levy and levy upon other property of the defendant in execution, return said execution to the court whence it issued, together with such affidavit and bond.

History.—§§9, 10, Feb. 17, 1833; RS 1198; GS 1627; RGS 2831; CGL 4518.

55.41 Executions; trial of claims of third persons.—At the next term of said court after the return a jury shall be sworn to try the right of property, and if the verdict be in favor of the plaintiff and it appear to the jury that the claim was interposed for delay, to award the plaintiff such damage as it may think reasonable, not exceeding twenty per cent; and, if the claimant shall three days before the trial deny in writing under oath filed in court, the correctness of the appraisement of the value of the property by the officer levying the execution, and the verdict be in favor of the plaintiff, to fix the value of each item thereof, or of such items thereof as may be covered by such denial.

History.—§10, Feb. 17, 1833; RS 1199; GS 1628; RGS 2832; CGL 4519.

55.42 Judgments upon claims of third persons.—Upon the verdict of the jury, the court shall enter judgment deciding the right of property, and if the verdict is for plaintiff, awarding a recovery by the plaintiff from the defendant and his sureties, of the value (as fixed by the officer, or as fixed by the jury if fixed by it) of such parts of the property as the jury may have found subject to execution, and awarding separately such damages as the jury may have awarded, and of all costs attending the presentation and trial of the claim.

History.—§1200 RS 1892; GS 1269; RGS 2833; CGL 4520.

55.43 Executions upon judgments against third persons claimants.—If the execution issued upon such judgment be not paid, it shall be satisfied in the usual manner, unless upon demand of the officer holding it upon the principal and sureties in the claim bond, they shall deliver to him the property released under the claim bond and pay to him the damages and costs awarded to the plaintiff by the jury. If the property be returned to the officer, but the damages and costs shall not be paid, the execution shall be enforced for such damage and costs. If part only of the property be returned to him, the execution shall be enforced for the value, fixed as aforesaid, of that not returned. All property returned shall be sold under the original execution against the original defendant.

History.—§1201 RS 1892; GS 1630; RGS 2834; CGL 4521.

55.44 Execution sales; notice.—Notice of all sales under execution shall be given by advertisement once each week for four successive weeks in a newspaper published in the county in which the sale is to take place, or if there is no newspaper published in the county, by posting notices at the door of the court house of the county, and at three other public places in the county, for thirty days; but the time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the property to be sold is

subject to decay, and will not sell for its full value if held for a period of thirty days.

History.—§3, Feb. 17, 1833; RS 1202; GS 1631; RGS 2835; CGL 4522.

55.45 Execution sales; time of sale.—All sales of property under legal process shall take place between the hours of 11:00 a.m. and 2:00 p.m. of any day of the week except Saturday and Sunday, and shall continue from day to day until such property be disposed of.

History.—§2, ch. 3256, 1881; RS 1203; GS 1632; RGS 2836; CGL 4523; §1, ch. 61-104.

55.46 Execution sales; place of sale, generally.—All real and personal property levied upon under cxecution shall be exposed to sale at the court house door of the county in which the real estate shall be situated, or the personal property shall have been seized. If, however, the property to be sold shall consist of merchandise or other property not easily movable, or movable at great relative expense, the sale shall take place where the property was when taken possession of under the levy.

History.—§3, Feb. 17, 1833; RS 1204; GS 1633; RGS 2837; CGL 4524.

55.47 Execution sales; place of sale where no courthouse.—In any county where, by reason of sale or destruction of the courthouse, county officials are occupying temporary quarters, all sales required to be at the courthouse door shall be made at the door of the building occupied by the clerk of the circuit court, and all notices required to be posted at the door of the courthouse of the county shall be posted at the door of the building occupied by the clerk of the circuit court. Sales so made and notices so posted shall be deemed to be as valid and effectual as if the building occupied by the clerk of the circuit court is in fact the courthouse of the particular county.

History.—§1, ch. 18009, 1937; CGL 1940 Supp. 4524(1).

55.48 Execution sales; bill of sale or deed to property sold.—Whenever a sale shall be made by virtue of any execution, the officer making the sale shall, on payment of the purchase money and the cost of the deed or bill of sale, execute to the purchaser a deed of conveyance or bill of sale of the property sold.

History.—§6, Feb. 17, 1833; RS 1205; GS 1634; RGS 2838; CGL 4525.

55.49 Executions; mandamus to force levy and sale.—Whenever it shall be made to appear to the circuit judge by a petition, sworn to by the plaintiff in execution, his agent or attorney, that there is an unsatisfied execution in his favor in the hands of an officer whose duty it is to make levy of execution, and that the officer refuses to make levy upon property liable thereto, and upon which it is his duty to make levy, or having made levy such officer refuses to advertise and sell the property levied upon, the plaintiff in execution shall be entited to an alternative writ of mandamus requiring the officer to levy such execution and collect the amount thereof, or advertise and sell the property levied upon, or both, as the case may be; or to show cause why he refuses so to do, and the cause shall then proceed to final hearing as in other mandamus proceedings.

History.—§1, ch. 4914, 1901; GS 1635; RGS 2839; CGL 4526; §1, ch. 61-330.

55.50 Executions; payment to execution creditor of moneys collected.—All money made upon execution in this state shall be paid to the party or his attorney in whose favor execution shall have been issued. And the receipt of said attorney shall release and fully acquit the officer so paying over the money as aforesaid. Where the names of more than one attorney shall appear upon the records of the court, the money shall be paid to the attorney who originally commenced the suit, or to him who made the original defense.

When property sold under execution shall bring more than the amount of the execution, the surplus shall without delay be handed over to the defendant.

History.—§57, Nov. 23, 1828; RS 1206; GS 1636; RGS 2840; CGL 4527.

55.51 Executions; failure of officer to pay over moneys collected.—If any officer collecting money under execution shall fail or refuse to pay it over within thirty days after it shall have been received by him, or within ten days after demand made by the plaintiff or his attorney of record, he shall be liable to pay the same and twenty per cent. damages, to be recovered by motion in court.

History.—§7, Feb. 17, 1853; RS 1207; GS 1637; RGS 2841; CGL 4528.

55.52 Proceedings supplementary; when execution unsatisfied, affidavit, etc.—At any time after an execution shall have been in the hands of any sheriff of this state and returned unsatisfied, the plaintiff in execution, his agent or attorney, may make and file in the court from which such exeuction issued, an affidavit affirming such fact and also that said execution is valid and outstanding, and also stating the residence of the defendant, and the plaintiff shall thereupon be entitled to have from the judge of said court an order requiring the defendant or defendants in said execution to be and appear in case the residence of defendant is in the county in which the court is located, before the judge of said court or some commissioner designated in said order, and in case the residence of defendant is in another county, then before some commissioner designated in said order in that other county, at a time and place specified in said order and then and there to be examined concerning his property.

History.—§1, ch. 7842, 1919; CGL 4540.

55.53 Proceedings supplementary; service.—The order provided for shall be served upon the defendant at least fifteen days before the time set for such examination, and shall be served by the sheriff in the same manner provided for service of subpoena.

History.—§2, ch. 7842, 1919; CGL 4541.

55.54 Proceedings supplementary; examination of defendant, witnesses, etc.—The exami-

nation provided for shall be comprehensive and shall cover any and all matters and things pertaining to the business and financial interests of the defendant which might tend to show what property the defendant has, his rights in same, and the location of same. Any and all testimony may be admissible which may tend directly or indirectly to aid in the satisfaction of any execution in whole or in part. Each answer of the party or witness must be under oath. A corporation must attend by and answer under oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf and may produce and examine other witnesses as upon the trial of an action.

History.—§3, ch. 7842, 1919; CGL 4542.

55.55 Proceedings supplementary; application of property to satisfaction of execution.—The judge may order any property of the judgment debtor not exempt from execution, in the hands of either himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment debt.

History.—§4, ch. 7842, 1919; CGL 4543.

55.56 Proceedings supplementary; application of property in hands of third persons, etc.—Where it shall appear that the defendant at any time within one year prior to date of issuance of execution has had title to or has paid the purchase price of any personal property to which at the time of the examination his wife, or any relative or any person on confidential terms with defendant may claim title and right of possession, the burden of proof shall be upon such defendant to establish that such transfer or gift from him was not made for the purpose of delaying, hindering and defrauding creditors.

History.—§5, ch. 7842, 1919; CGL 4544.

55.57 Proceedings supplementary; certain gifts, transfers, etc., voidable.—Where it appears that any gift, transfer, assignment or other conveyance of any personal property has been made or executed, contrived or devised by the defendant of fraud, covin, collusion or guile to the end, purpose and intent to delay, hinder or defraud creditors, the court upon whose order the examination may be held shall enter an order that said gift, transfer, assignment or other conveyance of said personal property, be utterly void, frustrate and of non effect, and shall direct the sheriff to take such property for the satisfaction of the execution in the matter. After the sheriff shall have levied upon said property, any person who may be aggrieved thereby may file claim and bond as provided in other cases where third persons claim property taken under levy.

Nothing herein shall authorize the seizure of or other interference with any property which is expressly exempted by law from levy and sale by virtue of any execution.

Provided further; that nothing herein shall authorize the seizure of or other interference with any personal property which has passed into the hands of a bona fide purchaser for value and without notice.

History.—§6, ch. 7842, 1919; CGL 4545.

55.58 Proceedings supplementary; may be referred to a commissioner.—At any stage of the proceedings any judge may, in his discretion, make an order directing that any further proceeding may be taken by, or that any question arising may be referred to a commissioner designated in the order. Where the proceedings are, or any question is, so referred, the commissioner may be directed to report his findings upon the law or the facts, or upon both. The commissioner shall have all the powers of a commissioner and the same fees as provided by statute in other cases.

History.—§7, ch. 7842, 1919; CGL 4546.

55.59 Proceedings supplementary; rule of evidence.—A party or a witness examined under these provisions, shall not be excused from answering a question on the ground that his answer will tend to show him guilty of the commission of a fraud, or prove that he has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that he or another person claims to have title as against the defendant or to hold property derived from or through the defendant, or to be discharged from the payment of a debt which was due to the defendant or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in any criminal proceeding or action.

History.—§8, ch. 7842, 1919; CGL 4547.

55.60 Proceedings supplementary; power of judge.—Any judge having any proceeding provided for herein before him, may make any such orders as within his discretion may seem meet in regard to carrying out the full intent and purpose of these provisions to subject any property or property rights of any defendant to the satisfaction of any execution against him.

History.—§9, ch. 7842, 1919; CGL 4548.

55.61 Proceedings supplementary; penalty for failure to obey orders.—Any person who refuses, or without sufficient excuse neglects to obey an order of any judge made pursuant to these provisions and duly served upon him or an oral direction given directly to him by the judge or commissioner in the course of any proceeding under these provisions or to attend before a judge or commissioner according to the command of a subpoena duly served upon him, may be punished by the judge or by the court out of which the execution was issued, or by the judge before whom the proceedings are being had, the same as for a contempt.

History.—§10, ch. 7842, 1919; CGL 4549.

55.611 Proceedings supplementary; costs.—The costs for those proceedings supplementary as set forth in §§55.52-55.61 are chargeable against the defendant, as well as all other incidentally related costs which the judge determines are reasonable and just, including, but

not limited to the following: Docketing the execution; return of the sheriff; service of the order; fee of a court reporter to take testimony.

History.—§1, ch. 63-144.

55.62 Satisfaction of judgments and decrees; duties of clerk and judge.—

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk, or the judge if there be no clerk, shall issue his receipt therefor and shall enter notation thereof upon the margin of the record of such judgment or decree and shall formally notify the owner of record of such judgment or decree, if such person and his address are known to the clerk or judge receiving such payment, and, upon request therefor, shall pay over to the person entitled, or to his order, the full amount of the payment so received, less his fees for issuing execution on such judgment or decree, if any has been issued, and less his fees for receiving into and paying out of the registry of the court such payment, together with the fees of the clerk for receiving into and paying such money out of the registry of the court.

(3) Full payment of judgments and decrees as in the preceding subsections of this section provided shall constitute full payment and satisfaction thereof and any lien created by such judgment or decree shall thereupon be satisfied and discharged.

History.—§§1-3, ch. 22672, 1945.

CHAPTER 56

REFEREES AND REFERENCES

56.01 Right to a reference.—Any civil cause may be tried before a practicing attorney as referee upon the application of the parties, and an order from the court in whose jurisdiction the case may be authorizing such trial and appointing such referee.

History.—§1230 RS 1892; GS 1659; RGS 2864; CGL 4561.

56.02 Powers and duties of referee.—

(1) TO SUBPOENA WITNESSES AND TAKE DEPOSITIONS.—Every referee shall have the same power to subpoena witnesses and parties to testify, and to compel their attendance, and to take depositions as the court making the reference may have in like cases.

(2) TO ALLOW AMENDMENTS.—He shall have the same power and control over the pleadings, as to filing additional pleadings, or striking out or amending the pleadings, as the court making the references may have.

(3) TO FIX AND ADJOURN DAY OF TRIAL.—He may fix the day and place for the trial, and may adjourn the trial for cause shown, provided, such trial shall take place within the county where the cause is pending, except by and with the consent of both parties; and if he shall unreasonably delay the trial or determination of a case, the court shall revoke the order appointing him.

(4) TO KEEP FILE AND RECORD OF THE CASE.—He shall keep a complete record of the case, including the evidence taken, as a part thereof, and such record shall be filed with the papers in the case, in the court making the reference.

(5) TO DETERMINE MOTIONS FOR NEW TRIALS, ETC.—He may hear and determine motions for a new trial, rehearings, arrest of judgment, or reformation or alterations of his findings, to the same extent and with like powers as the court by which the reference is made.

(6) TO ENTER JUDGMENT.—He shall have power to enter final judgment or decree with the effect hereinafter prescribed.

(7) TO GIVE NOTICE OF HIS FINDINGS AND JUDGMENT.—He shall, upon reaching his findings, give notice in writing, of the same, and likewise, after entering judgment, give notice thereof to all parties or their counsel of record.

History.—§§1, 4, ch. 3122, 1879; RS 1231; GS 1660; §1, ch. 6495, 1913; RGS 2865; CGL 4562.

56.03 Motions for new trials, etc.—

(1) WHEN TO BE MADE.—All motions for new trials, rehearings, in arrest of judgment, or for reformation or alteration of the findings, shall be made within ten days after receipt of the notice of the findings of the referee as provided for in subsection (7) of the preceding section.

(2) WHEN TO BE HEARD.—Motions mentioned in the preceding subsection must be brought to a hearing before the referee within ten days after the motion shall be filed with him, upon due notice to the opposite parties, but the referee may, by an order, enlarge the time for such hearing, and may specify what notice shall be given of such hearing.

(3) HOW AFFECTED BY DEATH, ETC., OF REFEREE.—In the absence or death of the referee after the notice of his findings, so that the parties cannot be heard before him upon such motions within the time fixed by law, the parties may apply to the court for such order or proceedings as might be allowed by the referee.

History.—§§1, 6, ch. 3122, 1879; RS 1232; GS 1661; §2, ch. 6495, 1913; RGS 2866; CGL 4563.

56.04 Entry of judgment; filing; entry and effect.—If there shall be none of the motions hereinabove mentioned, or if any such motion shall have been made or denied, or otherwise disposed of, or whenever the judgment or decree of the referee shall have been finally arrived at by him, he shall thereupon enter a final judgment or final decree in the cause, according to his previous findings, or such modifications thereof as may have been subsequently made, if said findings shall have been subsequently modified in any respect, and he shall file his said final judgment or final decree in the court by which the reference was made, together with all papers used before him, and a record of the case as kept by him, and such judgment or decree shall be entered in the minutes of the court and shall be of like force and effect as other judgments or decrees of such court.

History.—§§4, 10, ch. 31122, 1879; RS 1233; GS 1662; §3, ch. 6495, 1913; RGS 2867; CGL 4564.

56.05 Appeals.—

(1) RIGHT TO AND HOW TAKEN.—Any party to such judgment or decree may appeal, as a judgment or decree may be reviewable by appeal therefrom, to the appropriate appellate court, and such appeal shall be taken and prosecuted in like manner, and with like effect, as appeals from the court making the reference, and subject to all the provisions of law applicable to such appeals.

(2) REVERSALS, ETC., OF JUDGMENT.—Upon the reversal or modification of such judgment or decree by the appellate court, the court from which the appeal was taken may refer the cause to the same or another referee, to be agreed upon by the parties, or may proceed with the same as in other causes before the court.

History.—§§5, 8, 9, ch. 6495, 1913; RS 1234; GS 1663; RGS 2868; CGL 4565; (2)r. §8, ch. 63-559.

56.06 Compensation of referee.—The referee shall receive five dollars for each day he shall sit to hear the cause, and shall receive like pay for not exceeding two days for deliberation and judgment after the cause is submitted for decision; ten cents per folio of one hundred words for reducing the testimony to writing, and in cases involving more than ordinary skill or labor on the part of the referee, such greater compensation as may be agreed upon by the parties or allowed by the court. His compensation and costs may be demanded by him after he shall have decided the cause, and he may withhold all the papers and records of the cause until his fees shall be paid, unless, after due notice to him and opportunity to be heard, it is otherwise ordered by the court.

History.—§2, ch. 6495, 1913; RS 1235; GS 1664; RGS 2869; CGL 4566.

56.07 Compensation of officers.—Officers performing services in and about such references shall receive the same compensation as for like services performed in the court making the reference.

History.—§1236 RS 1892; §1, ch. 4387, 1895; GS 1665; RGS 2870; CGL 4567.

CHAPTER 57

ARBITRATIONS; FLORIDA ARBITRATION CODE

57.01 Who may submit to arbitration.—All parties to any controversy before or after suit thereupon may make a rule of court of any arbitration to which they may desire to submit such controversy. Guardians and executors and administrators shall have such power in matters relating to the trusts committed to them respectively.

However, any party to a submission not made a rule of court may seek relief in the courts.

History.—§§1, 2, 8, 9, Nov. 17, 1828; RS 1221; GS 1650; RGS 2855; CGL 4552.

57.02 How arbitration made a rule of court.—An arbitration may be made a rule of court by the parties filing in the court which would have jurisdiction of the controversy if it were not submitted to arbitration, a statement in writing signed by each party of the agreement of matters to be submitted to arbitration, and the name of the arbitrator or arbitrators, and an umpire selected by them. The clerk of the court (or the court if it have no clerk) shall record said statement in the minutes of the court, and thereupon the arbitrator or arbitrators and umpire shall have the powers hereinafter specified.

History.—§§1, 2, Nov. 17, 1828; RS 1222; GS 1651; RGS 2856; CGL 4553.

57.03 Powers of arbitrators, and proceedings.—The arbitrator or arbitrators, and umpire appointed as aforesaid, shall, before entering upon the investigation of the matter submitted to them, be severally sworn before some judge or justice of the peace faithfully and diligently to execute the trust committed by the submission; and the examination of all witnesses before the said arbitrator or arbitrators or umpire shall be under oath, and if the parties themselves be examined such examination shall also be under oath, and in the presence of each other; and the said arbitrators or either of them shall be and they are hereby authorized and empowered to issue subpoenas to compel the attendance of witnesses under the same regulations as the clerks of the circuit courts of this state, which said subpoenas shall be served by the sheriff or any constable of the county, and shall be obeyed by the witnesses in the same manner as subpoenas issued from any court within this state.

History.—§7, Nov. 17, 1828; RS 1223; GS 1652; RGS 2857; CGL 4554.

57.04 Compensation of arbitrators, officers and witnesses.—The arbitrators and umpire shall be allowed for their services two and one-half dollars per day; the officers of the court the usual fee for similar services in the court of which the arbitration has been made a rule; and the witnesses shall be as provided in §90.14.

History.—§10, Nov. 17, 1828; RS 1224; GS 1653; RGS 2858; CGL 4555; §1, ch. 26964, 1951.

57.05 Form of award.—The award shall be in writing, signed by a majority of the arbitrators or arbitrators and umpire, shall state the adjudication in full, and shall be filed and recorded in the court of which the arbitration is a rule. And the clerk of such court (or the court, if it have no clerk) shall give notice of the entry of the award to the persons against whom the award is rendered.

History.—§1225 RS 1892; GS 1654; RGS 2859; CGL 4556.

57.06 Setting aside the award, time, application and manner.—Any party to an award may, within thirty days after notice of the entry of the award of record, apply to the court of which the submission is a rule, by motion, to set aside the award, on giving the opposite party or his attorney ten days' previous notice of such intended application and of the grounds on which the motion will be made.

History.—§4, Nov. 17, 1828; RS 1226; GS 1655; RGS 2860; CGL 4557.

57.07 Setting aside award; grounds.—An award of any arbitration duly appointed, made pursuant to the said submission, shall be set aside by the court only on the ground of fraud, corruption, gross negligence or misbehavior of one or more arbitrators or umpire who may

have signed the award, or of evident mistake acknowledged by the arbitrators or umpire.

History.—§3, Nov. 17, 1828; RS 1227; GS 1656; RGS 2861; CGL 4558.

57.08 Setting aside award; testimony.—The court upon the hearing of such motion shall require affidavit of the facts constituting the ground on which the motion is made, and shall also, if offered, receive affidavit on the other side; but no parol testimony shall be admitted on either side.

History.—§5, Nov. 17, 1828; RS 1228; GS 1657; RGS 2862; CGL 4559.

57.09 Arbitrations; judgment upon award.—If any award be entered of record, so much thereof as decrees the payment of money by either party shall have the force and effect of a judgment from the day of entering said award, upon which execution may be issued as in cases of judgment duly entered; and so far as the award relates to the performance of any other lawful act, the party failing to comply with said award shall be considered in contempt, and by the order of court shall be committed to prison, there to remain without bail until he shall comply with the order of the court in the premises.

History.—§6, Nov. 17, 1828; RS 1229; GS 1658; RGS 2863; CGL 4560.

57.10 Florida arbitration code.—Sections 57.10-57.31 may be cited as the "Florida arbitration code."

History.—§22, ch. 57-402.

57.11 Arbitration agreements made valid, irrevocable and enforceable; scope.—Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. Such agreement or provision shall be valid, enforceable and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.

History.—§1, ch. 57-402.

57.12 Proceedings to compel and to stay arbitration.—

(1) A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application.

(2) If an issue referable to arbitration under an agreement or provision for arbitration subject to this law becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1) of this section, such application shall be made in said court. Otherwise and subject to §57.28, such application may be made in any court of competent jurisdiction.

(3) Any action or proceeding involving an issue subject to arbitration under this law shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(4) On application the court may stay an arbitration proceeding commenced or about to be commenced, if it shall find that no agreement or provision for arbitration subject to this law exists between the party making the application and the party causing the arbitration to be had. The court shall summarily hear and determine the issue of the making of the agreement or provision and, according to its determination, shall grant or deny the application.

(5) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

History.—§2, ch. 57-402.

57.13 Appointment of arbitrators by court.—If an agreement or provision for arbitration subject to this law provides a method for the appointment of arbitrators or an umpire, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision.

History.—§3, ch. 57-402.

57.14 Majority action by arbitrators.—The powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration.

History.—§4, ch. 57-402.

57.15 Hearing.—Unless otherwise provided by the agreement or provision for arbitration:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than five days before the hearing. Appearance at the

hearing waives a party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his jurisdiction, have like powers and be subject to like limitations thereon.

The arbitrators, or umpire in the course of his jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his jurisdiction, to proceed promptly with the hearing and making of the award.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy.

History.—§6, ch. 57-402.

57.16 Representation by attorney.—A party has the right to be represented by an attorney at any arbitration proceeding or hearing under this law. A waiver thereof prior to the proceeding or hearing is ineffective.

History.—§6, ch. 57-402.

57.17 Witnesses, subpoenas, depositions.—

(1) Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(2) On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or him of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable.

(4) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

History.—§7, ch. 57-402.

57.18 Award.—

(1) The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his jurisdiction. They or he shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.

(2) An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his objection prior to the delivery of the award to him.

History.—§8, ch. 57-402.

57.19 Change of award by arbitrators or umpire.—On application of a party to the arbitration, or if an application to the court is pending under §§57.21, 57.22 or 57.23, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in paragraphs (a) and (c) of subsection (1) of §57.23, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of §§57.21-57.23.

History.—§9, ch. 57-402.

57.20 Fees and expenses of arbitration.—Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

History.—§10, ch. 57-402.

57.21 Confirmation of an award.—Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§57.22 and 57.23.

History.—§11, ch. 57-402.

57.22 Vacating an award.—
(1) Upon application of a party, the court shall vacate an award when:
(a) The award was procured by corruption, fraud or other undue means;
(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party;
(c) The arbitrators or the umpire in the course of his jurisdiction exceeded their powers;
(d) The arbitrators or the umpire in the course of his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of §57.15, as to prejudice substantially the rights of a party; or
(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under §57.12 and unless the party participated in the arbitration hearing without raising the objection;
But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
(2) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.
(3) In vacating the award on grounds other than those stated in paragraph (e) of subsection (1), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with §57.13, or, if the award is vacated on grounds set forth in paragraphs (c) and (d) of subsection (1), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with §57.13. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.
(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.
History.—§12, ch. 57-402.

57.23 Modification or correction of award.—
(1) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:
(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
(b) The arbitrators or umpire have awarded upon a matter not submitted to them or him and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.
(2) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.
(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.
History.—§13, ch. 57-402.

57.24 Judgment or decree on award.—Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.
History.—§14, ch. 57-402.

57.25 Judgment roll, docketing.—
(1) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:
(a) The agreement or provision for arbitration and each written extension of the time within which to make the award;
(b) The award;
(c) A copy of the order confirming, modifying or correcting the award; and
(d) A copy of the judgment or decree.
(2) The judgment or decree may be docketed as if rendered in a civil action.
History.—§15, ch. 57-402.

57.26 Application to court.—Except as otherwise provided, an application to the court under this law shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.
History.—§16, ch. 57-402.

57.27 Court, jurisdiction.—
(1) The term "court" means any court of competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.
(2) Any judgment entered upon an award by a court of competent jurisdiction of any state, territory, the Commonwealth of Puerto Rico or foreign country shall be enforceable by application as provided in §57.26 and re-

gardless of the time when said award may have been made.

History.—§17, ch. 57-402.

57.28 **Venue.**—Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.

History.—§18, ch. 57-402.

57.29 **Appeals.**—

(1) An appeal may be taken from:

(a) An order denying an application to compel arbitration made under §57.12;

(b) An order granting an application to stay arbitration made under §57.12(2)-(4).

(c) An order confirming or denying confirmation of an award;

(d) An order modifying or correcting an award;

(e) An order vacating an award without directing a rehearing; or

(f) A judgment or decree entered pursuant to the provisions of this law.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

History.—§19, ch. 57-402.

57.30 **Law not retroactive.**—This law applies only to agreements and provisions for arbitration made subsequent to the taking effect of this law.

History.—§20, ch. 57-402.

57.31 **Severability.**—If any provision of this law or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this law. In any action or proceeding in any state or territory of the United States, the Commonwealth of Puerto Rico, or any foreign country, this law and any agreement or provision to arbitrate made thereunder shall be classified as substantive within the meaning of that term in the conflict of laws; provided, however, that such substantive classification shall never be intended to derogate the public policy of such other jurisdiction.

History.—§21, ch. 57-402.

CHAPTER 58

COURT COSTS

58.01 Costs; security by nonresidents.—Whenever a complainant or plaintiff, who is a nonresident, shall commence a suit in any of the courts of this state, or whenever a complainant or plaintiff, after the institution of a suit, shall remove himself or his effects out of this state, it shall be the duty of himself, or his agent, or attorney, to file in the court in which said suit is brought a bond with approved security in the sum of one hundred dollars, conditioned for the payment of all costs and charges which may be adjudged against him in said suit; and, upon a failure to file such bond and security within thirty days after such commencement, or such removal, the defendant may, after thirty days notice to the plaintiff or his attorney (during which the plaintiff may file such bond), move to dismiss the suit for want of such security, or may hold the attorney bringing or prosecuting said suit liable for said costs and charges; and if they be adjudged against said plaintiff, an execution may issue against said attorney for the same.

History.—§8, Nov. 23, 1828; §4, Nov. 21, 1829; RS 1301; GS 1733; RGS 2948; CGL 4672.

58.02 Costs; taxing.—The clerks of the several courts, or the judge if there be no clerk, shall tax the costs accruing in each case when the same is determined or at the close of each term of the court, and shall keep a duplicate of the bill of costs on file among the original papers in the suit. In such bill each item of costs shall be enumerated.

History.—§ §5, 6, ch. 78, 1847; RS 1302; GS 1734; RGS 2949; CGL 4673.

58.03 Costs; record.—All officers of this state who are allowed to charge fees and costs shall keep a book in which they shall record an itemized account of all the costs and fees which they charge against parties having business with them. Said book shall be at all times open for inspection of parties wishing to examine the costs charged for any service rendered by said officer or officers.

History.—§ §1, 2, ch. 3252, 1881; RS 1303; GS 1735; RGS 2950; CGL 4674.

58.04 Costs; recovery from losing party.—In all cases the party recovering the judgment shall recover also all his legal costs and charges, which shall be included in the judgment; but this section shall not be construed to relate to executors or administrators in cases wherein by law they are not liable to costs of suit.

Such costs may be collected:

(1) By execution upon the judgment aforesaid: or

(2) By delivery to the sheriff of a taxed bill of costs approved by the judge of the court wherein the services have been rendered, which bill shall have the force and effect of an execution, and shall be collected by the sheriff as in other cases of execution.

History.—§71, Nov. 23, 1828; §7, ch. 73, 1847; RS 1304; GS 1736; RGS 2951; CGL 4675.

58.05 Costs; prohibition against unlawful exaction.—

(1) PROHIBITION.—No officer shall make two charges for the same official act or service, nor charge for any constructive service; and no fees shall be charged in any case, or for any official service performed or claimed to be performed by any officer within the state, unless said fees be expressly authorized and their amount be specified by law.

(2) PENALTY.—When any officer shall willfully charge or levy more than he is really entitled to, such officer shall forfeit and pay to the party injured four times the amount so unjustly claimed to be recovered on motion before the court wherein the services were rendered.

History.—§ §2, 8, ch. 73, 1847; § §3, 4, ch. 1535, 1866; RS 1305; GS 1737; RGS 2952; CGL 4676.

cf.—§38.06 Effect of acts where judge fails to disqualify himself.
§28.24 Fees of clerks of circuit court.
§839.11 Extortion and malpractice generally.

58.06 Costs; recovery of illegally exacted; procedure.—

(1) SUMMARY PROCEEDINGS.—Any person feeling aggrieved by any charge made for costs by any such officer shall have the correctness of the same determined by a court and jury, on giving five days' previous notice to the officer making such objectionable charge, stating in said notice the time and place when and where the same shall be inquired into; and it shall be the duty of the clerk of the court, or the judge if there be no clerk, before which such officer is notified to appear, to enter such cause for trial on the day specified in the notice aforesaid, and said cause shall be tried on that day unless postponed by the court.

(2) OATH OF JURY.—There shall be administered to the jury empaneled to try the legality of such charge, the following oath:

"You and each of you do solemnly swear that you will truthfully and faithfully examine whether in matter of controversy between

_____ and _____ _____, said _____ _____ has been guilty of extortion, and a true verdict render. So help you God."

(3) VERDICT AND JUDGMENT.—If the jury find for the plaintiff, they shall find the amount which has been improperly collected and thereupon the court in which such trial is had shall enter up judgment for four times the amount found by the jury as aforesaid, in favor of the plaintiff, on which judgment execution shall issue as in other cases.

History.—§ §4, 5, 6, Mar. 10, 1843; §2, ch. 73, 1847; RS 1305; GS 1737; RGS 2952; CGL 4676.

58.08 Costs; premium on surety bonds, etc.—If costs shall be awarded to either or any party in any civil cause at common law or in equity in any court of the state, then the reasonable premiums or expenses paid on all bonds or stipulations, or other security furnished in the said cause by the prevailing party in whose favor such costs are allowed, may in the discretion of the judge of the court be taxed and allowed as a part of the costs of the case.

History.—§1, ch. 16246, 1933; CGL 1936 Supp. 4680(1).

58.09 Costs; right to proceed in forma pauperis.—Insolvent and poverty stricken persons having actionable claims or demands existing in their favor, shall be entitled to receive the services of the serveral courts, sheriffs, clerks, and constables of the county in which they reside, without charge or cost to themselves, and no prepayment of cost to any judge, clerk, sheriff or constable in the county, shall be required in any action at law or in equity when the party has obtained a certification of insolvency from the clerk of the court in each action based upon affidavits filed with him to the effect that such applying party or plaintiff is insolvent and unable to pay the charges, costs or fees otherwise payable by law to any of the officers, provided that such affidavits shall be supported and accompanied by written certificate signed by a member of the bar of such county, to the effect that he has made an investigation to ascertain the truth of plaintiff's affidavit and that he believes same to be true; that he has investigated the nature of the plaintiff's claim or demand to be put in suit, and that in his opinion the same is meritorious as a matter of law, and that he has not been paid or promised payment of any fee or other remuneration for his service and intends to act as attorney for the plaintiff without charge or compensation. Provided further, upon the failure or refusal of the clerk of the court to issue a certificate of insolvency, the applicant shall be entitled to a review of his application for such certificate by the judge of the court wherein the cause of action shall lie.

Any sheriff or constable who in complying with the terms of this section, lays out or expends his own personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under the beneficent provisions hereof, may requisition the board of county commissioners of said county for the actual outlay or expense involved, and upon the submission to said board of county commissioners of appropriate proof of any such personal disbursement or expenditure, it shall be the duty of said board of county commissioners to pay from the general fund of said county to the requisitioning officer, the amount of his actual expense or cost so incurred as hereinabove defined.

In the event of plaintiff's recovery in any such suit or action, costs shall be taxed in his favor as otherwise provided by law notwithstanding the provisions of this section, and said costs when collected shall be applied to the payment of fees and costs which otherwise would have been required, and which have not been paid.

History.—§ § 1-3, ch. 17883, 1937; CGL 1940 Supp. 4680 (2); §15, ch. 29615, 1955; §1, ch. 57-251.

58.10. Costs; refunded to counties in certain proceedings relating to state convicts.—All lawful costs hereafter legally adjudged against and paid by any county in all lunacy proceedings and all criminal prosecutions against state convicts imprisoned at the state prison farm at Raiford, and in all habeas corpus cases brought to test the legality of the imprisonment of state prisoners imprisoned at the state prison farm at Raiford, shall be refunded to the county paying the sum from the general revenue fund in the state treasury in the manner and to the extent herein provided, to-wit: between the first and fifteenth of the month next succeeding the month in which any such cost has been allowed and paid by the county, the clerk of the circuit court of the county shall make requisition upon the comptroller for all such costs so allowed and paid during the preceding month, giving the style of the cases in which the said cost was incurred, the amount and items of cost in each case, a certified copy of the judgment of the court adjudging the cost against the county, which said requisition shall show that the cost represented thereby has been paid by the county and shall be verified by the oath of said clerk, and to which shall be attached a certified copy of the cost bill or bills as approved and allowed by the board of county commissioners of the county, and if the comptroller shall find the same to be legal in all respects and to have been legally adjudged against and paid by the county, he shall thereupon draw his warrant therefor in the amount thereof, or in such amount as he shall have found to be legal and legally adjudged against and paid by the county, which warrant or warrants shall be in favor of the county so paying said costs, and upon presentation shall be paid by the state treasurer from the general revenue funds of the state.

History.—§1, ch. 19272, 1939; CGL 1940 Supp. 8489(1).

58.11 Costs in supreme court; certain not taxable.—The costs of copies of the record of any paper on file in the supreme court shall not be taxed as costs against the losing party

unless such copies have been ordered by him or his attorney.

History.—§5, ch. 1137, 1861; RS 1340; GS 1775; RGS 2999; CGL 4733.

58.12 Costs in supreme court; execution.—On the rendition of any judgment or decree in the supreme court for costs, the clerk, as soon as may be by the rules of court, shall issue execution in accordance with the terms of said judgment or decree, directed to all and singular the sheriffs of the state, and returnable in ninety days from the date of the issuance thereof.

History.—§6, ch. 1137, 1861; RS 1341; GS 1776; RGS 3000; CGL 4734.

58.13 Court costs; expenses of court reporter.—The court may in its discretion allow as taxable costs in a civil action expense of the court reporter for per diem, transcribing proceedings of the court and depositions.

History.—§1, ch. 29689, 1955.

CHAPTER 59

APPELLATE PROCEEDINGS, GENERALLY

(See Art. V, state constitution for jurisdiction of various appellate courts.)

59.01 Appellate proceedings; method of review; application of chapter.—

(1) APPEALS TO SUPREME COURT.—This chapter shall be applicable to appeals to the supreme court of Florida, except where inconsistent with supreme court rules, which rules shall apply in case of inconsistency.

(2) OTHER APPEALS.—This chapter shall also be applicable:

(a) As a uniform alternative method of taking appeals from orders of state boards, commissions, and other bodies, where appeals from such orders are permitted by law; and,

(b) To appeals from inferior courts, to courts other than the supreme court.

(3) WRIT OF ERROR ABOLISHED; APPEAL SUBSTITUTED.—Review in this state by writ of error is abolished. All relief heretofore obtainable by writ of error may hereafter be obtained by appeals as in equity.

(4) APPEAL AS A MATTER OF RIGHT.—Appeals, except where otherwise expressly provided by law, shall be a matter of right.

(5) METHOD OF REVIEW.—All proceedings for review, from a lower court to the proper appellate court, shall be by appeal, except where certiorari lies, or where otherwise expressly provided by law.

(6) RETURN DAYS ABOLISHED.—Return days for appeals are abolished. The date upon which the record is filed in the appellate court shall be the date from which the time for filing motions, briefs, and other pleadings shall commence to run.

(7) FILING RECORD; LIMITATION.—The record on appeal shall be filed in the appellate court within forty days from the filing of the notice of appeal, unless extended by the trial court, or by the appellate court or a member thereof. Provided, however, that extensions in excess of ten days shall not be granted without notice to the adverse party.

(8) NOTICE OF APPEAL.—The filing of the notice of appeal, with the clerk of the trial court, or judge if there be no clerk, shall give the appellate court jurisdiction of the subject matter and parties to the appeal; however, such notice shall be recorded in the minutes of the trial court, but such recording is not jurisdictional.

(9) FORM OF NOTICE.—The form of such notice of appeal may be prescribed by the supreme court. The notice of appeal may include assignments of error in brief form.

(10) APPLICATION OF CHAPTER.—The provisions of this chapter shall extend to appeals from state boards, commissions, and other bodies, and the following words, except where the context otherwise requires, shall be construed as follows:

(a) "Trial court" or words of similar import include the state board, commission or other body from which an appeal may be taken; and,

(b) "Clerk of the trial court" includes the clerk, secretary or similar officer of the state board, commission or other body from which an appeal may be taken.

History.—§1, Feb. 11, 1832; §1, ch. 4528, 1897; RS 1262, 1455; GS 1690, 1906, 1911; RGS 2900, 3167, 3172; CGL 4605, 4959, 4964; § §67.01, 67.06 consolidated with this section by §1, ch. 22854, 1945; (5) §10, ch. 26484, 1951; (2) §1, ch. 29728, 1955.

59.02 Appeals; from what judgments, decrees, orders, etc., allowed.—

(1) COMMON LAW APPEALS.—Appeals in cases at law lie only from final judgments, except as specified in §§59.03, 59.04 and 59.05.

(2) EQUITY APPEALS.—Appeals in cases in equity lie only from final decrees, except as specified in subsection (3) of this section.

(3) INTERLOCUTORY ORDERS AND DECREES IN EQUITY.—Review of interlocutory orders and decrees in equity, including those after final decree, may be by proceedings in the nature of certiorari in the supreme court. This subsection shall not be construed as precluding the review of such orders and decrees on appeal from the final decree, if found more expedient. The supreme court may by rule regulate proceedings under this subsection.

(4) ORDERS OF STATE BOARDS, COMMISSIONS, AND OTHER BODIES.—Appeals from orders of state boards, commissions, and other bodies, except where otherwise expressly provided by law, shall lie only from such orders as are final in their nature.

History.—§3, ch. 521, 1852; RS 1263, 1457; §1, ch. 4130, 1893; GS 1691, 1908; RGS 2901, 3169; CGL 4606, 4961; §67.02 consolidated with this section by §2, ch. 22854, 1945.

59.03 Appeal from rule of court.—Every rule or summary order of court to any of its officers, their sureties or deputies, which is, in effect, a judgment for the payment of money or other things, shall be construed a final judgment or decree from which an appeal may be taken.

History.—§2, Feb. 17, 1833; RS 1264; GS 1692; RGS 2902; CGL 4607; §3, ch. 22854, 1945.

59.04 Appeal from order granting new trial.—Upon the entry of an order granting a new trial, the party aggrieved may, without waiting for final judgment, prosecute an appeal to the proper appellate court, which, if the cause be reversed, may direct that final judgment be entered in the trial court for the party obtaining the verdict, unless motion in arrest of judgment or for judgment non obstante veredicto be made and prevail.

History.—§1267 RS 1892; GS 1695; RGS 2905; CGL 4615; §4, ch. 22854, 1945.

59.05 Appeal from order of nonsuit.—When, because of any decision or ruling of the court on the trial of a cause, it becomes necessary for the plaintiff to suffer a nonsuit, he may appeal therefrom, and the facts, points, rulings, and decisions may be preserved for review, by the appellate court, as in other cases.

History.—§1, ch. 3538, 1885; RS 1269; GS 1697; RGS 2907; CGL 4517; §5, ch. 22854, 1945.

59.06 Matters reviewable on appeal.—

(1) WHAT MAY BE ASSIGNED AS ERROR.—All judgments, decrees and orders made and passed in any cause wherein the trial court:

(a) May allow, or refuse to allow, any motion,

1. For a new trial or rehearing,
2. For leave to amend pleadings,
3. For leave to file new or additional pleadings,
4. To amend the record during the term, or,
5. For continuance of the cause; or,

(b) Shall sustain or overrule any demurrer or motion to dismiss the cause;

may be assigned for matter and cause of error upon any appeal from the final judgment, decree or order in the cause. The appellate court shall hear and determine the matter so assigned in the same manner and under like rules and regulations as in other causes.

(2) EFFECT OF PLEADING OVER OR AMENDING.—Pleading over, or amending pleadings, after judgment on demurrer, or order upon motion to dismiss, shall not waive the right to have reviewed, as aforesaid, such judgment, decree or order.

History.—§1, ch. 521, 1853; §1, ch. 3430, 1883; RS 1265; GS 1693; RGS 2903; CGL 4608; §6, ch. 22854, 1945.

59.07 Exceptions unnecessary.—

(1) ADVERSE RULINGS.—Upon all appellate proceedings the appellate court shall review, without exception having been taken at the trial, any question of law involved in any adverse ruling, order, instruction or thing whatsoever said or done at the trial or prior thereto or after verdict, which thing was said or done after objection made and considered by the trial court, and which affected the substantial rights of the party complaining and which is assigned as error and thereupon the appellate court may reverse, affirm or modify the judgment, decree or order appealed from, and may set aside, affirm, or modify any and all the proceedings, decree or order, and may, if proper, order a new trial or rehearing.

(2) JURY INSTRUCTIONS.—It shall not be necessary for a party to object to the giving of any charge by the court or to the refusal to give any charge requested in writing.

(3) ORDERS ON NEW TRIAL, DIRECTED VERDICTS, NONSUITS, ETC.—In order to entitle the party against whom such ruling is made to have the same reviewed by the appellate court, it shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts, nonsuits, or judgments non obstante veredicto.

(4) NEW TRIALS, REVIEW OF ORDER GRANTING.—In every case in which the trial court shall enter an order granting a motion for a new trial, the trial judge shall indicate in the order granting said motion the particular ground or grounds upon which said motion was granted, and upon appeal from any such order, if taken under the statutes providing for appeal from orders granting new trials, no other grounds than those specified by the trial judge, as a basis for the order granting the new trial,

shall be considered as arguable upon said appeal.

History.—§2, ch. 521, 1853; RS 1266; GS 1694; RGS 2904; CGL 4609; §7, ch. 22854, 1945.

59.08 Time for taking appeals or filing petitions for certiorari.—Appeals, including petitions for review by certiorari, or proceedings in the nature of certiorari, shall be taken or filed within sixty days from and after the entry of the order, decision, judgment, or decree appealed from.

History.—§10, Feb. 10, 1832; RS 1271, 1456; §1, ch. 4130, 1893; GS 1699, 1907; RGS 2909, 3168; CGL 4619, 4960; §1, ch. 20441, 1941; §67.03 consolidated with this section by §8, ch. 22854, 1945.

59.09 Payment of costs by plaintiff.—No appeal may be taken by the original plaintiff in any suit or proceeding until he shall pay all costs which have accrued, in or about the suit, up to the time the appeal is taken.

History.—§7, Feb. 10, 1832; §1, Feb. 12, 1836; RS 1270; GS 1698; §1, ch. 5638, 1907; RGS 2908; CGL 4618; §9, ch. 22854, 1945.

59.10 Service of notice of appeal to supreme court.—Where the appeal is to the supreme court no actual service of notice of appeal shall be necessary.

History.—§1, ch. 4529, 1897; GS 1704; RGS 2914; CGL 4624; §10, ch. 22854, 1945.

59.11 Service of notice of appeal to other courts.—Where the appeal is to a court other than the supreme court, a copy of the notice of appeal shall be served upon appellees, or their attorneys of record, who appeared in the trial court.

History.—§9, Feb. 10, 1832; RS 1273; GS 1702; RGS 2912; CGL 4622; §11, ch. 22854, 1945.

59.12 Service of notice of appeal.—

(1) Where a copy of the notice of appeal is required to be served upon the appellees it may be served:

(a) *WITHIN THIS STATE.*—Within this state in the same manner as summons ad respondendum, or by delivering a copy to the said appellees or their attorney of record, or by United States mail; and,

(b) *WITHOUT THIS STATE.*—Without this state, by registered United States mail, or by publishing the same in some newspaper published in the county where the appellate court is located once during each week for four consecutive weeks (four publications being sufficient).

(2) Proof of service may be by official return, affidavit, return of registry receipt, or acknowledgment of service.

History.—§9, Nov. 12, 1828; §1, Feb. 17, 1883; RS 1274; GS 1703; RGS 2913; CGL 4623; §12, ch. 22854, 1945.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

59.13 Supersedeas or stay.—

(1) MOTION AND ORDER FOR.—Every appeal shall operate as a stay or supersedeas under the following conditions. The appellant shall, at any time prior to filing his record on appeal, apply to the trial court for a good and sufficient bond payable to the adverse party, the amount and conditions of which shall be fixed by the trial court. If the appeal is from a money judgment or decree, the stay or supersedeas shall be as of right on posting the bond.

(2) "GOOD AND SUFFICIENT BOND" DEFINED.—A "good and sufficient bond" means a bond with a principal and two good and sufficient personal sureties, or one surety if a surety company authorized to do business in the state, when approved by the clerk or judge of the trial court, or by an officer authorized by the order granting the stay or supersedeas.

(3) FOR RECOVERY OF MONEY NOT SECURED.—When the judgment, order or decree requires or provides unconditionally for the payment or recovery of money, the bond shall be payable to the adverse party, conditioned to satisfy the judgment or decree or any modification not increasing the amount thereof, in full including costs, interest (if chargeable), and damages for delay, in event the appeal be dismissed or the judgment, order or decree is affirmed.

(4) FOR RECOVERY OF MONEY OTHERWISE SECURED.—When the judgment, order or decree is for the recovery of money otherwise secured, the bond shall be conditioned to pay costs on appeal, interest (if legally chargeable), and damages for delay, together with such other and further conditions as shall be fixed by the court.

(5) OTHER THAN FOR MONEY.—If the judgment or decree is, in whole or in part, other than a money judgment, the amount and condition of the bond shall be determined by the trial court, and the elements to be considered in fixing the amount and conditions of such bonds shall be the costs of the action, costs of the appeal, interest (if chargeable), damages for delay, use, detention, and depreciation of any property involved.

(6) REVIEW OF ORDER, WHEN ARBITRARY OR UNREASONABLE.—In any event, if the bond required is deemed to be arbitrary or unreasonable or such as is for any reason not proper, it may be reviewed, modified or discharged by the appellate court on motion; provided, ample notice thereof be given to the adverse party.

(7) CERTIORARI.—When it shall be made to appear to the trial court that a petition for certiorari has been or is about to be applied for in the appellate court, such trial court may grant a supersedeas or stay upon petitioner giving a good and sufficient bond, conditioned that such petition shall be duly presented to the appellate court within twenty days and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, together with such other and further conditions as may be fixed by the trial court, in event the order or judgment of which a review is sought is not quashed, modified or reversed.

(8) JUDGMENT AGAINST SURETY.—By entering into a supersedeas or stay order bond, given pursuant to this or any other statute, or order of court, the surety submits himself to the jurisdiction of the trial court. After motion and citation his liability may be enforced without the necessity of an independent action. Provided, however, that this provision shall not be

applicable to state boards, commissions and other bodies from which an appeal may be taken.

(9) APPELLATE COURT MAY GRANT.—Nothing herein shall be construed as denying the appellate court jurisdiction to grant supersedeas in like manner as the trial court.

History.—§ § 1, 2, Feb. 10, 11, 1832; §1, Feb. 12, 1836; § § 3, 4, ch. 521, 1853; RS 1272, 1458; §1, ch. 4917, 1901; GS 1701, 1909; RGS 2911, 3170; CGL 4621, 4962; §§67.04, 67.05 consolidated with this section by §13, ch. 22854, 1945.

59.14 Supersedeas bond not required of the state and its political subdivisions and their boards, commissions, etc.; security when required.—

(1) WHEN SECURITY NOT REQUIRED.—When the state or any of its political subdivisions, or any officer, board, commission, or other public body of the state or any of its political subdivisions, in a purely official capacity, takes an appeal, the filing of the notice of appeal shall perfect the same and stay the execution or performance of the judgment, decree, or order appealed from, and no supersedeas bond need be given unless expressly required by the appellate court.

(2) APPELLATE COURT MAY REQUIRE BOND.—The appellate court may, on motion for good cause shown, require a supersedeas bond or other security, in such amount, form and manner as it may prescribe as a conditon for the further prosecution of the appeal.

(3) EXECUTION OF BOND WHEN REQUIRED.—When a supersedeas bond is required by the appellate court as aforesaid, or where an appeal, or other proceeding, is taken in any court wherein the above exemption is not applicable, and where there is no court rule or otherwise exempting such parties from giving supersedeas, cost or other required bond, such parties are authorized to make and execute such required bond, with a corporate surety thereon duly licensed to do business in this state. Premium or other cost for the said bond may be paid from the general necessary and regular appropriation of the party taking the appeal, if the state or any of its officers, boards, commissioners or other agencies, and from the county general fund, school general fund, or otherwise as the case may be, if a political subdivision of the state or any of their officers, boards, commissions or other agencies. The officers of the state and its political subdivisions, and the executive officers of their boards, commissions, and other agencies aforesaid, are authorized to make and execute such bonds in behalf of such parties.

History.—§1, ch. 19172, 1939; CGL 1940 Supp. 4621(1); §1, ch. 22027, 1943; §14, ch. 22854, 1945.

cf.—§§64.03, 64.04, Injunctions, original proceedings in supreme court, without bond.

59.15 Bills of exceptions abolished; reporter's transcript; what record consists of.—

(1) BILLS OF EXCEPTIONS ABOLISHED.—For appellate purposes, under this chapter, bills of exceptions and the formal authentication thereof are abolished.

(2) REPORTER'S TRANSCRIPT.—When any proceeding in the trial court has been stenographically reported, the court reporter shall, within the time for filing directions by appellant or within such further time as may be allowed by the trial court, file a certified copy of his transcribed notes with the clerk of the trial court, or with the judge if there be no clerk, for use in preparing the record on appeal. The clerk, or judge if there be no clerk, shall not be required to verify, nor shall he make any charge for, any such copy when physically incorporated in the transcript. The trial court shall, at all times, have power to make the said report speak the truth.

(3) REPORTER'S TRANSCRIPT; REQUIREMENTS.—Every reporter's transcript shall comply with the requirements, by statute, court rule or otherwise, for the transcript of record.

(4) PROCEEDINGS IN PAIS; AUTHENTICATION.—Proceedings in pais, not stenographically reported, may be authenticated by recitals in orders, judgments, or decrees, of the trial court, or of the judge thereof, or by a stipulation by the interested parties.

(5) WHAT RECORD CONSISTS OF.—All pleadings, motions, exhibits and other papers and instruments properly filed in a cause, and upon which an assignment of error is founded, shall be considered a part of authentication.

History.—§68, Nov. 23, 1828; §1, ch. 138, 1848; RS 1268; GS 1696; §10, ch. 7838, 1919; RGS 2906; CGL 4616; §15, ch. 22854, 1945.

59.16 Stipulated record on appeal.—When the questions presented by an appeal may be determined without the examination of the entire record in the trial court, the interested parties may prepare and sign a statement of the cause showing how the questions arose and were decided, setting forth only so many of the facts averred and proved, or sought to be proved, as are deemed essential to a decision of the questions in the appellate court, together with any assignments of error relied on by the parties. Such stipulated record, when certified by the clerk, or judge if there be no clerk, and transmitted to the appellate court shall constitute the entire record on appeal.

History.—§1, ch. 12019, 1927; CGL 4610; §16, ch. 22854, 1945.

59.17 When books, documents, etc., may be certified for inspection.—With the approval of the trial court, voluminous books, documents, and instruments produced in evidence may be certified to the appellate court for inspection as original exhibits in the manner prescribed by §59.28. In such cases it is unnecessary to copy such books, documents, and instruments into either the reporter's transcript or the transcript of record. The books, documents, and instruments shall be returned to the trial court upon the final determination of the cause in the appellate court.

History.—§2, ch. 12019, 1927; CGL 4611; §17, ch. 22854, 1945.

59.18 Improper inclusion of matter in record or reporter's transcript; effect.—Any pleading, motion, document, proceeding or other matter which is included in the reporter's transcript when it should be exhibited by the record

proper, and any pleading, motion, document, proceeding or other matter which is included in the record proper when it should be exhibited by the reporter's transcript, shall be considered by the appellate court with the same force and effect as if it had been properly exhibited; provided, however, the same appears in the record in the appellate court so that it may be definitely identified and is so exhibited as to import authenticity.

History.—§3, ch. 12019, 1927; CGL 4612; §18, ch. 22854, 1945.

59.19 Reporter's transcript; amendments.—Any reporter's transcript may be amended by the trial court, upon reasonable notice and a showing of good cause, at any time before the transcript is filed in the appellate court, or with leave of the appellate court after the transcript has been so filed.

History.—§1, ch. 12018, 1927; CGL 4614; §19, ch. 22854, 1945.

59.20 Repetition in record prohibited.—In all cases where any assignment of error, document or other pleading shall appear, at any place in the transcript, it shall not be repeated or duplicated therein, but shall be designated by appropriate reference where it reappears.

History.—§4, ch. 12019, 1927; CGL 4613; §20, ch. 22854, 1945.

59.21 Transcript of record; preparation by attorney.—Whenever an appeal shall have been entered to any court where a certified transcript of the record in the trial court is required to be filed, it shall be lawful for any attorney at law representing the appellant to prepare the transcript, for certification by the clerk, in the manner required by statute and rules of court.

History.—§1, ch. 9281, 1923; CGL 4627; §21, ch. 22854, 1945.

59.22 Transcript of record; certification by clerk.—After the transcript of record is prepared by an attorney as provided in §59.21, the original thereof shall be presented to the clerk of the trial court, or to the judge if there be no clerk, for certification in the manner provided by statute and court rule.

History.—§2, ch. 9281, 1923; CGL 4628; §22, ch. 22854, 1945.

59.23 Transcript of record; duties and obligations of clerk.—When a transcript of record, prepared and presented to the clerk for certification as provided in §§59.21 and 59.22, is presented to the clerk of the trial court, or to the judge if there be no clerk, it shall be his duty to carefully compare the same with the original record in the cause, correct any errors and verify the same. When corrected and verified, said transcript of record shall be certified, by said clerk or judge, in accordance with the requirements of the statutes and rules of court, and forthwith delivered to the appellant or his attorney, upon the payment of the compensation provided by law.

History.—§3, ch. 9281, 1923; CGL 4629; §23, ch. 22854, 1945; §6, ch. 29749, 1955.

59.26 Refusal of clerk to verify and certify.—Any clerk, or judge if there be no clerk, who shall wilfully fail or refuse to examine, correct, verify, and certify any transcript of record, prepared and presented to him for certification as provided in §§59.21-59.23, shall be deemed in contempt of the appellate court to which the appeal is taken and may be required, by a rule of said court, to forthwith comply with the terms and requirements of this chapter.

History.—§5, ch. 9281, 1923; CGL 4631; §26, ch. 22854, 1945.

59.27 Filing record in appellate court and proceedings thereon.—

(1) Whenever a transcript of the record in the lower court shall be required in the appellate court, it shall be the duty of the appellant to demand from the clerk of the trial court, or the judge if there be no clerk, a true and correct transcript of so much of the record as is required for the appeal, and file said transcript in the appellate court within the time provided by law or rule of court for the filing thereof.

(2) If the appellant fails to procure and file the transcript of record as aforesaid, the appellate court shall, unless good cause be shown, dismiss the appeal upon the production, by the adverse party, of a certificate by the clerk of the trial court, or the judge if there be no clerk, showing that an appeal has been taken and the date when taken.

(3) Upon receipt of the mandate of the appellate court, or upon receipt of a certified copy of the order dismissing the appeal and the expiration of the time for petitioning the appellate court for a rehearing without the filing of such a petition, or the denial of such petition if filed, the trial court shall proceed to enforce the judgment, order, or decree appealed from, and issue execution for costs and damages which may have been adjudged by the appellate court.

(4) If the appeal be to an appellate court other than the supreme court, from a trial court in the same county wherein the appellate court is located, no transcript of the proceedings and record in the trial court shall be required, but may be used at the option of the appellant, but in lieu thereof the clerk of the trial court, or the judge if there be no clerk, shall, upon written request of the appellant or of the appellee, deliver the complete original file, or such portions thereof as may be designated in writing by the parties, to the clerk of the appellate court, taking a receipt for the same, which record may be used for said appeal. Upon the final disposition of the cause by the appellate court the said original file shall be returned by the clerk of the appellate court to the trial court.

History.—§4, Feb. 10, 1832; RS 1275; GS 1705; RGS 2915; CGL 4625; §27, ch. 22854, 1945.

59.28 Transmission of exhibits to appellate court.—Whenever the judge of the trial court shall certify that, in his opinion, it is necessary that the appellate court should have before it for consideration on such appeal any original paper, book, document, map, picture, photograph, or exhibit of any kind whatsoever, offered or received in evidence at the trial of such cause, it shall be the duty of the clerk of the trial court, or the judge if there be no clerk, to transmit the same to the clerk of the

appellate court with his certificate that such exhibit is the identical exhibit offered or received in evidence at the trial. It shall be the duty of the appellate court, in considering such appeal, to examine such exhibit, so transmitted, in determining the correctness of the trial court in receiving or excluding the same from evidence; in determining the sufficiency or insufficiency of the evidence to support the verdict; in determining the correctness of the trial court in granting or refusing a new trial; or in affirming or reversing the judgment of the lower court, just as fully as though the same were incorporated in a transcript of record.

History.—§1, ch. 9168, 1923; CGL 4626; §28, ch. 22854, 1945.

59.281 Original records as appellate transcript.—When it appears practicable, the circuit judges are hereby authorized to forward the original file or such parts as are designated by opposing counsel on directions and cross directions, (or by stipulation) to the supreme court without the necessity of preparing a new and appellate transcript. This section is designed to eliminate unnecessary costs and duplication of cumbersome appellate records and is cumulative to all other laws on appellate records. The supreme court is authorized to promulgate all rules pertaining to this section.

History.—§1, ch. 28087, 1953.

59.29 Amendment of appellate proceedings.—The appellate court may, at any time, in the furtherance of justice, upon such terms as may be just, permit appellate proceedings to be amended.

History.—§2, ch. 11890, 1927; CGL 4636; §29, ch. 22854, 1945.

59.30 Dismissal; want of proper parties as grounds.—No appeal shall be dismissed for want of proper parties if the notice of entry of appeal shall identify with reasonable certainty the judgment or decree sought to be reviewed. In case of numerous parties it shall be sufficient designation to identify the cause by its usual title in the inferior court and the abbreviation "et al." may be used to designate parties other than those expressly named. To this end the proceedings upon appeal shall be taken and considered as a step in the cause.

History.—§1, ch. 11890, 1927; CGL 4635; §30, ch. 22854, 1945.

59.31 Dismissal for error not insisted upon.—No cause shall be dismissed by an appellate court for any defect or omission not insisted upon by the adverse party.

History.—§2, ch. 11890, 1927; CGL 4636; §31, ch. 22854, 1945.

59.32 Dismissal; reinstatement of dismissed causes.—

(1) Whenever an appeal is taken to an appellate court, and the same is dismissed, or a motion to dismiss the same is made, because of any defective certificate of the clerk of the trial court, or the judge if there be no clerk, the same shall be reinstated upon the said docket, if dismissed, or the motion to dismiss shall be denied, if, within thirty days from the date of notice of such dismissal, or motion to dismiss, as the case may be, a proper certificate be tendered and filed; and,

(2) In every case where it shall appear to the appellate court that a reporter's authenticated transcript is actually incorporated into the transcript of the record, said court shall have authority to recognize and consider such reporter's transcript in the furtherance of justice, notwithstanding it may appear that such transcript was not properly filed in the lower court and notwithstanding any other alleged or apparent defect in the procedure by which such transcript was made up and filed; provided, that said appellate court is satisfied that such transcript fairly and truly reflects the matters in pais transpiring in the lower court in such case, notwithstanding the manner or means by which the same was brought into being.

History.—§1, ch. 5898, 1909; RGS 2917; §1, ch. 12322, 1927; CGL 4634; §32, ch. 22854, 1945.

59.33 Quashing appeals; power of appellate court.—Appellate courts shall have power to quash appeals in all cases in which appeals do not lie, or where they are taken against good faith or merely for delay, and may decree in such case damages against the appellant not exceeding ten per cent.

History.—§13, Feb. 10, 1832; §50, ch. 1096, 1861; RS 1279; GS 1709; §13, ch. 5898, 1909; RGS 2920; CGL 4639; §33, ch. 22854, 1945.

59.34 Judgment; duty of appellate court in its determination of causes.—The court, on an appeal, shall examine the record, and reverse or affirm the judgment, sentence or decree of the court below; give such judgment, sentence, or decree as the court below should have given; or otherwise as to it may appear according to law.

History.—§5, Feb. 10, 1832; RS 1277; GS 1707; §5, ch. 5898, 1909; RGS 2918; CGL 4637; §34, ch. 22854, 1945.

59.35 Judgment; power of appellate court to direct a new trial upon one or more issues.—An appellate court may, in reversing a judgment of a lower court brought before it for review by appeal, by the order of reversal, if the error for which reversal is sought is such as to require a new trial, direct that a new trial be had on all the issues shown by the record or upon a part of such issues only. When a reversal is had, with direction for new trial on a part of the issues, all other issues shall be deemed settled conclusively in favor of the appellee.

History.—§1, ch. 6467, 1913; RGS 2921; CGL 4640; §35, ch. 22854, 1945.

59.36 Mandate; opinion of appellate court to accompany.—It shall be the duty of the clerk of the appellate court, in all cases wherein the judgment or decree of the lower court shall be reversed or modified, in which it shall write an opinion, to send down with the mandate, a correct copy of said opinion. The clerk of the trial court shall file such copy in the records and files of the case, same to become a part thereof.

History.—§1, ch. 5899, 1909; RGS 2922; CGL 4641; §36, ch. 22854, 1945.

59.37 Mandate; judgment of appellate court may be certified to lower court and there enforced.—The appellate court may order that the record of the judgment or decree appealed from, with its decision and determination thereon in writing duly certified, be remitted to the court, from which the appeal was taken; and said decision and determination shall be carried into execution, by the officers of the lower court, a quo, or the appellate court may award execution to carry into effect its decision and determination.

History.—§6, Feb. 10, 1832; RS 1278; GS 1708; §6, ch. 5898, 1909; RGS 2919; CGL 4638; §37, ch. 22854, 1945.

59.38 Appeals and supersedeas in guardianship proceedings.—The provisions of the probate laws of Florida concerning appeals and supersedeas, as set forth in chapter 732, shall govern appeals and supersedeas in guardianship matters in the county judge's court. However, no appeal from an order revoking a guardianship and restoring property to the ward shall operate as a supersedeas.

History.—§1280 RS 1892; GS 1710; RGS 2923; CGL 4642; §38, ch. 22854, 1945.

59.41 Stipulation as to transcript and what it includes.—In appeals the parties may stipulate and agree in writing what portions and parts of the papers and testimony shall be included in the record to be furnished the appellate court for the determination of said cause; provided, that the judgment, decree, or order appealed from shall, in every case, be included in full in the record.

History.—§1, ch. 7355, 1917; RGS 3174; CGL 4966; tr. from 67.08 §41, ch. 22854, 1945.

59.42 Certified questions.—

(1) WHEN CERTIFIED.—When it shall appear to a judge of the circuit court that there is involved in any cause pending before him questions or propositions of law that are determinative of the cause and are without controlling precedent in this state, and it is made to appear that instruction from the supreme court would facilitate the proper disposition of the cause, the circuit court may promptly, on its own motion or on motion of either party, certify said question or proposition of law to the supreme court for instruction.

(2) LIMITATIONS ON.—Only questions or propositions of law that can be answered without regard to other issues may be so certified and they must be definitely and concisely stated. The certificate will not be employed in a way to affect the jurisdiction of the supreme court or the circuit court but will be limited to those cases in which it will facilitate the final disposition of the cause.

(3) CONTENTS OF CERTIFICATE.—The certificate shall contain the style of the case, a "Statement of Facts" showing the nature of the cause and the circumstances out of which the questions or propositions of law arise, and the "Questions" of law to be answered.

(4) PREPARATION OF CERTIFICATE.—The certificate may be prepared by stipulation as provided by rules of the supreme court or as directed by the circuit judge, upon due notice. When so prepared and signed by the judge, it shall be endorsed and certified to the supreme court by the clerk of the circuit court under his official seal.

(5) COSTS OF CERTIFICATE.—If sufficient reason therefor is shown, the supreme court may require the entire record to be sent up and decide the controversy as if it were on appeal. The costs of the certificate shall be equally divided unless otherwise ordered by the supreme court. If the entire record is sent up and decision rendered as on appeal, costs may follow the general rule.

(6) BRIEFS AND ARGUMENT.—When the certificate is filed in the supreme court, briefs shall be filed within fifteen and ten days unless otherwise directed. Oral argument may be granted on application as in other cases.

History.—§42, ch. 22854, 1945.

59.43 Application of chapter.—This chapter shall govern appellate review and proceedings in all courts and cases, including appellate proceedings from boards, commissions, and other bodies where provided for by law, where not otherwise expressly provided, and where otherwise provided may be used as an alternative method of review.

History.—§43, ch. 22854, 1945.

59.44 Chapter considered court rules.—This chapter and all amendments hereof hereafter made, shall be considered as rules of court, and may be changed, amended, repealed, or superseded by rules adopted by the supreme court of this state.

History.—§44, ch. 22854, 1945.

59.45 Misconception of remedy; supreme court.—If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the supreme court.

History.—§1, ch. 23826, 1947.

CHAPTER 62

GENERAL CHANCERY JURISDICTION AND PROCEDURE

62.01 Circuit court sitting in chancery always open.—The circuit courts, sitting in chancery, shall always be kept open for the issuing and return of process, making, hearing, and deciding motions, presenting, arguing and deciding upon petitions, granting injunctions and passing interlocutory and final decrees and orders. And all action in said matters in vacation shall have the same force and effect as if done in term time.

History.—§1, Nov. 7, 1828; §6, ch. 521, 1853; RS 1407; GS 1859; RGS 3104; CGL 4888.

62.02 Venue of suits in chancery; same as at law.—All provisions of law governing locality of actions at law shall, when they can be made applicable, govern those in chancery.

History.—§1408 RS 1892; GS 1860; RGS 3105; CGL 4889.
cf.—§§46.01-46.06, Venue of actions, generally.

62.03 Venue of receiverships when property in more than one circuit.—Whenever an application shall be made for the appointment of a receiver to take charge of either real or personal property, or both, and the property is situated in more than one of the judicial circuits of the state, the court in appointing said receiver shall have jurisdiction over the entire property for the purposes of that suit. Provided, that the application for appointment of the receiver must be made to the judge of a judicial circuit in which the principal or main place of business, residence or office of the defendant is situated; and the court to which such application is made shall have exclusive jurisdiction thereof, and any action on the application by the said court, either affirmative or negative, shall be final, subject, however, to a right of appeal.

History.—§1, ch. 4986, 1901; GS 1861; RGS 3106; CGL 4890.

62.05 Infants; unknown, insane or incompetent parties; procedure in suits against; guardian ad litem.—In any chancery suit wherein an infant, insane or incompetent person or person whose name is unknown to the plaintiff, is a party defendant, a guardian ad litem for such defendant may answer on his behalf forthwith upon his appointment and where such voluntary answer is filed it shall not be necessary to issue a summons to such guardian ad litem. Such guardian ad litem, at any time after filing his answer on behalf of such defendant, and at the hearing of the testimony, may announce that such defendant has no further testimony to offer, and waive the remainder of the time allowed by law for the taking of testimony; whereupon the testimony may be closed and the master may forthwith file his report. In any such suit such guardian ad litem on behalf of such defendants may waive the right of exception and the time allowed by law for the filing of exceptions to the master's report and the case may proceed accordingly.

History.—§1, ch. 10268, 1925; CGL 4911; §2, ch. 19175, 1939; CGL 1940 Supp. 4274(14).

62.07 Compensation of masters in chancery.—The fees of the master shall be as follows:

Attendance on litigated case, per day	$2.00
Attendance on unlitigated case, per day	1.00
Attendance to settle litigated report, per day	2.00
Attendance to settle unlitigated report, per day	1.00

Deed or bill of sale, drawing	4.00
Deed, executing	1.00
Deposition of witness, taking, per 100 words	.25
Exhibits, marking and numbering, each	.05
Moneys (except moneys arising from sales), receiving and paying out, on first five hundred dollars	4½ per cent
On residue	¾ of 1 per cent
Recognizance, taking	.50
Report upon appointment of guardian	2.50
Sale, attending and adjourning	1.00

For making, the same fees as are allowed sheriffs.

For all other services, the same fees as are prescribed for clerks of the circuit court. When no such fees are prescribed, then he shall receive such compensation as the judge may fix. All fees shall be taxed as part of the costs of the cause.

History.—§6, ch. 51, 1845; §1, ch. 1815, 1870; RS 1442; GS 1894; RGS 3150; CGL 4937.

62.071 Masters in chancery; additional compensation.—Master in chancery, in addition to the compensation provided in §62.07, shall be allowed such further compensation for any extraordinary services as the court may deem just and reasonable including time consumed in legal research required in preparing and summarizing his findings of fact and law.

History.—§1, ch. 28169, 1953.

62.08 Abatement; death of party served by constructive process after entry of decree pro confesso; effect.—In all chancery causes heretofore or hereafter brought in a court of this state where a decree pro confesso is or was duly and regularly entered against a defendant or defendants upon whom constructive service was or shall be duly had, if such defendants or either of them die after the entry of such decree pro confesso and before the entry of final decree, and the fact of such death is not or was not brought to the attention of the judge or the court before the entry of final decree, after the lapse of a period of five years from the date of such final decree the same shall be as binding and conclusive against and upon the heirs, devisees, legatees and legal representatives of such deceased defendant or defendants as effectually and fully as if such death had been suggested and the cause revived against such heirs, devisees, legatees and legal representatives before the entry of final decree.

History.—§1, ch. 11996, 1927; CGL 4947.

62.10 Entry of decrees in chancery order book that should have been entered in the minutes of the court declared valid.—Wherever any order or decree in chancery, required to be signed by the judge of the circuit court, shall have been prior to June 14, 1921, entered in the chancery order book instead of upon the minutes of the court, every such order and decree shall be, and is hereby declared to be, of the same force and effect, from the date of entry in such chancery order book, as if the same had been at such time entered in the minutes of the court; provided, however, that nothing herein shall affect creditors or subsequent purchasers for value without notice.

History.—§1, ch. 5394, 1905; §1, ch. 5914, 1909; RGS 3161; CGL 4950.

62.14 Rehearing after decree entered on publication; bona fide purchaser of property not affected.—If any defendant, against whom a decree has been rendered on publication only, as provided in §§48.12 and 48.13, shall at any time before the expiration of the time allowed for a rehearing, appear and petition the court for a rehearing thereof, and give bond in an amount and with conditions to be fixed by the judge, with sureties to be approved by the clerk, he shall be permitted to defend the complaint as if he had been personally served with process. And the court may stay all proceedings upon the original decree, pending such defense, and if the decree has been executed, may, at the final hearing, decree restitution. But the title to property sold under the original decree and purchased by a bona fide purchaser for value, shall not be affected by any such rehearing. The defendant applying for such rehearing shall give reasonable notice in writing to the complainant of such application.

History.—§4, ch. 5397, 1905; RGS 3157; CGL 4944; §33, ch. 29737, 1955.

62.15 Practice in chancery in absence of statute or court rule.—In the absence of provisions of the law or rules of practice of this state, the rules of practice in the courts of equity of the United States, as prescribed by the supreme court thereof, under the act of congress of the 8th of May, one thousand seven hundred and ninety-two, shall be rules for the practice of the courts of this state when exercising equity jurisdiction; and when the rules of practice so directed by the supreme court do not apply, the practice of the courts shall be regulated by the practice of the high court of chancery of England.

History.—§32, Nov. 7, 1828; RS 1425; GS 1877; RGS 3132; CGL 4919.

62.16 Decree in equity; signing and recording.—Decrees in equity may be signed by the judge when pronounced, and shall be recorded in the chancery order book of the court without any other enrollment. And no process shall be issued or other proceedings had on any final decree or order until the same shall have been signed and recorded as aforesaid.

History.—§28, Nov. 7, 1828; §8, ch. 521, 1853; RS 1448; GS 1900; §1, ch. 8574, 1921; RGS 3160; CGL 4948.

62.17 Certain decrees against minors validated.—All decrees in suits in chancery heretofore entered in any suit in any court of this state against a minor defendant or minor defendants, where a guardian ad litem was appointed for such minor defendant or minor defendants and where the only defect alleged to invalidate such decree is the failure to await the lapse of three months for the taking of testimony, as prescribed by chancery rule seventy-one for the government of circuit

courts prescribed by the supreme court of the state in 1873, be and the same are hereby validated and declared to be valid in all respects.

History.—§1, ch. 8479, 1921; CGL 4955.

62.18 Ne exeat; when to issue.—No writ of ne exeat shall be granted until a complaint sworn or supported by affidavit be filed, praying for such writ, except in the special cases and for the special causes in which said writs are authorized by the practice of the courts of the United States exercising equity jurisdiction. It may issue in any case where the court of chancery shall have concurrent jurisdiction with a court of common law, and where the issuance shall seem to the chancellor just.

History.—§§1, 2, Nov. 7, 1828; RS 1473; GS 1921; RGS 3184; CGL 4976; §2, ch 29737, 1955.

62.19 Ne exeat; judge to fix penalty of bond.—In granting such writ the chancellor shall fix the penalty and conditions of the bond to be required of the complainant, to defendant, with two good and sufficient sureties to be approved by the court, and no such writ shall issue until such bond shall be given by the complainant.

History.—§2, Nov. 7, 1828; RS 1474; GS 1922; RGS 3185; CGL 4977.

62.20 Ne exeat; absence from state under certain conditions permitted.—An absence of the defendant from the state, from which he shall return before a personal appearance shall be necessary by any decree of the court or before it shall be necessary to perform any order of the court, shall not be considered a breach of the condition of the bond.

History.—§3, Nov. 7, 1828; RS 1475; GS 1923; RGS 3186; CGL 4978.

62.21 Ne exeat; surrender of defendant by sureties.—The sureties (or either of them) of the defendant shall have power personally or by attorney, at any time before the bond shall be forfeited, to take the body of the principal and surrender him in open court, or deliver him to the ministerial officer of the court in which the suit is pending, who shall detain said principal as in cases of the surrender of the principal by special bail; and at the time of such delivery to the aforesaid officer, the surety shall take a receipt for the body and file it with the clerk of the court, either of which, if done before the bond is forfeited, shall discharge the sureties from their undertaking.

History.—§4, Nov. 7, 1828; RS 1476; GS 1924; RGS 3187; CGL 4979.

62.22 Equitable garnishment; proceedings prescribed.—If any suit shall be commenced for relief in equity in any court against any defendant residing out of this state, and any other defendant within the same having in his hands effects of, or being otherwise indebted to, such absent defendant, and the appearance of such absentee be not entered and security given to the satisfaction of the court for performing the decree, upon affidavit that such defendant is out of the state, or that upon inquiry at his usual place of abode he cannot be found so as to be served with process, the court may make an order and require surety, if it shall appear necessary, to restrain the defendant in this state from paying or conveying away, or secreting the debts by him owing to, or the effects in his hands, of such absent defendants, or to restrain the absent defendant from conveying away or secreting or removing the property in litigation, or make an order sequestrating the property which may be necessary to secure the plaintiff if he finally succeeds; and may order such debts to be paid, and effects to be delivered up to said plaintiff, upon his giving sufficient security for the return thereof.

Service upon the absent defendant shall be had in the manner provided by law, and if the defendant does not answer the complaint, decree pro confesso and final decree may be entered as in other cases; and the court shall make an order requiring the complainant to give security, to be approved by the court or by its clerk, for abiding such future orders as may be made for restoring the estate or effects to the absent defendant upon his answering the complaint; and if the complainant shall refuse to give or not be able to procure such security, the effects shall remain under the direction of the court, in the hands of a receiver, or otherwise, for so long a time, and shall be finally disposed of in such manner, as the court shall deem fit.

History.—§§1, 2, Feb. 12, 1832; RS 1499; GS 1948; RGS 3211; CGL 5003; §10, ch. 29737, 1955.
cf.—Ch. 48, Constructive service of process.

62.23 Removal of disabilities; minors; powers.—The judges of the several circuit courts of this state sitting in chancery shall have full power and authority, either in term time or in vacation at chambers, to remove the disabilities of nonage of all minors, male or female, over the age of eighteen years, residing in this state, upon a petition filed by the guardian, and in the event of there being no natural or legal guardian, then by the next friend of such minor in any of the circuits of this state.

History.—§1, ch. 3885, 1889; RS 1501; GS 1951; RGS 3214; CGL 5020.
cf.—Ch. 743, Disability of married minors removed.
See also Art. III, §20, Const., 1885.

62.24 Removal of disabilities; minors; petition.—Such petition shall set forth the name and age of such minor and his character, habits, education and mental capacity for business, and briefly set out the reasons why such disabilities should be removed, and shall be sworn to before some officer authorized to administer oaths.

History.—§2, ch. 3885, 1889; RS 1502; GS 1952; RGS 3215; CGL 5021.

62.25 Removal of disabilities; minors; proceedings.—The judge before whom any such petition shall be filed, shall forthwith consider the same, together with such evidence as to the character, habits and mental capacity of the minor as to him shall seem proper; and if satisfied that the removal of the disabilities of such minor will be for his permanent interest or benefit he shall make a decree removing his disabilities of nonage and authorizing such

minor to assume the management and control of all his estate, to contract and be contracted with, to sue and to be sued, and to do and perform any and all acts, matters and things that he could do if he were twenty-one years of age.

History.—§3, ch. 3885, 1889; RS 1503; GS 1953; RGS 3216; CGL 5022.

62.26 Removal of disabilities; minors; decree.—Such decree shall be duly recorded in the office of records of the county in which such minor resides, and a certified copy thereof shall be taken and received as sufficient evidence of the removal of the disabilities of nonage of such minor in all the courts of this state in which said minor may have any business or be engaged in any legal controversy.

History.—§4, ch. 3885, 1889; RS 1504; GS 1954; RGS 3217; CGL 5023.

62.36 Chancery jurisdiction over liens.—All liens of any kind, whether created by statute or the common law, and whether heretofore regarded as merely possessory or not, may be enforced by proceedings in chancery.

History.—§1510 RS 1892; GS 1960; RGS 3228; CGL 5034.

62.37 Chancery jurisdiction; creditors' bills.—Creditors' bills may be filed in the courts of this state, having chancery jurisdiction, before the claims of indebtedness of the persons filing the same shall have been reduced to judgment, but no such bill shall be entertained by such court, unless the complainants therein shall have first instituted suits in the proper courts at law for the collection of their claims; and no final decree shall be entered upon such creditor's bill until such claims shall have been reduced to judgment.

History.—§1, ch. 5137, 1903; GS 1961; RGS 3229; CGL 5035; §1, ch. 21976, 1943.

62.38 Short title; free dealer law.—Sections 62.39-62.46 may be cited and referred to as the free dealer law of 1943.

History.—§1, ch. 21976, 1943.

62.39 Jurisdiction to entertain applications.—The judges of the several circuit courts of this state, sitting in chancery, shall have full power and authority, either in term time or in vacation at chambers, to remove the disabilities of married women and authorize them to take charge of and manage their own estate and property and become free dealers in every respect.

History.—§2, ch. 21976, 1943.

62.40 Who may become free dealer.—Any married woman who resides in the state, and who may wish to take charge of and manage her estate and to become a free dealer in every respect, may apply by petition in chancery to the judge of the circuit court for the circuit in which said married woman may reside, for a license to take charge of and manage her own estate and property and to become a free dealer in every respect.

History.—§3, ch. 21976, 1943.

62.41 Petition; contents, etc.—Such petition shall set forth the name and age of such married woman, and her character, habits, education and mental capacity for business, and briefly set out the reasons why such disabilities should be removed, and shall be sworn to before some officer authorized to administer oaths.

History.—§4, ch. 21976, 1943.

62.42 Consent or service on husband.—There shall be filed with the said petition either one of the following:

(1) The written consent of the husband of petitioner to the granting of said petition; or

(2) Proof of personal service of a true copy of said petition on said husband; or

(3) Proof of publication of notice that application for such license will be presented to the court on specified date where the husband of petitioner has not signed written consent or cannot be personally served with copy of said petition. Such publication shall be made once a week for two consecutive weeks in a newspaper of general circulation in the county where petitioner resides. In addition to the requirements of this subsection, the petitioner must also file with the said petition her sworn statement showing:

(a) That diligent search and inquiry have been made to discover the residence of her husband, and that the same is set forth in her sworn statement as particularly as is known to her, or

(b) That the residence of her husband is, either:

1. Unknown to her; or
2. In some state or country other than this state, stating said residence if known; or
3. In the state, but that he has been absent from the state for more than sixty days immediately before making the sworn statement, or conceals himself so that process cannot be personally served upon him.

History.—§5, ch. 21976, 1943; §1, ch. 59-44.

62.421 Notice of petition, mailing of.—The clerk of the circuit court of this state shall upon the filing of a petition for a free dealer's license mail a copy of the petition by United States mail, with postage prepaid, to petitioner's husband at his residence as stated in petitioner's sworn statement, if the said residence is stated with more particularity than the name of the state or county in which the husband resides, the date of mailing to be noted on the docket.

History.—§2, ch. 59-44.

62.43 Hearing on petition, etc.—The judge before whom any such petition shall be filed shall forthwith consider the same, together with such evidence as to the character, habits, capacity, competency, and qualification of such married woman to take charge of and manage her own estate and property and to become a free dealer, as to him shall seem proper, and, if satisfied that the removal of the disabilities of such married woman will be for her permanent interest or benefit, he shall make a decree removing her disabilities of marriage and authorizing such married woman to assume the

management of and control of all her own estate and property and to become a free dealer, to contract and to be contracted with, to sue and be sued, and to do and perform any and all acts, matters and things with respect to her own estate and property that she could do if she were not married.

History.—§6, ch. 21976, 1943.

62.44 Decree granting free dealer's license.—Such decree shall be duly recorded in the office of the clerk of the circuit court of the county in which such married woman resides, and thereupon such married woman shall be authorized to take charge of and control her estate, contract and be contracted with, to sue and be sued, and to bind herself in all respects as fully as if she were unmarried. A certified copy of such decree shall be taken and received as sufficient evidence of the removal of the disabilities of marriage of such married woman wherever such married woman may have any business, own any property, or be engaged in any legal controversy.

History.—§7, ch. 21976, 1943.

62.45 Remarriage; effect.—Whenever any married woman who has been licensed as a free dealer under the laws of this state, shall subsequently remarry, her license as such free dealer shall not be affected by such remarriage but shall continue to be her authority to act as a free dealer, contract and be contracted with, sue and be sued, and otherwise control and manage her own estate and property and bind herself in all respects as fully as if she were unmarried.

History.—§8, ch. 21976, 1943.

62.46 Costs and expenses of suit; lien.—All the costs and expenses of such application, whether the same be granted or not, shall be a lien upon and paid out of the estate of such married woman, to be taxed and collected as costs in other cases.

History.—§9, ch. 21976, 1943.

CHAPTER 64

INJUNCTIONS

64.01 Injunction to issue only after complaint filed.—No writ of injunction shall be granted until a complaint praying therefor shall have been filed, except in the special cases in which, and for the special causes for which such writs are authorized in the courts of the United States exercising equity jurisdiction.

History.—§4, Nov. 7, 1828; RS 1463; GS 1913; RGS 3175; CGL 4967; §2, ch. 29737, 1955.

64.02 Injunction to stay proceedings at law.—No writ of injunction to stay proceedings at law shall issue except on motion to the court, and reasonable notice of such motion previously served on the opposite party or his attorney, nor unless the party applying therefor shall have previously paid all costs of the suit at law, and shall have entered into a bond with two or more sufficient sureties in a sum to be fixed by the court, payable to the plaintiff in the action at law, and conditioned, if the application be to stay the proceedings before verdict or inquest or damages, to pay to the plaintiff all damages, losses, expenses and charges which he may have sustained or have been put to by reason of the issuing of the said injunction if the injunction shall be dissolved, or if the complaint upon which it was granted be dismissed; or if the application be to stay the proceedings after verdict or inquest of damages, to pay the debt, interest enjoined and such damages as may be occasioned by the wrongful issuing of said injunction, if the said injunction shall be dissolved, or the complaint upon which it may be granted be dismissed.

History.—§27, Nov. 7, 1828; RS 1464; GS 1914; RGS 3176; CGL 4968; §2 ch. 29737, 1955.

64.021 Proceedings instituted by state or political subdivision; bonds.—When any injunction is issued upon complaint of the state or any officer, agency or political subdivision thereof, the court may in its discretion, having due regard to the public interest, require or dispense with the requirement of a bond with or without surety and conditioned as the circumstances may make equitable.

History.—§1, ch. 59-58.

64.03 Injunction without bond.—In all suits in equity where summary process by injunction or otherwise shall be prayed, and the complaint justifies such process, and affidavit shall be made of the truth of the statements of the complaint, and that the complainant is unable to give bond of indemnity or other security, the chancellor shall receive from both parties evidence of the truth or falsity of the statements of the complaint and of the accompanying affidavit, and if they shall appear to be true, shall grant such process without requiring such security.

History.—§1, ch. 1098, 1861; RS 1465; GS 1915; RGS 3177; CGL 4969; §2, ch. 29737, 1955.

64.04 Injunction without bond; political divisions.—No municipal corporation or taxing districts, organized or created under any law of this state, shall be required to furnish any surety upon any injunction, appeal, supersedeas or other judicial bond required by any law of this state, or order of court, in any legal proceedings in which it may be a party.

History.—§1, ch. 16245, 1933; CGL 1936 Supp. 4969(1).
cf.—§§59.14, 69.03, Supersedeas, original proceedings in supreme court, without bond.

64.05 Injunction; motion to dissolve.—The defendant, after injunction granted, may either before or after answer filed, on due notice being previously given to the opposite party or his solicitor, move the court for the dissolution of any injunction which may have been granted.

History.—§4, Nov. 1, 1828; RS 1467; GS 1917; RGS 3179; CGL 4971.

64.06 Injunction; evidence upon application for or motion to dissolve.—Upon an application for an injunction or other summary order, or upon motion to dissolve the same, either party thereto shall have the right to introduce evidence, and the chancellor shall grant, dissolve or continue the order, or may require security, according to the weight of the evidence.

History.—§2, ch. 1098, 1861; RS 1466; GS 1916; RGS 3178; CGL 4970.

64.07 Injunction; against levy of execution issued against another than the complainant.

—Whenever real estate in this state belonging to any person, natural or artificial, shall be levied upon, or attempted to be sold under any writ of fieri facias or other legal process issued upon any judgment, decree or order against another person, or shall be attempted to be sold as the property of another person, the courts of equity of this state shall have jurisdiction to restrain and enjoin such attempted sale on the application of such owner in possession of such real estate, or the legal representatives of such owner.

History.—§1, ch. 3432, 1883; RS 1468; GS 1918; RGS 3180; CGL 4972.

64.08 Injunction; against destruction of timber and removal of logs.—Courts of chancery shall entertain suits by any person claiming to own any timbered lands, or the timber, or the right to work for turpentine purposes the timber on any lands in this state, to enjoin trespass on such lands by the cutting of trees thereon, or the removing of logs therefrom, or by boxing or scraping the said trees for the purpose of making turpentine, or by the removal of turpentine therefrom.

History.—§2, ch. 3884, 1889; RS 1469, 1470; GS 1919; §1, ch. 5682, 1907; RGS 3181; CGL 4973.

64.09 Injunction against removal of mortgaged personal property.—Upon application of the mortgagee or his assigns, the removal from the state of any personal property mortgaged to secure a debt not matured at the time of the application, may be enjoined by any court of chancery within the territorial jurisdiction of which such property may be.

History.—§1472 RS 1892; GS 1920; RGS 3182; CGL 4974.

64.10 Injunction; sureties on bond of executor, administrator, guardian or trustee may restrain disposition of principal's property.—Wherever suit shall have been heretofore instituted, or shall hereafter be instituted, upon the bond of any executor, administrator, guardian or trustee, or for an accounting, the sureties or surety on such bonds or any of them if there be more than one, may apply to the court in which such suit is pending, if in chancery, or in case such suit is brought on the law side of the court, then in any court of chancery having jurisdiction thereof, for an injunction or restraining order restraining the principal or principals in such bond, or any one of them if there be more than one principal, from disposing of his or her property, and from mortgaging or incumbering or removing same from the county in which the same is located until the final disposition of said suit on said bond or for an accounting, and if, upon such application, it shall be made to appear to said court that there is danger that said principal or principals or any of them, if there is more than one, may dispose of his or their property before final judgment in said suit brought upon the bond of the said executor, administrator or guardian or trustee, or in the suit for an accounting, so that there will not be sufficient property of the said principal or principals to satisfy any judgment that may be rendered against the said administrator, executor, guardian or trustee, it shall be the duty of the said court or judge to issue an injunction or restraining order upon such terms as he may deem proper, enjoining the said principal or principals from selling or disposing of his or their land or property, or so much thereof as may be necessary for the protection of such surety or sureties, until the final disposition of the said suit. In such proceedings it shall not be necessary for the surety or sureties to admit or show that any amounts are due by said administrator, executor, guardian or trustee; provided, however, that the judge granting said injunction may vacate the same upon the giving by said executor, administrator, guardian or trustee adequate security, to be approved by the court, to said surety or sureties conditioned to save him or them harmless for all loss or damage he or they may sustain as such surety or sureties.

History.—§1, ch. 5406, 1905; RGS 3183; CGL 4975.
cf.—§222.09, Injunction to prevent sale of homestead or exempt property.

64.11 Abatement of nuisances; parties; by whom maintained.—Whenever any nuisance as defined in §823.05 is kept, maintained or exists, the state's attorney, county solicitor, county prosecutor, or any citizen of the county through any attorney he may select, may maintain his action by complaint in the proper court in the name of the state upon the relation of such attorneys or citizen to enjoin said nuisance, the person, or persons conducting or maintaining the same and the owner or agent of the building or ground upon which said nuisance exists.

History.—§2, ch. 7367, 1917; RGS 3223; CGL 5029; §2, ch. 29737, 1955.

64.12 Abatement of nuisances; temporary injunctions.—In such action the court, judge or court commissioner before whom the complaint may be brought may upon proper proof being made allow a temporary writ of injunction without bond. If it shall appear to the satisfaction of the court, judge or court commissioner by evidence or by affidavit that a temporary injunction shall issue, the court, judge or court commissioner may in his discretion pending the determination of the complaint on a final hearing enjoin (1) the conducting or maintaining of a nuisance; (2) the operating and maintaining of the place or premises where the nuisance is conducted or maintained; (3) the owner or agent of the building or ground upon which the nuisance exists; (4) and the conduct, operation or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the conducting or maintenance of the nuisance. Such injunction order shall definitely specify the activities enjoined and shall not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. At least three days notice in writing shall be given defendant or defendants of the time and place of application for said temporary injunction.

History.—§2, ch. 7367, 1917; RGS 3224; CGL 5030; §1, ch. 20467, 1941; §2, ch. 29737, 1955.

64.13 Abatement of nuisances; answer; evidence; costs, etc.—The defendant shall file his answer or motion to dismiss said complaint within twenty days after service of process and the said cause shall thereafter proceed as the court may order; and it shall be the duty of the court to hear the evidence in open court or by an examiner as it shall deem most expedient for a prompt hearing or disposition of the cause. In such actions evidence of the general reputation of the alleged nuisance and place shall be admissible for the purpose of proving the existence of said nuisance. No complaint when filed by any citizen shall be dismissed except upon a sworn statement made by said citizen and submitted to the court and unless the court shall be satisfied that said cause shall be dismissed, the said complaint shall not be dismissed but shall continue and the state attorney or county solicitor notified to proceed with said cause. If said action is brought by any citizen and the court shall find that there was no reasonable ground for said action the costs of said action shall be taxed against said citizen and execution may issue therefor on order of the court.

History.—§3, ch. 7367, 1917; RGS 3225; CGL 5031; §2, ch. 29737, 1955.

64.14 Abatement of nuisances; final hearing; perpetual injunction, etc.—Upon final hearing of said cause the court shall if the allegations of complaint are proved and the existence of a nuisance is shown, issue a perpetual injunction in said cause and shall order the costs of said proceeding to be paid by the persons responsible for establishing or maintaining said nuisance and shall adjudge that said costs shall become a lien upon all personal property found in the house or place of the nuisance and upon the failure of said property and fixtures to bring enough to pay said costs, then upon the real estate and buildings occupied by said nuisance, provided no lien shall attach to the real estate and buildings of any other than the occupant unless five days' written notice shall have been given to the owner or his agent who shall fail to abate said nuisance within said five days. If the owner or claimant pays said costs of proceedings said property, personal and real, shall by court order be released from the lien for costs upon the owner or claimant giving bond with proper surety for payment of costs and that said property shall no longer constitute a nuisance or be used in furtherance of any similar nuisance for one year from the date of said decree.

History.—§4, ch. 7367, 1917, RGS 3226; CGL 5032; §2, ch. 29737, 1955.

64.15 Abatement of nuisances; enforcement of orders; decrees, etc.—The courts of chancery in this state shall upon proper proof make such orders and decrees as will suppress and abate any and all nuisances mentioned in §823.05 and shall have the authority to enforce injunctions and decrees by proper contempt proceedings, but the jurisdiction hereby granted to said courts of chancery shall not be construed to repeal or alter §823.01, or §856.02.

History.—§5, ch. 7367, 1917; RGS 3227; CGL 5033.

64.16 Assessment of damages after dissolution of action.—

(1) In all injunction actions, upon dissolution, the circuit judge may hear the evidence and assess the damages to which a defendant may be entitled under any injunction bond, eliminating the necessity for action at law by the aggrieved party on the injunction bonds, provided the plaintiff in his complaint, or the defendant in his answer or motion to dissolve does not request a jury trial for damages.

(2) This section shall not apply to suits pending on June 11, 1951.

History.—§§1, 3, ch. 26916, 1951; §2, ch. 29737, 1955.

CHAPTER 65

DIVORCE, ALIMONY AND CUSTODY OF CHILDREN

65.01 Divorce to be by complaint.—Suits for divorce shall in all cases be by complaint.

History.—§1, Oct. 31, 1828; RS 1477; GS 1925; RGS 3188; CGL 4980; §2, ch. 29737, 1955.

65.02 Residence required.—In order to obtain a divorce the complainant must have resided six months in the state before the filing of the bill of complaint, but shall not affect any suit for divorce filed prior to October 1, 1957.

History.—§1, ch. 522, 1853; RS 1478; §1, ch. 4726, 1899; GS 1926; RGS 3189; CGL 4981; §1, ch. 16009, 1933; §1, ch. 16975, 1935; §1, ch. 57-44; §1, ch. 57-1974.

65.03 All divorces to be a vinculo.—No divorce shall be from bed and board, but every divorce shall be from bonds of matrimony.

History.—§3, Feb. 14, 1835; RS 1479; GS 1927; RGS 3190; CGL 4982.

65.04 Grounds for divorce.—No divorce shall be granted unless one of the following facts shall appear:

(1) That the parties are within the degrees prohibited by law.

(2) That the defendant is naturally impotent.

(3) That the defendant has been guilty of adultery.

If it shall appear to the court that the adultery complained of was occasioned by collusion of the parties, and done with the intent to procure a divorce, or that both parties have been guilty of adultery, no divorce shall be decreed.

(4) Extreme cruelty by defendant to complainant.

(5) Habitual indulgence by defendant in violent and ungovernable temper.

(6) Habitual intemperance of defendant or habitual use of narcotics by defendant.

(7) Willful, obstinate and continued desertion of complainant by defendant for one year.

(8) That the defendant has obtained a divorce from the complainant in any other state or country.

(9) That either party had a husband or wife living at the time of the marriage sought to be annulled.

History.—§§3-5, Oct. 31, 1828; §2, Feb. 14, 1835; §1, ch. 134, 1837; §1, ch. 134, 1846-47; RS 1840; GS 1928; RGS 3191; CGL 4983; (6) §1, ch. 59-323.

65.05 Effect of decree of divorce on children.—No decree of divorce shall render illegitimate the children born during the marriage, except when it is rendered upon the ground set forth in subsection (9) of §65.04, in which case the marriage shall be invalid from the beginning and the issue illegitimate and subject to all the legal disabilities of such issue.

History.—§4, Oct. 31, 1828; RS 1481; GS 1929; RGS 3192; CGL 4984.

65.06 Proceedings against nonresident defendants.—Complaints may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery.

History.—§1482, RS 1892; GS 1930; RGS 3193; CGL 4985; §2, ch. 29737, 1955.
cf.—Ch. 48, Constructive service of process.

65.07 Alimony pendente lite.—In every suit by a wife for a divorce founded upon any of the grounds mentioned in §65.04, she may in the complaint, or by petition, claim alimony and suit money, and if the complaint seems well founded, the court shall allow a reasonable sum therefor. Or if a wife defendant in any suit for divorce shall in her answer, or by petition, claim alimony or suit money, and the answer or petition shall seem well founded, the court shall allow a reasonable sum therefor.

History.—§§1, 2, ch. 3581, 1885; RS 1483; GS 1931; RGS 3194; CGL 4896; §2, ch. 29737, 1955.

65.08 Alimony upon decree of divorce.—In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given for the same,

as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife. In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in lump sum, or both, in its discretion.

History.—§7, Oct. 31, 18228; §12, Oct. 31, 1828; GS 1932; RGS 3195; CGL 4987; §1, ch. 23894, 1947; §1, ch. 63-145.

65.09 Alimony unconnected with divorce.—If any of the causes of divorce set forth in §65.04 shall exist in favor of the wife, and she be living apart from her husband, she may obtain alimony without seeking a divorce upon complaint filed and suit prosecuted as in other chancery causes; and the court shall have power to grant such temporary and permanent alimony and suit money as the circumstances of the parties may render just; but no alimony shall be granted to an adulterous wife.

History.—§§1, 2, ch. 3581, 1885; RS 1485; GS 1933; RGS 3196; CGL 4988; §2, ch. 29737, 1955.

65.10 Alimony unconnected with causes of divorce.—If any husband having ability to maintain or contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him or living apart from him through his fault, may obtain such maintenance or contribution upon complaint filed and suit prosecuted as in other chancery causes; and the court shall make such orders as may be necessary to secure to her such maintenance or contribution.

History.—§1486 RS 1892; GS 1934; RGS 3197; CGL 4989; §2, ch. 29737, 1955.

65.101 Rights of husband unconnected with causes of divorce.—Except in those cases where relief is afforded by some other pending civil action or proceeding, a husband residing in this state separate and apart from his wife and minor children, whether or not such separation is through his fault, may obtain an adjudication of his obligation to support and maintain his wife and minor children, if any, upon a complaint filed and suit prosecuted as in other chancery causes; and the court shall make such orders as may be necessary to adjudicate and define his financial obligations to such wife or children or both and to fix the custody and visitation rights of such parties and to enforce the same; provided however, that such a proceeding shall not preclude either party from later maintaining any other cause of action given under this chapter for other or additional relief at any time.

History.—§1, ch. 61-112.

65.11 Effect of decree of alimony.—A decree of alimony granted under §65.08 and §65.09 shall release the wife from the control of her husband, and she may use her alimony, and acquire, use and dispose of other property, uncontrolled by her husband; and when the husband is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him or his property, and make such order or decree as will secure the wife's alimony to her.

History.—§13, Oct. 31, 1828; RS 1487; GS 1935; RGS 3198; CGL 4990.

65.12 Proceedings against absent defendants in suits for alimony.—Proceedings against absent defendants in suits for alimony shall be the same as in other chancery causes.

History.—§1488 RS 1892; GS 1936; RGS 3199; CGL 4991.
cf.—Ch. 48, Constructive service of process.

65.13 Attachment or garnishment of amounts due in suits for alimony and divorce.—So much as the court in its discretion may order of the moneys or other things due to any person or public officer, state or county, whether the head of a family or not residing in this state when the money or other thing is due for the personal labor or service of such person or otherwise, shall be subject to attachment or garnishment to enforce the orders or decrees of the courts of this state for alimony, suit money or support, or other orders or decrees made by the courts of this state in suit for divorce or alimony; and in such cases where the money or other thing sought to be attached or delayed is the salary of a public officer, state or county, the writ of attachment or garnishment may be served upon the public officer whose duty it is to pay such salary, who shall respect and obey the same as provided by law in other cases; and it shall be the duty of such officer, immediately upon receipt of such writ, to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached or delayed, of the service of such writ, and such officer shall not issue a warrant for so much of such salary as ordered held under said writ until such case shall be settled or determined, and then in accordance therewith, and no more of such salary than is provided for in the order of the court shall be retained by virtue of such writ.

History.—§1, ch. 4973, 1901; GS 1913; §10, ch. 7838, 1919; RGS 3200; CGL 4992.

65.14 Custody of children, etc., power of court in making orders.—In any suit for divorce or alimony, the court shall have power at any stage of the cause to make such orders touching the care, custody and maintenance of the children of the marriage, and what, if any, security to be given for the same, as from the circumstances of the parties and the nature of the case may be fit, equitable and just, and such order touching their custody as their best spiritual as well as other interests may require.

History.—§7, Oct. 31, 1828; RS 1489; GS 1398; RGS 3201; CGL 4993.

65.141 Felony to remove children from state contrary to court order.—

(1) It is unlawful for any person, in violation of a court order, to lead, take, entice or remove a child beyond the limits of this state with personal knowledge of the order.

(2) It is unlawful for any person, with criminal intent, to lead, take, entice or remove

a child beyond the limits of this state during the pendency of any suit or proceedings affecting custody of a child after having received notice as required by law of the pendency of the suit or proceeding, without the permission of the court in which the suit or proceeding is pending.

(3) It is unlawful for any person, who has carried beyond the limits of this state any child whose custody is involved in any suit or proceeding pending in this state, pursuant to the order of the court in which the suit or proceeding is pending, or pursuant to the permission of such court, thereafter, to fail to produce such child in such court or deliver the child to the person designated by such court.

(4) Any person convicted of a violation of this law shall be guilty of a felony and upon conviction shall be punished by imprisonment in the state prison for a period not to exceed 5 years.

History.—§1, ch. 29654, 1955; §1, ch. 57-337.

65.15 Modification of alimony decrees; agreements, etc.—Whenever any husband and wife heretofore, or hereafter, shall have entered into any agreement providing for the payments for, or in lieu of, separate support, maintenance or alimony, whether in connection with any action for divorce or separate maintenance, or with any voluntary property settlement, or whenever any husband has pursuant to the decree of any court of competent jurisdiction been required to make to his wife any such payments, and the circumstances of the parties or the financial ability of the husband shall have been changed since the execution of such agreement, or the rendition of such decree, either party may apply to the circuit court of the circuit in which the parties, or either of them, shall have resided at the date of the execution of such agreement, or shall reside at the date of such application, or in which such agreement shall have been executed, or in which such decree shall have been rendered, for an order and judgment decreasing or increasing the amount of such separate support, maintenance or alimony, and the court, after giving both parties an opportunity to be heard, and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the husband, decreasing or increasing or confirming the amount of separate support, maintenance or alimony provided for in such agreement, or in such decree.

Thereafter the husband shall pay and be liable to pay the amount of separate support, maintenance or alimony directed in such order and judgment, and no other or further amount, and such agreement, or such decree, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this state, shall be deemed to be, and shall be, modified accordingly, and it shall be unlawful to commence, or cause to be commenced as party, or attorney, or agent, or otherwise, in behalf of either party in any court any action or proceeding otherwise than as herein provided, nor shall any court have jurisdiction to entertain any action or proceeding otherwise than as herein provided to enforce the recovery of separate support, maintenance or alimony otherwise than pursuant to such order and judgment.

This section is declaratory of existing public policy and laws of this state, which is hereby affirmed and confirmed in conformance with the provisions hereof, and it shall be the duty of the judges of the circuit courts of this state to construe liberally the provisions hereof in order to effect the objects and purposes hereof and the public policy of the state as hereby declared.

History.—§§1, 2, ch. 16780, 1935; CGL 4993(1).

65.16 Divorce; subsequent proceedings; costs, fees, etc.—

(1) Whenever any legal proceeding is brought for the purpose of enforcing a decree or order of the court, providing for the payment of alimony or support for children, the court may, in the exercise of a sound judicial discretion, allow to the divorced wife such sums of suit money, including a reasonable attorney's fee, as from the circumstances of the parties and the nature of the case shall be fit, equitable and just.

(2) Any order so made under the provisions of this section shall be enforced in the same manner as are other chancery orders or decrees.

History.—§§1, 2, ch. 25037, 1949.

65.17 Attorneys' fees, suit money, etc., in alimony, divorce and similar proceedings.—Whenever any court shall make any allowance for attorney's fees, suit money or costs in any divorce, alimony or support proceeding pending before it, such court may direct that all such allowances be paid to the attorneys or other persons for whose ultimate benefit such allowances are made.

History.—§1, ch. 22676, 1945.

65.18 Alimony and support and maintenance money for children; additional method for enforcing orders and decrees; costs, expenses.—

(1) An order or decree for the payment of alimony or support money for children, or both, entered by any court of this state, may be enforced by another equity court in this state in the following manner:

(a) The person to whom such alimony or support money is payable, or for whose benefit the same is payable, under such order or decree, may procure a certified copy of the said order or decree and file the same, together with a petition for enforcement, in the equity court of this state for the county wherein the said person may reside, or in the county wherein the person charged with the payment of such alimony or support money may reside or be found.

(b) Upon the filing of such certified copy and petition for enforcement the clerk of the court wherein filed shall forthwith issue a rule,

directed to the person charged with the payment of such alimony or support money under such order or decree, requiring that he either pay the sum or sums alleged to be due forthwith or show cause before the court on a day certain (not to exceed twenty days) why he fails or refuses to pay the sum or sums alleged to be due.

(c) The said petition and return to the rule to show cause shall constitute the pleadings upon which the issues shall be tried; any new, additional or affirmative matter alleged in the return not in reply to the petition shall be deemed denied for the purpose of such trial. The cause shall be tried in the same manner and under the same rules and regulations as if held by the court entering the said order or decree, and the court may enter such orders of enforcement as to it may seem proper, including contempt proceedings.

(d) Should the petition or the return to the rule to show cause seek a change in the amount of the alimony or support money awarded by the said order or decree the court shall have jurisdiction to adjudicate such application and amend or change the said order or decree; provided, however, that the clerk of the circuit court in which such order is entered changing the original order or decree, shall prepare and forward a certified copy thereof to the court of original jurisdiction and such order shall be recorded in the original proceedings and become a part thereof. Should the petition or the return to the rule to show cause ask for a modification of the said order or decree the court may, in its discretion, determine that the cause should be determined by the court entering the original order or decree and transfer the proceedings to such court for determination as a part of the original proceedings.

(2) The court wherein such a proceeding may be brought shall have power and jurisdiction to award costs and expenses, including the cost of certifying and recording the order entered in said cause in court of original jurisdiction and a reasonable attorney's fee, as to it may seem equitable and proper.

History.—§§1, 2, ch. 28187, 1953.

65.19 Same; default in undertaking of bond posted to insure payment.—

(1) When there is a default in the undertaking of any bond posted to insure the payment of alimony or support money, either temporary or permanent, for the wife, or child or children of the parties, the court in which the order was issued may, without further notice, from time to time, by order, where the amount involved is liquidated, require the penalty of such bond, or any part thereof as may be necessary to cure the then existing default, of the principal in such bond, under any order theretofore made in said cause.

(2) The sureties under such bond, or, in case of a cash bond, the sheriff of the county holding such cash bond, shall be required by order of said court to pay into the registry of the said court or to any party the court may direct, the sum necessary to cure such default.

(3) If the principal or sureties, or the sheriff holding such cash bond, shall fail to pay into the registry of the court, or to any party the court may have directed within the time required by any order aforesaid, the court may thereupon, without further notice, enforce the payment thereof by contempt against the principal or sureties on such bond or the sheriff holding such cash bond, or may cause to be issued an execution against such principal, sureties or sheriff for the amount unpaid under any such prior order or orders, provided that no sureties on such bond shall be liable for more than the penalty stated therein.

History.—§1-3, ch. 28288, 1953.

65.20 Entry of divorce decree, delay period.—In any divorce proceeding instituted in this state no final decree of divorce may be entered until at least twenty days have elapsed from the date of the filing of the original complaint praying for a divorce; provided however that the court, upon a showing that injustice will result from this delay, may, not withstanding the provision of this law, enter a final decree of divorce at an earlier date.

History.—§1, ch. 57-258; §1, ch. 59-64; §1, ch. 61-123.

65.21 Social investigation and recommendations when child custody is in issue.—In any case pending before a circuit court where the custody of a minor child is in issue, the court may, in its discretion, request the state welfare department to make an investigation and social study concerning all pertinent details relating to such child and each parent; and said welfare department shall, upon request by the court, furnish the court a written report with its recommendation together with a written statement of facts found in its social investigations on which its recommendations are based. The court may consider the information contained in such report in making a decision on the child's custody, and the technical rules of evidence shall not exclude such report from consideration by the court.

History.—§1, ch. 59-186.

CHAPTER 66

CHANCERY JURISDICTION OVER PROPERTY

66.01 Partition of property; jurisdiction.—Suits for a partition of real estate shall in all cases be by complaint and all proceedings, except where herein otherwise provided, shall be as in other cases in chancery.

History.—§1, Mar. 14, 1844; RS 1490; GS 1939; RGS 3202; CGL 4994; §2, ch. 29737, 1955.

66.02 Partition of property; venue of suit.—Suits for partition shall be brought in the county where the lands which are the subject matter of the suit lie; but if the lands lie in more than one county, the suit may be brought in either county, in which case the decrees shall be recorded in every county in which any part of the lands lie.

History.—§1, Mar. 14, 1844; RS 1491; GS 1940; RGS 3203; CGL 4995.

66.03 Partition of property; parties.—Such bill may be filed by any one or more of several joint tenants, tenants in common or coparceners, against their cotenants, coparceners or others interested in the lands to be divided.

History.—§2, Mar. 14, 1844; RS 1492; GS 1941; RGS 3204; CGL 4996.

66.04 Partition of property; form and contents of complaint.—Such complaint shall be sworn to by one or more of the complainants and shall allege a description of the lands or premises of which partition is prayed, by metes or bounds or other sufficient description, and shall state according to the best of the knowledge and belief of the complainants the name and places of residence of the several owners, joint tenants, tenants in common or coparceners, or other persons interested in said lands or real estate, the quantity or proportionate share held by each, and such other matters, if any, as may be necessary to enable the court to adjudicate fully upon the rights and interests of the party. But if the names, residence, quantity of interest or proportionate share of any of the owners or claimants of such lands are unknown to the complainants, then it shall be so stated in such complaint, and such suit may proceed in the same manner as though such unknown persons or defendants were named in the complaint.

History.—§2, Mar. 14, 1844; RS 1493; GS 1942; RGS 3205; CGL 4997; §11, ch. 29737, 1955.

66.05 Partition of property; decree.—Upon application for entry of a final decree, made after a decree pro confesso, or after litigation of the cause, the court shall proceed to ascertain and adjudicate the rights and interests of the parties, either by a reference to a

master, by a hearing upon the pleadings and proof, or in such other way or manner as may be most convenient and according to the ordinary rules and practice of the court; and shall also decree that partition be made if it shall appear that the parties are entitled to the same. When the rights and interests or proportions of the complainants are clearly established to the satisfaction of the court, or are undisputed, the court may, by decree, order partition to be made, and the shares, proportions or interests of the complainant or complainants, and such of the defendants as have established and satisfactorily proved their respective shares, interests or proportions, to be set off and allotted to them, leaving for future adjustment (by further proceedings in the same cause) the rights, shares and interests of the other defendants.

History.—§4, Mar. 14, 1844; RS 1494; GS 1943; RGS 3206; CGL 4998.

66.06 Partition of property; commissioners to make.—

(1) APPOINTMENT AND REMOVAL.—Upon a decree of partition being made, the court shall appoint three suitable persons to act as commissioners in making the partition decree, who shall be selected by the court, unless agreed upon by the parties. They may be removed by the court, upon good cause to be shown, and others appointed in their place.

(2) POWERS, DUTIES, COMPENSATION AND REPORT OF COMMISSIONERS.—Such commissioners shall, before entering upon their duties, be sworn by any officer authorized to administer oaths in Florida, faithfully and impartially to execute the trust imposed in them; shall have power to employ a surveyor or surveyors, if necessary, for the purpose of making such partition; shall be allowed such sum as may be deemed reasonable by the court for their services; shall proceed to make partition of the premises in question according to the order of the court, and having made such partition, shall report the same in writing to the court without delay.

(3) EXCEPTIONS TO REPORT, AND FINAL DECREE.—Any party in interest may file objections or exceptions to the report of the commissioners within ten days after he shall be notified of the filing of the same; or if he is absent from the state so that a notice cannot be given, within thirty days after the same is filed; if no objections or exceptions are filed as aforesaid, or if the court is satisfied, upon the hearing of any such objections or exceptions, that they are not well founded, then the report shall be confirmed, and a final decree shall be entered up, which shall accordingly vest in the respective parties the title to the several parcels or portions of the premises allotted to them respectively, and shall give to each of them the possession of and quiet title to their respective shares as against the other parties to the suit, or those claiming through or under them.

(4) APPOINTMENT OF MASTER WHERE PROPERTY NOT SUBJECT TO PARTITION.—Upon an uncontested allegation in the complaint that the property sought to be partitioned is indivisible and is not subject to partition without prejudice to the owners of same, upon a decree of partition being made, if the court is satisfied that such allegation is correct, the court may thereupon, upon application of either party and notice to the others before the court, appoint a special master to make sale of the property either at private sale or in the same manner as provided for sale thereof by §66.07.

History.—§§5-8, Mar. 14, 1844; RS 1495; GS 1944; RGS 3207; CGL 4999; (2) §1, ch. 28200, 1953; (2) §1, ch. 29685, (4) n. §1, ch. 29928, 1955.

66.07 Partition of property; sale where nondivisible.—

(1) THE ORDER OF SALE.—If the commissioners shall report to the court that the lands, tenements or hereditaments of which partition shall have been directed are so situated that a partition thereof cannot be made without great prejudice to the owners of the same, and if the court shall be satisfied that such report is just and correct, the court may thereupon, upon application of either party, upon notice to the others before the court, if said others be in the state, order the premises so situated to be sold at public auction to the highest bidder, by and under the direction of the said commissioners, and the moneys arising from such sale to be paid into the court, to be divided among the respective parties interested in proportion to their shares or interest.

(2) CONDITIONS OF SALE.—For good cause to be shown, the court may order such sale to be made upon a reasonable credit for part or all of the purchase money, but in all cases at least one-third of the purchase money shall be paid down, unless all parties consent to a credit for the whole; and in all cases the purchase money not paid down shall be secured by bond and mortgage on the premises, and such other additional security as the court shall direct.

(3) CONFIRMATION OF SALE AND CONVEYANCE.—Such sale must have been reported to the court, and the money arising therefrom paid into the court, and the sale approved by the court and a conveyance ordered, before any conveyance in pursuance of such sale shall be made by the commissioners.

History.—§§8-10, Mar. 14, 1844; RS 1496; GS 1945; RGS 3208; CGL 5000.

66.08 Partition of property; costs; taxes; attorneys fees, etc.—Every party in interest, whether complainant or respondent, shall, by decree of the court, be bound to pay a share of the costs and charges, including attorneys' fees to complainant's solicitor or defendant's solicitor or to each of them commensurate with their services rendered, and of benefit to the partition, in the discretion of the court, to be determined upon equitable principles arising from the suit for the partition or sale of the land in proportion to his interest; and such decree shall be binding on all his goods and chattels, lands or tenements; and in case of sale the court may order the same to be paid or retained

out of the moneys arising from such sale and due or belonging to the parties who ought to pay the same. All taxes, state, county and municipal, due thereon at the time of such sale, shall be paid out of the purchase money.

History.—§11, Mar. 14, 1844; RS 1497; §1, ch. 4545, 1897; GS 1946; RGS 3209; CGL 5001; §1, ch. 57-130.

66.09 Partition of property; personalty.—All the provisions of law applicable to partition and sale for partition of real estate, and the proceedings therefor, shall be applicable to the partition and sale for partition of personal property and the proceedings therefor, as far as the nature of the property will permit.

History.—§1498, RS 1892; GS 1947; RGS 3210; CGL 5002.

66.10 Real estate; certain jurisdiction over, conferred.—Courts of chancery in this state shall entertain suits by any person or corporation claiming to own any tract or parcel of land or portions thereof, or by two or more claiming to own the same tract or parcel of land or portion thereof; under a common title against all persons or corporations more than one, occupying or claiming title to said tract or portions thereof adversely to the complainant or complainants, whether the defendants claim or hold under a common title or not; and in such suits shall determine the title of the complainant or complainants, and each of them, as against the defendants, and each of them, and shall make a decree quieting the title of, and awarding possession to, the complainant or complainants entitled thereto; and may award injunctions, temporary or perpetual, appoint receivers, and make such orders as to costs as may be necessary for the protection of the rights of the parties.

History.—§1, ch. 3884, 1889; RS 1500; GS 1949; RGS 3212; CGL 5004.

66.11 Real estate; removing clouds, etc., generally.—A complaint may be brought and prosecuted to a final decree by any person or corporation, whether in actual possession or not, claiming title, legal or equitable, to real estate against any person or corporation not in actual possession, who has, appears to have, or claims an adverse estate, interest, or claim, legal or equitable, therein, for the purpose of determining such estate, interest, or claim and quieting or removing clouds from the title to such real estate.

It shall be no bar to the granting of relief to the complainant in such cases that the title has not been litigated at law or that there may be only one litigant to each side of the controversy, or that the adverse claim, estate, or interest against which such complaint is brought is void upon its face, or, though not void on its face, requires evidence, extrinsic of itself, to establish its validity.

History.—§1, ch. 4739, 1899; GS 1950; RGS 3213; §1, ch. 10223, 1925; CGL 5005; §2, ch. 29737, 1955.

66.12 Real estate; removing clouds; plaintiffs.—Any suit in chancery for the purpose of quieting title to, or clearing a cloud from, real estate may be brought and maintained by and in the name of the owner, or of any prior owner, who may have warranted such title; and all lands, the title to which is subject to a common defect, may be embraced in one suit irrespective of the number of existing ownerships, legal or equitable; and the decree for complainant shall enure to the benefits of each existing owner to the extent of his or her legal or equitable title.

History.—§1, ch. 10221, 1925; CGL 5006.

66.13 Real estate; removing clouds; defendants.—The complainant, or any defendant may, however, make parties to such cause any and all persons having title to, or otherwise interested in, such land, or any portion thereof, and if any defendant shall name a new party as defendant, such defendant shall be entitled to process by way of subpoena, or otherwise, as prescribed by law to bring in such other person or persons so named as defendants, but no person so named as defendant, and no person not made a party to any such suit shall be bound by any decree rendered therein adverse to his interest, but any decree favorable to any such interest shall enure to the benefit of any such party, as hereinabove provided.

History.—§2, ch. 10221, 1925; CGL 5007.

66.14 Real estate; removing clouds; joinder.—Where two or more persons are interested in removing a cloud or quieting title to one or several parcels of land as against the same clouds or adverse claims, it shall be permissible for them to unite as complainants in a single complaint for such purpose, and to obtain a single decree removing such clouds, and quieting the titles, although their interests relate to separate portions of the land.

History.—§1, ch. 10222, 1925; CGL 5008; §2, ch. 29737, 1955.

66.15 Real estate; removing clouds; abatement.—Such suits shall not abate or become defective by the death or transfer of interest of one or more complainants, provided other complainants survive whose interest continues, and the decree rendered, whether for or against the complainants, shall bind the successors in interest, pendente lite, of a complainant, without the necessity of making a suggestion of the death or transfer of an original complainant, or making his successors parties to the suit.

History.—§1, ch. 10222, 1955; CGL 5009.

66.16 Quieting title; additional remedy; jurisdiction.—Courts of chancery in this state shall entertain suits by any person or corporation claiming title to any tract or parcel of land, or portion thereof, or where any two or more are claiming to own the same land or any portion thereof, under a common title, against all persons or corporations claiming title to said land adversely to complainant whether defendants claim or hold under a common title or not; and in said suits shall determine the title of the complainant and may make decrees quieting and confirming the title, and awarding possession to party or parties entitled thereto; provided, however, that if the defendant or any of them in such case is in the actual possession

of any part of the land involved in such suit, a trial by a jury may be demanded by either party, whereupon the court shall order said cause to be docketed on the law side of said court, and at the next regular term thereof shall cause an issue in ejectment to be made up and tried by a jury as to any lands claimed to be in the actual possession of the defendant, or either of them. But this provision for a trial by a jury shall not affect the proceedings as to any lands involved in such suit as are not claimed to be in the actual possession of the defendant. The court in equity may proceed to a final decree without awaiting the determination of the issue in ejectment herein above mentioned.

History.—§1, ch. 11383, 1925; CGL 5010.

66.17 Quieting title; additional remedy; grounds.—Whenever a person or corporation, not the rightful owner of any real estate shall have any conveyance or other evidence of title thereto, or shall assert any claim, or pretend to have any right or title thereto, which may cast a cloud, doubt or suspicion on the title of the real owner, or whenever any person or corporation is the true and equitable owner of any real estate, the record title to which is not in said person or corporation, because of the defective execution of any deed or mortgage by reason of the omission of a seal thereon, the lack of witnesses, or any defect or omission in the wording of the acknowledgement of a party or parties thereto, where such person or corporation claims title thereto by, through or under such defective instrument and such defective instrument was from the apparent purpose thereof made and delivered by grantor therein to convey or mortgage such real estate and was spread upon the proper record in the county wherein such real estate lies, or where possession of any such real estate has been held by any person or corporation adverse to the record owner thereof or his, her or their heirs and assigns until such adverse possession has ripened into a good and sufficient title under color of title, or without color of title, under the statutes of this state, such person or corporation may file a complaint in the circuit court of any county in which any part of the said real estate is situated to have such conveyance or other evidence of claim or title canceled and such cloud, doubt or suspicion removed from such title, and/or to have his title established, quieted and confirmed, whether such real owner be in possession or not, or be threatened to be disturbed in his possession or not, and whether the defendant or defendants be resident of this state or not, and whether the title thereto has been litigated in a court of law or not, or whether the adverse claim or title or interest is void on its face or not, or if not void on its face may require evidence extrinsic of itself to establish its validity.

History.—§2, ch. 11383, 1925; CGL 5011; §2, ch. 29737, 1955.

66.18 Quieting title; additional remedy; bill; notice, etc.—The complainant shall set forth in his complaint his claim of title and the names and places of residence of all persons interested in the land, so far as known to the complainant or he can ascertain by diligent search and inquiry, and where the names of persons interested or the places of residences are unknown and have not been ascertained after diligent inquiry the complaint shall so state, and in all cases shall be sworn to; and where the names and places of residence of persons in interest are given they shall be made parties defendant; and where the complaint shall show parties interested who are unknown to the complainant and that he has made diligent search, and inquiry for their names and could not obtain them, all persons interested may be made defendants by a notice addressed "To all persons having or claiming any interest in the following described lands (here describing lands)." If the complainant shall allege in his complaint that he does not know and has not been able to ascertain by diligent search and inquiry whether any defendant be dead or alive, the above notice may also be addressed to such person "if alive, and if dead to his unknown heirs, devisees, legatees, or grantees." The notice in such cases shall state the nature of the suit and require the appearance of all parties in interest on the return day, to be fixed in said notice at not less than four weeks from the date of the first publication of the notice. The said notice shall be published once a week for four consecutive weeks in a newspaper having general circulation in the county where the suit is brought, if there be one, and where there is no newspaper in said county the notice shall be posted in three conspicuous places in said county, one of which shall be at the front door of the county court house and one of which shall be upon some portion of the land involved in the suit, and proof of such posting shall be made by affidavit of the person or persons posting the same. The clerk shall make and enter an order for publication of said notice, and shall cause the same to be published as aforesaid, and the costs thereof shall be taxed as other costs, and proof of such publication shall be made by affidavit of the owner, publisher, proprietor, editor, business manager or foreman of the newspaper in which said notice was published, and such affidavit shall set forth specifically the date of each publication of said notice, and shall have attached thereto a copy of said notice, and the same shall be recorded in the chancery order book of the court in which the suit is pending. If the place of residence of any nonresident defendant shall be stated in the complaint the clerk shall mail a copy of said notice, postage prepaid by United States mail, to each such defendant, and shall make an entry on the docket showing to whom, where and the date, each of such notices were mailed, for which he shall receive as costs the sum of twenty-five cents for each notice so mailed and entered as aforesaid.

History.—§3, ch. 11383, 1925; CGL 5012; §2, ch. 29737, 1955; §24, ch. 57-1.

66.19 Quieting title; additional remedy; procedure; guardian ad litem; evidence; decree, etc.—Such suits shall proceed as in other cases in equity, except when otherwise pro-

vided herein, and except also that if the complaint be taken as confessed, a guardian ad litem shall not be appointed unless it shall affirmatively appear that the interests of minors, persons of unsound mind, or convicts are involved. If the allegations of the complaint are taken as confessed and decree pro confesso rendered, a final decree may thereupon be rendered without the taking of further proof, or reference thereof to a master. Should any defendant appear and defend said suit claiming actual possession of some portion of the land involved in the suit, it shall be heard at a time to be set by said court. In the trial of such causes either party may introduce in evidence any relevant part of any public record affecting the title to the land involved, in lieu of certified copies thereof.

History.—§4, ch. 11383, 1925; CGL 5013; §12, ch. 29737, 1955.

66.20 Quieting title; additional remedy; deraignment of title.—In all such cases the complainant shall deraign his title, from the original source, or for a period of at least seven years prior to the filing of the complaint, unless the court shall otherwise direct, setting forth the book and page of such records where any instrument affecting the title is recorded, if same be of record, unless the complainant claims from a common source with the defendant.

History.—§5, ch. 11383, 1925; CGL 5014; am. §1, ch. 24293, 1947; §2, ch. 29737, 1955.

66.21 Quieting title; additional remedy; decree.—If it shall appear from the sworn bill of complaint in any case wherein a decree pro confesso has been entered against the defendants, or if it shall appear from a preponderance of the evidence taken after issue has been joined by any defendant or defendants, that the complainant has the legal title to the said real estate; or is the true, equitable owner of the real estate described in the bill of complaint but has not a good record title thereto because of one or more of the defects mentioned in §66.17 in the execution of such deed or deeds, mortgage or mortgages, and that such defective deed or deeds, mortgage or mortgages, was or were in fact made and delivered to the complainant or those under whom he claims with the apparent purpose of conveying or mortgaging the real estate described therein or any interest therein but failed to do so because of such defect or defects; or if it shall appear from the bill of complaint in any case where a decree pro confesso has been entered against the defendants, or if it shall appear from a preponderance of the evidence taken upon issue joined that the complainant and those under whom he claims have been in open, notorious, adverse and continuous possession of such real estate claiming the same under color of title, or without color of title, for a period of time and in the manner that would in law ripen into a good legal title to the real estate involved; then in either or any of such cases above enumerated the court shall enter a decree removing the alleged cloud from the title to the said real estate and forever clearing and confirming the title to said real estate in and to the complainant and those claiming under the complainant since the commencement of said suit, and decreeing the said complainant or those then claiming under him to have, hold and possess a good and sufficient fee simple title absolute in and to said real estate or the interest therein and thereby cleared of cloud and quieted and confirmed.

History.—§6, ch. 11383, 1925; CGL 5015.

66.22 Quieting title; additional remedy; opening decree, etc.—Any person not personally served with process in said suit and who had no actual knowledge thereof before decree may come in within sixty days from the rendition of such decree and upon application showing prima facie evidence of interest shall be permitted to open and relitigate the same; provided further, that this provision shall not lengthen the time for taking appeals, and no person whether under disability or otherwise shall take an appeal after the expiration of such sixty days.

History.—§7, ch. 11383, 1925; CGL 5016; §16, ch. 29615, 1955.

66.23 Quieting title; additional remedy; recording final decree.—All final decrees rendered in such causes may be recorded in the record of deeds to land in the county or counties in which the land is situated, which decrees shall operate to vest title in like manner as though a conveyance were executed by a special master or commissioner of the court under its order.

History.—§8, ch. 11383, 1925; CGL 5017.

66.24 Quieting title; additional remedy; operation.—§§66.16-66.23 of this chapter are intended as a remedy cumulative or additional to other existing remedies and should be so construed.

History.—§9, ch. 11383, 1925; CGL 5018.

66.25 Quieting title as to deeds without joinder of wife where separated for 30 years, etc.—A complaint may be brought to quiet the title to property in the state and to preclude any wife from claiming any dower interest or any heirs claiming any interest to property located in the state when the following statement of facts exists.

When any husband and wife have not lived and cohabited together as husband and wife for a period of thirty years or more, and during the said period of time the said husband has conveyed real estate located in the state as a single man, and where the said real estate has come into the hands of purchasers for a valuable consideration, without notice of the fact that said husband was in fact a married man at the time he conveyed said real estate as aforesaid, and where the said purchasers in acquiring said property for a valuable consideration, have relied on the acknowledgement to deeds by the said husband to the effect that he was a single man, and it afterwards became known that he is and was a married man at the time he so deeded said property, and has never been divorced and refuses to voluntarily get a

divorce to clear the title to properties so deeded by him as a single man, so as to preclude his wife from claiming any inchoate dower interest therein, and his heirs from claiming any interest therein, and where the title to the property so deeded by him as such single man has passed into the hands of purchasers for valuable consideration, without notice of the fact that he was married, as aforesaid, and when the wife has never lived in the county where such property was located, with the husband as his wife, and has never asserted any inchoate right to dower in said real estate, such inchoate right to dower is hereby divested and removed, and for all purposes terminated, and is a cloud on the title to said real estate, and the purchaser of such property so deeded by the husband as such single man under the aforestated facts, shall have the right to bring a complaint to remove the said cloud on the title and to prevent his wife or heirs from ever claiming any dower interest or any other interest from such purchasers for valuable consideration without notice of the fact of such marriage, and from their successors in title. And the chancery court, shall, when the above facts are proven in support of such complaint brought by such purchasers, render judgment in favor of such purchasers as complainants, and decree that the wife and heirs of the husband are forever barred and perpetually enjoined from ever claiming any interest to the property arising out of dower or otherwise, and that the fact that the wife never joined in the execution of the deeds by which the husband deeded the said property as a single man under the facts above stated, will not be effective to reserve an inchoate right of dower in the property held by such innocent purchasers, and the chancery court shall so decree.

History.—§§1, 2, ch. 19116, 1939; CGL 5011(1), 5011(2); §2, ch. 29737, 1955.

66.26 Tax titles; quieting title; parties.—Any grantee under any tax deed issued by the state, or any municipality or other political subdivision thereof, or any successor in title to such grantee, or any purchaser from the state, or any municipality or other political subdivision thereof, of any land the title to which has been acquired by this state or such municipality or political subdivision through any manner of proceeding or foreclosure for the nonpayment of taxes or special assessments, or the successor in title to any such purchaser, may maintain a suit in the chancery courts of this state for the purpose of quieting the title to the lands included in such tax deed, or so purchased from this state or any municipality or other political subdivision thereof, against the holders of the record title to said lands, and against any other person or corporation claiming any interest in said lands or any lien or encumbrance thereon, prior to the issuance of any such tax deed or prior to the loss of title to said lands in any such tax proceeding or foreclosure.

History.—§1, ch. 21822, 1943.

66.27 Tax title; procedure.—The practice and procedure and methods of serving process in suits brought under this law shall be as prescribed by the laws of this state for other suits to quiet title. Suits may be maintained hereunder whether or not the plaintiff is in possession of the lands involved; provided, however, that where the defendant is in actual possession of said lands a jury trial may be had as provided in the case of other suits to quiet title. Where the suit is based upon a tax deed, the complaint need not deraign title beyond the issuance of the tax deed. Where the suit is based upon a conveyance by this state, or any municipality or other political subdivision thereof, of land the title to which it has acquired through a foreclosure or other proceeding for the nonpayment of taxes, the complaint need not deraign title beyond the deed or other instrument or act vesting title in the state or municipality or other political subdivision of the state.

History.—§2, ch. 21822, 1943; §2, ch. 29737, 1955.

66.28 Quieting title to real property.—Any person who claims an estate of inheritance or for life in any real property within this state, or who has conveyed any such real property by warranty deed, whether in the actual and peaceable possession thereof or otherwise, may bring a proceeding in rem, in the circuit court of the county wherein such property is situate, or if situate in two or more counties, then in the circuit court of either of said counties, against all the world for the purpose of establishing his title to said property and to determine all adverse claims thereto, whenever:

(1) CLAIM UNDER WRITTEN INSTRUMENT, JUDGMENT, DECREE, ETC.—Such person claims such estate of inheritance or for life by, through or under a conveyance, judgment or decree and deraigns his title from a patent or other conveyance from the Spanish Crown, the United States, the state or other sovereign;

(2) CLAIM UNDER TAX DEED OR FORECLOSURE.—Such person claims such estate of inheritance or for life by, through or under a tax deed or other conveyance executed pursuant to the foreclosure of a lien for delinquent taxes or other assessments made by the state or any of its political subdivisions;

(3) ADVERSE POSSESSION UNDER COLOR OF TITLE.—Such person, or those under whom he claims, entered into possession of said real property under a claim of title exclusive to any other right, founding such claim upon a written instrument as being a conveyance of said real property, or upon a judgment or decree of some competent court, and has continued in the occupation and possession of the real property included in such instrument, judgment or decree for seven years; or

(4) ADVERSE POSSESSION WITHOUT COLOR OF TITLE.—Such person, or those under whom he claims, entered into possession of said real property under a claim of title exclusive to any other right, but not founded upon a written instrument, judgment or decree, and

has continued in the occupation and possession of said real property for seven years; or

(5) LOST, STOLEN OR DESTROYED PUBLIC RECORDS.—The public records of the county wherein said property is situate, or the public records of a county from which said county or a part thereof was formed, have been or may hereafter be lost, stolen or destroyed, in whole or in part, so that the chain of title to said property does not appear of record in said counties.

History.—§1, ch. 24099, 1947.

66.29 Proceeding in rem; how instituted.—The proceeding in rem shall be instituted by filing a complaint in the circuit court of the county wherein the said property is situate, of, if situate in two or more counties, in either of said counties, in which the party filing the same shall be designated as the plaintiff, and "all persons claiming any estate, right, title or interest in, or lien upon, the real property herein described (that is described in the complaint), or any part thereof," shall be designated as defendants. The complaint shall contain a statement of the applicable facts enumerated in §66.28, a particular description of the real property to be involved in the proceeding, and a specification of the estate, right, title or interest claimed by the plaintiff, or theretofore conveyed by him by warranty deed.

History.—§2, ch. 24099, 1947; §2, ch. 29737, 1955.

66.30 Sworn statement to be filed with complaint.—At the time of the filing of the complaint, unless the following facts to be shown by the complaint, the plaintiff shall file with said complaint, a sworn statement setting forth and showing:

(1) The character of his estate, right, title, or interest in the real property described in the complaint; or theretofore conveyed by him by warranty deed and to whom conveyed;

(2) The character of his possession in said property, the period of time the same has existed and for whom obtained;

(3) Whether or not he has ever made any conveyance of the property, or any part thereof, or any interest therein, and, if so, to whom;

(4) A statement of any and all outstanding mortgages, deeds of trust, leases and other encumbrances thereon;

(5) That he does not know and has never been informed of any other person who claims, or who may claim, any estate, right, title or interest in, or lien upon, the property, or any part thereof, adversely to him, or if he does know or has been informed of any such person, then the name and address of such person.

If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show, fully and explicitly, the reason for such inability. Such sworn statement shall constitute a part of the record in the cause. If the plaintiff be a corporation, the statement may be made by any officer thereof. If the plaintiff be a person under guardianship, the sworn statement may be made by the guardian. If the plaintiff be a partnership or firm, the sworn statement may be made by any member thereof.

History.—§3, ch. 24099, 1947; §13, ch. 29737, 1955.

66.31 Form, issuance and service of summons.—Upon the filing of the complaint, a summons shall be issued by the clerk of the court, under the seal of the court, which shall contain the name of the court and the county wherein the proceeding is brought, the name of the plaintiff, a particular description of the real property involved and shall be directed to "all persons claiming any estate, right, title or interest in, or lien upon, the real property herein described, or any part thereof," as defendants. A summons in substantially the following form shall be sufficient, to wit:

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT, IN AND FOR _____ COUNTY, FLORIDA, IN CHANCERY, CASE NO. _____.

_____,

Plaintiff,

v.

All persons claiming any estate, right title or interest in, or lien upon, the real property herein described, or any part thereof,

Defendants.

. . . . . .

THE STATE OF FLORIDA, TO:

All persons claiming any estate, right, title, or interest in, or lien upon, the real property herein described, or any part thereof,

Defendants, Greetings:

You are hereby notified that a proceeding to quiet title has been brought in the circuit court for _____ county, Florida, against all persons claiming any estate, right, title or interest in, or lien upon, the following described real property, situate in _____ county, Florida, to wit: (Here insert legal description of the real property involved in the proceeding) and you are hereby required to file with the clerk of said court your written appearance (personally, or by attorney) in said proceeding, on or before the _____ day of _____, 19_____ (which date shall be not less than twenty-eight days, nor more than sixty days, after the issuance of this summons), and thereafter to file service on the opposing counsel and file with said clerk your written defenses, if any, to the complaint at the times prescribed by law, therein setting up the estate, right, title or interest in, or lien upon, the above described property claimed by you. Herein fail not, or judgment will be entered against you by default.

WITNESS my hand and the seal of said court at _____, Florida, this _____, 19_____.

_____

As clerk of the above styled court.

History.—§4, ch. 24099, 1947; §2, ch. 29737, 1955.

66.32 Constructive service of summons.—(1) The summons, issued as aforesaid, shall be published once each week for four consecutive weeks (four publications being sufficient)

in some newspaper (as defined by §49.03), published in the county where the suit is pending, or if there be no newspaper published in said county and the lands in suit lie in two or more counties, then in any county wherein the said lands lie; and if there be no such newspaper in which to publish the same, the same may be published by posting true copies of said summons in three or more public places within the county, one of which shall be the courthouse door. No order for publication of such summons shall be necessary, nor shall any affidavit therefor be required. Proof of publication of such summons shall be made by uniform affidavit (§§49.04 et seq.).

(2) If the complaint, as provided in §66.30, discloses the name of any person claiming an estate, right, title or interest in, or lien upon, the real property described in the summons, adverse to the plaintiff, that fact, together with the name and address of said person, if stated, shall be stated in a memorandum, which shall be in substance, as follows, to wit:

"The following persons are said to claim an estate, right, title or interest in, or lien upon, the property described in the summons adverse to the plaintiff, to wit: (here give names and addresses of such persons)." A copy of the summons, with this memorandum attached thereto, shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within fifteen days after the first publication of the summons. The memorandum need not be published with the summons. Proof of posting, as aforesaid, shall be made by the affidavit of the person posting the same.

History.—§5, ch. 24099, 1947; §2, ch. 29737, 1955.

66.33 Service of summons on residents and on nonresidents.—

(1) If the complaint discloses the name of any person who claims or may claim any estate, right, title or interest in, or lien upon, the real property adverse to the plaintiff, the summons, with a copy of the memorandum provided for in §66.32 attached, shall be served upon such person, if he be found within this state, in the manner prescribed by law for service of summons ad respondendum.

(2) If such person be not found within this state, a copy of the summons shall be, within fifteen days after the first publication of the said summons as provided in §66.32, deposited in the United States mail, enclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the complaint.

(3) If no address be given as aforesaid, or if such person be a resident of this state but cannot be found after due diligence within the state, within fifteen days after the first publication of the summons aforesaid, then copies of the summons shall be mailed to such persons, addressed to them at the county seat or county seats of the county or counties wherein the real property described in the complaint lies.

History.—§6, ch. 24099, 1947; §2, ch. 29737, 1955.

66.34 Jurisdiction of court.—Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specifically served, the court shall have full and complete jurisdiction over the plaintiff, the property and the person of everyone having or claiming any estate, right, title or interest in, or lien upon, said property, or any part thereof, and shall be deemed to have acquired the possession and control of said property for the purposes of the proceeding, and shall have full and complete jurisdiction to render the decree provided for in this law.

History.—§7, ch. 24099, 1947.

66.35 Pleading to complaint.—Within the time required for pleading to the complaint, or within such further time as the court may, for good cause grant, any person having or claiming any estate, right, title or interest in, or lien upon, said property, or any part thereof, may appear and make himself a party defendant to the proceeding by pleading to the complaint. All motions, answers and other pleadings shall specifically set forth the estate, right, title, interest or lien claimed by the pleader, to entitle the pleader to be heard in court.

History.—§8, ch. 24099, 1947; §2, ch. 29737, 1955.

66.36 Lis pendens.—The plaintiff shall file with his complaint a lis pendens, in the manner and form prescribed by §47.49, which shall be recorded as provided by said section.

History.—§9, ch. 24099, 1947; §2, ch. 29737, 1955.

66.37 Default, decree pro confesso.—Upon the return day of the summons the clerk of the court shall enter an order that the complaint be taken pro confesso against "all persons claiming any estate, right, title or interest in, or lien upon, the real property described in the complaint filed herein, or any part thereof, who have not appeared herein." If any person file an appearance in said proceeding, within the time allowed by law, but fail to plead or answer within the time required, the plaintiff may, at his election, take an order, to be entered by the clerk or judge as of course, that the complaint be taken pro confesso as against any such person. Entry of the decree pro confesso shall confess all the allegations of the complaint well pleaded, and the court need not require proof of said allegations or any of them.

History.—§10, ch. 24099, 1947; §2, ch. 29737, 1955.

66.38 Rules of practice.—Except as herein otherwise provided, all the provisions and rules of law relating to evidence, depositions, pleading, practice, rehearings and appeals applicable to other chancery proceedings, shall apply to the proceedings hereby authorized.

History.—§11, ch. 24099, 1947.

66.39 Executors, etc., may maintain proceedings.—An executor, administrator, guardian or any other person holding the possession of property in the right of another, may maintain, as plaintiff, and may appear and defend in any proceeding herein provided for.

History.—§12, ch. 24099, 1947.

66.40 Joinder of parcels of real property.—The plaintiff may join in one complaint as many parcels of real property, within the purview of this law, as he may own in any county. If it appears that any such causes of action cannot be conveniently disposed of together, the court may order separate trials.

History.—§13, ch. 24099, 1947; §2, ch. 29737, 1955.

66.41 Venue of proceedings.—All proceedings under this law shall be brought and maintained in the circuit court of the county wherein the real property lies, except where any parcel of said property lies within more than one county, then the proceeding may be brought and maintained in the circuit court of any of such counties.

History.—§14, ch. 24099, 1947.

66.42 Guardian ad litem.—If the complaint be taken as confessed, a guardian ad litem shall not be appointed unless it shall affirmatively appear that the interests of minors, persons of unsound mind or convicts are involved.

History.—§15, ch. 24099, 1947.

66.43 Proceeding in personam.—If the plaintiff does not desire to make unknown persons parties to the proceeding herein provided for, he may bring a proceeding in personam, instead of a proceeding in rem, in which case the real property which is the subject matter of the proceeding need not be described in the summons mentioned in §66.31 and the proceeding shall be against the persons named as defendants instead of against all persons claiming any estate, right, title or interest in, or lien upon, the real property described in the complaint, as more fully set out in §66.29. The summons issued in a proceeding in personam shall contain the names of all the defendants, both resident and nonresident and those whose places of residence are unknown.

History.—§16, ch. 24099, 1947; §2, ch. 29737, 1955.

66.44 Final decree.—The court shall, by its final decree, ascertain and determine all estates, right, titles, interests and claims in, or liens upon, the real property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consist of mortgages or other liens, and shall be binding and conclusive upon every person who at the time of the commencement of the action had or claimed any estate, right, title or interest in, or lien upon, said real property, or any part thereof, and upon every person claiming under any defendant by title subsequent to the commencement of the action; provided, however, that said decree shall designate the liens and claims of those claiming by, through or under the plaintiff. A certified copy of the decree shall be recorded in the current deed book of the public records of the county or counties wherein said real property lies.

History.—§17, ch. 24099, 1947; §11, ch. 25035, 1949.

66.45 Decree entered to prevent further action; exceptions.—Whenever a decree in a proceeding hereby authorized shall have been entered as to any real property, no subsequent proceeding, relative to the same property or any part thereof, shall be tried under this law until proof shall first have been made to the court that all persons who appeared in the first proceeding, or their successors in interest, have been personally served with the papers mentioned in §66.33 either within or without this state, before the time to plead expires, or it is affirmatively shown they cannot be found and that their addresses are unknown.

History.—§18, ch. 24099, 1947.

66.46 Remedies deemed cumulative.—The remedies provided by §§66.28-66.47 shall be deemed cumulative and in addition to any other remedies now or hereafter provided by law for quieting or establishing title to real property.

History.—§19, ch. 24099, 1947.

66.47 Definitions.—In construing §§66.28-66.47, where the context will permit:

(1) The singular includes the plural, and vice versa.

(2) The masculine includes the feminine and neuter, and vice versa.

(3) The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, corporations and all other groups or combinations.

History.—§20, ch. 24099, 1947.

CHAPTER 69

MISCELLANEOUS COURT PROVISIONS

69.01 Circuit court; declaring tax assessment invalid.—In all cases where assessments are made against any person, body politic or corporate, and payment of the same shall be refused upon allegation of the illegality of such assessment, such person, body corporate or politic, may apply to the judge of the circuit court by petition setting forth the alleged illegality, and present the same, together with the evidence to sustain it, and the judge shall decide upon the same, and if found to be illegal shall declare the assessment not lawfully made.

History.—§4, ch. 151, 1848; RS 1542; GS 2006; RGS 3274; CGL 5082.

69.02 Circuit court; changing name of persons.—

(1) The circuit courts of this state shall have power and authority, in their discretion, to change the name of any person residing in this state, upon petition of such person to be filed in the circuit court of the county in which such person resides.

(2) The petition for change of name shall be verified under oath and shall show:

(a) That the petitioner is a bona fide resident of and domiciled in the county where change of name is sought.

(b) If known, the date and place of birth of petitioner petitioner's father's name, mother's maiden name and where petitioner has resided since birth.

(c) If petitioner is married, name of petitioner's spouse, and if petitioner has children the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and where petitioner has been employed for five years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of the same shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, his profession shall be stated, where he has practiced his profession and if a graduate of a school or schools the name or names thereof, time of graduation and degree or degrees received.

(f) Whether the petitioner has been generally known or called by any other name or names and, if so, by what name and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and, if so, where and when.

(h) Whether petitioner has ever been convicted of felony and, if so, when and where.

(i) Whether any judgment for money has ever been entered against petitioner and, if so, the name of the judgment creditor, the amount of such judgment, the date thereof the court by which entered, and whether such judgment has been satisfied and discharged.

(j) That the petition is filed for no ulterior or illegal purpose and the granting of the same will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark or otherwise.

(3) The hearing of the petition may be as soon as practical after said petition has been filed and proof of the allegations of said petition may be taken orally before the court.

(4) Upon the filing of the final order or decree changing the name of the petitioner, the clerk of the circuit court shall forward to the state registrar of vital statistics a report of said proceedings on a form to be furnished by the state registrar, which form shall contain sufficient information to identify the original birth certificate of the person, the new name, and the file number of the court order or decree. This report shall be filed by the state registrar, and shall become a part of the vital statistics of this state.

(5) A husband and wife and minor children may all join in one petition for change of name and the petition shall show the facts required of a petitioner herein as to the husband and wife and the name of the minor children may be changed at the discretion of the court.

(6) Where only one parent petitions for a change in the name of a minor child, notice of such petition shall be served on the other parent and proof of such service shall be filed in the cause.

(7) Nothing herein contained shall be construed to apply to any change of name authorized in proceedings for divorce or for the adoption of children.

History.—§1, ch. 1324, 1862; RS 1543; GS 2007; RGS 3275; CGL 5083; §1, ch. 28159, 1953; (6) §1, ch. 29921, 1955; (6) n. §1, ch. 61-152.

69.03 Supreme court; bond not to be required of certain officers in certain original

proceedings.—Constitutional officers of the state, boards of county commissioners and boards of public instruction of the several counties of this state, shall not be required to provide, file or furnish any bond or other security for the procurement of, or to render effective, for any and all purposes, any restraining order, injunction, or other order, writ or decree, in cases of original jurisdiction in the supreme court of Florida.

History.—§1, ch. 19172, 1939; CGL 4621(1).
cf.—§§59.14, 64.04 Supersedeas, injunctions, without bond.
Note.—§69.07 was repealed by §30, ch. 61-10, however this repeal was not reflected in title of this act.

69.09 Selection of bondholders' committee, etc.—In any suit now pending or hereafter commenced in any court of this state to foreclose the lien of any mortgage or deed of trust given to secure any issue of bonds or other obligations and encumbering real or personal property or both where the owners of said bonds or beneficiaries of said trust exceed ten in number any judge of said court in which the cause is pending may, upon the application of any proper party to the cause, plaintiff or defendant, or without such an application, appoint three persons (two of whom shall constitute a quorum for all purposes), as a committee for the protection of the holders of bonds or units or certificates of beneficial interest, as the case may be, and such committee shall be vested with such powers and authority and discharge such duties in connection with the litigation and the subject matter thereof, as may be necessary and proper, in the judgment of the judge of said court, to protect and safeguard the interest of the holders of the bonds and beneficiaries of the trust involved in or affected by the litigation. As necessity therefor arises during the pendency of such litigation, the judge of said court may by order or orders, from time to time prescribe, modify, abrogate or nullify the powers and authority of the committee.

History.—§1, ch. 16831, 1935; CGL 1936 Supp. 5977(22).

69.10 Same; qualifications of committeemen, etc.—No person shall be eligible for appointment to, nor qualified to act as, a member of said committee who is interested in the outcome of the suit, or in the subject matter thereof, or who is an officer, director or stockholder of any party to the suit, or who is related by blood or marriage to, or directly or indirectly associated with or employed by (a) any official of said court, or (b) any person who is interested in the outcome of the suit, or (c) any person who is interested in the subject matter, or (d) who is an officer, director or stockholder of any corporation a party to the cause.

History.—§3, ch. 16831, 1935; CGL 1936 Supp. 5977(24).

69.11 Same; compensation and expenses of committee.—The compensation and expenses of said committee shall be fixed and approved by the court and may be taxed as costs in the case, and by the court ordered paid by such parties in interest, and in such manner and at such time or times, and out of such fund or property involved in the cause, as the said judge, in his judgment shall determine. The judge of said court in which said litigation is or was pending shall have the right at all times, in his discretion, to remove any or all of the persons theretofore appointed members of said committee, and to appoint a successor or successors to fill such vacancies as may result from removal, resignation or death of members of any such committee. Such committee so appointed shall at all times be subject to the supervision and control of the judge of said court, and amenable to his orders until the approval of the final reports, if any, of said committee and the discharge of said committee by the order of the judge of said court.

History.—§2, ch. 16831, 1935; CGL 1936 Supp. 5977(23).

69.12 Same; employment of counsel by committee.—The employment of any and all counsel by such committee shall be with consent and approval of the judge of said court, and the compensation of such counsel shall be fixed by the judge of said court.

History.—§4, ch. 16831, 1935; CGL 1936 Supp. 5977(25).

69.13 Same; only legally appointed committees recognized.—No bondholders' committee not appointed by a judge of the court in which the cause is commenced or pending shall be heard in the cause, nor permitted, directly or indirectly to dominate or control the litigation or the action of the trustee or trustees under deed or deeds of trust under which or upon which the action is predicated, nor permitted to acquire, directly or indirectly, the property at the sale, if any, in said cause.

History.—§5, ch. 16831, 1935; CGL 1936 Supp. 5977(26).

69.15 Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, etc.—

(1) Whenever it shall be deemed expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of such officer shall seem burdensome or for other cause, the court may order such portion or all of the personal assets of the estate, as it shall deem proper, to be placed with such bank, trust company or savings and loan association, which savings and loan association is a member of the federal savings and loan insurance corporation, and doing business in this state, as the court shall designate, consideration being given to any bank, trust company or savings and loan association as above described, proposed by the officer. When the original assets are accordingly placed with a designated financial institution, such financial institution shall issue in the name of the estate and file with the court a receipt or receipts therefor and shall give the officer a duplicate copy thereof. Such receipt or receipts shall acknowledge:

(a) The original assets received by the financial institution, or the duly collected proceeds therefrom, and all interest, dividends, principal and other indebtedness subsequently collected by the financial institution on ac-

count thereof, are to be held by the financial institution in safekeeping, subject to such instructions of the officer as are authorized by orders of the court directed to the financial institution; and

(b) Accountings therefor are to be made to the officer at reasonably frequent intervals agreeable to the officer. After the receipt or receipts of the financial institution for the original assets placed with such financial institution have been filed with the court, the court thereupon shall, by an order, waive the bond to be given or theretofore given by such officer or reduce it so that it shall apply only to the estate remaining in the hands of such officer, whichever the court shall deem best for the estate.

(2) Whenever the court has ordered any assets of an estate to be placed with a financial institution designated as afore provided, any person or corporation having possession or control of any of such assets, or owning interest, dividends, principal or other indebtedness on account thereof, shall, on the due dates thereof, upon the demand of the financial institution whether the officer has duly qualified or not, pay and deliver such assets, interest, dividends, principal and other indebtedness to the financial institution and the receipt and acceptance thereof by the financial institution shall relieve the person or corporation from all further responsibility therefor.

(3) Any bank, trust company or savings and loan association as above described which may be designated by the court under this section, shall be at liberty to accept or reject such designation in any particular instance, and shall evidence its acceptance or rejection by filing the same with the court or the clerk of the court making such designation within fifteen days after actual knowledge of such designation shall have come to the attention of that financial institution so designated, and in the event of acceptance such bank, trust company or savings and loan association as above described shall be allowed as a proper charge against the assets placed with such financial institution, such reasonable amount for its services and expenses as the court making such designation may by its order allow and provide.

History.—§§1-3, ch. 21980, 1943; §1, ch. 57-198.

Note.—§69.16 was repealed by §30, ch. 61-10, however this repeal was not reflected in title of this act.

69.17 State named party; lien foreclosure, suit to quiet title.—Under the conditions prescribed in this section for the protection of the state, the state may be named a party in any civil action or suit in any court in this state or any district court of the United States having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the state has or claims a mortgage or other lien.

History.—§1, ch. 29724, 1955.

69.18 Same; complaint; service of process.—The complaint shall set forth with particularity the nature of the interest or lien of the state. In actions, service upon the state shall be made by serving the process of the court with a copy of the complaint upon the state attorney or upon an assistant state attorney for the judicial circuit in which the action is brought and by sending a copy of the process and complaint by registered mail to the attorney general. In actions the state may appear and answer, plead or deny within forty days after service or further time as the court may allow.

History.—§2, ch. 29724, 1955.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

69.19 Same; judicial sale.—A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the state as may be provided with respect to such matters by the law of this state. A sale to satisfy a lien inferior to one of the state, shall be made subject to and without disturbing the lien of the state, unless the state consents that the property may be sold free of its liens and proceeds divided as the parties may be entitled.

History.—§3, ch. 29724, 1955.

CHAPTER 70

EJECTMENT

70.01 Common law ejectment abolished.—In actions of ejectment it shall not be necessary to have any fictitious parties to the suit, but the party plaintiff may bring his suit directly against the party in possession or the one claiming adversely.

History.—§1, ch. 999, 1859; RS 1511; GS 1966; RGS 3234; CGL 5040.

70.03 Pleadings, form, etc.—

(1) COMPLAINT.—The complaint shall only contain a plain statement of the cause of action to entitle the plaintiff to recover the land in controversy, together with mesne profits. It may be in the following form, to-wit:

"In the Circuit Court of Florida _____ Circuit, _____ County, to-wit:

"A. B., by his attorney, sues C. D. in an action of ejectment: Because the defendant is in possession of a certain tract or parcel of land, situated, lying and being in said county, known and described as follows, to-wit: (Here describe the land), containing about _____ acres, to which said plaintiff claims title; and the defendant has received the profits of said land since the _____ day of _____, A. D. _____, of the yearly value of _____ dollars, and refuses to deliver possession of said land to the said plaintiff, or to pay him the profits thereof."

(2) ANSWER.—The defendant's answer shall specify the allegation or allegations of the complaint with which he takes issue, whether the same be plaintiff's title to the lands in controversy, defendant's possession, or otherwise.

History.—§§1, 2, ch. 999, 1859; §3, ch. 3244, 1881; RS 1513; §9, ch. 28301, 1953.

70.05 Verdict and judgment.—

(1) VERDICT.—A verdict for the plaintiff shall state the quantity of the estate of the plaintiff, and describe the land by its metes and bounds, by the number of the lot or other certain description.

(2) JUDGMENT.—The judgment awarding possession shall in like manner state the quantity of the estate and give a description of the land recovered.

History.—§§1, 2, ch. 3244, 1881; RS 1515; GS 1970; RGS 3238; CGL 5046.

70.06 Betterment, petition.—If in any suit in ejectment a judgment of eviction shall be rendered against the defendant, he may, at any time within three months after the rendition of such judgment, or if he shall have prosecuted an appeal, within three months after the affirmance of such judgment, file in the circuit court in which such judgment shall have been rendered a petition setting forth:

(1) That such defendant had, before the beginning of the suit in which judgment shall have been rendered, been in possession of, and that he or those under whom he validly derived had permanently improved the value of, the property in controversy.

(2) That he or those under whom he validly derived held said property at the time of such improvement under an apparently good, legal or equitable title, derived from the English, Spanish or United States governments, or from this state; or under a legal or equitable title plain and connected upon the records of a public office or public offices; or under purchase at a regular sale made by an executor, administrator, guardian or other person by order of court, and

(3) That when the defendant made said improvements, or purchased said property improved, he believed the title which he held or purchased to the land thus improved to be a good and valid title. Such petition shall pray that the value of the improvements shall be assessed and compensation awarded to him therefor.

History.—§1516 RS 1892; GS 1971; RGS 3239; CGL 5047; §2, ch. 29737, 1955.

70.07 Betterment, reply.—The plaintiff in the judgment of eviction may reply to the allegations in said petition, or any of them, within sixty days, unless further time be given by the court, after the notice to him of the filing of the petition and the issue or issues thus made shall stand for trial at a time to be set by the court after the filing of the reply; or if no reply is filed, the petition shall stand for trial at a time to be set by the court after the expiration of sixty days from the filing of the petition.

History.—§1517 RS 1892; GS 1972; RGS 3240; CGL 5048; §14, ch. 29737, 1955.

70.08 Betterment, trial and verdict.—If a reply shall have been filed, the plaintiff and defendant shall proceed to trial of the issues made by the reply; but if no reply be filed, the trial shall proceed ex parte, but the defendant shall be bound to prove every allegation of the petition. Whether the trial be ex parte or not, the jury shall be sworn to try the issues as aforesaid, and if they find them all in favor of the defendant in ejectment, to assess:

(1) The value of the land at the time of the assessment, irrespective of the improvements put upon the land by the defendant, or those under whom he derives, and if any, the injury done to the land by such defendant, or those under whom he derives.

(2) The value of the permanent improvements at the time of the assesment.

(3) The injury, if any, done to the land by the defendant or those under whom he derives, and

(4) The value of the use of the land by the defendant between the time of the judgment in ejectment and the time of the assessment, or if the defendant has been evicted from, or has surrendered the premises, from the time of the judgment to the time of the surrender or eviction. The jury shall specify in its verdict separately its findings upon each of the matters submitted to it.

History.—§1518 RS 1892; GS 1973; RGS 3241; CGL 5049; §2, ch. 29737, 1955.

70.09 Betterment, judgment for plaintiff.—Upon the rendition of such verdict the court shall cause the clerk to ascertain whether the balance of the last three assessments aforesaid (that is, of the value of the improvements, the extent of the injury and the value of the use of land), be in favor of the plaintiff in ejectment, or of the defendant, and to ascertain the amount of such balance; if the verdict be in favor of the plaintiff, on the issues made upon the petition, a judgment shall be rendered against the defendant for costs, whether the balance of the assessment aforesaid be in favor of the plaintiff or the defendant; but if the balance of the assessments be in favor of the plaintiff, he shall have in addition to the judgment for costs a judgment for such balance.

History.—§1519 RS 1892; GS 1974; RGS 3242; CGL 5050.

70.10 Betterment, judgment for defendant.—If the verdict upon the issues presented by the petition be in favor of the defendant, and the balance of assessments be also in his favor, a judgment for costs shall be entered against the plaintiff, and a further judgment that unless the plaintiff shall within sixty days pay or secure, as hereinafter provided, the amount of the balance of assessments against him, the defendant may pay or secure to the plaintiff the value of the land as assessed by the jury, as aforesaid.

History.—§1520 RS 1892; GS 1975; RGS 3243; CGL 5051.

70.11 Betterment, payment by plaintiff.—The plaintiff may pay said balance in cash, or may execute and deliver to the defendant a bond with two good and sufficient sureties, to be approved by the clerk of said court, conditioned to pay to the defendant in ejectment the said balance in two equal annual installments, with interest at eight per cent per annum. If the plaintiff shall pay the said sum within sixty days, or if the payment of the said bond shall be received, satisfaction of the judgment shall be entered and all rights conferred upon the defendant by said judgment shall cease.

History.—§1521, RS 1892; GS 1976; RGS 3244; CGL 5052.

70.12 Betterment, payment by defendant.—If, however, plaintiff shall not pay or secure the said sum within said sixty days, the defendant shall have the right within sixty days thereafter to pay to the plaintiff the value of the land as assessed by the jury, or to give to the plaintiff a bond with good and sufficient sureties, to be approved by the clerk of the said court, conditioned to pay to the plaintiff the said value in two equal annual installments, with eight per cent interest; or if the plaintiff should fail to pay the bond given by him as aforesaid when the same shall become due, the defendant shall again have the privilege for sixty days after the expiration of the time fixed in the bond for payment, of paying to the plaintiff in cash, the value of the land assessed as aforesaid. Upon the payment of said sum to the plaintiff at any of the times hereinbefore mentioned, the title to the said land shall vest in the defendant, and the plaintiff or those holding under him shall give to the defendant a deed to the said land, tenements, hereditaments and appurtenances, and if the defendant shall have been evicted from or shall have surrendered the premises, they shall be restored to him by order of the court, upon motion.

History.—§1522 RS 1892; GS 1977; RGS 3245; CGL 5053.

CHAPTER 71

RE-ESTABLISHMENT OF LOST PAPERS, RECORDS, ETC.

71.01 Re-establishment of papers, records, etc.—All papers, written or printed, of any kind whatsoever, and the records and files of any official, court or public office, may be re-established in the manner hereinafter provided.

History.—§1523 RS 1892; GS 1978; RGS 3246; CGL 5054.

71.02 Who may re-establish papers, records, etc.—Any person interested in the paper, file or record to be re-established may re-establish the same.

History.—§1524 RS 1892; GS 1979; RGS 3247; CGL 5055; §7, ch. 22858, 1945.

71.03 Re-establishment of papers, records, etc.; venue and in what court.—All proceedings had under the provisions hereof shall, if the re-establishment be sought of a record or file, be had in the circuit court of the county where such record of file existed before the loss or destruction thereof; and if it be a private paper, in the circuit court of the county where any person to be affected thereby shall live, or if such persons be non-residents, then in the circuit court of any county in which the person seeking the re-establishment may desire.

History.—§1525 RS 1892; GS 1980; RGS 3248; CGL 5056.

71.04 Re-establishment of papers, records, etc.; remedy concurrent.—Nothing herein contained shall prevent the re-establishment of lost paper, records and files, at common law or in equity in the usual manner.

History.—§12, ch. 1369, 1862; RS 1526; GS 1981; RGS 3249; CGL 5057.

71.05 Re-establishment of papers, records, etc.; effect of.—Any paper, record or file re-established shall have the force and effect of the original. A private paper shall have such effect immediately upon the recording of the order re-establishing it; but a re-established record shall not have that effect until recorded in the book provided for the class of records to which it belongs, and a re-established paper or file of any official, court or public officer shall not have such effect until a copy thereof, certified by the clerk of the circuit court, shall have been filed with the official or in the court or public office where the original belonged. A certified copy of all re-established papers required or authorized by law to be recorded may be rerecorded.

Where any deed forming a link in a chain of title to any land in this state has been placed upon the proper record without having been acknowledged or proven for record, has been lost or destroyed, certified copies of the record of such deed as so recorded may be received as evidence in any court of this state in proceedings to re-establish such deed: Provided, such deed has been so recorded for twenty years.

History.—§5, Nov. 21, 1829; RS 1527; §1, ch. 5162, 1903; GS 1982; RGS 3250; CGL 5058.

71.06 Re-establishment of papers, records, etc.; petition.—A person desiring to establish any paper, record or file, except where otherwise provided, shall file in the circuit court a petition, sworn to by himself, his agent or attorney, setting forth that such paper, record or file has been lost or destroyed, and is not in the custody or control of the petitioner, the time and manner of such loss or destruction, and that a copy (to be attached to the petition) is a substantial copy of that lost or destroyed, and that persons to be named in the petition are the persons, and the only persons known to the petitioner, interested for or against the re-establishment of such paper, record or file.

History.—§2, ch. 3019, 1877; RS 1533; GS 1997; RGS 3265; CGL 5073.

71.07 Re-establishment of papers, records, etc.; notice and service.—

(1) CONTENTS.—Upon the filing of such petition, the clerk shall issue a notice, to which shall be attached a copy of the petition, requiring the persons named in the petition as interested, and all other persons interested to appear before the judge of the said court at a time to be fixed in said notice, not less than forty-five nor more than sixty days from the issuance of the notice, to show cause why the said paper, record or file should not be re-established, which notice shall also be served as other legal process is served upon all persons within the jurisdiction of the court.

(2) PUBLICATION AND SERVICE OF THE NOTICE.—The clerk shall also cause to be published notice to all persons named and not served, and to all other persons interested to appear in said court and show cause as aforesaid on a day to be named in the notice, not less than twenty-eight nor more than sixty days from the first publication of said notice.

The notice shall contain a brief statement of the substance of the petition, and of the copy attached to it, and shall be published once each week for four successive weeks in a newspaper published in the county in which the proceedings are taken.

History.—§1, ch. 2048, 1873; RS 1534; GS 1998; RGS 3266; CGL 5074.

71.08 Re-establishment of papers, records, etc.; proceedings and judgment.—Answers filed by persons appearing in obedience to the notices aforesaid shall be sworn to, and shall be filed upon the day fixed for appearance. All issues of law or fact shall be determined by the court, and evidence shall be by affidavit, or in writing before an examiner to be appointed by the court, or orally before the court, as the court may determine. Upon the hearing the court may deny the prayer of the petition, or may grant the same, or may re-establish the paper, record or file in such form as the law and the evidence may justify. No application for re-establishment shall be granted without proof of the material matters set forth in the petition, or by written consent of the person or persons adversely interested.

History.—§4, ch. 3019, 1877; RS 1536; GS 1999; RGS 3267; CGL 5075.

71.09 Re-establishment of marks and brands.—The person desiring the re-establishment of the record of any marks or brands, shall file in the circuit court a petition under oath, describing the particular mark or brand sought to be re-established, and stating the place where the same was recorded, the time of record as near as may be known, and that the record thereof has been lost or destroyed, and requesting the re-establishment of the record of such mark or brand. Upon the filing of such petition, the judge of said court shall make an order re-establishing the said record.

History.—§2, ch. 1369, 1862; RS 1528; GS 1983; RGS 3251; CGL 5059.

71.10 Re-establishment of fieri facias; procedure.—Lost or destroyed writs of fieri facias issued upon lost or destroyed judgments may be re-established by the filing in the circuit court of an affidavit by the party desiring the re-establishment, his agent or attorney, setting forth the loss or destruction of the writ, the contents of it and the loss or destruction of the judgment upon which the writ issued, and the belief of affiant that the plaintiff will, in whole or in part, lose the amount of the lost or destroyed judgment before the same can be re-established. Upon the filing of such affidavit, the clerk of said court shall make an order that another writ shall be issued in lieu of the original lost or destroyed, and the proper officer of the court from which the writ originally issued shall issue such other writ.

History.—§7, ch. 1735, 1870; RS 1529; GS 1984; RGS 3252; CGL 5060.

71.11 Re-establishment of fieri facias; rights of owner of property subsequently levied upon.—The defendant may release any property levied upon under such new writ by filing with the officer executing the same an affidavit sworn to by himself, his agent or attorney, that the lost or destroyed judgment has been satisfied in whole or in part, and by filing with said officer a bond, with two good and sufficient sureties, payable to the plaintiff, in double the amount claimed to be due on said judgment, conditioned to pay to the plaintiff the amount adjudged by the court, in the proceedings provided for hereafter, to be due the plaintiff upon said judgment.

History.—§7, ch. 1735, 1870; RS 1530; GS 1985; RGS 3253; CGL 5061.

71.12 Re-establishment of fieri facias; trial of claims.—The officer shall return the affidavit and bond to the court issuing the execution, and at a term of court thereafter the issues presented by the said affidavits of the plaintiff and of the defendant shall be tried by the court and jury. If the jury find in favor of the plaintiff they shall specify the amount due him upon the execution, and judgment therefor shall be entered up against the defendant and the sureties on the bond for such sum, and execution shall issue thereon.

History.—§7, ch. 1735, 1870; RS 1531; GS 1986; RGS 3254; CGL 5062.

17.13 Re-establishment of pleadings and process in pending suits.—Lost or destroyed proceedings, and any paper or file affecting them, in any suit pending and undetermined in any court, may be re-established as follows:

The person desiring such re-establishment shall file a substantial copy of such proceedings or writings in the circuit court, and shall give ten days' notice in writing to all parties to the suit or their attorneys of record, of an application to the court for the re-establishment of such proceedings, or paper or file. Such notice shall be personally served at least ten days before the time fixed for such application. Upon the hearing of such application the judge may in such manner as he may think best, ascertain the facts, and upon such ascertainment determine the application.

History.—§6, ch. 1735, 1870; RS 1532; GS 1996; RGS 3264, CGL 5072.

71.14 Re-establishment of land titles destroyed by fire; jurisdiction.—When the records or any material part thereof in any county in this state have been destroyed by fire so that a connected chain of title cannot be deduced therefrom, any court in such county having chancery jurisdiction shall have the power to inquire into the condition of any title to or interest in any land in such county, and to make all such orders, judgments and decrees as may be necessary to determine and establish said title against all persons known or unknown.

History.—§1, ch. 4952, 1901; GS 1987; RGS 3255; CGL 5063.

71.15 Re-establishment of land titles destroyed by fire; parties plaintiff.—It shall be lawful for any person or persons claiming a freehold estate in any land in such county who, or whose grantors, were in the actual possession of such land at the time of such destruction of such records, and who is in possession thereof at the time of the filing of the petition hereinafter mentioned, to file a petition in chancery in any court in such county having chancery jurisdiction, praying for a decree establishing, and confirming his or their title to and estate in such land. Tenants in common or persons owning as aforesaid an undivided interest in any such lands may join in such petition.

History.—§2, ch. 4952, 1901; GS 1988; RGS 3256; CGL 5064.

71.16 Re-establishment of land titles destroyed by fire; parties defendant.—All persons so named in said petition, except the petitioner, shall be made defendants and shall be notified of said suit by subpoena, if residents of this state, in the same manner as is now or may hereafter be required in chancery proceedings by the laws of this state, and nonresidents may be served by publication, posting and mailing thereof to defendants whose residence may be known, in like manner as is or may be provided by law for the service of process upon nonresident defendants in other suits in chancery, except as may be otherwise provided herein. All other persons shall be deemed and taken to be defendants by the name or designation of "all whom it may concern," and notice to them under that designation shall be published and posted as aforesaid.

History.—§4, ch. 4952, 1901; GS 1990; RGS 3258; CGL 5066.
cf.—Ch. 48, Constructive service of process.

71.17 Re-establishment of land titles destroyed by fire; petition.—Said petition shall state clearly the description of said lands, the character and extent of the estate claimed by the petitioner, and from whom and when and by what mode he derived his title thereto; it shall give the names of all persons owning or claiming any estate or possessory interest in said lands, or any part thereof, and also all persons who shall be in possesion of said lands, or any part thereof, and also all persons to whom any of such lands have been conveyed, and the date or dates that such conveyances shall have been recorded in the office for the recording of deeds of such county since the time of the destruction of such records as aforesaid, and prior to the time of the filing of such petition, and their residences so far as the same are known to the said petitioner; and if no such persons are known to the said petitioner, it shall be so stated in said petition.

History.—§3, ch. 4952, 1901; GS 1989; RGS 3257; CGL 5065.

71.18 Re-establishment of land titles destroyed by fire; process, notice, etc.—Said notice shall be entitled "Land title notice," and shall be substantially as follows:

A., B. and C., etc. (here give the names of all known defendants, if any), and to all whom it may concern: Take notice that on the _____ day of _____ A. D. 19_____, a petition was filed by _____ in the circuit court for _____ county in chancery, to establish his title to the following described land (here insert a full description of the land mentioned in said petition).

Now unless you appear on the _____ day of _____ A. D. 19_____, in said court and do hereafter as required by law show cause against such application, said petition shall be taken as confessed and the title and estate of said petitioner will be decreed and established according to the prayer of said petitioner, and you will be forever barred from disputing the same.

_____

Clerk of the Circuit Court_____ county, Florida.

Said petition shall be verified by the affidavit of the petitioner, and any party so swearing falsely shall be deemed guilty of perjury, and punished by imprisonment in the state prison not exceeding twenty years, and shall be liable in damages to any person injured by such false statement to be recovered in an action in any court having jurisdiction thereof. It shall be the duty of the clerk of the court when such petition is filed to enter in a separate book or books, to be kept for the purpose, the names of the petitioners and defendants, the date of the filing of said petition and description of the lands included therein, which record shall be at all times open to the public, and said books shall be properly indexed.

History.—§4, ch. 4952, 1901; GS 1991; RGS 3259; CGL 5067.

71.19 Re-establishment of land titles destroyed by fire; proceedings, pleadings, etc.—Any person interested may oppose any such petition and file his motion or answer thereto on the return date next after the day to and upon which he shall have been cited to appear therein, and may also file a cross petition if he shall desire to do so; said answer shall admit, confess, avoid or traverse all the material allegations of the petition, and shall, except when made by a guardian ad litem, be verified by affidavit in the same manner as is or may be required as to other answers in chancery cases. The petition may, however, waive the verification of the answer by oath, as aforesaid, in which case the answer shall have no other or greater weight as evidence than the petition.

History.—§5, ch. 4952, 1901; GS 1992; RGS 3260; CGL 5068; §2, ch. 29737, 1955.

71.20 Re-establishment of land titles destroyed by fire; decree pro confesso and proceedings thereon.—If no motion or answer shall be filed on or before the rule day upon which the same shall be due as aforesaid, a decree pro confesso may be taken in like manner and with like effect as a decree pro confesso upon a bill in other chancery cases, and further proceedings may be had in referring same, taking evidence therein and rendering a decree therein or otherwise, as in other chancery cases.

History.—§6, ch. 4952, 1901; GS 1993; RGS 3261; CGL 5069.

71.21 Re-establishment of land titles destroyed by fire; determination of titles, etc.—It shall be competent for any such court in all such decrees in such proceedings to determine and decree in whom the title in or to any land described in such petition is vested, whether the petitioner, or in any other of the parties before the court, but said decree shall not in any wise affect any lien or liens to which said land may be subject, whether by mortgage, deed of trust, judgment, statute, mechanic's lien or otherwise, but shall leave all such liens to be ascertained or established or enforced as is or may be provided by law.

History.—§7, ch. 4952, 1901; GS 1994; RGS 3262; CGL 5070.

71.22 Re-establishment of land titles destroyed by fire; practice applicable.—The rules, regulations and practice governing pleadings or practice in chancery in this state shall apply to the proceedings under this law so far as they are not inconsistent herewith, and any appeal may be taken and prosecuted in the proceedings on any such petition in like manner and with like effect as in other chancery cases.

History.—§8, ch. 4952, 1901; GS 1995; RGS 3263; CGL 5071.

CHAPTER 72

ADOPTION

72.07 Declaration of policy.—For all minor children who have been permanently committed to a licensed child-placing agency, the licensed child-placing agency is the official guardian. The state welfare board, also referred to as the state department of public welfare, the department of public welfare, or the department, may accept permanent commitment and place children for adoption. When practicable, the child and adoptive parents shall be of the same religion; provided the natural parents may give written consent to the placement of the child with adoptive parents of a different religion. For all minor children who have been so committed the department is the official guardian. Also for the purpose of adoption the department is designated as the official guardian for all children of this state who have no natural parents, or who have been abandoned by their natural parents, or whose natural parents have voluntarily surrendered their rights as parents, and who have no legal guardian.

History.—§1, ch. 21759, 1943; §3, ch. 63-449.

72.08 Jurisdiction and venue.—The circuit court shall have exclusive jurisdiction in all matters of adoption. All petitions for adoption shall be filed in the circuit court of the county in which the petitioner or petitioners reside, or in which is located any licensed child placing agency to which the child sought to be adopted has been permanently committed, or in which such child may reside.

History.—§2, ch. 21759, 1943.

72.09 Licensed child-placing agency defined.—A licensed child-placing agency as used in this law is defined to mean any child welfare agency which has been duly licensed by the department of public welfare to place children for adoption.

History.—§3, ch. 21759, 1943; §4, ch. 63-449.

72.091 Adoption jurisdiction given state welfare department.—The department of public welfare shall have all the authority and duties relating to adoption which are now, by law, given to a licensed child-placing agency.

History.—§5, ch. 63-449.

72.10 Proof of permanent commitment to the department of public welfare or a licensed child-placing agency and proof of license.—The recital in the written consent given by the department of public welfare that the child sought to be adopted has been permanently committed to the department shall be prima facie proof of such commitment. The recital in the written consent given by a licensed child-placing agency or the declaration in an answer or recommendation filed by a licensed child-placing agency, that the child has been permanently committed and the agency is duly licensed by the department, shall be prima facie proof of such commitment and of such license.

History.—§4, ch. 21759, 1943; §6, ch. 63-449.

72.11 Who may adopt.—Any adult person who is a resident of this state may petition for leave to adopt a minor child; provided, however, that a petition for adoption shall not be granted to a married person unless both husband and wife join in the petition, except, where the petitioner is the stepparent of the child, or when, after due notice of the proceeding has been given to the nonjoining husband or wife, the court finds that there is good cause for such nonjoinder.

History.—§5, ch. 21759, 1943; §1, ch. 23721, 1947.

72.12 Petition for adoption; contents.—The petition for adoption shall be filed in triplicate, each copy of which shall be verified by one of the petitioners. Such petition shall state:

(1) The name, if known, sex, color, and age, if known, or if unknown, the approximate age, and the place of birth, if known, of the child sought to be adopted; provided, however, that the real name and the place of birth of the child sought to be adopted need not be set forth

if such child has previously been permanently committed to a licensed child-placing agency or the state department of public welfare;

(2) The new name to be given to such child if change of name is desired;

(3) The name, age and place of residence of the adopting parent or parents, and if married, the place and date of their marriage;

(4) The name and address of the agency to which such child has been permanently committed, and whether or not the agency is a licensed child-placing agency or the state department of public welfare as defined in this law;

(5) The reasons why the petitioner or petitioners desire to adopt said child. Upon the filing of the petition, the clerk of the court wherein the same is filed shall forthwith mail a copy thereof to the state welfare board, and to the licensed child-placing agency or the state department of public welfare, if such there be, named in the petition. The clerk shall make a certificate as to such mailing and such certificate shall be conclusive proof thereof.

History.—§6, ch. 21759, 1943; §7, ch. 63-449.

Note.—Word "or" added before the state department of public welfare as amended by ch. 63-449.

72.13 Process; service and publication.—In the absence of consent as hereinafter provided for, upon the filing of the petition, the clerk of the court wherein it is filed shall forthwith issue a notice directed either to the natural parent or parents, or the legal guardian, commanding them to be and appear in said court, on a day named in said notice, not less than twenty-eight nor more than sixty days from the date thereof, and to show cause why said petition should not be granted. Rule days are abolished in all proceedings hereunder. Said notice shall be served by the proper sheriff in the same manner as that in which summons in chancery are served, not less than fifteen days before the return day named in said notice. As many alias and pluries notices as may be necessary may, from time to time, be issued, returnable as herein provided, to a later date or later dates. If any person named in said notice be alleged to be a nonresident of Florida, or if the name or residence or whereabouts of any such person is alleged to be unknown, or if any such person cannot be personally served, the clerk shall cause such notice to be published once each week for four consecutive weeks (four publications being sufficient) prior to the return day, in some newspaper published in the county, which notice shall show the filing of said petition for adoption of such child. The clerk shall mail a copy of such notice to every such nonresident person at his place of residence as shown in the petition. The clerk shall file a certificate of constructive service, and thereupon such constructive service shall be as effectual as to persons who are nonresidents or whose names or residence or whereabouts are unknown, as if such persons had been personally served with process within this state, according to law. In the event it is necessary to serve such notice by publication, it shall be shown either in the verified petition or in an affidavit attached thereto, that diligent search has been made by the petitioner or the petitioners to ascertain the names and places of residence, of the natural parent or parents, or legal guardian.

History.—§7, ch. 21759, 1943; §1, ch. 63-211.

72.14 Consent.—The notice provided for in §72.13 shall be unnecessary when there shall have been filed with the petition, or thereafter, a written consent, executed in the presence of two witnesses and acknowledged before a notary public, or other officer authorized by law to take acknowledgments, by:

(1) The living parent or parents of a child born in wedlock, or the living mother of a child born out of wedlock, or if no parent is living, the legal guardian, if such there be; provided, that if such child has previously been permanently committed to a licensed child-placing agency or the state department of public welfare, then in such event, the consent of such parent or parents, or legal guardian shall not be required and the consent to adoption may be given by the licensed child-placing agency or the state department of public welfare to which such child has been so committed and such consent shall be sufficient. Provided further, that if such child has been permanently committed for the purpose of adoption, by a court having jurisdiction of the cause and parties, to an agency of or in a state other than Florida, such agency being duly licensed or otherwise legally qualified in said state to place children for adoption, and documentary evidence of such license or legal qualifications and permanent commitment for adoption satisfactory to the court has been filed in the proceeding, the consent of the parent or parents or legal guardian shall not be required and the consent to the adoption may be given by such out-of-state agency.

(2) Provided further, that if any adoption decree has heretofore been entered in any of the circuit courts of this state based upon the consent of the state department of public welfare, or a child-placing agency duly licensed or otherwise legally qualified by or in another state to whom such child has been permanently committed for adoption by a court having jurisdiction of the cause and the parties, such adoption or adoptions are hereby validated and confirmed unless proceedings are instituted in the court entering the decree or decrees to vacate and set same aside within six months from the effective date of this law.

(3) In any event, if the child sought to be adopted has attained the age of twelve years, the written consent of such child, executed and acknowledged as aforesaid, shall be required.

History.—§8, ch. 21759, 1943; §2, ch. 23721, 1947; (1), (2) §7, ch. 63-449.

Note.—Word "or" added to state department of public welfare as amended by ch. 63-449.

72.15 Social investigation and recommendations.—Upon or prior to the filing of a petition for the adoption of any minor child, a study shall be made of all pertinent details relating

to such child for the purpose of ascertaining whether he is a proper subject for adoption, and the petitioner or petitioners, to determine whether they are suitable persons to adopt such child; provided, however, said investigation and recommendations shall not be required, unless requested by the court, in cases where the petitioner is married to and not separated from one of the natural parents of the child sought to be adopted and the petition so states. If the child sought to be adopted has previously been permanently committed to a licensed child-placing agency, the social study shall be made by such agency, otherwise by the state welfare board. Written recommendations as to the desirability of the adoption shall be filed by such agency making such study or by the state welfare board, as the case may be. Thereupon such agency or the state welfare board, as the case may be, shall be deemed a party to the cause. In all cases in which the state welfare board is required to make a study and file recommendations as to the desirability of the adoption as herein provided the board shall, when submitting its recommendations, submit to the court a written statement of the facts found in its social investigation and on which its recommendations are based.

History.—§9, ch. 21759, 1943; §3, ch. 23721, 1947; §1, ch. 29674, 1955.

72.16 **Persons desiring to resist said adoption.**—Any person, including the state welfare board or the licensed child placing agency to which the child sought to be adopted has previously been permanently committed, shall have the right after the filing of any petition, to file an answer and objections to the granting of an order of adoption and shall thereupon appear as a respondent in the proceedings.

History.—§10, ch. 21759, 1943.

72.17 **Guardian ad litem under certain circumstances.**—In cases where the state welfare board or a child-placing agency is required to make a study and recommendation, if said board or agency fails to file its recommendations with the clerk of the court in which the petition has been filed as provided in §72.15 within ninety days from the date of the filing of the petition, or fails to file an answer or objection to the granting of the petition, within such time, then in such event, the court shall appoint a guardian ad litem to represent the child.

History.—§11, ch. 21759, 1943; §2, ch. 29674, 1955.

72.18 **Hearing.**—The hearing on the petition shall not be held until the child shall have lived in the home of the petitioners under supervision if the state welfare board not less than ninety days; provided, however, that hearings on all stepparent adoptions, whether or not a natural parent has filed formal opposition to the adoption with the court, may be held immediately upon filing of the petition and consent of, or proof of notice to the other natural parent, hearings on adoptions of children related to petitioners by blood or marriage may be held as soon as the recommendations of the state welfare board are filed, hearings on child-placing agency adoptions may be held upon receipt of the child-placing agency's recommendations, provided the child has lived in the home ninety days, and hearings on adoptions when a natural parent has filed formal opposition to the adoption with the court and hearings on adoptions where the state welfare board is recommending dismissal, may be held at any time after receipt of the state welfare board's recommendation. Provided further, the court in its discretion may postpone such hearings from time to time. The state welfare board, and the licensed child-placing agency named in the petition, if such there be, shall be notified of the date of the hearing. The petitioners and the child to be adopted, if twelve years of age or over, shall be required to attend the hearing in person, but a younger child shall not be required to attend unless the court so orders. Hearings may be held informally.

History.—§12, ch. 21759, 1943; §3, ch. 29674, 1955.

72.20 **Final decree of adoption.**—Upon hearing if it appears to the court that the petitioners are fit and proper persons to adopt said child and that the best interests of the child will be promoted by the adoption, and that the child is suitable for adoption by petitioners, the court shall enter a final decree of adoption declaring the child legally the child of petitioner or petitioners and giving such child the name by which it shall thereafter be known; otherwise the court shall dismiss the petition or continue the hearing for further investigation and consideration.

History.—§14, ch. 21759, 1943; §5, ch. 29674, 1955.

72.21 **Proceedings to be as in chancery.**—All proceedings herein shall be as in chancery and shall be governed by the same rules as other chancery causes, except as may be herein expressly changed or modified.

All recommendations, statements of facts, and supplementary recommendations filed by a licensed child placing agency or the state welfare board shall be served upon the petitioner or petitioners in the same manner as pleadings.

History.—§15, ch. 21759, 1943; §1, ch. 28044, 1953.

72.22 **Effect of adoption.**—By the decree of adoption the child shall be the child and legal heir of the adopting parent or parents, entitled to all rights and privileges, and subject to all obligations, of a child born to such parent or parents in lawful wedlock. The natural parents of such adopted child, if living, shall, after the adoption, be relieved of all legal duties and obligations due from them to such child, and shall be divested of all rights with respect to such child; provided, that when the adopting parent is married to one of the natural parents of such child, or thereafter intermarries with one of such natural parents, then the relation of such child toward such natural parents shall be in no way altered by the adoption; provided further, that when an adopted child has been subsequently adopted by some third party or readopted by his natural parents or one of them,

that such adopted child shall not inherit from an adopted parent when he has been subsequently adopted by another or by his natural parents or one of them, in the absence of some evidence in writing that such adopting parent considered such child his child for the purposes of inheritance, notwithstanding the subsequent adoption and provided further that nothing in this law shall be construed to prevent a legally adopted child from inheriting from the natural parents under the laws of this state or any state.

History.—§16, ch. 21759, 1943; §1, ch. 57-158.

72.23 Right of appeal.—Any party aggrieved by the entry of any order herein shall have the right to appeal in the same manner as in other chancery cases.

History.—§17, ch. 21759, 1943.

72.24 Filing statement with bureau of vital statistics.—Within thirty days after the decree of adoption has been entered by the court, it shall be the duty of the clerk of the court to forward a certified statement of the entry of the final decree of adoption in said cause to the registrar of vital statistics of the state board of health on a form to be provided by said registrar, to be recorded and preserved by said registrar as provided by law.

History.—§18, ch. 21759, 1943; §4, ch. 23721, 1947.

72.25 Prior adoption proceedings.—All adoptions lawfully made prior to May 17, 1943, pursuant to prior laws shall be valid, although not made in compliance with the provisions of this law; and adoption proceedings pending on said May 17, 1943, are not affected by this law.

History.—§20, ch. 21759, 1943.

72.27 Adoption records confidential.—The court files, records and papers in proceedings for the adoption of minors are hereby declared to be confidential, and shall be indexed only in the name or names of the petitioners seeking such adoption and neither the name of the minor before or after the adoption shall be noted on any docket, index or other record outside of the court file in such proceedings. At any time during the progress of the cause the court may enter an order impounding all files, records and papers therein. In all adoption proceedings, upon entry of a final decree, the court files, records and papers shall be sealed and shall not be open to inspection except upon order of said court; provided further, that all adoption records of the state welfare board and licensed child-placing agencies are hereby declared to be confidential, and shall not be open to inspection.

History.—§5, ch. 23721, 1947; §1, ch. 29703, 1955.

72.28 Custody of minor.—Whenever the minor is in the custody of the person or persons petitioning for its adoption the court, upon denial of the petition may in its discretion remove the child from the custody of the petitioners and make such other orders for its custody as may be to the best interest of the child.

History.—§6, ch. 23721, 1947; §6, ch. 29674, 1955.

72.29 Copy of final decree; delivery.—Within thirty days after the entry of a final decree of adoption, it shall be the duty of the clerk of the court to deliver a true copy of the final decree to the licensed child-placing agency which may have filed recommendations in the proceedings, or to the state welfare board if the recommendations were filed by said board.

History.—§7, ch. 23721, 1947.

72.30 Irregularities and procedural defects cured.—After two years from the entry of a final decree of adoption any irregularity or procedural defect in the adoption proceeding shall be deemed cured, and thereafter the validity of such final decree shall not be subject to direct or collateral attack by reason or on account of any such irregularity or procedural defect; provided, however, that as to all such decrees which were entered more than one year prior to the effective date of this law, the validity thereof may be subject to attack on the grounds of any such irregularity or procedural defect at any time within one year after the effective date of this law.

History.—§8, ch. 23721, 1947.

72.31 Short title.—Sections 72.31-72.39 may be cited and referred to as the adoption of an adult law of 1947.

History.—§1, ch. 23891, 1947.

72.32 Definition.—Wherever the word "adopters" appears in this law, the same shall be construed to include the survivor of a married couple.

History.—§1A, ch. 23891, 1947.

72.33 Order of adoption.—The judges of the several circuit courts of this state, sitting in chancery, shall have full power and authority, either in term time or in vacation, at chambers, to enter an order of adoption of an adult, hereinafter called adoptee, whether married or single, by other married adults, or the survivor thereof, hereinafter called adopters.

History.—§2, ch. 23891, 1947; §11, ch. 25035, 1949.

72.34 Petition to adopt adult.—Any adult, married or unmarried, residing in the state and wishing to adopt another adult, may apply by petition in chancery to the judge of the circuit court for the circuit in which such adopters may reside, for permission to adopt another adult, whether married or single; provided, however, that said adopters are more than ten years older than the adoptee.

History.—§3, ch. 23891, 1947; §11, ch. 25035, 1949; §1, ch. 28107, 1953; §1, ch. 29704, 1955; §1, ch. 61-445; §1, ch. 63-273.

72.35 Contents of petition to adopt adult.—Such adopters shall set forth in such petition the date and place of their marriage, the age of each of such adopters, the name, age, and address of the adoptee and the name, age, and address of the spouse of the adoptee, if married, and shall briefly set forth the reasons why the adoption of such adult is desired. Said petition shall be sworn to by adopters, before some officer authorized to administer oaths.

History.—§4, ch. 23891, 1947; §11, ch. 25035, 1949.

72.36 Consent of adoptee required.—There shall be filed with such petition the written consent of the adoptee and of the spouse, if any, of such adoptee to such adoption and also one of the following:

(1) The written consent of the natural parent or parents, if any, of such adoptee.

(2) Proof of personal service of a true copy of said petition and of notice of the time and place of the hearing of said petition upon the natural parent or parents, if any, of such adoptee.

(3) Proof by affidavit of publication of notice that a petition for such adoption will be presented to the court at a specified time and place. Such publication shall be made four times consecutively, once each week (four publications being sufficient) in a newspaper in the county where such adopters reside.

History.—§5, ch. 23891, 1947.

72.37 Consideration of petition by judge.—The judge before whom any such petition shall be filed, shall forthwith consider the same together with such evidence as to the character, habits, capacity, and qualifications of the adopters, as to him shall seem proper, and if satisfied that the adoption of such adoptee will be for his or her permanent interest or benefit, he shall enter a decree authorizing the adoption of such adoptee by such adopters, as their own child and heir at law.

History.—§6, ch. 23891, 1947.

72.38 Effect of adoption of adult.—By a decree of adoption, the adoptee shall be the child and legal heir of the adopters, entitled to all rights and privileges and subject to all obligations of a child born to such adopters in lawful wedlock. The natural parents of such adoptee, if living, shall, after the adoption, be relieved of all legal duties and obligations due from them to such adoptee and shall be divested of all rights with respect to such adoptee, provided, however, that nothing in this law shall be construed to prevent the adoptee from inheriting from his or her natural parents, under the laws of this or any other state. The provisions of §731.30, relating to inheritance by and from an adopted child shall also apply to inheritance by and from an adult adopted under the provisions of this law.

History.—§7, ch. 23891, 1947.

72.39 Recording decree of adoption.—Such decree shall be duly recorded in the office of the clerk of the circuit court of the county in which such adopters reside. A certified copy of such decree shall be taken and received as sufficient evidence of the adoption of such adoptee by such adopters, wherever such adoptee may be in business, own any property, or be engaged in any legal controversy.

History.—§8, ch. 23891, 1947.

72.40 Adoption of children; placement; selling; advertising, etc.—

(1) As used in this section:

(a) The word "person" shall include every natural person, corporation, association, partnership, institution or agency except licensed child-placing agencies.

(b) The singular shall include the plural, the plural the singular, the feminine gender shall include the masculine, and the masculine the feminine.

(c) The word "child" shall mean any person who shall not have attained his or her twenty-first birthday.

(d) The word "placement" shall mean the giving or transferring of possession or custody of a child, by any person to another person, for adoption or with intent or purpose of surrendering the control of the child.

(2) It shall be unlawful for any person:

(a) Rendering any service in connection with the placement of a child for adoption, or in connection with the placement of a child with one other than its parents, to charge or receive from or on behalf of either the natural parent or parents of the child to be adopted or placed, or from or on behalf of the person or persons legally adopting, or accepting, such child any compensation or thing of value whatsoever for the placement service, other than that now or hereafter allowed by law; but this shall not be construed to prohibit the payment by any interested persons of reasonable charges or fees for hospital or medical services, for the birth of a child or medical care for the mother or child incident thereto, or for legal services, or costs of court for an adoption suit or proceeding.

(b) To sell or surrender a child to another person for money or anything of value; and it shall be unlawful for any person to receive such minor child for such payment or thing of value; provided, that nothing herein shall be construed as prohibiting any person, who is contemplating adopting a child not yet born, from paying necessary, actual prenatal care and living expenses of the mother of the child to be adopted, nor of paying necessary, actual living and medical expenses of such mother for a reasonable time, not to exceed thirty days, after the birth of the child.

(c) Having the rights and duties of a parent, with respect to the care and custody of a minor, to assign or transfer such parental rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties.

(d) To advertise or cause to be advertised by any medium for the placement or adoption, or any offer or solicitation for the placement or adoption, of any child.

(e) To assist in the commission of any acts prohibited in paragraphs (a)-(d) hereof.

(3) It is not intended that any portion of this section shall be amendatory of chapter 72, relating to adoption, but it is intended to be cumulative thereto.

(4) Whoever shall violate any portion of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the state prison of not less than one year and not more than five years or by fine of not less than one thousand dollars or not exceeding five thousand dollars, or both.

History.—§§1-8, ch. 26840, 1951.

CHAPTER 73

EMINENT DOMAIN

73.01 Eminent domain; instituting proceedings; contents of petition.—Whenever the right, to take private property for public use without the consent of the owner, is now, or may hereafter be, conferred by the constitution or any general or local law of this state, upon the state or any of its bodies politic and corporate, upon any state, county, municipal or district authority, public body, officer or agent, upon the United States or upon any other person, those having such right may file a verified petition therefor in the circuit court of the county wherein the property lies, which petition shall be governed by the applicable rules of civil procedure except as otherwise specifically provided herein and which shall set forth:

(1) The authority under which, and the public use to which, the property is to be acquired, and that the property is necessary for that use;

(2) A description, sufficient for the identification thereof, of the property sought to be acquired. The petitioners may join in the same action all properties involved in a planned project whether in the same or different ownership or whether or not the property is sought for the same use.

(3) The estate or interest in said property which the petitioner intends to acquire for the public use stated;

(4) The names, places of residence, legal disabilities (if any) and interests in the said property of all owners, mortgagees, judgment creditors and lien holders, so far as ascertainable by diligent search; and where advisable all unknown owners, lien holders or claimants where after diligent search and inquiry petitioner has been unable to ascertain such persons;

(5) A prayer that the said property be condemned and taken for the uses and purposes set forth in the petition and that the title to the same, in fee simple or such other estate or interest as may be specified, be vested in the petitioner;

(6) If the petitioner be a corporation seeking to obtain a right of way, the petition shall also show that the petitioner has located its line and intends in good faith to construct the same over the property;

(7) If the petitioner be a drainage or subdrainage district created under the laws of this state, the said petition shall also show that the petitioner has surveyed and located the lines of its canal and other works and intends in good faith to construct the same over or on the said lands and that the said construction has been ordered by the proper authority.

History.—RS 1544; §§3, 11, ch. 5017, 1901; §1, ch. 5211, 1903; GS 2008, 2010, 2822; §3, ch. 6866, 1915; RGS 1959, 3276, 3278, 4375; §§1, 2, ch. 8558, 1921; CGL 1510, 1511, 3115, 5084, 5086, 6339; §1, ch. 20930, 1941; §1, ch. 59-450.
cf.—§127.01, Counties; delegated power of eminent domain.
§90.231 Expert witnesses' fees.

73.011 Jurisdiction of court over taxes and tax proceedings.—The court in which a proceeding in eminent domain is pending shall have jurisdiction and authority over any and all taxes and assessments encumbering the lands involved in such proceedings and may stay or defer the enforcement of such taxes and assessments, including all applications for tax deeds, foreclosures and other enforcement proceedings, until the final termination of such eminent domain proceedings. The said court may make such orders concerning such taxes and assessments as may be equitable and proper; providing, however, that ad valorem taxes levied upon any such lands shall be prorated against the owner to the date of taking. The provisions herein shall control pending cases which have not reached final judgment.

History.—§1, ch. 26338, 1949; §§1, 2, ch. 61-479.

73.02 Certain parties defendant.—If any interest in the property or any lien thereon belongs to the unsettled estate of a decedent, the executor or administrator shall be made the party defendant with respect to such interest without joining the devisee or heir; if a trust estate, the trustee shall be made the party defendant without joining cestui que trust. An administrator ad litem may be ap-

pointed to represent the estate of a deceased person whose estate is not being administered.

History.—§2, ch. 5017, 1901; GS 2009; §4, ch. 6866, 1915; RGS 1960, 3277; CGL 3116; 5085; §2, ch. 20930, 1941; §1, ch. 59-450.

73.03 Verification of petition and affidavit of diligent search.—The petition provided for in §73.01, shall be verified by the official head of the petitioner, its attorney, or some executive officer of the petitioner having knowledge of the facts stated in the petition. Unless shown in the verified petition, there shall also be annexed to the petition an affidavit by the same affiant that diligent search and inquiry has been made by the petitioner to ascertain the names, places of residence, legal disabilities (if any) and interest of the owners, mortgagees, judgment creditors and lien holders of the property and that those as ascertained are as set forth in the petition.

History.—§1546 RS 1892; §3 ch. 5017, 1901; GS 2010; §5, ch. 6866, 1915; §5, ch. 7338, 1917; RGS 1507, 1961, 3278; §2, ch. 8558, 1921; CGL 1511, 2285, 3117, 5086; §3, ch. 20930, 1941.

73.04 Process, service and publication.—Upon the filing of the petition, the clerk of the court wherein filed shall forthwith issue a notice, containing the legal description of the real estate involved, directed "to all whom it may concern" and containing the names of all the defendants named in the petition, which may include unknown persons claiming by, through or under known persons who are dead or who are not known to be either dead or alive, commanding them to be and appear in said court, on a day named in said notice not less than twenty-eight nor more than sixty days from the date thereof, and to show what right, title or interest they have or claim in or to said property and to show cause why it should not be taken for the uses and purposes set forth in the petition. Rule days are abolished in these proceedings. The said notice shall be served by the proper sheriff in the same manner as writs of summons ad respondendum are served, not less than fifteen days before the return day of such notice. As many alias and pluries notices as may be necessary to obtain service on the defendants may, from time to time, be issued, returnable as above stated, to a later day or days. If any defendant be alleged to be a nonresident of the state, or if the name or residence of any defendant is alleged to be unknown, or if any defendant cannot be personally served, the clerk shall cause such notice to be published once each week for four consecutive weeks, four publications being sufficient prior to the return day, in some newspaper published in the county; provided, however, that if the petitioner be a municipal corporation and a newspaper be published therein, said notice shall be published in said newspaper. The clerk shall mail a certified copy of such notice to each nonresident defendant at his place of residence as named in the petition. The clerk shall file a certificate of constructive service, which mode of service shall be as effectual as though the defendant had been personally served with process within this state. The published notice provided for in this section need contain only a description of the land to be taken from the defendant to whom the notice is directed. Notice of lis pendens may be filed and recorded as in other cases.

History.—§1547 RS 1892; §4, ch. 5017, 1901; GS 2011; RGS 1507, 1961, 3279; §5, ch. 6866, 1915; §5, ch. 7338, 1917; §1, ch. 10112, 1925; CGL 2285, 3117, 5087; §4, ch. 20930, 1941; §1, ch. 28282, 1953; §1, ch. 59-450.
cf.—§74.141 Public utilities; application of chapter.

73.05 Intervention.—Any person not expressly made a party, interested in or having a lien upon the property described in the petition, may become a party, as of course, before the return day or afterward by leave of court, by filing his petition of intervention in the cause setting forth his interest under oath.

History.—§1548 RS 1892; §5, ch. 5017, 1901; GS 2012; RGS 3280; CGL 5088; §5, ch. 20930, 1941.

73.06 Entry of defaults.—All parties not appearing and answering on the return day, whether under disability or not, shall be bound by the proceedings, and defaults may be entered against them, but nothing shall prevent any person who is shown by the record to be interested in the property from appearing before the jury to contest for and claim the amount of compensation that he conceives to be due for the property. No trial, as against any non-resident or unknown party, shall proceed or be had until after the period of publication provided in §73.04. Defaults may be opened by the judge at any time prior to the trial of the cause for good cause shown by interested parties.

History.—§1547 RS 1892; §4, ch. 5017, 1901; GS 2011; §6, ch. 6866, 1915; §6, ch. 7338, 1917; RGS 1508, 1962, 3279; §1, ch. 10112, 1925; CGL 2286, 3118, 5087; §6, ch. 20930, 1941.

73.07 Amendments, power of court, etc.—The court may order or grant amendments, and make all orders necessary to the justice of the cause, and also grant new trials.

History.—§1552 RS 1892; §7, ch. 5017, 1901; GS 2014; §7 ch. 6866, 1915; §7, ch. 7338, 1917; RGS 1509, 1963, 3282; CGL 2287, 3119, 5090; §7, ch. 20930, 1941.

73.08 Guardian ad litem, etc.—The court shall appoint a guardian ad litem for all defendants who are infants or are under other legal disabilities, and for defendants whose names or addresses are unknown, and the guardian ad litem shall be served with a copy of the order of his appointment at least ten days before the trial of the cause unless he enter his appearance therein.

History.—§7, ch. 6866, 1915; §7, ch. 7338, 1917; RGS 1509, 1963; CGL 2287, 3119; §8, ch. 20930, 1941.

73.09 Acquiring title after appropriation.—In any case where the petitioner shall not have acquired title to any lands which the petitioner is using, or if at any time after an attempt to acquire title by condemnation proceedings or otherwise, it shall be found that the titles so acquired are defective, the petitioner may proceed under this chapter to acquire or perfect such title, or to acquire any outstanding right, title or interest in and to such property; provided, however, that the compensation to be allowed the defendants under this section shall be a just compensation for the property, or

the right, title or interest therein, taken as of the date of the appropriation.

History.—§1559 RS 1892; §14, ch. 5017, 1901; GS 2021; §14, ch. 6866, 1915; §14, ch. 7338, 1917; RGS 1516, 1970, 3289; §4, ch. 8558, 1921; CGL 1513, 2294, 3126, 5097; §9, ch. 20930, 1941.

73.10 Trial in vacation or term.—

(1) Whenever it shall be made to appear to the judge of the court in which the cause is pending that the same is at issue or stands on default duly and properly entered, or that said cause is at issue as to one or more of the defendants and stands on default duly entered as to the others, the said judge shall try said cause at once, whether it be in vacation or in term time (so long as said trial shall not interfere with the holding of any regular term of court within his judicial circuit) and to this end the judge may make all necessary orders for procuring the jury or in reference to the cause. If no cause be shown to the contrary the said judge shall cause a jury of twelve men to be empaneled to try what compensation shall be made to the defendants for the property sought to be appropriated, which issue shall be tried in the same manner as the other issues of fact are tried in the said circuit court.

(2) The amount of such compensation shall be the value of the property sought to be appropriated including the damages, if any, accruing to the untaken portion where less than the entire property is sought to be appropriated determined as of the date of the trial of the issue of just compensation or as of the date at which title to the estate sought to be appropriated shall vest in the petitioner if such occur prior to the date of such trial.

(3) When the suit is by the state road department, county, municipality, board, district or other public body for the condemnation of a road, canal, levee or water control facility right of way, the enhancement, if any, in value of the remaining adjoining property of the defendant property owner by reason of the construction or improvement made or contemplated by the petitioner, shall be offset against the damage, if any, resulting to such remaining adjoining property of the defendant owner by reason of the construction or improvement, but such enhancement in value shall not be offset against the value of the property appropriated, and if such enhancement in value shall exceed the damage, if any, to the remaining adjoining property there shall be no recovery over against such property owner for such excess.

(4) A condemnation suit being an action in rem, in such a suit by the state road department, county, municipality, board, district, or other public body for the condemnation of a road rights of way, borrow pits or drainage easements or other rights of way the condemnation jury shall determine solely the amount of compensation to be awarded for the property taken and damages to the remaining property, if any. Provided, however, that when the suit is by the state road department, county, municipality, board, district or other public body for the condemnation of a right of way, and the effect of the taking of the property involved may damage or destroy an established business of more than five years standing, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the jury shall consider the probable effect the denial of the use of the property so taken may have upon the said business, and assess in addition to the amount to be awarded for the taking, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his answer the nature and extent of such damages.

(5) The property shall be viewed by the jury only upon demand by any party to the suit or by order of the court on its own motion.

(6) If the jury cannot agree, then the said judge shall forthwith empanel another jury and proceed with the trial of said cause; provided, however, that if any jury is summoned out of term time, that the entire cost thereof including the compensation of such jurors shall be taxed as costs against the petitioner in said cause.

History.—§1549 RS 1892; §6, ch. 5017, 1901; §2, ch. 5211, 1903; GS 2013, 2823; §6, ch. 6866, 1915; §6, ch. 7338, 1917; RGS 1508, 1962, 3281, 4376; §3, ch. 8558, 1921; §2, ch. 10112, 1925; CGL 1512, 2286, 3118, 5089 and 6340; §1, ch. 15927, 1923; §10. ch. 20930, 1941; §1, ch. 29729, 1955; §1, ch. 57-165; (2) and (4) §1, ch. 59-450; (3) §1, ch. 63-159.

73.11 Form of verdict.—The verdict of the jury shall state: First, an accurate description of the property taken; second, the compensation to be made therefor, including a reasonable attorney's fee for the defendant's attorney; and third, the amount of such compensation to which each owner is entitled, if sufficient facts are before the court to adjudicate the distribution of the proceeds.

History.—§1553 RS 1892; §8, ch. 5017, 1901; GS 2015; §8, ch. 6866, 1915; §8, ch. 7338, 1917; RGS 1510, 1964, 3283; CGL 2288, 3120, 5091; §11, ch. 20930, 1941.

73.12 Form of judgment.—The judgment shall recite the verdict in full and shall be that the property therein described be appropriated to the petitioner in fee simple, or the particular right or estate in said property sought, be appropriated to the petitioner upon the petitioner paying or securing by deposit of money the compensation found by the verdict of the jury. The compensation awarded by the jury shall be determined as a whole, irrespective of the interest of the various parties in such parcel. The court upon appropriate petition shall determine the rights of any owners, lessees, mortgagees, judgment creditors and lien-holders in respect to the compensation awarded to each owner by the verdict, and the method of apportionment among interested parties together with the disposition of any other matters arising from the taking.

History.—§1554 RS 1892; §9, ch. 5017, 1901; GS 2016, 2824; §9, ch. 6866, 1915; §9, ch. 7338, 1917; RGS 1511, 1965, 3284, 4377; CGL 2289, 3121, 5092, 6341; §12, ch. 20930, 1941; §1, ch. 59-450.

73.13 Payment of compensation for property.—The petitioner, within ten days after the rendition of the judgment, shall pay into

the court for the use of the defendant the compensation ascertained by the jury, or else the proceedings shall be null and void, unless, for good cause, further time, not exceeding thirty days, be allowed by the court. Upon such payment, and upon the recording of the judgment, with the clerk's certificate that the compensation has been paid into the court, in the book of deeds in said clerk's office, the petitioner may enter upon and appropriate the property for the uses aforesaid, with the same effect as though the petitioner held the same by deed or grant from the defendant.

History.—§1555 RS 1892; §10, ch. 5017, 1901; GS 2017; §1, ch. 6214, 1911; §10, ch. 6866, 1915; §10, ch. 7338, 1917; RGS 1512, 1966, 3285; CGL 2290, 3122, 5093; §13, ch. 20930, 1941.

73.14 Review by appeal.—Any person aggrieved by the final judgment may appeal to the appropriate district court of appeal, unless review by the supreme court is authorized by Art. V of the state constitution, in the manner and within the time prescribed by the Florida appellate rules, and such appeal shall in no case operate as a supersedeas where the petitioner has paid the amount of compensation into court as aforesaid, so as to prevent the petitioner's appropriation of the property pending the appeal. If, at any time after the appeal is taken, the defendant shall take out of the court the amount found to be due him, the appeal shall be dismissed in the appellate court upon the filing of a certificate by the clerk of the circuit court, stating that the defendant has taken out the compensation as aforesaid.

History.—§1556 RS 1892; §11, ch. 5017, 1901; §4, ch. 5211, 1903; GS 2018, 2825; §11, ch. 6866, 1915; §11, ch. 7338, 1917; RGS 1513, 1967, 3286, 4378; CGL 2291, 3123, 5094, 6342; §14, ch. 20930, 1941; §9, ch. 63-559.

73.15 Obtaining possession of property.—Whenever the judge shall be satisfied that any person whether holding under the defendant or not, is preventing or obstructing the petitioner from entering upon or taking possession of the property after the petitioner is entitled to do so, he may grant such writs of assistance as he may think necessary, or he may proceed by attachment as for contempt of court.

History.—§1557 RS 1892; §12, ch. 5017, 1901; §5, ch. 5211, 1903; GS 2019, 2826; §12, ch. 6866, 1915; §12, ch. 7338, 1917; RGS 1514, 1968, 3287, 4379; CGL 2292, 3124, 5095, 6343; §15, ch. 20930, 1941.

73.16 Costs of proceedings.—All costs of proceedings shall be paid by the petitioner, including a reasonable attorney's fee to be assessed by the court, except the cost upon the appeal taken by a defendant, in which the judgment of the circuit court shall be affirmed.

History.—§1558 RS 1892; §13, ch. 5017, 1901; §6, ch. 5211, 1903; GS 2020, 2827; §1, ch. 5707, 1907; §13, ch. 6866, 1915; §13, ch. 7338, 1917; RGS 1515, 1969, 3288, 4380; CGL 2293, 3125, 5096, 6344; §16, ch. 20930, 1941; §1, ch. 63-281.

73.17 Taking of property owned by railroad or canal companies.—Whenever land sought to be condemned to the use of a railroad or canal company is in the possession, under any law of this state, of another railroad or canal company, which is using the same in the construction or operation of its railroad or canal, the use of no more land than is necessary to furnish to the petitioner a right of way one hundred and five feet in width across such railroad or canal shall be condemned to such use.

History.—§1560 RS 1892; §15, ch. 5017, 1901; GS 2022; RGS 3290; CGL 5098; §17, ch. 20930, 1941.

73.18 Taking of right of way over an existing right of way.—If it shall be necessary for any railroad company organized under any law of this state to use for the purpose of its road any lands over which any other railroad company shall have previously acquired the right of way for its road, the right to use such lands may be acquired as in other cases. Such lands shall not be taken in a manner to interfere with the main track of the railroad first established, except for crossing, as provided by law.

History.—§1561 RS 1892; §16, ch. 5017, 1901; GS 2023; RGS 3291; CGL 5099; §18, ch. 20930, 1941.

73.19 Taking property in connection with drainage, generally.—The right of drainage given by §28, Art. XVI of the constitution, shall be exercised in the manner prescribed for acquiring private property for public use, as nearly as may be.

History.—§1563 RS 1892; §18, ch. 5017, 1901; GS 2025; RGS 3293; CGL 5101; §19, ch. 20930, 1941.

73.20 Right, title or interest taken by condemnation.—The petitioner shall state in the prayer of the petition what right, title or estate is sought in the property to be condemned, whether an easement, an estate for years, or the fee simple title, and the verdict and judgment of condemnation shall vest in the petitioner the right, title or estate prayed for in the petition.

History.—§1564 RS 1892; §19, ch. 5107, 1901; GS 2026; RGS 3294; CGL 5102; §1, ch. 15928, 1933; §20, ch. 20930, 1941.

73.21 Joinder and venue.—As many defendants may be joined in one cause of action and their property taken as provided in this chapter, as the circumstances will permit. Should it appear at any stage of the case that the causes of action joined cannot be conveniently disposed of together, the court may order separate trials; provided, however, that any such suits shall be tried in the county in which the lands are located.

History.—§6, ch. 8558, 1921; CGL 1515; §21, ch. 20930, 1941; §3, ch. 59-450.

73.22 Proceedings by board of commissioners of state institutions.—

(1) Whenever it becomes necessary for the welfare and convenience of any of the institutions now under the supervision and control of the board of commissioners of state institutions, or which may hereafter be placed under the supervision and control of said board of commissioners of state institutions, to acquire private property for the use of any of said institutions, and the same cannot be acquired by agreement satisfactory to the said board and the parties interested in, or the owners of said private property, the board of commissioners of state institutions is hereby empowered and authorized to exercise the right of eminent domain, and to proceed to condemn the said prop-

erty in the same manner as provided by law for the condemnation of property.

(2) Any suit or actions brought by the said board to condemn property as provided in this section shall be brought in the name of the board of commissioners of state institutions, and it shall be the duty of the attorney general of the state to conduct the proceedings for, and to act as counsel for the said board.

History.—§§1, 2, ch. 7947, 1919; CGL 5104, 5105; §§1, 2, ch. 20873, 1941; §22, ch. 20930, 1941.

73.23 Right of way in incorporated city or town.—Whenever the use of any street, square, highway or public way, or any part thereof, within any incorporated city or town, or county, is required by any corporation for public use, the right to use such street, square, highway or public way, or any part thereof, shall be granted only by the legislative body of such city or town, or by the county commissioners of the county.

History.—§1562 RS 1892; §17, ch. 5017, 1901; RGS 3292; CGL 5100; §23, ch. 20930, 1941.

73.24 Right of way for telegraph or telephone line over railroad right of way.—

(1) If any telegraph or telephone company fails to secure the consent of any railroad or railway company for the construction of its lines along and upon the right of way of any railroad in this state, the same may be acquired by eminent domain. If the defendant railroad or railway company has a principal office or place of business in this state and any portion of the right of way sought to be condemned extends into the county wherein such principal office or place of business is located, then the proceeding for condemnation shall be had in such county. No map need be filed with the petition but it shall state about how many poles per mile will be erected on such right of way and about how far from each other and from the centers of the main track of the railroad, their length and size, the depth they will be planted in the ground and the amount of land that will be occupied by them. No pole shall be set at a greater distance than ten feet from the outer edge of the right of way. In such proceeding the plaintiff shall give bond for costs in the penalty of two hundred dollars, payable to the defendant with surety to be approved by the clerk.

(2) The judgment shall authorize the petitioner to enter upon the right of way of the defendant and construct its lines thereon. Said judgment shall further provide that such lines shall be constructed so as not to interfere with the operation of the trains of said defendant or any telephone or telegraph line already upon such right of way; and furthermore, that if, at any time, the railroad or railway company shall desire, for railway purposes, the immediate use of any land occupied by said plaintiff, then the plaintiff shall, upon reasonable notice in writing, at its own expense, remove its line to some other place adjacent thereto on such right of way so as not to interfere with the track or use of said railway or any telephone or telegraph line already on said right of way, and that the said line shall not be erected on any embankment or slope of any cut of such right of way, and if at any time the said railroad or railway company shall require for railroad purposes its entire right of way at any point occupied by said line, the said plaintiff shall, at such point, remove said line entirely off such right of way.

(3) The telegraph or telephone company by such proceeding shall acquire only an easement in and to said railroad right of way for the purpose of constructing, maintaining and operating its telegraph or telephone line thereon, and only the interests of such parties as are brought before the court shall be condemned in such proceeding. If the easement, or right of way claimed extends in or through more counties than one, the whole right and controversy may be heard and determined in any county into or through which such right of way extends, except as herein otherwise provided.

History.—§§1, 3, 7, ch. 5211, 1903; GS 2822, 2824, 2828; RGS 4375, 4377, 4381; CGL 6339, 6341, 6345; §24, ch. 20930, 1941.

73.25 Certain proceedings exempted.—None of the provisions of this chapter shall apply to any condemnation suit or proceedings which were pending in any of the courts of Florida on June 13, 1941; and in the event any condemnation suit pending on said date in any of the courts of Florida should be dismissed and refiled or reinstituted embracing or involving the same property or substantially the same property, the provisions of this chapter likewise shall not be applicable to such proceedings but the same shall be controlled by the law existing on said date.

History.—§25A, ch. 20930, 1941.

CHAPTER 74

PROCEEDINGS SUPPLEMENTAL TO EMINENT DOMAIN

74.01 Declaration of taking; state and other agencies.—In any proceeding in any court of the state which has been or may be instituted by and in the name of the state, the state road department, or any county, county school board or municipality, the Jacksonville expressway authority, flood control district, or the ship canal authority, for the purpose of condemning lands or other property necessary for rights of way, borrow pits or drainage easements for state, county, Jacksonville expressway authority, roads, bridges, property for school purposes, or municipal streets, lanes, alleys and other public ways, rights of way or easements for sewers, lift stations, pumping stations, water or gas mains, canals, levees, or water storage areas, under any law authorizing the exercise of the right of eminent domain by the state, the state road department, the counties, county school boards, incorporated municipalities, the Jacksonville expressway authority, flood control districts, or the ship canal authority, the petitioner in such proceedings, whether such petitioner be the state road department, the state or any county, county school board, municipality of the state, the Jacksonville expressway authority, flood control district, or the ship canal authority, may file in the cause with the petition, or at any time before judgment, a declaration of taking, signed by the petitioner, or its duly authorized agent or attorney, declaring that said lands are thereby taken for the use of the petitioner, and there shall be attached thereto the petitioner's estimate of value, such estimate to be based upon a valid appraisal, made in good faith, on each parcel in the proceeding.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941; §1, ch. 26921, 1951; §1, ch. 29708, 1955; §§1, 2, ch. 31407, 1956; §1, ch. 59-362; §2, ch. 59-450; §1, ch. 61-203.

74.02 Service of process.—The failure of any nonresident or unknown party or parties whose address is alleged in the petition to be unknown to receive the notice, shall not invalidate the proceedings of the court or any order made pursuant to the provisions of this law.

(1) Any officer authorized to execute process may serve the notice above set forth upon any of the parties to the proceedings alleged in the petition to reside within the state, in the same manner as now provided by law for the service of summons and such notice shall be served at least seven days prior to the date set by the court for the appointment of appraisers.

(2) The parties alleged to be nonresidents, whose addresses are given, shall be given notice in the following manner:

(a) The notice shall be published one time in a newspaper authorized to publish legal notices, in the county where the suit is instituted at least seven days prior to the date designated by the court for the appointment of appraisers and a copy of this notice shall be mailed to the party at the address set forth in the petition by the clerk at least seven days prior to the date designated by the court for the appointment of appraisers. Notice shall be given to all unknown parties, or parties whose addresses are alleged to be unknown, in the same manner as heretofore provided in this subsection, except that no notices shall be mailed by the clerk. The notices provided in this subsection may be combined and one notice published as to all parties named or described under this subsection.

(b) The failure of any nonresident or unknown party or party whose address is alleged in the petition to be unknown to receive the notice, shall not invalidate the proceedings of the court or any order made pursuant to the provisions of this chapter in suits by parties mentioned in §74.01.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941.

74.03 Appointment of appraisers.—At the time designated in the notice all parties to the suit may appear and be forthwith heard upon questions of jurisdiction of the court and sufficiency of the pleadings, and also upon the suggestions of the parties in respect to the persons to be appointed as appraisers hereunder, not exceeding three in number; and thereupon, in the event jurisdictional questions and questions relating to the sufficiency of pleadings are resolved in favor of the petitioner, the court shall enter an order appointing not more than three disinterested persons as appraisers to view and appraise the premises and report the appraised value thereof to the court within a time limit fixed by such order, and such order shall also fix a time and place at which the court shall receive and consider the report of the appraisers and hear testimony relating thereto, such hearing to be not less than three nor more than seven days subsequent to the final date for the filing of the report of the appraisers, but such hearing may be continued from day to day at the pleasure of the court; provided, that for good cause

shown by the appraisers, the court may without notice to the parties, by order extend the time for filing of such report and shall in such event also fix another date for the hearing thereon. A copy of such order shall be furnished to all parties who have appeared in the proceedings. Before entering upon their duties such appraisers shall file an affidavit accepting appointment as such and to well and truly perform their duties.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941; §2, ch. 26921, 1951.

74.04 Hearing before appraisers.—Upon the date designated for considering the report of the appraisers all parties to the cause may be heard, represented by counsel and may introduce testimony as to the value of the property sought to be condemned, and said parties shall have the right to introduce testimony and be heard upon the question as to whether or not the petitioner is properly exercising the authority delegated to it in taking the said property.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941.

74.05 Payment into court.—The court, after the close of testimony, shall make such order as the court deems proper, securing to all parties all rights to which they may be entitled. If the court finds that the petitioner is entitled to possession of the property prior to final judgment, the court shall enter an order requiring the petitioner to deposit in the registry of the court such sum of money as the court shall determine will fully secure and fully compensate the persons lawfully entitled to compensation, as ultimately determined by final judgment of the court, which said deposit shall not be less than double the value as fixed by the appraisers appointed by the court; except that in the event the petitioner is acquiring right of way for the state highway system, or flood control purposes, or part of the turnpike system, or where the petitioner seeks to condemn property for school purposes or use, such petitioner shall be required to deposit such sum as the court shall determine will fully secure and fully compensate the persons lawfully entitled to compensation, which deposit shall not be less than one hundred per cent of the value as fixed by the court-appointed appraisers.

If the sum so fixed by the court is not deposited within twenty days after the date of such order, the order shall be void and of no further force or effect, provided that no sum paid into the registry of the court pursuant to this chapter shall be charged with commissions or poundage.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941; §1, ch. 29915, 1955; §1, ch. 59-297; §1, ch. 61-190; §1, ch. 61-247; §1, ch. 63-505.

74.06 Vesting of title to property.—Immediately upon the making of the deposit provided for in §74.05, title to the said lands in fee simple absolute or such less estate or interest therein as is specified in said declaration shall vest in the petitioner and said lands shall be deemed to be condemned and taken for the use of the petitioner and the right to just compensation for same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein and said judgment shall include as a part of the just compensation awarded, interest at the rate of six per cent per annum on the amount finally awarded as the value of the property, from the date of the surrender of possession to the date of payment, but interest shall not be allowed on so much thereof as may have been paid into court. No sum so paid into court shall be charged with commissions or poundage.

History.—§1, ch. 19217, 1939; CGL 1940 Supp. 7100(3m); §1, ch. 20304, 1941.

74.07 Paying over of funds in court.—Upon application of the parties in interest, the court may order that the sum of money set forth in the declaration of taking be paid forthwith for or on account of the just compensation to be awarded in said proceeding from the money deposited with the clerk of said court. The estimate of just compensation in the declaration of taking may be amended from time to time. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of money so received by said person entitled, the court shall enter judgment against the petitioner for the amount of the deficiency. If, however, such payment exceeds the final award there may be a recovery by the petitioner of such excess upon petition in the same proceeding for which sum judgment shall be entered and which also may be decreed to be a lien against any property of such party, except his homestead.

History.—§2, ch. 19217, 1939; CGL 1940 Supp. 7100(3n); §2, ch. 20304, 1941; §17, ch. 29615, 1955; §2, ch. 59-450.

74.08 Obtaining possession of property.—At the time of entry of an order fixing the amount of the deposit to be made, the court may by order, fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner, said order to become effectual upon the petitioner depositing the sum fixed by the court in the registry of the court. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. Whenever the judge shall be satisfied that any person, whether holding under the defendant or not, is preventing or obstructing the petitioner from entering upon or taking possession of the property after the petitioner is entitled to do so, he may grant such writs of assistance as he may think necessary, or he may proceed by attachment as for contempt of court.

History.—§3, ch. 19217, 1939; CGL 1940 Supp. 7100(3o); §3, ch. 20304, 1941.

74.09 Proceedings as evidence in main suit.—The declaration of taking, the amount of the deposit and the report of the appraisers appointed by the court, shall not be admissible in evidence in any cause and shall not be exhibited to any jury empaneled for the purpose

of assessing the value of any land in condemnation. The appraisers appointed by the court shall be competent witnesses in the cause when said cause is submitted to the jury for the purpose of fixing an award.

History.—§4, ch. 19217, 1939; CGL 1940 Supp. 7100(3p); §4, ch. 20304, 1941; §3, ch. 26921, 1951.

74.10 Costs and attorneys' fees.—The petitioner upon filing the declaration of taking and making the deposit, shall be irrevocably committed to the payment of the ultimate award; provided, however, this shall not prevent the petitioner from suing out a writ of error from said judgment in the manner provided by law.

All cost of proceedings shall be paid by the petitioner, including reasonable attorneys' fees for the defendant to be assessed by the court, except the cost upon review taken by a defendant, on which the judgment of the circuit court shall be affirmed.

History.—§§5, 5A, ch. 19217, 1939; CGL 1940 Supp. 7100(3q), 7100(3r); §§5, 6, ch. 20304, 1941; §1, ch. 63-282.

74.11 Appellate proceedings.—In event no writ of error has been issued in said cause within thirty days after the rendition of the judgment, the clerk of said court shall pay to the judgment creditor the sum necessary to satisfy the judgment from the funds on deposit, and upon order of the court shall refund to the petitioner any sum from the deposit not necessary for the satisfaction of said judgment. In event no writ of error is issued within thirty days after the judgment the petitioner shall pay into the registry of the court, for the use of the parties lawfully entitled thereto, the sum necessary to satisfy said judgment.

The issuance of a writ of error or the giving of any bond or undertaking therein shall not operate to prevent or delay the vesting of title to such lands in the petitioner, or the right, title or interest of the petitioner in and to said property. In event the judgment of the lower court is affirmed the said judgment shall be satisfied from the funds on deposit with the clerk, or by the petitioner within thirty days after the filing of the mandate in the lower court, and in event the said judgment is not so satisfied, execution may be issued and levied as provided in §74.14.

History.—§§6, 7, ch. 19217, 1939; CGL 1940 Supp. 7100(3s), 7100(3t); §§7, 8, ch. 20304, 1941.

74.12 Rights under this chapter additional.—The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this law shall be in addition to any right, power or authority conferred by the laws of the state under which proceedings may be conducted and shall not be construed as abrogating, limiting or modifying any such right, power or authority.

History.—§8, ch. 19217, 1939; CGL 1940 Supp. 7100(3u); §9, ch. 20304, 1941.

74.13 Rights of authority after taking.—In any case in which any housing authority created under the laws of Florida, has taken or may take possession of any real property during the course of condemnation proceedings and in advance of final judgment therein and the said petitioner has become irrevocably committed to pay the amount ultimately to be awarded as compensation, then it is lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land and in erecting buildings or public works thereon, or in improving said land or erecting and constructing buildings or works thereon, authorized by law to be constructed by any petitioner.

History.—§9, ch. 19217, 1939; CGL 1940 Supp. 7100(3v).
cf.—§421.12 Housing authorities' eminent domain.

74.14 Effect of failure to pay final judgment.—The failure of any petitioner after the rendition of the judgment to pay into the court, for the use of the parties lawfully entitled thereto, the compensation ascertained by the jury shall not, in cases where a declaration of taking is filed, deposit made, and an order procured authorizing petitioner to take possession, invalidate said judgment or the title of the petitioner and such failure shall not authorize any person lawfully entitled to the compensation ascertained by the jury to molest, interfere with, enter or trespass upon said property; provided, however, such person may sue out execution in event a writ of error has not been issued within thirty days after the rendition of said judgment and such execution may be levied upon the property so condemned and any other property of the petitioner in the same manner as executions are levied in common law causes.

History.—§10, ch. 19217, 1939; CGL 1940 Supp. 7100(3w); §10, ch. 20304, 1941.

74.141 Public utilities; application of chapter.—

(1) The provisions of this chapter shall apply in any proceeding in any court in the state which may be instituted by any municipality, rural electric cooperative corporation, telephone cooperative corporation or public utility corporation having the statutory power of eminent domain to appropriate property in fee or easement for the purpose of locating substations and transmission lines.

(2) At the time of entry of the order, in any proceedings authorized by subsection (1), fixing the amount of the deposit to be made and fixing the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner, the court shall by order set said cause for trial and try said cause not later than thirty days after the return day provided in §73.04.

History.—§§1, 2, ch. 28007, 1953; (1) §1, ch. 63-242.

74.15 Eminent domain proceedings; flood control and drainage districts.—

(1) The power of eminent domain is confirmed, invested in and granted unto any lawfully constituted flood control district of this state, any lawfully constituted drainage or sub-drainage district of this state and any lawfully constituted housing authority created under the provisions of any laws creating or

authorizing the creation of housing authorities within this state, for the public use, and the same are hereby declared, for the purpose of this law, to be bodies corporate. The proceedings herein provided for shall be maintained by and in the name of the authority for whose benefit the proceedings are instituted.

(2) In any proceeding in any circuit court of this state, which has been or may be instituted by and in the name of and under the authority of any authority referred to in subsection (1) above, for the acquisition of any land or easement or rights of way in land for public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by this law to acquire lands described in the petition, declaring that said lands are thereby taken for the use of the petitioner. Said declaration of taking shall contain or have annexed thereto:

(a) A statement of the authority under which and the public use for which said lands are taken.

(b) A description of the lands taken sufficient for the identification thereof.

(c) A statement of the estate or interest in said lands taken for said public use.

(d) A plan showing the lands taken.

(e) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

(3) Upon the filing of said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the authority taking the same, and said lands shall be deemed to be condemned and taken for public use, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein in accordance with the terms and provisions of §73.10, and said judgment shall include, as part of the just compensation awarded, interest at the rate of six per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into court. No sum so paid into the court shall be charged with commissions or poundage.

(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the authority taking for the amount of the deficiency.

(5) Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have the power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

(6) No appeal in any cause under this section, nor any bond or undertaking given therein, shall operate to prevent or delay the vesting of title to such lands in the authority taking.

(7) Action under this section irrevocably committing the authority taking to the payment of the ultimate award shall not be taken unless the chairman or other legally constituted head of such petitioning authority empowered to acquire the land shall be of the opinion that the ultimate award probably will be within the limits of the taking authority's ability to pay.

(8) The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this section shall be in addition to any right, power, or authority conferred by the laws of the state upon the bodies corporate named herein under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power or authority.

(9) In any case in which the authority taking has taken or may take possession of any real property during the course of condemnation proceedings and in advance of any final judgment therein and such taking authority has become irrevocably committed to pay the amount ultimately to be awarded as compensation, it shall be lawful to expend moneys duly appropriated for that purpose in going forward with the project for which the land was taken; provided, that in the opinion of the attorney representing the taking authority the title has been vested in the authority taking or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

(10) In any condemnation proceeding instituted by or on behalf of the taking authority the attorney representing such authority is authorized to stipulate or agree in behalf of the taking authority to exclude any property, or any part thereof, or any interest therein, that may have been, or may be, taken by or on behalf of the authority taking by the declaration of taking or otherwise.

(11) No money shall be paid nor contracts made for payment for any construction or maintenance proposed by the taking authority under this section in excess of the amount specifically appropriated therefor by the legislature of the state or procured by and secured to said taking authority under contracts with private persons, firms, or corporations in accordance with the laws authorizing such taking authority to negotiate contracts with private persons, firms, or corporations, or by the issuance of bonds and other debentures pursuant

to tax levies duly made, all in accordance with the law in such cases made and provided.

(12) Upon the filing of the petition the clerk of the court wherein filed shall forthwith issue a notice directed "to all whom it may concern" and containing the names of all the defendants named in the petition, which may include unknown persons claiming by, through or under known persons who are dead or who are not known to be either dead or alive, commanding them to be and appear in said court, on a day named in said notice not less than twenty-eight nor more than sixty days from the date thereof, and to show what right, title or interest they have or claim in or to said property, and to show cause why it should not be taken for the amount of compensation set forth in the petition. Rule days are abolished in these proceedings. The said notice shall be served by the proper sheriff in the same manner as writs of summons are served, not less than fifteen days before the return day of such notice. As many alias and pluries notices as may be necessary to obtain service on the defendants may, from time to time, be issued, returnable as above stated, to a later day or days. If any defendant be alleged to be a nonresident of the state, or if the name or residence of any defendant is alleged to be unknown, or if any defendant cannot be personally served, the clerk shall cause such notice to be published once each week for four consecutive weeks, four publications being sufficient prior to the return day, in some newspaper published in the county. The clerk shall mail a certified copy of such notice to each nonresident defendant at his place of residence as named in the petition. The clerk shall file a certificate of constructive service, which mode of service shall be as effectual as though the defendant had been personally served with process within this state. Notice of lis pendens may be filed and recorded as in other cases.

(13) All costs of proceedings shall be paid by the petitioner, including a reasonable attorney's fee for the defendant to be assessed by the jury, except the cost upon an appeal taken by a defendant, on which the judgment of the circuit court shall be affirmed.

(14) Nothing in this section shall be construed to limit, modify, abrogate, or change any of the powers or authority of any of the bodies corporate named herein, but the terms and provisions of this section shall be in addition to all powers and authority presently vested in such bodies corporate as may now exist or hereafter be created by lawful authority.

History.—§§1-11, ch. 25212, 1949; (1), (2), §4, ch. 26921, 1951.

CHAPTER 75

VALIDATION OF BONDS; PROCEDURE

75.01 Jurisdiction.—Circuit courts of this state shall have power and jurisdiction to take cognizance of, try and determine proceedings for the validation of bonds and certificates of indebtedness and all matters connected therewith.

History.—This section has been supplied by the revisors in order clearly to show the court taking jurisdiction to validate bonds (1941).

75.02 Petitioner.—Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any district established for the purpose of drainage, conservation or reclamation and including also state agencies, commissions and departments authorized by law to issue bonds may, if deemed expedient, determine its authority to incur bonded debt or issue certificates of indebtedness and the legality of all proceedings in connection therewith, including, in proper cases, any assessment of taxes levied or to be levied, the lien of such taxes, and of proceedings or other remedies for their collection. For such purpose a petition may be filed in the circuit court in such county or in the county in which such municipality or district, or any part thereof, may be located, against the state and the taxpapers, property owners and citizens of such county, municipality or district, including nonresidents owning property or subject to taxation therein. In proceedings for the validation of bonds or certificates of indebtedness issued by any of the state agencies, commissions or departments, such petition may be filed in the circuit court of the county in which the proceeds of such bond issue are to be expended, or in the circuit court of the county in which the seat of state government is situated, and such petition shall be brought against the state and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein.

History.—§1, ch. 6868, 1915; RGS 3296; §1, ch. 10036, 1925; §1, ch. 12003, 1927; CGL 5106, 5113, 5123; §1, ch. 25263, 1949.

75.03 Condition precedent.—As a condition precedent to the filing of a petition for the validation of bonds or certificates of indebtedness, the county, municipality, state agency, commission or department, or district desiring to issue the same shall, in accordance with the provisions of law regulating and controlling the same, either cause an election to be held to authorize the issuance of such bonds or certificates of indebtedness and show prima facie that such election was in favor of the issuance of the same, or, when permitted by law, adopt an ordinance, resolution or other proceeding permitted by law providing for the issuance of such bonds or certificates of indebtedness.

History.—§1, ch. 6868, 1915; RGS 3296; CGL 5106; §2, ch. 25263, 1949.

cf.—Article IX, §6, Florida constitution: Constitutional requirements relating to issuance of bonds.

75.04 Petition.—The petition for validation of bonds shall briefly set out, by proper allegations, references or exhibits, the petitioner's authority for incurring the bonded debt or issuing certificates of indebtedness, the holding of an election and the result thereof where an election is required, the ordinance, resolution or other proceeding authorizing the issue and their adoption, all other essential proceedings had or taken in connection therewith, the amount of the bonds or certificates to be issued, the interest they are to bear; and, in case of a district established for the purpose of drainage, conservation or reclamation, the authority for the creation of such district, for the issuance of bonds, for the levy and assessment of taxes and all other pertinent matters.

History.—§2, ch. 6868, 1915; RGS 3297; §2, ch. 12003, 1927; CGL 5107, 5123, 5124; §1, ch. 14504, 1929.

75.05 Rule nisi and service.—The judge of the circuit court, wherein the petition is filed shall, upon the filing and presentation thereof, make and issue an order in general terms in the form of a notice directed against the state and against the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by said issuance of bonds or certificates, or to be affected in any way thereby, requiring, in general terms and without naming them, all such persons, and the state through its state attorney or attorneys of the circuits wherein said county, municipality or district lies, to appear at a time and place within the circuit wherein the petition is filed, to be designated in such order, and show cause why the prayers of the petition should not be granted and the proceedings and bonds or certificates validated and confirmed as therein prayed. A copy of the above mentioned petition and rule nisi shall be served upon the state attorney of the circuit

in which such proceedings are pending, and in cases where the petitioning municipality or district lies in more than one judicial circuit, upon each state attorney of each of such circuits at least eighteen days before the time fixed in said rule nisi for hearing as aforesaid. The state attorney or attorneys shall carefully examine the said petition and if it appears, or there is reason to believe, that said petition is defective, insufficient or untrue, or if in the opinion of the state attorney or attorneys, the issuance of the bonds or certificates in question have not been duly authorized, defense shall be made thereto as may seem proper by said state attorney or attorneys. The state attorney or attorneys shall have access, for the purposes aforesaid, to all records and proceedings of said county, municipality, state agency, commission or department, or district, and any officer, agent or employee having charge, possession, custody or control of any of the books, papers or records of such county, municipality, state agency, commission, department, or district shall, on demand of the state attorney or attorneys, exhibit for examination such books, papers, or records, and shall, without cost, furnish duly authenticated copies thereof, which pertain to the proceedings for the issuance of said bonds or certificates or which may affect the legality of the same, as may be demanded of him.

In the case of state agencies, commissions or departments a copy of the above mentioned petition and rule nisi shall be served upon the state attorney of the circuit in which such proceedings are pending and if pending in a county when the proceeds of the bond issue are to be expended in any other county then upon the state attorney of each county in which it is proposed to expend said proceeds.

History.—§2, ch. 6868, 1915; RGS 3297; §2, ch. 10036, 1925; §2, ch. 12003, 1927; CGL 5107, 5114, 5124; §1, ch. 14504, 1929; §1, ch. 22623, 1945; §3, ch. 25263, 1949.

75.06 Publication of notice.—Prior to the date set for hearing as provided in the foregoing section, the clerk of the circuit court wherein said petition is filed shall cause a copy of said order or rule nisi to be published in the county wherein the petition is filed, unless the petitioner be a municipality or district in more than one county, then in each of such counties, once each week for three consecutive weeks, commencing with the first publication, which shall not be less than eighteen days prior to the date set for hearing; provided, however, if there be a newspaper published in the territory to be affected by the issuance of the bonds or certificates, and within the county or counties aforesaid, said publication shall be therein, unless otherwise ordered by the court. By the publication of said order or rule nisi, all property owners, taxpayers, citizens and others having or claiming any right, title or interest in said county, municipality or district, or the taxable property therein, shall be considered as and are made parties defendant to said proceedings, and the court shall have jurisdiction of them to the same extent as if named as defendants in said petition and personally served with process in the cause.

In the case of proceedings to validate the bonds of state agencies, commissions or departments, the said rule nisi shall be published in the manner herein provided in a newspaper in each of the counties wherein the proceeds of bonds are to be expended, and in a newspaper published in the county in which the seat of state government is located if said proceedings shall be brought therein.

History.—§2, ch. 6868, 1915; RGS 3297; §3, ch. 10036, 1925; §2, ch. 12003, 1927; CGL 5107, 5115, 5124; §1, ch. 14504, 1929; §1, ch. 22623, 1945; §4, ch. 25263, 1949.

75.061 Application of §§75.05 and 75.06 as amended.—Sections 75.05 and 75.06, as amended, shall apply to all bond validation proceedings in which the petition shall be filed after it becomes a law, but not to any proceeding pending at such time.

History.—§2, ch. 22623, 1945.

75.07 Intervention; hearings.—Any property owner, taxpayer, citizen or person interested may become a party to said proceedings by pleading to the said petition on or before the time set for hearing as provided in §75.05, or thereafter by intervention upon leave of court. At the time and place designated in the order for hearing, provided for in §75.05, the judge shall proceed to hear and determine all questions of law and fact in said cause, and may make such orders as to the proceedings and such adjournments as will enable him to properly try and determine the same and to render a final decree therein with the least possible delay.

History.—§3, ch. 6868, 1915; RGS 3298; §1, ch. 11854, 1927; §3, ch. 12003, 1927; CGL 5108, 5125.

75.08 Appeal and review.—Any party to the cause, whether petitioner, defendant or intervenor, or otherwise, dissatisfied with the final decree, may appeal therefrom to the supreme court within the time and in the manner prescribed by the Florida appellate rules after the entry of such decree.

History.—§3, ch. 6868, 1915; RGS 3298; §1, ch. 11854, 1927; §3, ch. 12003, 1927; CGL 5108, 5125; §10, ch. 63-559.

75.09 Effect of final decree.—In the event the decree of the circuit court validates such bonds, certificates or other obligations, which may include the validation of the county, municipality, taxing district, political district, subdivision, agency, instrumentality or other public body itself (hereinafter referred to as "public body") and any taxes, assessments or revenues affected, and no appeal is taken within the time above prescribed, or if taken and the decree of the circuit court is affirmed, such decree shall be forever conclusive as to all matters adjudicated against the petitioner and and all parties affected thereby, including all property owners, taxpayers and citizens of the petitioner, and all others having or claiming any right, title or interest in property to be affected by the issuance of said bonds, certificates or other obligations, or to be affected in any way thereby, and the validity of said bonds,

certificates or other obligations (hereinafter referred to as "obligations"), or of any taxes, assessments or revenues pledged for the payment thereof (hereinafter referred to as "security"), or of the proceedings authorizing the issuance of such obligations, including any remedies provided for their collection (hereinafter referred to as "proceedings"), shall never be called in question in any court by any person or party, either as a plaintiff or defendant.

History.—§4, ch. 6868, 1915; RGS 3299; §4, ch. 12003, 1927; CGL 5109, 5126; §1, ch. 29691, 1955; §9, ch. 57-1.

75.10 Recording of decree in other counties.—In the event any decree entered in the cause extends into more than one county the same shall be recorded in each county in which the petitioning municipality or district extends, such decree shall be recorded in the foreign judgment book in the office of the clerk of the circuit court of such other counties.

History.—§4, ch. 10036, 1925; CGL 5116.

75.11 Stamping instruments validated.—Bonds or certificates, when validated under the provisions of this chapter, shall have stamped or written thereon, by the proper officers of such county, municipality or district issuing the same, a statement in substantially the following form: "This bond is one of a series of bonds which were validated and confirmed by decree of the Circuit Court of the _____ Judicial Circuit of the State of Florida, in and for _____ County, rendered on _____, 19____."

A copy of such decree, certified by the clerk of the circuit court in which the decree was rendered, shall be original evidence of such decree in any court in this state.

History.—§5, ch. 6868, 1915; RGS 3300; §5, ch. 12003, 1927; CGL 5110, 5127; §1, ch. 57-300.

75.12 Payment of costs.—The costs in each case under this chapter shall be paid by the county, municipality or district filing the petition, except in cases where a taxpayer, citizen or other person may appear and contest the proceeding or intervene therein, the court may tax the whole or any part of the costs against such person as shall be equitable and just.

History.—§6, ch. 6868, 1915; RGS 3301; §6, ch. 12003, 1927; CGL 5111, 5128.

75.13 Certain prior proceedings validated.—Any action for validation heretofore brought by any municipality, special taxing district or political district or subdivision which extends into more than one county or judicial circuit, whereby bonds or certificates of indebtedness have been validated in which the proceedings have been brought in one county and a decree has been entered said decree shall be binding on all of the citizens, property owners, or taxpayers of each municipality, district or subdivision.

History.—§5, ch. 10036, 1925; CGL 5117.

75.14 Land owner or taxpayer not disqualification of judge.—No judge of any of the circuit courts of this state shall be disqualified in any validation proceedings, under this chapter, by reason of the fact that he is a land owner or taxpayer of any county, municipality or district seeking relief hereunder.

History.—§1, ch. 10164, 1925; CGL 5118.

75.15 Substitution of judges.—Whenever it shall appear that any circuit judge is disqualified, is absent, or is unable, on account of sickness or otherwise, to perform his duties in any case instituted or brought in his court to validate bonds or certificates, the judge of any other circuit shall have jurisdiction to hear, try and determine such case and to make and enter any order or decree therein in the same manner as in other chancery cases; and the final decree in such case may be signed or entered at a place other than that designated in the notice and at a time subsequent to the date therein mentioned.

History.—§2, ch. 10164, 1925; §1, ch. 12066, 1927; CGL 5119, 5121.

75.16 Certain orders and decrees validated.—All orders and decrees heretofore or hereafter made in proceedings for the validation of bonds or certificates of indebtedness, by any judge disqualified by matters or reasons not apparent on the record itself, shall be valid and binding upon all parties unless attacked within twenty days of the entry thereof; and all orders and decrees heretofore made in such validation proceedings by judges other than the regular judge or those mentioned or designated in the notices, or at places other than, or dates subsequent to, those mentioned in said notices, when it appears that the regular judge was disqualified, absent or disabled from discharging the duties of his office, are hereby ratified and confirmed.

History.—§3, ch. 10164, 1925; §2, ch. 12066, 1927; CGL 5120, 5122.

75.17 Commencement of action after validation; affidavit of good faith.—Every person who commences an action as taxpayer or otherwise to challenge the validity of any bonds or revenue certificates or to prevent the use of any moneys derived from the sale of such bonds or revenue certificates after the bonds or revenue certificates have been validated by courts of competent jurisdiction pursuant to chapter 75, shall file an affidavit of good faith stating that the suit is not filed merely for delay and setting forth with particularity why such action or objection was not taken as part of the bond or revenue certification validation proceedings.

History.—§1, ch. 61-508.

CHAPTER 76

ATTACHMENTS

76.01 Right to attachment.—Any creditor may have an attachment at law against the goods and chattels, lands and tenements of his debtor under the circumstances and in the manner hereinafter provided.

History.—§1635 RS 1892; GS 2099; RGS 3400; CGL 5253.

76.02 Attachment of corporate stock.—Shares of stock in any corporation incorporated by the laws of this state shall be subject to levy of attachment under the circumstances hereinafter provided and in the manner as set out in §§55.25-55.31.

History.—§1, ch. 3917, 1889; RGS 2846; CGL 4533.

76.03 Courts from which attachments shall issue.—Attachment shall issue from the court which may have jurisdiction of the amount claimed by the creditors; but, if the property to be attached is being actually removed from the state, and the creditor shall be unable to obtain process from the circuit, civil court of record, or county court, as the case may be, in time to prevent such removal, any justice of the peace or county judge may issue the writ, making the same returnable to the circuit, civil court of record, or county court, as the case may be, and shall immediately send all papers in the case to the clerk of the court to which the writ is made returnable.

History.—§2, Feb. 15, 1834; §1, ch. 250, 1849; RS 1636; GS 2100; RGS 3401; CGL 5254.

76.04 Grounds when indebtedness due.—The creditor may have an attachment upon a debt actually due to him by his debtor, whenever the debtor:

(1) Will fraudulently part with his property before judgment can be obtained against him.

(2) Is actually removing his property out of the state.

(3) Is about to remove his property out of the state.

(4) Resides beyond the limits of the state.

(5) Is actually moving himself out of the state.

(6) Is about to move himself out of the state.

(7) Is absconding.

(8) Is concealing himself.

(9) Is secreting his property.

(10) Is fraudulently disposing of his property.

(11) Is actually removing himself beyond the limits of the judicial circuit in which he resides, or

(12) Is about to remove himself out of the limits of such judicial circuit.

History.—§1, ch. 998, 1859; §2, ch. 1101, 1861; RS 1637; GS 2101; RGS 3402; CGL 5255.

76.05 Grounds when indebtedness not due.—Any creditor may have such attachment upon a debt not due, whenever the debtor:

(1) Is actually removing his property beyond the limits of the state.

(2) Is fraudulently disposing of his property for the purpose of avoiding the payment of his just debts or demands.

(3) Is fraudulently secreting his property for such purpose.

History.—§1, Feb. 14, 1835; RS 1638; §1, ch. 5257, 1903; GS 2102; RGS 3403; CGL 5256.

76.06 Effect of attachment upon unmatured debt.—In cases of attachment for debt not due, under §76.05, the existence of one or more of the special grounds assigned, and in case of attachment against executors or administrators for a debt not due, the existence of all the grounds assigned, shall cause the debt to become due, and the plaintiff in attachment may proceed upon a debt falling due upon a day before the institution of the suit.

History.—§1647 RS 1892; GS 2111; RGS 3412; CGL 5265.

76.07 Attachments in aid of foreclosure.—Any creditor who may be commencing or who may have commenced a suit to foreclose a mortgage on personal property in chancery or at law may have an attachment against such property, whenever he shall file in the court in which the proceedings are being had, an affidavit sworn to by himself, his agents or attorney, stating that he has reason to believe and does believe:

(1) That said property or part of same will be concealed or disposed of so that it will not be forthcoming to answer a judgment or decree upon foreclosure.

(2) That said property or part of same will be removed beyond the jurisdiction of said court.

(3) That said property or part of same is of a perishable character and is being used and consumed by the mortgagor or other parties.

(4) That said property or part of same has been disposed of without the consent of the party holding and owning the mortgage, and stating who has said property, if known, and if not known that affiant does not know who has same.

The plaintiff shall give bond as in other cases of attachment. Such writs of attachment shall be subject to motion to dissolve as other writs of attachment.

History.—§6, Dec. 11, 1824; RS 1640; GS 2104; RGS 3405; §1, ch. 8477, 1921; CGL 5258.

76.08 Procurement of attachment; affidavit, generally.—Before any attachment shall issue in any of the foregoing cases, the plaintiff shall file in the court from which he desires the attachment an affidavit, sworn to by himself, his agent or attorney.

History.—§1641 RS 1892; GS 2105; RGS 3406; CGL 5259.

76.09 Affidavit when indebtedness due.—In cases where the debt is actually due, such affidavit shall state the amount of the debt or the sum demanded, that the same is actually due, and that affiant has reason to believe in the existence of one or more of the special grounds hereinbefore enumerated in §76.04 stating specifically such special ground or grounds.

History.—§1, ch. 998, 1859; RS 1642; GS 2106; RGS 3407; CGL 5260.

76.10 Affidavit when indebtedness not due.—In cases where the debt is not actually due, such affidavits shall state the amount of the debt or demand; that the same is actually an existing debt or demand; and the existence of one or more of the special grounds hereinbefore enumerated in §76.05 stating specifically such special ground or grounds.

In addition, the plaintiff shall produce before the officer granting such attachment proof, by affidavit (other than his own) or otherwise, satisfactory to such officer, of the existence of such special ground.

History.—§2, Feb. 14, 1835; RS 1643; GS 2107; RGS 3408; CGL 5261.

76.11 Affidavit for attachment in aid of foreclosure.—In cases of attachments in aid of foreclosure of mortgages on personal property such affidavit shall describe specifically the property upon which the mortgage exists, and shall state that a complaint has been filed or other suit brought to foreclose said mortgage, the amount of the debt or demand secured by such mortgage, that the same is actually due, and that affiant has reason to believe in the existence of one or more of the special grounds enumerated in §76.07. The original mortgage, or a certified copy thereof, shall be attached to the affidavit.

History.—§6, Dec. 11, 1824; RS 1645; GS 2109; RGS 3410; CGL 5263; §2, ch. 29737, 1955.

76.12 Attachment bond.—No attachment shall issue until the person applying for same, his agent or attorney, shall enter into bond, with at least two good and sufficient sureties, payable to the defendant, in at least double the debt or sum demanded, conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out said attachment. In case of foreclosure of a mortgage upon personal property if the affidavit shall state that said property or part of same has been disposed of without the consent of the party holding and owning the mortgage and that plaintiff does not know who has said property or part of same, then said bond shall be made payable to the state for the use and benefit of all parties interested, conditioned to pay all costs and damages which may be sustained in consequence of plaintiff's improperly suing out said attachment, and any person or party aggrieved may sue on said bond in the name of the state, but the state shall not be liable for any costs, damages or expenses that may be incurred. Only one surety shall be required when such bond is executed by a lawfully authorized surety company as a surety thereon.

Any bond taken in cases of attachment shall not on account of any informality in the same be adjudged void as against the obligors, nor shall they be discharged therefrom, although the attachment may be dissolved by reason of such informality.

History.—§10, Feb. 15, 1834; RS 1646; GS 2110; RGS 3411; §2, ch. 8477, 1921; CGL 5264.

76.13 Writ; form.—

(1) GENERALLY.—The writ of attachment shall be directed to the sheriff, or other proper officer, commanding him to attach and take into custody so much of the lands, tenements, goods and chattels of the party against whose property the writ is issued as will be sufficient to satisfy the debt or sum demanded with costs.

(2) IN AID OF SUITS TO FORECLOSE.—In suits to foreclose mortgages, the writ shall describe the property, and command the officer to take and hold such property, or so much thereof as can be found sufficient to satisfy the debt to be foreclosed.

History.—§2, Feb. 15, 1834; RS 1648; GS 2112; RGS 3413; CGL 5266.

76.14 Writ; effect of levy.—The levy of a writ of attachment shall not operate to dis-

possess the tenant of any lands or tenements, but a levy upon real or personal property shall bind the property attached, except against pre-existing liens; and levies upon the same property under successive attachments shall have precedence as liens in the order in which they are made. A levy shall, however, bind real estate as against subsequent creditors or purchasers, only from the time of the record by the clerk of the circuit court in the lien book of a notice of the levy and a description of the property levied upon.

History.—§9, Feb. 17, 1833; RS 1651; GS 2115; RGS 3416; CGL 5269.

76.16 Writ; levy in other counties.—When, in any proceeding in attachment, the plaintiff, or someone in his behalf, shall, in addition to the affidavit in attachment proceedings, make affidavit that the defendant has real or personal property in some county of this state other than the one in which said proceedings were instituted, a writ of attachment, original or ancillary, as the case may be, shall be issued and directed to the sheriff of said county where said property is as aforesaid; and said officer shall execute said writ and hold the property levied on by virtue thereof subject to the order of the court from which said writ emanated, which said court shall have the power to order the delivery thereof to the sheriff or other proper officer of the county where the said proceedings were instituted, or order said officer so executing the writ to hold and dispose of the same in his county according to law as in other cases.

When any real property is levied upon by virtue of this section, the officer levying said writ shall file a written notice of said levy with the clerk of the circuit court for the county in which said property is situated, which notice shall contain a description of the property so levied upon, and the clerk shall record said notice in a book kept for the record of foreign judgments, for which he shall receive a fee of twenty-five cents, and said record shall be notice to all persons of said levy; and in case of the dissolution of the attachment or dismissal of the suit, or for any cause the property ceases to be bound by said attachment, upon due proof thereof the clerk shall note such fact on the record of the levy.

History.—§2, ch. 3721, 1887; RS 1650; GS 2114; RGS 3415; CGL 5268.

76.17 Writ; levy upon property removed from county pending levy.—When personal property of the defendant is situated in any county at the time of beginning of an action of attachment in such county and shall be removed from such county pending such action, it shall be the duty of the officer to whom the writ is addressed and delivered at once to make his return of the fact of the removal of such property aforesaid, and the plaintiff in such suit may make affidavit stating to what county or counties he believes the property has been removed, whereupon an alias writ shall issue, addressed to the sheriff of such last named county, or one such writ addressed to the sheriff of each county to which such property, or a portion thereof, has been removed, who shall, upon receipt of such writ, take possession of said property and deliver it to the proper officer of the court from which such writ was issued, and make return of said writ and his doings in the premises to said court, and the proceedings shall be thereafter as in other actions of attachment.

All questions as to the title of such property shall be adjudicated in the county in which the suit was brought, unless the court shall change the venue.

History.—§§1, 2, ch. 3245, 1881; RS 1650; GS 2114; RGS 3415; CGL 5268.

76.18 Return of property upon forthcoming bond.—The property so attached, as provided for in §76.17, may at any time be restored to the said defendant or some other person for him, upon the defendant or such other person giving bond to the officer levying such attachment, payable to the plaintiff with two good and sufficient sureties to be approved by such officer in double the value of the property levied upon, if such property value shall not exceed the amount of plaintiff's claim, or double the amount of plaintiff's claim; if the value of such property shall exceed the amount of plaintiff's claim, such value to be fixed by the officer, conditioned for the forthcoming of the property restored, and to abide the final order of the court.

History.—§13, Mar. 15, 1843; §1, ch. 6865, 1915; RS 1652; GS 2116; RGS 3417; CGL 5270.

76.19 Return of property upon bond to pay debt.—Property attached, as provided for in §76.17, may be restored to the defendant (or in case of foreclosure of mortgage, to any person who shall make affidavit that he is the owner of the equity of redemption), on his entering into bond with two good and sufficient sureties, to be approved by the officer, conditioned for the payment to the plaintiff in attachment of the debt or demand, and all costs of the suit, when the same shall be adjudicated to be payable to such plaintiff.

History.—§4, Feb. 14, 1835; RS 1653; GS 2117; RGS 3418; CGL 5271.

76.20 Replevy of property taken by attachment.—If the property taken under a writ of attachment be not subject to attachment, it may be retaken by the defendant by replevin proceedings.

History.—§4, Feb. 14, 1835; RS 1654; GS 2118; RGS 3419; CGL 5272.

76.21 Claims of third parties to attached property.—If any attachment shall be levied upon property claimed by any person other than the defendant in attachment, such person may, at his option, replevy the same or interpose a claim in the manner provided in case of execution.

History.—§8, Feb. 15, 1834; §1, Mar. 15, 1843; RS 1665; GS 2129; RGS 3430; CGL 5283.

76.22 Custody of attached property; sale of perishables.—All personal property levied on

by attachment, unless it be restored to the defendant or some person for him, or be claimed by a third person, shall remain in custody of the officer who shall have attached the same until disposed of according to law; but when the property attached shall be of a perishable nature, or liable to great deterioration in value, or the costs of keeping the same shall be greatly disproportionate to the value thereof, the officer who issued the attachment may, in vacation as well as in term time, grant an order for the sale of such property after such notice as to the officer shall seem expedient, and the proceeds of such sale shall be paid into court, and abide the judgment thereof. Such sale may be made upon other days than the legal sale days in other cases.

History.—§12, Feb. 17, 1833; RS 1655; GS 2119; RGS 3420; CGL 5273.

76.24 Dissolution of attachment; proceedings.—The court, to which the attachment is returnable, shall always be open for the purpose of hearing and deciding motions to dissolve such attachment, and in any case upon oath in writing made by the defendant and tendered to the court that any allegation in the plaintiff's affidavit is untrue, a trial of such answer or other defining pleading shall be had, and if the allegation in the plaintiff's affidavit which is denied is not sustained and proved to be true, the attachment shall be dissolved. If such affidavit shall deny the debt or sum demanded, the judge may, upon application of either party, require formal pleadings as to the debt or sum demanded, to be filed in such time as he may fix, and the issue of facts, if any, raised by such pleadings shall be tried as hereinbefore provided, and at the same time as the issue, of any, made by the affidavit as to the special cause assigned in plaintiff's affidavit. Issues of law raised by such pleadings shall be determined and given effect to by the judge as in other controversies at law.

Upon the demand of either party, a jury to be summoned from the body of the county upon the order of the judge shall be empaneled to try the issue joined as aforesaid; but a circuit judge shall not be required in vacation to go to any county in which he does not reside to try any such motion to dissolve.

History.—§5, Feb. 15, 1834; RS 1656; GS 2121; RGS 3421; CGL 5274; §15, ch. 29737, 1955.

76.25 Effect of dissolution.—

(1) UPON THE ACTION.—When any suit shall be commenced by attachment, and the same on motion be dissolved before service of an answer or other defensive pleading in the action then in every such case the suit shall abate and be dismissed from the court; but if such motion is made after service of an answer or other defensive pleading in the action, the attachment only shall be dissolved, and the plaintiff may still proceed in said suit and prosecute his debt or demand to final judgment.

(2) UPON WRITS OF GARNISHMENT.—Whenever an attachment shall be dissolved after service of an answer or other defensive pleading and there shall have been a writ of garnishment issued in the attachment suit, the same shall not be dismissed or abated in consequence of a dissolution of the said attachment, but shall remain good and binding and in full force and virtue and abide the final termination of the action commenced by said attachment.

History.—§7, Feb. 15, 1834; §3, ch. 1100, 1861; RS 1657; GS 2121; RGS 3422; CGL 5275; §10, ch. 28301, 1953.

76.29 Amendments of pleadings; etc.— Pleadings and proceedings in attachment shall be amendable as in other actions, and no motion to dissolve an attachment for any default or omission shall be granted if the application be made to amend in the particular objected to; but, if any amendment be made to an attachment bond, such amended bond, although not heretofore binding upon the sureties, shall relate back to the institution of the suit and afford protection to the defendant in attachment from such institution.

History.—§1663, RS 1892; GS 2127; RGS 3428; CGL 5281.

76.31 Judgments.—If judgment by default be entered in favor of the plaintiff, and the defendant shall have retaken the property upon a forthcoming bond, final judgment by default shall be entered at the same time against the defendant and the sureties on the bond for the amount of the judgment against the defendant if it be less than the value of the property as fixed by the officer, or for the value of the property so fixed if such value be less than the judgment against the defendant. If the defendant shall have retaken the property upon a bond to pay the debt, such judgment shall also be entered against the sureties for the amount of the judgment against the defendant. In case of a judgment against defendant after trial, judgment shall be entered against the sureties as above provided, except that the value of the property retaken by defendant shall be found by the judge or the jury (as the case may be tried before the one or the other), and stated in the finding or verdict.

History.—§1664, RS 1892; GS 2128; RGS 3429; CGL 5282.

76.32 Attachment of boats, vessels, etc.; when applicable.—In all actions hereafter instituted in any of the courts of the state by any person, firm, corporation or association of persons, including the state and any governmental subdivision, governmental agency or governmental department of the state, against any person, firm, association of persons or corporation, whether resident or nonresident, to recover damages for injury to the person or to the property, real or personal, of such person, firm, association of persons or corporation, including the state, and any governmental subdivision, governmental agency or governmental department of the state, resulting from carelessness, negligence or want of skill in the navigation, direction or management of any steamship, steamboat, tug, towboat, barge, watercraft, and ships and vessels of every kind, whether domestic or foreign, and howsoever propelled and powered, within the territorial jurisdiction of the state, the plaintiff or

plaintiffs to such action shall be entitled to and shall have a writ of attachment at law against the vessel the negligent, careless, or unskillful navigation, direction or management of which caused or resulted in such injury and damage, under the circumstances and in the manner hereinafter provided.

History.—§1, ch. 23137, 1945.

76.33 Attachment of boats, vessels, etc.; venue.—The venue of actions prosecuted under the provisions of this law shall be, at the option of the plaintiff thereto, either in the county wherein the defendants or any of them reside, the county wherein the damage or injury was suffered or the county wherein the vessel charged with the responsibility for the damage or injury may be found.

History.—§2, ch. 23137, 1945.

76.34 Attachment of boats, vessels, etc.; affidavit.—Before any writ of attachment shall issue under the provisions of this law, the plaintiff shall file in the court from which the attachment writ is desired, an affidavit sworn to by the plaintiff, his agent or attorney, which affidavit shall set forth the filing of the suit, the circumstances under which the injury or damage complained of was suffered, giving rise to the cause of action upon which the plaintiff relies for recovery, and shall state the amount or sum of the plaintiff's demand in good faith made.

History.—§3, ch. 23137, 1945.

76.35 Attachment of boats, vessels, etc.; bond.—No attachment shall issue until the person applying for the same, his agent or attorney, shall enter into bond with good and sufficient surety to be approved by the court, or by the clerk of the court in which the said suit is instituted, payable to the defendant or defendants, in a sum at least double the amount of money in good faith demanded, conditioned to pay all costs and damages which the defendant or defendants may sustain in consequence of the plaintiff's improperly suing out the attachment; provided, however, that no bond shall be required to be entered into in any suit wherein the state, or any governmental subdivision, governmental agency or governmental department is plaintiff.

History.—§4, ch. 23137, 1945.

76.36 Attachment of boats, vessels, etc.; forthcoming bond.—Any vessel attached in any suit under the provisions of this law may at any time be restored to the defendant to said action or to some other person for him, upon the defendant or such other person giving bond to the officer levying such attachment, payable to the plaintiff with good and sufficient surety to be approved by such officer, in double the value of the vessel levied upon, if such property value shall not exceed the amount of the plaintiff's claim, or double the amount of the plaintiff's claim, if such property value shall exceed the amount of the plaintiff's claim, such value to be fixed by the officer, conditioned for the forthcoming of the property restored, and to abide the final order of the court; provided, however, that if the suit be for unliquidated damages, the defendant or the claimant of the offending vessel in lieu of furnishing a bond as herein provided, may apply to the judge of the court in which the proceeding is pending for a reduction in the amount of the bond, and the said judge may in his discretion, and after such summary proceedings as he may direct, fix the amount and conditions, of the bond at a sum sufficient to adequately secure payment of the amount of the injury, loss or damage which may have been suffered by the plaintiff, together with costs of suit. The release bond herein provided for shall be approved by the judge or clerk of the court at the direction of the judge and if the plaintiff shall recover a judgment, it shall be rendered against the defendant, or the claimant of the vessel, and his surety upon the release bond.

History.—§5, ch. 23137, 1945.

76.37 Attachment of boats, vessels, etc.; application of law.—This law shall apply to and govern only those actions for injury, loss or damage which occur without the admiralty and maritime jurisdiction of the courts of the United States.

History.—§6, ch. 23137, 1945.

CHAPTER 77

GARNISHMENT

77.01 Right to garnishment.—Every person who shall have brought a suit to recover a debt or shall have recovered a judgment in any court of this state against any person, natural or corporate, shall have a right to a writ of garnishment, in the manner hereinafter provided, to subject any indebtedness due to the defendant by a third person, and any goods, money, chattels or effects of the defendants in the hands, possession or control of a third person. The officers, agents and employes of any companies or corporations shall be, as regards such companies or corporations, third persons, and as such shall be subject to garnishment after judgment against such companies or corporations.

History.—§1, ch. 43, 1845; §1, ch. 3738, 1887; RS 1666; §1, ch. 4136, 1893; GS 2130; §1, ch. 6910, 1915; RGS 3431; CGL 5284.

77.02 Garnishment in tort actions.—Prior to judgment against a defendant no writ of garnishment shall issue in any action sounding in tort.

History.—§1, ch. 7352, 1917; RGS 3432; CGL 5285.

77.03 Writ; procurement.—After judgment has been obtained against the defendant, before such writ shall issue, the plaintiff, his agent or attorney, shall make and file in the court where such judgment has been obtained an affidavit stating amount of said judgment, and that affiant does not believe that defendant has in his possession visible property upon which a levy can be made sufficient to satisfy the said judgment. Such affidavit may be made and filed, and the writ issued thereon, either before or after the return of execution.

History.—§§1, 14, ch. 43, 1845; RS 1667; §1, ch. 4393, 1895; GS 2131; RGS 3433; CGL 5286.

77.04 Writ; form.—The writ shall be directed to the sheriff or other proper officer of the county in which said garnishee may reside, and shall command said garnishee to serve upon plaintiff or plaintiff's attorney an answer to said writ within twenty days after service thereof and therein to state on oath whether he is at the time of the answer indebted to the defendant, or was indebted at the time of the service of the writ, or at any time between such periods, and in what sum or sums, and what goods, money, chattels or effects of defendant he has at the time of his answer in his hands, possession or control, or had at the time of the service upon him of the said writ, or at any time between such periods, and whether he knows of any other person indebted to said defendant, or who may have any of the effects of said defendant in his hands. Such writ shall also state the amount named in plaintiff's affidavit.

History.—§1, ch. 43, 1845; RS 1668; §1, ch. 4393, 1895; GS 2132; RGS 3434; CGL 5287; §11, ch. 28301, 1953.

77.05 Writ; service and return.—The writ shall be served in the same manner as service of summons.

History.—§§2, 3, ch. 43, 1845; RS 1669; GS 2133; RGS 3435; CGL 5288; §12, ch. 28301, 1953; §2, ch. 29737, 1955.

77.06 Writ; effect.—The service of the writ shall make the garnishee answerable for all indebtedness due by him to the defendant, and for any goods, money, chattels or effects of the defendant in his hands, possession or control, at the time of the service of the writ or at any time between such service and the time of his answer.

History.—§1, ch. 43, 1845; RS 1670; GS 2134; RGS 3436; CGL 5289.

77.07 Writ; dissolution.—The court to which a garnishment is returnable shall always be open for the purpose of hearing and deciding motions to dissolve such garnishment, and in any case upon oath in writing made by the defendant, and tendered to the court that any allegation in the plaintiff's affidavit is untrue, a trial of such traverse shall be had, and if the allegation in the plaintiff's affidavit which is traversed is not sustained and proved to be true, the garnishment shall be dissolved. If such affidavit shall traverse the debt or sum demanded, the judge may, upon application of either party, require formal pleadings as to the debt or sum demanded, to be filed in such time as he may fix, and the issue of fact, if any, raised by such pleadings shall be tried as provided in §77.08, and at the same time as the issue, if any, made by the affidavit as to the special cause assigned in plaintiff's affi-

davit. Issues of law raised by such pleadings shall be determined and given effect by the judge as in other controversies at law.

History.—§1, ch. 7353, 1917; RGS 3454; CGL 5307.

77.08 Writ; jury trials.—Upon the demand of either party a jury, to be summoned from the body of the county wherein such cause is pending, upon the order of the judge, shall be empaneled to try the issue joined as aforesaid; but a circuit judge shall not be required in vacation to go to any county in which he does not reside to try any such motion to dissolve.

History.—§1, ch. 7353, 1917; RGS 3455; CGL 5308.

77.13 Execution upon garnishee's refusal to surrender property.—If the garnishee will not surrender, provided he have the power to do so, the goods and chattels belonging to said defendant, and which he has confessed to be in his hands or possession, then by order of the court execution may be issued and levied on the property of said garnishee for the whole amount of the plaintiff's judgment against the defendant, or for so much of said judgment as shall be then unpaid; and the officer shall proceed to sell the property as under other executions. Said garnishee shall have the right to release his property from such levy and sale by surrendering the said property of the defendant to the officer levying said execution on the day and hour appointed for the sale of the property so levied upon, or at any time previous to the day of the sale, and by paying the costs of the proceedings to sell up to the time of the surrender.

History.—§5, ch. 43, 1845; RS 1675; GS 2139; RGS 3441; CGL 5294.

77.14 Disposition of property surrendered by garnishee.—When any garnishee shall have any of the goods, chattels or effects of said defendant in his hands or possession, and shall surrender the same, the constable, sheriff or other officer shall receive said property, and shall proceed to sell the same under the execution against the defendant.

History.—§6, ch. 43, 1845; RS 1676; GS 2140; RGS 3442; CGL 5295.

77.15 Proceedings against third persons named in answer.—If upon the answer of any garnishee it shall appear to the court that there are any of the defendant's effects or property in the hands of any person who has not been garnisheed, such court shall, upon motion of the plaintiff, award a garnishment against such person having any of the effects or property of the defendant in his custody, hands, possession or control, who shall answer, and be liable as other garnishees.

History.—§3, ch. 43, 1845; RS 1677; GS 2141; RGS 3443; CGL 5296; §2, ch. 29737, 1955.

77.16 Claims by third persons to garnisheed property.—If any person other than the defendant shall claim that the indebtedness due by a garnishee is due to him and not to the defendant, or shall claim the effects in the hands or possession of any garnishee, and shall make affidavit that the said indebtedness or effects are bona fide his property, the court shall immediately, unless good cause be shown to the contrary, and without the formality of pleading, direct a jury to be empaneled to inquire of the right of such property between the claimant and the plaintiff; and if the finding of the jury shall be against such claimant, the plaintiff shall recover costs; and if the jury find in favor of such claimant, he shall recover costs against the plaintiff; and if such claim be interposed after a levy on property, the officer making said levy shall return said execution with his levy thereon and said affidavit of said claimant to the court from which said execution issued, and such proceedings shall be had thereon as in other cases of claims made to property taken on execution.

History.—§8, ch. 43, 1845; RS 1679; GS 2143; RGS 3445; CGL 5298.

77.17 Compensation to garnishee.—The garnishee shall be allowed by the court the pay of a witness for his attendance out of the indebtedness to defendant, or out of the money or effects in his possession, and if there should be no such indebtedness, money or effects in his possession, then the allowance shall be against the plaintiff.

History.—§7, ch. 43, 1845; RS 1678; GS 2142; RGS 3444; CGL 5297.

77.18 Garnishment prior to judgment; procurement.—Before such writ shall issue, either in a suit commenced by a summons or by attachment before judgment has been obtained by the plaintiff against the defendant, the plaintiff, his agent or attorney, shall make and file in the court where the suit is pending, an affidavit that the debt for which the plaintiff sues is just, due and unpaid, that the garnishment applied for is not sued out to injure either the defendant or the garnishee, and that the affiant does not believe that the defendant will have in his possession after execution shall be issued visible property in this state and in the county in which suit is pending upon which a levy can be made sufficient to satisfy the amount of the plaintiff's claim.

Except in cases in which the plaintiff has had an attachment, no writ of garnishment before judgment shall issue until the person applying for same, his agent or attorney, shall enter into bond, with at least two good and sufficient sureties, payable to the defendant, in at least double the debt or sum demanded, conditioned to pay all costs and damages, which the defendant may sustain in consequence of the plaintiff's improperly suing out said writ of garnishment. Only one surety shall be required when such bond is executed by a lawfully authorized surety company as a surety thereon.

Any bond taken in cases of garnishment shall not on account of any informality in the same be adjudged void as against the obligors, nor shall they be discharged therefrom, although the garnishment may be dissolved by reason of such informality.

History.—§11, ch. 43, 1845; RS 1680; §1, ch. 4393, 1895; GS 2144; §2, ch. 6910, 1915; RGS 3446; CGL 5299; §2, ch. 29737, 1955.

77.19 Prior to judgment; amount to be retained by garnishee.—No garnishee who may be indebted to, or have in his possession the

money of a person whose money or credits may be garnisheed, shall retain out of said debt or money more than double the amount which the said writ of garnishment shall specify as the amount the plaintiff expects to recover in said suit, or the judgment he has recovered.

History.—§2, ch. 4393, 1895; GS 2145; RGS 3447; CGL 5300.

77.20 Prior to judgment; default.—Default and final judgment by default may be rendered against the garnishee, as in cases of garnishment after judgment; and such judgment shall be for the amount claimed by the sheriff; but no execution shall issue thereon or payment thereof be enforced until the plaintiff shall have recovered judgment against the defendant, and then only for the amount so recovered with costs.

History.—§11, ch. 43, 1845; RS 1681; GS 2146; RGS 3448; CGL 5301.

77.21 Prior to judgment; judgment.—Judgment against the garnishee upon his confession and upon traverse of his answer may be obtained as in cases of garnishment after judgment; but no execution shall issue thereon or payment thereof be enforced until the plaintiff shall have recovered judgment against the defendant, and then only for the amount so recovered.

History.—§11, ch. 43, 1845; RS 1682; GS 2147; RGS 3449; CGL 5302.

77.22 Prior to judgment; effect of judgment for defendant.—If the judgment shall be in favor of the defendant in the suit, then the plaintiff shall pay all costs which have accrued in consequence of suing out said writ of garnishment; and the money brought into the registry of the court thereby, or the judgment obtained thereon, except judgment by default against the garnishee, shall enure to the benefit of and be controlled and managed by the said defendant as amply and completely as though the same had been rendered in his favor.

History.—§2, ch. 1100, 1861; RS 1683; GS 2148; RGS 3450; CGL 5303.

77.23 Prior to judgment; rights of garnishee.—If any plaintiff shall discontinue his suit against the defendant, or be nonsuited, or have a verdict against him on the trial of said suit, then the judgment against the garnishee shall become null and void, and such garnishee shall have execution for his costs, to be taxed as in other cases against such plaintiff in said suit.

History.—§11, ch. 43, 1845; RS 1864; GS 2149; RGS 3451; CGL 5304.

77.24 Prior to judgment; discharge.—At any time before the entry of judgment, the defendant whose property has been garnisheed, may secure its release by giving a bond with two good and sufficient sureties to be approved by the clerk, or by the court if it have no clerk, in a penal sum of at least double the amount claimed in the complaint, with interest and costs, or if the value of the property garnisheed is less than such amount, then in double such value, conditioned to pay any judgment recovered against him in the action, with interest and costs, or so much thereof as shall equal such value. The court upon the approval of such bond shall make an order discharging such garnishment and releasing the property. Such order shall become effective upon filing the same with such bond in the court in which the proceedings are pending and serving a copy of the order on the garnishee. If the garnishee shall admit indebtedness to the defendant in excess of a sum sufficient to satisfy the plaintiff's claim, the court shall, on motion of the defendant and notice to the plaintiff, release the garnishee from responsibility to the plaintiff for any indebtedness to the defendant except in a sum deemed by the court sufficient to satisfy the plaintiff's claim, with interest and costs.

History.—§2150 GS 1906; GS 2150; §1, ch. 5906, 1909; §2, ch. 6910, 1915; RGS 3452; CGL 5305.

77.26 Attorney's fees in garnishment case.—Whenever any writ of garnishment is sued out in any of the courts of justices of the peace, or county courts, in this state, and the same shall be dismissed, or the plaintiff shall fail to sustain his claim, the defendant or defendants in garnishment shall be entitled to receive from the plaintiff an attorney's fee of ten dollars, which shall be taxed by the court as cost, and collected as provided for other costs in the suit.

History.—§1, ch. 4030, 1891; GS 1356; RGS 2552; CGL 4170.

77.27 No appeal until fees are paid.—If said writ be dismissed, or the plaintiff shall fail to sustain his claim, then no appeal from the order or judgment of said court shall be permitted until the attorney's fee, as herein provided, shall have been paid into court.

History.—§2, ch. 4030, 1891; GS 1357; RGS 2553; CGL 4171.

77.28 Garnishment; attorney's fees, costs, expenses, etc.; deposit required.—Before the issuance of any writ of garnishment in any cause by any court of this state, the party applying for such writ shall deposit into the registry of such court the sum of ten dollars, which, at any time after the service of such writ, shall be paid to the garnishee upon his demand, by the clerk of said court, for the payment, or part payment by such garnishee of the attorney's fee, which he may expend, or agree to expend, in obtaining legal services for representation in said cause in response to such writ. Upon the rendering of a final judgment in any such proceeding in which a writ of garnishment shall be issued, the court shall determine a sum that should be awarded to the garnishee for his costs and expenses in said cause, including a reasonable attorney's fee, and such amount shall be taxed in said cause in the same manner that other court costs are taxed, and shall be paid accordingly. The plaintiff in such an action may recover in such manner the said sum advanced by him and paid into the registry of the court, and if the amount so allowed by the court is greater than the amount of such deposit, then judgment for the garnishee shall be entered against the party against whom such costs shall be taxed, for the amount of such deficiency.

History.—§1, ch. 21772, 1943.

CHAPTER 78

REPLEVIN

78.01 Right to replevin.—Any person, when goods or chattels may be wrongfully detained by any other person or officer, may have under the circumstances and in the manner provided in this chapter, a writ of replevin for the recovery thereof, and for the recovery of the damages sustained by reason of the wrongful caption or detention. Or such person may at his election institute an action seeking like relief, but with summons to the defendant instead of writ, for the seizure of the property, in which event no bond shall be required of him, and seizure of the property involved shall be had only after judgment, such judgment to be in like form and tenor as that now provided for when defendant shall have retaken the property upon forthcoming bond; and provided further that notice of lis pendens to charge third persons with knowledge of plaintiffs claims upon such property may be filed and recorded as in other actions.

History.—§1, Mar. 11, 1845; RS 1707; GS 2171; RGS 3476; CGL 5329; §1, ch. 28277, 1953; §1, ch. 29706, 1955.

78.02 What may not be taken by replevin.—(1) PROPERTY TAKEN FOR TAXES, ETC.—No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine in pursuance of any statute in this state.

(2) PROPERTY TAKEN UNDER EXECUTION, ETC.—No replevin shall lie at the suit of the defendant in any execution or attachment to recover goods and chattels seized by virtue thereof, unless such goods and chattels are exempted by law from such execution or attachment.

(3) FOR PROPERTY REPLEVINED FROM DEFENDANT.—No replevin shall lie by the original defendant in replevin for property taken in replevin and delivered to the plaintiff while the same remains in the possession of the original plaintiff or his agents.

(4) FOR PROPERTY TO WHICH PLAINTIFF HAS RIGHT OF POSSESSION.—No replevin shall lie at the suit of any person unless he shall have a right to reduce into his possession the goods taken.

History.—§§2, 3, Mar. 11, 1845; §3, Mar. 10, 1845; RS 1708; GS 2172; RGS 3477; CGL 5330.

78.03 Venue and jurisdiction; generally.—The action shall be brought in the court in the county or justice's district where the property is, which shall have jurisdiction of the value of the articles sought to be replevied, as set forth in the affidavit hereinafter provided for.

When property consists of separate articles, any one of which may in value be within the jurisdiction of a justice of the peace, but taken together will exceed that jurisdiction, the plaintiff shall not, for the purpose of giving jurisdiction to a justice of the peace, divide and separate said property to enable him to bring separate actions therefor.

History.—§14, Mar. 10, 1845; RS 1709; GS 2173; RGS 3478; CGL 5331.

78.04 Issuance of writ by justice of peace; returnable before proper court.—When property wrongfully taken or wrongfully detained exceeds in value the jurisdiction of a justice of the peace, and it is inconvenient or impracticable from distance or other causes, or the urgency of the case will not permit, to apply to the clerk of the circuit or county court, as the case may be, for a writ of replevin, a justice of the peace shall, after bond as hereinafter provided shall have been made and given and filed with the justice (who shall also approve the bond), issue a writ of replevin, directed to a sheriff or a constable, and returnable to the court having jurisdiction.

Upon the issuance of the writ, the justice shall immediately file the bond in the court to which the writ is returnable, and the cause shall thereafter proceed in that court.

History.—§15, Mar. 10, 1845; RS 1710; GS 2174; RGS 3479; CGL 5332; §2, ch. 29706, 1955.

78.05 Commencement of replevin; method.—Actions of replevin shall be commenced by the filing of a complaint as in other actions at law. Before writ of replevin shall issue the plaintiff shall file a bond as provided in this chapter.

History.—§§4, 6 Mar. 10, 1845; RS 1711; GS 2175; RGS 3480; CGL 5333; §13, ch. 28301, 1953.

78.06 Contents of complaint.—The complaint shall state that the plaintiff is lawfully entitled to the possession of the property (describing it, and stating its true value) and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this

state, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution, and that the defendant has possession of and detains the same from plaintiff, in the county or justice district in which the suit is brought.

History.—§6, Mar. 10, 1845; RS 1712; GS 2176; RGS 3481; CGL 5334; §14, ch. 28301, 1953.
cf.—§81.32 for form of affidavit in justice of peace court.

78.07 Bond; requisites.—The bond shall be payable to the defendant, with at least two good and sufficient sureties, to be approved of by the officer issuing the writ, in at least double the sworn value of the property to be replevied, conditioned that the plaintiff will prosecute his suit to effect and without delay, and that if the defendant recover judgment against him in the action, he will return the same property, if return thereof be adjudged, and will pay to the defendant all such sums of money as may be recovered against him by such defendant in the said action for any causes whatever.

History.—§6, Mar. 10, 1845; RS 1713; GS 2177; RGS 3482; CGL 5335.
cf.—§81.32 for form of bond in justice of peace court.

78.071 Concealment of property by defendant; delivery thereof to sheriff.—If the plaintiff in replevin or his attorney has good cause to believe that the defendant is secreting or concealing property or any part thereof sought to be replevied, the judge of the court in which said cause is pending may, upon sworn motion of said plaintiff or his attorney, together with any necessary supporting affidavits, order the defendant to deliver such property to the sheriff or show cause why he should not be held in contempt of court for his failure so to do.

History.—§1, ch. 63-152.

78.08 Writ; form; return.—The writ and summons shall be returnable as other process in actions at law; such writ and summons shall command the officer to whom it may be directed to replevy the goods and chattels in possession of the defendants, describing them, and to summon the defendant to be and appear before the court from which said writ and summons were issued, on the return day thereof, to answer the plaintiff in the premises.

History.—§4, Mar. 10, 1845; RS 1714; GS 2178; RGS 3483; CGL 5336.

78.09 Writ; service.—Such writ and summons shall be served upon the defendant at the time and in the manner in which writs of summons are required to be served. If the officer to whom any summons has been directed in a suit in which a writ of replevin has been issued shall return that the defendant does not reside in the state or cannot be found, the plaintiff may give notice of institution of suit in the manner provided for giving notices of suits by attachment. The pleadings and proceedings and entry of default and judgments shall be as in such cases of attachment. If the plaintiff in such cases, that is, when the defendant does not reside in the state or cannot be found, as mentioned above, shall not give notice within sixty days after the issuance of the writ of replevin, the suit shall be dismissed upon the motion of the defendant.

History.—§5, Mar. 10, 1845; RS 1715; GS 2179; RGS 3484; CGL 5337; §1, ch. 20841, 1941.

78.10 Writ; execution on property in buildings, etc.—In executing the writ of replevin, if the property or any part thereof be secreted or concealed in any dwelling house, or other building or enclosure, the officer shall publicly demand delivery thereof, and if the same be not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open, and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of the county.

History.—§7, Mar. 10, 1845; RS 1716; GS 2180; RGS 3485; CGL 5338.

78.11 Writ; execution on property changing possession, etc.—If the property to be replevied be in the possession of the defendant at the time of the issuance of the writ, and shall pass into the possession of a third person before the execution of the writ, the officer holding the writ shall execute it upon the property in the possession of such third person, and shall serve the writ and summons both upon the defendant and such third person, and the suit, with proper amendments, shall proceed against such third person.

History.—§1717 RS 1892; GS 2181; RGS 3486; CGL 5339.

78.12 Writ; execution on property removed from jurisdiction.—If the property to be replevied shall at the time of the issuance of the writ be in the territorial jurisdiction of the court issuing the writ the officer to whom the writ is directed shall deliver the same to the proper officer in the jurisdiction into which the property has been removed, and such latter officer shall proceed to execute the writ, and shall hold the property subject to the orders of the court issuing the writ.

History.—§1718 RS 1892; GS 2182; RGS 3487; CGL 5340.

78.13 Writ; disposition of property levied on.—The officer executing said writ shall deliver said property to the plaintiff in replevin after the lapse of three days from the time said property was so taken, unless within said three days the defendant in replevin shall give bond in double the value of said property as appraised by the said officer, with security to be approved by such officer, conditioned to have said property forthcoming to abide the result of the suit instituted against the same, in which event said property shall be redelivered to the said defendant in replevin.

History.—§1, ch. 1099, 1861; RS 1719; GS 2183; RGS 3488; CGL 5341.

78.17 Pleadings; amendments.—Pleadings and proceedings in replevin shall be amendable as in other actions. But if any amendment be made to any replevin bond, such amended bond, although not heretofore binding upon the sure-

ties, shall relate back to the institution of the suit and afford protection to the defendant in replevin from such institution.

History.—§1723 RS 1892; GS 2187; RGS 3492; CGL 5345; §16, ch. 29737, 1955.

78.18 Judgment for plaintiff when goods not delivered to defendant.—If it shall appear, upon default of the defendant, or upon trial or otherwise, that the goods described in the complaint were wrongfully taken or detained by the defendant, and the said goods shall have been delivered to plaintiff by the officer executing the writ, the plaintiff shall have judgment for his damages caused by the taking and detention, and for his costs of suit.

History.—§11, Mar. 11, 1845; RS 1724; GS 2188; RGS 3493; CGL 5346.

78.19 Judgment for plaintiff when goods redelivered to defendant.—If it shall appear, as set forth in §78.18, that the goods have been redelivered to the defendant upon his forthcoming bond, the plaintiff shall take judgment for the property itself and against the defendant and the sureties on the forthcoming bond of the defendant for the value of the property; provided, however, that where plaintiff's interest in said property is based upon a claim of lien or some special interest therein then said judgment shall be only for the amount of the lien or the value of such special interest duly established and costs, such judgment to be satisfied by the recovery of the property, or of the amount adjudged against the defendant and his sureties. After the rendition of the judgment, the plaintiff may, at his option, sue out a writ of possession for the property, and execution for his costs, or sue out execution against the defendant and his sureties for the amount recovered as aforesaid and costs. If he shall elect to sue out a writ of possession for the property, and the officer shall return that he is unable to find the said property, or any of it, the plaintiff may immediately sue out execution against the said defendant and his sureties as aforesaid for the whole amount recovered against them, or for the amount recovered less the value of the goods found by the officer. If he shall sue out an execution for the whole amount, the officer shall release all goods taken under the writ of possession. In any proceeding to ascertain the value of the goods, so that judgment for such value may be entered, the value of each article shall be found, except it shall not be necessary to ascertain the value of each article of a lot of goods, wares and merchandise where the same have been replevined, but it shall be sufficient to ascertain the total value of the entire lot found for the plaintiff or defendant, as the case may be.

History.—§1, ch. 3133, 1879; RS 1724; §1, ch. 5159, 1903; GS 2188; RGS 3493; §1, ch. 9320, 1923; CGL 5346, 5348.

78.20 Judgment for defendant when goods redelivered to him.—When goods shall have been redelivered to the defendant upon his forthcoming bond, and it shall appear upon the nonsuit of the plaintiff, or upon trial or otherwise, that the defendant is entitled to the goods, he shall have judgment against the plaintiff and the sureties upon his bond for his damages for the taking of such property and for his costs.

History.—§12, Mar. 11, 1845; RS 1725; GS 1289; RGS 3494; CGL 5347.

78.21 Judgment for defendant when goods not redelivered to him.—When it shall appear as set forth in §78.20 and the property shall not have been redelivered to the defendant, judgment shall be entered up against the plaintiff for possession of the property, and costs, and against him and his sureties for the value thereof and costs, in the same manner as provided in §78.19, for judgment in favor of the plaintiff; and the defendant shall have the same election as in said section accorded to the plaintiff. The value of each article of the goods replevined shall be found as directed in §78.19, with same exception.

History.—§13, Mar. 11 1845; RS 1725; GS 2189; §1, ch. 9320, 1923; RGS 3494; CGL 5347.

CHAPTER 79

HABEAS CORPUS

79.01 Application and writ.—Whenever any person detained in custody, whether charged with a criminal offense or not, shall, by himself or by some other person in his behalf, apply to the supreme court of the state or to any justice thereof, or to any circuit judge, in vacation or in term time, for a writ of habeas corpus, and shall show by affidavit or evidence probable cause to believe that he is detained in custody without lawful authority, the court, the justice or judge to whom such application shall be made forthwith shall grant the writ, signed by himself, directed to the person in whose custody the applicant is detained, and returnable immediately before such court, justice or judge, or any of said courts, justices or judges, as the writ issued may direct.

History.—§1, Sept. 16, 1822; §1, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435.

79.02 Bond may be required.—In all cases where it shall appear necessary, the court or judge granting the writ shall previously require bond, payable to the governor, with sufficient security, executed in such manner and in such reasonable penalty as such court, justice or judge shall prescribe, conditioned for the payment of such charges and costs as may be awarded against the prisoner, and that he will not escape by the way. Such bond shall be filed with the papers in the case, and may be sued on in the name of the governor for the benefit of any person interested therein. In the event of inability to give bond for the payment of charges and costs, he may be permitted, in lieu thereof, to make deposit in such amount as the court, justice or judge may require.

History.—§1, Sept. 16, 1822; §1, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435.

79.03 Service of writ.—Such writ, when issued, shall be served by the sheriff of the county in which the petitioner is alleged to be detained, upon the officer or other person to whom it is directed, or in his absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner. In case where the sheriff of the county is the person holding the party detained, a delivery to or receipt of the writ by him shall be sufficient service thereof.

History.—§2, ch. 3129, 1879; RS 1772; GS 2249; RGS 3572; CGL 5436.

79.04 Return to writ.—The person on whom the writ shall be executed, shall, without delay, bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable, and at the same time to certify to the cause of the detention.

History.—§2, Sept. 16, 1822; §2, ch. 3129, 1879; RS 1773; GS 2250; RGS 3573; CGL 5437.

79.05 Compelling return and production of body.—

(1) CIVIL LIABILITY.—Any person failing to return the writ so served upon him with the cause of the prisoner's detention, or to bring the body of the prisoner before the court, justice or judge, according to the command of the writ, for three days after such service, or when the prisoner is to be brought more than twenty miles, for so many days more as will be equal to one day for every twenty miles of such further distance, shall forfeit and pay to the prisoner the sum of three hundred dollars, the right to recover which shall not cease by the death of either or both of the parties.

(2) BY PROCEEDINGS BY THE COURT.—A justice or judge in vacation may take the same steps to enforce obedience to any writ of habeas corpus as may be taken in term time by any court having jurisdiction over such writs, and in cases pending before the supreme court, or either of the justices thereof, writs for the enforcement of such obedience may be directed to the sheriff or other lawful officer of any county in the state.

History.—§§3, 4, Sept. 16, 1822; §§3, 4, ch. 3129, 1879; RS 1774; GS 2251; RGS 3574; CGL 5438.

79.06 Effect of the return.—

(1) GENERALLY.—The return made to the writ may be amended, and shall not be taken to be conclusive as to the facts stated therein, but it shall be competent for the court, justice or judge before whom such return is made to examine into the cause of the imprisonment or detention, to receive evidence in contradiction of the return, and to determine the same as the very truth of the case shall require.

(2) IN CASES OF CONTEMPT.—When, on the return of the writ, the cause of detention shall appear to have been a contempt, plainly and specifically charged in the commitment by some court officer or body having authority to commit for the contempt so charged and for the time stated, the court or judge before whom the writ is returnable forthwith shall remand the prisoner, if the time for detention for contempt has not expired.

History.—§6, Sept. 16, 1822; §6, ch. 3129, 1879; RS 1775; GS 2252; RGS 3575; CGL 5439.

79.07 Procurement of evidence.—In vacation the justice or judge shall have the same power to compel the attendance of a witness to give evidence upon the trial as a court would

in term time; and whenever either in term or vacation it shall be inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence, and subpoenas may be directed to the sheriff or other lawful officer of any county in the state.

History.—§7, Sept. 16, 1822; §7, ch. 3129, 1879; RS 1776; GS 2253; RGS 3576; CGL 5440.

79.08 Hearing and judgment.—The court, justice or judge before whom the prisoner shall be brought shall without delay proceed to inquire into the cause of his imprisonment, and shall either discharge him, admit him to bail or remand him to custody, as the law and the evidence shall require; and shall moreover either award against the prisoner the charges of his transportation, not exceeding fifteen cents per mile, and the costs of the proceedings, or shall award the costs in his favor, or shall award no costs or charges against either party, as shall seem right.

The clerk of the court in which such proceedings are taken may issue execution for the costs and charges awarded by a judgment rendered in vacation in the same manner as if rendered in term time.

History.—§5, Sept. 16, 1822; §8, ch. 3129; 1879; RS 1777; GS 2254; RGS 3577; CGL 5441.

79.09 Filing of papers and entry of judgment.—In cases before a circuit judge the petition and the papers in the cause shall be filed with the clerk of the circuit court of the county in which the prisoner is detained and the judgment shall be entered of record upon the minutes of the court; and in cases before the supreme court or a justice thereof the papers shall be filed with the clerk of the supreme court, and the judgment entered upon the minutes of the court.

History.—§8, Sept. 16, 1822; §8, ch. 3129, 1879; RS 1778; GS 2255; RGS 3578; CGL 5442.

79.10 Effect of judgment.—The judgment so entered of record shall be conclusive until reversed in the manner hereinafter provided for, and no person remanded by such judgment while the same continues in force shall be at liberty to obtain another habeas corpus for the same cause, or by any other proceeding to bring the same matter again in question except by a writ of error or by action of false imprisonment; nor shall any person who shall be discharged from confinement by such judgment be afterward confined or imprisoned for the same cause, unless by order or judgment of a court of competent jurisdiction.

History.—§9, Sept. 16, 1822; §9, ch. 3129, 1879; RS 1779; GS 2256; RGS 3579; CGL 5443.

79.11 Appeal to judgment.—The judge hearing the cause, or a justice of the supreme court, shall grant to any party or persons aggrieved by the judgment, including the state or any officer thereof, or any political subdivision of the state, an appeal in accordance with the Florida appellate rules.

History.—§§10, 11, Sept. 16, 1822; §10, ch. 3129, 1879; RS 1780; §1, ch. 4920, 1901; GS 2257; RGS 3580; CGL 5444; §11, ch. 63-559.

79.12 Trial of accused pending appeal.—Whenever in any criminal prosecution a writ of habeas corpus is applied for by any person charged with any criminal offense and the accused shall have been remanded to custody by the court to which such application is made, a supersedeas of such order made upon appeal being taken to an appellate court shall not preclude the state from proceeding with the prosecution and trial of the accused pending the decision in such matter of habeas corpus by the appellate court, but in such cases the state may proceed with the prosecution and trial of the accused in the same manner as if appeal had not been taken in the habeas corpus matter. Should the accused be convicted, however, of the charge, then in that event, the court shall withhold imposition of sentence and final judgment until the appellate court shall have determined the issues presented in the matter of habeas corpus.

History.—§1, ch. 10098, 1925; CGL 5445.

CHAPTER 80

QUO WARRANTO AND PROHIBITION

80.01 Quo warranto; refusal of attorney general to institute.—Any person claiming title to an office which is exercised by another shall have the right, upon refusal by the attorney general to institute proceedings in the name of the state upon such claimant's relation, or upon the attorney general's refusal to file a complaint setting forth his name as the person rightfully entitled to the office, to file an information or institute an action in the name of the state against the person exercising the office, setting up his own claim. In this case the court is authorized and required to determine the right of the claimant to the office, if he so desires. However, in this, as well as in all other proceedings of this character, no person shall be adjudged entitled to hold an office except upon full proof of his title to the office.

History.—§2, ch. 1874, 1872; RS 1782; GS 2259; RGS 3582; CGL 5447.

80.02 Quo warranto; control of attorney general over proceedings instituted by him.—Where the attorney general institutes an action setting forth the name of the person rightfully entitled, or whenever there may be filed an information upon the relation of a party claiming title, the attorney general shall not have the right to dismiss such proceedings without the consent of the claimant, but the court shall investigate the claim and determine the right, if so desired by the person upon whose relation the information is filed; and such claimant may have counsel of his own choice to control the proceedings in his behalf.

History.—§4, ch. 1874, 1872; RS 1784; GS 2261; RGS 3584; CGL 5449.

80.03 Quo warranto; power of court to bring in parties.—In all proceedings upon writs of quo warranto, or upon information in the nature of such writs, or in civil actions instituted to obtain the remedies obtainable by such proceedings, where the attorney general institutes the action and does not make all the persons claiming title to the office parties, it shall be within the power of the court to make parties defendant of all persons claiming the office and not made parties by the attorney general; but the said persons so desiring to be made parties shall be required to set forth by petition under oath a prima facie case of right and title to the office before the court can be required to make the order, and to give security to the satisfaction of the court for the payment of all costs which may be awarded against them.

History.—§1, ch. 1874, 1872; RS 1781; GS 2258; RGS 3581; CGL 5446.

80.04 Quo warranto; effect of judgment.—In all cases where an individual institutes an action without the consent of the attorney general, the judgment shall be conclusive as between the parties other than the state; such judgment shall be no bar to any quo warranto proceeding by the state, nor shall a judgment in such proceeding instituted by the attorney general be a bar to proceedings by any claimant other than the parties thereto. The party recovering the judgment shall, however, be entitled to exercise the office until removed by quo warranto proceedings, or until his rights thereto shall otherwise cease.

History.—§3, ch. 1874, 1872; RS 1783; GS 2260; RGS 3583; CGL 5448.

80.05 Prohibition; practice and proceedings.—The practice in the courts of this state having jurisdiction to issue writs of prohibition shall be as set forth in §§80.06-80.12.

History.—§2, ch. 3002, 1877; RS 1785; GS 2262; RGS 3585; CGL 5450.

80.06 Suggestion for prohibition.—The plaintiff or plaintiffs shall file a suggestion stating the nature of the case, and the proceedings in the inferior court, tribunal or body presuming to exercise jurisdiction, sought to be prohibited, concluding with a prayer for judgment, and that the state's writ of prohibition may be granted in that behalf. When the matters suggested appear upon the face of the proceedings in the inferior court, then the transcript of the record of all the proceedings in the case, duly certified, shall accompany the suggestion, and where the matters suggested are not matters of record, then the truth thereof shall be verified by affidavit of the party instituting the proceedings or of his agent, or attorney at law, or in fact.

History.—§2, ch. 3002, 1877; RS 1785; GS 2262; RGS 3585; CGL 5450.

80.07 Prohibition; rule nisi; issuance, service, etc.—Upon the filing of the suggestion, the court, if in its judgment a prima facie case is made, shall grant a rule directed to the inferior court and to the parties plaintiff in the suit therein pending to show cause why the writ of prohibition should not issue as prayed for. Such rule shall be a suspersedeas, and shall be served upon the inferior court and

the parties to whom it is directed at such time as the court may direct, and an answer or return shall be made thereto by the inferior court and the parties at the time prescribed in the rule. In case of failure to make such answer or return, it may be enforced by attachment for contempt.

History.—§3, ch. 3002, 1877; RS 1786; GS 2263; RGS 3586; CGL 5451.

80.08 **Prohibition; manner of service of rule.**—In all cases in which the plaintiff in the inferior court is a non-resident of the county in which the action or matter is pending, service of the rule may be made upon his attorney at law in the pending suit or controversy, or in such manner as may be prescribed by the court.

History.—§7, ch. 3002, 1877, RS 1787; GS 2264; RGS 3587; CGL 5452.

80.09 **Prohibition; proceedings upon default.**—In case of default in making answer or return, the party prosecuting the writ may, instead of compelling an answer by attachment, have a hearing upon the matter of suggestion, and the court, after hearing the proof, shall render judgment either that a prohibition absolutely do issue restraining the court and the parties from proceeding in such action or matter, or that the proceedings be dismissed, in which last event a copy of the judgment of dismissal shall be certified to the inferior court.

History.—§5, ch. 3002, 1877, RS 1789; GS 2266; RGS 3589; CGL 5454.

80.10 **Prohibition; proceedings upon answer.**—Upon the filing of the answer or return, the person prosecuting the writ may reply to the matters relied upon by such defendant, and the like proceedings (except in the matter of notices or motions, and of the hearing) shall be had for the trial of issues of law or fact, joined between the parties as in personal actions.

History.—§4, ch. 3002, 1877, RS 1788; GS 2265; RGS 3588; CGL 5453; §2, ch. 29737, 1955.

80.11 **Prohibition; power of court in vacation.**—In cases arising in the circuit court, all the proceedings, including the final judgment, may be had before the judge either during term or in vacation, and the courts before which such proceedings in prohibition are instituted shall have power to summon a jury, in case it is necessary, in such manner as they may deem proper.

History.—§6, ch. 3002, 1877; RS 1790; GS 2267; RGS 3590; CGL 5455.

80.12 **Prohibition; enforcement of writ.**—Any person who shall disobey any writ of prohibition issued under this chapter shall be punishable as for contempt, by fine and imprisonment, at the discretion of the court.

History.—§9, ch. 3002, 1879; RS 1791; GS 2268; RGS 3591; CGL 5456.

CHAPTER 81

JUSTICE OF THE PEACE COURTS; PROCEDURE

81.01 Commencement of actions generally.—All actions, except those for goods sold, work and material, money lent, money paid, money received, accounts stated, and for the hire of goods or property, shall be commenced by a summons issued by the justice. In such suits the rules of pleading and practice governing the circuit courts shall prevail and be enforced, except there shall be two rule days in each month.

History.—§3, ch. 2040, 1875; RS 1612; GS 2076; §11, ch. 5922, 1909; RGS 3367, 3370; CGL 5220, 5223; §7, ch. 22858, 1945.

81.02 Service of summons.—The summons shall be served by a sheriff or constable, but if such officers be disqualified or unable to act, or if neither can be conveniently found, by a person specially appointed in writing by the justice for that purpose.

History.—§4, ch. 2040, 1875; RS 1613; §1, ch. 4384, 1895; GS 2077; RGS 3368; CGL 5221.

81.03 Return of summons.—Proof of service may be made by affidavit of the person making the service, or by return of the officer signed by him, with the addition of his official title.

History.—§5, ch. 2040, 1875; RS 1614; GS 2078; RGS 3369; CGL 5222.

81.04 Offer to confess judgment.—The defendant may, before answering, make an offer to allow judgment to be taken against him for an amount to be stated in such offer, with costs. The plaintiff shall thereupon, and before any proceedings shall be had in the action, determine whether he will accept or reject such offer. If he accepts the offer and gives notice thereof to the justice, the justice shall note the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance shall not be given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

History.—§11, ch. 2040, 1875; RS 1617; GS 2080; RGS 3371; CGL 5224.

81.05 Deposition upon continuance.—On application for the adjournment or continuance of a cause, the depositions of such witnesses as may be in attendance may be taken by the justice, at the request of either party; and such depositions, signed by the witness and attested by the justice, shall be filed and may be used by either party on the trial, as if such testimony were given at the trial.

History.—§8, ch. 2040, 1875; RS 1618; GS 2081; RGS 3372; CGL 5225.

81.06 Procurement of evidence.—Every justice of the peace shall have the right to issue subpoenas for witnesses and commissions to take testimony upon interrogatories.

The fine against a witness for non attendance in a justice's court shall not exceed twenty dollars.

History.—§7, ch. 2040, 1875; RS 1619; GS 2082; RGS 3373; CGL 5226.

81.07 Trial to be without jury unless demanded.—Every trial shall be before the justice without a jury, unless either party shall demand a jury. At the time of making such demand, the party making it shall deposit with the justice sufficient costs to pay the jury, and the said sum shall be taxed as costs.

History.—§32, ch. 2040, 1875; RS 1620; GS 2083; RGS 3374; CGL 5227.

81.08 Procurement of the jury.—When a jury is required as aforesaid, the justice of the peace shall direct the officer, by a venire under the hand and seal of the justice, forthwith to summon six disinterested persons who are qualified to be jurors. They shall be summoned from the neighborhood of the place, as far as may be, on or before the day appointed for the trial.

History.—§§32, 33, ch. 2040 1875; RS 1621; GS 2084; RGS 3375; CGL 5228.

cf.—§40.07, Disqualification of jurors.
§40.08, Exemptions from jury duty.
§54.12, Ground of challenge of jurors for cause.

81.09 Compelling attendance of jurors.—Every person duly summoned to serve as a juror in the court of a justice of the peace who shall fail to attend the said court without a good and sufficient excuse, to be judged of by the justice of the peace, shall pay a fine of three dollars, and an execution for the amount of the said fine and costs shall be issued against the goods and chattels of such defaulting juror, to be levied as in other cases of execution, or the justice may proceed as in cases of contempt.

History.—§34, ch. 2040, 1875; RS 1621; GS 2084; RGS 3375; CGL 5228.

81.10 Verdict and judgment.—When the jury has returned a verdict in the cause, the justice shall enter up judgment thereon forthwith agreeably to said verdict.

History.—§32, ch. 2040, 1875; RS 1622; GS 2085; RGS 3376; CGL 5229.

81.11 Judgments upon confession.—Judgment upon confession before a justice of the peace may be entered with or without the service of summons for any indebtedness or for damages, which confession shall be signed in the presence of the justice, and shall show the cause of action or indebtedness for which it is given, and no writ of error or appeal shall be allowed to the party confessing the same.

History.—§19, ch. 2040, 1875; RS 1623; GS 2086; RGS 3377; CGL 5230.

81.12 Common counts; commencement of action.—In all civil actions of which justice of the peace courts have jurisdiction, where the claim of plaintiff is for goods sold, work and material, money lent, money paid, money received, accounts stated and for the hire of goods or property, such action shall be commenced by the claimant filing, with the justice of the peace having jurisdiction of the matter in controversy, an itemized statement in writing of his claim against the defendant, verified by affidavit.

History.—§2, ch. 5922, 1909; RGS 3385; CGL 5238.

81.13 Common counts; issuing the summons.—That upon filing such itemized statement, the justice of the peace shall issue summons ad respondendum to the defendant, returnable as like process is returnable under the laws governing the practice in other courts.

History.—§3, ch. 5922, 1909; RGS 3386; CGL 5239.

81.14 Common counts; appearance; default; etc.—The defendant shall file his appearance in person or by attorney upon the rule day named in the summons, should service of the same have been made ten days prior to said rule day; otherwise, the defendant shall have until next rule day thereafter in which time to file his appearance; and should the defendant not file his appearance in the said court on or before the rule day succeeding the rule day to which the summons ad respondendum is made returnable and after such summons has been duly served, then in that event, judgment shall, upon the day succeeding the second rule day after the service of the summons, be entered against the defendant for the amount claimed by plaintiff, together with the costs which may have accrued in such case.

History.—§4, ch. 5922, 1909; RGS 3387; CGL 5240.

81.15 Common counts; sworn denial of dedendant; default; etc.—When the defendant has filed his appearance, as provided for in §81.14, he shall have until the succeeding rule day after the filing of such appearance in which to file his denial of the cause of action, under oath, and should the defendant not file a written denial under oath of plaintiff's claim, prior to said rule day, then judgment shall be entered against him for the amount claimed by the plaintiff, with the costs which have accrued in such case; and the defendant shall deposit into the court such amount as he avers that he owes the claimant.

History.—§5, ch. 5922, 1909; RGS 3388; CGL 5241.

81.16 Common counts; form of sworn denial.—The defendant's denial of plaintiff's claim shall be in the following form, to-wit:

Personally appeared before me, _____, the justice of the peace in and for the _____ Justice District of _____ County, Florida, _____, who being duly sworn, deposes and says that he has read the itemized sworn statement of _____ filed against him in this Court on the _____ day of _____ A. D. _____, and he is not indebted to the plaintiff in the sum alleged, but is indebted to the plaintiff in the sum of _____ dollars.

Sworn to and subscribed before me this _____ day of _____, A. D. _____.

_____

_____

Justice of the Peace.

History.—§6, ch. 5922, 1909 RGS 3389; CGL 5242.

81.17 Common counts; necessary pleadings; jury; etc.—The sworn statement of the account and the denial of the obligation as provided for in §81.15, shall constitute all the necessary pleadings, and the case shall thereupon be considered at issue, and the next trial term day after the filing of said denial shall be the trial day for said cause, and all such trials may be had before the justice of the peace without a jury, unless one of the parties to the action demands a jury trial, in which event the party demanding the jury trial shall deposit sufficient costs to pay the jury, and a jury of six good and lawful men shall be summoned from the body of the county, returnable instanter, to try the issue between the parties.

History.—§7, ch. 5922, 1909; RGS 3390; CGL 5243.

81.18 Common counts; evidence.—Upon a trial in justice of the peace court upon papers filed and hereinbefore mentioned, any matter or thing going to the merits of the contention between the parties which would be admissible in evidence under any other rules of pleadings, under the laws of Florida, shall be admitted in evidence.

History.—§9, ch. 5922, 1909; RGS 3392; CGL 5245.

81.19 Common counts; judgment and costs.—Should the defendant aver in his denial that he owes the plaintiff a sum of money less than the sum claimed by plaintiff and deposits the same in court, and the verdict upon the trial of said cause should be that the defendant is indebted to plaintiff in the sum in which the defendant avers that he is indebted to plaintiff, or a less amount, then in that event plaintiff shall have judgment against the defendant for the amount found in the verdict, but the costs which have accrued in said cause shall be taxed against the plaintiff, and should defendant deny in full plaintiff's claim, and the verdict be for the defendant, then the costs shall be taxed against the plaintiff; otherwise, the judgment shall be for the amount named in the verdict in favor of the plaintiff against the defendant, together with the costs which have accrued in said cause.

History.—§8, ch. 5922, 1909; RGS 3391; CGL 5244.

81.20 New trial.—Justices of the peace may grant new trials in cases tried before them.

History.—§1, ch. 2095, 1877; RS 1625; GS 2087; RGS 3379; CGL 5232.

81.21 Docketing judgments in circuit courts.—A justice of the peace, on demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the clerk of the circuit court of the county where the judgment was rendered, or any other county in this state, within four years after the rendering of such judgment. The time of the receipt of the transcript by the clerk shall be noted thereon, and a memorandum of the judgment entered in the docket of the circuit court provided for such judgments; and from that time the judgment shall be a judgment of such circuit court, and enforced in like manner as other judgments of the circuit court. No judgment rendered by a justice of the peace shall be a lien on real estate until a transcript thereof be filed in the office of the clerk of the circuit court, and docketed.

History.—§43, ch. 2040, 1875; RS 1624; GS 2087; RGS 3378; CGL 5231.

81.22 Right to execution.—Upon judgment being entered in any cause, execution shall thereupon be issued against the party against whom judgment is rendered, for the amount of such judgment and costs, and such execution shall be served by the executive officer of the court issuing the same.

History.—§10, ch. 5922, 1909; RGS 3393; CGL 5246.

81.23 Issuance of executions by the justice.—Executions issued by justices of the peace shall be directed to the sheriff or any constable of the county, and shall have full force throughout the same; and if in any case it shall be necessary to send an execution to some other county to be levied upon the property of the defendant, it shall be the duty of the plaintiff, or his agent, to present the same to a justice of the peace or the county judge residing in the county to which the same is carried, and the said justice or county judge shall endorse thereon an authority to the sheriff or any constable of the county to levy the same, which shall possess the same force as if it had been originally issued by a justice of the peace of said county.

History.—§40, ch. 2040, 1875; RS 1626; GS 2088; RGS 3380; CGL 5233.

81.24 Issuance of executions by clerk of circuit court.—The officer shall be required to give fifteen days' notice of the sale of all personal property levied on, by a written or printed advertisement, posted in three or more public places in the vicinity of the place of sale, and all sales of such property shall be made at the justice's place of holding his court, and the property shall be in full view at the time of sale, except in the case of ponderous articles, or articles the removal of which would create exorbitant cost.

It the jdgment be docketed by the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county, and have the same effect and be executed in the same manner as other executions of the circuit court.

History.—§§40, 41, ch. 2040, 1875; RS 1626; GS 2088; RGS 3380; CGL 5233.

81.25 Foreclosure of mortgages.—Whenever any person holds a debt or demand within the jurisdiction of a justice of the peace, secured by a mortgage or other written lien upon personal property, he may, upon commencing suit in a justice's court upon his debt or demand file therewith his mortgage or written lien; and upon recovery of judgment for his debt or demand, the same shall operate as a foreclosure of his mortgage upon the property therein described, and his lien shall be enforced by execution as in other cases, except that he shall enforce his judgment against the property mortgaged or upon which he has a lien, before he can resort to other property of the defendant. The execution in such cases shall direct the officer to levy upon the mortgaged property first, if the same can be found, but if the same cannot be found, or a sufficiency thereof, to levy upon any other property subject to execution.

In suits of this character, the defendant may make his defense upon legal and equitable grounds, and third persons may interpose claims to the property involved in such suits, as in other suits.

History.—§§1, 2, ch. 3536, 1885; RS 1627; GS 2089; RGS 3381; CGL 5234.

81.26 Costs and fees.—

(1) SECURITY.—Any justice of the peace, in any action or proceeding before him, may, before or after issuing process, require the plaintiff to give security for the costs, and the person becoming security shall sign and leave with the justice a memorandum to the effect following: "A. B., plaintiff, against C. D., defendant. I hereby agree to be security for all costs which may be recovered against the plaintiff in this case."

Such surety shall be liable to pay all costs

that may be recovered against the plaintiff in a civil suit before the justice, or on appeal or writ of error, and execution therefor may be issued as well against the surety as against the plaintiff.

(2) AMOUNT.—The fees of a justice of the peace shall be the same as those of the clerk of the circuit court for similar services.

History.—§5, ch. 2040, 1875; RS 1630; GS 2092; RGS 3384; CGL 5237.
cf.—§82.20 Cost when tried in county judge's court.

81.29 Appeal upon death, etc., of the justice.—If any justice of the peace shall die, resign, be removed, or his term shall expire, after judgment and before appeal, and before the time for appealing expires, any party may appeal from such judgment within sixty days after the deposit of the docket and papers of the said justice with his successor; and in such case the appeal may be made and perfected before his successor in the same manner as it might have been before him; and the successor shall transmit the record to the appellate court and said court may proceed thereon as though the return had been made by the justice rendering the judgment.

History.—§63, ch. 2040, 1875; RS 1633; GS 2097; RGS 3398; CGL 5251.

81.30 Removal of justices.—If any justice of the peace of this state shall, on indictment, be convicted of any offense against the penal laws of this state, in addition to the sentence and penalty now imposed by law, said justice shall be removed from his said office on the conviction aforesaid.

History.—§2, Feb. 14, 1835; RS 1628; GS 2090; RGS 3382; CGL 5235.

81.31 Transfer to successor.—Whenever any justice of the peace shall resign or be removed from office, or his term of office shall expire, it shall be his duty to turn over to his successor forthwith all dockets, books, papers and effects in his possession pertaining to his office, and all proceedings previously commenced shall continue without interruption; and if any person so resigning or removed, or whose term of office has expired, shall willfully fail or refuse to deliver such dockets, books, papers and effects as aforesaid, he shall be liable to any person injured for all damages, costs and expenses occasioned thereby. When any justice of the peace shall die, his executor or administrator, or other person having the same in charge, shall turn over to the successor aforesaid all dockets, books, papers and effects pertaining to such office. If such justice of the peace, such executor or administrator, or other person, shall not so deliver the same, the clerk of the circuit court shall issue a precept to the sheriff requiring him to make search for and take possession of such dockets, books, papers and effects, and bring them forthwith to the said clerk's office; and the sheriff shall execute such precept and make return of his doings thereon.

The clerk, upon receipt of such dockets, books, papers, etc., shall immediately turn them over to the proper justice of the peace. All proceedings commenced before the former justice shall proceed without interruption before his successor; and the successor shall, on demand of any person entitled thereto, issue execution upon any judgment remaining unsatisfied upon said docket, at any time within two years from the rendition of the judgment.

History.—§45, ch. 2040, 1875; §1, ch. 3927, 1889; RS 1629; GS 2091; RGS 3383; CGL 5236.
cf.—§839.14 Penalty for withholding records from successor.
§937.18 Justice to keep docket.
§937.19 Inspection and final disposition of docket.

81.32 Forms in civil proceedings.—The following forms may be used in civil proceedings before justices of the peace:

(1) Summons.

State of Florida, }
_____ County. }

In the name of the State of Florida. To the sheriff or any constable of said county:

You are hereby commanded to summon _____, to appear before me at _____ on the _____ day of _____, A. D. 19____, to answer _____ upon a claim in the sum of _____ dollars and _____ cents; herein fail not, or judgment will be given against him by default.

Given under my hand and official seal this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(2) Subpoena.

State of Florida, }
_____ County. }

In the name of the State of Florida. To the sheriff or any constable of said county:

You are hereby required to summon _____ _____ personally to be and appear before me at _____, on the _____ day of _____ A. D. 19____, to testify in behalf of _____ in a suit pending in my said court, wherein _____ is plaintiff and _____, is defendant; and herein to fail not under penalty of the law.

Given under my hand and seal this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(3) Attachment affidavit.

State of Florida, }
_____ County. }

Before the subscriber, a justice of the peace in and for said county, personally came A. B., who, being personally sworn, says that C. D. is indebted to him, the said A. B., in the sum of _____, dollars and _____ cents, and that the same is actually due, and that affiant has reason to believe that (here state one or more of the grounds mentioned in the statute).

Sworn to and subscribed before me this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(4) Attachment bond.

State of Florida, }
_____ County. }

Know all men by these presents that we, A. B. and _____ and _____ are held and firmly bound unto C. D. in the sum of _____ dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this _____ day of _____ A. D. 19____.

The condition of the above obligation is such that whereas the said A. B. has this day applied for an attachment against the lands, tenements, goods and chattels of C. D., for the sum of _____ dollars and _____ cents; now if the said A. B. shall well and truly pay all costs and damages, the defendant, the said C. D., may sustain in consequence of plaintiff's improperly suing out said attachment, then this obligation to be void; else to remain in full force and virtue.

Taken before and approved by me.

_____ _____(Seal.)
Justice of the Peace. _____(Seal.)
_____(Seal.)

(5) Affidavit in replevin.

State of Florida, }
_____ County. }

A. B., being duly sworn, says that he is lawfully entitled to the possession of the following property, to-wit: (here naming it as particularly as may be.) That said property is detained by C. D. within _____ Justice District of this county, who has the same in his possession. That said property has not been taken for any tax, fine or assessment levied by virtue of any law of this State, nor seized by virtue of an execution or attachment against the property of said A. B. liable to execution. That the actual value of said property is _____ dollars.

Sworn to and subscribed before me this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(6) Replevin bond.

State of Florida, }
_____ County. }

Know all men by these presents that A. B. and _____ and _____ are held and firmly bound unto C. D. in the sum of _____ dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this _____ day of _____, A. D. 19____.

The condition of the above obligation is such that whereas the said A. B. has this day begun an action of replevin to recover possession of personal property, to-wit: ("One gray horse, etc.") of the value of _____ dollars. Now, therefore, if the said A. B. shall diligently prosecute the said action and return the said property to the said C. D., if return thereof shall be adjudged, and shall pay him such sum as may for any cause be recovered against said A. B., then this obligation to be void.

Executed in presence of

_____(Seal.)
_____(Seal.)
_____(Seal.)

(7) Claim affidavit.

State of Florida, }
_____ County. }

Before the subscriber, a justice of the peace in and for said county, personally came _____, who being duly sworn, says that the following property, to-wit: _____ _____ levied upon by _____ sheriff (or constable) in and for said county, by virtue of an execution (or attachment) in favor of _____ _____ against _____ belongs to him, the said deponent.

Sworn to and subscribed before me this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(8) Claim bond.

State of Florida, }
_____ County. }

Know all men by these presents that we _____ and _____ are held and firmly bound unto _____ _____ in the sum of _____ dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this _____ day of _____ A. D. 19____.

The condition of this obligation is such that whereas _____, sheriff (or constable) in and for said county, by virtue of an execution (or attachment) in favor of _____ against _____ and the above bounden _____ has interposed a claim to said property; now, if the said _____ shall deliver said property upon the demand of said officer, if the same shall be adjudged to be the property of the defendant in execution, and pay to the plaintiff all damages which the jury on the trial of the right of property may find in his favor, if it shall appear to the jury that such claim was interposed for the purpose of delay, then this obligation to be void, else to remain in full force and virtue.

Executed in the presence of

_____(Seal.)
_____(Seal.)
_____(Seal.)

(9) Forthcoming bond.

State of Florida, }
_____ County. }

Know all men by these presents that we _____ and _____ are held and firmly bound unto _____

_____ in the sum of _____ dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed, this _____ day of _____ A. D. 19____.

The condition of this obligation is such that whereas _____ a constable in and for said county, by virtue of an execution in favor of _____ against _____ has levied upon the following property: (here describe the property), and _____ wishes to replevy the same; now, if the said _____ shall have the said property forthcoming at _____ on the _____ day of _____, A. D. 19____, then this obligation to be void; else to remain in full force and virtue.

_____(Seal.)
_____(Seal.)

(10) Writ of garnishment.

State of Florida, }
_____ County. }

In the name of the State of Florida:

To _____

You are hereby required personally to be and appear before a justice's court to be held at _____ on the _____ day of _____, A. D. 19____, then, and there, in a certain matter wherein _____ is plaintiff and _____ is defendant, to set forth upon oath what goods and chattels, rights and credits, money or effects were in your hands, custody or control, at the time of the service of this notice, or since, belonging to the said defendant, and in what you are indebted to him; herein fail not.

Amount claimed by plaintiff, _____ dollars and _____ cents.

Given under my hand this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(L. S.)

(11) Venire for jury.

State of Florida, }
_____ County. }

To the sheriff or any constable of any county: In the name of the State of Florida:

You are required forthwith to summon six disinterested persons, qualified to be jurors, to appear before me at my office at _____ in said county, on the _____ day of _____, A. D. 19____, to form a jury for the trial of an action between A. B., plaintiff, and C. D., defendant, and make due return of this writ. Dated this _____ day of _____, A. D. 19____.

(The venire should be read to each person summoned as a juror.)

(12) Oath to jury.

You, and each of you do solemnly swear that you will well and truly try this issue, wherein _____ is plaintiff, and _____ is defendant, and a true verdict give according to the evidence. So help you God.

(13) Oath to jury in claim cases.

You and each of you do solemnly swear that you will well and truly try this claim interposed by _____ to the property levied upon by virtue of an execution in favor of _____ against _____ and a true verdict give according to the law and the evidence, and that you will also give to the plaintiff such damages as may appear reasonable and right, in case it should appear that such claim was interposed for delay. So help you God.

(14) Oath to witnesses.

You do solemnly swear that the evidence you shall give on this issue shall be the truth, the whole truth, and nothing but the truth. So help you God.

(If the witnesses desire, the word "affirm" may be used instead of "swear," and the words, "So help you God," may be omitted.)

(15) Confession of judgment.

State of Florida, }
_____ County. }

A. B. Against C. D.

I have confessed judgment before _____ _____ a justice of the peace of the county of _____ for _____ dollars and _____ cents, damages due to A. B., and the said justice is authorized to enter judgment against me in favor of said A. B. for said sum and costs.

(16) Money judgment.

Judgment is hereby rendered against C. D., defendant, in favor of A. B., plaintiff, for the sum of _____ dollars and _____ cents, damages and _____ dollars and _____ cents costs, this, the _____ day of _____ A. D. 19____.

_____
Justice of the Peace.

(17) Execution on money judgment.

State of Florida, }
_____ County. }

To the sheriff or any constable of said county:

Whereas judgment against C. D. in the sum of _____ dollars and _____ cents damages, and _____ dollars and _____ cents, costs of suit, was recovered before me on the _____ day of _____, A. D. 19____, by A. B.:

Therefore, in the name of the State of Florida, you are commanded to levy on the goods and chattels, lands and tenements of said C. D., and make sale thereof according to law, to the amount of said damages, costs and interest thereon, together with the costs of this execution, and your fees hereon, and make return hereof when satisfied, or when duly required, with your doings hereon.

Given under my hand and official seal this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(L. S.)

(18) Execution in replevin.

State of Florida, }
_____County. }

To the sheriff or any constable of the county of _____

Whereas, judgment was rendered against C. D. on the _____ day of _____ A. D. 19____, in favor of A. B., that the said A. B. recover the possession of certain personal property, to-wit: (One gray horse, of the value of _____ dollars; one double wagon, of the value of _____ _____ dollars, or any other property, affixing the value of each article as found by the court or jury), and for the sum of _____ dollars damages, and for _____ dollars and _____ cents, costs of suit; therefore, in the name of the State of Florida, you are hereby required to deliver the said property forthwith to the said A. B., unless the same has already been delivered; and if the said property or any article thereof cannot be delivered by you on account of your failure to find the same, you make the value thereof as herein stated, by levy and sale of the goods and chattels of the said C. D.; and you are further required to levy upon the goods and chattels of the said C. D., and make sale thereof according to law, to the amount of the said damages and costs, with interest thereon, and the costs of this execution and your fees hereon, and make due return of your doings hereon when you have fully executed and satisfied the same.

Given under my hand and official seal this _____ day of _____, A. D. 19____.

_____
Justice of the Peace.

(L. S.)

History.—§1634 RS 1892; GS 2098; RGS 3399; CGL 5252.

CHAPTER 82

FORCIBLE ENTRY AND UNLAWFUL DETAINER

82.01 Unlawful entry and forcible entry defined.—No person shall enter into any lands or tenements but in case where entry is given by law, nor shall any person, where entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner.

History.—§1, ch. 1630, 1868; RS 1687; GS 2152; RGS 3456; CGL 5309.

82.02 Unlawful entry and unlawful detention defined.—No person who shall, without consent, enter in a peaceable, easy and open manner into any lands or tenements, shall hold the same afterwards against the consent of the party entitled to possession thereof.

History.—§2, ch. 1630, 1868; RS 1688; GS 2153; RGS 3457; CGL 5310.

82.03 Remedy declared for unlawful entry and forcible entry.—If any person shall enter or shall have entered into lands or tenements in case where entry is not given by law, or if any person shall enter or shall have entered into any lands or tenements with strong hand or with multitude of people, even in case entry is given by law, the party turned out or deprived of possession by such unlawful or by such forcible entry, by whatever right or title he held such possession, or whatever estate he held or claimed in the lands or tenements of which he was so dispossessed, shall at any time within three years thereafter be entitled to the summary remedy herein provided.

History.—§3, ch. 1630, 1868; RS 1689; GS 2154; RGS 3458; CGL 5311.

82.04 Remedy declared for unlawful detention.—If any person shall enter or shall have entered in a peaceable manner into any lands or tenements, in case such entry is lawful, and after the expiration of his right shall continue to hold the same against the consent of the party entitled to the possession, the party so entitled, whether as tenant of the freehold, tenant for years, or otherwise, shall be entitled to the like summary remedy at any time within three years after the possession shall so have been withheld from him against his consent.

History.—§4, ch. 1630, 1868; RS 1690; GS 2155; RGS 3459; CGL 5312.

82.05 Questions involved in this proceeding.—No question of title, but only a right of possession and of damages, shall be involved in the action.

History.—§20, ch. 1630, 1868; RS 1691; GS 2156; RGS 3460; CGL 5313.

82.06 Petition of plaintiff.—The party so turned out of possession, or so held out of possession, may exhibit his complaint, verified by oath of the plaintiff, his agent or attorney, before the county judge, or county court, or circuit court of the county in which the real estate is situated, in the following form or to the following effect:

State of Florida,

_____ County.

A. B., of the said county, complains that C. D. has unlawfully (or forcibly as the case may be) turned him out of and withholds possession (or unlawfully and against his consent withholds from him possession) of certain real estate known and described as follows: (here insert description) containing by estimation _____ acres of land, with appurtenances, lying and being in the state aforesaid; whereof he prays restitution of possession and his damages.

A. B., Plaintiff.

History.—§§5, 6, ch. 1630, 1868; RS 1692; GS 2157; RGS 3461; CGL 5314.

82.07 Process; issuance and form.—The clerk of the court, or the county judge, as the case may be, upon the filing of said complaint shall thereupon issue a summons to the following effect:

The State of Florida, to the sheriff of _____ _____ county, greeting:

We command you to summon _____ if he be found within the county of _____ personally to be and appear before (the name of the court or county judge, as the case may be), for said county, on the _____ Monday in _____, being the first day of our next term, to answer _____ in an action wherein he prays restitution of possession of the following real estate, with the appurtenances, viz: _____, and have then and there this writ.

Witness (name of the clerk or county judge, as the case may be), this the _____ day of _____, A. D. 19_____.

History.—§7, ch. 1630, 1868; RS 1693; GS 2158; RGS 3462; CGL 5315.

82.08 Process; service and return.—

(1) RETURN.—The summons aforesaid shall be made returnable to the next term of the court in which it is brought; but, if a regular term of the court in which the suit is brought will not be held within fifteen days after the filing of the complaint, the party making the complaint may have the summons to be issued made returnable to said court at any time not less than ten days from its date.

(2) SERVICE OF PROCESS.—Such process shall be served at least ten days before the day to which it is returnable, and it shall be served as the law requires summons ad respondendum to be served, except that in case no person can be found at the usual place of residence of defendant, it may be served by posting a copy in a conspicuous place on the property in the summons mentioned.

..History.—§§9, 24, ch. 1630, 1868; RS 1694; GS 2159; RGS 3463; CGL 5316.

82.09 Trial by jury; regular venire.—If the summons be returnable to a term of the circuit or county court, the action shall be tried by a jury of six good and lawful men, of that county, freeholders, and not of kin to either party, to be selected from the jury in attendance at said term of court, or, in case of deficiency, from the bystanders.

History.—§8, ch. 1630, 1868; RS 1695; GS 2160; RGS 3464; CGL 5317.

82.10 Trial by jury; special venire.—If the summons be returnable to the court of the county judge, or to a day in vacation in the circuit or county court, the clerk, or the judge, as the case may be, shall, at the time of issuing the summons, issue a venire facias directed to the sheriff of the county commanding him to summon at least six persons possessing the qualifications mentioned in §82.09, to be attendant as jurors upon the court on the day to which the writ is returnable, to try the complaint aforesaid. If a sufficient number of the persons thus summoned do not attend, the deficiency shall be made up of bystanders qualified as aforesaid.

History.—§§8, 24, ch. 1630, 1868; RS 1696; GS 2161; RGS 3465; CGL 5318.

82.11 Trial to be without pleadings.—If it shall appear to the court, at the return day of the summons, that the defendant has been duly served therewith, it shall proceed without further pleadings in writing to empanel a jury to try the cause.

History.—§10, ch. 1630, 1868; RS 1697; GS 2162; RGS 3466; CGL 5319.

82.12 Trial; oath of jury in forcible entry, etc.—In cases of forcible entry and unlawful detainer the jury shall be sworn to well and truly try whether the defendant at any time within three years before the filing of the complaint, did forcibly or unlawfully enter upon the property in the complaint mentioned and turn the plaintiff out of the possession thereof, and whether the defendant continued to hold possession thereof at the time of filing the complaint, and to assess such damages as may be recoverable according to the evidence.

History.—§11, ch. 1630, 1868; RS 1698; GS 2163; RGS 3467; CGL 5320.

82.13 Trial; oath of jury in unlawful detainer.—If the complaint be of an unlawful detainer against the consent of the plaintiff, the jury shall be sworn to well and truly try whether the defendant, against the consent of the plaintiff, wrongfully holds possession of the real estate mentioned in the complaint; whether the said defendant has so held possession thereof against the consent of the plaintiff within three years next before the exhibition of the complaint; and whether the plaintiff has the right of possession in the tenement aforesaid, and to assess such damages as may be recoverable according to the evidence.

History.—§11, ch. 1630, 1868; RS 1699; GS 2164; RGS 3468; CGL 5321.

82.14 Trial; evidence as to damages.—On the trial, evidence shall be admitted as to the monthly rental value of the premises, and, in case of recovery by plaintiff, the jury shall fix his damages at double the rental value of the premises from the time of the unlawful or wrongful holding. But the damages in no case of detainer shall be fixed at more than rental value of the premises, unless the jury be satisfied from the evidence that such detention is willful and knowingly wrongful.

History.—§14, ch. 1630, 1868; RS 1700; GS 2165; RGS 3469; CGL 5322.

82.15 Trial; form of verdict.—

(1) IN CASES OF FORCIBLE OR UNLAWFUL ENTRY.—The form of the verdict of the jury shall be, in cases of forcible or unlawful entry, substantially as follows: We, the jury, find that the defendant did (or did not), within three years next before the filing of the complaint in this cause, forcibly (or unlawfully) enter upon the real estate in the complaint mentioned, and turn the plaintiff out of possession thereof; that the said defendant did (or did not) continue to hold the possession thereof, at the date of the said complaint; and we assess the damages of plaintiff at _____ dollars.

(2) IN CASES OF UNLAWFUL DETAINER.—The form of the verdict in cases of unlawful detainer against the plaintiff's consent shall be substantially as follows: We, the jury, find that the defendant did (or did not), at the time of filing the complaint in this cause, wrongfully hold possession of the real estate mentioned in the complaint, against the consent of the plaintiff; that the said defendant has (or has not) so held possession thereof, against the consent of the plaintiff, within three years next before the filing of said complaint; and that the plaintiff has (or has not) the right of possession in the real estate aforesaid; and we assess the damages of the plaintiff at _____ dollars.

History.—§13, ch. 1630, 1868; RS 1700; GS 2166; RGS 3470; CGL 5323.

82.16 Judgment and execution.—If the verdict of the jury shall be in favor of the plaintiff, the court shall award a judgment for the plaintiff that he recover possession of the property

described in the complaint, with his damages and costs, and shall award a writ of habere facias possessionem to be executed without delay, and also a writ of execution for his damages and costs as in other civil cases; and if the verdict shall be for the defendant, the court shall render judgment against the plaintiff that his complaint be dismissed and that the defendant recover costs, and execution may issue therefor.

History.—§15, ch. 1630, 1868; RS 1702; GS 2167; RGS 3471; CGL 5324.

82.17 Effect of judgment.—No judgment rendered either for plaintiff or defendant shall bar any action of trespass for injury to the property, or ejectment, between the same parties respecting the same property in question; nor shall any verdict be held conclusive of the facts therein found, in any action of trespass or ejectment.

History.—§20, ch. 1630, 1868; RS 1703; GS 2168; RGS 3472; CGL 5325.

82.18 Granting of new trials.—New trials may be granted in proper cases by the court trying the cause.

History.—§1704 RS 1892; RGS 3473; CGL 5326.

82.19 Appeals; supersedeas.—An appeal may be taken by the losing party to the proper appellate court in the manner and within the time prescribed by the Florida appellate rules.

History.—§16, ch. 1630, 1868; §1, ch. 1691, 1869; RS 1705; GS 2169; RGS 3474; CGL 5327; §13, ch. 63-559.

82.20 Costs when tried in county judge's court.—The county judge shall receive fees for his services in said proceedings, the same in amount as that fixed for the clerk of the circuit court for similar services, and shall in addition receive five dollars for each day occupied in the trial. Such fees and per diem shall be taxed in the costs.

History.—§1706 RS 1892; GS 2170; RGS 3475; CGL 5328.
cf.—§81.26 Costs and fees.

CHAPTER 83
LANDLORD AND TENANT

83.01 Unwritten lease tenancy at will; duration.—Any lease of lands and tenements, or either, hereafter made, shall be deemed and held to be a tenancy at will, unless the same shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—§§1, 2, ch. 5441, 1905; RGS 3567, 3568; CGL 5431; 5432.

83.02 Certain written leases tenancies at will; duration.—Where any tenancy shall have been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which such tenancy is unlimited, such tenancy shall be a tenancy at will. If the rent is payable weekly, then such tenancy shall be from week to week; if payable monthly, then such tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—§2, ch. 5441, 1905; RGS 3568; CGL 5432; §2, ch. 15057, 1931.

83.03 Termination of tenancy at will; length of notice.—A tenancy at will may be terminated by either party giving notice as follows: Where the tenancy is from year to year, by giving not less than three months notice prior to any annual period; where the tenancy is from quarter to quarter, by giving not less than forty-five days notice prior to the end of any quarter; where the tenancy is from month to month, by giving not less than fifteen days notice prior to the end of any monthly period, and where the tenancy is from week to week, by giving not less than seven days notice prior to the end of any weekly period.

History.—§3, ch. 5441, 1905; RGS 3569; CGL 5433.

83.04 Holding over after term, tenancy at sufferance, etc.—When any tenancy shall have been created by an instrument of writing and the term of which such tenancy is limited therein shall have expired and the tenant shall hold over in the possession of said premises without renewing the said lease by some further instrument of writing then such holding over shall be construed to be a tenancy at sufferance, and the mere payment or acceptance of rent shall not be construed to be a renewal of the said term, but if such holding over be continued with the written consent of the lessor

then such tenancy shall become a tenancy at will under the provisions of this law.

History.—§4, ch. 5441, 1905; RGS 3570; CGL 5434; §3, ch. 15057, 1931.

83.05 Right of entry upon default in rent.—If any person leasing or re-renting any land or house shall fail to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented.

History.—§5, Nov. 21, 1828; RS 1750; GS 2226; RGS 3534; CGL 5398.

83.06 Right to demand double rent upon refusal to deliver possession.—When any tenant shall refuse to give up possession of the premises at the end of his lease, the landlord, his agent, attorney or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

All contracts for rent, verbal or in writing, shall bear interest from the time the rent shall become due, any law, usage or custom to the contrary notwithstanding.

History.—§§4, 6, Nov. 21, 1828; RS 1759; GS 2235; RGS 3554; CGL 5418.

83.07 Action for use and occupation.—Any landlord, his heirs, executors, administrators or assigns, may recover reasonable satisfaction for any house, lands, tenements, or hereditaments held or occupied by any person by his permission, in an action on the case for the use and occupation of the said lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any such action, any demise or agreement (not being by deed) whereby a certain rent was reserved shall appear or be given in evidence, the plaintiff in such action shall not therefor be nonsuited but may make use thereof as an evidence of the quantum of damages to be recovered.

History.—§7, Nov. 21, 1828; RS 1760; GS 2236; RGS 3555; CGL 5419.

83.08 Landlord's lien for rent.—Every person to whom rent may be due, his heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his sub-lessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of such property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

History.—§§1, 9, 10, ch. 3131, 1879; RS 1761; GS 2237; RGS 3556; CGL 5420.

83.09 Exemptions from liens for rent.—No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bed clothes and wearing apparel.

History.—§6, Feb. 14, 1835; RS 1762; GS 2238; RGS 3557; CGL 5421.

83.10 Landlord's lien for advances.—Landlords shall have a lien on the crop grown on rented land, for advances made in money or other things of value, whether made directly by them or at their instance and request by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well being of the tenant or his family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling or preparing the crop for market; and they shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all such property or articles so advanced; and such liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

History.—§2, ch. 3247, 1879; RS 1763; GS 2239; RGS 3558; CGL 5422.

83.11 Distress for rent; affidavit.—Any person to whom any rent or money for advances may be due, his agent or attorney, executor or administrator, may make and file in the court in the county where the land lies, having jurisdiction of the amount claimed, an affidavit stating the amount or quality and value of the rent due for such land, or the advances, and whether it or they are payable in money, cotton or other agricultural product or thing.

History.—§2, ch. 3131, 1879; RS 1764; GS 2240; RGS 3559; CGL 5423.

83.12 Distress for rent; form of writ.—Upon the filing of such affidavit, the clerk, or the judge if the court have no clerk, shall issue a distress warrant, directed to the executive officer of the court, commanding him to levy on property liable to be distrained for the rent, or the advances, and collect the amount claimed in the affidavit, or the value thereof, and to summon the said defendant to appear before the court at a date fixed in the writ not more than ten days from the issuance of the writ; provided, that upon the filing of the affidavit provided for in §83.11 and before warrant shall issue, the plaintiff, his agent or attorney, shall also file a bond with two good and sufficient sureties, payable to the defendant, in at least double the debt or sum demanded, or if property, in double the value of the property sought to be levied upon, conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out said attachment or the action dismissed or result in judgment for defendant.

History.—§2, ch. 3131, 1879; RS 1765; GS 2241; §10, ch. 7838, 1919; RGS 3560; CGL 5424.

83.13 Distress for rent; levy of writ.—The

officer to whom the writ is directed shall execute the same by service on the defendant at least five days before the return day, and by levy on property distrainable for such rent or advances, if to be found in his jurisdiction. If the property is not to be so found, but is in another jurisdiction, he shall deliver the writ to the proper officer in said other jurisdiction; and such other officer shall execute said warrant by distraining said property, and shall deliver the same to the proper officer of the court in which the proceedings were instituted, to be disposed of according to law, unless he is ordered by the court from which the writ emanated to hold such property and dispose of the same in his jurisdiction according to law, as in other cases of distress. If the defendant cannot be found, the levy upon the property shall suffice as the service upon him.

History.—§3, ch. 3721, 1887; RS 1765; GS 2241; RGS 3560; CGL 5424.

83.14 **Distress for rent; replevy of distrained property.**—The property so distrained may at any time be restored to the defendant upon his giving bond to the officer levying such distress warrant, payable to the plaintiff with two or more good and sufficient sureties to be approved by such officer in double the value of the property levied on, such value to be fixed by the officer, conditioned for the forthcoming of the property restored, to abide the final order of the court; or it may be restored to the defendant on his entering into bond with two or more good and sufficient sureties, to be approved by the officer making the levy, conditioned for the payment to the plaintiff of the amount or value of the rental or advances which may be adjudicated to be payable to such plaintiff. Judgment may be entered against the sureties on such bonds in the manner and with like effect as provided in §76.31.

History.—§3, ch. 3131, 1879; RS 1766; §1, ch. 4408, 1895; RGS 3561; CGL 5425.

83.15 **Distress for rent; claims by third persons.**—Any third person claiming any property so distrained may interpose and prosecute his claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.—§7, ch. 3131, 1879; RS 1770; GS 2246; RGS 3565; CGL 5429.

83.16 **Distress for rent; counter-claim.**—In actions of distress for rent defendants may set up in defense any claim or demand which might be pleaded by way of set-off or recoupment in any ordinary action at law, and with like effect.

History.—§1, ch. 4107, 1895; GS 2247; RGS 3566; CGL 5430.

83.17 **Distress for rent; default and judgment thereon.**—If the defendant shall not appear upon the return day of the writ and file the affidavit provided for in §83.18, the clerk, or the judge if the court have no clerk, shall ascertain what rent or advance is due to the plaintiff, and the value thereof, and shall enter judgment for the same by default, with costs, against the defendant, and shall also enter judgment against the sureties on his bond as provided for in §83.14, if the property has been restored to the defendant, and execution shall issue and be enforced as in other cases.

History.—§1767 RS 1892; §2, ch. 4408, 1895; GS 2243; RGS 3562; CGL 5426.

83.18 **Distress for rent; trial; verdict; judgment; appeal.**—In case the defendant shall appear and file his affidavit that the rent or advances, or any part thereof claimed, is not due, a trial without other written pleadings shall be had upon the return day of the writ, or upon such other day as the court or judge shall fix, and a jury (unless a trial by jury is waived) shall be sworn to well and truly try, and a true verdict render, whether any, and if any, what rent or advance is due to the plaintiff, as alleged in his affidavit, and value of the same. If the verdict of the jury, or the finding of the court, be for the plaintiff, judgment shall be rendered against the defendant for the amount or value of the rental or advances, including interest and costs, and judgment shall also be rendered against the sureties on the defendant's bond as provided for in §83.14, if the property has been restored to the defendant, and execution shall issue and be enforced as in other cases. If the verdict of the jury, or the finding of the court, be for the defendant, the proceeding shall be dismissed and the defendant shall have judgment and execution against the plaintiff for costs. An appeal may be taken by either party to the proper appellate court, and such appeals shall operate as a supersedeas in the manner and within the time provided by the Florida appellate rules.

History.—§1768 RS 1892; §3, ch. 4408, 1895; GS 2244; RGS 3563; CGL 5427; §14, ch. 63-559.

83.19 **Distress for rent; sale of property distrained.**—If the verdict and judgment be for the plaintiff, and the property in whole or in part shall not have been replevied, the same, or such part as is not restored, shall be sold and the proceeds applied upon the payment of the execution of the plaintiff. If, however, the rental, or any part thereof be due in cotton or other agricultural products, and the property distrained, or any part of it, be of a similar kind to that claimed in the affidavit, the property of such similar kind, up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed in the affidavit), may be, at the request of the plaintiff, delivered to the plaintiff as a payment on his execution.

When any property levied upon is sold, it shall be advertised at least ten days, in the same manner as is provided by law for the advertisement of personal property for sale under execution. All property so levied upon may be sold on the leased premises, or at the court house door.

If the defendant shall, before the sale, appeal, and make such appeal effectual as a supersedeas, and pay all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to him, and there shall be no sale.

In case any property be sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of such rental at the time it became due.

History.—§§5, 6, ch. 3131, 1879; RS 1769; GS 2245; RGS 3564; CGL 5428.

83.20 Causes for removal of tenants.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from such premises in the manner hereinafter provided in the following cases:

(1) Where such person shall hold over and continue in the possession of the demised premises, or any part thereof, after the expiration of his time, without the permission of his landlord.

(2) Where such person shall hold over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which such premises are held, and three days' notice in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to such rent on the person owing the same. The service of such notice shall be by delivery of a true copy thereof, or if such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place.

History.—§1, ch. 3248, 1881; RS 1751; GS 2227; RGS 3535; CGL 5399.

83.21 Removal of tenant by county judge; petition.—The landlord, his attorney, his legal representative, agent or assigns, applying for the removal of any such tenant, shall make and file with the county judge of the county wherein the premises are situated, a petition in writing, and under oath, stating the facts which so authorize the removal of any tenant, and describing the premises.

History.—§2, ch. 3248, 1881; RS 1752; GS 2228; RGS 3536; CGL 5400; §1, ch. 61-318.

83.22 Removal of tenant by county judge; process, service and return.—Upon the filing of such petition, the county judge shall issue his summons, describing the premises of which the possession is demanded, and requiring the person in possession, or claiming the possession thereof, forthwith to remove from the same or to show cause before the said judge, within not less than three or more than five days, to be fixed in the summons, why possession of said premises should not be delivered to the applicant. Such summons shall be served by the executive officer of said court in the manner provided for service of summons ad respondendum, but if the defendant cannot be found in the county in which such action is pending and either (a) he has no usual place of abode in such county or (b) there is no person of his family above fifteen years of age at his usual place of abode in such county, then such executive officer shall serve such summons by attaching the same to some portion of the premises involved in such proceedings.

History.—§2, ch. 3248, 1881; RS 1753; GS 2229; RGS 3537; CGL 5401; §1, ch. 22731, 1945.

83.23 Removal of tenant by county judge; peremptory judgment.—If at the time appointed in said summons no sufficient cause be shown to the contrary the county judge shall enter a judgment that the complainant recover possession of the premises, and issue his warrant within three days thereafter (unless an appeal shall have been taken and properly perfected) to the sheriff of said county commanding him to remove all persons from the premises aforesaid, and to put the said applicant in full possession thereof.

History.—§3, ch. 3248, 1881; RS 1754; GS 2230; RGS 3538; CGL 5402.

83.24 Removal of tenant by county judge; trial.—The person in possession of said premises, and any person claiming possession thereof, may at the time appointed in said summons for showing cause, or before, file an affidavit with the county judge denying the facts upon which the said summons was issued, or any of the facts, and the matter therein controverted shall be tried by the judge, unless a jury be demanded, in which case it shall be tried by six legal jurors to be immediately summoned upon the order of the judge and empaneled for that purpose.

History.—§4, ch. 3248, 1881; RS 1755; GS 2231; RGS 3539; CGL 5403.

83.25 Removal of tenant by county judge; verdict and judgment.—

(1) FOR THE PLAINTIFF.—If the verdict shall be in favor of the lessor, landlord or other person applying for the possession of said premises, the county judge shall enter a judgment that the complainant recover possession of the premises, and issue his warrant on the third day thereafter (unless a new trial be granted by him) to the sheriff of the county, commanding him to put the landlord, lessor or other person into possession of said premises as hereinbefore directed, which it shall be his duty forthwith to execute.

(2) FOR THE DEFENDANT.—If, upon a trial of the issues before the judge, or before a jury, the finding of the judge, or the verdict of the jury, shall be in favor of the defendant, the proceedings shall be dismissed, unless an appeal be taken, or unless the judge grant a new trial.

History.—§§5, 6, ch. 3248, 1881; RS 1756; GS 2232; RGS 3540; CGL 5404.

83.26 Removal of tenant by county judge; costs.—In every case the prevailing party shall have judgment for his costs, and the judge shall issue execution therefor on the third day thereafter unless an appeal be taken.

The costs shall be the same as are by law provided for similar services and fees in justice's court.

History.—§§5, 6, ch. 3248, 1881; RS 1757; GS 2233; RGS 3541; CGL 5405.

83.27 Removal of tenant by county judge;

appeals.—At any time within ten days after the entry of judgment by the county judge, or, if there be a motion for a new trial, at any time within ten days after the refusal to grant such new trial, either party may appeal to the circuit court of the county wherein the trial is had in the manner prescribed by the Florida appellate rules unless appeal to the supreme court is authorized by Art. V of the state constitution.

History.—§7, ch. 3248, 1881; RS 1758; GS 2234; RGS 3542; CGL 5406; §14, ch. 63-559.

83.28 Removal of tenant by county court; petition.—The landlord, his attorney, his legal representative, agent or assigns, in such counties, applying for removal of tenant, shall make and file in the county court for the county in which the premises are situated, a petition in writing under oath describing the premises and stating the facts which authorize the removal of such tenant.

History.—§2, ch. 6463, 1913; RGS 3543; CGL 5407; §2, ch. 61-318.

83.29 Removal of tenant by county court; process and service.—Upon filing such petition, the clerk of such court shall issue a summons describing the premises of which the possession is demanded, and requiring the person in possession, or claiming possession, of such premises forthwith to remove therefrom or to show cause before said court within five days why possession of said premises shall not be delivered to the applicant. Such summons shall be served forthwith by the sheriff of the county in the manner provided for service of summons ad respondendum, but if the defendant cannot be found in the county in which such action is pending and either (a) he has no usual place of abode in such county or (b) there is no person of his family above fifteen years of age at his usual place of abode in such county, then such sheriff shall serve such summons by attaching the same to some portion of the premises involved in such proceeding.

History.—§3, ch. 6463, 1913; RGS 3544; CGL 5408; §2, ch. 22731, 1945.

83.30 Removal of tenant by county court; pleadings of defendant.—The person in possession of said premises, or any person claiming possession thereof, at or before the time appointed in said summons, may file motion to quash the same, or may file an affidavit denying the facts upon which such summons was issued, or any of such facts, and such matters therein controverted shall constitute, without further pleadings, the issues to be tried; and such issues may be tried by jury if either of the parties so desires; otherwise, such issues shall be tried by the judge of said court.

History.—§4, ch. 6463, 1913; RGS 3545; CGL 5409.

83.31 Removal of tenant by county court; trial by jury.—Should either party desire that such issues be tried by jury, such party shall, on or before the return day of such summons, file notice in writing with the clerk of said court, and shall, at the same time, deposit sufficient money to pay jury fees, provided that if such issue be tried in regular term, and trial by jury be so desired, it shall be tried by the regularly empaneled jury for such term, and, in such case, no deposit shall be required.

History.—§5, ch. 6463, 1913; RGS 3546; CGL 5410.

83.32 Removal of tenant by county court; hearing and peremptory judgment.—If, on the day appointed in such summons, no such affidavit be filed, or motion to quash said writ be made, the clerk, on application of petitioner, shall cause a default to be entered against the defendant, and thereafter the files of such case shall be produced before the judge of said court, and, if he shall find the proceedings regular, judgment of the court shall be entered that the petitioner recover possession of the premises described in said petition. If motion to quash such writ be filed, it shall be heard by the judge on the day following the return day of such writ, unless such hearing be continued by the judge to some time definite upon good cause shown. Upon the overruling of such motion to quash, judgment shall be entered as in case of default, unless the judge overruling such motion shall permit the defendant to file the aforesaid affidavit instanter.

History.—§6, ch. 6463, 1913; RGS 3547; CGL 5411.

83.33 Removal of tenant by county court; trial.—Whenever affidavit shall be filed by defendant as herein provided, the judge of said court shall make an order setting such case down for trial, giving only such time as is reasonably necessary to summon jury, unless a term of said court shall be in session or shall convene within five days or less, in which case the issues so made shall be tried by the jury in attendance on such regular term; and, if such cause is not heard at regular term, and a jury is demanded, the judge of said court shall, at the time of setting such cause for trial, direct that a jury be summoned for such purpose. Such jury shall consist of six persons having the qualifications of jurors serving in the county court, and they shall receive the same fee as are paid in justice of the peace court.

History.—§7, ch. 6463, 1913; RGS 3548; CGL 5412.

83.34 Removal of tenant by county court; judgment; new trials, etc.—If, on trial of such issues, whether by judge or jury, the issues be found for the petitioner, unless new trial be granted, judgment shall be entered thereon by the court that the petitioner recover possession of said premises; but, if on such trial of the issues, they be found for the defendant, unless new trial be granted, judgment shall be entered dismissing such proceedings; and new trial shall not be granted either party unless motion therefor be made within two days after verdict; and, if new trial be granted, the same shall be brought on for hearing within two days thereafter, unless further time be granted by the court for sufficient reason.

History.—§8, ch. 6463, 1913; RGS 3549; CGL 5413.

83.35 Removal of tenant by county court; writ of process.—On the third day after entry of such judgment, unless new trial be granted, the clerk of such court shall issue warrant un-

der seal of the court to the sheriff of the county, describing the premises, and commanding him to put the landlord or lessor in possession thereof.

History.—§9, ch. 6463, 1913; RGS 3550; CGL 5414.

83.36 Removal of tenant by county court; execution of writ.—Upon receiving such warrant, it shall be the duty of the sheriff to immediately execute the same by putting such landlord or lessor or his duly appointed agent in possession of the premises described in such warrant.

History.—§10, ch. 6463, 1913; RGS 3551; CGL 5415.

83.37 Removal of tenant by county court; costs and charges.—In any suit brought under this chapter, the prevailing party shall have judgment for costs, and execution shall issue therefor as in the case of other money judgments entered by county court. The costs of clerk and sheriff for the proceedings herein provided for, shall be the same as for similar services in county court, and, in addition to the usual fees and charges, there shall be a fee of one dollar to be paid to the judge of said court, and, in every case tried out of term time, an additional fee of one dollar such fees to be taxed with other costs in said suit.

History.—§11, ch. 6463, 1913; RGS 3552; CGL 5416.

83.38 Removal of tenant by county court; appeal; supersedeas; etc.—Appeal may be taken from any final judgment entered by virtue of proceedings had under §§83.28-83.37, to the circuit court in the manner prescribed by the Florida appellate rules; provided, however, that such appeal must be taken within ten days from the rendition of such judgment, unless appeal to the supreme court is authorized by Art. V of the state constitution.

History.—§12, ch. 6463, 1913; RGS 3553; CGL 5417; §14, ch. 63-559.

CHAPTER 84

MECHANICS' LIEN LAW

84.011 Definitions.—As used in this act:

(1) Contract means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders as herein defined.

(2) Contractor means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as above defined the entire remaining work under such contract.

(3) Contract price means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and shall be increased or diminished, as the case may be, by the price of any extras or change orders as herein defined, or by any amounts attributable to altered specifications, defects in workmanship or materials or any other breaches of the contract; provided, that no penalty or liquidated damages between the owner and a contractor shall diminish the contract price as to any other lienor. If no price is agreed upon by the contracting parties this term shall mean the value of all labor, services or materials covered by their contract, with any increases and diminutions, as above provided.

(4) Direct contract means a contract as herein defined between the owner and any other person.

(5) Extras or change orders means labor, services or materials for improving real property authorized by the owner and added to or deleted from labor, services or materials covered by a previous contract between the same parties.

(6) Furnish materials means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying tools, appliances or machinery used on the particular improvement to the extent of the reasonable rental value for the period of actual use (not determinable by the contract for rental unless the owner is a party thereto), but does not include supplying hand tools. The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement.

(7) Improve means build, erect, place, make, alter, remove, repair or demolish any improvement over, upon, connected with, or beneath the surface of any land or other real property, or excavate any land, or furnish materials for any of such purposes, or perform any labor or services upon such improvement; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus.

(8) Improvement means any building, structure, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made or done on land or other real property for its permanent benefit.

(9) Laborer means any person other than an architect, landscape architect, engineer, land surveyor and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(10) Lienor means any person having a lien

or prospective lien upon real property by virtue of this chapter and includes his successor in interest.

(11) Materialman means any person who furnishes materials under contract to the owner, contractor or subcontractor on the site of the improvement or for direct delivery to the site of the improvement or for specially fabricated materials off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(12) Owner means the owner of any legal or equitable interest in real property, which interest can be reached and sold by any legal process, who enters into a contract for the improvement of such real property.

(13) Perform or furnish when used in connection with the words labor or services or materials means performance or furnishing by the lienor or by another for him.

(14) Real property means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state, county, any municipality, school board, or governmental agency, commission or political subdivision.

(15) Site of the improvement means the real property which is being improved and on which labor or services are performed or materials furnished in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel or tract of land to another, this term means the real property to which the improvement is removed.

(16) Subcontractor means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract.

(17) Sub-subcontractor means a person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract.

(18) Commencement of the improvement means the time of filing for record of the notice of commencement provided in §84.131.

(19) Lienors giving notice means any lienor, except a contractor, who has duly served a notice to owner as provided in §84.061(2).

(20) Notice by lienor means the notice to owner served as provided in §84.061(2).

(21) Notice of commencement means the notice recorded as provided in §84.131, and the giving of notice shall be effective upon the filing in the clerk's office.

(22) Claim of lien means the claim recorded as provided in §84.081.

(23) Clerk's office means the office of the clerk of the circuit court of the county in which the real property is located.

(24) Post or posting means placing the document referred to on the site of the improvement in a conspicuous place on the front of said site and such documents shall be protected from the weather.

History.—§1, ch. 63-135.
Similar provisions in former §84.01.

84.022 Types of lienors and exemptions.—

(1) Persons performing the services described in §84.031 shall have rights to a lien on real property as provided in that section.

(2) Persons performing services or furnishing materials for subdivision improvements as described in §84.041 shall have rights to a lien on real property as provided in that section.

(3) Persons who are in privity with an owner and who perform labor or services or furnish materials constituting an improvement or part thereof shall have rights to a lien on real property as provided in §84.051.

(4) Persons who are not in privity with an owner and who perform labor or services or furnish materials constituting a part of an improvement under the direct contract of another person shall have rights to a lien on real property as provided in §84.061.

(5) Any improvement to an existing improvement for which the contract price is five hundred dollars or less and which is completed within six months from actual commencement thereof shall be exempt from all other provisions of this chapter except the provisions of §84.051.

(6) In any direct contract the owner may require the contractor to furnish a payment bond as provided in §84.231 and upon receipt of such bond the owner shall be exempt from the other provisions of this chapter and of chapters 85 and 86. The owner may post said bond or a copy thereof.

History.—§1, ch. 63-135.

84.031 Liens for professional services.—

(1) Any person who performs services as architect, landscape architect, engineer or land surveyor, subject to compliance with and the limitations imposed by this chapter, shall have a lien on the real property improved for any money that shall be owing to him for his services in preparing plans, specifications or drawings used in connection with improving the real property or for his services in supervising any portion of the work of improving the real property, rendered in accordance with his contract and with the direct contract.

(2) Any architect, landscape architect, engineer or land surveyor who has a direct contract and who in the practice of his profession shall perform services, by himself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him for his professional services, regardless of whether such real property is actually improved.

(3) No liens under this section shall be acquired until a claim of lien is recorded.

History.—§1, ch. 63-135.
Similar provisions in former §84.02.

84.041 Subdivision improvements.—Any person who, pursuant to a direct contract, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that shall be owing to him for his services or materials. The work of making real property suitable as the site of an improvement shall include the grading, leveling, excavating and filling of land (including the furnishing of fill soil), the grading and paving of streets, curbs and sidewalks, the construction of ditches and other area drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage and drainage purposes, and shall also include the altering, repairing and redoing of all said things. When such services or materials are placed on land dedicated to the public use and are furnished under contract with the owner of the abutting land, the cost of such services and materials, if unpaid, may be the basis for a lien upon said abutting land. When such services or materials are placed upon land under contract with the owner of such land who subsequently dedicates portions of such lands to public use, the person furnishing the services or materials placed upon the dedicated land shall be entitled to a lien upon the land abutting the dedicated land for the unpaid cost of the services and materials placed upon the dedicated land, or in the case of improvements which serve or benefit real property which is divided by such improvements, to a lien upon each abutting portion for the equitable portion of the full amount due and owing. If the portion of the cost to be borne by each parcel of the lands subject to the same lien is not specified in the contract it shall be prorated equitably among the parcels served or benefited. No lien under this section shall be acquired until a claim of lien is recorded.

History.—§1, ch. 63-135.

84.051 Liens of persons in privity.—A materialman or laborer, either of whom is in privity with the owner, or a contractor who complies with the provisions of this chapter and is subject to the limitations thereof, shall have a lien on the real property improved for any money that shall be owing to him for labor, services or materials furnished in accordance with the direct contract. No lien under this section shall be acquired until a claim of lien is recorded but, when so recorded, the liens shall take priority in accordance with §84.071. A lienor who, as a subcontractor, laborer or materialman not in privity with the owner, commences to furnish labor, services or material to such an improvement and who thereafter becomes in privity with the owner shall have such a lien for any money that shall be owing to him for such labor, services or materials furnished after he becomes in privity with the owner; provided, such a lienor may record one claim of lien to cover his work done both in privity with the owner and not in privity with the owner.

History.—§1, ch. 63-135.

84.061 Liens of persons not in privity; proper payments.—

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor who complies with the provisions of this chapter and is subject to the limitations thereof, shall have a lien on the real property improved for any money that shall be owing to him for labor, services or materials furnished in accordance with his contract and with the direct contract. The total amount of all liens allowed under this chapter for furnishing labor, services or material covered by any certain direct contract shall not exceed the amount of the contract price fixed by said direct contract except as provided in subsection (3) of this section.

(2) (a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, shall be required to serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. This notice must be served before commencing or not later than forty-five days from commencing to furnish his services or materials but in any event before the date of furnishing the affidavit under subsection (3) (d)1., of this section, or abandonment, whichever shall occur first. The serving of this notice shall not dispense with recording the claim of lien. This notice shall not be deemed to constitute a lien, cloud or encumbrance on said real property nor actual nor constructive notice of any of the same.

(b) If the owner, in his notice of commencement, shall have designated a person in addition to himself to receive a copy of such lienor's notice, as provided in §84.131(1)(g), the lienor shall mail a copy of his notice to the person so designated. Failure by the lienor to mail such copy, however, shall not invalidate an otherwise valid lien.

(c) The notice may be in substantially the following form:

NOTICE TO OWNER

To_____
(owner's name and address)

The undersigned hereby informs you that he has furnished or is furnishing services or materials as follows:_____

_____
(general description of services or materials) for the improvement of the real property identified as _____
(property description)

under an order given by _____. Florida law prescribes the serving of this notice and restricts your right to make pay-

ments under your contract in accordance with §84.061, Florida Statutes.
Copies to _____.

_____
(Lienor's signature and address)

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(a) The owner shall not pay any money on account of a direct contract prior to recording of the notice provided in §84.131, and any amount so paid shall be held improperly paid.

(b) The owner at any time after recording the notice provided in §84.131, may pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and covered by the direct contract, and shall deduct the same from the balance due the contractor under a direct contract.

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2. the sum then due to each lienor giving notice prior to the time of said payment. The owner may require (and in such event, the contractor shall furnish as a prerequisite to requiring payment to himself) an affidavit as prescribed in paragraph (d)1. of this subsection, on any payment made or to be made on a direct contract; provided, the furnishing of any such affidavit shall not relieve the owner of his responsibility to pay or cause to be paid all lienors giving notice as aforesaid. Except laborers, the owner shall be under no obligation to any lienor from whom he has not received a notice at the time of making any such payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors filing notices pro rata in the manner prescribed in subsection (5) of this section. Lienors receiving money shall execute partial releases as provided in §84.202(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services or materials, the owner may pay such bills in full direct to the person or firm to whom they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay such bills and shall deduct the amounts so paid from the balance of payment due the contractor.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner an affidavit stating, if that be the fact, that all lienors have been paid in full or, if the fact be otherwise, showing the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. The contractor shall have no lien or right of action against the owner for labor, services or materials furnished under the direct contract while in default by reason of not giving the owner such affidavit. The contractor shall execute said affidavit and deliver it to the owner at least five days before instituting suit as a prerequisite to the institution of any suit to enforce his lien under this chapter.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services or materials the owner may, after giving the contractor at least ten days written notice, pay such bills in full direct to the person or firm to whom they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor.

3. If the balance due is not sufficient to pay in full all lienors listed in the affidavit given by the contractor at that time and other lienors giving notice, the owner shall pay no money to anyone until such time as the contractor has furnished him with the difference; provided, that if the contractor fails to furnish the difference within ten days from delivery of the affidavit or notice from the owner to the contractor to furnish the affidavit, the owner shall determine the amount due each lienor and shall disburse to them the amounts due from him on a direct contract in accordance with the procedure established by subsection (5) of this section.

4. The owner shall have the right to rely on the contractor's affidavit given under this subparagraph in making the final payment unless there are lienors giving notice who are not listed in said affidavit. If there are lienors giving notice who are not so listed, the owner may pay said lienors and any persons listed in said affidavit and shall thereupon be discharged of any further responsibility under the direct contract except for any balance which may be due to the contractor.

5. The owner shall retain the last payment due under a contract or ten per cent of the total contract price, whichever is larger, which shall not be disbursed until the contractor's affidavit under paragraph (d)1. of this subsection has been delivered to the owner.

6. When final payment has become due to the contractor and the owner fails to withhold as required by subsection (3)(d)5. of this section, the property improved shall be subject to the full amount of all valid liens of which the owner has notice at the time the contractor furnishes his affidavit.

(e) If the improvement is abandoned before completion, the owner shall determine the amount due each lienor giving notice and shall pay the same in full or prorate in the same manner as provided in subsection (5) of this section.

(f) No contractor shall have any right to require the owner to pay any money to him under a direct contract if such money cannot

be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor except the contractor or any laborer, the owner shall give the contractor at least ten days written notice of his intention to do so, and the amount he proposes to pay each lienor.

(h) When the owner has properly retained all sums required in this section to be retained but has otherwise made improper payments, the owner's real property shall be held liable to all laborers, subcontractors and materialmen complying with this chapter only to the extent of such retentions and such improper payments, notwithstanding the provisions of subsection (3) of this section. Any money paid by the owner on a direct contract, the payment of which is proved to have caused no detriment to any certain lienor, shall be held to have been properly paid as to such lienor, and if any of such money shall be held not properly paid as to any other lienors, the entire benefit of its being held not properly paid as to them shall go to such lienors.

(4) Liens under this section shall take effect from the recording of the notice of commencement provided in §84.131.

(5) In determining the amounts for which liens between lienors claiming under a direct contract shall be paid by the owner or allowed by the court within the total amount fixed by the direct contract and under the provisions of this section, the owner or court shall pay or allow such liens in the following order:

(a) Liens of all laborers.

(b) Liens of all persons other than the contractor.

(c) Lien of the contractor.

Should the total amount for which liens under such direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all liens in a class shall be allowed for their full amounts before any liens shall be allowed to any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the total amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed only in the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services or materials shall be allowed only in the lien of the lienor farthest removed from the contractor. This section shall not be construed to affect the priority of liens derived under separate direct contracts.

History.—§1, ch. 63-135.

84.071 Priority of liens.—

(1) Liens under §§84.031 and 84.041 shall attach at the time of recordation of the claim of lien and shall take priority as of that time.

(2) Liens under §§84.051 and 84.061 shall attach and take priority as of the time of recordation of the notice of commencement, but in the event a notice of commencement is not filed, then such liens shall attach and take priority as of the time the claim of lien is recorded.

(3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens, except as otherwise provided for liens under this chapter.

(4) If a contractor defaults and if all liens attaching prior to default are paid in full or pro rata in accordance with §84.061(5), prior to the recommencement of completion of the improvement after such default, the lien of all lienors after such default shall take effect from such recommencement and not from the prior commencement of the improvement. Such default shall not be effective as to lienors except the contractor until the owner has recorded notice of default in the clerk's office and posted a certified copy thereof.

(5) If construction is abandoned for any reason other than as provided in subsection (4) of this section, and if the owner desires to recommence construction he may record in the clerk's office and post a certified copy of an affidavit stating his intention to recommence construction and stating that all lienors giving notice except those listed in said affidavit have been paid in full. Thirty days after the recording thereof, the rights of any person, firm or corporation who shall acquire any interest, lien or encumbrance on said property or shall furnish labor, services or materials to the same shall be paramount to any existing lien under this chapter as to which there is no claim of lien recorded within said thirty day period. A copy of such affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of recommencement as prescribed in §84.131.

History.—§1, ch. 63-135.

84.081 Claim of lien.—

(1) For the purpose of perfecting his lien under this chapter every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this chapter may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom he was employed.

(c) The labor, services or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorpo-

rated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for indentification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner.

(2) The claim of lien shall be signed and verified on personal oath by the lienor, his agent or attorney acquainted with the facts stated therein.

(3) Such claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of _____
County of _____

Before me, the undersigned authority, personally appeared _____, who, being duly sworn, says that he is (the lienor herein) (the (agent) (attorney) of the lienor herein) whose address is _____, and that in pursuance of a contract with _____, lienor furnished labor, services or materials consisting of _____ _____ on the following described real property in _____ County, Florida: owned by _____ of a total value of $_____, of which there remains unpaid $_____ and furnished the first of the same on _____, 19___, and the last of the same on _____, 19___, and (if the lien is claimed by one not in privity with the owner) that the lienor served his notice to owner on _____, 19__, by _____.

_____

Sworn to and subscribed before me this_____ day of _____, 19__.

_____

Notary Public My commission expires:

(4) (a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this chapter may be amended at any time during the period allowed for recording such claim of lien, provided, that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as is provided for recording the original claim of lien.

(c) Failure to serve any claim of lien in the manner provided in §84.181, within ten days after recording shall render the claim of lien voidable to the extent that such failure or delay is shown to have been prejudicial to any person entitled to rely thereon.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than ninety days after the final furnishing of the labor or services or materials by the lienor; provided if the original contractor defaults or the contract is terminated under §84.071(4),(5), no claim for a lien attaching prior to such default shall be recorded after ninety days from the date of such default or ninety days after the final performance of labor or services or furnishing of materials, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy or death of the owner before the claim of lien is recorded.

History.—§1, ch. 63-135.
Similar provisions in former §§84.14, 84.16 and 84.17.

84.091 When single claim of lien sufficient.—

(1) A lienor shall be required to record only one claim of lien covering his entire demand against such real property except where the amount demanded is for labor or services or materials furnished for more than one improvement on a single lot, parcel, or tract of land, or for a single improvement on contiguous or adjacent lots, parcels, or tracts of land, or for more than one improvement to be operated as a single plant but located on separate lots, parcels, or tracts of land, or for more than one improvement to be operated as separate units on separate lots, parcel or tracts of land but improved in one continuous building operation, such as, but not limited to, a housing or multiple unit dwelling project, or a multiple separate unit development, and made or to be made in each case under the same direct contract. The claim of lien shall then be applicable to such lots, parcels or tracts of land and the improvements thereon included therein but not previously released in writing, and proof of delivery of materials at the order of the purchaser to any of such lots, parcels or tracts of land shall be prima facie sufficient to support a lien on any or all of such lots, parcels or tracts of land so improved.

(2) In the event the project consists of six or more improvements or one improvement costing more than fifty thousand dollars, and delivery is to a place, other than the site of improvement, designated by the purchaser, such as, but not limited to, a warehouse, concentration point, cutting or fabricating plant, of materials ordered by the purchaser to be used on one or more of such improvements, there shall be served upon the owner a notice, signed and acknowledged by both the seller and purchaser, substantially as follows:

NOTICE OF DELIVERY

Notice is hereby given that materials having a value of $_____ have been delivered by the undersigned vendor to _____ (purchaser) at _____, said materials to (address of delivery) be used for construction of improvements upon the following described property situated in _____ County, Florida, to wit:

_____
Vendor

_____
Purchaser

The service of said notice shall not create a lien, but shall be proof of delivery of the materials referred to in said notice sufficient to support a lien therefor on any or all of such lots, parcels or tracts of land described in said notice; provided, however, that no lien shall attach to any one or more of such lots, parcels or tracts of land by lienors subject thereto until compliance with §84.061(2), when required, and §84.081, and provided further, that no lien shall attach to any one or more of such lots, parcels or tracts of land previously released in writing or upon which the improvement has been completed for a period of ninety days.

History.—§1, ch. 63-135.
Similar provisions in former §84.15.

84.101 Extent of liens.—Except as provided in §84.121, liens under this chapter shall extend to, and only to, the right, title and interest of the person who contracts for the improvement as such right, title and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a lessee in accordance with an agreement between such lessee and his lessor, liens shall extend also to the interest of such lessor. In the absence of fraud on the part of the lessor, the interest of the lessor shall not be subject to liens for improvements made by the lessee when the lease is recorded in the clerk's office and the terms of the lease expressly prohibit such liability.

History.—§1, ch. 63-135.
Similar provisions in former §84.03.

84.111 Liens for improving land in which the contracting party has no interest.—When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in §84.121, but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he has performed labor or services or for which he has furnished materials. The court, in the enforcement of such lien, may order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored substantially to its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

History—§1, ch. 63-135.
Similar provisions in former §84.11.

84.121 Liens for improving real property under contract with husband or wife on property of the other or of both.—When the contract for improving real property is made with a husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or by both, the spouse who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title, or interest of the other in said property to liens under this chapter unless such other shall, within ten days after learning of such contract, give the contractor and record in the clerk's office, notice of his or her objection thereto.

History—§1, ch. 63-135.
Similar provisions in former §84.12.

84.131 Notice of commencement.—

(1) An owner or his authorized agent before actually commencing to improve any real property, or recommencing completion of an improvement after default or abandonment, shall record a notice of commencement in the clerk's office and forthwith post a certified copy thereof containing the following information:

(a) A description sufficient for identification of the real property to be improved.

(b) A general description of the improvement.

(c) The name and address of the owner as defined in §84.011 of this chapter, his interest in the site of the improvement, and the name and address of the fee simple title holder, if other than such owner.

(d) The name and address of the contractor.

(e) The name and address of the surety on the payment bond under §84.231, if any, and the amount of such bond.

(f) The name and address within the state of a person other than himself who may be designated by the owner as the person upon whom notices or other documents may be served, and service upon the person so designated shall constitute service upon the owner.

(g) The owner, at his option, may designate a person in addition to himself to receive a copy of the lienor's notice as provided in §84.061(2)(b), and if he does so, the name and address of such person shall be included in the notice of commencement.

(2) If the improvement described in said notice is not actually commenced within thirty days after the recording thereof, such notice shall be void and of no further effect.

(3) Neither the recording of a notice of commencement nor the posting of a copy thereof shall constitute a lien, cloud or encum-

brance on real property, nor actual nor constructive notice of any of the same.

History.—§1, ch. 63-135.

84.141 Application of money to materials account.—

(1) Any owner, contractor, or subcontractor in making any payment under or properly applicable to any contract to one with whom he has a running account, or with whom he has more than one contract, or to whom he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied and if he shall fail to do so or shall make a false designation he shall be liable to anyone suffering a loss in consequence for the amount of such loss.

(2) When a payment for materials is made to a subcontractor, or materialman, such subcontractor or materialman shall demand of the person making such payment a designation of the account and the items of account to which such payment is to apply. In any case where a lien is claimed for materials furnished by a subcontractor or materialman, it shall be a defense to such claim to prove that a payment made by the owner to the contractor for such materials has been paid over to such subcontractor or materialman, and to prove also that when such payment was received by such subcontractor or materialman he did not demand a designation of the account and of the items of account to which such payment was to be applied or, receiving a designation of its application to the account for such materials, he failed to apply such payment in accordance therewith; provided this subsection shall be deemed to be cumulative to any other defenses available to the person paying said materialman or subcontractor.

History.—§1, ch. 63-135.
Similar provisions in former §84.09.

84.151 Repossession of materials not used.—If for any reason the completion of an improvement is abandoned or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he has not received payment may peaceably repossess and remove such materials or replevy the same and thereupon he shall have no lien on the real property or improvements and no right against any persons for the price thereof, but shall have the same rights in regard to the materials as if he had never parted with their possession. This right to repossess and remove or replevy the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of improvement, except that if the materials have been so transferred, the right to repossess or replevy them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein is acquired after such transfer from the site of the improvement or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

History.—§1, ch. 63-135.
Similar provisions in former §84.10.

84.161 Copy of contract and statements of account may be demanded.—

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon shall be furnished by any party thereto, upon demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or wilfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby shall have a cause of action against the person refusing or neglecting to furnish the same or wilfully and falsely stating the amount due or to become due for his damages sustained thereby. The information contained in such copy or statement furnished pursuant to such demand shall be binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents shall be required to pay for the reproduction thereof and if such person fails or refuses to do so, he shall be entitled only to inspect such documents at reasonable times and places.

(2) The owner, at the time any payment is to be made by him to the contractor or directly to a lienor, may in writing demand of any lienor a written statement under oath of his account showing the nature of the labor or services performed and to be performed, the materials furnished and to be furnished, the amount paid on account to date, the amount due, and the amount to become due. Failure or refusal to furnish such statement within ten days after such demand or the furnishing of a false or fradulent statement shall deprive the person so failing or refusing to furnish such statement of his lien.

History.—§1, ch. 63-135.
Similar provisions in former §84.25.

84.171 Materials not attachable for debts of purchaser.—Whenever materials have been furnished to improve real property and payment therefor has not been made or waived, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for

materials furnished and the materialman has not received payment therefor, such materials shall not be subject to attachment, execution, or other legal process to enforce the debt due for the purchase price.

History.—§1, ch. 63-135.
Similar provisions in former §84.28.

84.181 Manner of serving notices, etc.—

(1) Service of notices, claims of lien, affidavits, assignments and other instruments permitted or required hereunder, or copies thereof when so permitted or required, unless otherwise specifically provided in this chapter, shall be made by one of the following methods:

(a) By serving in the manner provided by law for the service of process.

(b) By actual delivery to the person to be served; or, if a partnership, to one of the partners; or, if a corporation, to an officer, director, managing agent or business agent thereof.

(c) By mailing the same, postage prepaid, by registered or certified mail to the person to be served at his last known address, and receipt of the same by such person or, if a partnership, by one of the partners; or, if a corporation, by an officer, director, managing agent or business agent.

(d) If none of the foregoing can be accomplished, by posting on the premises.

(2) If the real property is owned by more than one person, a lienor may serve any notices or other papers under this chapter on any one of such owners and this shall be deemed notice to all owners.

History.—§1, ch. 63-135.
Similar provisions in former §§84.14, 84.19.

84.191 Assignment of lien.—A lien or prospective lien, except that of a laborer, may be assigned by a written instrument signed and acknowledged in the manner provided for recording conveyances of real property by the lienor at any time before its discharge. The assignment may be recorded in the clerk's office. A payment made to the assignor on account of such assigned lien, without notice of such assignment, shall be valid and of full force and effect as against the assignee thereof. The failure to record an assignment shall not affect its validity, except as provided herein.

History.—§1, ch. 63-135.
Similar provisions in former §84.22.

84.202 Waiver or release of liens.—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his demand shall not constitute a waiver of his lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under §84.061 (2), or the claim of lien under §84.081.

(2) Any person other than a laborer may waive his lien under this chapter at any time, either before or after furnishing services or materials. A laborer may waive his lien only to the extent of labor theretofore performed.

(3) Any person may at any time waive, release or satisfy any part of his lien under this chapter, either as to the amount due for labor performed, or for services or materials furnished or to be furnished, or as to any part or parcel of the real property.

History.—§1, ch. 63-135.
Similar provisions in former §84.26.

84.211 Discharge of lien.—A lien properly perfected under this chapter may be discharged by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, his agent or attorney and attested by said clerk. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction of the lienor, duly acknowledged and recorded in the clerk's office. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this chapter.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within twenty days why his lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his lien should not be enforced or his failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of a competent jurisdiction showing a final determination of the action.

History.—§1, ch. 63-135.
Similar provisions in former §84.23.

84.221 Duration of lien.—

(1) No lien provided by this chapter shall continue for a longer period than one year after the claim of lien has been recorded unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction.

(2) An owner or his agent or attorney may elect to shorten the time prescribed in subsection (1) of this section, within which to commence an action to enforce any claim of lien by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF LIEN

To: _____
(Name and address of lienor)

You are notified that the undersigned contests the claim of lien filed by you on _____ 19___, and recorded in _____ Book _____, Page _____, of the public records of _____ _____ County, Florida, and that the time

within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This _____ day of _____ 19___.

Signed: _____

Owner or Attorney

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his lien within sixty days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service shall be deemed complete upon mailing.

History.—§1, ch. 63-135.
Similar provisions in former §84.21.

84.231 Payment bond.—The payment bond required to exempt an owner under this chapter, chapters 85 or 86, shall be furnished by the contractor in at least the amount of the contract price before commencing the construction of the improvement under such direct contract. Such bond shall be executed as surety by a surety insurer authorized to do business in Florida and shall be conditioned that such contractor shall promptly make payments to all persons supplying him labor, material and supplies used directly or indirectly by said contractor, subcontractor or sub-subcontractor in the prosecution of the work provided in said contract. The owner, contractor, or surety, parties or obligees under any such bond, shall furnish a true copy at cost of reproduction thereof to any lienor demanding the same and if any such person fails or refuses to furnish such copy without justifiable cause, he shall be liable to the lienor demanding the copy for any damages caused to such lienor by such refusal or failure. Any person supplying labor, material or supplies used directly or indirectly in the prosecution of the work to any subcontractor or sub-subcontractor and who has not received payment therefore, shall, within ninety days after performance of the labor or after complete delivery of materials and supplies, deliver to the contractor written notice of the performance of such labor or delivery of such materials and supplies and the nonpayment therefor, and no action or suit for such labor or for such materials and supplies may be instituted or prosecuted against the contractor unless such notice has been given. No action or suit shall be instituted or prosecuted against the contractor or against the surety on the bond required in this section after one year from the performance of the labor or completion of delivery of the materials and supplies. Any lienor shall have a direct right of action on such bond against the surety and no such bond shall contain any provisions restricting the classes of persons protected thereby or the venue of any suit thereon. The surety shall not be entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; provided that the liability of the surety shall not be increased beyond the penal sum of the bond. Except claimants in privity with the contractor and except laborers, no claimant shall recover on a bond or from the contractor unless he shall have complied with the provisions of §84.061(2).

History.—§1, ch. 63-135.

84.241 Transfer of liens to security.—

(1) Any lien claimed under this chapter may be transferred by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either (a) depositing in the clerk's office a sum of money, or (b) filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, either to be in an amount equal to the amount demanded in such claim of lien plus interest thereon at six per cent per year for three years plus one hundred dollars to apply on any court costs which may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded and costs not to exceed one hundred dollars. Upon making such deposit or filing such bond the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred at the address stated therein. Upon filing the certificate of transfer the real property shall thereupon be released from the lien claimed and such lien shall be transferred to said security. The clerk shall be entitled to a fee for making and serving the certificate in the sum of two dollars. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited for an order to require additional security, reduction of security, change or substitution of sureties, payment or discharge thereof or any other matter affecting said security.

(4) If no proceeding to enforce a transferred lien shall be commenced within the time specified in §84.221, the clerk shall return said

security upon request of the person depositing or filing the same, or the insurer.

History.—§1, ch. 63-135.
Similar provisions in former §84.24.

84.251 Redemption and sale.—

(1) The right of redemption upon all sales under this chapter shall exist in favor of the person whose interest is sold and may be exercised in the same manner as is or may be provided for redemption of real property from sales under mortgages.

(2) Sales pursuant to any decree or judgment of foreclosure may be made by the clerk of the court which enters the decree or judgment in the same manner as prescribed for mortgage foreclosures in §702.02(2)-(5). This procedure shall be an alternative to any other method in existence prior to the adoption of this law.

History.—§1, ch. 63-135.
Similar provisions in former §84.27.

84.261 Consolidation and intervention.— Any party interested in any action for the enforcement of a lien hereunder may, as of right, make application to the court for a consolidation with such action of all pending actions or may join all parties interested or involving the contract or real property improved; provided, no consolidation or intervention shall be ordered whereby the court would lose jurisdiction of such action.

History.—§1, ch. 63-135.
Similar provisions in former §84.22.

84.271 Interplead.—An owner or other person holding funds for disbursement on an improvement shall have the right to interplead such lienor and any other person having or claiming to have an interest in the real property improved or a contract relating to the improvement thereof, whenever there is a dispute between lienors as to the amounts due or to become due them. If the court decrees the interpleader, it may transfer all claims to the funds held by the plaintiff. In such case the court shall require said fund to be deposited in registry of court, and effective upon such deposit, shall decree the real property to be free of all liens and claims of lien of the parties to the suit.

History.—§1, ch. 63-135.

84.281 Judgments in case of failure to establish liens; personal and deficiency judgments or decrees.—

(1) If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him in an action to enforce the same under the provisions of this chapter, he may, in addition to the lien decreed in his favor, recover a judgment or decree in such action against any party liable therefor for such sums in excess of the lien as are due him or which he might recover in an action on a contract against any party to the action from whom such sums are due him.

(2) In any action heretofore or hereafter brought a court may, either before or after the final adjudication, award a summary money judgment or decree in favor of any party. This shall not preclude the rendition of other judgments or decrees in the action.

(3) If, upon the sale of the real property under any judgment or decree there is a deficiency of proceeds to pay the amount of such judgment or decree, the judgment or decree may be enforced for the deficiency against any person liable therefor in the same manner and under the same conditions as deficiency decrees in mortgage foreclosures. Any payment made on account of any judgment or decree in favor of a party shall be credited on any other judgment or decree rendered in favor of that party in the same action.

History.—§1, ch. 63-135.
Similar provisions in former §84.29.

84.291 Attorneys' fees.—In any action brought to enforce a lien under this chapter, the prevailing party shall be entitled to recover a reasonable fee for the services of his attorney, to be determined by the court, which shall be taxed as part of his costs.

History.—§1, ch. 63-135.

84.301 Other actions not barred.—This chapter shall be cumulative to other existing remedies and nothing contained in this chapter shall be construed to prevent any lienor or assignee under any contract from maintaining an action thereon at law in like manner as if he had no lien for the security of his debt, and the bringing of such action shall not prejudice his rights under this chapter, except as herein otherwise expressly provided.

History.—§1, ch. 63-135.
Similar provisions in former §84.32.

84.311 Remedies in case of fraud or collusion.—

(1) When the owner or any lienor shall, by fraud or collusion, deprive or attempt to deprive any lienor of benefits or rights to which such lienor is entitled under this chapter by establishing or manipulating the contract price or by giving false affidavits, releases, invoices, worthless checks, statements or written instruments permitted or required under this chapter relating to the improvement of real property hereunder to the detriment of any such lienor, the circuit court in chancery shall have jurisdiction, upon a complaint filed by such lienor, to issue temporary and permanent injunctions, order accountings, grant discovery, utilize all remedies available under creditors bills and proceedings supplementary to execution, marshal assets and exercise any other appropriate legal or equitable remedies or procedures without regard to the adequacy of a remedy at law or whether or not irreparable damage has or will be done.

(2) (a) Any lien asserted under this chapter in which the lienor has wilfully exaggerated the amount for which such lien is claimed or in which the lienor has wilfully included a claim for work not performed upon or materials not furnished for the property upon which he seeks to impress such lien or in which

the lienor has compiled his claim with such wilful and gross negligence as to amount to a wilful exaggeration, shall be deemed a fraudulent lien.

(b) It shall be a complete defense to any action to enforce a lien under this chapter, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien and the court so finding is empowered to and shall declare the lien unenforceable and the lienor shall thereupon forfeit his right to any lien on the property upon which he sought to impress such fraudulent lien.

(c) An owner against whose interest a fraudulent lien is filed shall have a right of action for his actual damages occasioned thereby and for punitive damages. Such action may be instituted independently of another action, or in connection with a summons to show cause under §84.211, or as a counterclaim or crossclaim to any action to enforce or to determine the validity of such lien. The lienor who files a fraudulent lien shall be liable to the owner in damages which shall include court costs, clerk's fees, and a reasonable attorney's fee for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien or interest on any money deposited for the purpose discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

History.—§1, ch. 63-135.

84.321 Insurance proceeds liable for demands.—The proceeds of any insurance which by the terms of the policy contract are payable to the owner of real property improved or a contractor or subcontractor and actually received or to be received by him because of the damage, destruction or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner, contractor or subcontractor, as the case may be, has been reimbursed therefrom for any premiums paid by him, be liable to liens or demands for payment provided by this chapter to the same extent and in the same manner, order of priority and conditions as the real property or payments under a direct contract would have been had such improvement not been so damaged, destroyed or removed. The insurer may pay the proceeds of any such policy of insurance to the insured named in such policy and thereupon any liability of the insurer under this chapter shall cease. Such named insured who receives any proceeds of such policy shall be deemed a trustee of such proceeds and such proceeds shall be deemed trust funds for the purposes designated by this section for a period of one year from the date of receipt of such proceeds. This section shall not apply to that portion of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected prior to the recording of the notice of commencement or recommencement.

History.—§1, ch. 63-135.
Similar provisions in former §84.13.

84.331 Disbursing agent and others may rely on owner's notices.—When the proceeds of a construction or improvement loan or any portion thereof are being disbursed by a person other than the owner, any affidavit, notice or other instrument which is permitted or required under this chapter to be furnished to the owner may be relied upon by such other person in making such disbursements to the same extent as the owner is entitled to rely upon the same.

History.—§1, ch. 63-135.

84.341 Misapplication of funds shall constitute embezzlement.—

(1) For the purpose of this section the net proceeds of a loan shall be deemed to be the amount remaining after deducting from the principal amount of the loan:

(a) Fees and charges legally incident to the procuring of the loan;

(b) The amount required to satisfy prior encumbrances against the real property which is security for such loan and the fees and charges legally incident thereto, if such encumbrances are paid or to be paid with the consent of the lender, from the proceeds of the loan; and

(c) The amount of fees and charges for professional services for which liens are not provided by this chapter and which are bona fide rendered in connection with the improving of the real property.

(2) Any person, firm, corporation or agent, officer or employee thereof who procures a loan secured by mortgage or other encumbrance on real property, representing that the net proceeds thereof are to be used for the purpose of improving such real property and who, with intent to defraud, shall use the net proceeds, as defined in subsection (1) of this section, or any part thereof for any other purpose than to pay for labor or services performed on, or material furnished for, this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid or while any amount of which he has received notice of nonpayment prescribed by this chapter remains unpaid, shall be guilty of embezzlement and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state; provided, however, that failure to pay for such labor, services or materials furnished for this specific improvement after receipt of such loan shall constitute prima facie evidence of intent to defraud.

(3) Any person, firm, corporation or agent, officer or employee thereof who, with intent to defraud, shall use the proceeds of any payment made to him on account of improving certain real property, for any other purpose than to pay for labor or services performed on or

materials furnished for this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid shall be guilty of embezzlement and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state; provided, however, that failure to pay for such labor, services or materials furnished for this specific improvement after receipt of such proceeds shall constitute prima facie evidence of intent to defraud.

(4) The provisions of subsections (2) and (3) shall not apply to mortgage bankers or their agents, servants or employees, for their acts in the usual course of the business of lending or disbursing mortgage funds.

History.—§1, ch. 63-135.
Similar provisions in former §84.07.

84.351 Making or furnishing false statement shall constitute perjury.—Any person, firm or corporation who shall wilfully make or furnish to another person, firm or corporation, an affidavit containing a false statement in connection with the improvement of real property in this state, knowing that the one to whom it was furnished may rely on it, and the one to whom it was furnished shall part with anything of value relying on the truth of such statement as an inducement to do so, shall be guilty of perjury and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state.

History.—§1, ch. 63-135.
Similar provisions in former §84.08.

84.361 Effective date.—Chapter 63-135 shall take effect at 12:01 a.m., October 1, 1963. The rights of all persons with respect to an improvement that has a time of visible commencement prior to October 1, 1963, shall be determined and enforced as provided in former §§84.01-84.35, as they existed prior to October 1, 1963. As to all other rights, former §§84.01-84.35, Florida Statutes, are repealed concurrently with the effective time of this chapter.

History.—§3, ch. 63-135.

CHAPTER 85
LIENS, GENERALLY
PART 1—MISCELLANEOUS LIENS
PART II—FACTOR'S LIENS
PART I—MISCELLANEOUS LIENS

85.01 Liens upon property.—Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described property, under the circumstances hereinafter mentioned, to-wit:

History.—§1726, 1730 (immediately preceding) RS 1892; §1, ch. 5143, 1903; GS 2190, 2196; RGS 2495, 3502; CGL 5349, 5363; §44, ch. 16042, 1933.

85.02 Liens for labor on railroads; telegraphs, etc.—In favor of any person performing by himself or others any labor upon any railroad, canal, telegraph or telephone line, wharf, mill, distillery or other manufactory, whether in the construction, operation or repair thereof; upon such line, wharf, mill, distillery or other manufactory, any and all franchises, machinery and equipments connected therewith or thereon and on the land upon which they stand.

History.—RS 1727; §3, ch. 5143, 1903; GS 2191; RGS 3497; CGL 5351.

85.03 Liens for materials furnished.—In favor of any person who shall furnish any building material for the construction, repair or use of any fence, railroad, canal or telegraph line, wharf, bridge, mill, distillery or other manufacturing work or structure; upon the said lines or other property, and upon the lands upon which they stand.

History.—§4, ch. 3747, 1887; RS 1729; §5, ch. 5143, 1903; GS 2193; §1, ch. 7313, 1917; RGS 3499; CGL 5353.

85.04 Liens for labor on farms, etc.—In favor of any person performing by himself or others any labor upon or in any farm, orchard, grove, garden, park or other grounds, whether in clearing up, fencing, ditching or draining, or in maintaining, improving or cultivating the same; upon such farm, orchard, grove, garden, park or other grounds.

History.—§3, ch. 3747, 1887; RS 1728; §4, ch. 5143, 1903; GS 2192; RGS 3498; CGL 5352.

85.05 Liens in favor of professional engineers and surveyors.—In favor of professional engineers, and registered land surveyors, who in the practice of their profession shall perform by themselves, or others, any professional engineering or land surveying as defined by law, upon or in connection with any property and also upon the land upon which any of said property may stand. Such liens shall be superior to all others accruing thereafter, except only the statutory liens of material men, mechanics, artisans and laborers. If such professional engineering or surveying shall be done or furnished by the procurement of the owner of the property or his agent, or from a person contracting with such owner to have the work done, the lien shall be upon the interest of such owner; but if the professional engineering or surveying be done by the procurement of a person having less than the absolute interest, or of his agent, or of any person contracting with him to have the work done, the lien shall be only upon the limited interest of such person.

History.—§§1-3, ch. 7922, 1919; CGL §§5356-5358; §15, ch. 15657, 1931; CGL 1936 Supp. 4151(109).

85.06 Liens upon separate statutory property of married women; notice.—In favor of any person who shall have performed any labor upon or furnished any material used or to be used upon the separate statutory property of any married woman in this state, with her knowledge or assent or pursuant to a contract

in writing with her, in the construction of buildings or repairs or improvements upon her separate statutory property. Such person so performing labor or furnishing said materials may at any time subsequent to the performance of the labor or the furnishing of the materials, or after the making of a contract in writing therefor with said married woman for the construction or repair of said buildings or improvements upon her separate statutory property, file in the office of the clerk of the circuit court, and have recorded in the record of liens required to be kept by said clerk, in the county in which the land is located, a notice of the performance of such labor or of the furnishing of such materials, or of the contract for the construction or repair of said buildings or improvements—the form of notice being hereinafter provided—and from the date of filing of such notice the rights of all persons performing labor or furnishing materials, or purchasing or dealing with the property of said married woman, upon which said construction, improvements or repairs are made, or are to be made, shall be subject and subordinate to the claim set out in said notice.

The notice provided for in this section shall be substantially as follows: It shall be in writing and shall be sworn to by the person filing the same, or his agent. It shall state the name of the owner of said property, the nature and character of the improvements or repairs and the value thereof, and it shall also contain a description of the property upon which the improvements or repairs have been or are to be made.

The notice of lien herein provided for may be filed prior to the filing of the bill of complaint and must be filed within three months after the entire performance of the labor or the entire furnishing of the materials, provided that nothing herein shall prevent the filing of such notice at any time after a contract in writing has been entered into therefor. Suit in equity to enforce the rights of parties performing labor or furnishing materials as provided for herein, must be brought within twelve months from the filing of notice of lien.

History.—§§1-3, ch. 6926, 1915; RGS 2854; §1, ch. 9301, 1923; CGL 4551.

85.07 Liens for labor on and with machines, etc.—In favor of any person by himself or others performing any labor upon or with any engine, machine, apparatus, fixture, implement, newspaper or printing material or other property, or doing work in any hotel; upon such engine, machine, material, apparatus, fixture, implement, newspaper or printing material, or other property, and upon the furniture, furnishings and belongings of said hotel.

History.—§6, ch. 3747, 1887; RS 1730; §1, ch. 4583, 1897; GS 2196; RGS 3503; CGL 5364.

85.08 Liens for labor on logs and timber.—In favor of any person by himself or others cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom.

History.—§7, ch. 3747, 1887; RS 1731; GS 2197; RGS 3504; CGL 5365.

85.09 Liens for labor and services on personal property.—In favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed, or which is used in the business, occupation, or employment in which the labor or services is performed.

History.—§10, ch 3747, 1887; RS 1732; GS 2198; RGS 3505; §1, ch 8474, 1921

85.10 Liens for labor in raising crops.—In favor of any person performing any labor in, or managing or overseeing, the cultivation or harvesting of crops; upon the crops cultivated or harvested.

History.—Ch. 1899, 1872; §9, ch. 3747, 1887; RS 1733; GS 2199; RGS 3506 CGL 5367.

85.11 Liens for labor on or for vessels.—In favor of any person performing for himself or others, any labor, or furnishing any materials or supplies for use in the construction of any vessel or watercraft; and in favor of any person performing for himself or others, any labor or service of any kind, on, to or for the use or benefit of a vessel or watercraft, including masters, mates and members of the crew and persons loading or unloading the vessel or putting in or taking out ballast; upon such vessel or watercraft, whether partially or completely constructed and whether launched or on land, her tackle, apparel and furniture.

History.—§1, ch. 3612, 1885; RS 1734; GS 2200; §10, ch. 7838, 1919; RGS 3507; CGL 5368

85.12 Liens for manufacturing and repairing articles.—In favor of any person who shall manufacture, alter or repair any article or thing of value; upon such article or thing.

History.—§5, ch. 3747, 1887; RS 1735; GS 2201; RGS 3508; CGL 5369.

85.13 Liens for furnishing articles to be manufactured.—In favor of any person who shall furnish any logs, lumber, clay, sand, stone or other material whatsoever, crude or partially or wholly prepared for use, to any mill or other manufactory to be manufactured into any article of value; upon all such articles furnished and upon all articles manufactured therefrom.

History.—§7, ch. 3747, 1887; RS 1736; GS 2202; RGS 3509; CGL 5370.

85.14 Liens for furnishing locomotives, machinery, etc.—In favor of any person who shall furnish any locomotive or stationary engine, water engine, wind mill, car or other machine or parts of machine or instrument for any railroad, telegraph or telephone line, mill, distillery, or other manufactory; upon the articles so furnished.

History.—§9, ch. 3747, 1887; RS 1737; GS 2203; RGS 3510; CGL 5371.

85.15 Liens for furnishing material for vessels.—In favor of any ship chandler, storekeeper or dealer furnishing stores, provisions, rigging or other material to or for the use of

any ship, vessel, steamboat or other water craft; on such ship, vessel, steamboat or other watercraft.

History.—§14, ch. 40, 1845; §§1-4, ch. 1128, 1861; RS 1738; GS 2204; RGS 3511; CGL 5372.

85.16 Liens for care and maintenance of animals.—In favor of all persons feeding or caring for the horse or other animal of another, including all keepers of livery, sale or feed or feed stables, for feeding or taking care of any horse or other animal put in their charge; upon such horse or other animal.

History.—§1, ch. 3618, 1885; RS 1739; GS 2205; RGS 3512; CGL 5373; §1, ch. 25048, 1949.
cf.—§86.08 Remedies against personal property only; all lienors.

85.17 Liens for feed, etc., for raising horses, polo ponies and race dogs.—In favor of any person who shall furnish corn, oats, hay, grain or other feed or feed stuffs or straw or bedding material to or upon the order of the owner, or the agent, bailee, lessee, or custodian of the owner, of any race horse, polo pony or race dog, for the unpaid portion of the price of such supplies upon every race horse, polo pony, or race dog which consumes any part of such supplies. All race horses and race dogs of such owner which are accustomed to consume supplies of the character delivered, which are at the time of the delivery of such supplies upon the premises to which delivery is made, shall be deemed prima facie to have consumed such supplies. Such lien shall remain valid and enforceable for a period of one year from the dates of the respective deliveries of such corn, oats, hay, grain, feed or feed stuffs, or straw; and such liens are to be enforced in the manner provided for the enforcement of other liens on personal property in this state. Said liens shall be superior to any and all claims, liens and mortgages, whether recorded or unrecorded, including, but not limited to, any lessor's or vendor's lien, and any chattel mortgage, which theretofore may have been or thereafter may be created against such race horse, polo pony or race dog, and to the claims of any and all purchases thereof.

History.—§1, ch. 17092, 1935; CGL 1936 Supp. 5373(1); §7, ch. 22858, 1945.

85.18 Liens for board, lodging, etc., at hotels, etc.—In favor of keepers of hotels, apartment houses, rooming houses, and boarding houses for the board, lodging and occupancy of and for moneys advanced to guests or tenants, upon the goods and chattels belonging to such guests or tenants in such hotel, apartment house, rooming house or boarding house, including garage and storeroom. Upon the nonpayment of such sums in accordance with the rules of such hotels, apartment houses, rooming houses or boarding houses, the keeper thereof may instantly eject such guests or tenants therefrom.

History.—§6, ch. 1999, 1874; RS 1740; GS 2206; RGS 3513; CGL 5374; §44, ch. 16042, 1933.

85.19 Liens of hotels, apartment houses, rooming houses, boarding houses, etc.—In favor of any person conducting or operating any hotel, apartment house, rooming house, boarding house or tenement house where rooms or apartments are let for hire or rental. Such lien shall exist on all the property including trunks, baggage, jewelry and wearing apparel, guns and sporting goods, furniture and furnishings and other personal property of any person which property is brought into or placed in any room or apartment of any hotel, apartment house, lodging house, rooming house, boarding house or tenement house when such person shall occupy such room or apartment as tenant, lessee, boarder, roomer or guest for the privilege of which occupancy money or anything of value is to be paid to the person conducting or operating such hotel, apartment house, rooming house, lodging house, boarding house or tenement house. Such lien shall continue and be in full force and effect for the amount payable for such occupancy until the same shall have been fully paid and discharged.

History.—§1, ch. 12080, 1927; CGL 5375.
cf.—§212.03 Transient rentals tax.

85.20 Unlawful to remove property upon which lien has accrued.—It is unlawful for any person to remove any property upon which a lien has accrued under the provisions of §85.19 from any hotel, apartment house, rooming house, lodging house, boarding house or tenement house without first making full payment to the person operating or conducting the same of all sums due and payable for such occupancy or without first having the written consent of such person so conducting or operating such place to so remove such property. Any person violating the provisions of this section shall, if the property removed in violation hereof be of the value of fifty dollars or less, be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not more than one hundred dollars or imprisonment in the county jail for not more than three months; and if the property so removed should be of greater value than fifty dollars then such person shall be deemed guilty of a felony and upon conviction shall be punished by fine of not more than one thousand dollars or imprisonment in the state prison for not more than two years.

History.—§§2, 3, ch. 12080, 1927; CGL 5376, 7323.
cf.—§775.06 Alternative punishment.

85.21 Lien for service of stallions and other animals.—In favor of owners of stallions, jackasses or bulls, upon the colt or calf of the get of said stallion, jackass or bull, and also upon the mare, jenny or cow served by said stallion, jackass or bull in breeding thereof for the sum stipulated to be paid for the service thereof, by filing at any time within eighteen months after the date of service a statement of the account thereof, together with the description as to color and markings of the female served, and the name of the owner at the date of service, in the office of the county clerk of the county wherein the owner of the said female resided at the time of service. Neither the mare, jenny or cow, nor the get thereof, shall be sold within eighteen months after the date of service, unless the service fee shall be paid, unless

such sale shall be agreed to and approved in writing by the owner of the stallion, jackass or bull at the time of the sale or transfer of the mare, jenny or cow, or offspring thereof. At any time after such mare, jenny or cow shall conceive, any one having the lien herein provided, may enforce the same in the same manner as is now provided by law.

History.—§1, ch. 4352, 1895; GS 2207; §1, ch. 7362, 1917; RGS 3514; CGL 5377.

85.22 Liens for loans and advances.—Any person who shall procure a loan or advance of money or goods and chattels, wares or merchandise or other things of value, to aid him in the business of planting, farming, timber getting or any other kind of businesses in this state, from any factor, merchant, firm or person in this state, or in the United States or in any foreign country, shall, by this law, be held to have given to the lender, lenders, or person making such advance, a statutory lien of prior dignity to all other incumbrances, saving and excepting liens for labor and liens in favor of landlords, upon all the timber getting, all the crops, and products grown or anything else made or grown by said person, through the assistance of said loan or advances; provided, that the lien above given shall not be created unless the person obtaining or procuring such loan or advance shall give to the person making such loan or advance an instrument of writing consenting to said lien; and the same shall be recorded in the office of the clerk of the circuit court of the county wherein such business of planting, farming or timber getting is conducted.

History.—§1, ch. 4163, 1893; GS 2208; RGS 3515; CGL 5378.

85.23 Liens of orchestral and band musicians.—In favor of any musician or leader of an orchestra or band performing labor or services for any other person, owning, operating or managing any premises, done and performed in pursuance of any contract duly authorized or ratified by such owner, operator or management, upon all the right, title or interest, of any nature whatsoever, of such owner, operator or management, making, authorizing or ratifying such contract, in and to the premises and personal property thereon, or used in connection therewith.

Performance by a musician involving the use of a musical instrument as commonly known and commonly used in orchestral or band work, or the services of an orchestra leader, when such performance or service is rendered pursuant to a duly authorized contract, shall be deemed and considered as labor done and performed, whether the said contract be written, oral, expressed or implied.

When musical services are contracted for by a lessee of real or personal property, or his duly authorized agent, the aforesaid lien shall not extend to the property of the lessor, nor to the leasehold, unless the lessor has agreed thereto in writing, or has become the surety of the lessee in such manner as to bind him to pay, or guarantee the payment of the sums due for the musical services, or where the lessor has a proprietary interest in the business conducted by the person contracting for musical services for said business. In no case shall any person be deemed to have ratified a contract for musical services made by another by mere knowledge that such services have or might be employed, or by failure to object thereto, but such ratification must be based upon some unequivocal affirmative act, statement or conduct, intended to cause the person claiming the lien to rely thereon, and upon which said person in fact relied.

If any part of the property subject to a lien under this law be removed from the premises where labor is done and performed before the discharge from the lien, such removal shall not affect the rights of lienors in respect to either the remaining property or the part removed.

History.—§§1-4, ch. 18035, 1937; CGL 1940 Supp. 5378(1)-5378(4).

85.24 Priority of foregoing liens.—Liens for labor and liens for material provided for by this law shall take priority among themselves according to the times that the notices required to create such liens respectively were given or were recorded in the cases where record is required; that is to say, each such lien which shall have attached to the property shall be paid before any such lien which shall have subsequently attached thereto, shall be entitled to be paid.

History.—§12, ch. 5143, 1903; GS 2209; RGS 3516; CGL 5379.

85.25 Acquisition of liens by persons in privity with the owner.—

(1) AS AGAINST THE OWNER.—As against the owner, absolute or limited, of the property, real or personal, upon which a lien is claimed, or person deriving through his death, or purchasers or creditors with notice, the lien hereinbefore provided for shall be acquired by any person, in privity with such owner, by the performance of the labor or the furnishing of the materials. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created, or shall arise, while the construction or repair of such property as aforesaid is in progress shall be deemed and held to be a purchaser or creditor with notice.

(2) AS AGAINST PURCHASERS AND CREDITORS.—

(a) *As to real estate.*—As against purchasers and creditors of such owner without notice, such lien shall be acquired upon real estate only from the time of the record in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. Such notice shall contain a statement of the amount claimed, a description of the property upon which the lien is claimed, and a notice of the intention to hold a lien for the said amount, and shall be verified by the oath of the lienor or his agent. It shall be filed only after the labor has been entirely performed and the materials entirely furnished.

No such notice of a perfected lien shall be

effectual against creditors or purchasers of the owner without notice unless it be filed within three months after the entire performance of the labor or the entire furnishing of the material.

(b) *As to personal property.*—There shall be no lien upon personal property as against purchasers and creditors without notice, unless the person claiming the lien be in possession of the property upon which the lien is claimed, in which case the lien as against creditors and purchasers without notice shall continue so long as the possession continues, but not for a period longer than three months after the performance of the labor or the furnishing of the material.

History.—§1742 RS 1892; §1, ch. 4582, 1897; §§8, 9, 11, ch. 5143, 1903; GS 2210; RGS 3517; CGL 5380.

85.26 Acquisition of liens by persons not in privity with the owner.—

(1) AS AGAINST THE OWNER.—A person entitled to acquire a lien, not in privity with the owner, as aforesaid, shall acquire a lien upon such owner's real or personal property as against him, and persons claiming through his death, and purchasers and creditors with notice, by the delivery to him or his agent, of a written notice that the contractor or other person for whom the labor has been performed, or the materials furnished, is indebted to the person performing the labor or furnishing the materials in the sum stated in the notice; but if a person who is performing or is about to perform, by himself or others, labor, or is furnishing or is about to furnish materials shall so desire, he may deliver to the owner, or his agent, a written cautionary notice that he will do certain work, or will furnish certain materials, or both. A lien shall exist from the time of the service of the notice for the amount unpaid on the contract of and by the owner to the contractor or the person for whom the work was done or the material furnished.

Such service shall also create a personal liability against the owner of the property in favor of the lienor giving such notice for the amount due him as aforesaid, but not to a greater extent than the amount of such original contract.

(2) AS AGAINST PURCHASERS AND CREDITORS.—

(a) *Upon real estate.*—As against purchasers and creditors of such owners without notice, such liens against real estate shall be acquired from the time of the recording (subsequent to the service of the notice provided for in subsection (1) of this section) in the office of the clerk of the court, in the county, of a notice of lien similar to that provided by §85.25. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created or shall arise while the construction or repair of such property as aforesaid is in progress, shall be deemed and held to be a purchaser or creditor with notice.

(b) *Upon personal property.*—There shall be no lien upon personal property as against creditors and purchasers without notice, except under the circumstances and for the time prescribed in §85.25, and for the amount of indebtedness due to the lienor at the time of the service of the notice provided for by subsection (1) of this section.

History.—§1743 RS 1892; §2, ch. 4582, 1897; §§1, 15, ch. 5143, 1903; GS 2211; RGS 3518; CGL 5381.

85.27 Release of lien by filing bond.—Any lienee may release his property from any lien claimed thereon under this chapter by filing with the clerk of the circuit court a bond with two good and sufficient sureties, to be approved by the clerk, payable to the person claiming the lien in double the sum claimed, and conditioned for the payment of any judgment which may be recovered on said lien, with costs.

History.—§8, ch. 1632, 1868; RS 1749; §19, ch. 5143, 1903; GS 2225; RGS 3532; CGL 5396.

85.28 Liens of owners, operators or keepers of camps; ejection of occupants.—Liens prior in dignity to all others except liens for unpaid purchase price shall exist in favor of owners, operators, or keepers of tourist camps or trailer camps for rent owing by and for money or other property advanced to any occupant thereof upon the goods, chattels or other personal property of the occupant of such camp. Upon the nonpayment of such sums in accordance with the rules of such camps, or for failure to observe any provision of this law or the rules and regulations prescribed by the state board of health, the owner, operator or keeper thereof may instantly eject such occupant therefrom; the liens created in favor of owners, operators, or keepers of tourist camps or trailer camps may be enforced in the same manner as is now or may hereafter be provided by law for the enforcement of liens in favor of keepers of hotels and boarding houses. Nothing in this section, however, shall prevent owners or operators of tourist camps or trailer camps from enforcing any claims for rent under and in the manner provided by landlord and tenant acts of this state.

History.—§11, ch. 12419, 1927; §1, ch. 19365, 1939; CGL 4149.

PART II—FACTOR'S LIENS

85.29 Definitions.—Whenever used in this law, the following terms shall have the meaning herein ascribed to them:

(1) Merchandise shall mean materials, goods in process, and finished goods intended for sale, whether or not requiring further man-

ufacturing or processing, but not include machinery, equipment, or trade fixtures of the borrower;

(2) Factor and factors shall mean persons, firms, banks, and corporations, and their successors in interest, who advance money on the security of merchandise, whether or not they are employed to sell such merchandise;

(3) Borrower shall mean the owner of merchandise, or his agent, who creates a lien in favor of a factor, but shall not include mercantile establishments selling at retail.

History.—§1, ch. 59-350.

85.30 Notice; filing with a secretary of state.—

(1) If so provided by a written agreement with the borrower, a factor shall have a continuing general lien upon such merchandise of the borrower as is from time to time after the execution of said written agreement designated in one or more separate written statements dated and signed by the borrower and delivered to the factor, and upon any accounts receivable or other proceeds resulting from the sale or other disposition of any such merchandise, without such merchandise being taken into the constructive or actual possession or custody of the factor or of a third person for the account of the factor, and such lien shall secure the factor for all his loans and advances to or for the account of the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges, and expenses properly chargeable against or due from said borrower, and for the amounts due or owing upon any notes or other obligations given to or received by the factor for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges, and expenses. Such lien shall be valid from the time of filing the notice hereinafter referred to, whether such merchandise shall be in existence at the time of the execution of the written agreement providing for the creation of the lien or at the time of filing such notice or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the borrower: Provided, that a notice of the lien is filed stating:

(a) The name of the factor; the name under which the factor does business, if an assumed name; the principal place of business of the factor within the state, or, if he has no place of business within the state, his principal place of business outside the state; and, if the factor is a partnership or association, the names of the partners, and if a corporation, the state under which laws it was organized.

(b) The name and address of the borrower; the name under which the borrower does business, if an assumed name, the principal place of business of the borrower within the state, or, if he has no place of business within the state, the principal place or places at which the merchandise shall be located or stored; and the interest of the borrower in the merchandise as far as known to the factor.

(c) The general character of merchandise subject to the lien, or which may become subject thereto, and the period of time, whether definite or indefinite, during which such loans or advances may be made under the terms of the written agreement providing for such loans or advances and for such lien.

(2) Such notice must be signed by the borrower and the factor and must be filed in the office of the secretary of state. The secretary of state shall cause each notice of lien filed to be marked with a consecutive file number and with the date and hour of filing, to be kept in a separate file, and to be noted and indexed in a suitable index, arranged according to the name of the borrower and containing a notation of the borrower's chief place of business as given in the notice of lien. Amendments of the notice may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent, or amended notices. The secretary of state at the time of filing such notice, or amended notice or notices, shall upon request issue to the person filing the same a receipt in writing setting forth the filing data. No mistake or omissions of the secretary of state shall impair the lien.

History.—§§2, 3, ch. 59-350.

85.31 Duration; satisfaction.—Such notice may be filed at any time after the making of the agreement and shall be effectual from the time of filing as against all claims of unsecured creditors of the borrower and as against subsequent liens of creditors, except any common-law or statutory liens of laborers, mechanics or others subsequently attaching to such merchandise by reason of work or services rendered thereon, but this law shall not obligate the factor personally for any debt secured by such lien. When merchandise subject to the lien provided for by this law is sold in the ordinary course of the business of the borrower, such lien, whether or not the purchaser has knowledge of the existence thereof, shall terminate as to the merchandise so sold and shall attach without further act, writing or formality to any obligation and to any other proceeds of such sale in the hands of the borrower. Provided there is full compliance with the provisions of §§524.01-524.06, and unless the factor and the borrower shall agree otherwise, the delivery by the borrower to the factor of a written agreement or separate written statement as hereinbefore provided for designating the merchandise which will be subject to the lien shall operate as an assignment of the accounts receivable which will result from the sale or other disposition of such merchandise, with the same effect as if an assignment thereof by the borrower to the factor had been duly perfected immediately after such sale or other disposition.

History.—§4, ch. 59-350.

85.32 Filing certificate of satisfaction.—Upon the payment or satisfaction of the indebtedness secured by the lien provided for by this law, the factor or his legal representative, upon the request of any person interested in

the said merchandise, shall sign a certificate setting forth such payment or satisfaction. The secretary of state shall, on receipt of such certificate, file the same in the file in which the original notice of lien was entered. All notices of lien shall be deemed to be and remain in full force and effect without further or other filing until the certificate of discharge hereinabove referred to shall have been filed with such filing office.

History.—§5, ch. 59-350.

85.33 Filing fees.—The fee for filing any notice of lien, any amendment thereof or certificate under this law shall be one dollar for the first page and seventy-five cents for each additional page.

History.—§6, ch. 59-350.

85.34 Exempt transactions.—This law shall not apply to transactions of bailment, pledge, or consignment of merchandise in the actual or constructive possession or custody of the factor, or in the actual or constructive possession or custody of a third person for the account of the factor, and in such transaction and in any transaction under which the factor shall not comply with the filing requirements of this law, the factor shall have such security interest or lien rights in the merchandise as shall accrue to the factor under the statutory and common law as it otherwise exists.

History.—§7, ch. 59-350.

85.35 Recordation laws; election.—As to any transactions falling within the provisions both of this law and of any other law requiring or permitting filing or recording, the factor shall not be required to comply with both, but by complying with the provisions of either, at the factor's election, the factor shall have the protection given by the provisions complied with. In the event, however, the factor shall claim a lien on proceeds in the form of accounts receivable, compliance must be made with the filing provisions of §§524.01-524.06.

History.—§8, ch. 59-350.

CHAPTER 86

ENFORCEMENT OF STATUTORY LIENS

86.01 Enforcement by persons in privity with the owner.—All liens provided for by the foregoing chapters, either upon real or personal property, except where otherwise provided, shall be enforceable by person in privity with the owners as follows:

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382.

86.02 Retention of possession.—By a retention of possession for a period not exceeding three months of the property upon which the lien has attached, by the person entitled to such lien, if he were in such possession at the time the lien attached.

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382.

86.03 By suit in equity.—By a suit in equity; provided, however, that this shall be the exclusive remedy for the enforcement of claims and liens upon the separate statutory property of married women and against estates by the entireties.

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382; §2, ch. 29737, 1955.

86.04 Ordinary suit at law.—By an ordinary suit at law and the levy of the execution obtained therein on the property on which the lien is held.

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382.

86.05 Special proceeding at law.—By a suit at law in which the complaint shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property, and a prayer that the property be sold to satisfy the lien. In such suit the judgment for the plaintiff shall be a personal judgment against the defendant as well as declare the lien upon the property describing it and shall direct execution against such property, as well as against the property generally of the defendant.

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382; §2, ch. 29737, 1955.

86.06 Summary proceeding.—By any person claiming a lien for labor performed, his legal representative, agent or assign making or filing in the court having jurisdiction of the amount of the lien claimed, a petition under oath describing the premises or property on which a lien is claimed and stating the facts which authorize or create the lien.

(1) PETITION FOR ENFORCEMENT OF LIEN.—Upon filing such petition the clerk of such court, or judge thereof, shall issue a summons describing the premises or property on which the lien is claimed, the amount of such lien and requiring the person against whom such lien is claimed forthwith to pay such claim or to show cause before such court within five days why such claim should not be paid. Such summons shall be served forthwith by the sheriff of the county in the manner providing for serving of summons ad respondendum.

(2) DEFENDANT MAY MOVE TO QUASH OR FILE TRAVERSE; ISSUES TRIED BY JURY.—The person against whom such lien is claimed or against whom summons is directed, or any other person claiming any interest in the property described in the petition and summons, at or before the time appointed in said summons, may file a motion to quash the same or may file an affidavit denying the facts on which such summons was issued, or any of such facts, and such matters therein controverted shall constitute without further pleadings the issue to be tried; and such issues may be tried by jury if either of the parties so desires, otherwise such issues shall be tried by the judge of said court.

(3) PARTIES DEMANDING JURY TO DEPOSIT COSTS.—Should either party desire such issue to be tried by jury, such party shall, on or before the return day of such summons, file a notice in writing with the clerk of said court, or the judge thereof, and shall, at the same time, deposit sufficient money to pay jury fees, provided that if such issue be tried in regular term, and trial by jury be so desired, it shall be tried by the regularly empaneled jury for such term, and, in such case no deposit shall be required.

(4) DEFAULT AND JUDGMENT; HEARING ON MOTION TO QUASH.—If, on the day appointed for such summons, no such affidavit be filed, or motion to quash said writ be made, the clerk of such court, or the judge thereof, on application of the petitioner, shall cause a default to be issued against the defendant, and thereafter the files of such case shall be produced before the judge of said court, and, if he shall find the proceedings regular, judgment of the court shall be entered that the petitioner recover the amount of the lien claimed and set out in the petition, together with attorney's fee

of fifteen per cent of amount claimed in petition and cost of court. If motion to quash such writ be filed it shall be heard by the judge on the day following the return day of such writ, unless such hearing be continued by the judge, upon good cause shown, until some time definite, which time shall not be more than five days from the date of the return of the summons. Upon the overruling of such motion to quash, judgment shall be entered immediately as in case of default, unless the party defendant has on or before the return day mentioned in the summons, filed his affidavit denying the facts on which the summons was issued, or any of such facts. In all actions brought under this subsection the judgment for the plaintiff shall be a personal judgment against the defendant as well as declare the lien upon the property, describing it, and shall direct execution against such property, as well as against the property generally of the defendant.

(5) SETTING DOWN CASE FOR TRIAL; JURY SUMMONED; JURORS.—Whenever affidavit shall be filed by defendant within the time herein provided, the judge of said court shall make an order setting such case down for trial, giving only such time as is reasonably necessary to summons a jury unless a term of said court shall be in session or shall convene in five days or less, in which case the issue so made shall be tried by the jury in attendance on such regular term, providing that in no case shall the time for the trial of the issues raised by the pleadings be continued for a period of more than five days from the date of the return of the summons, as hereinbefore provided, and in case the judge before whom such matter is pending is absent, sick or in any other way disqualified or prevented from acting on such petition, the judge of the circuit court or the county court, as the case may be, shall have jurisdiction of such cause of action or the parties may agree on a regular practicing attorney residing in the county where the petition is filed, who shall upon the filing of a written stipulation have full jurisdiction to try such issues, issue such orders and sign such papers as are necessary for the completion of the files of such cause in all respects, the same as if he were the judge of such court. If such cause is not heard at a regular term, and a jury is demanded, the judge of said court shall, at the time of setting such cause for trial, direct that a jury be empaneled for such purpose. Such jury shall consist of six persons having the qualifications of jurors serving in the court having jurisdiction of the amount claimed in the petition and they shall receive the same fee as paid to jurors in the justice of the peace court.

(6) JUDGMENT ON TRIAL OF ISSUES; GRANTING NEW TRIAL, ETC.—If, on the trial of such issues, whether by judge or jury, the issues be found for the petitioner, unless new trial be granted, judgment shall be entered thereon by the court for the amount found by such judge or jury to be due the petitioner, together with fifteen per cent attorney's fee and the cost of the court, and the judgment shall be a prior lien on the premises or property described in the petition over all other liens accruing or that may be filed subsequent to the day the lien for such labor performed accrued but if on the trial of such issues, they be found for the defendant, unless new trial be granted, judgment shall be entered dismissing such proceedings; and new trial shall not be granted either party unless motion therefor be made within two days after verdict; and, if new trial be granted, the same shall be brought on for hearing within two days thereafter, unless further time be granted by the court for sufficient reason.

(7) EXECUTION.—Upon the entry of a judgment, as hereinbefore provided, the petitioner may sue out his writ of execution, as in the case of other executions on judgments of suits at law.

(8) APPEALS; TIME; SUPERSEDEAS; COSTS; BONDS.—Appeals may be taken from any final judgment entered by virtue of proceedings had under this section in the manner as provided by the Florida appellate rules for appeal from any judgment of the court having jurisdiction of the amount of lien claimed in the petition filed under this section; provided, however, that such appeal must be taken out within ten days from the rendition of such judgment, and provided further that before such appeal be issued the party suing out the same shall first pay all costs which shall have accrued and enter into a good and sufficient bond with two sureties, in a sum equal double the amount of such judgment, conditioned to pay the full amount of such judgment and the costs of such appeal in case such appeal be dismissed or judgment be affirmed.

History.—§1744 RS 1892; §13, ch. 5143, 1903; GS 2212; RGS 3519; §1, ch. 12079, 1927; CGL 5382; (8) §2, ch. 29737, 1955; (8) §15, ch. 63-559.
cf.—Ch. 55, judgments and executions.

86.07 Enforcement by persons not in privity with the owner.—A person not in privity with the owner may resort to any of the remedies prescribed by §§86.02, 86.03, 86.04 and 86.06; but in every suit at law or in chancery the contractor or the person for whom the labor was performed or the materials furnished must be made a party defendant to the suit; and the judgment or decree may provide for the recovery from the contractor or other person as aforesaid of the amount due by him, and from the owner of the amount due by him to the contractor or other person as aforesaid, at the time of the service of the notice provided for by §85.26, as well as decree and enforce the lien against the property of such owner for such amount; but only one satisfaction of such judgment shall be had. And although no lien be found to exist and no judgment may be rendered against the owner, judgment may be rendered against the contractor or other person for whom the labor was performed or the materials furnished for the amount due by him. If personal service in such suit cannot be made upon any defendant, constructive service may

be made in the manner and under the rules prescribed for such service in chancery cases.

History.—§1744 RS 1892; §15, ch. 5143, 1903; GS 2213; RGS 3520; CGL 5383.
cf.—Ch. 48 Constructive service of process.

86.08 Remedies against personal property only; all lienors.—

(1) BY INJUNCTION AND ATTACHMENT.—If any person entitled to a lien under chapter 85 upon personal property shall have reason to believe that the same is about to be removed from the county in which it may be, he may enjoin the removal of the same, in the manner provided for enjoining the removal of property subject to a mortgage or, if the lien shall have been perfected, may attach the same in the manner provided for attachment in aid of foreclosure of mortgages.

(2) BY SALE WITHOUT JUDICIAL PROCEEDINGS.—Whenever any person shall entrust to any mechanic or laborer materials with which to construct, alter or repair any article of value, or any article of value to be altered or repaired, such mechanic, or laborer, if such article be completed and not taken away, and the fair and reasonable charges not paid, may, after three months from the time such charges become due, sell the same, and such sale shall be at public auction for cash; but before any such sale such mechanic or laborer shall give public notice of the time and place thereof, by advertisements posted for ten days in three public places in the county, one of which shall be at the court house, and another in some conspicuous part of his shop or place of business, and the proceeds of such sale, after payment of charges for construction or repair, with the cost of such sale, shall, if the owner be absent, be deposited with the clerk of the circuit court for such county, where the same shall remain, subject to the order of the person legally entitled thereto, and the clerk shall be entitled to receive from all proceeds so deposited with him five per cent on such proceeds for the care and disbursement thereof; provided that any person claiming a lien under the provisions of §85.16, may enforce the same by sale without judicial proceedings in the manner set forth herein after one month after the time the charges for which a lien is claimed become due.

(3) MOTOR VEHICLES.—Any motor vehicle which is stored in a garage or storage space subject to instructions by any law enforcement agency and which remains unclaimed or for which reasonable towing and/or storage charges remain unpaid, may after seventy-five days from the time such vehicle is deposited in the garage or storage space, be sold by the owner or operator of such garage or storage space, and such sale shall be at public auction for cash. Notice of such sale shall be given to the person whose name the vehicle is registered in and to all persons claiming a lien on such vehicle as shown on the records of the state motor vehicle commission of this state or with the corresponding agencies in any other state. Said notices shall be by registered or certified mail, addressed to the owner of the vehicle and the person having a recorded lien on the vehicle at the address shown on the records of the registering agency and shall be mailed not less than fifteen days prior to the date of the sale. If, after diligent search and inquiry, the name and address of the registered owner and/or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of such sale shall be made by publishing a notice thereof one time, at least ten days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held or by advertisements posted for ten days in three public places in the county, one of which shall be at the court house, and another in some conspicuous part of the garage or storehouse, and the proceeds of such sale, after payment of reasonable towing and storage charges, and the cost of such sale, shall, if the owner be absent, be deposited with the clerk of the circuit court for such county, where the same shall remain, subject to the order of the person legally entitled thereto, and the clerk shall be entitled to receive from all proceeds so deposited with him five per cent on such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens except those registered with the motor vehicle commissioner of the state.

History.—§1745 RS 1892; GS 2214; RGS 3521; CGL 5384; §2, ch. 25048, 1949; (3) n. §1, ch. 57-94.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

86.09 Courts open.—The courts of this state shall always be open to hear and determine causes arising under this law.

History.—§12, ch. 4955, 1901; GS 2221; RGS 3528; CGL 5891.

86.10 Joinder of suits.—All persons who may have liens, as provided by chapters 84 and 85, may join together in suits to enforce their respective liens.

History.—§14, ch. 5143, 1903; GS 2224; RGS 3531; CGL 5394.

86.11 Time of bringing suit.—When there has been no record of a notice of lien, suit to enforce lien (if it exists without such record) must be brought within twelve months from the performance of the work or the furnishing of the materials, and if there has been such record, the suit must be brought within twelve months from the time of such record.

History.—§1748 RS 1892; §18, ch. 5143, 1903; GS 2223; RGS 3530; CGL 5393.

86.12 Process, when returnable; answers, when filed.—All process except in circuit court shall be returned to any date fixed by the court. The answers of defendants shall be filed upon return date of the writ.

History.—§2222 GS 1906; RGS 3529; CGL 5392; §17, ch. 29737, 1955.

86.13 Time of trials.—In any of the suits at law provided for in §§86.04 and 86.05, a trial may be had at any time after five days from the filing of the pleas of the defendant. Upon the written request of either party, the judge

of the court in which the suit is pending shall fix the day of such trial, and upon like request, order the executive officer of his court to summons from the body of the county a jury to try the issues.

History.—§1746 RS 1892; GS 2215; RGS 3522; CGL 5385.

86.14 Execution to issue.—After judgment has been obtained under the provisions of this chapter, if the amount thereof and all costs be not paid within five days therefrom, execution shall immediately be issued to the sheriff of the county, and the property so attached or levied upon shall be advertised and sold at the regular sales day as now provided by law.

History.—§10, ch. 4955, 1901; GS 2219; RGS 3526; CGL 5389.

86.15 Failure to perform duty.—The sheriff or other officer who shall fail or refuse to properly execute any process directed to him under and in accordance with the provisions of this chapter, shall be liable for damages in double the amount claimed in such process, to the person or persons who may be injured by such failure or refusal to execute the same.

History.—§11, ch. 4955, 1901; GS 2220; RGS 3527; CGL 5890.

CHAPTER 87

DECLARATORY DECREES, JUDGMENTS AND ORDERS

87.01 Scope; jurisdiction of circuit court.—The circuit courts of the state are hereby invested with authority and original jurisdiction and shall have the power upon a filed complaint, to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed or prayed. No action or procedure shall be open to objection on the ground that a declaratory decree, judgment or order is prayed for. The circuit court's declaration may be either affirmative or negative in form and effect and such circuit court declaration shall have the force and effect of a final decree, judgment or order. The circuit courts may render declaratory decrees, judgments or orders as to the existence, or nonexistence:

(1) Of any immunity, power, privilege or right; or

(2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future. Any person seeking a declaratory decree, judgment or order may, in addition to praying for a circuit court declaration, also pray for additional, alternative, coercive, subsequent or supplemental relief in the same action.

History.—§1, ch. 21820, 1943; §2, ch. 29737, 1955.

87.02 Power to construe, etc.—Any person claiming to be interested or who may be in doubt as to his rights under a deed, will, contract or other article, memorandum or instrument in writing or whose rights, status or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing, or any part thereof, and obtain a declaration of rights, status or other equitable or legal relations thereunder.

History.—§2, ch. 21820, 1943.

87.03 Before breach.—A contract may be construed either before or after there has been a breach thereof.

History.—§3, ch. 21820, 1943.

87.04 Suits by executors, administrators, trustees, etc.—Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or equitable or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(2) To direct the executor, administrator, or trustee to abstain from doing any particular act in his fiduciary capacity; or

(3) To determine any question arising, in the administration of the estate or trust, including questions of construction of wills and other writings.

History.—§4, ch. 21820, 1943.

87.05 Enumeration not exclusive.—The enumeration in §§87.02, 87.03 and 87.04 does not limit or restrict the exercise of the general powers conferred in §87.01, in any proceeding where declaratory relief is sought; also, any declaratory decree, judgment or order given or made in pursuance of this chapter may be given or made by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the said decree, judgment or order shall have the same binding effect with respect to that future act or event, and the rights or liability to arise therefrom, as if that act or event had already been done or had already happened before the said decree, judgment or order was given or made.

History.—§5, ch. 21820, 1943.

87.06 Review by appeal, etc.—All decrees, judgments or orders under this chapter may be appealed to or reviewed by the appropriate district court of appeal in the manner and within the time prescribed by the Florida appellate rules, unless appeal to the supreme court is authorized by Art. V of the state constitution.

History.—§6, ch. 21820, 1943; §16, ch. 63-559.

87.07 Supplemental relief.—Further relief based on a declaratory decree, judgment or order may be granted whenever necessary or proper. The application therefor shall be by petition to the circuit court having jurisdiction to grant the relief. If the application be deemed sufficient, the circuit court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory decree, judgment or order, to show cause why further relief should not be granted forthwith.

History.—§7, ch. 21820, 1943.

87.08 Jury trials.—When a proceeding under this chapter involves the determination of an

issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the circuit court in which the proceeding is pending. In order to settle questions of fact necessary to be determined before judgment can be rendered, the circuit court may direct their submission to a jury. When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not. Neither this section nor any other section of this chapter shall be construed as requiring a jury to determine issues of fact in equity cases.

History.—§8, ch. 21820, 1943.

87.09 **Costs.**—In any proceeding under this chapter, the court may make such award of costs as in its sound judicial discretion may seem equitable and just.

History.—§9, ch. 21820, 1943.

87.10 **Parties.**—When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a county or municipal charter, ordinance or franchise, such county or municipality shall be made a party, and shall be entitled to be heard, and if the statute, charter, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state or the state attorney of the judicial circuit in which the action is pending shall also be served with a copy of the proceedings and be entitled to be heard.

History.—§10, ch. 21820, 1943; §1, ch. 59-440.

87.11 **Construction of law.**—This chapter is declared to be substantive and remedial; its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status and other equitable or legal relations; and is to be liberally administered and construed.

History.—§11, ch. 21820, 1943.

87.12 **Adequate remedy does not preclude.**—The existence of another adequate remedy shall not preclude a decree, judgment or order for declaratory relief. The circuit court may order a speedy hearing of an action for a declaratory decree, judgment or order and may advance it on the calendar. When a suit for declaratory decree is filed as provided in this chapter the court shall have power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as a suit in equity.

History.—§12, ch. 21820, 1943; §2, ch. 29737, 1955.

87.13 **"Person" defined.**—The word "person" wherever used in this chapter shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

History.—§13, ch. 21820, 1943.

CHAPTER 88

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT LAW

88.011 Short title.—This chapter may be cited as the "uniform reciprocal enforcement of support law."

History.—§1, ch. 29901, 1955.

88.021 Purposes.—The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

History.—§2, ch. 29901, 1955.

88.031 Definitions.—As used in this chapter unless the context requires otherwise:

(1) State includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) Initiating state means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) Responding state means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) Court means the circuit court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) Law includes both common and statute law.

(6) Duty of support includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) Obligor means any person owing a duty of support.

(8) Obligee means any person to whom a duty of support is owed.

History.—§3, ch. 29901, 1955.

88.041 Remedies additional to those now existing.—The remedies herein provided are in addition to and not in substitution for any other remedies.

History.—§4, ch. 29901, 1955.

88.051 Extent of duties of support.—Duties of support arising under the law of this state, when applicable under §88.081, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

History.—§5, ch. 29901, 1955.

88.061 Interstate rendition.—The governor of this state may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

History.—§6, ch. 29901, 1955.
cf.—§941.02 Fugitive from justice; duty of governor.

88.071 Relief from the above provisions.—Any obligor contemplated by §88.061 who submits to the jurisdiction of the court of such other state and complies with the court's order

of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.

History.—§7, ch. 29901, 1955.

88.081 **Choice of law.**—Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History.—§8, ch. 29901, 1955.

88.091 **Remedies of a state or political subdivision thereof furnishing support.**—Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

History.—§9, ch. 29901, 1955.

88.101 **How duties of support are enforced.**—All duties of support are enforceable by complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the circuit court.

History.—§10, ch. 29901, 1955.

88.111 **Contents of complaint for support.**—The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number.

History.—§11, ch. 29901, 1955.

88.121 **Official to represent plaintiff in proceeding initiated in this state.**—The state attorney, upon the request of the court, or of the state department of public welfare, or of the state welfare director, or of the district board of public welfare, shall represent the plaintiff in any proceeding initiated in this state under this chapter.

History.—§12, ch. 29901, 1955.

88.131 **Petition for a minor.**—A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

History.—§13, ch. 29901, 1955.

88.141 **Duty of court of this state as initiating state.**—If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of the complaint, its certificate and this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

History.—§14, ch. 29901, 1955.

88.151 **Costs and fees.**—

(1) Where the action is brought by or through a state, or an agency thereof, no clerk's fees shall be required of it, but if an order be entered requiring the defendant to pay the costs, as hereinafter authorized, such order shall be deemed to include the clerk's fees for services rendered in an action so brought.

(2) Regardless of whether this state is the initiating state or the responding state, an individual plaintiff shall be entitled to have performed in this state the necessary services of the clerk, sheriff and court reporter in any proceedings under this chapter including contempt proceedings, without paying any costs or fees or giving any security therefor.

(3) If this state be the responding state and if the court enters an order requiring the defendant to furnish support or reimbursement therefor, the court may also by order or orders require that the defendant pay all costs, charges and fees in the proceedings incurred in this state, including costs, charges and fees incurred in contempt proceedings. If no order requiring the payment of the costs by the defendant is made under this subsection, or if such an order is made and the court thereafter finds that compliance therewith cannot or should not be compelled, the court may in its discretion order that the costs, charges and fees, except clerk's fees incurred in an action brought by or through the state or an agency thereof, to be paid by the county.

(4) If this state be the initiating state the court may in its discretion order that the costs, charges and fees incurred in this state be paid by the county.

History.—§15, ch. 29901, 1955; (1), (2), (4) §1, ch. 57-405.

88.161 **Jurisdiction by arrest.**—When the court of this state, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or as a responding state, ob-

tain the body of the defendant by appropriate process.

History.—§16, ch. 29901, 1955.

88.171 **State information agency.**—The state department of public welfare is hereby designated as the state information agency under this chapter, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law.

(2) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this chapter.

History.—§17, ch. 29901, 1955.

88.181 **Duty of the court of this state as responding state.**—When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the state attorney, whose duty it shall be to carry on the proceedings, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.

History.—§18, ch. 29901, 1955.

88.191 **Further duty of responding court.**—If a court of this state, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating state.

History.—§19, ch. 29901, 1955.

88.201 **Procedure.**—The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

History.—§20, ch. 29901, 1955.

88.211 **Order of support.**—If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

History.—§21, ch. 29901, 1955.

88.221 **Responding state to transmit copies to initiating state.**—The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

History.—§22, ch. 29901, 1955.

88.231 **Additional powers of court.**—In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(2) To require the defendant to make at specified intervals to the clerk of the court or the obligee such payments as are specified by the Florida court and to report personally to such clerk at such times as may be deemed necessary.

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

History.—§23, ch. 29901, 1955.

88.241 **Additional duties of the court of this state when acting as a responding state.**—The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(2) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

History.—§24, ch. 29901, 1955.

88.251 **Additional duty of the court of this state when acting as an initiating state.**—The court of this state when acting as an initiating state shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

History.—§25, ch. 29901, 1955.

88.261 **Evidence of husband and wife.**—Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History.—§26, ch. 29901, 1955.

88.271 **Hearings and rules of evidence.**—Hearings shall be conducted before the judge without a jury. They shall be conducted in such informal manner as will best conduce to the ends of justice, and the judge shall not be bound by the technical rules of evidence.

History.—§27, ch. 29901, 1955.

88.281 **Application of payments.**—Any order of support issued by a court of this state when acting as a responding state shall not supersede any previous order of support issued in a

divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

History.—§28, ch. 29901, 1955.

88.291 **Effect of participation in proceeding.**—Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

History.—§29, ch. 29901, 1955.

88.301 **Repealer.**—Chapter 27996, laws of Florida, acts of 1953, (Former §§88.01-88.12), known as the "uniform support of dependents" law, is hereby repealed, except, however, that support actions heretofore commenced may be carried forward either under said law or under this uniform reciprocal enforcement of support law.

History.—§31, ch. 29901, 1955.

88.311 **Uniformity of interpretation.**—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§32, ch. 29901, 1955.

88.321 **Additional remedies.**—If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§88.331-88.371.

History.—§1, ch. 59-393.

88.331 **Registration.**—The obligee may register the foreign support order in a circuit court of this state in the manner, with the effect and for the purposes herein provided.

History.—§1, ch. 59-393.

88.341 **Registry of foreign support orders.**—The clerk of the circuit court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

History.—§1, ch. 59-393.

88.351 **Petition for registration.**—The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the complaint subject only to subsequent order of confirmation.

History.—§1, ch. 59-393.

88.361 **Jurisdiction and procedure.**—The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

History.—§1, ch. 59-393.

88.371 **Effect and enforcement.**—The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this state.

History.—§1, ch. 59-393.

TITLE VII

EVIDENCE

CHAPTER 90

WITNESSES

90.01 Oaths, affidavits and acknowledgments; who may take or administer; requirements.—

(1) IN THIS STATE.—Oaths, affidavits and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers), may be taken or administered by or before any judge, clerk or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner, any justice of the peace or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered before any judge, clerk or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES AND DISTRICTS OF THE UNITED STATES.—Oaths, affidavits and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory or district; provided, however, such officer or person is authorized under the laws of such state, territory or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) IN FOREIGN COUNTRIES.—Oaths, affidavits and acknowledgments, required or authorized by the laws of this state, may be taken or administered, in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

History.—§1, ch. 48, 1845; RS 1299; GS 1730; RGS 2945; CGL 4669; §1, ch. 23156, 1945; §7, ch. 24337, 1947.

90.011 Oaths, affidavits and acknowledgments; taken or administered by commissioned officer of U. S. armed forces.—

(1) Oaths, affidavits and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army, air force or marine corps or ensign or higher in the navy or coast guard when the person required or authorized to make and execute the oath, affidavit or acknowledgment is a member of the armed forces of the United States, the spouse of such member or a person whose duties

require his presence with the armed forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

History.—§§1-3, ch. 61-196.

90.02 Affirmation equivalent to oath.—Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

History.—§1300 RS 1892; GS 1731; RGS 2946; CGL 4670.

90.04 Witnesses; competency of wife or husband.—In the trial of civil actions in this state, neither the husband nor the wife shall be excluded as witnesses, where either the said husband or wife is an interested party to the suit pending.

History.—§1, ch. 3124, 1879; §1, ch. 4029, 1891; GS 1502; RGS 2702; CGL 4369.
cf.—§932.31 Competency of witnesses in criminal cases.

90.05 Witnesses; as affected by interest.—No person, in any court, or before any officer acting judicially, shall be excluded from testifying as a witness by reason of his interest in the event of the action or proceeding, or because he is a party thereto; provided, however, that no party to such action or proceeding, nor any person interested in the event thereof, nor any person from, through or under whom any such party, or interested person, derives any interest or title, by assignment or otherwise, shall be examined as a witness in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic, against the executor, or administrator, heir at law, next of kin, assignee, legatee, devisee or survivor of such deceased person, or the assignee or committee of such insane person or lunatic; but this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor or committeeman shall be examined on his own behalf, or as to which the testimony of such deceased person or lunatic shall be given in evidence.

History.—§1, ch. 1983, 1874; RS 1095; GS 1505; RGS 2705; CGL 4372.

90.06 Witnesses; atheists may testify.—Atheists, agnostics, and all persons who do not believe in the doctrine of future rewards and punishments, shall be permitted to testify in any of the courts of this state. They may solemnly affirm instead of taking an oath, and false testifying by said persons shall be perjury, as in case of other witnesses, and shall be punished as now prescribed by law.

History.—§§1, 2, ch. 4036, 1891; GS 1503; RGS 2703; CGL 4370.

90.07 Witnesses; conviction of perjury disqualifies.—A conviction of perjury shall make incompetent any person to testify in any court in this state, even if such person has been pardoned.

History.—§72, Act Nov. 23, 1828; §6, Act Mar. 10, 1845; §54, ch. 1096, 1861; §1096 RS 1892; §1, ch. 4966, 1901; GS 1504; RGS 2704; CGL 4371.

90.08 Witnesses; conviction of other crimes as disqualification.—No person shall be disqualified to testify as a witness in any court of this state by reason of conviction of any crime except perjury, but his testimony shall be received in evidence under the rules, as any other testimony; provided, however, evidence of such conviction may be given to affect the credibility of the said witness, and that such conviction may be proved by questioning the proposed witness, or, if he deny it, by producing a record of his conviction. Testimony of the general reputation of said witness may likewise be given in evidence to affect his credibility.

History.—§72, Act Nov. 23, 1828; §25, Act Mar. 15, 1843; §6, Act Mar. 10, 1845; §54, ch. 1096, 1861; §§1096, 1097 RS 1892; §1, ch. 4966, 1901; GS 1506; RGS 2706; CGL 4373; §7, ch. 22858, 1945.

90.09 Impeachment of witness by party producing.—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness prove adverse, contradict him by other evidence, or prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

History.—§52, ch. 1096, 1861; RS 1101; GS 1510; RGS 2710; CGL 4377.

90.10 Impeachment of witness by adverse party.—If a witness, upon cross examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to witness, and he must be asked whether or not he made such statements.

History.—§53, ch. 1096, 1861; RS 1102; GS 1511; RGS 2711; CGL 4378.

90.11 Witnesses; procurement, subpoena, etc.—When the attendance of any person shall be required as a witness in any court, in any

cause pending therein, the clerk of the said court, or the court if it has no clerk, on application, shall issue a writ of subpoena, directed to the person whose attendance shall be required, when such person resides in the state; provided, however, in justice of the peace courts, such witness must reside within twenty-five miles of the place where the court sits.

History.—§38, Nov. 23, 1828; RS 1098; §1, ch. 4397, 1895; GS 1507; RGS 2707; CGL 4374.

90.14 Witnesses; pay.—Witnesses in all cases, civil and criminal, in the circuit courts, county courts, county judge's courts, criminal courts of record now or hereafter created, and witnesses summoned before any referee, arbitrator or master in chancery, shall receive for each day's actual attendance three dollars, and also five cents per mile for actual distance traveled to and from the courts; in courts of justices of the peace, one dollar per day and the same mileage as in the circuit court.

History.—§5, ch. 3106, 1879; RS 1103; §1, ch. 4387, 1895; GS 1512; §2, ch. 5649, 1907; §1, ch. 6905, 1915; §1, ch. 7280, 1917; RGS 2712; CGL 4379; §1, ch. 29927, 1955.

90.141 Law enforcement officers; per diem, expenses.—Any law enforcement officer of any municipality, county or the state who shall appear as an official witness to testify at any hearing or law action in any court of this state as a direct result of his employment as a law enforcement officer shall be entitled to per diem and traveling expenses at the same rate provided for state employees under §112.061.

History.—§1, ch. 63-508.

90.15 Manner of obtaining compensation.—Compensation shall be paid to the witness by the party in whose behalf he is summoned, and the prevailing party may tax the same as costs against his adversary; but no person shall be compelled to attend court as a witness in any civil cause unless the party in whose behalf he is summoned shall first pay him the amount of compensation to which he would be entitled for mileage and per diem for one day, or the same is deposited with the executive officer of said court, and he shall not be compelled to attend thereafter unless paid in advance. But if any witness should serve without payment in advance, at the completion of his services he may exhibit his account for compensation, and when the same shall have been taxed and approved by the court wherein the services have been rendered, such bill shall have the force and effect of judgment and execution against the party in whose behalf the witness was summoned, and be collected by the sheriff as in other cases of execution. Any witness who shall charge and receive more than is really due shall forfeit and pay to the party injured four times the amount so unjustly claimed; and if he shall willfully make out his account for more than is lawfully due, he shall forfeit his compensation.

History.—§41, Nov. 11, 1828; RS 1104; §4, ch. 4387, 1895; GS 1513; RGS 2713; CGL 4380.

90.23 Witnesses, expert.—

(1) The term "expert witness" as used herein applies exclusively to a person duly and regularly engaged in the practice of his profession, who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill in respect of the subject upon which he is called to testify.

(2) The testimony of any expert or skilled witness may be taken at any time before the trial of any civil cause in any of the courts of this state, in equity or at common law, upon reasonable notice, in the manner now provided for taking depositions de bene esse, notwithstanding the residence of the witness. Provided, however, that the court may, upon proper objection by opposing counsel, pursuant to due notice, disallow the taking of such deposition, and require the attendance of such witness in person at the trial of the cause, if the court finds that the personal appearance of such witness at the trial shall be necessary to insure a fair and impartial trial. Such objection shall be made to the court prior to the taking of the deposition, otherwise the same may be used in evidence, if otherwise admissible.

(3) An expert or skilled witness, whose deposition is taken, shall be allowed a witness fee in such reasonable amount as the trial judge may determine, and the same shall be taxed as costs.

(4) Nothing herein contained shall prevent the taking of any deposition as otherwise provided by law.

History.—§§1-4, ch. 23896, 1947; (1)-(3), §18, ch. 29737, 1955.

90.231 Expert witnesses; fee.—

(1) The term "expert witness" as used herein shall apply to any witness who offers himself in the trial of any civil action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court.

(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in the amount of ten dollars per hour or such amount as the trial judge may deem reasonable, and the same shall be taxed as costs.

History.—§§1, 2, ch. 25090, 1949; §19, ch. 29737, 1955; §1, ch. 59-201.

cf.—See City of Daytona Beach v. Humphreys, 53 So. 2d. 871.

90.241 Ministers as witnesses; confidential communications.—

(1) No minister of the gospel, no priest of the Catholic church, no rector of the Episcopal church, no ordained rabbi, no practitioner of Christian Science, and no regular minister of religion of any religious organization or denomination usually referred to as a church, over the age of twenty-one years, shall be allowed or required in giving testimony as a witness in any litigation, to disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional

capacity, and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

(2) Such prohibition shall not apply to cases where the communicating party, or parties, waives the right so conferred by personal appearance in open court so declaring, or by an affidavit properly sworn to by such a one, or ones, before some person authorized to administer oaths, and filed with the court wherein litigation is pending.

(3) Nothing in this section shall modify or in anywise change the law relative to "hearsay testimony."

(4) It shall be the duty of the judge of the court wherein such litigation is pending, when such testimony as herein prohibited is offered, to determine whether or not that person possesses the qualifications which prohibit him from testifying to the communications sought to be proved by him.

History.—§§1-4, ch. 59-144.

90.25 Uniform foreign depositions law.—(1) This section may be cited as the uniform foreign depositions law.

(2) Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

(3) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History.—§§1-3, ch. 59-250.

CHAPTER 92

EVIDENCE, ADMISSIBILITY

92.01 Statutes; acts and resolutions of this state as evidence.—Printed copies of all statutes, acts and resolutions of the legislature of this state, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence of such statutes, acts and resolutions, in all courts and on all occasions whatsoever. And such copies of private acts shall be so admitted without being specially pleaded.

History.—§6, Nov. 21, 1828; §27, Mar. 15, 1843; RS 1105; GS 1514; RGS 2714; CGL 4381.

92.02 Written laws of the United States and of the several states.—Printed copies of the statute laws of the United States, and of any of the several states and territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts and on all other occasions in this state as prima facie evidence of such laws.

History.—§28, Mar. 15, 1843; RS 1106; GS 1515; RGS 2715; CGL 4382.

92.03 The unwritten law of the United States and of the several states, etc.—The unwritten or common law of the United States, or any of the states or territories thereof, may be proved as facts by parol evidence; and the books of reports in cases adjudged in their courts may also be admitted as evidence of such law.

History.—§29, Mar. 15, 1843; RS 1107; GS 1516; RGS 2716; CGL 4383.

92.031 Judicial notice of foreign laws; uniform act.—

(1) Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.

(2) The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

(3) The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

(4) Any party may also present to the trial court any admissible evidence of such laws, but,

to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

(5) The law of a jurisdiction other than those referred to in subsection (1) shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice.

(6) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(7) This section may be cited as the uniform judicial notice of foreign law act.

(8) This section shall be deemed cumulative and in addition to all other laws governing proof or judicial notice of the laws of other jurisdictions.

History.—§§1-8, ch. 25110, 1949.

92.032 Foreign documents; procedure for admitting in evidence.—A copy of any official foreign document or record or entry therein, certified by the lawful custodian thereof, shall be admissible in evidence in all courts of this state in all cases now pending or hereafter commenced to prove the contents thereof when accompanied by a certificate of an official of such foreign government that such lawful custodian has certified such copy in his official capacity and in accordance with the laws of such foreign country and when this accompanying certificate is authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, that the person signing such accompanying certificate is such official of such foreign government and the signature appearing on such accompanying certificate is genuine.

History.—§1, ch. 26842, 1951.

92.04 Foreign laws.—The existence and the tenor or effect of all foreign laws may be proven as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law which is not accompanied by a copy of such code or statute.

History.—§30, Mar. 15, 1843; RS 1108; GS 1517; RGS 2717; CGL 4384.

92.05 Final judgments and decrees of circuit court.—All final judgments and decrees, heretofore or hereafter rendered and entered in the circuit courts of this state, and certified copies thereof shall be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees.

History.—§1, ch. 4723, 1899; GS 1522; RGS 2722; CGL 4390; §7, ch. 22858, 1945.

92.06 Judgments and decrees of U. S. district courts as evidence in state courts.—All final judgments and decrees heretofore or hereafter to be rendered and entered in the United States district courts of this state and certified copies thereof are declared to be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees.

History.—§1, ch. 14748, 1931; CGL 1936 Supp. 4391(1).

92.07 Judgments and decrees of this state as evidence.—The recitals in all judgments and decrees of the supreme court and of the several circuit courts of this state, when such judgment or decree appears regular and has been recorded as provided by law for more than twenty years, shall be admissible in evidence as prima facie proof of the truth of the facts so recited. Either party to any suit at law or equity may offer a properly certified copy of such judgment or decree entered and recorded more than twenty years prior to the institution of the suit in which the same is offered, and such copy shall be admissible in evidence as prima facie proof of the facts in said judgment or decree set forth; provided, however, the party offering the same shall at least ten days before the trial of the suit in which this copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the judgment or decree; provided, that nothing in this law shall render admissible in evidence any instrument of writing based on any judgment, deed of conveyance or power of attorney included in this law where any such instrument of writing has heretofore been brought in question in any action at law or in equity in any suit now pending or heretofore decided.

History.—§1, ch. 10111, 1925; CGL 4391.

92.08 Deeds and powers of attorney of record for 20 years or more as evidence.—The recitals in any deed of conveyance or power of attorney shall be admissible in evidence when offered in evidence by either party to any suit at law or in equity as prima facie proof of the truth of the facts therein recited, provided such deed of conveyance or power of attorney appears regular on its face and is a muniment in the chain of title under which the party offering the deed claims, and has been recorded as provided by law for more than twenty years prior to the institution of the suit in which it is offered; and provided further, that the party offering the deed of conveyance or power of attorney for such purposes shall at least ten days before the trial of the suit in which the said copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the deed or power of attorney. The original deed or power of attorney shall be offered unless the party offering the certified copy shall show that the original is not within the custody or control of the party offering the copy.

History.—§2, ch. 10111, 1925; CGL 4392.

92.09 Effect of reversal, etc., of such deeds, etc.—No copy of a judgment or decree shall be admitted in evidence as aforesaid when it shall be made to appear that such decree has been reversed, annulled, vacated, or set aside, or that the same in collateral proceedings has been successfully attacked. No deed shall be admitted in evidence as hereinbefore provided if it shall appear that the execution or validity of said deed has been successfully attacked in any proceedings to which the grantee therein named or those or any of them holding under such grantee has been a party or parties.

History.—§3, ch. 10111, 1925; CGL 4393.

92.10 Copies of records of courts.—Copies of the records and judicial proceedings of any court in this state, or of another state or territory, or of the United States, shall be admissible in evidence in all cases in this state, when authenticated by the attestation of the officer having charge of the records of such court, with the seal of such court annexed. And the recital by the person attesting that he has charge of such records shall be prima facie evidence that he has such charge.

History.—§26, Mar. 15, 1843; RS 1109; GS 1518; RGS 2718; CGL 4385.

92.11 Copies of wills and probates.—Copies of all wills and letters testamentary or of administration, recorded in any public office of record in this state, when duly certified by the keeper of said records, shall be received as evidence in all the courts of record in this state; and the probate of wills granted in any of the United States or territories thereof, or in any foreign state, duly authenticated and certified according to the laws of the state or territory, or of the laws of the foreign country or state where such probate may have been granted, shall likewise be received in evidence in all the courts of record in this state.

History.—§12, Nov. 20, 1828; RS 1110; GS 1519; RGS 2719; CGL 4386.

92.12 Copies of evidence of records of public officers in general.—In all cases where any record, pleading, document, deed, conveyance, paper or instrument of writing is, or may be, required or authorized to be made or filed or recorded in any public office of this state or of any county thereof, a copy thereof, duly certified under the hand and seal of office (if there be seal of office, and if there be no seal of office, then under the private seal of the officer having the custody or control of the same), to be a true and correct copy of the original, on file or of record in his office, shall in all cases and in all courts and places be admitted and received in evidence with the like force and effect as the original thereof might be. Nothing herein contained shall be so construed as to prevent any court or judge before whom such copies may be offered in evidence from requiring the party offering the same to produce or account for the original of such copy, if the same shall be deemed necessary or proper for the attainment of justice.

History.—§1, ch. 81, 1846; RS 1111; GS 1520; RGS 2720; CGL 4387.

92.13 Certified copies of records of certified copies as evidence.—Certified copies of the record of certified copies of deeds, mortgages, powers of attorney and other instruments referred to in §695.19 shall have the same effect as to notice and all other purposes whatsoever as the record of the original has or can have; and certified copies of the record of such certified copies shall be admissible and may be used in evidence in the same manner and with like effect and under the same conditions as certified copies of the record of the original instrument.

History.—§2, ch. 11989, 1927; CGL 4388.

92.14 United States deeds and patents and copies thereof as evidence.—Deeds and patents issued by the United States government and photographic copies made by authority of said government from its records thereof in the general land office, embracing lands in this state, and certified copies of the record thereof made in this state may be used in evidence in the courts of this state subject to the same rules that are applicable to the admission in evidence of other deeds and certified copies of the record thereof.

History.—§3, ch. 8565, 1921; CGL 5716.

92.15 Receipts in cases involving title from United States.—A receipt of a receiver of a United States land office shall in all cases be prima facie evidence that the title to the land covered by said receipt has passed from the United States to the person named in the receipt as having paid for the said land.

History.—§1, ch. 3915, 1889; RS 1119; GS 1537; RGS 2737; CGL 4409.

***92.16 Certificates of commissioner of agriculture respecting the ownership, conveyance of and other facts in connection with public lands.**—A certificate of the commissioner of agriculture, under his official seal, with respect to the present or past ownership by the state or by the school, seminary or internal improvement funds of any lands in this state, or of the conveyance or transfer of any such lands by said trustees of the internal improvement fund or of the state board of education or other officers or boards of the state having power to convey any such lands, or any facts shown by the public records of his office with respect to any of such lands, or the transfer, ownership or conveyance of the same, shall be prima facie evidence of the facts therein certified, and every such certificate shall be admissible in evidence in all of the courts of this state. All such certificates shall, without other or further proof, be admitted to record and recorded in the deed books of the respective counties of this state where the lands mentioned in such certificates lie, and the record of every such certificate shall have the same force and effect for all purposes as the record of deeds.

History.—§1, ch. 2063, 1875; RS 1112; GS 1524; §1, ch. 7381, 1917; RGS 2724; CGL 4395; §7, ch. 22858, 1945.

***92.16 Certificates of trustees of the internal improvement fund respecting the ownership, conveyance of and other facts in connection with public lands.**—A certificate of the trustees of the internal improvement fund under their official seal,

with respect to the present or past ownership by the state or by the school, seminary or internal improvement funds of any lands in this state, or of the conveyance or transfer of any such lands by said trustees of the internal improvement fund or of the state board of education or other officers or boards of the state having power to convey any such lands, or any facts shown by the public records of his office with respect to any of such lands, or the transfer, ownership or conveyance of the same, shall be prima facie evidence of the facts therein certified, and every such certificate shall be admissible in evidence in all of the courts of this state. All such certificates shall, without other or further proof, be admitted to record and recorded in the deed books of the respective counties of this state where the lands mentioned in such certificates lie, and the record of every such certificate shall have the same force and effect for all purposes as the record of deeds.

History.—§3, ch. 63-294.

*Note.—This section amended by Ch. 63-294 subject to ratification of amendment to §26, Art. IV, state constitution at 1964 general election.

***92.17 Effect of seal of commissioner of agriculture.**—The impression of the seal of the commissioner of agriculture upon any deed, agreement or contract, purporting to have been made by the trustees of the internal improvement fund, or by the members of the board of education, or by the commissioner of agriculture, shall entitle the same to be received in evidence in all courts and in all proceedings in this state.

History.—§1, ch. 3127, 1879; §§1, 2, ch. 3877, 1889; RS 1114; GS 1526; RGS 2726; CGL 4397.

*92.17 Effect of seal of trustees of internal improvement fund.—The impression of the seal of the trustees of the internal improvement fund upon any deed, agreement or contract, purporting to have been made by the trustees of the internal improvement fund, or by the members of the board of education, shall entitle the same to be received in evidence in all courts and in all proceedings in this state.

History.—§4, ch. 63-294.

*Note.—This section amended by ch. 63-294 subject to ratification of amendment to §26, Art. IV, state constitution at 1964 general election.

92.18 Certificates of state officers.—The certificate of any state officer, under his seal of office, as to any official act occurring in the course of the official business of the office in which he presides, shall be prima facie evidence of such fact.

History.—§1, ch. 3250, 1881; RS 1113; GS 1525; RGS 2725; CGL 4396.

92.19 Portions of records as evidence.—In all cases where any certified copy of any record, pleading, document, deed, conveyance, paper or instrument in writing, involving the title to real estate shall be lawfully admissible in evidence in any of the courts of this state, a certified copy of such portions of such instrument as shall contain the essential parts thereof and only such portion of the descriptive matter thereof as shall be involved in the case on trial, shall likewise be admissible in evidence; and in no case shall it be necessary to include in such certified copies descriptive matter not involved in the case in which such copy is offered in evidence.

History.—§1, ch. 10237, 1925; CGL 4400.

92.20 Certificates issued under authority of congress as evidence.—Every certificate issued under authority of the congress and every duly certified copy thereof under the seal of the United States governmental department having the authority to issue such certified copy, relating to the grade, classification, quality or condition of agricultural products shall be accepted in any court of this state as prima facie evidence of the true grade, classification, condition or quality of such agricultural product at the time of its inspection.

History.—§1, ch 13568, 1929; CGL 1936 Supp. 4400(1).

92.21 Certificate of health officer in certain cases.—Every owner, agent or lessee of any building or buildings used for the purpose of providing board and lodgings for the entertainment of guests, containing ten rooms or more, who shall have obtained and posted a certificate as provided by law, may present the same as evidence in his defense in any suit in any of the courts in this state in which damages are claimed for injuries from alleged unsanitary conditions of said buildings and premises.

History.—§4, ch. 4606, 1899; GS 1527; RGS 2727; CGL 4398.

92.22 Use of former bills of exceptions as evidence; use of evidence given on former trial.—In the event it be made to appear to the satisfaction of the court that any evidence used at a trial of a civil case, whether oral or written, and incorporated in a bill of exceptions, or incorporated in the record proper can not be had, then the bill of exceptions taken at the trial, or the evidence incorporated in the record of the trial, may be used as evidence upon any subsequent trial or hearing of the case, or in any other civil cause or civil proceeding, as to any matter in issue at a previous trial or hearing; and, further, in the event that such evidence is not so preserved as before stated, then the same may be used at a subsequent trial or hearing, or in any other civil cause or civil proceeding involving substantially the same issue; if (1) such evidence has at such former trial been reported stenographically or reduced to writing in the presence of the court; (2) that the party against whom the evidence is offered, or his privy, was a party on the former trial; (3) that the issue is substantially the same in both cases; (4) that a substantial reason is shown why the original witness or document is not produced; and, (5) that the court is satisfied that the report of such evidence taken at such former trial is a correct report.

History.—§1, ch. 4135, 1893; GS 1523; §1, ch. 5897, 1909; §10, ch. 7838, 1919; RGS 2723; §1, ch. 8572, 1921; CGL 4394.

92.23 Rule of evidence in suits on fire policies for loss or damage to building.—In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire, hereafter issued or renewed, the insurer shall not be permitted to deny that the property insured was worth, at the time of insuring it by the policy, the full sum insured therein on such property.

History.—§2, ch. 4677, 1899; GS 1528; RGS 2728; CGL 4399.

92.24 Certain tax deeds prima facie evidence of title.—All tax deeds issued under and pursuant to the provisions and in the form prescribed in and by the following acts and statutes of this state, to-wit: §10, chapter 4888,

acts 1901 and said section as amended by §1, chapter 5152, acts 1903; §577 of the general statutes of Florida, 1906; §779 of the revised general statutes of Florida, 1920, and said section as amended by §12, chapter 14572, acts 1929; are declared to be prima facie evidence of the regularity of the proceedings from the valuation of the land described in such deeds respectively, by the assessors, to the date of the deed or deeds inclusive, and shall be so received in evidence in any and all the courts of this state, without regard to date of execution.

History.—§1, ch. 5150, 1903; §1, ch. 5152, 1903; GS 1521; §12, ch. 14572, 1929; RGS 2721; CGL 4389.

92.25 Records destroyed by fire; use of abstracts as evidence.—Whenever in the trial of any suit, or in any proceeding in any court of this state, it shall be made to appear that the original of any deed or other instrument of writing, or of any record of any court relating to any land, the title thereof or any interest therein being in controversy in such suit or proceeding, is lost or destroyed, or not within the power of the party to produce the same, and that the record thereof has been heretofore destroyed by fire, and that no certified copy of such record is in the possession or control of such party, it is lawful for such party, and the court shall receive as evidence, any abstract of title, or letter press copy thereof made in the ordinary course of business prior to such loss or destruction; and it is also lawful for any such party to offer, and the court shall receive as evidence, any copy, extract or minutes from such destroyed records, or from the original thereof, which were at the date of such destruction in the possession of any person or persons then engaged in the business of making abstracts of titles for others for hire.

History.—§1, ch. 4951, 1901; GS 1529; RGS 2729; CGL 4401.

92.26 Records destroyed by fire; use of sworn copies as evidence.—A sworn copy of any writing admissible under the above section made by the person or persons having possession of such writing shall be admissible in evidence; provided, the party desiring to use such sworn copy, as aforesaid, shall have given the opposite party a reasonable opportunity to verify the correctness of such copy; and provided, that no abstract of title or letter press copy thereof, extract or minutes or copy made admissible in evidence by this section, shall be so admitted by virtue hereof unless a copy thereof shall have been served on the opposite party, or his attorney or counsel, at least ten days before the same is offered in evidence. Nothing herein shall be construed to prevent the impeachment of such evidence, or its exclusion by the court for good and sufficient cause.

History.—§1, ch. 4951, 1901; GS 1530; RGS 2730; CGL 4402.

92.27 Records destroyed by fire; effect of abstracts in evidence.—In all cases in which any destroyed abstracts, copies, minutes, extracts, maps or plats, or copies thereof, purchased and placed in the clerk's office, as provided by law, or which are made admissible in evidence under any of the provisions of this revision, whether purchased or placed in such office or not, shall be received in evidence under this law, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in actual possession of the land or lot described therein at the time of the destruction of the record of such county, claiming title thereto, otherwise than under sale for taxes or special assessments) be presumed to have been executed and acknowledged according to law; and all sales under powers, and all judgments, decrees and legal proceedings, and all sales thereunder (sale for taxes and assessments, and judgments and proceedings for the enforcement of taxes and assessments excepted) shall be presumed to be regular and correct, except as against the person or persons in this section above mentioned and excepted.

History.—§4, ch. 4951, 1901; GS 1531; RGS 2731; CGL 4403.

92.28 Records destroyed by fire; land title suits; what may be received in evidence.—In all suits or proceedings concerning any land, or any estate, interest or right in, or any lien or incumbrance upon the same, when it shall be made to appear that the original of any deed, conveyance, map, plat or other written or record evidence has been lost or destroyed, or is not in the power, custody or control of the party wishing to use it on the trial to produce same, and the record thereof has been heretofore destroyed by fire, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of any deed, conveyance, map, plat record, or other written evidence so lost or destroyed; provided, that the testimony of the parties themselves shall be received only in such cases, and subject to all the qualifications in respect to such testimony as now provided by law; and provided further, that any writing in the hands of any person or persons, which may become admissible in evidence under the provisions of this section, or any part of this law, shall be rejected and not admitted as evidence, unless the same appear upon the face thereof without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same shall be explained to the satisfaction of the court, and appear fairly and honestly made in the ordinary course of business.

History.—§5, ch. 4951, 1901; GS 1532; RGS 2732; CGL 4404.
cf.—§831.04 Penalty for changing record.

92.29 Photographic copies as evidence.—Photographic reproductions made by any federal, state, county or municipal governmental board, department or agency, in the regular course of business, of any original record, document, paper or instrument in writing, which is, or may be, required or authorized to be made or filed or recorded with said board, department or agency shall in all cases and in all

courts and places be admitted and received as evidence with a like force and effect as the original would be, whether said original record, document, paper or instrument in writing is in existence or not.

History.—§1, ch. 20866, 1941.

92.30 Presumption of death; official findings as evidence.—A written finding of presumed death, made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such findings, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P. L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U. S. C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance.

History.—§1, ch. 22866, 1945.

92.31 Missing persons; prisoners; etc.; official reports as evidence.—An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in §92.30, or by any other law of the United States to make same, shall be received in any court, office or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be.

History.—§2, ch. 22866, 1945.

92.32 Official findings and reports; presumption of authority to issue or execute.—For the purposes of this law, any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described above, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

History.—§3, ch. 22866, 1945.

92.33 Written statement concerning injury to person or property; admission as evidence.—Every person who shall take a written statement by any injured person with respect to any accident or with respect to any injury to person or property shall, at the time of taking such statement, furnish to the person making such statement a true and complete copy thereof. Any person having taken, or having possession of any written statement or a copy of such statement, by any injured person with respect to any accident or with respect to any injury to person or property shall, at the request of the person who made such statement or his personal representative, furnish the person who made such statement or his personal representative a true and complete copy thereof. No written statement by an injured person shall be admissible in evidence or otherwise used in any manner in any civil action relating to the subject matter thereof unless it shall be made to appear that a true and complete copy thereof was furnished to the person making such statement at the time of the making thereof, or, if it shall be made to appear that thereafter a person having possession of such statement refused, upon request of the person who made the statement or his personal representatives to furnish him a true and complete copy thereof.

History.—§1, ch. 26482, 1951.

92.35 Uniform photographic copies of business and public records as evidence law.—

(1) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, micro-film, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(2) This section shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

(3) This section may be cited as the uniform photographic copies of business and public records as evidence act.

History.—§§1-3, ch. 26901, 1951.

cf.—§119.04 Photographing and destruction of public records; alternative procedure.

§321.23 Department of public safety records, photographing; use as evidence.

92.36 Business records as evidence; uniform act.—

(1) The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(2) A record of an act, condition or event, shall, in so far as relevant, be competent evi-

dence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

(3) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(4) This section may be cited as the uniform business records as evidence act.

(5) This section shall be deemed cumulative and in addition to all other laws governing shop books, books of account and business records as evidence.

History.—§§1-5, ch. 25111, 1949; tr. §90.24.

92.37 Books of account as evidence.—In all suits the shop books and books of account of either party, in which the charges and entries shall have been originally made, shall be admissible in evidence in favor of such party; but the credibility of such evidence shall be judged of by the jury in case of a trial at law, and by the court in case of a hearing in equity.

History.—§1, ch. 662, 1854; RS 1120; GS 1538; RGS 2738; CGL 4410; tr. 90.21, 1959.

92.38 Comparison of disputed writings.—Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by the witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the jury, or to the court in case of a trial by the court, as evidence of the genuineness, or otherwise, of the writing in dispute.

History.—§55, ch. 1096, 1861; RS 1121; GS 1539; RGS 2739; CGL 4411; tr. §90.20, 1959.

92.39 Evidence of individual's claim against the state in suits between them.—In suits between the state and individuals, no claim for a credit shall be allowed upon trial, but such as shall appear to have been presented to the comptroller for his examination, and by him disallowed in whole or in part, unless it shall be proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the comptroller's office by unavoidable accident.

History.—§4, Feb. 10, 1837; RS 1122; GS 1540; RGS 2740; CGL 4412; tr. §90.22, 1959.

TITLE VIII

LIMITATIONS

CHAPTER 95

LIMITATIONS OF ACTIONS; ADVERSE POSSESSION

95.02 Actions not affected by limitations.—This chapter shall not apply to any action by this state, or by any officer or persons in behalf of this state, or to any action by or on behalf of the trustees of the internal improvement fund, or the seminary or school fund, or the board of education of the state, or any county or municipal corporation, or school district within this state, or with respect to any moneys or property held or collected by any officer or trustee or his sureties.

History.—§20, ch. 1869, 1872; RS 1283; GS 1714; RGS 2927; CGL 4647.

95.021 Certain limitations on actions by state, county, or municipal corporation.—

(1) The provisions of existing law, whether provided for in this chapter or any other chapter, whereby an action is barred if not commenced within twenty years, shall apply to any action by the state, or any of its agencies, or by any officer or persons on behalf of the state or any of its agencies, or by any county or municipal corporation of the state.

History.—§1, ch. 28270, 1953; (2) §24, ch. 57-1.
cf.—§270.16 Preservation of equity of state in lands sold, etc.

95.03 Stipulations in contract shortening period of limitation illegal.—All provisions and stipulations contained in any contract whatever entered into after May 26, 1913 fixing the period of time in which suits may be instituted under any such contract, or upon any matter growing out of the provisions of any such contract, at a period of time less than that provided by the statute of limitations of this

state, are hereby declared to be contrary to the public policy of this state, and to be illegal and void. No court in this state shall give effect to any provision or stipulation of the character mentioned in this section.

History.—§§1, 2, ch. 6465, 1913; RGS 2391; CGL 4651.

95.04 Promise to pay debts barred, must be in writing.—Every acknowledgment of or promise to pay a debt barred by the statute of limitations, must be in writing and signed by the party to be charged.

History.—§1, ch. 4375, 1895; GS 1717; RGS 2930; CGL 4650.

95.05 Who may avail himself of disabilities.—No person shall avail himself of a disability unless it existed when the cause of action accrued.

History.—§17, Nov. 10, 1828; §17, ch. 1869, 1872; RS 1285; GS 1716; RGS 2929; CGL 4649.

95.06 Limitation as to new action after reversal of judgment.—If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal or writ of error, the plaintiff, or, if he die and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal.

History.—§16, Nov. 10, 1828; RS 1284; GS 1715; RGS 2928; CGL 4648.

95.07 Limitation, absence of defendant from state.—If, when the cause of action shall accrue against a person, he is out of the state, the action may be commenced within the term herein limited after his return to the state; and if after the cause of action shall have accrued he depart from the state, the time of his absence shall not be part of the time limited for the commencement of the action.

History.—§14, ch. 1869, 1872; RS 1284; GS 1715; RGS 2928; CGL 4648.

95.08 Limitation of claims against county.—Every claim against any county shall be presented to the board of county commissioners within one year from the time said claim shall become due, and shall be barred if not so presented.

History.—§3, ch. 2086, 1877; RS 589; GS 785; RGS 2941; CGL 4665.

95.09 Limitation of certain claims of the state or its subdivisions.—No suit or action either in equity or at law by injunction, mandamus, quo warranto, or otherwise, shall be commenced or maintained whereby to attack, set aside, or invalidate any act or instrument in writing, either by recorded motion, resolution or ordinance, heretofore or hereafter passed, or adopted, or entered into by the state, any county, municipality, or political subdivision thereof, whereby there has been compromised, settled, satisfied, canceled, released, discharged, or exonerated, any claim, demand, bank deposit, debt, obligation, or chose in action, due the state, any county, municipality, or political subdivision of the state unless such suit or action shall have been commenced within three years from the date of the act, resolution, ordinance or instrument so attacked.

History.—§1, ch. 18288, 1937; CGL 1940 Supp. 4665(1).

95.10 Limitation upon causes of actions arising out of the state.—When the cause of action has arisen in another state or territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this state.

History.—§18, ch. 1869, 1872; RS 1295; GS 1726; RGS 2940; CGL 4664.

95.11 Limitations upon actions other than real actions.—Actions other than those for the recovery of real property can only be commenced as follows:

(1) WITHIN TWENTY YEARS.—An action upon a judgment or decree of a court of record in the state, and an action upon any contract, obligation, or liability founded upon an instrument of writing under seal.

(2) WITHIN SEVEN YEARS.—An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States or of any foreign country.

(3) WITHIN FIVE YEARS.—An action upon any contract, obligation or liability founded upon an instrument of writing not under seal.

(4) WITHIN FOUR YEARS.—Any action for relief not specifically provided for in this chapter.

(5) WITHIN THREE YEARS.—

(a) An action upon a liability created by statute, other than a penalty or forfeiture;

(b) An action for trespass upon real property;

(c) An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property;

(d) An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(e) And an action upon a contract, obligation or liability not founded upon an instrument of writing, including an action for goods, wares and merchandise sold and delivered, and on store accounts.

(6) WITHIN TWO YEARS.—An action by another than the state upon a statute for a penalty or forfeiture; an action for libel, slander, assault, battery or false imprisonment; an action arising upon account of an act causing a wrongful death.

(7) WITHIN ONE YEAR.—

(a) An action by the state for a penalty or forfeiture under a penal act of the legislature;

(b) Suits for the recovery of wages, overtime, or damages and penalties accruing under laws respecting the payment of wages and overtime.

(8) IN CASE OF MUTUAL ACCOUNT.—In an action brought to recover a balance due upon a mutual, open and current account where there have been reciprocal demands between the

parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

(9) IN CASE OF BASTARDY PROCEEDINGS.—A bastardy proceeding may be instituted at any time until such illegitimate child reaches four years of age; providing however, that upon proof that a defendant has during the four years herein provided made payment of any money to the plaintiff in such proceeding the limitation herein shall, be deemed stayed for and during the period of time of such payments, and such action shall not be barred until four years after the date of the last payment.

History.—§10, ch. 1869, 1872; §1, ch. 3900, 1889; RS 1294; GS 1725; §10, ch. 7838, 1919; RGS 2939; CGL 4663; §1, ch. 21892, 1943; §7, ch. 24337, 1947; (5) (a) §24, ch. 57-1; (9) n. §1, ch. 59-188.

cf.—§§196.06, 196.09 Limitations upon actions to recover lands conveyed by tax deed.
§§350.32, 353.06, 356.09 Limitations on actions against common carriers for rate discrimination, freight claims and killing or injury of livestock, respectively.
§608.47, Limitations upon actions against stockholders for corporate debts.
§659.35, Bank statements; limitation on time for objections.
§§734.27, 734.29 Suspension of statutes of limitations, decedents' estates.
§768.04 Wrongful death minor child.

95.12 Real actions; limitations, generally.—No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action.

History.—§2, ch. 1869, 1872; RS 1287; GS 1718; RGS 2932; CGL 4652.

95.13 Real actions; possession by legal owner presumed.—In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action.

History.—§4, ch. 1869, 1872; RS 1289; GS 1720; RGS 2934; CGL 4654.

95.14 Real actions; limitation upon action founded upon title.—No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defense in respect to which such action is prosecuted or defense made, or unless it appear that the title to such premises was derived from the United States or the state, within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of the title from the state or the United States.

History.—§3, ch. 1869, 1872; RS 1288; GS 1719; RGS 2933; CGL 4653.

95.15 Real actions; no adverse possession against the state and its agencies.—Adverse possession shall not run against the state, or any state board or state agency, holding a purchase money mortgage on lands conveyed by the state, or any state board or state agency.

History.—§1, ch. 17107, 1935; CGL 1936 Supp. 4656(1).

95.16 Real actions; adverse possession under color of title; requirements.—Whenever it appears that the occupant, or those under whom he claims, entered into possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment for seven years, the premises so included shall be deemed to have been held adversely, except that, where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract; provided, that adverse possession commencing after December 31, 1945, shall not be deemed to be adverse possession under color of title unless and until the instrument of conveyance of the premises in question upon which such claim of title is founded shall be duly recorded in the office of the clerk of the circuit court of the county in which the premises are situated.

History.—§5, ch. 1869, 1872; RS 1920; GS 1721; §1, ch. 19253, 1939; RGS 2935; CGL 4655; §1, ch. 22897, 1945.

95.17 Definition of possession and occupation under color of title.—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in any of the following cases:

(1) Where it has been usually cultivated or improved; or

(2) Where it has been protected by a substantial enclosure. All contiguous land protected by such substantial enclosure shall be deemed to be premises included within the written instrument, judgment, or decree, within the purview of §95.16; or

(3) Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for the ordinary use of the occupant; or

(4) Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

History.—§6, ch. 1869, 1872; RS 1290; GS 1721; RGS 2935; CGL 4655; §2, ch. 19253, 1939; §2, ch. 22897, 1945.

95.18 Real actions; adverse possession without color of title; requirements.—Where it shall appear that there has been an actual continued occupation for seven years of premises under a claim of title exclusive of any other right, but not founded upon a written instrument, or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely; provided that during the period of seven years aforesaid the person so claiming adverse possession without color of title shall have within a year after entering into possession made a return of said property by proper legal description to the assessor of the county wherein situated and has subsequently, during each year paid all taxes theretofore or thereafter levied and assessed against the same and matured installments of special improvement liens theretofore or thereafter levied and assessed against the same by the state and county and by city or town, if such property be situated within any incorporated city or town, before such taxes become delinquent.

History.—§7, ch. 1869, 1872; RS 1291; GS 1722; RGS 2936; CGL 4656; §1, ch. 19254, 1939.

95.19 Definition of possession and occupation without color of title.—For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

(1) Where it has been protected by substantial enclosure; or,

(2) Where it has been usually cultivated or improved;

(3) Provided, however, no such land shall be deemed to have been held adversely under the provisions of subsections (1) and (2) above unless within one year after the entry by such adverse owner, he has returned the said property by proper legal description to the assessor of the county wherein situated, and has subsequently, during each year, paid all taxes theretofore or thereafter levied and assessed against the same and matured installments of special improvement liens theretofore or thereafter levied and assessed against the same by the state and county and by any city or town, if such property be situated within any incorporated city or town, before such taxes become delinquent, except that provision (3) shall not be applicable to suits pending on June 5, 1939.

History.—§8, ch. 1869, 1872; RS 1291; GS 1722; RGS 2936; CGL 4656; §2, ch. 12954, 1939.

95.20 Real actions; adverse possession against persons under disability.—If a person entitled to commence any action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents or services out of the same, be, at the time such title shall descend or accrue, either: (1) within the age of twenty-one years; (2) insane; or (3) imprisoned, the time during which said disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense made, within the period of seven years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

But adverse possession as hereinbefore defined for thirty years shall confer title even as against persons under the disabilities mentioned in this section.

A married woman may prosecute any action concerning her land, in her own name, and without joining her husband.

History.—§9, ch. 1869, 1872; RS 1292; GS 1723; RGS 2937; CGL 4657.

95.21 Real actions; adverse possession against lands purchased at sales made by executors, etc.—The title of any purchaser, or his assigns, who shall have held possession for three years, of any property, real or personal, purchased at any sale made by an executor, administrator, or guardian, shall not be questioned by any heir, distributee, or ward, upon the ground of any irregularity in the conveyance or of any insufficiency or irregularity in the court proceedings authorizing the same, whether jurisdictional or not; nor shall such title be questioned at any time by anyone who has received the money to which he was entitled, arising from such sale; provided, however, that nothing herein contained shall be deemed to bar an action for fraud, nor an action against the executor, administrator, or guardian for personal liability for loss or damage to any heir, distributee, or ward.

History.—§1, ch. 3134, 1879; RS 1293; GS 1724; RGS 2938; CGL 4658; §1, ch. 20954, 1941; §3, ch. 22897, 1945.

95.22 Limitation upon claims by remaining heirs, when deed made by one or more.—When any person owning lands, or any interest in lands in Florida, shall die, and a conveyance or conveyances shall be made by one or more of his or her heirs or devisees purporting to convey either singly or in the aggregate the entire interest of the deceased in such lands, or any part thereof, or the entire title thereto, then no person shall after seven years from the date of the record thereof, in the county where the lands lie, claim or recover the whole, or any part, of the real estate so conveyed.

Provided, however, that this section shall not apply to persons whose names appear of record, as devises under the will or as the heirs in proceedings brought to determine their identity, in the office of the county judge administering the estate of the decedent.

Provided further that minors whose rights might be barred hereby shall have until two years after attaining their majority to take proceedings to establish their rights.

Provided further that suit may be brought within the time limited in said original section 1, Chapter 10168, Acts of 1925, by an heir or

devisee of a decedent who died before the effective date of this law.

History.—§1, ch. 10168, 1925; CGL 4659; §14, ch. 20954, 1941.

95.23 Limitations where deed or will of record for twenty years or more.—After the lapse of twenty years from the record of any deed or the probate of any will purporting to convey lands no person shall assert any claim to said lands as against the claimants under such deed or will, or their successors in title.

After the lapse of twenty years all such deeds or wills shall be deemed valid and effectual for conveying the lands therein described, as against all persons who have not asserted by competent record title an adverse claim.

History.—§§1, 2, ch. 10171, 1925; CGL 4660, 4661.

95.24 Liability of cities and villages for damages to person or property.

(1) No action shall be brought against any city or village for any negligent or wrongful injury or damage to person or property unless brought within twelve months from the time of the injury or damages.

(2) The provisions of this section shall not be applicable to any action brought for negligent or wrongful injury or damage received prior to the effective date on which this section became a law.

History.—§§1, 2, ch. 20885, 1941.

95.241 Notice of claim required.—

(1) No suit arising out of any action in tort or sounding in tort shall be maintained against any municipal corporation of Florida unless written notice of the claim, giving time, place, and circumstances of the injury, is given the presiding officer of the governing body of the municipality or the city manager or the city clerk or recorder or the city attorney within thirty days of the occurrence of the injury or of the discovery of the injury. In the event that the requisite notice is not given within the prescribed period and the municipality or its agents are alleged to have actual notice of the injury, in order for the action to proceed the injured party must show to the satisfaction of the court having jurisdiction over the claim that the delay or failure to give the requisite notice has not been prejudicial to the municipality.

(2) The provisions of this act relating to the time for giving notice shall not impair the right of any municipality to extend the period within which the requisite notice may be given, nor to repeal any existing notice required by any municipality whether by charter, ordinance or otherwise.

History.—§§1, 2, ch. 61-503.

95.251 Effect of repeal of §95.25.—Chapter 61-489, repealing §95.25 July 1, 1961, does not apply to rights vested prior to the effective date of this act.

History.—§2, ch. 61-489.

95.26 Limitations where deed or will on record for ten years or more.—

(1) After the lapse of ten years from the record of any deed or the probate of any will purporting to convey lands, where it appears that the person or persons owning the land therein described had attempted to convey the title thereto, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person or persons signing such instruments, to the land therein described, as effectively as if there had been no lack of any seal or seals, witness or witnesses, defect in the acknowledgment, or the relinquishment of dower, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be admissible in evidence under §21, Art. XVI of the constitution of Florida.

(2) Provided, however, that this law shall not apply to any conveyance, the validity of which shall be contested or shall have been contested by suit commenced heretofore or within eighteen months of the effective date of this law.

(3) The word convey as used herein shall be construed as embracing the word devise whenever such construction may be necessary to give effect to this law.

(4) This law is intended to liberalize former curative acts; and is not to be construed as imposing, by implication, any technical requirements, upon the execution of any deed or will, not otherwise required by law; this law shall not be construed as repealing or amendatory of, but as cumulative to all laws touching the subject matter hereof and now in force and effect.

History.—§§1-4, ch. 21790, 1943.

95.27 Sections 95.16 and 95.17 retroactive.—The provisions of §§95.16 and 95.17 shall be applicable to lands heretofore and hereafter held adversely under color of title as therein defined; provided, however, that owners whose lands have been held adversely by others during that period of time between June 5, 1939, and June 11, 1945, shall have until December 31, 1945, within which to bring proceedings to obtain possession of such lands, if the seven-year period of possession has run or may run before said date.

History.—§4, ch. 22897, 1945.

95.28 Limitations; instruments encumbering real estate.—The lien of a mortgage or other instrument encumbering real estate (hereinafter referred to as mortgage), except mortgages and liens specified in §95.32, shall terminate and no action or proceeding of any kind shall begin to enforce or foreclose the mortgage after the expiration of the following periods, unless an extension of any such period shall have been effected in the manner provided in §95.29:

(1) If the final maturity of an obligation secured by a mortgage is ascertainable from the record of the mortgage, the period of limita-

tion shall be twenty years after the date of such maturity.

(2) If the final maturity of an obligation secured by a mortgage is not ascertainable from the record of the mortgage, the period of limitation shall be twenty years from the date of the mortgage.

(3) In all such obligations, including taxes paid by the mortgagee, the period of limitation shall be twenty years; provided, however that a mortgagee shall have no right of subrogation to the lien of the state, for taxes paid by said mortgagee to protect the security of his mortgage unless said mortgagee obtains an assignment from the state of the tax sales certificate, and, provided, further that the mere redeeming of the tax certificate shall be insufficient for such subrogation purposes.

If any provision of this section, or the application thereof to any set of circumstances, shall ever be held by a court of competent jurisdiction to be invalid or ineffective for any reason, such holding shall not affect the applicability thereof to other circumstances, nor affect the remaining provisions hereof.

History.—§1, ch. 22560, 1945; §1, ch. 29977, 1955.

95.29 Same; extension agreements; recording.—If an extension agreement executed by the mortgagee or his successors in interest, and the mortgagor or his successors in interest, be recorded in each county wherein such mortgage was recorded before the period of limitation has expired, the period of limitation shall be extended as follows:

(1) If the final maturity, as extended, of the obligation secured by the mortgage is ascertainable from the record of the extension agreement, the additional period of limitation shall be twenty years after the date of final maturity of the obligation as extended by the extension agreement;

(2) If the final maturity, as extended, of the obligation secured by the mortgage is not ascertainable from the record of the extension agreement, the additional period of limitation shall be twenty years after the date of such extension agreement.

History.—§2, ch. 22560, 1945.

95.30 Same; instruments payable in installments.—If the record of the mortgage shows that the mortgage secures an obligation payable in installments, and the maturity date of the final installment of the obligation is ascertainable from the record of the mortgage, the periods of limitation in §§95.28 and 95.29 shall commence to run from the maturity date of the last installment of the obligation secured by the mortgage as ascertained from the record thereof.

History.—§3, ch. 22560, 1945.

95.31 Same; extensions; tolling of statute; application of law.—

(1) The periods of limitation set forth in this law shall be extended only as provided in this law and shall not otherwise be extended by any other agreement, nonresidence, disability, partial payment, by operation of law, or by any other method.

(2) The running of the limitations prescribed in this law shall be tolled by the commencement of an action or a proceeding to foreclose or to enforce the mortgage; and the action or proceeding to foreclose or to enforce the mortgage may proceed to completion, notwithstanding that the period of limitation has, in fact, run.

(3) The limitations prescribed in this law shall apply only to the foreclosure or enforcement of a mortgage; but shall have no application to actions to enforce or collect the obligation secured by a mortgage.

History.—§§4-6, ch. 22560, 1945.

95.32 Same; exemptions from operation of law.—The provisions of this law shall not apply to mortgages or deeds of trust executed by any railroad or other public utility corporation or by any receiver or trustee thereof; nor shall the provisions of this law apply to liens or notices of liens under chapters 84 and 85.

History.—§7, ch. 22560, 1945.

95.33 Same; duties of clerk of circuit court.—The clerk of the circuit court shall file and record the extension agreement provided for in §95.29, shall enter on the margin of the record of the mortgage mentioned therein a reference to the filing of the extension agreement, stating thereon the date of the filing of such extension agreement, for which services the clerk of the circuit court shall be entitled to a fee at the rate provided by law.

History.—§8, ch. 22560, 1945.

95.34 Same; to what mortgages and liens applicable.—After one year from May 4, 1945, the provisions of this law shall apply to all mortgages in existence on May 4, 1945, on which actions to foreclose have not been commenced, except mortgages and liens excepted from this law by §95.32; provided, however, this law shall not apply to mortgages the enforcement of which is barred under existing law on May 4, 1945.

History.—§9, ch. 22560, 1945.

95.35 Termination of contracts, to purchase real estate, in which there is no maturity date.—Whenever anyone shall have contracted to purchase real estate in the state, prior to July 1, 1927, by written agreement, the final maturity of which obligation is not disclosed and is not ascertainable from the record of said contract, or has accepted an assignment of such agreement, and the fact of the existence of such a contract of purchase, or assignment, appears of record from the instrument itself or by reference in some other recorded instrument, and shall not have obtained and placed of record a deed to the property or a decree of a court of competent jurisdiction recognizing his rights thereunto, and is not in actual possession of the property covered by the contract or by the assignment as defined in §95.17, he, his widow, heirs, personal representatives, successors, and

assigns, shall have no further interest in the property described in the contract, or the assignment, by virtue thereof, and the record of such contract, assignment or other record reference thereto, shall no longer constitute either actual or constructive notice to a purchaser, mortgagee, or other person acquiring an interest in the property, unless within six months after this law shall take effect, he or someone claiming under him shall:

(a) Place on record a deed or other conveyance of the property from the holder of the record title; or

(b) Place on record a written instrument executed by the holder of the record title evidencing an extension or modification of the original contract and showing that the original contract remains in force and effect; or

(c) Institute, or have pending, in a court of competent jurisdiction a suit for the enforcement of his rights under such contract.

History.—§1, ch. 24292, 1947.

95.36 Dedications for park purposes.—It is hereby declared to be in the best interest of the public that ancient dedications of lands to municipalities for park purposes for a period of thirty years or more shall not hereafter be disturbed or challenged in law or in equity by the original dedicator, his heirs or assigns, or any other person, in cases where such lands have been put to some municipal use during the period of dedication and/or have been conveyed by the municipality for a period of at least seven years by a deed recorded in the public records for that period of time. Accordingly, the legislature hereby declares such suits in law or equity shall not be maintained in any court in this state, and all rights of said ancient dedicator and all other persons are terminated and declared null and void.

History.—§1, ch. 25503, 1949.

95.37 Claims against state; limitations.—

(1) No claims against the state shall be presented to the legislature more than four years after the cause for relief accrued. Any claim presented after this time of limitation shall be void and unenforceable.

(2) All relief acts of the legislature shall be for payment in full. No further claim for relief shall be submitted to the legislature in the future.

History.—§§1, 2, ch. 26953, 1951.
cf.—§215.26 Limitation on right to refund from state treasury.

95.38 Limitation of actions; drainage district bonds and coupons.—

(1) No action shall be maintained at law or in equity in the state on any bond or coupon issued by a drainage district under the general laws of the state after the expiration of twenty years from the maturity of the bond or coupon. Provided, however, that the holder of any such bond or coupon which, at the passage of this act, is more than twenty years old, or which becomes twenty years old within one year from the time this act becomes a law, shall have a period of one year from time this act becomes a law to institute an action or actions for the enforcement thereof.

(2) This statute shall not apply to any bond or coupon if the time for the payment of the indebtedness evidenced by the bond or coupon has been extended by agreement beyond the maturity date of the bond or coupon.

History.—§§1, 2, ch. 61-522.

TITLE IX

ELECTORS AND ELECTIONS

CHAPTER 97

QUALIFICATION AND REGISTRATION OF ELECTORS

97.011 Short title.—All chapters in this revision, including chapters 97 to 104 inclusive, are cited as "The Election Code of 1951."

History.—§1, ch. 26870, 1951.

97.021 Definitions.—The following words and phrases when used in this code shall be construed:

(1) Primary election means election held preceding the general election, for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state or county office. The first primary is a nomination or elimination election, the second primary is a nominating election only.

(2) General election means an election held on the first Tuesday after the first Monday in November in the even numbered years, for the purpose of filling national, state and county offices and for voting on constitutional amendments as proposed by the legislature.

(3) Special primary election is a special called nomination election designated by the governor, for the purpose of nominating a party nominee to be voted on in a general or special general election.

(4) Special general election is a special called election for the purpose of voting on a party nominee to fill a vacancy in the national, state or county office.

(5) Elector as used throughout this code is synonymous with the word voter or qualified elector or voter.

(6) (a) Any group of citizens may organize as a political party if the general purpose of the organization is for election to office of qualified persons, and the determination of public issues under the accepted democratic processes of the United States.

(b) Any such group may be recognized as a political party which on January 1 preceding a primary election has registered to vote as members more than five per cent of the total registered electors of the state. Such political party shall nominate its candidates for elective offices to be voted for in the next general election, in the primary and in no other manner except to fill vacancies in nomination as otherwise provided.

(c) A minority political party is any such group as defined above which on January 1 preceding a primary election does not have registered as members five per cent of the total registered electors of the state.

(7) Wherever the word supervisor is used it shall mean the supervisor of registration.

(8) Weekday shall include Monday, Tuesday, Wednesday, Thursday, Friday and Saturday.

History.—§2, ch. 6469, 1913; RGS 300; §1, ch. 8582, 1921; CGL 356; §1, ch. 13761, 1929; ch. 18060, 1937; §1, ch. 19663, 1939; §1, ch. 26870, 1951; (2) §1, ch. 28156, 1953; (8) n. §1, ch. 61-370.
Note.—Formerly §102.02.

97.031 Registration prerequisite to voting.—No person whose name is not on the registration books is permitted to vote in any election.

History.—§11, ch. 6469, 1913; §3, ch. 6874, 1915; RGS 314; CGL 371; §16, ch. 13761, 1929; CGL 1936 Supp. 371(1); §1, ch. 26870, 1951.
Note.—Formerly §102.18.

97.041 Qualifications to register.—Any person twenty-one years of age or any person who will attain age twenty-one prior to the next succeeding primary or general election, upon proof of his birthdate, who is a citizen of the United States, a permanent resident living in Florida for one year, residing in the county where he wishes to register for six months, is eligible to register with the supervisor when the registration books are open; provided however, that a person who has not attained the age of twenty-one years at the time the registration books close, but who will attain such

age prior to the next succeeding primary or general election may not register sooner than thirty days prior to the closing of the registration books next preceding his twenty-first birthday. Naturalized citizens must present to the registration officer a certificate of naturalization or certified copy thereof. The following persons are not entitled to vote:

(1) Persons not registered.

(2) Persons under guardianship or confined in any state prison.

(3) Persons insane or idiotic.

(4) Persons convicted of any felony by any court of record, and whose civil rights have not been restored.

(5) Persons convicted of bribery, perjury, larceny or infamous crimes in this or other states or interested in any wager depending on the result of any election.

(6) Persons not registered in the precinct in which they have their permanent place of residence.

History.—Ch. 3850, 1889; §1, ch. 3879, 1889; §1, ch. 4328, 1895; §1, ch. 8583, 1921; RGS 215; CGL 248; §1, ch. 26870, 1951; §2, ch. 28156, 1953; §1, ch. 63-408.
Note.—Formerly §98.01.

97.051 Oath and identification of elector for registration.—A person making application for registration as an elector shall take the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of Florida; that I am twenty-one years old, a resident of Florida for one year and of this county for six months; that I am a citizen of the United States and qualified to vote under the Constitution and Laws of the State." The person must also state under oath, to be administered by the registration officer, whether he is registered in any other jurisdiction. If he answers affirmatively, the registration officer shall notify the supervisor in that jurisdiction to cancel the prior registration. He shall also give a sufficient description of himself as to reasonably identify his person.

History.— §7, ch. 3879, 1889; RS 101; §8, ch. 4328, 1895; GS 178; RGS 222; CGL 257; §4, ch. 25383, 1949; §1, ch. 26870, 1951.
Note.—Formerly §98.11.

97.061 Special registration certificate; electors requiring assistance.—

(1) Any person who is otherwise eligible to register but who is found by the supervisor to be so physically impaired as to make it impossible indefinitely for him to register or to cast his vote efficiently shall upon his request be registered by the supervisor under the procedure prescribed by this section and shall be entitled to receive assistance at the polls under the conditions prescribed by the applicable provisions of this code.

(2) The supervisor upon finding that a person is qualified to register under the procedure prescribed herein and that such person's incapacity is expected to continue indefinitely, shall enter in his registration record a specific description of the particular disabling impairment and a precise, accurate, and full description of the physical appearance of the person, giving in addition to the information required of all other electors the person's weight, height, color of eyes, description of hair, complexion, and any other distinguishing characteristic which would be of assistance in establishing his identity.

(3) Such persons upon being registered shall be issued a special registration certificate of a distinctive color and convenient size which shall contain the name of the person bearing it and the other information required above and which shall indicate that it must be presented by such person in order for him to be entitled to vote without the necessity of being examined orally and under oath at the polling place by the election inspection board. Such certificate shall give notice that the bearer is required to keep the supervisor advised of any change in his condition which would avoid the necessity of this special procedure or which would require the alteration of his physical description; provided that any such disabled elector registered to vote under this section who has identified himself by signing the registration book shall continue to be privileged to identify himself at the polls by use of his signature in lieu of the identification certificate and receive assistance in voting as prescribed herein.

History.—§14, ch. 6469, 1913; RGS 318; CGL 375; §3, ch. 25388, 1949; §6, ch. 25391, 1949; §1, ch. 26870, 1951; (1) §3, ch. 28156, 1953; §1, ch. 59-446; (1) §1, ch. 61-358.
Note.—Formerly §§97.06 and 102.21.
cf.—§101.061 Assistance to blind, disabled electors in marking ballots.
§§101.051 and 101.48. Examination by election board of physically impaired electors.
§101.52 Assistance to blind and disabled electors in using voting machines.

97.062 Registration; special armed service preregistration book.—Any person subject to be called for military duty in the service of his country who has received orders or induction papers, or is already inducted or enlisted, and is a citizen of the state and under the age of twenty-one years, and who will be eligible to vote in any primary, general, school, municipal or special election when he reaches the age of twenty-one years, may make application to the supervisor of registration of the county of his legal residence, presenting at the time evidence to show that he is about to be inducted into the military service, has received orders to report, or is already inducted or enlisted into the armed service, and enter his name on a special registration book of the precinct of his or her residence by filling out the following affidavit:

AFFIDAVIT

_____ being first duly sworn upon oath says that he is a citizen of the United States; that he is about to be called into the military service of his country; that he is now _____ years of age; that his legal residence is _____ County of the State of Florida; that he will be twenty-one years of age on the _____ day of _____, 19____, and will then be eligible to vote in election precinct No. ____, or _____ ward in the city of _____, county of _____; that he may not be able to appear personally

and register when he becomes twenty-one years of age because of absence from the state on military duty; that he is not and will not be registered in any other county or state at this time; that his full name is _____; that he was born on _____ and that he is ____ feet and ____ inches tall, and weighs _____ pounds; that he has been a legal resident of the State of Florida more than twelve months and of the county of _____ for more than six months, last past; that his party affiliation is _____ and that he desires the supervisor of registration of _____ county to enter his name in the registration books of his precinct when he becomes twenty-one years of age; that his precinct and the date he becomes twenty-one years of age are correctly recited herein, and that this application and affidavit are made for this purpose and no other purpose.

_____
Signature of Applicant.

Sworn to and subscribed before me this____ day of _____ A. D. 19____.

_____
Supervisor of Registration.

Upon filing the application and affidavit the supervisor of registration shall hold such application and affidavit until the applicant becomes twenty-one years of age. When such applicant has attained the age of twenty-one years and is eligible to vote, the supervisor of registration is directed to enter such application on the legal registration books of his precinct or ward, and forward to such applicant a certificate of registration which shall be evidence of his official registration to vote in all general, primary, school, municipal or special elections.

The supervisor of registration shall keep a separate armed service special preregistration book in which only the names of members of armed services who register under this special provision prior to induction or after induction and prior to becoming twenty-one years of age, shall be entered. Registration in this special armed service preregistration book shall be sufficient registration when the registrant becomes twenty-one years of age, and upon receipt of the certificate of registration to vote registrant shall be qualified as any other regularly registered elector.

History.—§1, ch. 26870, 1951.

97.063 Armed services absentee registration.—Members of the armed forces while in the active service, and their spouses, shall be entitled to register absentee.

History.—§1, ch. 59-217.

97.071 Registration certificate.—A certificate of registration shall be furnished each registered elector upon registering, containing a statement of: the precinct or district number where registered, full name, place of residence, sex, age, state or country of nativity, party affiliation, occupation, color, freeholder status, date of registration and signature of the registration officer. The certificate of registration is in substantially the following form:

REGISTRATION CERTIFICATE NO. _____

State of Florida
_____County
Precinct or District No._____

The bearer _____ is at the date hereof a qualified elector in the above precinct-district. He resides at _____, sex _____, is _____ years of age, state or country of nativity _____, political party affiliation _____, by occupation a _____, his color is _____, freeholder status ____ _____ and is entitled to vote in said precinct, unless hereafter disqualified.

Registered on this ____ day of _____ A. D. 19____.

_____
Supervisor of Registration
for said County

History.—§13, ch. 3879, 1889; RS 167; §15, ch. 4328, 1895; GS 191, 192; RGS 235, 236; CGL 288, 289; §4, ch. 24203, 1947; §11, ch. 25035, 1949; §1, ch. 26870, 1951; §10, ch. 27991, 1953.
Note.—Formerly §§98.31 and 98.32.

97.081 Registration of freeholder.—

(1) The supervisor or other registering officer shall require every person registering to state under oath or affirmation whether he is a freeholder, and record it opposite his name in the registration books.

(2) (a) The county commissioners of any county or the governing authority of any municipality may at any time call for a reregistration of freeholder electors for the purpose of securing a new and up-to-date list of freeholders to be used for qualifying freeholder electors to participate in any election called for the purpose of approving the issuance of bonds of such county or municipality, respectively, or for the purpose of approving an act with reference thereto. The reregistration of freeholder electors of a municipality may be called for under the provisions of this section, for the purposes herein stated, whether the proceedings requiring such freeholders election are under the authority of the charter of the municipality or under the authority of the general laws.

(b) The county commissioners of any county shall, when presented with a resolution adopted by the board of public instruction of said county requesting a reregistration of the freeholder electors, call such reregistration for the purpose of securing a new and up-to-date list of freeholder electors of said county to participate in any election called for the purpose of approving the issuance of bonds for financing the school building program of said county or for the purpose of approving any act with reference thereto. The cost of making the call and conducting the reregistration provided by this subsection shall be borne by the county board of public instruction requesting the same.

(3) The latest record of reregistered qualified freeholders shall supersede prior records and in any bond election held after a reregis-

tration of freeholders the power to issue bonds shall be based upon the approval by a majority of the votes cast in an election in which a majority of the reregistered freeholders who reregister and are qualified shall participate.

(4) The county commissioners or the governing authority of the municipality shall by resolution or ordinance call for such reregistration, notify the supervisor, or other registration officer as may be provided for by municipal charter, and shall publish the calling of such reregistration in a newspaper of general circulation once each week for four consecutive weeks stating the purpose and use of such reregistration.

(5) The registration books shall be kept open for at least thirty days and closed at least fourteen days prior to the holding of any bond election at which time a certified number of registered freeholders shall be available, as provided by law. In computing days, election day is to be excluded, but all Sundays and holidays are to be included and should the fourteenth day preceding a bond election fall on a Sunday or holiday, the registration books shall close at 5:00 p.m. on the day preceding.

History.—§19, ch. 14715, 1931; CGL 1936 Supp. 457(17); §1, 26870, 1951; (5) §1, ch. 29934, 1955; (2) §1, ch. 31404, 1956; (3) §24, ch. 57-1; (2)(a), (4) §1, ch. 59-158; (5) §1, ch. 61-372.
Note.—Formerly §98.12.
cf.—§100.241 Freeholder requirements.
§100.251 Registration and freeholders proof.

97.091 Electors must be registered in precinct.—No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered. When an elector's name does not appear on the registration books of the election precinct in which he is registered and resides and when he cannot present a valid certificate of registration, he may have his name restored upon making satisfactory proof to the supervisor, of the fact of his previous registration, that his name has been omitted from the books and that he is entitled to have his name restored. The supervisor may issue a duplicate certificate of registration signed by the supervisor and by the elector; across the face of which shall be written in red ink "duplicate registration certificate." Upon the presentation of the duplicate registration certificate at his precinct, he shall be entitled to vote.

History.—§13, ch. 3879, 1889; RS 167; §15, ch. 4328, 1895; GS 192; RGS 236; CGL 289; §4, ch. 24203, 1947; §11, ch. 25035, 1949; §1, ch. 26870, 1951; §4, ch. 28156, 1953.
Note.—Formerly §98.32.

97.101 Replacement of registration certificate.—Every elector has the right to a replacement of his certificate of registration without charge when same becomes defaced, upon his surrendering the certificate to the supervisor. Any elector who loses his certificate is entitled to a renewal thereof by the supervisor of the county in which he was registered upon application and proof of the loss, in the following manner: he shall, when the books are open, apply for a renewal of certificate, stating under oath, administered by the supervisor that his certificate was lost and was not sold, bartered or wilfully destroyed or lost, which application the supervisor shall examine and if he feels the facts justify it, he shall issue a renewal certificate, marking across its face "Renewal", and make this entry in the registration books. The decision in such case, if it is against the application, is subject to review by the board of county commissioners, provided the applicant shall notify the supervisor of his appeal to the board of county commissioners within three days after notice of the rejection.

History.—§15, ch. 3879, 1889; RS 169; §17, ch. 4328, 1895; GS 198; RGS 242; CGL 295; §1, ch. 26870, 1951.
Note.—Formerly §98.38.

97.111 How persons may register change of party affiliation.—Any person who has registered, desiring to change his party affiliation may at any time after a general election and thirty days before the next succeeding primary election when the registration books are open and at no other time, change his party affiliation. The person shall surrender his certificate of registration or card, or make a sworn affidavit if his certificate or card is lost, to the supervisor, at which time the supervisor shall cancel his prior registration and issue the person a new certificate and card. All cancellations are retained on file by the supervisor.

History.—§9, ch. 6469, 1913; §1, ch. 6874, 1915; RGS 309; CGL 365; §1, ch. 25388, 1949; §1, ch. 26870, 1951; §5, ch. 28156, 1953; §2, ch. 29934, 1955.
Note.—Formerly §102.11.

97.121 Persons inducted into military service, reregistration not a prerequisite to right to vote.—

(1) A person inducted into the military service of the United States and remaining in service when the registration books of any county are open for reregistration of electors is exempt from any general or local law, requiring reregistration as a prerequisite to vote in elections, provided the person has registered as an elector and his name has not been removed from the registration lists.

(2) No persons entitled to exemption due to military service shall be deprived of voting in any election because of failure to reregister, but the supervisor or other registering officers may require reasonable proof of his military service, as grounds for exemption.

History.—§§1, 2, ch. 20738, 1941; §1, ch. 26870, 1951.
Note.—Formerly §98.42.

97.131 Registration of federal employees and military personnel absent from the state.—When a person holding a position in the government of the United States or in the military service is, by reason of his duties incident to his position, required to be absent from the state during the period of time required for the registration of qualified electors to vote in a primary or general election as now required by law and thereby unable to register, in such a case it is lawful for such elector, if retaining his qualifications to vote under his last registration, to make out and forward to the supervisor of the county in which he is registered the following affidavit, or one in substantially

the same form:

"STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, authorized to take oaths, personally appeared _____ _____, who, being by me first duly sworn, deposes and says that he (she) is a qualified elector of the State of Florida and that he (she) is registered as such elector in _____ Precinct, County of _____, State of Florida, and that since the time of such registration he (she) has not by any act of omission or commission become disqualified to serve as a qualified elector in the precinct and county aforesaid. That he (she) reaffirms the oath taken by him (her) upon his (her) original registration; that he (she) hereby authorized the supervisor of registration in the county aforesaid to transfer his (her) name from the present registration books and reregister the same in the new registration books. That he (she) holds a position under the government of the United States or in the military service and by reason of the duties attendant thereto it is impossible for him (her) to appear personally before said supervisor of registration at any time within the time allowed by law for such reregistration.

Sworn to and subscribed before me this _____ day of _____A.D. 19__.

_____

(Name and title of officer administering oath)"

Upon receipt of this affidavit the supervisor shall make out his renewal certificate of registration, transferring the elector's prior registration to the new registration books, and the renewal or transfer of registration, when so allowed and certified, is valid for all intents and purposes; provided the elector retains his residence and other qualifications to vote at the place specified in the registration.

History.—§1, ch. 19333, 1939; CGL 1940 Supp. 280(69); §1, ch. 26370, 1951.

Note.—Formerly §102.14.

CHAPTER 98

REGISTRATION OFFICE, OFFICERS AND PROCEDURES

98.011 Time of registration and office hours.—The supervisor shall keep the registration books open at his office from 9:00 a.m. to 12:00 noon, and from 2:00 p.m. until 5:00 p.m. on all weekdays throughout each year, unless the board of county commissioners shall authorize otherwise, but the registration books must be kept open at least one day in each week, and every weekday for thirty days prior to closing for any primary or general election. If the time when the registration books are to remain open has been limited by the board of county commissioners, the supervisor shall give notice by publishing twice in a newspaper of general circulation printed in his county naming the days of the week he will keep his books open. If there is no newspaper published in the county the supervisor shall have notices posted in at least three public places of which one shall be the courthouse. All the registration books close on the thirtieth day preceding the day on which there is a primary or general election and remain closed for five days following the election. No person shall register at any time other than during the period provided for registration of electors. In computing the thirty day period, the election day is excluded, but all other holidays and Sundays are to be included. Registration shall be conducted on weekdays only and should the thirtieth day preceding an election fall on Sunday or holiday, then the registration books shall close at 5:00 p.m. on the day preceding.

When a special election is called at a time when the books are open the supervisor shall close all books to further registration thirty days prior to election date or immediately in the event the date of the election is less than thirty days.

History.—§9, ch. 3879, 1889; RS 163; §10, ch. 4328, 1895; §5, ch. 4537, 1897; GS 183; §10, ch. 6469, 1913; §2, ch. 6874, 1915; RGS 227, 312; CGL 263, 369; §7, ch. 19663, 1939; §1, ch. 24203, 1947; §2, ch. 25379, 1949; §5, ch. 25383, 1949; §2, ch. 26870, 1951; §1, ch. 61-371.

Note.—Formerly §§98.22 and 102.17.

98.021 Registration books open in precincts; notice of location—The registration books in each precinct may if necessary be opened at a convenient place on each week day from 9:00 a. m. to 12:00 M., and from 2:00 p. m. until 5:00 p. m., and one night each week until 9:00 p. m. during the month of January in even-numbered years. Unless the board of county

commissioners directs otherwise, the books must be kept open for not less than one day in each week throughout the period. Each precinct registration officer shall post notice in at least three public places within his precinct stating the building in which the registration books will be open.

This section shall have equal application to all counties whether or not they have adopted the permanent registration system as provided in §98.041 or §98.141.

History.—§9, ch. 6469, 1913; §1, ch. 6874, 1915; RGS 307; CGL 363; §6, ch. 19663, 1939; §1, ch. 25379, 1949; §8, ch. 26329, 1949; §2, ch. 26870, 1951; §3, ch. 29934, 1955.
Note.—Formerly §102.09.

98.031 Registration and election districts, precincts and polling places; boundaries.—Each election precinct, election district and polling place in this state as defined and fixed is recognized and continued. The board of county commissioners in each county upon recommendation and approval of the supervisor may, in any odd-numbered year, alter or create new districts or precincts. Each precinct shall be numbered and a polling place at a suitable location designated. The district, or precinct, shall not be changed thereafter except in odd-numbered years with the consent of four members of the board of county commissioners and the supervisor. The board of county commissioners and the supervisor may if requested by official action of a municipality or if practical and desirable have precinct boundaries conform to municipal boundaries.

History.—§10, ch. 3879, 1889; RS 164; §11, ch. 4328, 1895; GS 184; RGS 228; CGL 281; §2, ch. 24203, 1947; §6, ch. 25383, 1949; §2, ch. 26329, 1949; §2, ch. 26870, 1951; §4, ch. 29934, 1955; §3, ch. 57-166; §1, ch. 59-281.
Note.—Formerly §98.23.
cf.—§101.73 Description of election districts and precincts.
§124.04 Restriction on election districts.

98.041 Permanent single registration system established; effective date.—A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties except those mentioned in §98.141 including elections held in municipalities which by resolution elect to use the system. The system shall be established on or before January 1, 1966, and become effective in each county on January 1 subsequent to the date the board of county commissioners shall officially adopt the system. When the system is adopted, the supervisor shall obtain materials as provided in §98.361. Electors shall be registered in pursuance of this system by the supervisor or by precinct registration officers, and electors registered shall not thereafter be required to register or reregister except as provided by law or as provided for the registration of freeholders.

History.—§1, ch. 25391, 1949; §2, ch. 26870, 1951; §1, ch. 59-237.
Note.—Formerly §97.01.

98.051 Registration books for permanent registration system; when open.—

(1) The permanent registration books shall be kept open each week day in the office of the supervisor, and at all offices at which a deputy supervisor or registration officer is on duty, from 9:00 a. m. until 12:00 M., and from 2:00 p. m. until 5:00 p. m. to permit electors previously registered and others, to be registered under this permanent registration system. For thirty days prior to closing for the first primary, such offices shall be open for two nights in each week until 9:00 p. m. Such offices shall also be open one night each week until 9:00 p. m. during the period from sixty days to thirty days prior to closing for the first primary in any even-numbered year.

(2) The first year only when the permanent registration system becomes effective, the books may be kept open each week day by the precinct registration officers from 9:00 a. m. until 12:00 noon and from 1:00 p. m. until 9:00 p. m. at a convenient place in the precinct during the months of January and February; provided, however, that the board of county commissioners upon the recommendation of the supervisor of registration may shorten the said period of time in any precinct or precincts so long as the same shall not be made less than one week; and provided further, while registrations are being made in the precincts, registrations may also be made at the office of the supervisor of registration.

(3) The books shall close on the thirtieth day before each election at 5 o'clock p. m. and remain closed for five days after the election, after which they shall be open for permanent registration except in bond elections as contemplated by §6, Art. IX, Florida constitution.

(4) The board of county commissioners may authorize the supervisor to keep his office open for less time, but at no time shall the office be open less than one day each week.

The supervisor shall give notice of the days of the week his office will be open by publication in two issues of a newspaper of general circulation published in the county. If there is no newspaper published in the county, the supervisor shall have such notice posted in at least three public places of which one shall be the courthouse.

History.—§3, ch. 25391, 1949; §2, ch. 26870, 1951; (1), §5, ch. 29934, (2), §1, ch. 29761, 1955.
Note.—Formerly §97.02.

98.061 Registration certificates; certificate of transfer; when reregistration required.—

(1) Registration certificates issued to electors registering under this permanent registration system are of the form provided for by §98.111. When a qualified elector moves from one precinct to another in the county, he shall notify the supervisor and obtain a certificate of transfer before he is qualified to vote in the precinct.

(2) An elector registered in one county, who moves to another county and remains there for six months must reregister in the county where he now resides and request the supervisor to ask cancellation of his former registration before being eligible to vote.

History.—§9, ch. 25391, 1949; §2, ch. 26870, 1951.
Note.—Formerly §97.09.

98.071 Duty of elector to record change in registration.—It is the duty of electors under

this permanent registration system to notify the supervisor in person of any changes in his record with reference to name by marriage or other legal process.

History.—§7, ch. 25391, 1949; §2, ch. 26870, 1951.
Note.—Formerly §97.07.

98.081 Removal of names from registration books; procedure.—Between October 1 and January 31, preceding a general election, upon adoption of the permanent registration system the supervisor shall mail either to each qualified elector in the county or to each elector who did not vote in any election in the county during the past two years, a form to be filled in, signed and returned by mail within thirty days after the notice is postmarked. The form returned shall advise the supervisor whether the elector's status has changed from that of the registration record. Names of electors failing to return the forms within this period shall have their names withdrawn temporarily from registration books. The list of the electors, temporarily withdrawn, shall be posted at the courthouse. Names will be restored to the registration records when the elector in person makes known to the supervisor that his status has not changed. The supervisor is then required to reinstate the names on the registration books at any time the books are open without the elector reregistering. Notice of these requirements shall be printed on the registration certificates. This method prescribed for the removal of names is considered cumulative to statutes relating to the removal of names from registration book by the supervisor or board of county commissioners. This is not a reregistration but a method to be used for keeping the permanent registration list up to date.

History.—§8, ch. 25391, 1949; §2, ch. 26870, 1951; §1, ch. 61-86.
Note.—Formerly §97.08.

98.082 Removal of elector's name from registration book.—Any elector may have his name removed from the registration books by filing with the supervisor a written request duly acknowledged and upon receipt of said request the supervisor shall remove the name of said elector from the registration book.

History.—§1, ch. 63-185.

98.091 Use of system by cities.—Any municipality in a county which has adopted this permanent registration system and which has not less than 1500 population according to the latest official decennial census may use such system in its elections in place of a separate registration for its electors with the concurrence of the board of county commissioners and supervisor of registration. Any municipality desiring to use this system shall, before July 1 of any odd-numbered year, adopt a resolution to that effect and shall notify the board of county commissioners that it desires to use this system. The board of county commissioners may, prior to the following January 1, arrange the boundaries of the precincts in the county so that no precinct in the said municipality adopting this system extends beyond the boundaries of the municipality and shall be in not more than one ward or district of the municipality. When a municipality has adopted this system, it shall be effective on January 1 following the adoption of the above resolution. The supervisor or one of his deputies shall deliver the registration records required for a municipal election to the municipal election boards on the morning of the election and collect them when the polls are closed. The municipality shall reimburse the county for actual costs incurred. In the event any municipality elects to use this system, regardless of the provisions of its charter or other laws relating to electors, any registered elector in the precinct at the time the municipal election is held is qualified to participate in such election; provided that when registration books are closed for an election in a municipality within the county, said county registration books shall not be closed for registration to any elector in any other section of the county who is not a resident of the municipality in which the election is being held.

History.—§4, ch. 25391, 1949; §2, ch. 26870, 1951; §10, ch. 27791, 1953; §2, ch. 29761, 1955; §1, ch. 57-136; §1, ch. 63-268.
Note.—Formerly §97.04.

98.101 Specifications for permanent registration binders, files and forms.—In this system, visible record binders, files and registration forms are used as registration books. The binders shall be visible record binders, metal bound with built-in shifts, to hold executed registration forms, with label-holders and followers for sheet protection as necessary. The registration forms shall consist of duplicates, both to be signed by the registrant. One of the original executed forms shall be used for the poll binders, which binders shall have a built-in lock to protect the forms. The poll binders are divided in a manner convenient for electors to vote. The other original form shall be used for the office copies and arranged alphabetically, in suitable filing cabinets, thus providing a master list of all electors in the county.

History.—§3, ch. 25391, 1949; §2, ch. 26870, 1951.
Note.—Formerly §97.03.

98.111 Registration form; secretary of state to prescribe; information required.—The secretary of state shall prescribe the registration form and the form shall be prepared to elicit the following information: (1) registration number, (2) date of registration, (3) full name, (4) sex, (5) political affiliation, (6) business or occupation, (7) date of birth, (8) age, (9) color, (10) state or country of birth, (11) if naturalized, the time, place and court of naturalization as evidenced by legal proof, (12) postoffice address at time of registering, same to be entered with as specific particularity as possible, (13) freeholder status, (14) whether the registrant owns a beneficial interest in the fee simple title to real estate in the county, (15) the fact whether the registrant is able to write his name or mark his ballot, and if not, the nature of the disability, (16) whether such registrant has been convicted of any felony, and if so, have his civil rights been restored, and (17) other information deemed necessary by the secretary of state. There shall also be printed on the form an

affidavit to include the oath prescribed by §3, Art. VI, Florida constitution, and a statement that all the information on the form is true.

History.—§5, ch. 25391, 1949; §2, ch. 26870, 1951; §1, ch. 59-231.
Note.—Formerly §97.05.

98.121 Preservation of certain registration forms.—When names of registrants are removed from the books, their executed registration forms shall be attached together and filed alphabetically in the office of the supervisor.

History.—§10, ch. 25391, 1949; §2, ch. 26870, 1951.
Note.—Formerly §97.10.

98.131 Permanent registration system mandatory by 1966.—All counties which have not adopted the permanent registration system or the system described in §98.041 shall adopt the system in the year 1966 and reregister all the electors in said year. On and after January 1, 1966, electors shall not participate in elections if they are not registered in the permanent registration system.

The board of county commissioners shall pay any expenses incurred by the supervisor in putting this permanent registration system into operation including extra clerical help or assistants required, provided such expense shall be subject to approval by the board of county commissioners.

History.—§14, ch. 25391, 1949; §2, ch. 26870, 1951; §2, ch. 59-237.
Note.—Formerly §97.14.

98.141 Counties having permanent registration system exempt.—Counties which have or may have adopted a permanent registration system before January 1, 1960, under authority of special or population acts, if in the opinion of the secretary of state they substantially comply with the requirements of the state permanent registration system, may upon resolution of the board of county commissioners, adopt this law as the basis for their system without reregistration.

History.—§12, ch. 25391, 1949; §2, ch. 26870, 1951.
Note.—Formerly §97.12.

98.151 Existing law effective until system adopted.—Until this system is effective in a county, registration systems existing under other general state laws either as set forth herein or effective at the time of the adoption of chapter 26870, Laws of 1951, or under population, local or special acts shall remain in full force and effect. Upon the adoption of this permanent registration system, all state laws in conflict or inconsistent with the provisions of this code shall cease to remain in full force or effect.

History.—§13, ch. 25391, 1949; §2, ch. 26870, 1951; §6, ch. 28156, 1953.
Note.—Formerly §97.13.

98.161 Supervisor of registration; election, tenure of office, compensation.—There is elected at the general election in 1948, and every four years thereafter a supervisor of registration in each county, and he shall hold office for four years, beginning on Tuesday after the first Monday in January succeeding his election, and until his successor is elected and qualified. The terms of the office of supervisors priorly appointed and now holding office are extended to expire on the first Tuesday after the first Monday in January, 1949. Each supervisor shall before performing any of his duties, take the oath prescribed in §2, Art. XVI, of the state constitution and give bond payable to the governor in the sum of five hundred dollars, with two sureties approved by his board of county commissioners, conditioned on the faithful discharge of his duties; and his compensation shall be of such sum in proportion to the amount of work to be done and allowed by his board of county commissioners; provided that the compensation is not less than one hundred dollars per annum.

The compensation of precinct registration officers is fixed by their board of county commissioners, after the supervisor has certified the amount of service performed.

History.—Chs. 3700, 3704, 1887; §8, ch. 3879, 1889, RS 162; §9, ch. 4328, 1895; GS 179, 180; §1, ch. 5614, 1907; §1, ch. 9271, 1923; RGS 223, 224; CGL 258, 259; §§1, 2, ch. 22759, 1945; §2, ch. 26870, 1951.
Note.—Formerly §§98.13, 98.14 and 98.17.

98.171 Supervisor to keep separate precinct register.—The supervisor shall enter in the separate book of the precinct in which the elector resides, the same number and information concerning the elector as entered in the general registration book, arranging the names alphabetically, according to surname. The supervisor or his deputy shall require the elector then to sign his name, and he shall attest the registration.

History.—§15, ch. 6469, 1913; RGS 319; CGL 376; §2, ch. 26870, 1951.
Note.—Formerly §102.22.

98.181 Supervisor of registration to make up books; certify official lists.—

(1) Immediately upon the expiration of the time for registration at the precincts each precinct registration officer shall promptly deliver his book and blanks to the supervisor at the county seat where they shall be kept, and the supervisor shall then make up the registration books for the precincts in his county, so that the two books of each precinct shall be as nearly duplicate as possible. The duplicate books shall be marked and numbered on the backs to designate clearly the precinct to which they belong, and one of the books marked on the back "office copy" and kept at all times in the supervisor's office.

(2) The supervisor shall attach his certificate to each of the two books, certifying that they have been examined and revised and the registration was made in compliance with the constitution and laws of this state, impartially, to the best of his ability. The books or lists of names so certified, with the additions, corrections, erasures and revisions in conformity to law, shall constitute the registration books and elector lists of the county.

(3) A set of such indexes or records as the supervisor may direct shall be kept in all cities of over twenty-five thousand population, when such city shall not be the county seat, as will enable the supervisor, or the super-

visor's deputy, to provide all the services to the electors in such city as are provided by the supervisor at the supervisor's office at the county seat. Such set of indexes or records may be limited to cover those persons residing in such city and its environs. If there be two such cities in a county then an additional set shall be kept, or such number of sets as may be required to serve all such cities, but all services available at the supervisor's office at the county seat shall be equally available in such cities, the same as if they were the county seat.

History.—§§12, 14, ch. 3879, 1889; RS 166, 168; §§14, 16, ch. 4328, 1895; GS 190, 195; RGS 234, 239; CGL 287, 292; §§3, 7, ch. 24203, 1947; §8, ch. 25383, 1949; §2, ch. 26870, 1951; (3) n. §6, ch. 29934, 1955.

Note.—Formerly §§98.30 and 98.35.

98.191 New registration books.—The supervisor of any county shall, whenever it may be necessary, transfer and transcribe into new registration books and into new books of the precinct, the names of all legally registered electors as their names appear upon the old registration books.

History.—§14, ch. 3879, 1889; RS 168; §16, ch. 4328, 1895; GS §94, RGS 238; CGL 291; §6, ch. 24203, 1947; §10, ch. 26484, 1951; §2, ch. 26870, 1951.

Note.—Formerly §98.34.

98.201 Custodian of registration books.—The supervisor is the official custodian of the books of registration with the exclusive control of matters pertaining to the registration of electors. Whenever it shall come to his knowledge that any elector has become disqualified to vote by reason of conviction of any disqualifying crime or from other causes, or has removed from the county or to another precinct without obtaining a certificate of transfer, or his right to vote has become affected since his registration, the supervisor shall notify the person at his last known address by certified or registered mail and should there be evidence that the notice was not received, then notice shall be given by publication in a newspaper of general circulation in the county where the person was last registered or last known. The notice by publication shall run one time. The notification shall plainly state that the registration is allegedly illegal and shall be in the form of a notice to show cause why the person's name should not be removed from the registration books. The notice shall state a time and place for the person so notified to appear before the supervisor to show cause why his name should not be removed. Upon hearing all evidence in a quasi judicial manner, the supervisor of registration shall determine whether or not there is sufficient evidence to strike the person's name from the registration books. If the supervisor determines that there is sufficient evidence he shall strike the name forthwith. Appeal shall be to the circuit court in and for the county wherein the person was registered. Notice of appeal shall be filed within fifteen days with the supervisor of registration and shall act as supersedeas. Trial in the circuit court shall be de novo and governed by the rules of that court. Unless the person can show that his name was erroneously or illegally stricken from the registration books or that he is indigent, he shall be made to bear the costs of the trial in the circuit court. Otherwise, the costs of the appeal shall be paid by the board of county commissioners.

The supervisor may, at any time, process and forward to any elector a post or renewal card to verify the qualifications of an elector and, on the nonreturn of such card within the prescribed time set by law, shall proceed as otherwise provided in section 98.081, for nonreturns.

History.—§14, ch. 3879, 1899; RS 168; §16, ch. 4328, 1895; GS 196; RGS 240; CGL 293; §2, ch. 26870, 1951; §7, ch. 28156, 1953; §7, ch. 29934, 1955; §1, ch. 63-481.

Note.—Formerly §98.36.

cf.—§§98.301, 98.312 Striking names from registration lists.

98.211 County registers open to inspection; copies.—The registration books are public records. Every citizen is allowed to examine the general county and precinct books while they are in the custody of the supervisor, but is not allowed to make copies or extracts therefrom. The supervisor may furnish copies of the names, occupations, color, party and residence of any electors upon reasonable compensation, not exceeding customary fees for copying papers, in the office of the clerk of the circuit court, including the affixing of his official seal, but shall not furnish in writing any other information contained in the books.

History.—§18, ch. 6469, 1913; RGS 322; CGL 379; §4, ch. 25388, 1949; §2, ch. 26870, 1951; §8, ch. 29934, 1955; §1, ch. 57-810.

Note.—Formerly §102.25.

98.212 Supervisors to furnish statistical and other information.—

(1) Upon written request supervisors shall, as promptly as possible, furnish to recognized public or private universities and senior colleges within the state, to state or county governmental agencies and to recognized political party committees, statistical information for the purpose of analyzing election returns and results.

(2) In general election years, between January 1 and December 1, supervisors may require reimbursement for any or all actual expense of supplying such information but at all other times such information shall be supplied or made available at out of pocket cost for materials. Supervisors are authorized to utilize the services of research and statistical personnel that may be supplied. All such statistical information and analyses shall be made public no later than thirty days after the completion of compilation.

(3) Lists of names submitted to supervisors for indication of registration or nonregistration or for party affiliation shall be processed at all times at cost; provided, that in no case shall the charge exceed three cents for each name on which the information is furnished.

History.—§2, ch. 57-810.

98.221 Public inspection of all renewals and transfers allowed.—The supervisor shall keep open for public inspection a record of renewals and transfers of registration allowed under §97.131, and shall not allow renewal or transfer

to be made except upon basis of a lawful registration personally made in the state previously, which registration would entitle the elector to vote but for the requirement of biennial registration in the particular county or city, nor shall any registration officer allow any renewal or transfer under §97.131, except to an elector qualified to vote in the county, precinct or city.

History.—§2, ch. 19333, 1939; CGL 1940 Supp. 280(70); §2, ch. 26870, 1951.
Note.—Formerly §102.15.

98.231 Supervisor of registration to furnish secretary of state number of registered electors.—The supervisor of each county, within ten days after the closing of registration books prior to the election, shall advise the secretary of state the total number of registered electors of each political party.

History.—§17, ch. 6469, 1913; RGS 321; CGL 378; §3, ch. 25379, 1949; §2, ch. 26870, 1951; §1, ch. 61-84.
Note.—Formerly §102.24.

98.241 Supervisor to furnish inspectors of elections registration books.—The supervisor shall furnish inspectors of elections with one of the registration books for each precinct, and he is not authorized prior to any election to furnish copies of the books of his county, or allow indiscriminate handling or examination thereof by anyone, but he shall at all times allow any elector to examine his own status upon the books.

History.—§19, ch. 3879, 1899; RS 172; §20, ch. 4328, 1895; GS 201; RGS 245; CGL 298; §2, ch. 26870, 1951.
Note.—Formerly §99.01.

98.251 Blanks and forms; election laws.—Each supervisor shall furnish to inspectors of election at the polling place at each precinct in his county, a sufficient number of forms and copies of election laws for their use at the election. The secretary of state shall prepare the blanks, forms and a sufficient number of copies of the laws regulating elections, and at least sixty days before any election transmit them to each supervisor for use of the inspectors of election.

History.—§38, ch. 3879, 1889; RS 192; §69, ch. 4328, 1895; GS 253; RGS 297; CGL 353; §2, ch. 26870, 1951.
Note.—Formerly §99.54.

98.261 Supervisor to deliver books and papers to successor.—The supervisor shall, upon his removal from office, deliver to his successor immediately all books, papers and blanks belonging to his office.

History.—§8, ch. 3879, 1889; RS 162; §9, ch. 4328, 1895; GS 182; RGS 226; CGL 262; §2, ch. 26870, 1951.
Note.—Formerly §98.20.

98.271 Appointment of deputy supervisors and precinct officers; compensation.—Each supervisor shall select and appoint, subject to removal by him, as many deputy supervisors as may be necessary and whose compensation shall be paid by the board of county commissioners and who shall have the same powers and whose acts shall be as effective as the acts of the supervisor. In addition, the supervisor shall select and appoint, subject to removal by him, as many precinct registration officers for each precinct as may be necessary and whose compensation shall be paid by the board of county commissioners and, who shall register electors in the precincts. Whenever the supervisor shall remove any precinct registration officer, the precinct registration officer shall, on demand, surrender to the supervisor, all books and papers connected with the office. Each precinct registration officer shall, before entering office, make an oath in writing that he will faithfully perform the duties of his office, which oath is filed by the supervisor.

History.—Chs. 3700, 3704, 1887; §8, ch. 3879, 1889; §§9, 13, ch. 6469, 1913; RS 162; §9, ch. 4328, 1895; GS 179, 181; RGS 223, 225, 311, 317; §1, ch. 9271, 1923; CGL 258, 261, 368, 374; §2, ch. 26870, 1951; §8, ch. 28156, 1953.
Note.—Formerly §§98.15, 98.18, 102.16 and 102.20.

98.281 Special registration procedure, deputy supervisor to handle registration.—Each supervisor may appoint deputy supervisors to accept registration of those who are qualified in settled sections of the county as may be reasonably necessary. These appointments are in addition to precinct registration officers, who shall accept registration during the time provided in §98.021.

History.—§2, ch. 26870, 1951.

98.291 Names may be restored to registration books.—When the name of any elector has been wrongfully or erroneously erased, the name of the elector is restored by the supervisor on application and proof to him, or restored by order of the board of county commissioners, if the supervisor fails to do so.

History.—§14, ch. 3879, 1889; RS 168; §16, ch. 4328, 1895; GS 197; RGS 241; CGL 294; §8, ch. 24203, 1947; §2, ch. 26870, 1951.
Note.—Formerly §98.37.

98.301 Duty of bureau of vital statistics to furnish lists of deceased persons.—It is the duty of the bureau of vital statistics of the state to furnish each supervisor monthly a list of deceased persons who were residents of their county, and a copy of said list to every municipality in said county and upon receipt of these reports, transmitting names and addresses of deceased persons over twenty-one years of age, the supervisor is required to strike their names from the registration books and the municipalities are also required to strike the names of said deceased persons from their registration books.

Nothing in this section shall limit or restrict the supervisor in his duty to remove the names of such deceased persons from the registration books after verification of information received from other sources as provided in §98.201 or other provisions of the registration laws.

History.—§3, ch. 14730, 1931; CGL 1936 Supp. 302(1); §10, ch. 24203, 1947; §11, ch. 25035, 1949; §2, ch. 26870, 1951; §1, ch. 29917; §9, ch. 29934, 1955.
Note.—Formerly §98.41.
cf.—§§98.201, 98.312 Striking names from registration lists.

98.311 County judge to furnish supervisor with list of mentally incompetent persons.—From October 1, 1949, each county judge shall, at least once each month, deliver to the supervisor of his county a list stating the name, address, age, color and sex of persons adjudged mentally incompetent during the preceding

calendar month, and also those whose mental competency has been restored.

History.—§1, ch. 25504, 1949; §2, ch. 26870, 1951; §1, ch. 63-184.
Note.—Formerly §98.411.

98.312 Clerk to furnish supervisor with list of persons convicted of felonies.—From October 1, 1953, each clerk of the criminal and circuit courts shall at least once each month deliver to the supervisor of his county a list stating the names, addresses, ages, color and sex of persons convicted of felonies during the preceding calendar month.

Nothing in this section shall limit or restrict the supervisor in his duty to remove the names of such persons from the registration books after verification of information received from other sources as provided in §98.201 or other provisions of the registration laws.

History.—§9, ch. 28156, 1953; §10, ch. 29934, 1955.
cf.—§§98.201, 98.301 Striking names from registration lists.

98.321 Supervisor to give certificate to person elected.—The supervisor shall give to any person nominated or elected to a county office a certificate of his nomination or election and give to any person desiring it a certified copy thereof, upon payment to him of the customary fees for copying and certifying papers in the office of the clerk of the circuit court.

History.—§32, ch. 3879, 1889; RS 186; §63, ch. 4328, 1895; GS 245; RGS 289; CGL 345; §2, ch. 26870, 1951.
Note.—Formerly §99.46.
cf.—§28.24 Compensation of the clerk of the circuit court.
§696.05 Photographic recording by the clerk of the circuit court.

98.331 Secretary of state to make certificate and transmit to person elected.—The secretary of state shall make and transmit to each person nominated or elected to any state office, immediately after the state canvass, a certificate of election, which certificate is prima facie evidence of his nomination or election to the office.

History.—§36, ch. 3879, 1889; RS 190; §67, ch. 4328, 1895; GS 251; RGS 295; CGL 351; §2, ch. 26870, 1951.
Note.—Formerly §99.52.

98.341 Seal of office for supervisor.—

(1) The attorney general shall approve a suitable seal for the supervisor for each county and the supervisor shall then deposit an impression and description of the seal with the secretary of state.

(2) Each supervisor is authorized to obtain for his office an impression seal of the seal as herein provided, and the cost of the impression seal shall be paid by the board of county commissioners upon signed requisition of the supervisor from the county general fund.

(3) The supervisor is empowered and directed to attach an impression of his seal upon official documents and certificates executed over his signature, and take oaths and acknowledgments under his seal in matters pertaining to his office.

History.—§§1-3, ch. 21762, 1943; §2, ch. 26870, 1951.
Note.—Formerly §98.51.

98.351 Form of registration books.—There shall be one or more volumes, well bound with leather backs and corners and cloth sides for each election precinct, large enough to contain the names of all electors of the precinct for which provided, called the "General County Register for Election Precinct _____" (number to be inserted). The pages of the register are alphabetically indexed on the margin. There is one registration book bound in tag board with cloth strips on the back for each election precinct in each county, called "Precinct Register for _____ Precinct _____ County," and its pages are alphabetically indexed in the margin so as to facilitate registering the electors in the precinct in alphabetical order, according to surname. These precinct registers are bound in different sizes, so as to suit the different precincts. The paper, size of papers, ruling and printing are the same as used for the general county register.

The following form of oath shall be printed in the column in which the word "Oath" appears: "I, having been first duly sworn, say upon oath, that the statements here entered opposite my name, as to my qualifications as an elector, are true." The supervisor shall administer this oath; and he shall also administer the oath required by §3 of article VI of the constitution of Florida, in the manner prescribed by §97.051.

The pages of the registration book shall carry the heading "Official Register of Electors for _____ Precinct, _____ County, Florida," and shall be ruled and printed in columns with the following headings: (1) number, (2) date, (3) surname and given name, (4) sex, (5) party affiliation, (6) voted, (7) occupation, (8) age and date of birth, (9) color, (10) nativity, (11) declaration of naturalization, (12) residence, (13) oath, signature of voter, (14) signature of supervisor, (15) freeholder—tax on real property, (16) tax on personal property and (17) remarks.

History.—§12, ch. 6469, 1913; §4, ch. 6874, 1915; RGS 316; CGL 373; §2, ch. 25388, 1949; §2, ch. 26870, 1951.
Note.—Formerly §102.19.

98.361 Registration books, forms and certicates furnished by secretary of state.—

(1) The secretary of state shall prepare a sufficient number of registration books, and all other books and blanks required by law for registration of electors for county not under permanent registration system. Upon request of the supervisor the secretary of state shall furnish required books and blanks.

(2) All binders, files and other materials are furnished by the board of county commissioners; provided, however, that when a municipality elects to use the system it shall reimburse the county fifty per cent of the cost of such binders, files and other materials for the precincts within the said municipality.

History.—§11, ch. 3879, 1889; RS 165; §13, ch. 4328, 1895; GS 188, 189; §19, ch. 6469, 1913; RGS 232, 233, 323; CGL 285, 286, 380; §11, ch. 25391, 1949; §2, ch. 26870, 1951; §3, ch. 29761, 1955.
Note.—Formerly §§97.11, 98.28, 98.29 and 102.26.

98.381 Conflicting registration laws.—All registration laws after January 1, 1960, in conflict with the election code of 1951 are repealed except chapter 22195, Laws of 1943, creating the Hillsborough county election board.

History.—§2, ch. 26870, 1951.

CHAPTER 99

CANDIDATES, CAMPAIGN EXPENSES AND CONTESTING ELECTIONS

99.011 Candidate defined.—The word "candidate" shall mean any person who has announced to any person, or to the public, that he is a candidate for a certain office.

History.—§13, ch. 6470, 1913; RGS 5928; CGL 8192; formerly §875.41, revised and renumbered by §3, ch. 26870, 1951.

99.012 Individuals seeking public office.—No individual may qualify as a candidate for public office within the state whether such office be federal, state, county, or municipal, who is qualified as a candidate in the same primary or general election for any other office if the term of such other office or any part thereof runs concurrent to the office for which he seeks to qualify.

History.—§1, ch. 63-269.

99.021 Form of candidate oath.—

(1) Every candidate for nomination to any office is required to take and subscribe to an oath or affirmation in writing, in which he shall state:

(a) The party of which he is a member;

(b) That he voted for at least ninety per cent of the opposed nominees of the party of which he is a member at the last past general election, if he voted at said election, and that he was not a registered member of any other political party during the two years immediately preceding the date of execution of this oath or affirmation, and that he pledges himself to vote for ninety per cent of the opposed nominees of such party whose names shall appear upon the ballot at the next succeeding general election and during his term in office if elected;

(c) The title of the office for which he is a candidate;

(d) That he is a qualified elector of the state;

(e) The name of the county of his legal residence;

(f) That he is qualified under the laws of Florida to hold office for which he desires to be nominated;

(g) That he has paid the assessment levied against him as a candidate for said office by the executive committee of the party of which he is a member;

(h) That he has not violated any of the laws of the state relating to elections or registration of electors; and

(i) That he has taken the oath as required by §§876.05-876.10.

(j) That he has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he seeks.

A printed copy of the statement is required to be furnished to the candidate by the executive committee of said party and said sworn statement shall be substantially in the following form:

State of Florida

County of _____

Before me, an officer authorized to administer oaths, personally appeared _____, to me well known, who, being sworn, says he is a member of the _____ party; that he did vote for ninety per cent of the opposed nominees of said party, at the last past general election; that he did not register as a member of any other political party during the two years immediately preceding, and that he pledges himself to vote for ninety per cent of the opposed nominees of said party, whose names shall appear upon the ballot at the next succeeding general election and during his term in office, if elected; that he is a candidate for the office of _____

in _____; (insert description of primary election involved) that he is a qualified elector of _____county, Florida; that he has paid the assessment levied against him as a candidate for said office by the _____ executive committee of the _____ party; that he is qualified under the constitution and laws of Florida to hold the office for which he desires to be nominated; that he has taken the oath required by §§876.05-876.10, and that he has not violated any of the laws of the state relating to elections or the registration of electors.

_____
(Signature of the candidate)

Sworn to and subscribed before me this _____ _____ day of _____, 19____ at _____county, Florida.

(2) The provisions of subsection (1) relating to the required oath of candidates for nomination in a primary election, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, candidates for election to political party offices in the primary, as provided by law. The requirements set forth in this section shall also apply to persons filling vacancies under §103.111.

History.—§§22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; §3, ch. 19663, 1939; §3, ch. 26870, 1951; §10, ch. 28156, 1953; §1, ch. 57-742; (1)(b), (2)a. §1, ch. 61-128; (1)(j) n. §2, ch. 63-269; (2) §1, ch. 63-66.
Note.—Formerly §§102.29 and 102.30.

99.022 Qualification of candidates for county commission and county school board.—A candidate for the office of county commission or county school board shall have been a bona fide resident of the district from which he qualifies for a period of at least six months prior to the qualifying date.

History.—§1, ch. 59-489.

99.031 Filing fee of candidate.—A candidate for nomination for any office is required to pay, to the officer with whom he qualified, a filing fee and attach the orginal or signed duplicate of the receipt for his party assessment or pay the same in accordance with the provisions of §103.121 at the time of filing the sworn statement. The amount of the filing fee is three per cent of the annual salary of the office. The amount of committee assessment is two per cent of the annual salary unless made less by the executive committees.

History.—§24, ch. 6469, 1913; RGS 328; CGL 385; §3, ch. 26870, 1951; §12, ch. 29934, 1955.
Note.—Formerly §102.31.

99.041 Candidates entitled to have names printed on official ballot; exception.—

(1) Any candidate who has qualified as prescribed by law, is entitled to have his name printed on the official primary election ballot; provided that when there is only one candidate of any political party qualified for an office the name of the candidate shall not be printed on the primary election ballot, and such candidate shall be declared nominated for the office.

(2) Any candidate for party committee member who has qualified as prescribed by law is entitled to have his name printed on the official primary election ballot; provided that when there is only one candidate of any political party qualified for an office the name of the candidate shall not be printed on the primary election ballot and such candidate shall be declared elected for the state or county executive committee.

History.—§27, ch. 6469, 1913; RGS 331; CGL 388; §3, ch. 26870, 1951; §1, ch. 63-99.
Note.—Formerly §102.34.

99.051 When nominated names to appear in groups.—When an office requires the nomination of more than one candidate, as many groups shall be numerically designated as there are vacancies to be filled by nomination, each candidate shall indicate the group in which he desires his name to appear on the ballot.

History.—§52, ch. 6469, 1913; §8, ch. 6874, 1915; RGS 356; CGL 413; §3, ch. 26870, 1951.
Note.—Formerly §102.49.

99.061 Nomination of candidates for state, county and United States offices; sworn statement, receipt and filing fee.—

(1) Candidates for nomination of any recognized political party for state offices of secretary of state, attorney general, state comptroller, state treasurer, state superintendent of public instruction, commissioner of agriculture, state senator, member of the house of representatives, supreme court judge, circuit judge, state's attorney and candidates for the offices of representatives to congress and United States senate, are required to file their qualification papers, pay the qualification fees and party assessment, if any has been levied, to the secretary of state at any time after noon of the first filing date, which shall be the seventy-seventh day prior to the first primary, but not later than noon of the sixty-third day prior to the date of the first primary in the year in which any primary is held.

(2) Candidates for nomination of any recognized political party for the office of governor and all other candidates for state offices are required to file their qualification papers and pay their qualification fees and party assessment to the secretary of state at any time after noon of the first filing date, which shall be the seventy-seventh day prior to the first primary, but not later than noon of the sixty-third day prior to the date of the first primary in the year in which any primary is held.

(3) Candidates for nomination to a county office shall file their sworn statement and receipt for party assessment with and pay their filing fees to the clerk of the circuit court of the county who shall receive same in his capacity as clerk of the board of county commissioners of said county at any time after noon the first filing date, which shall be the sixty-third day prior to the first primary and not later than noon the forty-ninth day prior to the first primary in the year in which any primary is held for the qualifying of such candidates. The clerk of the circuit court shall remit to the secretary of the state executive committee of

the political party to which the candidate belongs within sixty days after the closing of qualifying time the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and members of the legislature.

(4) The secretary of state shall certify to the clerks of the circuit court the names of all candidates duly qualified for nomination of any recognized political party for offices of state senator and member of the house of representatives within ten days of the closing date for qualifying.

History.—§§25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387, §§4, 5, ch. 13761, 1929; §1, ch. 16990, 1935; §1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); §1, ch. 20619, 1941; §1, ch. 21851, 1943; §1, ch. 23006, 1945; §1, ch. 24163, 1947; §3, ch. 26870, 1951; (4)n. §11, ch. 28156, 1953; §4, ch. 29936, 1955; (3) §10, ch. 57-1; (3) §1, ch. 59-84; (3) §1, ch. 61-373 and §4, ch. 61-530; (3) §1, ch. 63-502.

Note.—Formerly §§102.32, 102.33, 102.351, 102.36, 102.66 and 102.69

99.071 Nomination for judge of inferior court and solicitor.—A candidate for nomination by a political party for the office of judge or solicitor of any inferior court created with jurisdiction wholly within the county by special legislative act is classified as a county officer and is required to file for nomination in the same manner and at the same time as prescribed for county officers in the county in which the court exists.

History.—§1, ch. 20850, 1941; §1, ch. 21702, 1943; §3, ch. 26870, 1951; §13, ch. 29934, 1955.

Note.—Formerly §102.67.

99.081 United States senators elected in general election.—United States senators from Florida are elected at the general election held next preceding the expiration of their terms of office and such election shall conform as nearly as practicable to the methods provided for the election of state officers.

History.—§1, ch. 6471, 1913; RGS 391; CGL 456; §3, ch. 26870, 1951.

Note.—Formerly §106.01.

99.091 Representatives to congress.—

(1) A representative to congress is elected in and for each congressional district at every general election.

(2) When Florida is entitled to additional representatives according to the last census, representatives are elected from the state at large and at large thereafter until the state is redistricted by the legislature.

History.—§§2, 3, ch. 3879, 1889; RS 157; §4, ch. 4328, 1895; §3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; §2, ch. 25383, 1949; §3, ch. 26870, 1951.

Note.—Formerly §98.07.

99.101 Filing fee required of candidate for committeeman and committeewoman.—Any candidate for nomination, by any recognized political party under the primary law, to the office of national committeeman or committeewoman shall file a qualification oath and pay a filing fee of one hundred dollars with the secretary of state.

He shall attach to his oath the original or signed duplicate of the receipt for his party assessment which assessment shall be the amount set by the state executive committee of the party of which he is a member but shall not exceed twenty-five dollars. Such assessment shall be paid to said committee.

History.—§1, ch. 25382, 1949; §3, ch. 26870, 1951; §14, ch. 29934, 1955.

Note.—Formerly §102.312.

99.102 Filing fee required of candidates for delegates to national convention.—Candidates for nomination by any recognized political party under the primary laws, to the office of delegate to the national convention shall file a qualification oath and pay a filing fee of: (1) congressional—$25.00 (2) state at large—$50.00, payable to the secretary of state.

History.—§3, ch. 26870, 1951.

99.103 Secretary of state to remit filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members, and, if such party shall be declared by the secretary of state to have recorded on the registration books of the counties, as of the eighty-fourth day prior to the first primary in general election years, five per cent of the total registrations of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the secretary of state from its candidates.

(2) Not later than thirty days prior to the first primary in even-numbered years the secretary of state shall remit all filing fees or party assessments that may have been collected by him to the respective state executive committee of the parties complying with subsection (1). Party assessments collected by the secretary of state shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of §103.111.

History.—§1, ch. 29935, 1955; (2) §24, ch. 57-1; (1) §1, ch. 57-62; §4, ch. 57-166.

99.111 Notification to supervisor of unopposed candidates.—The clerk of the circuit court shall notify the supervisor of the names of all persons who qualified for a county office and without opposition in the primary election.

History.—§3, ch. 26870, 1951; §24, ch. 57-1.

99.121 Secretary of state and supervisor to certify state, congressional, district and county nominations to county commissioners.—The secretary of state shall certify to the board of county commissioners of each county in case of an officer to be voted for by the electors of the whole state, and to the board of county commissioners of the counties composing a congressional, senatorial or other district, in case of any officer to be voted for by the electors of the district containing more than one county, the names of persons nominated to the offices.

The supervisors shall certify to their boards of county commissioners the names of persons nominated to county offices. The certifications shall be filed with the boards of county commissioners not less than twenty-five days prior

to the general election.

The names of such persons shall be printed by the boards of county commissioners upon the ballot in their proper place except as provided in chapter 100.

History.—§30, ch. 4328, 1895; §10, ch. 4537, 1897; GS 215, 3824; §54, ch. 6469, 1913; RGS 259, 358, 5885; CGL 315, 415, 8148; §11, ch. 26329, 1949; §3, ch. 26870, 1951; §5, ch. 57-166.
Note.—Formerly §§99.13 and 102.51.

99.131 County commissioners to print names of candidates on ballots, etc.—

(1) The board of county commissioners of each county shall print on the general election ballots to be used in their counties, names of candidates nominated by primary elections or special primary elections or put in by appropriate executive committee of any political party, including presidential electors recommended by the state executive committee and nominated by the governor, provided the names are certified and filed with them at least twenty-five days prior to election day except as provided in chapter 100 for filling vacancies. This certificate shall contain the names of persons nominated and the offices for which they are nominated, and shall be signed and sworn to by a majority of the members of the appropriate canvassing board of primary elections, or in case of a nomination by an executive committee, by the chairman or secretary thereof. All committee nominations are made as provided by laws governing primary elections; and further, there are printed on the ballots the names of candidates of political parties nominated or selected to fill vacancies in nomination or vacancies in office in the manner and within the time provided by chapter 100.

(2) In addition to names printed on the ballot, there shall be printed under each office to be voted upon, a blank line. If an election is held to fill a vacancy in either house of the legislature during a regular session thereof the names of all candidates nominated by the executive committee of a political party may be certified to the proper authority not less than five days prior to the election and the names are printed upon the ballots to be voted at said election.

(3) The board of county commissioners shall deliver the ballots to the supervisor not later than twenty days preceding a general election except as provided in chapter 100. Any member of the board of county commissioners who violates this provision shall, upon conviction, be guilty of a misdemeanor and punished accordingly.

History.—§30, ch. 4328, 1895; §10, ch. 4537, 1897; GS 212; RGS 256; §1, ch. 9293, 1923; §1, ch. 12038, 1927; CGL 312; §1, ch. 14657, 1931; §7, ch. 22858, 1945; §5, ch. 25384, 1949; §5, ch. 26329, 1949; §3, ch. 26870, 1951; (1), (3) §6, ch. 57-166.
Note.—Formerly §99.10.

99.141 When names not to be printed on ballot.—

(1) No candidate's name, who is voted for by electors of a single county in any primary or general election shall be printed on the ballot, who has notified the board of county commissioners in writing, not less than thirty days before the election, duly acknowledged, that he will not accept the nomination specified in the certificate of nomination.

(2) No candidate's name, who is voted for by electors of more than one county in any primary or general election shall be printed on the ballot, who has notified the secretary of state in writing, not less than thirty days before the election, duly acknowledged, that he will not accept the nomination specified in the certificate of nomination.

History.—§30, ch. 4328, 1895; §10, ch. 4537, 1897; GS 213; RGS 257; CGL 313; §6, ch. 25384, 1949; §3, ch. 26870, 1951; §7, ch. 57-166; §1, ch. 61-363.
Note.—Formerly §99.11.

99.151 Preservation of certificates and petitions of nominations.—

(1) The board of county commissioners shall preserve in the office of the clerk of the circuit court all certificates of nomination filed with them for six months after the election for which such nominations are made.

(2) Upon filing of party assessment, qualification fee, the clerk of the circuit court shall, at the close of qualifying date, submit to the secretary of state a list of the names of all persons seeking nomination to county office.

History.—§32, ch. 4328, 1895; GS 216; RGS 260; CGL 316; §3, ch. 26870, 1951.
Note.—Formerly §99.14.

99.161 Contributions; expenditures, etc.—

(1) CERTAIN PERSONS PROHIBITED FROM MAKING CONTRIBUTIONS.—

(a) No person holding a horse or dog racing permit, nor any member of an unincorporated association holding such a permit, nor any officer, director, or supervisory employee of a corporation holding such a permit, or trustee authorized by trust agreement to vote stock in such corporation where such stock is owned by person or persons sui juris, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, political office in the state.

(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state.

(c) No person operating a public utility subject to grant of franchise or regulation by the state, or any political subdivision thereof, nor any member of an unincorporated association operating such a public utility, nor any officer or director of a corporation operating such a public utility, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, political office in the state.

Members of non-profit cooperative corporations which operate public utilities shall not, by reason of such membership therein, be included within the prohibition contained in this subsection.

(2) MAXIMUM CONTRIBUTIONS; INDIRECT AND PROHIBITED CONTRIBUTIONS; ADVERTISING; INITIAL DATE OF EXPENDITURES.—

(a) No person shall contribute to a candidate for election or nomination to political office in the state, directly or indirectly, in moneys, material, supplies, or by way of loan, in an amount or value in excess of one thousand dollars in any primary or general election.

(b) No person shall give, furnish or contribute moneys, material, supplies or make loans in support of a candidate for election or nomination, through or in the name of another, directly or indirectly, in any primary or general election. The solicitation from and contributions by candidates and party executive committees to any religious, charitable, civic, eleemosynary or other causes or organizations established primarily for the public good is expressly prohibited; provided that it shall not be construed as a violation of this section for a candidate to continue regular personal contributions to religious, civic or charitable groups of which he is a member or to which he has been a regular contributor for more than six months.

(c) No candidate or party executive committee, or person or organization on behalf of such candidates or committee, shall expend any moneys or give anything of value for advertising in any publication or newspaper not qualified for legal advertising as provided by law, unless the publication or newspaper has been published at least once per month for not less than a period of three years prior thereto, and has a circulation of at least one thousand; provided, further, that no such political advertising shall be done in any club or association bulletin, program, news sheet, magazine, pamphlet or hand bill.

(d) No candidate for nomination or any committee, organization or person on his behalf shall, prior to noon on the first filing date for the nomination which said candidate seeks, make any expenditures for campaign purposes or for the promotion of his candidacy other than for personal travel and incidental expenses, and all expenditures as defined in this section shall be reported as required by this section from the date of public announcement of his candidacy or from the date of filing of his qualification papers, whichever date shall occur first; provided that such candidate or committees or organizations shall be permitted to reserve but make no use of advertising time and space and office facilities prior to qualification.

(3) CAMPAIGN TREASURER AND DEPUTY; DESIGNATION OF DEPOSITORIES; REMOVAL; VACANCY, FILLING.—

(a) Each candidate for nomination for, or election to, political office in the state, upon or before, and as a condition precedent to, qualifying as such candidate, shall appoint one campaign treasurer and shall designate one campaign depository and shall file the name and address of each with the officer before whom such candidate is required by law to qualify. The candidate may designate himself or any other elector to act as such campaign treasurer and may designate as his campaign depository any bank authorized by law to transact business in the state.

(b) Any campaign treasurer for any candidate may appoint as many deputy treasurers as deemed necessary and may designate not more than one depository in each county in which a campaign is conducted; provided, however, the campaign treasurer herein provided for shall be responsible for the accounts of all such deputy campaign treasurers; and provided further that the names and addresses of each deputy campaign treasurer and additional campaign depositories shall be filed with the officer before whom such candidate is required by law to qualify.

(c) Any candidate may remove a campaign treasurer or deputy campaign treasurer so appointed.

(d) In case of the death, resignation, or removal of a campaign treasurer, the candidate shall forthwith appoint a successor and certify the appointment in the manner provided in the case of an original appointment.

(4) CAMPAIGN TREASURER IN CHARGE OF FUNDS; TIME LIMIT.—

(a) No contribution or expenditure of money or other thing of value, nor obligation therefor, including contributions, expenditures, or obligations of the candidate himself or of his family, shall be made, received, or incurred, directly or indirectly, in furtherance of the candidacy of any candidate for political office in the state except through the duly appointed campaign treasurer or deputy campaign treasurers of the candidate.

(b) Any contribution received by the campaign treasurer or deputy treasurer less than five days before the election shall be returned by him to the person contributing it and shall not be used or expended in behalf of the candidate or in furtherance of his candidacy.

(5) DEPOSIT OF CONTRIBUTIONS; STATEMENT OF CAMPAIGN TREASURER. —All funds received in furtherance of the candidacy of any candidate shall, within twenty-four hours after receipt thereof (Sundays and holidays excepted), be deposited by the campaign treasurer or deputy campaign treasurers in a campaign depository of such candidate in an account designated "Campaign Fund of _____(name of candidate)."

Accompanying all deposits so made by the campaign treasurer or deputy campaign treasurers shall be a detailed statement showing the names and addresses of the persons contributing or providing the funds so deposited, together with a statement of the amount received from, or provided by, each person. Such statement shall be in triplicate upon a form prescribed by the secretary of state, one copy to be retained by the campaign depository for its records, one copy to be filed by the depository as set forth in subsection (10) of this section, and one copy to be retained by the campaign treas-

urer for his records, which statements shall be certified as correct by the campaign treasurer.

(6) EXPENDITURES RESTRICTED TO AMOUNTS ON DEPOSIT.—No candidate, campaign treasurer or deputy campaign treasurer shall authorize the incurring of any expense in behalf of the candidate, or in furtherance or aid of his candidacy, unless there are moneys on deposit in the campaign depository to the credit of the account known as the campaign fund of the candidate sufficient to pay the amount of the expenses so authorized, together with all other expenses previously authorized. Any such expenses, incurred or authorized or official campaign treasurer's reports thereof, in excess of such moneys on deposit shall be deemed to constitute a violation of this section.

(7) WRITTEN AUTHORIZATION OF EXPENDITURE REQUIRED.—No expenses shall be incurred by any candidate for election or nomination to political office, or by any person, corporation, or association in his behalf, or in furtherance or aid of his candidacy, unless prior to the incurring of the expense a written order shall be made in and upon the form prescribed, and signed by the campaign treasurer of the candidate authorizing the expenditure, and no money shall be withdrawn or paid by any campaign depository from any campaign fund account except upon the presentation of the written order, so signed, accompanied by the certificate of the person claiming the payment, which certificate shall state that the amount named in the order, or such part thereof as may be claimed, naming the amount claimed, is justly due and owing to the claimant, that the order truly states all of the purposes for which the indebtedness was incurred, and that no person other than the claimant is interested, directly or indirectly, in the payment of the claim, and unless an order for payment in and upon the form prescribed, and signed by the campaign treasurer or deputy treasurer, is presented to the campaign depository; provided that any such authorization may be issued by the campaign treasurer to the candidate for traveling expenses still to be incurred. The order authorizing such expenditure, the certificate, and the order for payment shall be on the same piece of paper.

(8) REPORTS; CERTIFICATION AND FILING; UNOPPOSED CANDIDATES.—(a) Each candidate shall report to his campaign treasurer on Friday of each week all expenditures made by such candidate for traveling expenses during the preceding seven days and each campaign treasurer shall make a full and complete report of all monies or other things of value contributed to him and to all deputy campaign treasurers of such candidate; the report shall contain the names and addresses of each of the contributors and the amount contributed by each, and a complete statement of all expenditures authorized, incurred, or made by him, and by all deputy campaign treasurers, to the date of such report, and all expenditures by the candidate for traveling expenses made prior to the Friday next preceding the filing of such report. These reports shall be made at the following intervals by the campaign treasurers of the candidates for the following respective offices between the date of the appointment of the campaign treasurer and the date of the election or elimination of the candidate:

1. Governor and United States Senator—On Monday of each week preceding the election
2. All other offices—On the first Monday of each month preceding the election
3. In the case of all offices—Fifteen days after each primary or election in which the candidate participates

(b) The rental or purchase of public address equipment shall not be regarded as traveling expense.

(c) The campaign treasurer shall certify as to the correctness of each report and the candidate shall also bear the responsibility for the accuracy and veracity of each report.

(d) Such reports shall be filed with the officer before whom the candidate is required by law to qualify not later than noon of the day designated and all such reports shall be open to public inspection. Duplicate copy, duly certified, shall be filed by the same time with the clerk of the circuit court in the county in which the candidate resides, unless, under the provisions of this subsection, the original reports are filed with such clerk.

(e) Should any candidate be unopposed for nomination for, or election to, any office after the time prescribed by law for qualifying for the nomination or election, then the obligation to file the above reports shall cease.

(9) STATE AND COUNTY EXECUTIVE COMMITTEES, REPORTS, CERTIFICATION AND FILING.—

(a) Each state and county executive committee and each organization, group, or other committee organized in support of a candidate or party in any primary or election, shall make a report of the amount of money received from each candidate qualifying in the county or in the state, as the case may be, on the first Monday of the month following the closing date of qualification of candidates. Each such executive committee, organization, group, or other committee shall make a full and complete report of all moneys or other things of value contributed to them or to any member of such body and such report shall contain the names and addresses of each of the contributors and the amount contributed by each, and a complete statement of all expenditures authorized, incurred or made by them, or by any member of said body, to the date of such report. These reports shall be made by the chairman or secretary of the state or county executive committee, and by the chairman of all other organizations covered by this subsection, on the first Monday of each month following the first report preceding the election. The state executive committee shall file its report with the secretary of state and the county executive committee shall file its report with the clerk of the board of county commissioners. All other organizations shall

file reports with the clerk of the circuit court of that county in which the greatest number of its members or contributors resident in the state may reside and shall, in addition, file a duplicate copy, duly certified, with the secretary of state if there be members or contributors residing in more than one county or in another state.

(b) The chairman or secretary of said committee shall certify as to the correctness of each report.

(c) Any contribution received by the committee less than five days before the election shall not be used or expended in behalf of any candidate or political party.

(d) No state or county executive committee, in the furtherance of any candidate or political party, directly or indirectly, shall give, pay or expend any money or give or pay anything of value or authorize any expenditure or become pecuniarily liable, except for the purpose provided in §99.172; provided, however, that the contribution of funds by one executive committee to another or to establish party organizations for legitimate party or campaign purposes shall not be prohibited but all such contributions shall be recorded and accounted for in the reports of the contributor and recipient.

(10) DEPOSITORY'S STATEMENT AFTER ELECTION.—Within fifteen days after each election in which a candidate participates, the designated campaign depository or depositories of each such candidate shall file either the original or a true copy of all the deposit slips filed with the said depository by the campaign treasurer or deputy campaign treasurer, and the original or a true copy of all authorizations of the campaign treasurer or deputy campaign treasurers upon which funds were withdrawn from said depository. Such statement by such depository shall be filed with the officer before whom the candidate whose account the depository carries is required to qualify.

(11) NOT APPLICABLE TO CANDIDATES FOR MUNICIPAL OFFICES.—This section shall not apply to candidates for municipal offices.

(12) SECRETARY OF STATE TO PRESCRIBE FORMS.—Appropriate forms necessary to effectuate the purposes of this act, including the campaign treasurer's reports, the statements by the campaign depository, the deposit slips, and the order authorizing expenditures, the certificate of the person to whom payment is made, and the order for payment, shall be prescribed and approved by the secretary of state of the state.

(13) LIMITATION OF ACTIONS.—Prosecution for the violation of any of the provisions of this section may be commenced before, but not after, four years shall have elapsed from the date of the violation.

(14) No person or public office holder in the furtherance of his candidacy for nomination or election for public office in any election, shall himself, or by any other person, or state or county executive committee, or on behalf of any person, directly or indirectly, give, pay or expend any money or give or pay anything of value, or authorize any expenditures or become pecuniarily liable for any political poll, survey, index or measurement of any kind or the publication, production or distribution thereof, relating to candidacy for public office.

No person shall solicit either directly or indirectly from any candidate for nomination or election for public office, or from any public office holder, any money or thing of value for the conduct of any poll, survey, index or measurement of any kind or the publication, production or distribution thereof, relating to candidacy for public office.

Provided however, this subsection shall not apply to any poll conducted by the candidate himself, where the candidate maintains control of the manner, method, time, advertisement and complete jurisdiction over the said poll in all its aspects.

Any person violating the provisions of this act shall, upon conviction, be punished by a fine of not more than $500.00 or by imprisonment not exceeding 1 year.

History.—§§1-11, 13, ch. 26819, 1951; §3, ch. 26870, 1951; §12, ch. 28156, 1953; §1, ch. 29936, 1955; (2)(c) §1, ch. 57-377; (14) n. §1, ch. 63-520.

cf.—§104.27 Penalties for violation of §99.161.
§550.07 Issuance of license by racing commission; revocation.

99.172 Expenditures allowed in furtherance of candidacy at any election.—

(1) No person in furtherance of his candidacy for nomination or election for public office in any election shall directly or indirectly give, pay or expend any money or give or pay anything of value, or authorize any expenditure or become pecuniarily liable in furtherance of said candidacy except for purposes enumerated below. Further, no person or group of persons acting on behalf of any other person's candidacy shall directly or indirectly give, pay, or expend any money or give or pay anything of value, or authorize any expenditure or become pecuniarily liable without authority from said candidate or his campaign treasurer and then only for the purposes enumerated below. Further, no county or state political party committee directly or indirectly shall give, pay, or expend any money or give or pay anything of value or authorize any expenditure or become pecuniarily liable, except for the following purposes, unless otherwise provided by law:

(a) Fee for qualifying.
(b) For his traveling expenses while campaigning or the legitimate traveling expenses of speakers in his behalf or of his campaign employees or committee members.
(c) Stenographic work.
(d) Clerks at his campaign headquarters to address, prepare and mail campaign literature.
(e) Telegrams.
(f) Telephones.
(g) Postage.
(h) Freight.
(i) Express.
(j) Stationery.
(k) List of electors.
(l) Office rent.
(m) Newspaper advertising.
(n) Advertising on television.

(o) Advertising in magazines or other periodicals.

(p) Advertising on billboards, on banners and on streamers.

(q) Printing and the renting of halls in which to address the electors.

(r) Radio time.

(s) The renting or buying of public address equipment and the automotive equipment necessary to transport and operate it.

(t) Compensation for campaign treasurer and campaign manager of the candidate at his main headquarters.

(u) Compensation for poll watchers.

(v) Hire of cars and drivers.

(w) Public opinion polls.

(x) Campaign literature.

(y) Baby-sitting service.

(2) No candidate shall pay money or give anything of value for the privilege of speaking at a political meeting in the furtherance of his candidacy, nor shall anyone speaking for a candidate pay money or give anything of value for such privilege.

(3) The expenditure of any money or giving, paying or promising to give or pay any money or anything of value directly or indirectly by any candidate in furtherance of his candidacy for nomination or election, except for the purposes authorized by this section is prohibited.

History.—§§1, 3, ch. 6470, 1913; RGS 5918; CGL 8182; §1, ch. 19617, 1939; §1, ch. 20934, 1941; §7, ch. 22858, 1945; §3, ch. 26870, 1951; §13, ch. 28156, 1953; §2, ch. 29936, 1955; §1, ch. 63-255.
Note.—Formerly §102.61.
cf.—§104.061 corruptly influencing voting. §104.28 violating provisions concerning expenditures of candidates.

99.183 Statement to be kept for four years; admissible as evidence.—The officers, with whom statements of campaign expenses are filed, shall securely keep the statements for at least four years, and a copy of the statements duly certified to by the officer with whom filed is admissible as evidence in any state court.

History.—§21, ch. 6470, 1913; RGS 365; CGL 422; §3, ch. 26870, 1951; §14, ch. 28156, 1953.
Note.—Formerly §102.58.

99.192 Contest of election.—The certification of election or nomination of any person to office may be contested in the circuit court in accordance with chancery procedure by any unsuccessful candidate for such office, or by any taxpayer on any question submitted by referendum.

Such contestant shall file a sworn bill of complaint within ten days after the canvass by the canvassing board of the election returns for such office, and shall set forth the grounds on which he intends to establish his right to such office, or to set aside the result of the election on a submitted referendum. The successful candidate and the canvassing board or election board shall be the proper party defendant.

History.—§§7, 8, art. 10, ch. 38, 1845; RS 199; GS 283; RGS 379; CGL 444; §3, ch. 26870, 1951.
Note.—Formerly §104.06.

99.202 Venue.—The venue for nomination or election contest or on a referendum result shall be in the county in which the contestant qualified or in the county in which the question was submitted for referendum or if the election or referendum covered more than one county then in Leon county.

History.—§3, ch. 26870, 1951.

99.211 Decree of ouster; revocation of commission.—If the contestant is found to be entitled to the office and if on the findings a decree to that effect shall be entered, and if the adverse party has been commissioned or has entered upon the duties thereof or is holding the office then a judgment decree of ouster is entered against such party. Upon presentation of a certified copy of the judgment decree of ouster to the governor he shall revoke such commission and commission the person found in the decree entitled to the office.

If a judgment is entered setting aside a referendum then the election shall be void.

History.—§9, art. 10, ch. 38, 1845; RS 201; GS 285; RGS 381; CGL 446; §3, ch. 26870, 1951.
Note.—Formerly §104.08.

99.221 Quo warranto not abridged.—Nothing in this code shall be construed to abrogate or abridge any remedy that may now exist by quo warranto, but in such case the proceeding in chancery is taken to be an alternative or cumulative remedy.

History.—§203, RS 1892; GS 287; RGS 383; CGL 448; §3, ch. 26870, 1951.
Note.—Formerly §104.10.

CHAPTER 100

GENERAL, PRIMARY, SPECIAL, BOND AND REFERENDUM ELECTIONS

100.011 Opening and closing of polls, all elections; expenses.—

(1) The polls shall be open at the voting places at 7:00 a. m., on the day of the election, and shall be kept open until 7:00 p. m., of the same day, and the time to be regulated by the customary time in standard use in the locality. The inspectors shall make public proclamation of the opening and closing of the polls, and during the election and canvass of the votes the ballot box shall not be concealed.

(2) The time of opening and closing polls shall be observed in all elections held in this state, including municipal and school elections; and all provisions of general, special or local laws, or municipal charters setting forth contrary hours are repealed.

(3) The expenses of holding all elections for county and state offices necessarily incurred shall be paid out of the treasury of the county or state, as the case may be, in the same manner and by the same officers as in general elections.

History.—§23, ch. 3879, 1889; RS 117; §27, ch. 4328, 1895; GS 209; §8, ch. 6469, 1913; RGS 253, 306; CGL 309, 362; §§1, 2, ch. 20409, 1941; §§1, 2, ch. 22739, 1945; §4, ch. 25384, 1949; §4, ch. 26870, 1951.
Note.—Formerly §§99.07 and 102.08.

100.021 Notice of general election.—The secretary of state shall, between the first days of July and September in any year in which a general election shall be held, make out a notice stating what offices and vacancies are to be filled at the general election in the state, and in each county and district thereof. At least sixty days prior to the date of holding the election the secretary of state shall have the notice published four times in a newspaper printed in each county, and in counties in which no newspaper is printed, he shall send to the sheriff a notice of the offices and vacancies to be filled at such general election by the qualified voters of his county, or any district thereof, and the sheriff shall have at least five copies of the notice posted in the most conspicuous and public places in the county.

History.—§5, ch. 3879, 1889; RS 159; §6, ch. 4328, 1895; §4, ch. 4537, 1897; GS 176; RGS 220; CGL 255; §1, ch. 25383, 1949; §4, ch. 26870, 1951.
Note.—Formerly §98.06.

100.031 General election.—A general election is held in each county on the Tuesday next succeeding the first Monday in November, 1906, and biennially on the same day, at which time the qualified electors shall choose, as provided by constitution and laws of this state, persons to fill all vacant federal, state or county offices required to be filled by an election.

History.—§2, ch. 4328, 1895; §1, ch. 4537, 1897; GS 171; RGS 216; CGL 251; §4, ch. 26870, 1951.
Note.—Formerly §98.04.

100.041 Officers chosen at general election.—

*(1) The governor, the administrative officers of the executive department, and the state senators representing the odd numbered

districts, shall be elected at a general election to be held in 1920, and every four years thereafter. State senators from the even numbered districts shall be chosen in the general election in 1922, and every four years thereafter. Members of the house of representatives shall be chosen at every general election. The clerk of the circuit court, county judge, sheriff, superintendent of public instruction, county surveyor, county assessor of taxes and county tax collector shall be chosen for each county by its qualified electors at the general election 1920, and every four years thereafter. The justice of the peace for each justice district, and a constable for each justice district shall be elected by the qualified electors thereof at the general election 1920, and every four years thereafter.

(2) A board of county commissioners of five members, one for each district, elected from the several counties at large, shall be elected by the qualified electors of the county at every general election beginning in 1944. The commissioners elected from the even numbered districts shall serve two years, those elected from the odd numbered districts shall serve four years, and thereafter the terms shall be for four years; provided, that §11 of Art. VIII of the state constitution shall not be affected.

(3) County school board members shall be elected at the general elections held in November, and their terms shall be arranged so that in counties which now have five board members, the terms shall be arranged with three members elected at one general election and two members elected at the next ensuing general election.

History.—RS 156; §3, ch. 4328, 1895; §2, ch. 4537, 1897; GS 172; §10, sub. §10, ch. 7638, 1919; RGS 217; CGL 252; §4, ch. 26870, 1951; §15, ch. 28156, 1953; (3) §1, ch. 59-140.
Note.—Formerly §98.05.

*100.041 Officers chosen at general election.—(1) The governor, and the administrative officers of the executive department and the state senators representing the odd numbered districts, shall be elected at a general election to be held in 1920 and every four years thereafter. State senators from the even numbered districts shall be chosen in the general election in 1922, and every four years thereafter. Members of the house of representatives shall be chosen at every general election. The clerk of the circuit court, county judge, sheriff, superintendent of public instruction, county surveyor, county assessor of taxes and county tax collector shall be chosen for each county by its qualified electors at the general election in 1920 and every four years thereafter. The justice of the peace for each justice district, and a constable for each justice district shall be elected by the qualified electors thereof at the general election in 1920, and every four years thereafter. Provided however, that if the appropriate constitutional amendment authorizing same becomes effective the governor and the administrative officers of the executive department shall be elected at the general election of A.D., 1964, for a term of two years, and thereafter commencing with the general election of A.D., 1966, the governor and the administrative officers of the executive department shall be elected for a term of four years. The terms of office shall begin the first Tuesday after the first Monday in January after said election. The governor elected at the general election of A.D., 1964, shall be eligible for re-election to said office in the general election of A.D., 1966, but the governor elected at the general election of A.D., 1966, and thereafter, shall not be eligible for re-election to said office the next succeeding term.

History.—(1) §1, ch. 63-479.
*Note.—This subsection (1) enacted by ch. 63-479 is dependent upon ratification of constitutional amendment.

100.051 Candidate's name on general election ballot.—The board of county commissioners of each county shall print on ballots to be used in their county at the next general election the names of candidates who have been nominated and qualified.

History.—§53, ch. 6469, 1913; RGS 357; CGL 414; §4, ch. 26870, 1951.
Note.—Formerly §102.50.

100.061 First primary election. —A first primary election shall be held on the first Tuesday after the first Monday in May of each year in which a general election is held for nomination of candidates of political parties. Each candidate receiving a majority of the votes cast in each contest in the first primary election shall be declared nominated for such office. A second primary election shall be held as provided by §100.091 in all contests where a candidate does not receive a majority.

History.—§5, ch. 6469, 1913; RGS 303; CGL 359; §2, ch. 13761, 1929; §1, ch. 17897, 1937; §7, ch. 26329, 1949; §4, ch. 26870, 1951; §1, ch. 57-166; §1, ch. 59-4.
Note.—Formerly §102.05.

100.071 Grouping of candidates on primary ballots.—

(1) Where two or more similar offices are to be filled in the same election, the names of candidates are placed or printed upon the ballot or voting machine in groups; that is, if two or more places on the supreme court, or two or more members of the legislature from the same county, are to be elected, then the candidates' names are placed or printed on the ballot or voting machines in groups, such as group 1, group 2, group 3 as the case may be.

The name of the office shall be printed over each numbered group and each numbered group clearly separated from the next numbered group, the same as in the case of single offices, so as to emphasize the necessity of voting for one candidate in each of the numbered groups.

(2) Nominees of recognized political parties chosen in primaries are in the same numbered group on the general election ballot in which their names appeared on the primary election ballot.

History.—§§1, 2, ch. 23957, 1947; (3) n. §10, ch. 24994, 1948; (3) r. §1, ch. 25051, 1949; §4, ch. 26870, 1951; (1) §1, ch. 29937, 1955.
Note.—Formerly §99.58.

100.081 Conducting primary elections; nomination of county commissioners.—The primary elections shall provide for the nomination of county commissioners by the qualified electors of such county at the time and place set for voting on other county officers, provided, that county commissioners are nominated by the several districts of the county instead of by the county at large, except as provided by §11 of Art. VIII of the state constitution.

History.—§63, ch. 6469, 1913; §10, ch. 6874, 1915; RGS 362; CGL 419; §18, ch. 13761, 1929; §4, ch. 26870, 1951.
Note.—Formerly §102.55.
Held unconstitutional in Ervin v. Richardson, 70 So. 2d 585.

100.091 Second primary election.—

(1) A second primary election shall be held on the fourth Tuesday after the first Monday in May of each year in which a general elec-

tion is held for the nomination of candidates of political parties where nominations are not made in the first primary election.

(2) The names of the candidates placing first and second in the first primary election shall be placed on the ballot in the second primary election in all contests wherein no candidate received a majority of the votes cast in the first primary election, subject to the following exceptions:

(a) In all contests wherein there is a tie for first place in the first primary election only the names of the candidates so tying shall be placed on the ballot in the second primary election.

(b) In all contests wherein there is a tie for second place in the first primary election and the candidate placing first did not receive a majority of the votes cast, then in that event, only the names of the candidates placing first and tying for second shall be placed on the ballot in the second primary election.

(3) The candidate who shall receive the highest number of votes cast for the office in the second primary election shall be declared nominated.

History.—§50, ch. 6469, 1913; RGS 352; CGL 411; §14, ch. 13761, 1929; §2, ch. 17897, 1937; §4, ch. 19663, 1939; §4, ch. 26870, 1951; §2, ch. 57-166; §2, ch. 59-4.
Note.—Formerly §102.48.

100.101 Special elections.—Special elections shall be held in the following cases:

(1) Where there has been no choice of any officer who should have been elected at a general election.

(2) When a vacancy occurs in the office of state senator or member of the house of representatives.

(3) When it shall be necessary to elect presidential electors, by reason of the offices of president and vice-president both having become vacant.

(4) When a vacancy occurs in the office of national representative in congress from Florida.

History.—§4, ch. 3879, 1889; RS 157; §5, ch. 4328, 1895; GS 175; RGS 219; CGL 254; §4, ch. 26870, 1951.
Note.—Formerly §98.08.

100.111 Filling vacancy.—

(1) Whenever there is a vancancy in an elective office which may not be filled by appointment, and a special election is called by the governor to fill the vacancy in such office, nominees of recognized political parties under the primary laws of Florida shall be chosen in a special primary which shall be called by the governor who may fix the date of a primary election and if necessary a second primary election to select nominees of recognized political parties to become candidates in the special election above referred to.

(2) The last date on which for candidates to qualify in such special primary election shall be fixed by the secretary of state and candidates shall qualify not later than noon of the day so fixed.

(3) The filing of campaign expense statements by candidates in such special primaries shall be not later than such dates as shall be fixed by the secretary of state and in fixing such dates the secretary of state shall take into consideration and be governed by the practical limitations of the time element.

(4) The qualification fees and party assessments of such candidates as may qualify shall be the same as collected for the same office at the last previous primary for that office. The party assessment shall be paid to the appropriate executive committee of the political party to which the candidate belongs.

(5) The county canvassing boards shall make as speedy a return of the result of such primaries as the time element will permit and the state canvassing board likewise shall make as speedy a canvass and declaration of the nominees as the time element will permit.

(6) When used in this subsection only, the following quoted words shall have the meaning herein indicated:

(a) "County office" shall include any office which is filled by election by the electors of one county only.

(b) "District office" shall include any office which is filled by election by the electors of an area comprising two or more counties but less than state-wide.

(c) "State office" shall include any office which is filled by election by the electors of the entire state.

(d) "District committee" shall mean the majority of the members of the state executive committee of a political party from the counties comprising the area involving a district office, and which members are convened into session at a meeting presided over by the chairman of such state executive committee or by a vice-chairman designated by said chairman. When such a district committee shall be convened into session, the members thereof shall elect from among their number a secretary who shall keep accurate minutes of the proceedings of said committee; that at the conclusion of the meeting of said committee, such secretary shall file in the office of the chairman of the party's state executive committee the written minutes of such meeting signed by the presiding officer and secretary of such committee at said meeting; and that copies of said minutes or of motions or resolutions appearing therein as adopted at said district committee meeting, duly certified to by the chairman and secretary of such state executive committee, shall be accepted as legal evidence of the action of such a district committee.

In the event that death, resignation, withdrawal, removal or any other cause or event should cause a vacancy in office or nomination between the last date of filing for a special or local primary election or between the date of the first and second primary election or between the date of the second primary election and the general election shall leave no candidate for nomination or election to any county, district or state office, then in that event the secretary of state shall set the latest practicable filing date for that office which will per-

mit ballots to be available and if no such date be practicable, then the secretary of state shall notify the chairman of the state political party executive committee of that party which lost its nominee or candidate as may be appropriate under the terms of this section, or notify the chairman of all state political party executive committees if there be a vacancy in office for which it would be appropriate for more than one political party to designate a candidate or nominee. The candidate or nominee should be named as soon as possible in order that he may have his name printed on the ballot of the ensuing primary or general election and in no event shall the county commissioners be required to print a name on a ballot submitted by the appropriate committee or committees less than five days prior to the election. In the event that the ballots are printed more than five days prior to an election, the name of a committee designated candidate or nominee may be placed on the ballot with a rubber stamp or by other appropriate method. In the event that it is impossible or impractical for a committee to designate a nominee or candidate within five days prior to an election, every effort should be made by the county commissioners to have that candidate's or nominee's name placed on the ballot by the best, practical and appropriate means.

When, under the circumstances set forth in the preceding paragraph, vacancies are required to be filled by committee nominations as to county, district and state offices, such vacancies shall be filled as follows: vacancy in a county office as defined herein shall be filled by the county executive committee of the political party losing its candidate; provided, that if at any time such action is required of a county committee and there be less than three members of such committee, the vacancy shall be filled by a district committee of the party which would be convened to fill a vacancy in a congressional office in the district wherein such county is located. Vacancy in a district office as defined herein shall be filled by a district committee of the party losing its candidate. Vacancy in a state office as defined herein shall be filled by the state executive committee of the party losing its candidate.

(7) It is declared to be the purpose of subsections (1)-(5) of this section to provide for special primaries to select nominees to become candidates in special elections which are necessary to be held to fill vacancies in the elective offices which cannot be filled by appointment.

History.—§4, Ch. 26870, 1951; §16, Ch. 28156, 1953. §§(1), (4), (6) §1, ch. 29938, 1955; (6)(d) by §1, ch. 57-91; (6) (d) by §1, ch. 59-139.
cf.—§114.04 Filling vacancies.

100.112 Filling vacancy occurring on or immediately prior to election day.—In the event a vacancy in nomination or office should occur within seventy-two hours prior to any general election the office shall not be filled by a write-in vote but rather the vacancy shall be filled as if it had occurred immediately upon the close of the polls on election day.

History.—§1, ch. 63-229.

100.121 Candidates in special election; filing fee and campaign expenses; canvassing returns.—Whenever there is a vacancy in an elective office which may not be filled by an appointment, and a special election is called by the governor to fill the vacancy:

(1) The last date on which a candidate is entitled to qualify shall be fixed by the secretary of state and the candidate shall qualify not later than noon of the day so fixed,

(2) The qualification fee of the candidate shall be in the amount fixed in the general primary election law and the party assessment collected from the candidate shall not be more than the maximum in the general primary general law and the party assessment so collected shall be remitted or paid, in accordance with the provisions of §103.121, to the appropriate executive committee of the political party,

(3) The filing of campaign expense statements by a candidate in a special election shall not be later than the dates fixed by the secretary of state and he should take into consideration and be governed by the practical limitations of the time element, and

(4) The county canvassing board shall make as speedy return of the result of the primary as the time element will permit and the state canvassing board likewise shall make as speedy a canvass and declaration of the nominee as possible.

History.—§§1-6, ch. 24103, 1947; §11, ch. 25035, 1949; §4, ch. 26870, 1951; §15, ch. 29934, 1955.
Note.—Formerly §102.73.
cf.—§99.031 Filing fee of candidate.

100.131 Notice of special election; vacancy in legislature during regular session.—Whenever a special election is required to fill a vacancy in the office of state senator or representative during a regular session, the governor shall issue an order declaring on what day the election shall be held and deliver the order to the secretary of state who shall deliver to the sheriff of the county in which the special election is to be held a notice of the time of election and the office to be filled by the electors of the affected county. The sheriff shall have a copy of the notice published one time in a newspaper published in the county, if a newspaper is published on a date not less than five or more than ten days prior to the election. If a newspaper is not published in the county or not published within the period set forth, then the sheriff shall have at least five copies of the notice posted in the most conspicuous and public places in the county, such notices to be posted not less than five days nor more than ten days prior to the election.

History.—§2, ch. 20872, 1941; §3, ch. 26329, 1949; §4, ch. 26870, 1951.
Note.—Formerly §98.44.

100.141 Notice of special election; generally.—Whenever a special election is required, the governor shall issue an order declaring on what day the election shall be held and deliver the order to the secretary of state. The secretary of state shall prepare a notice stating what offices and vacancies are to be filled in a

special election in the state, county and district thereof; he shall have the notice published three times in a newspaper printed in each county wherein a special election is to be held at least fifteen days prior to the election. The secretary of state shall deliver to the sheriffs, of counties in which no newspaper is published, a notice of the time of the special election and the offices to be filled by the electors of their respective counties, or district thereof. The sheriff shall post at least five copies of the notice in the most public and conspicuous places in the county.

History.—§6, ch. 3879, 1889; RS 160; §7, ch. 4328, 1895; GS 177; RGS 221; CGL 256; §3, ch. 25383, 1949; §1, ch. 26329, 1949; §4, ch. 26870, 1951.
Note.—Formerly §98.10.

100.151 County commissioners calling special election, notice.—The county commissioners shall not call any special election until notice is given to the supervisor of registration and his consent obtained as to a date when the registration books can be available.

History.—§4, ch. 26870, 1951.

100.161 Filling vacancy of United States senators.—Should a vacancy happen in the representation of this state in the senate of congress, the governor shall issue writs of election to fill such vacancy at the next general election; and the governor may make temporary appointments until the vacancy is filled by election.

History.—§2, ch. 6471, 1913; RGS 392; CGL 457; §4, ch. 26870, 1951; §17, ch. 28156, 1953.
Note.—Formerly §106.02.

100.171 Arrangement for special election; appointment of election officials.—The board of county commissioners of the county in which a special election is held shall upon the publication or posting of the notice of election as provided in §100.131, hold a meeting or meetings for the arranging of a special election, the appointment of clerks and managers of voting precincts in their respective counties and do the things necessary to conduct such election which shall conform to the laws governing general elections, except requirements governing special primary and special general elections which have special provisions.

History.—§5, ch. 20872, 1941; §4, ch. 26870, 1951.
Note.—Formerly §98.47.

100.181 Determination of person elected.—The person receiving the highest number of votes cast for one office is elected to the office. In case two or more persons receiving an equal and highest number of votes for the same office, such persons shall draw lots to determine who shall occupy the office.

History.—§7, ch. 20872, 1941; §4, ch. 26329, 1949; §4, ch. 26870, 1951.
Note.—Formerly §98.49.

100.191 General election laws applicable to special elections; returns.—All laws that are applicable to general elections are applicable to special elections, except, that the canvass of returns by the county canvassing boards of the counties in which special elections are held is made on the day following the elections and the certificate of the result of the canvass is immediately forwarded to the secretary of state. The board of state canvassers shall immediately upon receipt of returns from the county in which a special election is held proceed to canvass the returns and determine and declare the result thereof.

History.—§6, ch. 20872, 1941; §4, ch. 26870, 1951.
Note.—Formerly §98.48.

100.201 Election required before issuing bonds.—Whenever any county, district or municipality is by law given power to issue bonds, such bonds shall be issued only after the same have been approved by the majority of votes cast in an election in which a majority of freeholders who are qualified electors residing in the county, district or municipality shall participate.

History.—§1, ch. 14715, 1931; CGL 1936 Supp. 457(1); §4, ch. 26870, 1951.
Note.—Formerly §103.01.

100.211 Power to call bond election, notice required.—The board of county commissioners, or the governing authority of any district or municipality may call elections under this code. In the event it is determined to hold any election to decide whether a majority of freeholders who are qualified electors are in favor of issuance of bonds in the county, district or municipality, the board of county commissioners, or the governing authority of the municipality or district, shall by resolution order an election to be held in the county, district or municipality and shall give at least thirty days' notice of the election by publication in a newspaper published within the county, district or municipality as the case may be. The publication shall be made at least once each week for four consecutive weeks during the thirty days' period. If no newspaper be published in the county, district or municipality, then the notice shall be posted in at least ten different places within the territorial limits of the county, district or municipality.

History.—§2, ch. 14715, 1931; CGL 1936 Supp. 457(2); §4, ch. 26870, 1951.
Note.—Formerly §103.02.

100.221 General election laws to govern where not covered under this code.—The laws governing the holding of general elections are applicable to bond elections, except as provided in §§100.201-100.351. The places for voting in bond elections are the same as the places for voting in general elections, when the bond elections are held in the county or district; but when bond elections are held in a municipality the polling places are the same as in other municipal elections.

History.—§8, ch. 14715, 1931; CGL 1936 Supp. 457(8); §4, ch. 26870, 1951.
Note.—Formerly §103.08.

100.231 Registration closes fourteen days prior to election.—The registration books shall close not later than fourteen days prior to the date of holding any bond election unless such bond election shall be held on the day of another election as prescribed in §100.261 in

which case the registration books shall close as prescribed for such other election.

History.—§5, ch. 14715, 1931; CGL 1936 Supp. 457(5); §4, ch. 26870, 1951; §16, ch. 29934, 1955.
Note.—Formerly §103.05.

100.241 Freeholder requirements.—

(1) (a) Any person is deemed a freeholder who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land. For the purposes of this section a tenant-stockholder of a corporative apartment corporation is deemed to have an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land.

(b) As used in this section, cooperative apartment corporation means a corporation organized for the purpose of owning, maintaining and operating an apartment building or apartment buildings to be occupied by its stockholders, and tenant-stockholder means an individual who is entitled, solely by reason of his ownership of stock in a cooperative apartment corporation, to occupy for dwelling purposes an apartment in a building owned by such corporation.

(2) (a) In any election where only freeholders are qualified to vote the regular registration books of the county shall be used and if the registration system of the county is used for voting by a municipality, the books covering the precincts located within the municipality shall be used and only those persons who are shown thereon as freeholders shall be entitled to vote in said election.

(b) In order to determine the number of freeholders entitled to vote in each particular election, the supervisor shall determine from the records of his office the number of freeholders appearing on said registration books and shall execute his certificate as to the number, which shall be accepted as the determination prima facie of those entitled to vote in the election.

(c) Those persons shown on the registration books in a freeholders' election to be freeholders ers shall be permitted to vote in the election.

(d) Any registered elector who is not shown as a freeholder, but who presents to the inspectors a tax receipt showing a payment of taxes on property in his name or a deed or certified copy thereof of property in his name, or makes a sworn affidavit of ownership giving either a legal description, address or location of the property in his name shall be entitled to vote in the election and shall be considered a freeholder.

The number of persons qualifying in this manner shall be added to the number shown on the certificate of the supervisor in determining the number of persons qualified as freeholders.

(e) The supervisor shall be compensated at reasonable rates for actual costs and services rendered in conducting a freeholders election by the county, district or municipality requiring the same to be held.

(f) It is unlawful for any person to vote or participate in any county, district or other bond election held, who is not a freeholder and a qualified elector.

History.—§1, ch. 9294, 1923; CGL 250; §§1, 6, 14, ch. 14715, 1931; CGL 1936 Supp. 457(4), (6), (14); §7, ch. 22858, 1945; §4, ch. 26870, 1951; (1) §1, ch. 61-332.
Note.—Formerly §§98.03, 103.04, 103.06, 103.14.
cf.—§97.081 Registration of freeholders.

100.251 Registration and freeholders proof.—Qualification and registration of electors participating in any bond election are the same as prescribed for voting in elections under the general election laws and in addition, they shall submit proof by either affidavit, tax receipt, deed or certified copy of deed before the registration officer that they are freeholders who are qualified electors residing in the county, district or municipality in which the election is to be held.

History.—§3, ch. 14715, 1931; CGL 1936 Supp. 457(3); §4, ch. 26870, 1951; §18, ch. 28156, 1953.
Note.—Formerly §103.03.
cf.—§97.081 Registration of freeholders.

100.261 Holding bond elections with other elections.—Whenever any bond election is called, it shall be lawful for any county, district or municipality to hold such bond election on the day of any state, county or municipal primary or general election, or on the day of any election of such county, district or municipality for any purpose other than the purpose of voting on such bonds, provided, however, nothing in this section shall prohibit the holding of a special or separate bond election.

History.—§1, ch. 22545, 1945; §4, ch. 26870, 1951; §19, ch. 28156, 1953.
Note.—Formerly §103.21.

100.271 Inspectors, clerk, duties; return and canvass of election recorded.—In any bond election, except where the election is held in connection with a regular or special state, county or municipal election, at least two inspectors and one clerk shall be appointed and qualified, as in cases of general elections, and they shall canvass the vote cast and make due returns of same without delay. Elections held in a municipality shall be returned to and canvassed by the governing authority which called the election, but in counties and districts returns are made to the board of county commissioners. The board of county commissioners or in the case of a municipality, the governing authority thereof, shall canvass the returns and declare the result and have same recorded in the minutes of the board of county commissioners, and in case of a district the certificate of declaration of result is recorded in the minutes of the governing authority of such district, or in the minutes of the governing authority of the municipality, as the case may be.

History.—§10, ch. 14715, 1931; CGL 1936 Supp. 457(10); §4, ch. 26870, 1951.
Note.—Formerly §103.10.

100.281 Returns necessary to authorize issuance of bond.—Should a majority of the freeholders who are qualified electors participate in a bond election and a majority of the votes cast be in favor of approving the issuance of bonds, then the issuance of said bonds is deemed authorized in accordance with §6, Art. IX of the state constitution as amended. Before

any bonds are deemed to have been authorized it shall be found and determined by the canvassing board that a majority of freeholders qualified to vote did participate in the bond election. In the event a majority of the freeholders who are qualified electors residing in such county, district or municipality, shall fail to participate in the election, or a majority did participate but a majority of those participating did not vote in favor of approval of the issuance of the proposed bonds, then the issuance of those specified bonds are deemed to have failed of approval and it is unlawful to issue or attempt to issue the said bonds.

History.—§12, ch. 14715, 1931; CGL 1936 Supp. 457(12); §4, ch. 26870, 1951.
Note.—Formerly §103.12.

100.291 Record results of election prima facie evidence.—Whenever any bond election is called and held, and the minutes have been recorded as provided in §100.271 and also a separate finding as to the total number of votes cast in the election both in favor and against the approval of bonds, then a duly certified copy of the finding is admissible as prima facie evidence in all state courts of the truth, including the regularity of the call, conduct and holding of the election at the time and place specified.

History.—§17, ch. 14715, 1931; CGL 1936 Supp. 457(15); §4, ch. 26870, 1951.
Note.—Formerly §103.17.

100.301 Refunding bonds excluded.—Sections 100.201-100.351 shall not apply to refunding bonds and wherever the word "bond" or "bonds" is used in these sections it shall be construed to exclude refunding bonds; but if the statute, ordinance or resolution under which refunding bonds are authorized or are to be issued requires an election to determine whether such refunding bonds shall be issued, the election may be held as provided by §§100.201-100.351.

History.—§21½, ch. 14715, 1931; CGL 1936 Supp. 457(19); §4, ch. 26870, 1951.
Note.—Formerly §103.20.

100.311 Local law governs bond election held by cities or towns.—No section of this code controlling or regulating bond elections is deemed to repeal or modify any provision contained in any local law relating to bond elections held by cities or towns, but §§100.201-100.351 are deemed additional and supplementary to such local laws.

History.—§21, ch. 14715, 1931; CGL 1936 Supp. 457(18); §4, ch. 26870, 1951.
Note.—Formerly §103.19.

100.321 Test suit.—Any taxpayer of the county, district or municipality wherein bonds are declared to have been authorized, shall have the right to test the legality of the election and of the declaration of the result thereof, by a bill in equity in the circuit court of the county wherein the election was held. The bill shall be filed against the county commissioners in the case of a county or district election, or against the governing authority of the municipality in the case of a municipal election. In case any such election or the declaration of results thereof shall be adjudged to be illegal and void in any such suit, the judgment or decree shall have the effect of nullifying the election in toto. No suit shall be brought to test the validity of any bond election unless the suit shall be instituted within sixty days after the declaration of the results of any bond election. In the event proceedings shall be filed in any court to validate the bonds, which have been voted for, then any such taxpayer shall be bound to intervene in such validation suit and contest the validity of the holding of the election or the declaration of the results thereof, in which event the exclusive jurisdiction to determine the legality of such election or the declaration of the results thereof shall be vested in the court hearing and determining said validation proceedings. If said bonds in the validation proceedings shall be held valid on final hearing or an intervention by the taxpayer shall be interposed and held not to have been sustained, then the judgment and decree in said validation proceedings shall be final and conclusive as to the legality and validity of the election and of the declaration of the results thereof, and no separate suit at law or in equity to test the same shall be thereafter permissible.

History.—§18, ch. 14715, 1931; CGL 1936 Supp. 457(16); §4, ch. 26870, 1951.
Note.—Formerly §103.18.
cf.—Ch. 75, Validation of bonds; procedure.

100.331 Bond issue defeated not to be recalled for period of six months.—If any bond election is called and held for approving the issuance of bonds for a particular purpose and such election shall not result in the approval of the bonds as provided in §100.281, then no other election for the approval of bonds for the same purpose shall be called for at least six months.

History.—§13, ch. 14715, 1931; CGL 1936 Supp. 457 (13); §4, ch. 26870, 1951.
Note.—Formerly §103.13.

100.341 Bond election ballot.—The ballots used in bond elections are on plain white paper with printed description of the issuance of bonds to be voted on as prescribed by the authority calling the election. A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots in connection with the question "For Bonds" and "Against Bonds." Direction to electors to express his choice by making an "X" mark in the space to the right or left of the question shall be printed on the ballot.

History.—§11, ch. 14715, 1931; CGL 1936 Supp. 457(11); §4, ch. 26870, 1951.
Note.—Formerly §103.11.

100.342 Elections; notice of special referendum elections.—In all special or referendum elections not otherwise provided for there shall be at least thirty days' notice of the election by publication in a newspaper published within the county, district or municipality as the case may be. The publication shall be made at least

once a week for four consecutive weeks during the thirty-day period. If no newspaper be published in the county, district or municipality, the notice shall be posted in as many places as deemed advisable by the supervisor of registration, and in no event shall the notice be posted in less than ten places within the limits of the county, district or municipality.

History.—§1, ch. 59-335.

100.351 Referendum election; certificate of results to secretary of state.—Whenever an election is held under a referendum provision of an act of the legislature, the election officials of the governmental unit wherein the election is held shall certify the results thereof to the secretary of state who shall enter same upon the official record of the act requiring such election on file in his office.

History.—§1, ch. 25438, 1949; §4, ch. 26870, 1951.
Note.—Formerly §99.59.

CHAPTER 101

VOTING; BALLOTS, VOTING MACHINES; ABSENTEE; PROCEDURE

101.011 Voting.—

(1) In counties where ballots are used, each elector shall be given a ballot by the inspector. Before delivering the ballot to the elector, one of the inspectors shall write his initials or name on the stub attached to the ballot; then the elector shall, without leaving the polling place, retire alone to a booth or compartment provided, and place an "X" mark after the name of the candidate of his choice for each office to be filled and likewise mark an "X" after the answer he desires in case of a constitutional amendment or other question submitted to a vote.

(2) At a general election an elector may vote for any person possessing the qualifications to hold the office for which the vote is cast other than those whose names are printed on the ballot by writing in the name of such person in the blank space provided.

(3) No ballot shall be voided or declared invalid in any special, general, or primary election within the state by reason of the fact that same is marked other than with an "X", so long as there is a clear indication thereon to the election officials that the person marking such ballot has made a definite choice, and provided further, that the mark placed on said ballot with respect to any candidate by any such voter shall be located in the square on the ballot opposite such candidate's name.

History.—§46. ch 4328, 1895; §3, ch. 4329, 1895; GS 230; RGS 275; CGL 331; §8, ch. 17898, 1937; §5, ch. 26870, 1951; §1, ch. 28030, §20, ch. 28156, 1953; (2) §1, ch. 59-334.
Note.—Formerly §99.29.

101.021 Elector to receive the ballot of the political party designated in registration book. —In a primary election a qualified elector is entitled to receive and vote the official primary election ballot of the political party designated in his registration, and no other; provided that he shall not receive such ballot if, in the event he is challenged, he fails to execute the affidavit required of a challenged elector by §101.111.

History.—§41, ch. 6469, 1913; RGS 345; CGL 402; §5, ch. 26870, 1951; §21, ch 28156, 1953.
Note.—Formerly §102 40.

101.031 Instructions for electors.—The secretary of state (or in case of municipal elections, the city or town council) shall print in large type on cards, instructions for the electors in preparing their ballots. He shall provide not less than four cards for each voting precinct and furnish them to each supervisor on their requisition. It is the duty of the supervisors and the board of county commissioners to send a sufficient number of these cards with the ballot boxes to the precincts prior to an election. It is the duty of election inspectors to display the cards in the election booths as information for electors. The cards shall contain information about how to obtain ballots, how to prepare ballots for depositing in the ballot box, how to obtain a new ballot in place of one accidentally spoiled and such other information as the secretary of state may deem necessary.

History.—§40, ch. 4328, 1895; §12, ch. 4537, 1897; GS 225; RGS 270; CGL 326; §1, ch. 25106, 1949; §5, ch. 26870, 1951.
Note.—Formerly §99.24.

101.041 Secret voting.—In all elections held on any subject which may be submitted to a vote, and for all, or any, state, county district or municipal officers, the voting is by secret, official ballots, printed and distributed as provided by this code, and no ballot shall be received or counted in any election, except as prescribed by this code. Only those provisions of this law which are consistent with the law governing primaries, shall apply to primaries and, only those provisions of this law which are consistent with the law relating to the use of voting machines shall apply to voting machines.

History.—§29. ch. 3879. 1889; RS 178; §28, ch. 4328, 1895; GS 210; RGS 254; CGL 310; §3. ch. 17898. 1937; §5, ch. 26870, 1951.
Note.—Formerly §99.08.

101.051 Examination by election board of physically impaired electors.—

(1) If an elector has been issued a special registration certificate under the provisions of §97.061 but does not have it or a renewal thereof on his person at the time he presents himself for voting, the clerk or one of the inspectors shall place the person under oath and orally examine him according to the form provided below, which form the clerk or inspector shall fill out in his own handwriting and certify to in the space provided for his signature. The form is in lieu of identification slips and the elector shall present the form to the clerk or inspector in charge of the booth, which clerk or inspector shall also certify, sign and deposit the form in the container for identification slips. This form shall be as follows:

I hereby certify that an applicant to vote stated that he could not write, whereupon I propounded the following questions to the applicant

1. Hold up your right hand. Do you solemnly swear that the answers you give to these questions are true, so help you God? _____.
2. What is your name? _____.
3. Your age? _____. Your sex? _____.
4. Your address? _____.
5. Your occupation? _____.
6. Your political party? _____.
7. Why are you unable to write? _____.
8. Did you previously present yourself and have your name _____ entered on the registration books in time for this election? _____.
9. Are you a duly qualified elector in this precinct? _____.
10. Are you physically able to cast your vote? _____. (If answer is "no", then ask:

(a) Do you now request assistance in voting?_____.

(b) Why do you need such assistance? _____.)

I further certify that I correctly wrote in the answers as given by the applicant and compared them with the information on the registration books opposite the name given by the applicant and found the applicant qualified to vote.

_____
(Clerk or Inspector)

I hereby certify that this form filled out and signed by an election official of this precinct was handed to me by the applicant who was personally known to me or who told me that his name and address was that shown on the form; and I admitted the applicant to the booth.

(Signature of official preparing ballot)

When assistance is given, election official or person giving assistance must sign below:

(Note: It is unlawful to assist, or be in the booth with any elector unless such elector is blind, unable to read, or so physically incapacitated as to be unable to prepare his ballot and requests such assistance.)

I certify that I assisted this elector in voting at his request.

(Signature of clerk or inspector or person assisting elector to vote.)

(2) It shall be unlawful for any person to be in the voting booth with any elector, except as provided above. In such cases only the elector may upon request be assisted by two election officials that he may select or some other person of his own choice who has not previously so acted for any other person during the election. The officials or person giving the assistance shall first be required to sign the certificate last provided above.

(3) It shall be the duty of the board of county commissioners to furnish a sufficient number of these forms to the supervisor who shall deliver a sufficient number thereof to each voting precinct along with other election paraphernalia.

History.—§5, ch. 18407, 1937; CGL 1940 Supp. 337(28e); §3, ch. 22018, 1943; §5, ch. 26870, 1951; §2, ch. 59-446.
Note.—Formerly §100.36.

101.061 Assistance to blind and disabled electors in marking ballots.—Any elector applying to vote in any election who under the provisions of §97.061 has been issued a special registration certificate, upon the presentation of such certificate or, if he does not have it or a renewal thereof and has submitted to the examination required by §101.051, may request assistance of two inspectors of his choice or some other person of his own choice who has not previously so acted for any other person during the election to mark his ballot without suggestion or interference from the inspectors. In all cases any elector before retiring to the booth may have one of the clerks of the election read over to him the titles of the offices to be filled and the candidates therefor. After the elector requests the aid of the two inspectors, they shall retire to the booth for the purpose of marking the elector's ballot for the candidates according to the elector's choice. All electors after voting are required to withdraw immediately from the voting place. The special registration certificates under this law shall not apply or be issued to illiterates. Provided however, that no special registration certificate shall be issued to any person on account of illiteracy.

History.—§§47, 48, ch. 4328, 1895; §3, ch. 4329, 1895; GS 231, 232; RGS 276, 277; §22, ch. 13893, 1929; CGL 332, 333, 1936 Supp. 337(22); §1, ch. 20422, 1941; §5, ch. 26870, 1951; §3, ch. 59-446.
Note.—Formerly §§99.30, 99.32, 99.56, 100.22.
cf.—§97.061 Special registration certificate; electors requiring assistance.

101.071 To occupy booth alone; time allowed elector.—When the elector presents himself to vote, the election official shall ascertain whether his name is upon the register of electors, and if his name appears and no challenge interposes, or if interposed, be not sustained, one of the election officials stationed at the entrance shall announce the name of the elector and permit him to enter through the entrance to the booth to cast his vote, allowing only one elector at a time to pass through to vote. No elector, while receiving, preparing and casting his ballot, shall occupy a booth longer than five minutes or be allowed to occupy a booth already occupied, or to speak with anyone, except as provided by §§101.051 and 101.061, while in the polling place. If an elector requires longer than five minutes, then upon a sufficient reason he may be granted a longer period of time by the election officials in charge. After casting his vote, he shall at once leave the polling room by the exit opening, and shall not be permitted to re-enter on any pretext whatever. After the elector has voted, declined or failed to vote within five minutes, he shall immediately withdraw from the place and go beyond the prohibited distance. If he refuses to leave after the lapse of five minutes he shall be removed by the election officials.

History.—§§44, 45, ch. 4328, 1895; GS 228, 229; RGS 273, 274; §20, ch. 13893, 1929; CGL 329, 330, 1936 Supp. 337(20); §5, ch. 26870, 1951.
Note.—Formerly §§99.27, 99.28 and 100.20.

101.081 Elector to deposit ballot.—After preparing his ballot the elector shall fold the ballot so as to conceal the face and show the stub attached with the name or initials of the inspector, and hand it to the receiving inspector who shall detach the stub and return the ballot to the elector to deposit in the ballot box in the presence of the inspectors. The detached stubs are numbered consecutively and filed by the inspectors.

History.—§53, ch. 4328, 1895; GS 234; RGS 279; CGL 335; §5, ch. 26870, 1951.
Note.—Formerly §99.35.

101.091 Marking more names than persons to be elected.—If the elector marks more names than there are persons to be elected to an office, or if it is impossible to determine the elector's choice, his ballot shall not be counted for the office; but this shall not vitiate the ballot, as to those names which are properly marked, and nothing in this code is construed to prevent any elector, at any general election, from voting at a general election for any qualified person other than those whose names are printed on the ballot.

History.—§54, ch. 4328, 1895; GS 235; RGS 280; CGL 336; §5, ch. 26870, 1951; §22, ch. 28156, 1953.
Note.—Formerly §99.36.

101.101 Elector who spoils ballot.—Any elector who shall by mistake, spoil a ballot, so he cannot safely vote the same, may return it to the inspectors who shall immediately detach the stub and destroy the ballot without examination, and give the elector another ballot. In no case shall an elector be furnished with more than three ballots, or carry a ballot outside the polling room. The clerk of inspection shall keep a record of all ballots destroyed.

History.—§52, ch. 4328, 1895; GS 233; RGS 278; CGL 334; §5, ch. 26870, 1951.
Note.—Formerly §99.33.

101.111 Person offering to vote may be challenged by any elector or watcher; oath of challenged elector; determination of challenge.—When the right to vote of any person who desires to vote is questioned by any elector or watcher, the challenge is communicated to the inspectors, before the person is permitted to vote, by the sheriff or some other officer or person in charge of admission to the polling place, when his right to vote must be determined by law. It is necessary for the elector or watcher entering the challenge to state any reason for such challenge. The inspectors of election shall immediately deliver to the challenged person the following form of affidavit:

Oath of Challenged Elector

"(Instruction to election officials: The oath below is required to be executed by a challenged elector at a primary election; the same affidavit shall be executed by a challenged elector at a general election, except there shall be stricken therefrom the words:
'that I am a member of the _____ party and that at the last preceding general election, if I voted therein, I voted for a majority of the nominees of such party')
State of Florida
County of _____
I do solemnly swear that my name is _____; that I am a member of the _____ party and that at the last preceding general election, if I voted therein, I voted for a majority of the nominees of such party; that I am _____ years old; that I was born in the state of _____ or the country of _____; that my residence is on _____ street, in the town or city of _____, in this election precinct of _____ county; that I personally made application for registration and signed my name and that I am a qualified elector.

_____
Signature of elector
Sworn and subscribed to
before me this _____ day of
_____, 19____

_____
Inspector or clerk of election"

Any inspectors or clerks of election may administer the oath. If the challenged person refuses to make and sign the affidavit, the inspectors shall refuse to allow him to vote. If such person makes the affidavit, the inspectors and clerk of election shall compare the information in the affidavit with that entered on the registration books opposite his name, and, upon such comparison of the in the information in the affidavit with that en- of other evidence which may then be offered, the inspectors shall decide by majority of votes whether the challenged person is permitted to vote. If the challenged person be unable to write or sign his name, the inspectors shall examine the precinct register to ascertain whether the person registered under the name of such person is represented to have signed his name. If he is so represented, then he shall be denied permission to vote without further examination; but, if not, then one of the inspectors shall place such person under oath and orally examine him upon the subject matter contained in the affidavit and if there is any doubt as to the identity of such person, the inspector shall compare his appearance with the description entered upon the precinct register opposite his name. The inspector shall then proceed as in other cases to determine whether the challenged person is permitted to vote.

History.—§43, ch. 4328, 1895; GS 227; §43, ch. 6469, 1913; RGS 272, 347; CGL 328, 404; §5, ch. 26870, 1951; §10, ch. 27991, 1953; §23, ch. 28156, 1953.
Note.—Formerly §§99.26 and 102.42.

101.121 Persons allowed in polling places.—As many electors are admitted to vote as there may be booths available and no person is permitted under any pretext to come within fifteen feet of any polling place whatever from the opening of the polls until the completion of the count of the ballots and certificates of returns, except the sheriff or his deputy, officially designated watchers, the inspectors and clerks of election. No sheriff, deputy sheriff or city policeman shall enter the polling place without permission from a majority of the inspectors, except to cast his ballot.

History.—§§39, 42, ch. 4328, 1895; GS 224, 226; RGS 269, 271; CGL 325, 327; §5, ch. 26870, 1951; §17, ch. 29934, 1955.
Note.—Formerly §§99.23 and 99.25.

101.131 Watchers at polls; ballot box voting.—All political parties and all individual candidates for office are permitted by the election officials to have one watcher for each candidate or political party in all polling places from the beginning to the conclusion of all elections. The watchers are not permitted to come close to the official's table or voting booths than is necessary to properly perform their function but are allowed within the polling room to watch and observe the conduct of electors and officials. The watchers are required to furnish their materials and necessities, and shall not obstruct the orderly conducting of any election. During the elections the officials are required to call out the names of electors loud enough to be heard by the watchers. The authority the watchers are required to present to the officials is their appointment or designation by a candidate or if representing a political party, then the desig-

nation from the chairman of the executive committee or any vice-chairman or secretary or by a candidate or any deputies designated by him in written notice to the county supervisor of elections at least fourteen days in advance of any primary or election.

History.—§3D, ch. 22018, 1943; §5, ch. 26870, 1951; §18, ch. 29934, 1955.
Note.—Formerly §100.45.

101.141 Specifications for primary election ballot.—In counties where voting machines are not used, and for use for absentee voting prior to election day in those counties using voting machines, the primary election ballot shall conform to the following specifications:

(1) The ballots are of different color for each political party participating in the primary election. All ballots shall contain the same information as far as possible and be printed on paper of such thickness that the printing cannot be distinguished from the back.

(2) Across the top of the ballot shall be printed, "Official Primary Ballot _____ Party" (with proper party name inserted), beneath which shall be printed the date of the election, county, and precinct number, but the number shall be omitted in voting machine counties, but filled in by the person issuing the ballot. Above the caption of the ballot shall be two stubs, with perforated line between the stubs and between the lower stub and top of the ballot, each stub shall have printed thereon: "Official Primary Ballot," above which shall appear the party name; on the left side shall be a blank line under which shall be "Signature of elector" (only on the top stub); on the right side shall appear: "Initials of issuing officer," under which shall be a blank line; the stubs of all ballots for each precinct shall be prenumbered consecutively, beginning with "No. 1," the stubs on each ballot shall bear the same number.

(3) Beneath the caption and preceding names of candidates, shall be the following words: "To vote for a person whose name is printed on the ballot, mark a cross (X) in the square at the right of the name of the person for whom you desire to vote."

(4) The ballot shall have the headings, under which appear the names of the offices and the candidates for the respective offices alphabetically arranged as to surnames, in the following order: the heading "Congressional," and thereunder the offices of United States senator and representative in congress; the heading "Judicial," and thereunder the offices of the justices of supreme court, circuit court judges, and the other judicial offices involved in the primary election in the order fixed by the secretary of state; the heading "State" and thereunder the offices of governor, secretary of state, comptroller, commissioner of agriculture, state treasurer, attorney general, superintendent of public instruction, railroad commissioner and state attorney; the heading, "Legislative," and thereunder the offices of state senator and member of the state house of representatives; the heading, "County," and thereunder the offices of clerk of the circuit court, sheriff, tax assessor, tax collector, superintendent of public instruction, and thereafter such other county offices involved in the primary election in the order fixed by the secretary of state; the heading "Official presidential preference primary ballot," as provided in §101.180, followed by national committeemen and committeewomen; or, in the year of their election, "Party offices," and thereunder the offices of state committeemen and committeewomen followed by precinct committeeman and committeewoman except where more than one candidate is to be nominated for an office and qualify and run in groups, immediately following the name of each office on the ballot shall be printed, "Vote for One (or such other proper number)." When more than one candidate is to be nominated for office and the candidates qualify and run in groups, the group's number is printed beneath the name of the office and the names of candidates in the respective group are arranged thereunder in alphabetical order as to surnames, and following group numbers there are printed the words, "Vote for One." The name of the office shall be printed over each numbered group and each numbered group clearly separated from the next numbered group, the same as in the case of single offices. If in any primary election all the offices as above set forth are not involved, those offices to be filled are arranged on the ballot in the order named.

(5) On the ballot stubs the words, "Official Primary Ballot" and the party name, and on the caption the words, "Official Primary Ballot _____ Party" shall be in 18-point caps; the printed instruction to electors immediately preceding the offices and names of candidates shall be in 10-point type; the headings shall be in 12-point black-face caps; the offices, group numbers and the words, "Vote for one (or such other proper number)," shall be in 12-point upper and lower case black-face type; the names of candidates shall be in 10-point light-face caps; the lines on which are printed the candidates names shall be at least one and one-half picas apart, and the box to the right of each candidate's name provided for the cross (X) in voting shall be two picas wide and one and one-half picas high.

(6) Should the above directions for complete preparation of the ballot be insufficient, the secretary of state shall determine and prescribe any additional matter or form, and the secretary of state shall, not less than thirty days prior to the first primary election, mail to the clerk of the board of county commissioners in the counties, the form of the ballot to be used with instructions for the preparation and printing and before final printing shall, under his certificate, approve the form of the ballot including the color.

(7) If the above requirements as to type, size and kind should not be possible to follow, the ballot shall be prepared to conform as

closely as possible to such requirements.

History.—§§38, 39, ch. 6469, 1913; RGS 342, 343; CGL 399, 400; §7, ch. 13761, 1929; §1, ch. 17901, 1937; §§1, 2, ch. 25386, 1949; §5, ch. 26870, 1951; (4) §2, ch. 29937, 1955.
Note.—Formerly §§102.37 and 102.38.

101.151 Specifications for general election ballot.—In counties where voting machines are not used, the general election ballot shall conform to the following specifications:

(1) The ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back.

(2) Across the top of the ballot shall be printed "Official Ballot, General Election," beneath which shall be printed the date of the election, the county and the precinct number. The precinct number is omitted in counties having voting machines, but shall be filled in by the person issuing the ballot. Above the caption of the ballot shall be two stubs with perforated line between the stubs and between the lower stub and the top of the ballot. The top stub shall be stub No. 1 and shall have printed thereon, "General Election, Official Ballot," and then shall appear the name, county and number of precinct and the date of the election. On the left side shall be a blank line under which shall be printed "Signature of Elector." On the right side shall be "Initials of Issuing Officer" under which there shall be a blank line. The second stub shall be the same, except there shall not be a space for signature of the elector. Both stubs No. 1 and No. 2 on ballots for each precinct shall be prenumbered consecutively, beginning with "No. 1."

(3) Beneath the caption and preceding the names of candidates shall be the following words: "To vote for a person whose name is printed on the ballot, place a cross (X) mark in the square at the right of the name of the person for whom you desire to vote." The ballot shall have headings under which shall appear in not more than three columns the names of the offices and names of duly nominated candidates for the respective offices in the following order: The heading "Electors for President and Vice-President" and thereunder the names of the candidates for president and vice-president of the United States nominated by the political party which received the highest vote for governor in the last general election of the governor in this state, above which shall appear the name of said party. Then shall appear the names of other candidates for president and vice-president of the United States who have been properly nominated. Then shall appear the subheading "For write-in voting for electors for President and Vice-President" followed by blank spaces to the number of such electors to which this state is entitled under federal law. Then shall follow the heading "Congressional" and thereunder the offices of United States senator and representative in Congress; then the heading "Judicial" and thereunder the offices of justices of the supreme court, circuit court judges and such other judicial offices involved in the general election in the order to be fixed by the secretary of state; then the heading "State" and thereunder the offices of governor, secretary of state, comptroller, commissioner of agriculture, state treasurer, attorney general, superintendent of public instruction, state attorney, together with the names of the candidates for each office and the title of the office which they seek; then the heading "Legislative" and thereunder the office of state senator and member of the state house of representatives; then the heading "County" and thereunder the offices of clerk of the circuit court, sheriff, tax assessor, tax collector, superintendent of public instruction, and thereafter such other county offices involved in said general election in the order to be fixed by the secretary of state.

Immediately following the name of each office on the ballot shall be printed, "Vote for One." When more than one candidate is nominated for office and the candidates qualify and run in groups, the group numbers shall be printed beneath the names of the office. The name of the office shall be printed over each numbered group and each numbered group clearly separated from the next numbered group, the same as in the case of single offices. Following the group number shall be printed the words, "Vote for One" and the names of the candidates in the respective groups shall be arranged thereunder.

(4) The names of the candidates of the party which received the highest number of votes for governor in the last election in which a governor was elected shall be placed first under the heading for each office together with appropriate abbreviation of party name, the names of the candidates of the party which received the second highest vote for governor shall be second under the heading for each office together with appropriate abbreviation of the party name.

(5) All offices for which there are more than one candidate shall be placed at the top of the ballot immediately following the instructions. Thereafter, all candidates for office where only one candidate is seeking the position shall be printed in succession in the general order as provided for contested offices. Then shall appear the names of the unopposed candidates. Above the names of unopposed candidates shall be printed the following: "The remaining offices required by law to be filled at this election are being sought by only one candidate for each office. To vote for these remaining offices place a cross (X) mark in the square to the right of the name of the candidate for whom you desire to vote. To vote for a person whose name is not printed on the ballot, write his name in the blank space provided for that purpose." A blank line shall be left at the bottom of the list of the candidates for these remaining offices.

(6) The same requirement as to the type, size and kind of printing of official ballots in primary elections as provided in §101.141(5), shall govern the printing of official ballots in general elections.

(7) Should the above directions for complete

preparation of the ballot be insufficient, the secretary of state shall determine and prescribe any additional matter or form, including the number of columns in which the ballot may be printed, so as to provide a presentable ballot and conserve paper, and not less than sixty days prior to a general election mail to the clerk of the board of county commissioners in the counties the forms for use in the general election with instructions for preparation of the ballot and before final printing shall, under his certificate, approve the form of the ballot.

(8) The provisions of §101.141(7) shall be applicable in printing of said ballot.

History.—§35, ch. 4328, 1895; GS 219; §1, ch. 5612, 1907; RGS 264; CGL 320; §5, ch. 17898, 1937; §§2, 3, ch. 25187, 1949; §5, ch. 26870, 1951; (3), (5) §3, ch. 29937, 1955; (3) §1, ch. 57-235; (5) §2, ch. 59-334.
Note.—Formerly §§99.18 and 99.171.

101.161 Constitutional amendment or other public measure.—Whenever a constitutional amendment or other public measure shall be submitted to the vote of the people, the substance of such amendment, or other public measure shall be printed on the ballot one time, after the list of candidates, followed by the phrase "for the amendment," and also by the phrase "against the amendment," with a sufficient blank space thereafter for the placing of the symbol "X" to indicate the voter's choice, excepting that when voting machines are used the amendment or measure shall be in the form relating to the use of voting machines. The phraseology of the substance of the amendment or other public measure, shall be furnished to the several counties by the secretary of state so as to insure uniformity, and he shall be authorized to give each of the proposed constitutional amendments or other public measure, a designating number for convenient reference and this number designation may also appear on the ballot.

History.—§34, ch. 4328, 1895; GS 218; RGS 262; CGL 318; §§1-11, ch. 16180, 1933; §1, ch. 16877, 1935; §4, ch. 17898, 1937; §1, ch. 22626, 1945; §5, ch. 26870, 1951.
Note.—Formerly §99.16.

101.171 Copy of constitutional amendment to be posted.—Whenever any amendment to the state constitution is voted upon at any election, the county commissioners of each county shall have the amendment printed in legible type and a copy thereof conspicuously posted at each precinct upon the day of election, such printed amendments to be furnished the county commissioners by the secretary of state.

History.—§1, ch. 5405, 1905; RGS 263; CGL 319; §5, ch. 26870, 1951.
Note.—Formerly §99.17.

101.180 Form of presidential preference primary ballot.—The form of the presidential preference primary ballot shall be as follows: The heading, office and candidates shown being sufficient to demonstrate the form required.

OFFICIAL PRESIDENTIAL PREFERENCE PRIMARY BALLOT

No._____ Initials of Issuing Official_____

_____ Party _____

Stub No. 1

_____

Signature of elector

OFFICIAL PRESIDENTIAL PREFERENCE PRIMARY BALLOT

No._____ Initials of Issuing Official_____

_____ Party _____

Stub No. 2

OFFICIAL PRESIDENTIAL PREFERENCE PRIMARY BALLOT

_____ Party

Date _____

_____ County

Precinct No. _____

Place a cross (X) in the circle at the top of the column of the group of delegates for whom you wish to vote.

Candidates Preferring JOHN GREEN for President	Candidates Preferring JAMES BROWN for President	Candidates Expressing no preference
○	○	○
Delegates-at-Large Sam White Organizing Chairman	Delegates-at-Large Robert Gray Organizing Chairman	Delegates-at-Large John Williams Organizing Chairman
John Jones Belle Brooks	Charles Smith Hildred Casey	Peter Kyne Wilbur Collins
District Delegates John Doe Mary Roe	District Delegates William Jones Peter Sands	District Delegates Tom Burt Susie Brown

History.—§2, ch. 29947, 1955.

101.181 Form of primary ballot.—The form of the primary election ballot shall be as follows: The heading, office and candidates shown being sufficient to demonstrate the form required.

OFFICIAL PRIMARY BALLOT

No._____ Initials of Issuing Official

_____ Party

Stub No. 1

_____

Signature of elector

OFFICIAL PRIMARY BALLOT

No._____ Initials of Issuing Official

_____ Party

Stub No. 2

OFFICIAL PRIMARY BALLOT

_____ Party

(Date) _____

_____ County

Precinct No._____

TO VOTE for a person whose name is printed on the ballot, mark a cross (X) in the square at the RIGHT of the name of the person for whom you desire to vote.

CONGRESSIONAL

UNITED STATES SENATOR Vote for One

William Jones	
Charles Smith	
John Williams	

(And thence, other offices under this heading, followed by the headings and offices as prescribed in §101.141.)

History.—§40, ch. 6469, 1913; §5, ch. 6874, 1915; RGS 344; CGL 401; §8, ch. 13761, 1929; §2, ch. 17901, 1937; §3, ch. 25386, 1949; §5, ch. 26870, 1951.

Note.—Formerly §102.39.

101.191 Form of general election ballot.—The form of the general election ballot shall be as follows: The heading, office and candidate shown being sufficient to demonstrate the form required.

OFFICIAL BALLOT GENERAL ELECTION
ORANGE COUNTY, FLORIDA

No. _____

Precinct No. 1
November 2, 1949

Stub No. 1

_____

Signature of Elector

_____

Initials of Issuing Official

OFFICIAL BALLOT GENERAL ELECTION
ORANGE COUNTY, FLORIDA

No. _____

Precinct No. 1
November 2, 1949

Stub No. 2

_____

Initials of Issuing Official

OFFICIAL BALLOT GENERAL ELECTION
ORANGE COUNTY, FLORIDA

Precinct No. 1
November 2, 1949

To vote for a person whose name is printed on the ballot, mark a cross (X) on the square at the RIGHT of the name of the person for whom you desire to vote. To vote for a person whose name is not printed on the ballot write his name in the blank space provided for that purpose.

ELECTORS

For President
and Vice-President

Vote for group

DEMOCRATIC

HARRY S. TRUMAN For President	
ALBEN W. BARKLEY For Vice-President	

REPUBLICAN

THOMAS E. DEWEY For President	
EARL WARREN For Vice-President	

FOR WRITE-IN VOTES FOR ELECTORS
FOR PRESIDENT AND VICE-PRESIDENT

Vote for each

(with sufficient number of lines to equal number of electors to which this state is entitled under federal law.)

CONGRESSIONAL

UNITED STATES SENATOR Vote for one

THOMAS BROWN (Dem)	
BERT L. ACKER (Rep)	

(And thence, other offices under this heading, followed by the headings and offices as prescribed in §101.151.)

PROPOSED CONSTITUTIONAL
AMENDMENTS

Mark a cross (x) mark in the square at the RIGHT for the Amendment or against the Amendment.

No. 1
CONSTITUTIONAL AMENDMENT
ARTICLE IX, SECTION 17

(Here the Secretary of State will insert brief description of the amendment as otherwise provided by law.)

FOR the Amendment	
AGAINST the Amendment	

History.—§35, ch. 4328, 1895; GS 220; RGS 265; CGL 321; §5, ch. 24994, 1948; §4, ch. 25187, 1949; §5, ch. 26870, 1951; §29, ch. 29934, 1955; §2, ch. 57-235; §3, ch. 59-334.
Note.—Formerly §99.19.

101.20 Publication of ballot form.—Upon completion of the list of qualified candidates, in counties where paper ballots are used, the board of county commissioners shall publish in a newspaper of general circulation, in the county at least seven days before any primary, general or special election of whatever nature, a sample ballot form, or should the county have an addressograph or equivalent system for mailing to registered electors, a sample ballot may be mailed to each registered elector in lieu of publication at least seven days before any election.

History.—§5, ch. 26870, 1951; §8, ch. 57-166.

101.21 Number of ballots required, payment for ballots.—Where voting machines are not used, there shall be as many official ballots as shall be equal to one hundred and ten per cent of the registered qualified electors at the voting place. The printing and delivery of ballots and cards of instruction shall in municipal elections be paid for by the several cities and towns respectively, and in all other elections by the counties respectively.

History.— §§29, 37, ch. 4328, 1895; §11, ch. 4537, 1897; GS 211, 222; RGS 255, 267; CGL 311, 323; §7, ch. 17898, 1937; §2, ch. 24088, 1947; §7, ch. 25384, 1949; §5, ch. 26870, 1951.
Note.—Formerly §§99.09, 99.21.

101.22 Voting procedure, ballots.—Before any ballot is delivered to an elector, one of the inspectors shall affix his initials on the line provided on each of the two ballot stubs and the elector shall sign his name on the line on the top stub, and if he is unable to write, he shall sign his mark with the assistance of one of the inspectors. The inspector shall compare the signature on the ballot stub with the signature on the elector's registration and if necessary require other identification. If the inspector is reasonably sure that the person is entitled to vote, he shall then detach and retain the upper stub and the elector shall go to the booth and mark his ballot and after he has marked his ballot, he shall fold it so as to leave the stub remaining attached visible so that it can be detached without unfolding. The inspector shall compare it with the stub he retained and if it is the ballot he delivered to the elector, he shall detach and retain the remaining stub and the elector shall then deposit the folded ballot in the ballot box. But, if the marked ballot returned proves to be a different one from the one delivered to him, the inspectors shall then and there search the elector and if the original ballot is found on or about his person, the inspectors shall take possession of the ballot and discharge the elector from the polling place without permitting him to vote. Inspectors of elections, where ballots are used, are clothed with such police power as is necessary to carry out the provisions of this section.

History.—§36, ch. 4328, 1895; GS 221; RGS 266; CGL 322; §6, ch. 17898, 1937; §6, ch. 25187, 1949; §5, ch. 26870, 1951.
Note.—Formerly §§99.20, 102.41.

101.23 Election inspector to keep list of those voting.—When any person has been admitted to vote, his name shall be checked on the margin of the page opposite his name, or at the place indicated upon the registration books, by one of the inspectors. One of the inspectors shall, at the same time, keep a poll list containing names of electors who have voted. The inspectors may prevent any person from voting a second time when they have reason to believe that the person has voted. They may refuse to allow any person to vote who is not a qualified elector, or who has become disqualified to vote in the precinct or prevent any elector from consuming more than five minutes in voting. But no inspector shall handle the ballot being voted or interfere with the voting of any elector.

History.—§58, ch. 4328, 1895; GS 236; RGS 281; CGL 337; §5, ch. 26870, 1951; §24, ch. 28156, 1953.
Note.—Formerly §99.37.

101.24 Ballot boxes and ballots.—The county commissioners, except where voting machines are used, shall prepare one ballot box for each polling place in their respective counties, of sufficient size to contain all the ballots of the particular precinct, and the ballot box shall be plainly marked with the name of the precinct for which it is intended. Before any general or special election they shall place in the ballot box as many ballots as provided in §101.21. After securely locking the ballot box, and sealing up the keyhole and other openings, they shall send the key in a sealed envelope, to the inspector of elections of the precinct, together with the box. The custodian is placed under oath or affirmation to perform his commission faithfully and without favor or prejudice to any political party.

History.—§26, ch. 3879, 1889; RS 180; §7, ch. 4328, 1895; §7, ch. 4537, 1897; GS 203; RGS 247; CGL 303; §1, ch. 17898, 1937; §1, ch. 24088, 1947; §11, ch. 25035, 1949; §1, ch. 25384, 1949; §5, ch. 26870, 1951.
Note.—Formerly §99.02.

101.25 Names on ballot.—The nomination of all candidates for all elective state, congressional and county offices, for United States senator and for the election of members of the state, congressional and county executive committees is made in the manner provided in this code.

The name of no person nominated shall be placed upon the official ballot to be voted at any general election as a candidate for any office, unless the person has been nominated for the office under the provisions of this code.

History.—§1, ch. 6469, 1913; RGS 299; CGL 355; §1, ch. 17900, 1937; §5, ch. 26870, 1951.
Note.—Formerly §102.01.

101.26 Order of titles and names of candi-

dates.—The ballots printed shall contain the names of all candidates nominated who have not declined. In general elections the names of the candidates shall be printed on the ballots in the order in which their party nominee ran for governor in last election.

History.—§33, ch. 4328, 1895; GS 217; RGS 261; CGL 317; §4, ch. 24994, 1948; §1, ch. 25187, 1949; §5, ch. 26870, 1951.
Note.—Formerly §99.15.

101.27 Voting machines; defined.—The list of candidates used or to be used on the front of the voting machine for an election district in which a voting machine is used pursuant to law shall be deemed official ballots under this code. The word "ballot" as used in this act (except when reference is made to irregular ballots) means that portion of the cardboard or paper or other material within the ballot frames containing the name of the candidate and the designation of the party by which he was nominated, or a statement of a proposed constitutional amendment, or other question or proposition with the word "yes" for voting for any question or proposition, and the word "no" for voting against any question. The term "question" shall mean any constitutional amendment, proposition or other question submitted to the elector at any election. The term "official ballot" shall mean the printed strips of cardboard containing the names of the candidates nominated and a statement of the questions submitted. The term "irregular ballot" shall mean a vote cast, by or on a special device, for a person whose name does not appear on the ballots. The term "voting machine custodian" shall mean the person who shall have charge of preparing and arranging the voting machine for elections. The term "protective counter" shall mean a separate counter built into the voting machine which cannot be reset, which records the total number of movements of the operating lever. The term "board of elections" shall mean the clerk and inspectors appointed to conduct an election.

History.—§1, ch. 13893, 1929; CGL 1936 Supp. 337(1); §1, ch. 18405, 1937; §5, ch. 26870, 1951.
Note.—Formerly §100.01.

101.28 Requirements of voting machines.—Any voting machines may be adopted, rented, purchased or used which shall be so constructed as to fulfill the following requirements: It shall secure to the elector secrecy in the act of voting; it shall provide facilities for voting for or against as many questions as may be submitted; it shall permit the elector to vote for the candidates of one or more parties; it shall permit the elector to vote for as many persons for an office as he is lawfully entitled to vote for, but no more; it shall prevent the elector from voting for the same persons more than once for the same office; it shall permit the elector to vote for or against any question he may have the right to vote upon, but no other; if used in primary elections, it shall be so equipped that the election officials can lock out all rows except those of the elector's party by a single adjustment on the outside of the machine; it shall correctly register or record, and accurately count all votes cast for any and all persons, and for or against any and all questions; it shall be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected; it shall be provided with a counter which shall show at all times during any election how many persons have voted; it shall be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of electors; it shall also be provided with one device for each party for voting for all presidential electors of that party by one operation, and in that connection there shall be provided on the ballot the words "Electors for President and Vice-President" followed by the name of the party and thereafter by the names of the candidates thereof for the offices of president and vice-president, and a registering device which shall register the votes cast for such electors thus voted for collectively, as contemplated by section 103.111. Every voting machine shall be furnished with a lantern, or a proper substitute for one, which shall give sufficient light to enable electors while voting to read the ballots and suitable for use by the election officers in examining the counters. All voting machines used in any election shall be provided with a screen, hood, or curtain which shall be so made and adjusted as to conceal the elector and his action while voting.

History.—§2, ch. 13893, 1929; CGL 1936 Supp. 337(2); §5, ch. 26870, 1951; §25, ch. 28156, 1953.
Note.—Formerly §100.02.

101.29 Providing machines; payment for same.—The authorities adopting the use of voting machines, shall, as soon as practicable, provide for each polling place one or more voting machines in complete working order, and the authorities in charge of elections shall preserve and keep them repaired, and have custody of same when not in use at any election. If it is impracticable to supply each election district with voting machines at any election, as many may be supplied as it is practicable to procure, and these may be used in the districts as the officers adopting the machine may direct. The board of county commissioners or the municipal authorities on the adoption and rental or purchase of voting machines may provide for payment as they may deem for the best interest of their respective localities.

History.—§§5, 6, ch. 13893, 1929; CGL 1936 Supp. 337(5),(6); §5, ch. 26870, 1951.
Note.—Formerly §§100.05, 100.06.

101.30 Voting machine model.—For the instruction of electors on any election day there shall, so far as practicable, be provided for each polling place a mechanically operated model of a portion of the face of the machine. The model, if furnished, shall, during the election, be located on the election officers' table or in some other place which the electors must pass to reach the machine, and each elector shall, before entering the machine booth, be instructed regarding its operation and such instructions illustrated on the model, and the

elector given opportunity to personally operate the model. The elector's attention shall also be called to the diagram on the face of the machine so that the elector can become familiar with the location of the questions and the names of the officers and candidates. In case any elector, after entering the voting machine booth, shall ask for further instructions concerning the manner of voting, two election officers of opposite political parties, if present, and if not, two election officers of the same party shall give such instructions to him, but no officer or person assisting an elector shall in any manner request, suggest or seek to persuade or induce any elector to vote for or against any particular ticket, candidate, amendment, question or proposition. After giving them instructions and before the elector shall have registered his vote, the officers or persons assisting him shall retire and such elector shall then register his vote in secret.

History.—§21, ch. 13893, 1929; CGL 1936 Supp. 337(21); §5, ch. 26870, 1951; §26, ch. 28156, 1953.
Note.—Formerly §100.21.

101.31 Experimental use of voting machines.—The board of county commissioners of any county or the governing body of any municipality may provide for experimental use at any election in one or more precincts, voting machine or machines and the use of any machine shall be as valid for all purposes as if they had been adopted.

History.—§4, ch. 13893, 1929; CGL 1936 Supp. 337(4); §3, ch. 18405, 1937; §5, ch. 26870, 1951.
Note.—Formerly §100.04.

101.32 Adoption of voting machines; powers incident to adoption.—The board of county commissioners or the governing body of a municipality, may if they so elect, submit to the electors of a county or municipality at a general or special election the question of whether it shall adopt voting machines; providing that no special election shall be called for the sole purpose of determining this question. If a majority of the electors approve of same, the board of county commissioners of the county or governing body of the municipality shall adopt for use at elections any kind of voting machine that meets the requirements set forth in §101.28, and the machines shall be used at any and all elections held in the county or municipality or any part thereof for voting, registering and counting votes cast at any election; provided that the board of county commissioners or governing body may purchase, install and use, not to exceed five voting machines, for experimenting with same in districts or precincts without submission of the question to the electors of the county or municipality. Voting machines may be adopted for use in different districts in the same county or municipality. The provisions of this section relating to the submission of a question to the public relating to the adoption of voting machines shall be construed as permissive.

In every case in which the governing authorities of any city or town, shall adopt and use at any precinct any voting machine, the governing authorities may do anything necessary which they deem to be requisite to a fair, honest and satisfactory use of the machines.

History.—§§3, 28, ch. 13893, 1929; CGL 1936 Supp. 337(3), (27); §2, ch. 18405, 1937; §5, ch. 26870, 1951; §1, ch. 59-116.
Note.—Formerly §100.32.

101.33 Number of electors for each machine.—In precincts containing six hundred or less registered electors there shall be one voting machine and in precincts containing more than six hundred registered electors there shall be available one machine for every six hundred registered electors or fraction thereof which are expected to participate in any election.

History.—§14, ch. 13893, 1929; CGL 1936 Supp. 337(14); §5, ch. 18405, 1937; §5, ch. 26870, 1951.
Note.—Formerly §100.14.

101.34 Supervisor shall be custodian of voting machines.—The supervisor is the custodian of voting machines in the county using them, and he shall appoint deputies necessary to prepare and supervise the machines prior to and during elections and their compensation shall be the same as clerks and inspectors of elections and they shall be paid by the board of county commissioners from the same fund the clerks and inspectors are paid from.

History.—§3A, ch. 22018, 1943; §4, ch. 24089, 1947; §5, ch. 26870, 1951.
Note.—Formerly §100.42.
cf.—§102.021 Compensation of inspectors and clerks.

101.35 Custodians of voting machines.—Where a voting machine is used, it shall be in proper order for use at any election at the polling place before the time fixed for opening of the polls, and the counters set at zero. The custodian, the supervisor, shall appoint one or more deputies to be known as deputy custodians of voting machines, who shall be competent, thoroughly instructed, and sworn to perform their duties honestly and faithfully, and shall be instructed at least thirty days before the election. They shall be considered as officers of elections. Before the machines are prepared for any election, the supervisor shall mail written notice to the chairman of the county executive committee of the principal parties, or if the election be a municipal, bond or referendum election, or if there be no chairman of any county executive committee, to the chairman of at least two local organizations representing the opposing sides, stating the time and place where the machine will be prepared, at which time one representative of each political party is afforded an opportunity to see that the machines are in proper condition. The representatives are sworn to faithfully perform their duties and are regarded as election officials but shall not interfere or assume any of the deputy custodians' duties. When the machine has been examined by such representatives it shall be sealed with a numbered seal. The representatives shall certify to the numbers of machines, that all counters are set at zero, and the number registered on the protective counter, if one is provided, and on the seal. After the preparation of the machines, an officer or

someone authorized, other than the person who prepared them, shall inspect each machine and report in writing the fact whether the machines are in the proper order as set forth above; and the right of such inspection shall be accorded any candidate or his representatives authorized in writing. When a machine is properly prepared, it shall be locked against voting and sealed, and the keys delivered to the board of officials having charge of said election, together with a written report, stating that such machine is properly prepared for the election. The machine shall be transferred to the polling place, and it is the duty of the local authorities to provide protection against molestation or injury to it. The lantern or light fixture shall be in good order before the opening of the polls.

Those members of the board of elections who have not served regularly at each election in a precinct in which a voting machine is used shall attend meetings and receive such instructions from the deputy custodians concerning their duties as is necessary for the proper conduct of the election with the machine. The instruction shall be given not more than twenty-one days prior to date of election and as near the election as practicable for all primary general elections. The deputy custodian shall, when giving the instruction, call as many meetings as necessary and within five days, file a report with the board or official in charge of elections stating that he has instructed the election officers, giving their names, time and place where the instructions were given. Each member shall receive a certificate from the deputy custodian certifying that he is qualified to properly conduct the election with the machine. The members shall be entitled to receive ten cents for every mile traveled of the estimated distance by the most usual route from their place of residence to the place of instruction, and like sum for returning.

History.—§§10, 11, ch. 13893, 1929; CGL 1936 Supp. 337(10), (11); §4, ch. 18405, 1937; §1, ch. 24089, 1947; §11, ch. 25035, 1949; §5, ch. 26870, 1951; §19, ch. 29934, 1955.
Note.—Formerly §§100.10, 100.11.

101.36 Voting machines; when used.—In counties having adopted voting machines, the machines shall be so arranged as to require individual voting for all offices. The order in which the ballot is arranged shall as nearly as practicable conform to the requirements of the form of the paper ballot. The voting machines shall be used by the counties in all general, primary and special elections. In counties above two hundred sixty thousand population according to the latest federal census which have adopted the use of voting machines, it shall be mandatory for all municipalities in such counties to use such voting machines in all elections but in all counties of lesser population it shall be optional with each municipality as to whether it shall use ballots or voting machines in its elections. Authority is hereby granted to the board of county commissioners of any county having adopted voting machines to permit municipalities within the county to use county-owned voting machines.

History.—§12, ch. 18405, 1937; CGL 1940 Supp. 337(28a); §3B, ch. 22018, 1943; §99.191 was first compiled from §6, ch. 24994, 1948; §5, ch. 25187, 1949; §5, ch. 26870, 1951; §1, ch. 28101, 1953; §4, ch. 29937, 1955; §1, ch. 61-481.
Note.—Formerly §§99.191, 100.30, 100.43.
cf.—§228.11 When voting machines may be used in school elections.

101.37 Location of voting machines.—At all elections where voting machines are used, the arrangement of the polling room shall be as follows: The exterior of the voting machine and every part of the polling room shall be in plain view of the election officers; the voting machine shall be placed at least one foot from every wall or partition of the polling room and at least four feet from any table where any of the election officers may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the election officers and the party watchers when not in use by electors. The election officers shall not themselves be, or permit any other person to be in any position or near any position that will permit one to see or ascertain how an elector votes, or how he has voted. The election officer attending the machine shall inspect the face of the machine after each elector has cast his vote, to see that the ballots on the face of the machine are in proper places and that the machine has not been injured. During elections the door or other covering of the counter compartment of the machine shall not be unlocked or open, or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the election officers and shall be sent with the returns.

History.—§19, ch. 13893, 1929; CGL 1936 Supp. 337(19); §5, ch. 26870, 1951.
Note.—Formerly §100.19.

101.38 Disposition of voting machine keys.—The keys of the machine shall be enclosed in an envelope supplied by the custodian on which shall be written the number of the machine, the district and ward where it has been used, which envelope shall be securely sealed and endorsed by the election officers and returned to the officer from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by officials having them in charge. It shall be unlawful for any unauthorized person to have in his possession any key of any voting machine and all election officers or persons entrusted with the keys for election purposes, or in the preparation of the machines, shall not retain them longer than necessary to use them for such purpose. All machines shall be boxed and stored in a suitable place as soon as possible after the election.

History.—§25, ch. 13893, 1929; CGL 1936 Supp. 337(25); §5, ch. 26870, 1951.
Note.—Formerly §100.27.

101.39 Voting machines, sealing curtains.—Curtains on all voting machines shall be se-

curely sealed or fastened before being used in any election so that the clearance lever can not be operated without opening or closing curtains. And no voting machine, while in use, shall be concealed in any voting place, so as to hide or obscure the machine from public view.

History.—§3C, ch. 22018, 1943; §5, ch. 26870, 1951.
Note.—Formerly §100.44.

101.40 Voting machine out of order.—In case any voting machine used in any precinct shall, during the time the polls are open, become injured, it is the duty of the election board to substitute a perfect machine, if possible, and at the close of the polls, the records of votes shown on the counters of both machines shall be added together in ascertaining the results of the election. If no other machine can be prepared for use at the election, and the one injured can not be repaired in time for use, unofficial ballots made as nearly as possible like the official ballots may be used, received by election officers and placed in receptacle in such case to be provided by said officers, and counted with votes registered on the voting machines, and the result shall be declared the same as though there had been no accident to the voting machine. The ballots thus voted shall be preserved and returned with a certificate or statement setting forth how and why same were voted.

History.—§16, ch. 13893, 1929; CGL 1936 Supp. 337(16); §6, ch. 18405, 1937; §5, ch. 26870, 1951.
Note.—Formerly §100.16.

101.41 Sample ballots.—

(1) Where voting machines are used, two sample ballots must be furnished to each polling place by the officer whose duty it is to provide official ballots, arranged in the form of a diagram showing the official ballot on the voting machine as it will appear on election day. Sample ballots shall be open to inspection by all electors in any election and a sufficient number of reduced size of ballots may be furnished to election officials so that one may be given to any elector desiring same.

(2) Upon completion of the list of qualified candidates, the board of county commissioners shall publish in a newspaper of general circulation, in the county at least seven days before any primary, general or special election of whatever nature, a sample ballot form, or should the county have an addressograph or equivalent system for mailing to registered electors, a sample ballot may be mailed to each registered elector in lieu of publication at least seven days before any election.

History.—§8, ch. 13893, 1929; CGL 1936 Supp. 337(8); §5, ch. 26870, 1951; (1) §27, ch. 28156, 1953; (2) §9, ch. 57-166.
Note.—Formerly §100.08.

101.42 Official ballots; number; printing.—

(1) Official ballots of the form and description for use upon voting machines shall be prepared and furnished in the same manner, at the same time, and are delivered to the supervisors. Two sets of official ballots shall be provided for each polling place for each precinct, of which one set shall be inserted or placed in or upon the machine and the other retained in the custody of the board of elections, unless it shall become necessary during the election to make use of same upon or in said machine.

(2) All ballots for voting machines shall be printed on white paper of such size as will fill the ballot frames of the machine, in plain color type as large as the space will permit. Party nominations shall be arranged on each voting machine, either in columns or horizontal rows; the captions of the ballots on said machines so placed as to indicate to the elector what push knob, key, lever or other device is used or operated in order to vote for the candidates of his choice.

(3) If the official ballot is larger than the voting machine can accommodate, the officer whose duty it is to provide the official ballots may place the ballot upon more than one machine or place part of the ballot upon the voting machine to its reasonable capacity and the remainder upon paper ballots, provided that when possible, that portion of the ballot so placed upon additional machines or upon paper ballots shall consist of candidates who are unopposed, and when this is not possible all candidates for a particular office shall be placed upon one machine or upon one paper ballot, as the case may be. No opposed candidates for any federal or state office shall be placed upon such paper ballots. The board of county commissioners shall determine which county offices shall be placed upon such paper ballots.

History.—§§7, 9, 13, ch. 13893, 1929; CGL 1936 Supp. 337(7), (9), (13); §5, ch. 26870, 1951; (3) n. by §1, ch. 59-299.
Note.—Formerly §§100.07, 100.09, 100.13.

101.43 Substitute ballot.—When voting machines are used and the required official ballots for a precinct are not delivered in time to be used on election day, or after delivery, are lost, destroyed or stolen, the clerk or other officials whose duty it is to provide ballots for use at such election, in lieu of the official ballots, shall have substitute ballots prepared, conforming as nearly as possible to the official ballots, and the board of election shall substitute these ballots to be used in the same manner as the official ballots would have been used at the election.

History.—§15, ch. 13893, 1929; CGL 1936 Supp. 337(15); §5, ch. 26870, 1951.
Note.—Formerly §100.15.

101.44 Irregular ballots.—Ballots voted at a general election for any person whose name does not appear on the machine as a qualified candidate for office are referred to as irregular ballots. Such irregular ballot shall be deposited, written or affixed in or upon the receptacle or device provided on the machine for that purpose. An irregular ballot must be cast in its appropriate place on the machine, or it is void and not counted. Where an irregular ballot is cast it shall not be necessary to use the (X) mark.

History.—§18, ch. 13893, 1929; CGL 1936 Supp. 337(18); §5, ch. 26870, 1951; §28, ch. 28156, 1953; §4, ch. 59-334.
Note.—Formerly §100.18.

101.45 Election board opening polls.—The board of election of each precinct shall attend

the polling place one-half hour before the time set for opening of the polls and shall arrange the furniture, stationery and voting machines. The said boards shall, if not previously done, insert in their proper places on the machines the ballots containing the names of offices to be filled and the names of candidates nominated. The keys to the machine shall be delivered to the election officers at least one-half hour before opening the polls, in a sealed envelope, on which shall be written or printed the number and location of the machine, the number of the seal and the number registered on the protective counter or device, as reported by the custodian. The said envelope shall not be opened until at least one member of the board from each of two political parties is present, and shall have examined the envelope to see that same has not been opened. Before opening the envelope, the election officers present shall examine the number on the seal on the machine, also the number registered on the protective counter, and see if they are the same as the number written on the envelope. If they are not the same, the custodian or an authorized person must be present when the machine is opened to re-examine such machine and certify that it is properly arranged. If the numbers are found to agree with those on the envelope, the election officer shall proceed to open the doors concealing the counters and each officer shall carefully examine every counter and see that it registers zero (000), and same is subject to the inspection of official watchers. The machine shall remain locked against voting until the polls are opened, and only electors are to operate same. If any counter is found not to register at zero (000), the board of election shall immediately notify the custodian, who shall adjust such counters at zero (000), but if it is impracticable for the custodian to arrive in time to adjust such counters, the election officers shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post same upon the wall of the polling room and it shall remain throughout election day. In filling out the statement of canvass, they shall subtract such number from the total then registered thereon.

History.—§17, ch. 13893, 1929; CGL 1936 Supp. 337(17); §5, ch. 26870, 1951.
Note.—Formerly §100.17.

101.46 Instruction to electors before election.—The authorities in charge of elections, where voting machines are used, shall designate suitable and adequate times and places for giving instructions to electors who apply, and the machines shall contain a sample ballot showing the title of offices to be filled, and, so far as practicable, the names of candidates to be voted on at the next election. No voting machine which is to be assigned for use in an election shall be used for instruction after having been prepared and sealed for the election. During the public exhibition of any voting machine for any instruction, the counting mechanism shall be concealed but the doors may be temporarily opened when authorized by the board or official in charge of elections.

History.—§12, ch. 13893, 1929; CGL 1936 Supp. 337(12); §5, ch. 26870, 1951.
Note.—Formerly §100.12.

101.47 Requirements before elector enters voting machine booth.—

(1) In all elections where voting machines are used, every elector desiring to vote is required to identify himself to the clerk and inspectors of the election as a duly qualified elector at such election by signing his signature, in ink or indelible pencil, to an identification blank or slip, which is substantially the form provided by this code.

(2) It is the duty of the clerk or inspector to compare the signature with the signature of the elector upon the registration books, and if satisfied that the signature is the same, he then shall sign the slip in the place provided and the signing shall constitute an oath or affirmation of the fact stated by the clerk or inspector above his signature.

(3) The board of county commissioners shall furnish and the supervisor shall supply sufficient containers for each precinct, each container to be securely sealed. Each container shall have a slot large enough to receive the identification slips. Before the polls open, the clerk in the presence of all inspectors and the public, shall open the container and ascertain that it is empty, and while empty shall securely seal same and place a seal across the lid and body of the container leaving a slot open without breaking or removing the seal; and the clerk or inspectors shall sign their names upon the seal. Printed forms of seals shall be furnished with each container, containing a statement over the place for the signature that the container was opened, emptied, and sealed while empty before the polls were opened; the signing of the certificate shall constitute the clerk's or inspector's certificate to the facts.

(4) No person shall be admitted to a voting machine unless he presents to the clerk or inspector an identification slip as provided in subsections (1) and (2) of this section.

(5) Before the elector enters a voting machine he shall deliver his identification slip duly signed to the clerk or inspector operating the machine, and the clerk or inspector shall also sign the slip and his signature shall constitute an oath or affirmation as to the printed facts set forth above his signature, and then the clerk or inspector shall deposit the slip through the slot in the locked or sealed container.

(6) The identification slip, when signed by any person as an elector and by the clerk or inspector comparing his signature and by the clerk or inspector admitting him to the voting machine and depositing slip in the container, shall be prima facie evidence that the person whose name appears therein as an elector was admitted to the voting machine and that he then and there voted.

(7) It is the duty of the clerk and inspec-

tors to return all unused signature identification blanks to the supervisor immediately on the closing of the polls, and then seal the slot of the container with a seal signed by all the election officials in that precinct and the clerk shall deliver same to the supervisor.

(8) The identification slip shall be in the following form:

No._____

SIGNATURE IDENTIFICATION SLIP

_____ ELECTION

Held in _____ County, Florida, on the _____ day of _____A. D. 19_____.

I affix my signature hereto in the place and at the time of voting for the purpose of identifying myself as a duly registered and qualified elector in this election.

_____

(Signature of elector)

I hereby certify that the foregoing signature was signed in my presence during voting hours at this voting precinct and by me compared with that on the registration books and approved for voting in precinct No. _____.

_____

(Signature of clerk or inspector)

I hereby certify that I admitted the person who signed this identification slip to the voting machine; that said elector was personally known to me, or told me that he signed it; and that the number of the voting machine is_____

_____

(Signature of official operating machine)

(9) It shall be the duty of the board of county commissioners to prepare and send to the supervisor for delivery to each polling place the same number of signature identification slips as there are qualified electors for such polling place. In preparing the slips the same shall be numbered consecutively beginning with number (1) and continued to such number as there are qualified electors for each county. In preparing the identification slips the appropriate information to designate the date, name of county and kind of election, to-wit: general, special or primary, shall be printed in at the appropriate blank spaces appearing in the form.

(10) Any certificate signed by any clerk or inspector of any election certifying to the result of the election in or for any precinct is admissible in evidence in the trial of any cause, either civil or criminal, in any court in the state, and when admitted shall constitute prima facie evidence that it was signed by the persons whose names are signed hereto and conclusive proof that any person who signed the certificate as clerk or inspector of election was duly appointed and qualified to act throughout the election and in the capacity indicated upon said certificate, unless the contrary is disclosed thereby.

(11) It shall be the duty of the supervisor to deliver the required number of identification slips, numbered in consecutive numerical order, to each precinct and to preserve for one year a record in his office showing the number of identification slips which he delivered to each precinct designating the precinct number and address and the numbers of slips so delivered. (Such as: Delivered to precinct number one, five hundred identification slips, numbered one to five hundred inclusive.)

(12) The identification slips and all other election materials required to be delivered to each precinct shall be delivered by enclosing and locking same in the voting machine; along with an itemized list with a receipt in the form: "I hereby certify that I have checked the items listed hereon and acknowledge receipt thereof," which receipt shall be signed by the clerk of the precinct and deposited in the container provided for identification slips.

(13) It shall be unlawful for any person, other than the printer while printing and delivering the slips to the board of county commissioners, the county commissioners and their agents engaged by them in delivering the slips to the supervisor and his agents in placing the slips in the voting machine for delivery to the voting precincts, the clerks and inspectors and qualified electors while acting inside of polling places during the election, to have in their possession any signature identification slip or other slip containing the same, or substantially the same wording as the signature identification slip; and it shall be unlawful for any person or official to deliver any official slip or other slip containing the same or substantially the same wording as the signature identification slip to any person other than as herein provided.

History.—§1, ch. 18407, 1937; CGL 1940 Supp. 337(28-c); §1, ch. 22018, 1943; §3, ch. 24089, 1947; §5, ch. 26870, 1951; (5) §29, ch. 28156, 1953.

Note.—Formerly §100.34.

101.48 Examination by election board of physically impaired electors.—

(1) If an elector has been issued a special registration certificate under the provisions of §97.061 but does not have it or a renewal thereof on his person at the time he presents himself for voting, the clerk or one of the inspectors shall place the person under oath and orally examine him according to the form provided below, which form the clerk or inspector shall fill out in his own handwriting and certify to in the space provided for his signature. The form is in lieu of identification slips and the elector shall present the form to the clerk or inspector operating the voting machine, which clerk or inspector shall also certify and sign the form, and deposit same in the container for identification slips. This form shall be as follows:

I hereby certify that an applicant to vote stated that he could not write, whereupon I propounded the following questions to the applicant:

1. Hold up your right hand. Do you solemnly swear that the answers you give to these questions are true, so help you God? _____.
2. What is your name?_____.
3. Your age?_____. Your sex?_____.
4. Your address? _____.
5. Your occupation?_____.

6. Your political party? _____.
7. Why are you unable to write? _____.
8. Did you previously present yourself and have your name _____ entered on the registration books in time for this election? _____.
9. Are you a duly qualified elector in this precinct? _____.
10. Are you physically able to cast your vote? _____. (If answer is "no", then ask: (a) Do you now request assistance in voting? _____. (b) Why do you need such assistance? _____.)

I further certify that I correctly wrote in the answers as given by the applicant and compared the same with the information on the registration books opposite the name given by the applicant and found the applicant qualified to vote.

_____
(Clerk or Inspector)

I hereby certify that this form filled out and signed by an election official of this precinct was handed to me by the applicant who was personally known to me or who told me that his name and address was that shown on the form; and that I admitted the applicant to voting machine No. _____.

_____.
(Signature of official operating machine.)

When assistance is given, election official or person giving assistance must sign below:

_____.

(Note: It shall be unlawful to assist, or be in the compartment, while the curtain thereof is closed, with any elector unless such elector is blind, unable to read, or so physically incapacitated as to be unable to operate the machine and requests such assistance.)

I certify that I assisted this elector in voting at his request.

_____.
(Signature of clerk or inspector or person assisting elector to vote.)

(2) It shall be unlawful for any person to be in the voting booth with any elector while the curtain is closed, except as provided above. In such cases only the elector may upon request be assisted by two election officials that he may select or some other person of his own choice who has not previously so acted for any other person during the election. The officials giving the assistance shall first be required to sign the certificate last provided above.

(3) It shall be the duty of the board of county commissioners to furnish a sufficient number of these forms to the supervisor who shall deliver a sufficient number thereof to each voting precinct along with other election paraphernalia.

History.—§3, ch. 18407, 1937; CGL 1940 Supp. 337(28e); §3, ch. 22018, 1943; §5, ch. 26870, 1951; (1) §10, ch. 27991, 1953; §4, ch. 59-446.
Note.—Formerly §100.36.
cf.—§97.061 Special registration certificate; electors requiring assistance.

101.49 Procedure of election officers where signatures differ.—

(1) Whenever any clerk or inspector, upon a just comparison of the signature, shall doubt that the handwriting affixed to a signature identification slip of any elector who presents himself at the polls to vote, is the same as the signature of the elector affixed in the registration book, it shall become the duty of the clerk or inspector to deliver to the person an affidavit which shall be in substantially the following form:

STATE OF FLORIDA,
COUNTY OF_____.

I do solemnly swear (or affirm) that my name is_____; that my occupation is that of _____; that I am _____ years old; that I was born in the State of _____; County of _____; that I personally made application for registration within the last two years and at such time signed my name in the registration book, and at said time I resided on _____ Street, in the Town or City of _____, County of _____, State of Florida; that I am a qualified elector of the county and state aforesaid and have not voted in this election.

_____
(Signature of elector).

Sworn to and subscribed before me this _____ day of _____, A. D. 19____.

_____
Clerk or inspector of election
Precinct No._____.
County of _____.

(2) The person shall fill out, in his own handwriting, the form and make an affidavit to the facts stated in the filled-in form, such affidavit is then sworn to and subscribed before one of the inspectors or clerks of the election who is authorized to administer the oath. Whenever the affidavit is made and filed with the clerk or inspector, the person shall then be admitted to the voting machine to cast his vote, but if the person fails or refuses to make out or file such affidavit, then he shall not be permitted to vote.

History.—§2, ch. 18407, 1937; CGL 1940 Supp. 337(28-d); §2, ch. 22018, 1943; §5, ch. 26870, 1951.
Note.—Formerly §100.35.

101.50 Election officers to preserve affidavits and identification slips.—All signature identification slips where voting machines are used shall be preserved by the clerk and inspectors of election, but in those instances where an affidavit has been made in addition to the identification slip, such affidavits and slips bearing the signatures of the same persons are placed together in a separate envelope and kept separate from the remaining slips, but all such slips and affidavits preserved shall be returned to the supervisor whose duty it is to preserve them for at least one year, subject to inspection by any elector, and to deliver the same to any prosecuting officers of the county, upon demand, after taking his written receipt.

History.—§5, ch. 18407, 1937; CGL 1940 Supp. 337(28-f); §5, ch. 22018, 1943; §5, ch. 26870, 1951.
Note.—Formerly §100.38.

101.51 To occupy booth alone; time allowed elector.—When the elector presents himself to

vote, the election official shall ascertain whether his name is upon the register of electors, and if his name appears and no challenge interposes, or if interposed, be not sustained, one of the election officials stationed at the entrance shall announce the name of the elector and permit him to enter through the entrance to the booth or compartment to cast his vote, allowing only one elector at a time to pass through to vote. No elector, while receiving, preparing and casting his ballot, shall occupy a booth or compartment longer than five minutes or be allowed to occupy a booth or compartment already occupied, nor to speak with anyone, except as provided by §§101.051 and 101.061, while in the polling place. If an elector requires longer than five minutes, then upon a sufficient reason he may be granted a longer period of time by the election officials in charge. After casting his vote, he shall at once leave the polling room by the exit opening, and shall not be permitted to re-enter on any pretext whatever. After the elector has voted, declined or failed to vote within five minutes, he shall immediately withdraw from the place and go beyond the prohibited distance. If he refuses to leave after the lapse of five minutes he shall be removed by the election officials.

History.—§§44, 45, ch. 4328, 1895; GS 228, 229; RGS 273, 274; CGL 329, 330, 1936 Supp. 337(20); §5, ch. 26870, 1951.
Note.—Formerly §§99.27, 99.28, 100.20.

101.52 Assistance to blind and disabled electors in using voting machine and voting absentee.—

(1) Any elector applying to vote in any election who under the provisions of §97.061 has been issued a special registration certificate, upon the presentation of such certificate, or, if he does not have it or a renewal thereof and has submitted to the examination required by §101.48, may request assistance of two inspectors of his choice or some other person of his own choice who has not previously so acted for any other person during the election to use the voting machine without suggestion or interference from the inspectors, but in all cases any elector before retiring to the compartment may have one of the clerks of the election to read over to him the title of the offices to be filled and the candidates therefor. After the elector requests the aid of the two inspectors, they shall retire to the compartment for the purpose of operating the voting machine for the candidates according to the elector's choice. All electors after voting are required to withdraw immediately from the voting place.

(2) Any elector applying to cast an absentee ballot in the office of the supervisor of registration, in any election, who under the provisions of §97.061, has been issued a special registration certificate, upon presentation of such certificate, or, if he does not have it or a renewal thereof and has submitted to the examination required by §101.051, may request the assistance of some person of his own choice, who has not previously assisted any other person during the election, in casting his absentee ballot. Provided, however, that no supervisor of registration, his deputies or members of his staff shall act in such capacity.

History.—§§47, 48, ch. 4328, 1895; §3, ch. 4329, 1895; GS 231, 232; RGS 276, 277; §22, ch. 13893, 1929; CGL 332, 333; 1936 Supp. 337(22); §5, ch. 26870, 1951; §5, ch. 59-446; §1, ch. 61-416.

101.53 Watchers at polls; voting machine voting.—All political parties and all individual candidates for office shall be permitted by the election officials to have one watcher for each candidate or political party in all polling places from the beginning to the conclusion of all elections. The watchers shall not be permitted to come closer to the officials' table or voting machines than is necessary to properly perform their function but are allowed within the polling room to watch and observe the conduct of electors and officials. The watchers are required to furnish their materials and necessities, and shall not obstruct the orderly conducting of any election. During the elections the officials shall call out the names of electors loud enough to be heard by the watchers. The authority the watchers are required to present to the officials is their appointment or designation by a candidate or if representing a political party, then the designation from the chairman of the executive committee or any vice-chairman or secretary or by a candidate or any deputies designated by him in written notice to the county supervisor of elections at least fourteen days in advance of any primary or election. Watchers have the right to challenge electors, but it shall be necessary for the watchers to state any reason for such challenge and no election official or officers shall interfere with the watchers in the orderly performance of their duties.

History.—§3D, ch. 22018, 1943; §5, ch. 26870, 1951; §20, ch. 29934, 1955; §1, ch. 61-365.
Note.—Formerly §100.45.

101.54 Tabulation of vote and proclamation of results, where voting machine used.—As soon as the polls are closed, the inspectors of election shall immediately lock and seal the voting machines against voting. The inspectors then shall sign a certificate stating that the machines have been locked against voting and sealed; the number of electors as shown on the public counters; the number on the seal; the number registered on the protective counter, if one is provided; and that the voting machines are closed and locked. The inspectors then shall open the counting compartments in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of all the counter numbers. The clerk of the board of elections shall then read and announce in distinct tones the designating number and letter on each counter for each candidate's name, the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also read and announce the vote on each constitutional amendment, proposition or other question. The results shall be announced four times by the following procedure. While the clerk is announcing the results, one inspector shall stand by his side and check the clerk's announcements.

The vote as registered is entered on the tabulation, by two inspectors of opposite political faith, whenever practicable, but not including the clerk, in the same order on the space which has the same designating number and letter, after which the figures are verified by being called off from the counters of the machine by the inspector standing near the clerk. While the inspector is announcing the results, the clerk shall stand by his side and check the inspector's announcements. After the results are announced by the clerk and the inspector, they shall exchange positions with the two inspectors who are tabulating the results. The same procedure as used by the clerk and inspector shall again be followed by the two inspectors in announcing the results. The tabulation shall then be filled out, which shall show the total number of votes cast for each office, the number of votes cast for each candidate, as shown on his counter, and the number of votes for persons not nominated or elected. The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the board of elections. Any candidate or duly accredited watcher who may desire to be present shall be admitted to the polling place from the closing of the polls until count and tabulation are complete. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the clerk who shall read the name of each candidate, with the designating number and letter of his counter, and the vote registered on such counter; also the vote cast for and against each question submitted. During each proclamation ample opportunity is given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall then and there be made by the board, after which the doors of the voting machine shall be closed and locked. Before adjourning, the board shall, with the seal provided therefor, so seal the operating lever of the machines that the voting and counting mechanism will be prevented from operation. The same procedure shall be followed for each machine where more than one machine is used in any precinct, and a final proclamation made to the total vote received by each candidate. Irregular ballots, enclosed in properly sealed package and properly endorsed, shall be filed with the original statement of returns. The inspector filing the returns shall deliver to the said board or officer from whom they were received, the keys of the voting machine, enclosed in a sealed envelope having endorsed thereon a certificate of the inspectors stating the number of the machine or machines, and the precinct where it has been used, the number on the seal and the number on the protective counter, if any. As each vote is read and announced, it shall be recorded on two statements by two other members of the board, and when completed compared with the numbers on the counters of the machine. If found correct, the result shall be announced by the clerk and the tabulation of votes, after being duly certified and sworn to, shall be filed as provided for filing election returns.

History.—§23, ch. 13893, 1929; CGL 1936 Supp. 337(23); §7, ch. 18405, 1937; §5, ch. 26870, 1951.
Note.—Formerly §100.23.

101.55 Certificate of returns.—In precincts where voting machines are used, certificates of results shall be printed to conform with the type of machines used, on a form approved by the secretary of state. The designating number and letter on the counter for each candidate shall be printed next to the candidate's name on the certificate of the result. The form of such certificate shall also provide for the entry of the total number of votes cast for each candidate and upon each question. Three of such certificates shall be made in each precinct of which one shall be sent to the supervisor of the county, another sent to the county judge, and another publicly posted at the polling place in which the precinct is situated.

History.—§8, ch. 18405, 1937; CGL 1940 Supp. 337(23-a); §5, ch. 26870, 1951.
Note.—Formerly §100.24.

101.56 Locking machine and returning irregular ballots.—The election officers shall, as soon as the count is completed and ascertained, lock the counter compartment of the machine, and it shall so remain for a period not less than ten days, unless another election is held within three weeks, in which event the machine shall remain locked for five days, except in either event it may be opened by the canvassing board or by order of a court of competent jurisdiction. Whenever irregular ballots have been voted, the election officers shall return such ballots in a secured package endorsed "irregular ballots" and return and file such package with the original statement of the result of the election made by them. The package shall be filed for six months succeeding the election, and not opened or its contents examined during that time except by a judge of a court lawfully empowered to direct the package to be opened and examined. The package may be opened at the end of six months and the ballots disposed of at the discretion of the official or body having charge of them.

History.—§24, ch. 13893, 1929; CGL 1936 Supp. 337(24); §10, ch. 18405, 1937; §2, ch. 24089, 1947; §11, ch. 25035, 1949; §5, ch. 26870, 1951.
Note.—Formerly §100.26.

101.57 Protest of election returns; inspection by canvassing board.—Whenever any elector believes that election returns are erroneous and fraudulent, he shall have a right to file a written protest against the canvass of such returns with the canvassing board specifying the precinct or precincts in which he believes such returns are erroneous or fraudulent. Such protest may be filed with the canvassing board up until the time the canvass has been completed and the totals of votes tabulated. Before canvassing such returns the canvassing board shall examine the counters on the machines in such precincts and find whether the returns correctly show the votes cast. If there be discrepancies between the

returns and the counters of the machines, the counters of such machines shall be presumptively correct, and the votes shown by the counter shall be canvassed wherever there is a discrepancy between the returns and the vote shown by the counters. The rights of all parties in interest to appeal to the courts for protection against error or fraud are not annulled.

History.—§9, 18405, 1937; CGL 1940 Supp. 337(23-b); am. §7, ch. 22858, 1945; §5, ch. 26870, 1951; §30, ch. 28156, 1953; §24, ch. 57-1.
Note.—Formerly §100.25.

101.571 Form of protest of election returns.—The form of the "Protest of Election Returns" shall be as follows:

PROTEST OF ELECTION RETURNS

_____, Florida
_____, 19____

As provided in Section 101.57, Florida Statutes, as amended, I, _____ of _____ Florida, being a qualified elector in Precinct No. _____ of _____ County, Florida, believe the election returns from Precinct No. _____ in the _____ election of _____ 19____ are erroneous and fraudulent.

I hereby protest against the canvass of such returns by the _____ Canvassing Board, and request that said returns be investigated, examined, checked and corrected by said Canvassing Board. The basis for this protest is _____

Signed _____
Elector
Precinct No. _____
_____ County

Witness to signature:
_____

History.—§31, Ch. 28156, 1953.

101.58 Supervising and observing registration and election processes.—The secretary of state may, at any time he deems fit or upon the petition of five per cent of the registered electors, or upon the petition of any candidate, county executive committee chairman, state committeeman or committeewoman or state executive committee chairman, appoint one or more deputies whose duties shall be to observe and examine the registration and election processes and the condition, custody and operation of voting machines in any county or municipality. The deputy shall have access to all registration books and records as well as any other records or procedures relating to the election process. The deputy shall supervise preparation of the election machines and procedures for election, and it shall be unlawful for any person to obstruct the deputy in the performance of his duty. He shall file with the secretary of state a certificate that he personally examined the voting machines and with such certificate file a report of his findings and observations of the registration and election processes in the county or municipality and a copy of the certificate and report shall also be filed with the clerk of the circuit court of said county. The compensation of such deputies shall be fixed by the secretary of state; and costs incurred under this section shall be paid from the biennial operating appropriation made to the office of secretary of state.

History.—§13, ch. 18405, 1937; CGL 1940 Supp. 337(28-b); §5, ch. 26870, 1951; §1, ch. 63-256.
Note.—Formerly §100.31.

101.60 Election board to report violations of this code.—It shall be the duty of the clerk and inspectors to report any violation of this code to the proper prosecuting officers of the county. If ordered by a majority of the board at any precinct, any person presenting himself to vote may be arrested by any peace officer attending such precinct, for known violations of the election code.

History.—§4, ch. 18407, 1937; CGL 1940 Supp. 7476(8); §4, ch. 22018, 1943; §5, ch. 26870, 1951.
Note.—Formerly §100.37.

101.61 Absent elector defined.—The term absent elector shall mean any registered and qualified elector who due to physical disability is unable without another's assistance to attend the polls, or who on account of the tenets of his religion cannot attend the polls on the day of a general, special or primary election or any qualified elector wherever he may be, except persons confined in prison or jail, so long as he will not be in the county of his residence during the hours the polls are open for voting on the day of an election. Such person may cast an absentee ballot upon compliance with the absent elector provisions of this code.

History.—§1, ch. 7380, 1917; RGS 368; CGL 429; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §1, ch. 59-213.
Note.—Formerly §101.01.

101.62 Absentee ballots; application; time; form.—Any elector who will be absent on the day of an election from his home county, or who is physically incapable of appearing at the polling place, or who on account of the tenets of his religion cannot attend the polls on the day of a general, special or primary election, may make application to the supervisor or his deputies at any registration office maintained by the supervisor for the purpose of registering electors, either in person or by mail, at any time during the forty-five days preceding any election, but not later than 5:00 p. m. of the fifth day preceding such election, upon a blank to be furnished by the supervisor for the official ballot to be voted at such election. The application blank shall be sent immediately, by mail, or delivered by hand, to the absent elector; provided however that the absent elector who cannot attend the polls on the day of an election on account of the tenets of his religion must make application only in person and have application delivered only by hand. Such blank shall be in substantially the following form, signed by the applicant, and witnessed as herein required.

Application for absent elector's ballot.

I, _____, duly qualified and registered as a _____ elector
(party)
of the _____ precinct of the county of _____, and State of Florida,

and a _____, not confined
(give occupation)
to prison or jail, will be unable to attend the polls in said county on the day for holding
_____
(designate which election)
because (check appropriate reason):

(1) ☐ I am physically disabled and unable (without the assistance of another) to attend the polls on election day.

(2) ☐ I will be absent from the county during the entire period the polls are open for voting on the day of election and cannot without manifest inconvenience vote in person.

(3) ☐ I will be unable to attend the polls on election day because of the tenets of my religion.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in_____ on_____ Send "absent electors' ballot" to me at_____ post office, county, city address, if any_____ _____ Home address of applicant _____ Date _____

In witness whereof I have hereunto set my hand and seal this the_____ day of_____ 19_____.

Signed and sealed in
presence of
(Two witnesses)

_____
signature

_____
address

_____
signature

_____
address

_____(SEAL)
Signature of absent elector

Sworn to and subscribed before me
My commission expires

_____(SEAL)
Notary Public or other officer
authorized to administer oaths.

In primary elections, the supervisor of registration will supply the elector with the ballot of the party in which he is registered and no other.

History.—§2, ch. 7380, 1917; RGS 369; CGL 430; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §32, ch. 28156, 1953; §21, ch. 29934, 1955; §2, ch. 59-213.
Note.—Formerly §101.02.

101.63 Absentee ballots; filing; record; publication.—Upon receipt of application for absentee ballot, filled out and signed, the supervisor shall file it in his office and enter the name and address of the applicant to which the ballot is to be sent, upon a list to be kept by the supervisor or clerk for that purpose, together with the date of receiving the application, the date of mailing or delivering the ballot to the elector, the date of receiving the ballot from the elector and such other information he may deem necessary. The names of all applicants for absentee ballots received by the supervisor during any week prior to an election shall be listed alphabetically or by precinct and said list shall be posted at the courthouse or published once in a newspaper published in the county during the week following the receipt of such applications.

History.—§3, ch. 7380, 1917; RGS 370; CGL 431; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §33, ch. 28156, 1953; §1, ch. 61-70; §1, ch. 63-186.
Note.—Formerly §101.03.

101.64 Mailing absentee ballots; numbering; return envelopes; form.—The supervisor shall, after the printer delivers the ballots for a precinct in which applications from absent electors have been received, prepare the first numbered ballot for the first applicant, the second ballot for the second applicant, and so on. The supervisor shall initial both stubs No. 1 and No. 2 and enter the name of the elector in the place indicated for the elector to sign. If the applicant appears in person he shall sign stub No. 1 as if he were voting on election day. The supervisor shall then detach the ballot and stub No. 2 from No. 1 and forward by mail, postage prepaid or deliver personally, one of such ballots with stub No. 2 attached (or if there be more than one kind of ballot to be voted, then one of each kind) to each applicant from his county as shown by the list provided by §101.63, provided such applicant is properly registered. In counties under the permanent registration system or the system described in §98.041, where the supervisor maintains deputies in municipalities other than the county seat and such municipalities shall have a population in excess of ninety thousand blocks of numbered ballots shall be made available as required and as the supervisor may direct in order to comply with the provisions of §98.181; all ballots made available in municipalities where deputies are maintained shall be fully accounted for to the supervisor. But the supervisor or any deputy shall not receive applications for absent electors' ballots later than 5:00 p.m. of the fifth day preceding any such election. In counting, the day of the election shall not be counted. The supervisor shall enclose with such ballot two envelopes, a plain white envelope into which the absent elector shall enclose and seal his marked ballot and then place the sealed white envelope, together with detached stub No. 2 in the second envelope which is addressed to the supervisor and also bearing on the back side of this "return envelope" a certificate which shall be substantially in the following form:

ELECTOR'S CERTIFICATE

I, _____, do solemnly swear, or affirm, that I am a resident of_____ precinct of _____ county or of the _____ precinct or ward of the city of _____ in the county of _____, State of Florida, and have been a resident of such county or city for six months and of this state for one year and am entitled to vote in such precinct; that I will not be in the county during the time the

polls are open (or that I am too ill to come to the polls).

_____
(Elector's Signature)

Subscribed and sworn to before me this _____ day of _____, A. D., _____

(Attesting Witness)

_____

(Official Title)

_____

(Address)

_____

_____

(City and State)

Notaries: USE NO SEAL (Postal Officers must apply station cancellation stamp)

The statement shall be so arranged that the signature of the absent elector and the attesting witness shall be across the flap of the envelope. The absent elector and the attesting witness shall execute the said form on the envelope.

History.—§4, ch. 7380, 1917; RGS 371; CGL 432; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §34, ch. 28156, 1953; §22, ch. 29934, 1955; §1, ch. 61-369.
Note.—Formerly §101.04.

101.65 Instruction to absent electors.—

(1) The supervisor shall enclose with each ballot sent to an absent elector separate printed instructions furnished by them containing substantially the following: "Upon receipt of the enclosed ballot you will mark the same according to the instructions, then detach stub No. 2 bearing the initial of the supervisor from the ballot. Place only the marked ballot in the enclosed plain envelope and securely seal it, and then place stub No. 2 and sealed plain envelope in the second envelope addressed to the supervisor. The application blank properly filled out shall be mailed in a separate envelope from the ballot envelope. Fill out the "Elector's Certificate" on the back of the envelope, sign, and have the envelope signed by an attesting witness, place the necessary postage upon the envelope and deposit it in the post office or in some government receptacle provided for the deposit of mail, or deliver it personally to this office so that absent elector's ballot will reach the supervisor of the county in which your precinct is located not later than 5:00 p.m. of the day preceding the primary or general election.

(2) Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station or any officer having authority to administer an oath or take an acknowledgment may be an attesting witness.

If a postmaster, or assistant postmaster, or postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If one or the other officers named acts as attesting witness his signature on the elector's certificate, together with his title and address but no seal shall be required.

(3) Any affidavits made by an absent elector, who is in the armed forces, may be executed before a commissioned officer, warrant officer or non-commissioned officer not lower in grade than sergeant or its equivalent navy rating, or any person authorized to administer oaths.

History.—§5, ch. 7380, 1917; RGS 372; CGL 433; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §35, ch. 28156, 1953; (2) §23, ch. 29934, 1955.
Note.—Formerly §101.05.

101.66 Absent elector's ballot; signing, sealing, mailing.—Upon the receipt of the absentee ballot and printed instructions as provided in §101.65, the absent elector shall, in secret, mark his ballot, follow the instructions enclosed with his ballot, place only the marked ballot in the plain envelope and return same to the supervisor of the county in which his precinct is located.

History.—§7, ch. 7380, 1917; RGS 373; CGL 434; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §36, ch. 28156, 1953.
Note.—Formerly §101.06.

101.67 Safekeeping of mailed ballots; deadline for receiving absentee ballots.—The supervisor shall safely keep in his office any envelopes received containing marked ballots of absent electors, and he shall, before the canvassing of the election returns deliver the envelopes to the county canvassing board and his list kept regarding same. All marked absent electors' ballots to be counted must be received by the supervisor by 5:00 p. m. of the day preceding any election; all ballots received thereafter shall be marked with the time and date of receipt, and filed in his office. No application for an absent elector's ballot shall be received or handed out to an elector unless there remains time for the ballot to be mailed to the supervisor by United States mail or personally voted in the office of the supervisor, or in the office of any deputy where ballots are available before the deadline for receiving said ballots.

History.—§2, ch. 11824, 1927; CGL 436; §1, ch. 25385, 1949; §5, ch. 26870, 1951; §24, ch. 29934, 1955; §24, ch. 57-1.
Note.—Formerly §101.07.

101.68 Canvassing absent elector's ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot and shall safely keep the ballot unopened in his office until the board of county canvassers canvasses the vote according to law. The canvassing board shall compare the information on the back of the envelope with the registration book to see that the elector is duly registered in the precinct, has not voted on election day and to determine the legality of the absent elector's ballot. If it is determined, by the canvassing board that any vote is illegal, then some member of the board shall, without opening the envelope, mark across the face of the envelope "rejected as illegal." The envelope and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

(2) The board of county canvassers shall

then open the covering envelope and record the ballot upon the poll book of the proper precinct in the same manner as clerks of elections record votes. The ballots for the entire county still in the plain sealed envelope shall be mixed up so as to make it impossible to determine which plain envelope come out of which signed envelope. The vote of all absent electors shall be added to the total of the poll for the county.

(3) The supervisor or the chairman of the canvassing board shall, after the board convenes, have custody of the absent electors' ballots until a final proclamation is made as to the total vote received by each candidate.

History.—§5, ch. 26870, 1951; (3) n. by §37, ch. 28156, 1953.

101.69 Voting in person; return of ballot; double voting.—The provision of this code shall not be construed to prohibit any absent elector, returning to his home county from voting in his precinct at any election notwithstanding that he may have made application for an absent elector's ballot and same may have been mailed to him; provided, that the elector has not voted the ballot and provided also that he returns the ballot if he received same to the election board in his precinct. The returned ballot shall be marked "canceled" by the board and placed in the regular box of other canceled ballots.

History.—§1, ch. 22014, 1943; §1, ch. 25385, 1949; §5, ch. 26870, 1951.
Note.—Formerly §101.11

101.691 Armed services and federal personnel absentee voting.—The following persons shall be entitled to cast an absentee ballot in any primary, special, or general election held in their respective election districts or precincts, subject to the conditions hereinafter set forth in this section:

(1) Members of the armed forces while in active service, their spouses and service academy cadets.

(2) Members of the merchant marine of the United States, their spouses and dependents.

(3) Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil-service laws and the classification act of 1949, and whether or not paid from funds appropriated by the congress.

(4) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

In order to cast an absentee ballot, the persons covered by this section must be otherwise eligible to vote.

History.—§§1, 2, ch. 29904, 1955; (1) §1, ch. 63-484.

101.692 Same; post card application for ballot or registration.—

(1) Upon receipt of a federal post card application for an absentee ballot, the supervisor of registration shall check the registration records to determine whether the applicant's registration is in order. If so, the absentee ballot shall be mailed as herein provided.

(2) If the applicant shall have previously registered and his registration has lapsed because of his failure to reregister or because of his failure to return a notice mailed to his address of record by the supervisor in compliance with the provisions of a permanent single registration law, then the supervisor shall send to the applicant, in the same envelope containing the absentee ballot, a blank form which shall be so conformed to the requirements of the registration law applicable in the county as to permit the reinstatement of the applicant's registration when it is properly filled out and returned to the supervisor.

(3) Upon the return of such blank form the supervisor shall properly reregister or reinstate the applicant's name in the registration books or records of the county and maintain on file, as the basis for such reinstatement, or reregistration the properly filled out form received from the applicant. Such reinstatements or reregistrations shall be permitted even though the registration books or records may have been closed in preparation for the impending election.

(4) If the supervisor finds that the applicant has never registered in the county, then the supervisor shall send to the applicant, in the same envelope containing the absentee ballot, an application for absentee registration.

History.—§3, ch. 29904, 1955; (4) §2, ch. 59-217.

101.693 Same; federal post card application for absentee registration and ballot.—The federal post card application, as provided for by federal law, shall be accepted as an application for absentee registration when duly executed by residents of Florida who are otherwise entitled to vote who are members of the armed forces and their spouses living outside the territorial limits of the state. The federal post card application shall also be accepted as an application for an absentee ballot when duly executed by any one of the persons covered in §101.691. If any application is sent to the secretary of state or is directed to some other official, it shall be immediately forwarded to the supervisor of registration in the county of the applicant's residence if possible.

History.—§4, ch. 29904, 1955; §3, ch. 59-217; §1, ch. 63-190.

101.694 Same; mailing of ballots and registration applications; form.—

(1) Upon receipt of a duly executed federal post card application, as provided for by §101.693, the supervisor of registration shall mail to the applicant a ballot, if they are available for mailing. An application for reregistration shall also be sent if the applicant has been registered but has failed to reregister. An application for absentee registration shall be sent if the applicant has never registered in the county, or if the applicant has

been registered but has failed to reregister, an application for registration shall be sent. There shall also be included the necessary instructions for voting and returning the ballot and for executing and returning the application for reregistration or registration, and a return envelope pre-addressed to the supervisor of registration. Such ballots and instructions and other necessary materials for this section shall be available at least forty-five days prior to each election.

(2) There shall be printed across the face of each envelope in which a ballot is sent to a federal post card applicant, or is returned by such applicant to the supervisor, two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official election balloting material—via air mail," or similar language, between the bars. There shall be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. postage, including air mail." All printing on the face of each such envelope shall be in red, and there shall be printed in red in the upper left corner of each ballot envelope an appropriate inscription or blanks for return address of sender. Otherwise the envelopes shall be the same as those used in sending ballots to, or receiving them from other absentee voters.

(3) The gummed flap of the envelope supplied for the return of the ballot shall be separated by a wax paper or other appropriate protective insert from the remaining balloting material and there shall be included an instruction sheet outlining a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter and witnessing officer, in instances of adhesion of the balloting material.

(4) Cognizance shall be taken of the fact that absentee ballots and other materials such as instructions and envelopes are to be carried via air mail and to the maximum extent possible such ballots and materials should be reduced in size and weight of paper. The same ballot shall be used, however, as is used by other absentee voters.

(5) The application for absentee registration shall be of the following form:

APPLICATION FOR ABSENTEE REGISTRATION

"I, _____, being first duly sworn, on oath say that I am a citizen of the United States and eligible to become a legal voter in the State of Florida; that my legal residence is _____ Street (or Avenue) in the _____ election precinct, or the _____ ward in the City (Town) of _____, County of_____; that I have not been and will not be able to register personally for the reason that _____; that I am not a registered voter in any State; that I desire to be registered in such _____ precinct; that my full name is _____; that I was born on _____ at _____; that my color is _____; that I am _____ feet_____ inches in height; that my occupation is _____; that my legal residence is and has been in the State of Florida for twelve months last past and of the County of _____ for six months last past; that my party affiliation is _____; that I desire a registration certificate be mailed to me at _____; and I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am twenty-one years of age, that I have been a resident of the State of Florida for one year and of the county for six months, and that I am qualified to vote under the Constitution and laws of the State of Florida."

(Signature) _____

"Sworn to and subscribed to before me this _____ day of _____, 19_____.

(Signature) _____

Title of person administering oath"

History.—§5, ch. 29904, 1955; (1) §4, (5)n. §5, ch. 59-217.

101.695 Same; oaths administered by.—For the purposes of §§101.691-101.696 oaths may be administered and attested by any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, or any civilian official empowered by state or federal law to administer oaths.

History.—§6, ch. 29904, 1955.

101.696 Same; definitions.—

(1) The term "members of the merchant marine of the United States" means persons (other than members of the armed forces) employed as officers or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, or of vessels of foreign-flag registry under charter to or control of the United States, and persons (other than members of the armed forces) enrolled with the United States for employment, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessel; but does not include persons so employed, or enrolled for such employment or for training for such employment, or maintained for emergency relief service, on the Great Lakes or the inland waterways.

(2) The term "armed forces" shall be interpreted to mean and include the army of the United States, navy, air force of the United States, marine corps, coast guard, coast and geodetic survey, and public health service, when on active duty.

(3) The term "dependent" means any person who is in fact a dependent.

History.—§7, ch. 29904, 1955.

101.70 Any governmental agency or political subdivision may adopt any provisions of

the absentee voting law.—Any municipality, school district or other governmental agency or political subdivision may by resolution or ordinance adopt this law as means of providing for absentee voting in any authorized election. In such event the words "city clerk" or other appropriate official is inserted wherever the word "supervisor" appears.

History.—§2, ch. 22014, 1943; §1, ch. 25385, 1949; §5, ch. 26870, 1951.

Note.—Formerly §101.12.

101.71 Polling place.—

(1) There is in each precinct in each county one polling place, managed by a board of inspectors and clerk of election. The inspectors of election shall rail off and construct a space, in which to hold an election, with an opening at one end for entrance of the electors and an opening at the other for their exit. Only one elector shall be allowed to enter any polling place at a time, and no one except inspectors shall be allowed to speak to him while casting his vote, and no inspector shall speak to or interfere with the elector concerning his voting, otherwise than to perform his duties as such inspector.

(2) Notwithstanding the provisions of the above subsection and of §98.031, whenever the board of county commissioners of any county shall determine that the accommodations for holding any election at a polling place designated for any precinct in the county are inadequate for the expeditious and efficient housing and handling of voting and voting paraphernalia, including voting machines where used, said board may by resolution, duly adopted not less than sixty days prior to the holding of such election, provide that the voting place for such precinct shall be moved for the purpose of such election to another site in said precinct or, if such is not available, to another site in a contiguous precinct. If such action of the board shall result in the voting place for two or more precincts being located for the purposes of an election in one building, the voting places for the several precincts involved shall be established and maintained separate and apart from each other in said building. When any board adopts the aforesaid resolution it shall be required, not more than thirty days nor less than twenty days prior to the holding of any such election, to give notice of the change of the polling place for the precinct involved, with clear description of the voting place to which changed, in not less than two issues of a newspaper of general circulation published in said county and to use such other advertising media as necessary to properly publicize said change.

History.—§22, ch. 3879 1889; RS 176; §26, ch. 4328, 1895; §1, ch. 4699, 1899; GS 208; RGS 252; CGL 308; §5, ch. 26870, 1951; (2) n. §1, ch. 57-385.

Note.—Formerly §99.06.

101.72 Booths.—The county commissioners of each county (or in case of a municipal election, the mayor or other chief executive officer), where voting machines are not used, shall provide at each polling place, a room or covered enclosure. In such place or covered enclosure shall be provided booths or compartments, one booth or compartment for each hundred or fraction of hundred over fifty qualified electors registered for that election, and furnish each with a shelf or table for the convenience of electors preparing their ballots. Each booth or compartment shall be so arranged that it will be impossible for one elector in one compartment to see an elector in another in the act of marking his ballot and each voting table or shelf shall be kept supplied with conveniences for marking the ballots.

History.—§38, ch. 4328, 1895; §7, ch. 4329, 1895; GS 223; RGS 268; CGL 324; §5, ch. 26870, 1951.

Note.—Formerly §99.22.

101.73 Description of election districts and precincts.—Within ten days after there is any change in the division, number or boundaries of the election precincts, or of the location of the polling places, the county commissioners shall make in writing an accurate description of any new or altered election precincts, setting forth the boundary lines thereof, so as to designate accurately the limits of each precinct. They shall at the same time name, clearly define and describe in writing the polling place which they have established in each new or altered election precinct or in any precinct in which they may have changed the polling place. Such changes shall be recorded in the registry of deeds in the clerk of the circuit court's office for such county. Upon the recording of the changes, the county commissioners shall publish the change four times in some newspaper in the county, and if there is no newspaper, they shall post a plainly written or printed copy at the courthouse in a conspicuous place and also at three other places in each changed or altered district.

History.—§10, ch. 3879, 1889; RS 164; §11, ch. 4328, 1895; GS 185, 186; RGS 229, 230; CGL 282, 283; §7, ch. 25383, 1949; §5, ch. 26870, 1951.

Note.—Formerly §§98.25, 98.26.

cf.—§98.031 Registration districts, precincts; boundaries.

101.74 Temporary change of polling places in case of epidemic.—In case of an epidemic existing in any city or town, at the time of holding any election, the county commissioners may establish at any safe and convenient point outside such infected locality, additional polling places for the electors in the infected precinct, in which the qualified electors shall be allowed to vote. The registration books belonging to the infected precinct shall be applicable to and are used at such polling places established.

History.—§39, ch. 3879, 1889; RS 193; §70, ch. 4328, 1895; GS 254; RGS 298; CGL 354; §5, ch. 26870, 1951.

Note.—Formerly §99.55.

CHAPTER 102

CONDUCTING ELECTIONS AND ASCERTAINING THE RESULTS

102.012 Inspectors and clerks to conduct elections.—

(1) The board of county commissioners in each county, at least twenty days prior to the holding of any election, shall appoint two election inspection boards for each precinct in the county. Each election inspection board is composed of three inspectors and a clerk, all of whom must be registered qualified electors of the precinct in which they are appointed; and in the event no such elector or electors can be found in the precinct in which they are appointed, then such person, or persons, may be appointed from any precinct within the county commissioners' district in which such precinct is located; and all of whom shall not belong to the same political party; provided that in any primary in which only one party has candidates appearing on the ballot all clerks and inspectors may be of that party. One of the boards shall conduct the voting, beginning at 7:00 a.m. and closing at 7:00 p.m. at which time the second board shall come on and count the votes cast. The first board shall turn over to the second board all closed ballot boxes, registration books and other records of the election at the time the boards change. The second board shall continue counting until the count is complete or until 7:00 a.m. the next morning, and if the count is not completed, the first board that conducted the election shall again report for duty and complete the count. The second board shall turn over all ballots counted and not counted, all registration books and other records, and shall advise the first board what has transpired in tabulating the results of the election.

(2) In precincts of more than a thousand registered electors the board of county commissioners shall appoint additional election inspection boards necessary for the election on the recommendation of the supervisor.

(3) In precincts of less than three hundred registered electors it is not necessary to appoint two election inspection boards but one such board shall suffice.

(4) The board of county commissioners may, in any election, in their discretion and except in first primary elections, appoint one election inspection board if they have reasons to believe that only one is necessary.

(5) In precincts using voting machines there shall be one election inspection board appointed plus an additional inspector for each machine in excess of one; provided, that the board of county commissioners may in their discretion appoint additional inspectors to those provided for in the first part of this sentence.

(6) The board of county commissioners may require the supervisor to divide alphabetically the registration books for each precinct as will best facilitate the holding of an election.

(7) The board of county commissioners shall publish the names of the inspectors and clerks once in a newspaper published in the county, at least fifteen days before the election day. If there is no newspaper published in the county then the board of county commissioners shall have the names of the inspectors and the clerks posted in at least five conspicuous places in the county, at least fifteen days prior to election day.

(8) Only electors who can read and write the English language shall be appointed to the election inspection board.

History.—§20, ch. 3879, 1889; RS 174; §24, ch. 4328, 1895; §8, ch. 4537, 1897; GS 205; RGS 249; §1, ch. 8587, 1921; CGL 305; §2, ch. 17898, 1937; §2, ch. 25384, 1949; §6, ch. 26870, 1951; (5) §38, ch. 28156, 1953; (1) §25, ch. 29934, 1955; (1), (7) §10, ch. 57-166; (1), (7) §1, ch. 63-53.
Note.—Formerly §99.03.

102.021 Compensation of inspectors and clerks.—Inspectors and clerks of any election and the deputy sheriff serving at the precincts shall be paid for their services by their respective boards of county commissioners, and the inspectors who deliver the returns to the county seat shall receive such sum as the board of county commissioners shall determine but in no event shall the sum exceed one dollar per hour and traveling expenses as provided in §112.061.

History.—§24, ch. 4328, 1895; §8, ch. 4537, 1897; GS 206; RGS 250; CGL 306; §§1, 2, ch. 20448, 1941; §3, ch. 25384, 1949; §6, ch. 26870, 1951; §5, ch. 63-400.
Note.—Formerly §99.04.

102.031 Election boards to maintain good order.—The election boards shall possess full authority to maintain order at the polls and enforce obedience to their lawful commands

during an election, and during the canvass and estimate of the votes.

History.—§58, ch. 4328, 1895; GS 237; RGS 282; CGL 338; §6, ch. 26870, 1951; §1, ch. 59-212.
Note.—Formerly §99.38.

102.041 Voting procedure; powers of inspectors.—The powers of inspectors relating to voting procedure in general elections as provided in §101.22 shall govern the powers of the inspectors relating to voting procedure in primary elections.

History.—§42, ch. 6469, 1913; RGS 346, 5911; CGL 403, 8175; §3, ch. 17901, 1937; §4, ch 25386, 1949; §6, ch. 26870, 1951.
Note.—Formerly §102.41.

102.051 Filling vacancy of clerk or inspector.—In case of absence or refusal to act of any inspector or clerk appointed by the board of county commissioners, the qualified electors present favoring the ticket which the absent inspector or clerk was chosen to represent, shall choose from among them an inspector or clerk, who together with those present, shall constitute a board of four. The inspector or clerk so chosen shall (if any be present), represent the same political party that the absent inspector or clerk would have represented, and the person chosen may act as inspector or clerk of the election at the precinct where he may be chosen. The inspectors and clerks shall each take and subscribe an oath or affirmation, which is written or printed, to the effect that they will perform the duties of inspectors or clerks of election according to law, and will endeavor to prevent all fraud, deceit or abuse in conducting the election. The oath may be taken before an officer authorized to administer oaths, or before either of the persons who are to act as inspectors, one of them to swear the others, and one of the others sworn thus in turn to administer the oath to him who has not been sworn. The oaths are returned with the poll list and the returns of the election to the supervisor. One of the inspectors shall be chosen by them as chairman of their board. In all questions that may arise before them, the decision of a majority of them shall decide the question.

History.—§21, ch. 3879, 1889; RS 175; §25, ch. 4328, 1895; §9, ch. 4537, 1897; GS 207; RGS 251; CGL 307; §7, ch. 22858, 1945; §6, ch. 26870, 1951.
Note.—Formerly §99.05.

102.061 Duties of election board; counting; closing polls.—

(1) At the close of the election at each precinct, the election inspection board that conducted the election shall turn the ballot box, registration books and other records over to the relieving board when more than one board is conducting the election, which shall proceed to open the ballot box in presence of the public desiring to witness the canvass, count the ballots without adjournment or interruption until the count is completed, except for the necessary interruption provided for in §102.012. The ballots are first counted and if the number of ballots exceeds the number of persons voted, as may appear by the poll list kept by the clerk, and by the stubs detached by the inspectors, the ballots are replaced in the box and one of the inspectors shall publicly draw out and destroy unopened as many ballots as are equal to such excess. If two or more ballots are found folded together to present the appearance of a single ballot, they are laid aside until the count is completed, and if, upon comparison of the count, and the appearance of such ballots, a majority of the inspectors are of the opinion that the ballots were voted by one person such ballot shall be destroyed.

(2) In counting the ballots the election inspection board shall use either (a) the tally call system of counting; or (b) a system whereby the ballots are opened and placed in piles according to the candidate voted for, then the number of ballots in each pile is counted. The ballots are then reshuffled and the process repeated until the total votes cast for each candidate for every office has been determined; and no other system of counting shall be used.

(3) Where voting machines are used the procedure and the tabulating of results shall conform to the provisions of the law relating to voting machines.

History.—§29, ch. 3879, 1889; RS 183; §60, ch. 4328, 1895; GS 241; RGS 285; CGL 341; §9, ch. 17898, 1937; §8, ch. 25384, 1949; §6, ch. 26870, 1951.
Note.—Formerly §99.42.

102.071 Tabulation of votes and proclamation of results where ballots are used.—The election board shall post at the polls, for the benefit of the public, the results of the voting for each office or other item on the ballot as the count is completed. Upon completion of all counts in all races triplicate certificates of the results shall be drawn up, upon a form provided by the board of county commissioners, by the inspectors and clerk at each precinct, which shall contain the name of each person voted for, for each office, the number of votes cast for each person for such office, and if any question is submitted, the certificate shall also contain the number of votes cast for and against the question. The certificate shall be signed by the inspectors and clerk, and one of the certificates delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication; the duplicate copy of the certificate shall be delivered to the county judge; and the remaining copy shall be enclosed in the ballot box together with the oaths of inspectors and clerks. All the ballot boxes, ballots, ballot stubs, memoranda and papers of all kinds used in the election shall also be transmitted, sealed by the inspectors, with the certificates of result of the election to be filed in the supervisor's office. Registration books and the poll lists shall not be placed in the ballot boxes but returned to the supervisor.

History.—§30, ch. 3879, 1889; RS 184; §61, ch. 4328, 1895; §2, ch. 4699, 1899; GS 242; RGS 286; CGL 342; §9, ch. 25384, 1949; §6, ch. 26329, 1949; §6, ch. 26870, 1951; §39, ch. 28156, 1953.
Note.—Formerly §99.43.

102.081 Deputy sheriff at each polling place.—The sheriff shall deputize a deputy sheriff for each precinct who must be present during the time the polls are open and until the election is completed, who shall be subject to all lawful commands of the inspectors, and who

shall maintain good order. The deputy may summon a posse from among bystanders to aid him when necessary to maintain peace and order at the polls.

History.—§27, ch. 3879, 1889; RS 181; §58, ch. 4328, 1895; GS 238; RGS 283; CGL 339; §6, ch. 26870, 1951.
Note.—Formerly §99.39.

102.091 Duty of sheriff to watch for violations; appointment of special officers.—The sheriff shall exercise strict vigilance in the detection of any violations of the election laws and in apprehending the violators. The governor may appoint special officers, when deemed necessary, to see that violators of the election laws are apprehended and punished.

History.—§§16, 18, ch. 5470, 1913; RGS 5931; CGL 8195; §6, ch. 26870, 1951.
Note.—Formerly §875.44.

102.101 Sheriff and other officers not allowed in polling place.—No sheriff, deputy sheriff, policeman or other officer is allowed within the polling place unless summoned by a majority of the inspectors. On failure of any of said officers to comply with this provision, the inspectors or one of them shall make affidavit against such officer for his arrest.

History.—§58, ch. 4328, 1895; GS 239; RGS 284; CGL 340; §6, ch. 26870, 1951.
Note.—Formerly §99.41.

102.111 Board of state canvassers.—Immediately after certification of any election by the county canvassing board, the results shall be forwarded to the secretary of state concerning the election of any state officer, member of the legislature or representative to congress. The secretary of state, comptroller and attorney general, or any two of them, together with an administrative officer of the executive department who may be designated by them, shall meet in the secretary of state's office after reasonable notice and they shall be a board of state canvassers, who shall canvass the returns of the election and determine and declare who has been elected for such office, or as such member. If the returns are not in by the seventh day at 5:00 p.m. following an election all missing counties are ignored and the results shown by the returns on the file are certified.

History.—§35, ch. 3879, 1889; RS 189; §66, ch. 4328, 1895; GS 248; RGS 292; CGL 348; §6, ch. 26870, 1951.
Note.—Formerly §99.49.

102.121 State canvassing board to issue certificates.—The board of state canvassers shall make and sign separate certificates of the result of the election for national and state officers, which certificates shall be written and contain the total number of votes given for each person for each office and for each member of the legislature and state senate. The certificates, the one including the result of the election for presidential electors and representatives to congress, and the other including the result of the election for state officers, members of the legislature and state senators, shall be recorded in the secretary of state's office in a book to be kept by him for that purpose. He shall have a certified copy of each certificate published once in one or more newspapers printed in Tallahassee.

History.—§35, ch. 3879, 1889; RS 189; §66, ch. 4328, 1895; GS 250; RGS 294; CGL 350; §6, ch. 26870, 1951.
Note.—Formerly §99.51.

102.131 False and fraudulent returns.—If any returns shall appear to be irregular, false or fraudulent so that the state canvassing board is unable to determine the true vote for any officer or member, they shall so certify and shall not include the returns in their determination, canvass and declaration. The secretary of state shall file in his office all the returns, together with other documents and papers received by him or the board. The board shall canvass the returns for presidential electors and representatives to congress separately from their canvass of returns for state officers or members of the legislature.

History.—§35, ch. 3879, 1889; RS 189; §66, ch. 4328, 1895; GS 249; RGS 293; CGL 349; §6, ch. 26870, 1951.
Note.—Formerly §99.50.

102.141 County canvassing board; duties.—(1) At the close of the polls, or as soon thereafter as is practicable, but not later than the third day after any primary, general or other election, the county judge and supervisor with the assistance of the chairman or other members of the board of county commissioners shall meet in the supervisor's office. In case the county judge or supervisor cannot act, another member of the board of county commissioners who is designated by the chairman of the board shall act in his place, and they shall constitute the county canvassing boards. They shall proceed publicly to canvass the absentee electors' votes as provided for in §101.68.

(2) On the third day after any election, or sooner if the returns are received, the county judge and supervisor with the assistance of the chairman or other members of the board of county commissioners shall meet in the supervisor's office. In case the county judge or supervisor cannot act, another member of the board of county commissioners who is designated by the chairman of the board shall act in his place, and they shall constitute the county canvassing board. They shall proceed publicly to canvass the vote given each candidate and nominee as shown by the returns then on file in the office of the county judge and supervisor, and the absentee returns which have been previously publicly canvassed.

(3) The canvass, except absent electors' returns, shall be made entirely from the returns and certificates of the inspectors, as signed and filed by them with the county judge and supervisor, respectively, and the board of county canvassers shall not change the number of votes cast for the candidates or nominees respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before the third day after the election, and all returns of missing precincts shall be ignored and the results as shown by the returns then on file certified.

(4) The canvassing board may employ such

clerical help to assist with the work of the board as they deem necessary, with one member of the board present at all times, until the canvass of the returns is completed. The clerical help shall be paid from the same fund as inspectors and other necessary election officials.

History.—§46, ch. 6469, 1913; RGS 350; CGL 407; §11, ch. 13761, 1929; §6, ch. 26870, 1951; §1, ch. 57-104.
Note.—Formerly §102.45.

102.151 County canvassing board to issue certificates; supervisor to give notice to secretary of state.—The county canvassing board shall make and sign triplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast and the number of votes cast for each candidate or nominee. One of such certificates which relate to offices for which the candidates or nominees have been voted for in more than one county, shall be immediately transmitted to the secretary of state, another to the clerk of the circuit court and the third copy filed in the supervisor's office. The supervisor shall transmit to the secretary of state immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county officers nominated or elected, the office for which each was nominated or elected, with their post office address in their respective counties.

History.—§47, ch. 6469, 1913; RGS 351; CGL 408; §12, ch. 13761, 1929; §5, ch. 25388, 1949; §6, ch. 26870, 1951.
Note.—Formerly §102.46.

CHAPTER 103

PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS

103.011 Electors of president and vice-president.—Electors of president and vice-president, known as presidential electors, are elected on the first Tuesday after the first Monday in November, 1908, and on the same day thereafter every four years. Votes cast for the actual candidate for president or vice-president, whose names appear on the general election ballot, are counted as votes cast for the presidential electors of the party supporting such candidate. The secretary of state shall certify as elected the presidential electors of the party whose candidates for president and vice-president received the greatest number of votes.

History.—§§2, 3, ch. 3879, 1889; RS 157; §4, ch. 4328, 1895; §3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; §2, ch. 25383, 1949; §7, ch. 26870, 1951.
Note.—Formerly §98.07.

103.021 Nomination for presidential electors.—Candidates for presidential electors are nominated in the following manner:

(1) The governor shall nominate the presidential electors of all political parties who have elected a president of the United States subsequent to January 1, 1900. He shall nominate the electors upon recommendation of the state executive committee of the political parties and shall nominate only persons who are qualified electors and who have taken an oath that they will vote for the candidate of the party that they are nominated to represent. The governor shall certify to the secretary of state on or before September 1, in a presidential election year, the names of a number of persons for each political party, equal to the number of senators and representatives which this state has in congress. They shall be nominated the electors from this state for president and vice-president of the United States.

(2) The names of the electors are not printed on the general election ballot, but the names of the actual candidates for president and vice-president for whom the electors will vote if elected are printed on the ballot in the order in which the party of which the candidate is a nominee polled the greatest number of votes for governor in the last general election.

(3) Minor political parties, which have not elected a president of the United States since January 1, 1900, may have the names of their candidates for president and vice-president printed on the general election ballots provided a petition signed by seven thousand five hundred registered electors of Florida of which no more than one thousand shall come from any one county, and at least twenty-five shall come from each of thirty-four counties. A separate petition shall be submitted from at least thirty-four counties. Said petition shall be submitted to the supervisor of registration of said county no later than August 15 in a presidential election year and the supervisor shall check the names and shall, on or before September 1 in a presidential election year, certify to the secretary of state, the number shown as registered electors of said county and said supervisor shall be paid by the person requesting the certification the sum of ten cents for each name checked. The supervisor shall then forward the petition, with his certificate attached, to the secretary of state who shall order the names of the candidates petitioned to be included on the ballot and to permit the required number of persons to be certified as electors in the case of major party candidates when the number of the petitioners complies with the number required on the petition.

(4) When, for any reason a person nominated or elected a presidential elector, is unable to serve because of death, incapacity, or otherwise, the governor may appoint a person to fill such vacancy who possesses the qualifications whereby he could have been nominated in the first instance. Such person shall file with the governor an oath that he will support the candidate for president and vice-president that the person who is unable to serve was committed to support.

History.—§1, ch. 25143, 1949; §7, ch. 26870, 1951; (3) §1, ch. 61-364.
Note.—Formerly §102.011.

103.031 Plurality of votes to fill vacancy; proceeding in case of tie.—If any more than the number of persons required to fill the vacancy as provided by §103.061 shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes is determined by lot drawn by the governor in the presence of the electors attend-

ing; otherwise, they, to the number required, having the greatest number of votes, are considered elected to fill the vacancy.

History.—§9, ch. 71, 1847; RS 207; GS 291; RGS 387; CGL 452; §7, ch. 26870, 1951.
Note.—Formerly §105.04.

103.041 Presidential electors to receive certificate of election.—When any person is elected to the office of presidential elector or representative in congress the governor shall make out, sign and seal with the seal of the state, and transmit to such person a certificate of his election.

History.—§37, ch. 3879, 1889; RS 191; §68, ch. 4328, 1895; GS 252; RGS 296; CGL 352; §7, ch. 26870, 1951.
Note.—Formerly §99.53.

103.051 Congress sets meeting dates of electors.—The presidential electors shall, at 12 o'clock on the day which is directed by congress, meet at Tallahassee and perform the duties enjoined upon them by the constitution and laws of the United States.

History.—§6, ch. 71, 1847; RS 204; GS 288; RGS 384; CGL 449; §7, ch. 26870, 1951.
Note.—Formerly §105.01.

103.061 Meeting of electors and filling of vacancies.—Each presidential elector, shall, before the hour of 12 o'clock on the day preceding the day fixed by congress to elect a president and vice-president, give notice to the governor that he is in Tallahassee, and ready to perform the duties of elector. The governor shall forthwith deliver to the electors present a certificate of the names of all the electors; and if on examination thereof, it should be found that one or more electors are absent, and shall fail to appear before 10 o'clock in the morning of the day of election of president and vice-president, the electors present shall elect by ballot, in the presence of the governor, a person or persons to fill such vacancy or vacancies as may have occurred through the nonattendance of one or more of the electors.

History.—§3, ch. 71, 1847; RS 206; GS 290; RGS 386; CGL 451; §7, ch. 26870, 1951.
Note.—Formerly §105.03.

103.071 Compensation of electors.—Each presidential elector attending as such in Tallahassee shall be reimbursed for his traveling expenses as provided in §112.061, from his place of residence to Tallahassee and return. Such expenses shall be paid upon approval of the governor. The amounts necessary to meet the requirements of this section shall be included in the legislative budget request of the governor. If the amounts appropriated for this purpose are insufficient the state budget commission may release the necessary amounts from the deficiency appropriation.

History.—§12, ch. 71, 1847; RS 210; GS 294; RGS 390; CGL 455; §§7, ch. 26869, ch. 26870, 1951; §1, ch. 61-32; §6, ch. 63-400.

103.081 Committees for each party; political advertising.—The following committees shall constitute the executive or managing committees of each political party, namely: a state executive committee and a county executive committee; provided, that nothing herein contained shall prevent a political party from electing or appointing other committees, in accordance with its practices. The state executive committee of each political party shall file with the secretary of state the name of the political party it was elected to manage and the name and address of its chairman, vice-chairman, secretary and treasurer. The county executive committee of each political party shall file with the clerk of the circuit court of its county the name of the political party it was elected to manage and the name and address of its chairman, vice-chairman, secretary and treasurer.

No person affiliated on the registration records with any political party, the name of which is so filed with the secretary of state or a clerk of the circuit court, in association with others, shall use such name or any abbreviated form thereof in political advertising in newspapers, other publications, handbills, radio or television, in connection with any political activities in support of a candidate of any other party, unless such person shall first obtain the written permission of the chairman of the state executive committee of the party with which such person is so affiliated.

No person, or group of persons, shall use the name of any political party, the name of which is so filed with the secretary of state or a clerk of circuit court in full or abbreviated form, in connection with any club, group, association or organization of any kind unless approval and permission has been given in written form by the advisory committee of the state executive committee of such party. Specifically excluded from this provision are organizations which are chartered by the national executive committee of the party concerned and county executive committees of such parties.

History.—§6, ch. 6469, 1913; RGS 304; CGL 360; §7, ch. 26870, 1951; §26, 29934, 1955; §1, ch. 57-202; n. §1, ch. 61-424.
Note.—Formerly §102.06.

103.091 Minority political party.—

(1) A minority political party may provide for the selection of its state executive committee in such manner as it deems proper.

(2) The state executive committee of minority political party may by resolution provide a method of election of national committeemen, national committeewomen and nomination of presidential electors if such party is entitled to a place on the ballot as otherwise provided for presidential electors, and may provide also for the election of delegates and alternates of national conventions.

History.—§§1-2A, ch. 22039, 1943; am. §§1-3, ch. 22678, 1945; §7, ch. 26870, 1951.
Note.—Formerly §102.71.

103.101 Delegates and alternates to national convention; election of national committeemen and committeewomen.—

(1) Each political party which had cast for its candidate for governor in the last election more than ten per cent of the total vote cast for governor, or each political party with whom ten per cent of the total registered electors have registered by the first day of February in the year 1956 and every four years thereafter, shall

elect on the fourth Tuesday in May in the year 1956 and every four years thereafter the delegates of said party to the national convention, one man and one woman from each congressional district and the remaining delegates which said party is entitled to have as delegates to the national convention from the state-at-large, one-half men and one-half women. Petitions of delegates accompanied by individual qualification papers, filing fees and receipts for party assessments, may be filed at any time after noon of the first filing date, which shall be the same as for state offices in the year in which delegate elections are held.

(2) Names of candidates for delegates to the national convention, in number equal to the number of state-at-large delegates and the number of district delegates for at least half of the congressional districts in the state, shall be grouped under their respective designations upon a single nominating petition, which shall contain a statement indicating their collective preference choice for president of the United States, if any, or that they have no preference. No name of any candidate for delegate shall be filed in more than one group and no group shall contain more candidates than the total number of delegates to be elected from both state-at-large and all districts. The group filed first with the secretary of state shall occupy the left hand column of the ballot, beneath the name of the candidate for president that they have petitioned to support, followed by other groups in the order of filing. No more than one group in support of a single candidate for president may appear on the ballot. If two or more groups file petitions indicating a preference for the same candidate for president, he may choose the group that shall appear on the ballot. If the candidate does not choose one group, only the first group to file shall appear on the ballot. If two or more groups file with no preference for a candidate for president, all such groups shall appear on the ballot. No squares shall appear at left of the individual names in the groups, but a circle shall be placed at the head of each list for delegates-at-large and a cross placed therein shall vote for the delegates-at-large and the two district delegates which said party is entitled to have as delegates to the national convention. If any state-at-large delegate group shall be elected in the state but its district delegate group shall be incomplete in any district for any reason, then such state-at-large delegate group shall, at its first organizing meeting, complete such district delegate group or groups for those districts in which such state-at-large delegate group shall have received a plurality of the vote cast. Members of any district delegate group so selected by a state-at-large delegate group shall be entitled to all the rights and privileges as delegates that would accrue to them if they had been elected in the election held for such delegates, and the secretary of state shall, within five days, be notified of their election.

(3) Each group of candidates for delegate shall designate a member of the group from the state-at-large to serve as organizing chairman, and shall so specify in filing its petition. The organizing chairman of each group shall be so identified on the ballot; and when the results of the election have become known, it shall be the duty of the elected organizing chairman to convene an organizing meeting of all of the elected delegates at an appropriate time and place prior to the national convention. The delegation shall then proceed to the election of a permanent delegation chairman for the duration of the national convention to which it is accredited. The organizing chairman shall be eligible to serve as permanent chairman if so elected.

(4) National committeemen and committeewomen of any political party authorized to have a primary under this section shall be elected the fourth Tuesday in May in the year 1956 and every four years thereafter. National committeemen and committeewomen elected in 1952 shall continue to serve until their terms of office expire under the rules of the respective national committees and the conventions of their respective parties, thereafter to be replaced by the national committeemen and committeewomen elected the fourth Tuesday in May in the year 1956 and every four years thereafter.

(5) Each delegate elected to the national convention on the fourth Tuesday in May in the year 1956 and every four years thereafter shall choose his or her alternate to the national convention, except that the national committeeman and national committeewoman elected the fourth Tuesday in May in the year 1956 and every four years thereafter shall be ex officio alternates to the state-at-large delegates who occupy the last two positions on the ballot for state-at-large delegates, unless such national committeeman or committeewoman has been elected as a delegate.

(6) The secretary of state shall certify to the board of county commissioners of each county in the order in which they appear on the petition in case of each delegate to be voted on by the electors of the whole state, and to the board of county commissioners of the counties composing a congressional district, in case of delegates to be voted for by the electors of the district containing one or more counties, the names of persons filed in each preference or no preference group of candidates. The ballot form as prescribed in §101.180 shall be used.

(7) Wherever an election is conducted for party delegates or officer the results of such election are determined by plurality vote. For state-at-large delegates, the state-wide vote shall be controlling; for district delegates, the vote in the particular district shall be controlling.

History.—§3, ch. 6469, 1913; RGS 301; CGL 357; §§1-3, ch. 22058, 1943; §1, ch. 22729, 1945; §1, ch. 25235, 1949; §7, ch. 26870, 1951; §1, ch. 29947, 1955.

Note.—Formerly §§102.03, 102.72.

103.102 Committeemen and committeewomen; expenses.—The state executive committee of any political party may defray the expenses for per diem and mileage of the national committeeman and committeewoman of its

party, incurred in connection with the official duties of such committeeman and committeewoman as members of the national committee of the party, on the same basis as such expenses of members of said state executive committee are defrayed by such committee for attendance at regularly called meetings and the provisions of §112.061, or any amendment thereof, shall be inapplicable.

History.—§1, ch. 57-81; §7, ch. 63-400.

103.111 State and county executive committees.—

(1) The state executive committee of each political party shall consist of two members, a man and a woman for each county, who shall be elected for four years in the second primary elections held in the year 1958 and every four years thereafter. The members of the executive committee shall, within thirty days after their election, meet and organize by electing from their members a chairman and a vice-chairman, one of whom is a man and the other a woman, and a vice-chairman for each congressional district, and other such officers as each committee deems necessary. The outgoing chairman of the state executive committee shall, not less than ten days before the first meeting, notify each newly elected member of the time and place of the meetings.

(2) The county executive committee of each political party shall consist of two members, a man and a woman, from each precinct within the county, who shall be elected for four years at the second primary held in the year 1958, and every four years thereafter; provided that in precincts where any political party has an official registration of more than one thousand qualified electors, an additional two members, a man and a woman, may, if desired, be authorized for each political party having more than one thousand registered electors in said precinct and their membership provided for as in other precincts; provided further that members of the county executive committee of each political party, whether elected or appointed to vacancy, shall before taking office establish by written oath or affirmation that he did vote for at least ninety per cent of the opposed nominees of his political party at the past general election, if he voted at said election, that he did not register as a member of any other political party during the two years immediately preceding, and that he pledges to vote for at least one hundred per cent of the opposed nominees of his political party at the next succeeding general election and during his term in office. The members of the committee shall, within thirty days after their election, meet at the county seat and organize by electing from among their members a chairman and a vice-chairman, one of whom shall be a man and the other a woman, and other officers as are necessary.

(3) In the event of no election of committeemen or committeewomen, or of a vacancy occurring from any other cause in any county executive committee, the chairman shall call a meeting of the county executive committee by due notice to all members and the vacancy shall be filled by a majority vote of the members of the county executive committee attending from among the members of the party residing in the precinct where the vacancy occurs. In the event of no election or of a vacancy occurring from any other cause in the state executive committee, the executive committee, or a majority thereof, of the county so without representation, may fill the vacancy by the election of some person who is a member of the party in the county. Any officer or member of any of the committees may be removed and his or her office declared vacant upon a two-thirds vote of the entire membership of the committee at any regular meeting or at any special meeting, after ten days notice to the membership of the committee that a motion for that purpose will be considered at a special meeting. The removal may be for any cause which in the opinion of two-thirds of the membership of the committee warrants the removal of the member. Any vacancy so created is filled as provided above.

(4) In the event of no election of precinct committeeman or committeewoman, or of a vacancy occurring from any other cause in any county executive committee, where such vacancy is not filled by the county executive committee as herein provided, the chairman of the state executive committee of such party may fill such vacancy by appointment, if, after giving sixty days notice of his or her intention to do so, to the chairman of the county executive committee by registered mail, such vacancy is not filled by the county executive committee.

(5) In the event of no election of county committeemen or committeewomen of a political party in any county the chairman of the state executive committee of such party may appoint a committeeman and a committeewoman in each precinct in said county from the members of the party residing in the precinct to which the appointment is made and all appointments so made shall constitute the county executive committee of such party until the next election in such county when a county executive committee shall be elected as herein provided.

(6) The members of the state executive committee from each congressional district under the vice-chairman from such district shall perform all duties usually handled by congressional district committees if authorized.

(7) A majority of the members of the state or county executive committee shall constitute a quorum.

(8) The clerks of the respective circuit courts shall be required to maintain a list of the elected members of county executive committees of recognized political parties and shall within thirty days after the primary election in which such members are elected, send a copy of said list to the chairman of the state executive committee of the political party to which said county committee member belongs. The chairmen of the county executive committees of recognized political parties shall furnish to the clerks of their respective circuit courts a list of

the vacancies filled by appointment within thirty days after the appointment and shall likewise send the names of said appointees to the chairman of the state executive committee of the political party to which said appointed executive committee members belong.

(9) The chairman of each county political executive committee shall furnish to the chairman of the state executive committee on October 1, 1963, and quarterly thereafter, copy of the committee's financial report, copy of the minutes of its meetings, and copy of its attendance records. For each meeting the attendance record shall list the total membership by name with the indication of those present, absent, or excused from attendance.

History.—§7, ch. 6469, 1913; RGS 305; CGL 361; §3, ch. 13761, 1929; §1, ch. 16984, 1935; §2, ch. 19663, 1939; §1, ch. 20870, 1941; §7, ch. 26870, 1951; §10, ch. 28156, 1953; §4, ch. 29935, 1955; (8) n. §1, ch. 59-122; (2) §1, ch. 61-374; (2) §2, ch. 63-66; (9) n. §1, ch. 63-199.

Note.—Formerly §102.07.

cf.—§99.021, Form of candidate's oath.

103.121 Powers and duties of executive committees.—

(1) The state and county executive committees shall have the following powers and duties:

(a) To adopt a constitution by two-thirds vote, of the full committee,

(b) To adopt such by-laws as they may deem necessary by majority vote of the full committee,

(c) To conduct their meetings according to general accepted parliamentary practice,

(d) To make party nomination when required by law,

(e) To conduct campaigns for party nominees,

(f) To do anything that is considered by custom and practice as proper for party committees,

(g) To make assessment it requires of candidates, for the purpose of meeting its expenses or maintaining its party organization, not later than twenty calendar days before the last filing date for state offices of each year in which a general election is held. No executive committee shall levy assessments to exceed two per cent of the annual salary of the office sought by any candidate. Within five days after adoption the state executive committee shall deliver a certified copy of its assessment resolution to the secretary of state; the county executive committee shall deliver a certified copy of its assessment resolution to the clerk of the board of county commissioners. The certified copies shall be filed by the secretary of state and the board of county commissioners. The county executive committee shall have exclusive power to levy and receive payment of assessments upon candidates to be voted for in a single county except state senators and members of the house of representatives and representatives to the congress of the United States, and the state executive committees shall have exclusive power to levy all other assessments authorized. Upon payment by a candidate of his filing fee and committee assessment, he shall be entitled to a receipt from the officer with whom he qualified. If any executive committee shall fail to meet and levy party assessments before the expiration of the last day for levying assessments in a year in which a general election is held, then such assessments shall be two per cent.

(h) To appoint from its own membership the necessary sub-committees,

(i) And to allow proxies, but each proxy shall reside in the same election precinct, in the case of a county executive committee, or in the same county in case of a state executive committee, as the committeeman or committeewoman represented by the proxy.

(2) The state executive committee shall declare by resolution for the recommendation of candidates for presidential electors and deliver a certified copy thereof to the governor within the time required for filing sworn statements by candidates.

(3) The state executive committee may declare by resolution for the nomination of candidates for the offices of president and vice president of the United States. Upon adoption of a resolution and upon service of a certified copy thereof upon the secretary of state within the time required for filing sworn statements by candidates as provided in §99.061 (1), the names of such candidates shall appear upon the official primary election ballot.

(4) The chairman and treasurer of an executive committee of any political party shall be accountable for the funds of such committee and jointly liable for their proper expenditure for authorized purposes only. The treasurer of the state executive committee of any political party shall furnish adequate bond, but not less than ten thousand dollars, conditioned in effect upon the faithful performance by such party officer of his duties and for his faithful accounting for party funds which shall come into his hands; and the treasurer of a county executive committee of a political party shall furnish adequate bond, but not less than five thousand dollars, conditioned as aforesaid. The funds of each such state executive committee shall be publicly audited at the end of each calendar year and a copy of such audit furnished the attorney general for his examination prior to April 1, of the ensuing year. Copies of such audit when filed with the attorney general shall become public documents. The treasurer of each county executive committee shall maintain adequate records evidencing receipt and disbursement of all party funds received by him, and such records are subject to inspection by any member of the party represented by the committee, and by the state attorney of the judicial circuit in which the executive committee is located.

History.—§§20, 21, 23 and 28, ch. 6469, 1913; RGS 324, 325, 327, 332; CGL 381, 382, 384, 389; §1, ch. 25389, 1949; §9, ch. 26329, 1949; §7, ch. 26870, 1951; §41, ch. 28156, 1953; (1)(h), (4) §2, ch. 29935, 1955; (4) §1, ch. 57-743; (1)(e) r. n. §1, ch. 61-157; (1)(g) §1, ch. 63-97.

Note.—Formerly §§102.27, 102.28, 102.30 and 102.35.

103.131 Political party offices deemed vacant in certain cases.—Every political party office

shall be deemed vacant in the following cases:

(1) By the death of the incumbent.

(2) By his resignation.

(3) By his removal.

(4) By his ceasing to be an inhabitant of the state, district or precinct for which he shall have been elected or appointed.

(5) By his refusal to accept the office.

(6) The conviction of the incumbent of any felony or by a majority vote of the members of the appropriate committee attending a meeting held after due notice has been given and at which a quorum is present, determines the incumbent to be guilty of an offense involving the violation of his oath of office.

(7) The decision of a competent tribunal declaring void his election or appointment, and his removal by said tribunal.

(8) By his failure to attend, without good and sufficient reason, three consecutive meetings, regular or called, of the committee of which he is a member.

History.—§1, ch. 59-68; (6) §1, ch. 61-122.

CHAPTER 104

ELECTION CODE; VIOLATIONS; PENALTIES

104.011 False swearing.—Whoever is found guilty of wilful and corrupt swearing or affirming or wilfully and fraudulently subscribes any oath or affirmation, or wilfully and corruptly procures another person to swear or affirm falsely, or subscribes an oath or affirmation in connection with or arising out of voting, registration or elections shall, upon conviction, be guilty of a felony.

History.—§1, sub. ch. 12, ch. 1637, 1868; RS 2786, GS 3828; RGS 5891; § 15, ch. 14715, 1931; CGL 8154; CGL 1936 Supp. 8202(6); §8, ch. 26870, 1951.
Note.—Formerly §§ 103.15 and 875.14.

104.012 Consideration for registration.—Any person who gives anything of value that is redeemable in cash to any person in consideration for his becoming a registered voter shall, upon conviction, be guilty of a misdemeanor. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration, baby-sitting in connection with the absence of an elector from home for registering.

History.—§1, ch. 63-198.

104.021 False certificate of nomination.—Any person who shall falsely or fraudulently make a certificate of nomination or any part thereof, or file any certificate of nomination, knowing the same or any part thereof to be false or suppress any nomination which has been duly filed or any part thereof, shall, upon conviction, be guilty of a felony.

History.—§31, ch. 4328, 1895; GS 3823; RGS 5884; CGL 8147; §8, ch. 26870, 1951.
Note.—Formerly §875.09.

104.031 False declaration to secure assistance in preparing ballot.—Any person who makes a false declaration for assistance in the preparation of his ballot in any election shall, upon conviction, be guilty of a felony.

History.—§49, ch. 4328, 1895; GS 3829; RGS 5892; CGL 8156; §8, ch. 26870, 1951.
Note.—Formerly §99.31.

104.041 Fraud in connection with casting vote.—Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast or to be cast, or attempted to be cast, shall, upon conviction, be guilty of a felony.

History.—§4, ch. 22014, 1943; §1, ch. 25385, 1949; §8, ch. 26870, 1951.
Note.—Formerly §101.14.

104.051 Violations; neglect of duty; corrupt practices.—

(1) Any person, including clerks, inspectors, and other officials, who shall wilfully and fraudulently violate any of the provisions of this election code shall be subject to immediate arrest and exclusion from the polls, and replaced by other election officials, as provided by §102.051.

(2) Any election official or any other official who wilfully and with bad motive refuses or neglects to perform his duties as prescribed by this election code shall, upon conviction, be guilty of a misdemeanor.

(3) Any election official or other official who performs his duty as prescribed by this election code fraudulently and corruptly shall, upon conviction, be guilty of a felony.

(4) Any persons who are appointed to conduct the election of electors of president and vice-president of the United States shall, for neglect of duty or improper conduct, be liable to the same penalties as other election officials in similar circumstances.

(5) Any supervisors, deputy supervisors or any employee who shall attempt to influence or interfere with any elector voting an absentee ballot shall, upon conviction, be guilty of a misdemeanor.

(6) No provision of this section shall preclude punishment for a greater offense if such offense is stated in other parts of the election code.

History.—§7, ch. 71, 1847; § § 17, 30, 57, and 62, ch. 4328, 1895; §10, ch. 4537, 1897; §3, ch. 4699, 1899; §17, ch. 5929, 1909; §16, ch. 14715, 1931; §4, ch. 18407, 1937; RS 205; GS 215, 289, 3819, 3824, and 3825; RGS 259, 385, 5880, 5885, 5886, and 5888; CGL 315, 450, 8143, 8148, 8149, 8151, 1936 Supp. 8151(1), 1940 Supp. 7476(8); § § 3E, 4, 7, 8, ch. 22018, 1943; §8, ch. 26870, 1951; (5), §42, ch. 28156, 1953.
Note.—Formerly §§99.13, 100.37, 100.46, 100.47, 103.16, 105.02, 875.08, 875.10 and 875.11.

104.061 Corruptly influencing voting.—

(1) Whoever by bribery, menace, threat or other corruption whatsoever, either directly or indirectly, attempts to influence or deceive any elector in giving his vote or ballot or preparing the same, or to deter him from giving the same, or disturbs or interferes with him in the free exercise of the right of suffrage at any election shall, upon conviction, be guilty of a misdemeanor on the first conviction and a felony on the second conviction.

(2) Any person or candidate who shall give, lend, solicit, request, demand or receive, directly or indirectly, any money, intoxicating liquor, or any other thing of value of whatever nature whatsoever, or the promise thereof, either to influence a vote or under pretense of being used to procure the vote of any other person, or to be used in any poll or other place prior to or on the day of any election for or against any candidate for office or as pay for services or reimbursement for loss of time, or for expenses as a consideration for his promising to vote, working for, electioneering for or making public speeches for or against any candidate seeking nomination, shall, upon conviction, be guilty of a misdemeanor on the first conviction, and of a felony on the second conviction.

No person in the furtherance of or in opposition to the candidacy of any person for nomination or election in any election shall give or promise to give, pay, loan, expend or contribute any money or other thing of value for any proposition whatsoever; provided personal services and personal traveling expenses may be contributed, and provided further that campaign contributions may be made to a candidate direct or to his campaign manager by other than a corporation to be expended only as authorized by law. Any person who violates the provisions of this subsection shall, upon first conviction, be guilty of a misdemeanor and upon second conviction guilty of a felony.

History.—§3, sub. ch. 12, ch. 1637, 1868; §50, ch. 4328, 1895; RS 2783; GS 3814, 3826; §15, ch. 5929, 1909; § § 1, 3, 6-8, ch. 6470; 1913; RGS 5874, 5889, 5908, 5918, 5921, 5922, 5923; CGL 8137, 8152, 8172, 8182, 8185, 8186, 8187; §1, ch. 19617, 1939; §1, ch. 20934, 1941; §7, ch. 22858, 1945; §8, ch. 26870, 1951.
Note.—Formerly §§102.61, 875.02, 875.12, 875.27 and 875.34-875.36.

104.071 Remuneration by candidate for services, support, etc.; penalty.—It is unlawful for any person or candidate who shall, in order to aid or promote his nomination in any election, directly or indirectly, himself or by or through any other person to:

(1) Promise to appoint another person, promise to secure or aid in securing appointment, nomination or election of another person to any public or private position, or to any position of honor, trust or emolument, except one who has publicly announced or defined what his choice or purpose in relation to any election in which he may be called to take part, if elected, or

(2) Give or promise to give, pay, loan any money or other thing of value to the owner, editor, publisher or agent of any newspaper or other periodical as compensation or reward for, or to induce him to advocate or oppose, through the columns of his paper, any candidate for nomination in any election, and no such owner, editor, publisher or agent shall give, solicit or accept such payment or reward, or

(3) Give, pay, expend or contribute any money or thing of value for the furtherance of the candidacy of any other candidate, or

(4) Furnish, give or deliver to another person any money or other thing of value, to be used by another person for any purpose prohibited by the election laws.

Any candidate found guilty of a violation of any provisions of this section shall be punished for a misdemeanor and from and after his conviction be disqualified to hold the office or position to which he aspires for the term affected. If at the time of conviction such person who was a candidate is serving in the position or of-

fice to which he aspired, his conviction is cause for removal or impeachment.

History.—§60, ch. 6469, 1913; §§5, 6, 11, 14, 15, ch. 6470, 1913; RGS 5916, 5920, 5921, 5926, 5929, 5930; CGL 8180, 8184, 8185, 8190, 8193, 8194; §8, ch. 26870, 1951.
Note.—Formerly §§875.31, 875.33, 875.34, 875.39, 875.42, 875.43.

104.081 Threats of employers to control votes of employees.—It shall be unlawful for any person, firm, company, association or corporation having one or more persons in their service as employees to discharge or threaten to discharge any employee in their service for voting or not voting in any election, state, county or municipal, for any candidate or measure submitted to a vote of the people. Any persons violating the provisions of this section shall, on conviction, be guilty of a misdemeanor. Any firm, company, association or corporation violating the provisions of this section shall be fined not more than one thousand dollars in addition to the penalty of being punished for a misdemeanor, which shall be personally applied to each official or agent who actually participated.

History.—§ § 1, 2, 3, ch. 5016, 1901; GS 3839, 3840; RGS 5901, 5902; CGL 8165, 8166; §8, ch. 26870, 1951.
Note.—Formerly §§875.22, 875.23.

104.091 Use of monev for political purposes by corporation prohibited.—No corporation whatsoever shall pay or agree to pay or contribute or consent to contribute, directly or indirectly, any money, property or other thing of value to any political party, organization, committee or individual for any political purpose whatsoever, or for the purpose of influencing registration of any kind, or to promote or defeat the candidacy of any person for nomination, appointment or election to any political office.

Any officer, employee, agent or attorney, or other representative of any corporation acting for and on behalf of such corporation, who shall violate this section shall, upon conviction, be guilty of a felony, and the corporation, if a domestic corporation, shall be automatically dissolved, and if a foreign corporation its rights to do business in this state shall be automatically revoked.

Any person who shall aid, abet or advise the violation of this section shall be punished in like manner as the principal offender. Violations of this section shall be prosecuted in the county where such payment or contribution is made.

History.—§ § 1, 2, 4, 5, ch. 4538, 1897; GS 3836, 3837, 3838; RGS 5898, 5899, 5900; CGL 8162, 8163, 8164; §8, ch. 26870, 1951.
Note.—Formerly §§875.19-875.21.

104.101 Failure to assist officers at polls.—Any person summoned by the sheriff or deputy sheriff who shall fail or refuse to assist him in maintaining the peace at the polls shall, upon conviction, be guilty of a misdemeanor.

History.—§27, ch. 3879, 1889; RS 181; §58, ch. 4328, 1895; GS 3834; RGS 5896; CGL 8160; §8, ch. 26870, 1951.
Note.—Formerly §99.40.

104.11 Neglect of duty by sheriff or other officer.—Any sheriff, deputy sheriff or other officer who shall wilfully neglect or refuse to perform his duties relating to elections shall, upon conviction, be guilty of a misdemeanor.

History.—§52,, ch. 4328, 1895; GS 3818; RGS 5879; CGL 8142; §8, ch. 26870, 1951.
Note.—Formerly §875.07.

104.12 Calling out militia on election day.—Any officer or other person who shall call out or order out the militia of this state to appear and exercise on any day during an election, except in cases of invasion or insurrection, or except in obedience to some civil magistrate to suppress riots, or to enforce law, he shall, upon conviction, be guilty of a misdemeanor.

History.—§4, sub-ch. 12, ch. 1637, 1868; RS 2782; GS 3817, RGS 5878; CGL 8141; §8, ch. 26870, 1951.
Note.—Formerly §875.06.

104.13 Intermingling ballots.—Whoever places any ballot in the ballot box except as properly voted by electors, or wilfully intermingles any other ballots which have not been duly received during the election with the ballots which are voted by the electors shall, upon conviction, be guilty of a misdemeanor.

History.—§7, sub-ch. 12, ch. 1637, 1868; RS 2785; GS 3827; RGS 5890; CGL 8153; §8, ch. 26870, 1951.
Note.—Formerly §875.13.

104.14 Illegal voting; bond election.—It is unlawful for any person to vote or participate in any county, district, or other bond election, who is not a freeholder and a qualified elector. Any person violating this section shall, upon conviction be guilty of a misdemeanor.

History.—§1, ch. 9294, 1923; CGL 250; §8, ch. 26870, 1951.
Note.—Formerly §98.03.

104.15 Person knowing he is not qualified elector voting at any election.—Whoever, knowing he is not a qualified elector, wilfully votes at any election shall upon conviction, be guilty of a misdemeanor.

History.—§1, ch. 3278, 1881; RS 2787; GS 3830; §14, ch. 5929, 1909; RGS 5893, 5907; CGL 8157, 8171; § § 1, 4, ch. 25365, 1949; §8, ch. 26870, 1951.
Note.—Formerly §§875.15 and 875.26.

104.16 Voting substitute ballot.—Any elector who votes or attempts to vote a substitute ballot shall, upon conviction, be guilty of a misdemeanor.

History.—§36, ch. 4328, 1895; GS 221; §42, ch. 6469, 1913; RGS 266, 346, 5911; CGL 322, 403; 8175; §6, ch. 17898, 1937; §3, ch. 17901, 1937; §6, ch. 25187, 1949; §4, ch. 25386, 1949; §8, ch. 26870, 1951.
Note.—Formerly §§99.20, 102.41.

104.17 Voting in person after casting absentee ballot.—Any person who shall vote or attempt to vote both in person and by absentee ballot shall, upon conviction, be guilty of a misdemeanor.

History.—§1, ch. 22014, 1943; former §101.11 repealed and new section substituted by §1, ch. 25385, 1949; §8, ch. 26870, 1951.
Note.—Formerly §101.11.

104.18 Casting more than one vote at any election.—Whoever casts more than one vote at any election shall, upon conviction, be guilty of a misdemeanor.

History.—§6, sub-ch. 12, ch. 1637, 1868; §1, ch. 3278, 1881; RS 2787, 2788; GS 3830, 3831; §56, ch. 6469, 1913; RGS 5893, 5894; 5912; CGL 8157, 8158, 8176; § § 1-3, ch. 25365, 1949; §8, ch. 26870, 1951.
Note.—Formerly §§875.15-875.17.

104.181 Unlawful to vote if elector has voted in other state or country within one year.—

(1) That it shall be, and it is hereby made unlawful for any person to vote in any primary, special or general state or county election in the state within one year of the time such person has voted in any election in any other state or country in which residence in such state or country at the time of the election there was a necessary qualification to such person's right to vote there.

(2) Any person violating any of the provisions of this section upon conviction thereof shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment in the discretion of the judge.

History.—§28, ch. 29934, 1955.

104.19 Use of stickers, rubber stamps, etc., unlawfully.—It shall be unlawful for any person casting a ballot at any election to use stickers, rubber stamps, or carry into a voting booth any mechanical device, paper or memorandum other than the official ballot. In casting a write-in ballot the elector shall cast the same in his own handwriting or in the handwriting of an authorized person aiding him. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

History.—§7, ch. 25187, 1949; §8, ch. 26870, 1951.
Note.—Formerly §99.201.

104.20 Ballot not to be seen, and other offenses.—Any elector who shall, except as provided by law, allow his ballot to be seen by any person, or who shall take or remove or attempt to take or remove any ballot from the polling place before the close of the polls, or place any mark on his ballot by which it may be identified, or shall remain longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired, or who shall endeavor to induce any elector to show how he voted, or mark his ballot, or aid or attempt to aid any elector unlawfully, or shall print or procure to be printed, or have in his possession, any copies of any ballot prepared to be voted shall, upon conviction, be guilty of a misdemeanor.

History.—§55, ch. 4328, 1895; §2, ch. 4536, 1897; GS 3835; RGS 5897; CGL 8161; §8, ch. 26870, 1951.
Note.—Formerly §99.34.

104.21 Changing electors' ballots.—Whoever fraudulently and deceitfully changes the vote or ballot of any elector by which such elector is prevented from voting such ballot or from voting such ballot as he intended, shall, upon conviction, be guilty of a misdemeanor.

History.—§5, sub-ch. 12, ch. 1637, 1868; RS 2784; GS 3815; RGS 5875; CGL 8138; §8, ch. 26870, 1951.
Note.—Formerly §875.03.

104.22 Stealing and destroying records, etc., of election.—Any person who is guilty of stealing, wilfully and wrongfully breaking, destroying, mutilating, defacing or unlawfully moving or securing and detaining the whole or any part of any ballot box or any record tally sheet or copy thereof, booth returns, or any other paper or document provided for, or who shall fraudulently make any entry or alteration therein except as allowed and directed by the laws, or who permits any other person so to do, shall, upon conviction, be guilty of a misdemeanor.

History.—§7, sub-ch. 12, ch. 1637, 1868; RS 2785; GS 3827; § § 18, 19, ch. 5929, 1909; RGS 5890, 5909, 5910; CGL 8153, 8173, 8174; §8, ch. 26870, 1951.
Note.—Formerly §§875.13, 875.28 and 875.29.

104.23 Disclosing how elector votes.—Any election official or person assisting any elector who shall disclose how any elector voted, except upon trial in court, shall, upon conviction, be guilty of a misdemeanor.

History.—§51, ch. 4328, 1895; GS 3816; RGS 5876; CGL 8139; §8, ch. 26870, 1951.
Note.—Formerly §875.04.

104.24 Penalty for assuming name.—No registered elector shall call himself or pass by any other name than the name by which he is registered, or fraudulently use the name of another in voting. Any person violating this section shall, upon conviction, be guilty of a misdemeanor.

History.—§57, ch. 6469, 1913; RGS 360, 5913; CGL 417, 8177; §4, ch. 22014, 1943; §1, ch. 25385, 1949; §8, ch. 26870, 1951.
Note.—Formerly §§101.14, 102.53.

104.25 Betting on result of election.—Whoever makes or becomes directly or indirectly interested in any wager or bet, the result of which shall depend upon any election, provided such wager or bet shall occur on or before the day of election, shall, upon conviction, be guilty of a misdemeanor.

History.—§8, sub-ch. 12, ch. 1637, 1868; RS 2790; GS 3833; RGS 5895; CGL 8159; §8, ch. 26870, 1951.
Note.—Formerly §875.18.

104.26 Penalty for destroying booth.—Any person who wrongfully, during or before an election, removes, tears down or destroys or defaces any booth, compartment or other convenience provided for the purpose of enabling the elector to prepare his ballot, or any card for the instruction of the voter, shall, upon conviction, be guilty of a misdemeanor.

History.—§41, ch. 4328, 1895; GS 3812; RGS 5873, CGL 8136; §8, ch. 26870, 1951.
Note.—Formerly §875.01.

104.27.—Penalties for violation of §99.161.—

(1) Any person who knowingly violates the provisions of §99.161 shall be deemed guilty of a misdemeanor and subject to a fine of not more than one thousand dollars or to imprisonment for not more than six months.

In addition thereto—

(2) The nomination or election to office of any person who knowingly violates the provisions of §99.161, or whose campaign treasurer or deputy campaign treasurer knowingly violates the provisions of §99.161, shall be void, and the nomination or office shall be filled as in other cases where a vacancy occurs.

(3) The charter of any corporation, including nonprofit corporations organized in whole or in part for political purposes or for the support of religious, charitable, civic, eleemosynary and similar causes, which knowingly vio-

lates the provisions of §99.161 shall be subject to revocation by the secretary of state.

(4) The permit of any horse or dog racing track shall be subject to revocation by the state racing commission if any person holding such a permit, or any member of an unincorporated association holding such a permit, or any officer, director, supervisory employee, of a corporation holding such a permit, or trustee authorized by trust agreement to vote stock in such corporation where such stock is owned by a person or persons sui juris, knowingly violates §99.161.

(5) Any license for the sale of intoxicating beverages shall be subject to revocation by the state beverage department if any person holding such a license, or any member of an unincorporated association holding such a license, or any officer or director of a corporation which holds such a license, knowingly violates §99.161.

(6) The franchise of any public utility shall be subject to revocation by the Florida public utilities commission if any person holding such a franchise, or any member of an unincorporated association holding such a franchise, or any officer, or director of a corporation which holds such a franchise, knowingly violates §99.161.

(7) Whoever shall knowingly make any false certificate, statement, or report provided for in §99.161 shall suffer the pains and penalties for perjury.

(8) Any chairman or secretary of any state or county executive committee who fails to file the report provided for in §99.161, or shall violate the provisions thereof shall be subject to the process prescribed under subsection (9) of this section and his office shall be filled as in other cases where a vacancy occurs.

(9) Any elector having information of any violation of §99.161 may file a petition in any circuit court of this state in the county in which the person or persons violating said §99.161 resides. The petition shall be filed in duplicate and the clerk of the court where the same is filed shall within three days after its filing send one of such duplicate copies to the attorney general. The procedure in each such case after the filing of the petition shall be the same as is provided for the prosecution and defense of a chancery case.

It shall be the duty of the attorney general upon his receipt of a copy of the petition to act as counsel for the state, and he shall file in the proceeding such pleadings as he determines ought to be filed.

The final decree entered by the court in each case shall make a finding of fact that §99.161 was or was not violated, as the case may be. If the decree of the circuit court finds as a fact that §99.161 was violated by any nominee or one elected to office, the attorney general shall send a certified copy thereof to the officer responsible for issuing the certificate of nomination or office and upon receipt of such certified copy such officer shall immediately revoke the certificate of nomination or office as may have been issued, or in case such certificate has not been issued he shall withhold the same.

Appeals from any degree entered by the court may be taken by either petitioner or the respondent in the same manner as other appeals are taken in chancery cases, excepting that the notice of appeal shall be filed within ten days after the decree is entered. Any such appeal shall have priority on the docket of the district court of appeal and be heard and considered at such time as that court may direct. The appellate court shall have the power to shorten the time in such cases for filing the transcript and briefs, and when it acts to shorten this time the clerk of the appellate court shall mail copies of orders entered by the appellate court to all interested parties or their counsel.

Any vacancy in office or nomination on account of any such decree shall not be filled until the expiration of ten days from the date the decree is entered, or if an appeal is taken in time such vacancy shall not be filled until the appeal has been determined by the appellate court and a final decree consequent upon such appeal is entered in the circuit court.

(10) Any elector having information of any violation of §99.161 punishable under subsections (3), (4), (5), (6) may file complaint with the secretary of state, racing commission, beverage department or the public utilities commission as may be appropriate in each case and it shall be the duty of such officer or agencies to investigate such complaints and refer any findings of fact indicating that a violation occurred to the state's attorney in the appropriate county for filing of a petition and pleadings in the circuit court. The final decree entered by the court in each case shall make a finding of fact that §99.161 was or was not violated as the case may be. If the decree finds as a fact that §99.161 was violated, the state's attorney shall send a certified copy thereof to the officer or agency concerned and such officer or agency shall upon receipt of such certified copy immediately revoke the charter, permit, license or franchise of the defendant person, persons, corporation or utility. Appeals from any decree may be taken as prescribed in subsection (9) of this section and in all other respects the provisions of subsection (9) of this section shall apply to such appeals.

History.—§12, ch. 26819, 1951; §8, ch. 26870, 1951; (8), §43, ch. 28156, 1953; §§(2), (3), (8), (9), (10), §3, ch. 29936, 1955; (9) §17, ch. 63-559; §1, ch. 63-279.

104.271 False, wilful or malicious charges against opposing candidates; penalty.—Any candidate who, in a primary election or other election, falsely, wilfully or maliciously charges an opposing candidate participating in such election with a violation of any provisions of §99.161, or any other section of the election laws providing and declaring that certain acts of candidates shall constitute violations of the law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or sentenced to not more than six months in the county jail, or both such fine and imprisonment, in the discretion of the court, and in addition to such penal provisions, a person from and after any such

conviction shall be disqualified to hold office or position to which he aspires for the term affected. If at the time of conviction such person who was a candidate is serving in a position or office to which he aspired, his conviction shall be cause for removal or impeachment.

History.—§44, Ch. 28156, 1953.

104.272 Mishandling of funds by officers of state executive committees.—Any chairman or treasurer of a state executive committee of any political party who shall improperly expend, misappropriate or make false or improper accounting for the funds of such committee shall upon conviction be guilty of a felony.

History.—§3, ch. 29935, 1955.

104.28 Violating provisions covering expenditures of candidates.—Any person who violates the provisions of §99.172 concerning expenditures of candidates shall, upon conviction, be guilty of a misdemeanor.

History.—§ § 1, 3, ch. 6470, 1913; RGS 5918; CGL 8182; §1, ch. 19617, 1939; §1, ch. 20934, 1941; §7, ch. 22858, 1945; §8, ch. 26870, 1951.
Note.—Formerly §102.61.

104.29 Inspectors refusing to allow watchers while ballots are counted.—The inspectors or other election officials shall allow at all times while the ballots are being counted as many as three persons near to them to see whether the ballots are being correctly read, called, and the votes correctly tallied, and any officials who deny this privilege or interfere therewith shall, upon conviction, be guilty of a misdemeanor.

History.—§1, ch. 6873, 1915; RGS 5877; CGL 8140; §8, ch. 26870, 1951.
Note.—Formerly §875.05.

104.30 Voting machine; unlawful possession; tampering with.—

(1) Any unauthorized person who shall unlawfully have possession of any voting machine or key thereof shall, upon conviction, be guilty of a misdemeanor.

(2) Any person tampering or attempting to tamper with, destroy, deface or impair in any manner or destroy any voting machine while the same is in use in any election, or who shall after such machine is locked in order to preserve the registration or record of any election made by the same, tamper or attempt to tamper with any voting machine shall, upon conviction, be guilty of a felony.

History.—§26, ch. 13893, 1929; CGL 1936 Supp. 8202(1); §8, ch. 26870, 1951.
Note.—Formerly §100.28.

104.31 Political activities of state, county and municipal officers and employees.—

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall

(a) Use his official authority or influence for the purpose of interfering with an election, or a nomination for office, or affecting the result thereof, or

(b) Directly or indirectly coerce or attempt to coerce, command or advise any other officer or employee to pay, lend or contribute any part of his salary or anything else of value to any party, committee, organization, agency or person for political purposes, or

(c) Directly or indirectly coerce or attempt to coerce, command and advise any such officer or employee as to where he might purchase commodities or to interfere in any other way with the personal right of said officer or employee. The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

(d) The provisions of paragraph (a) of this subsection shall not be construed so as to limit the political activity in general, special, primary, bond, referendum or any other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof unless, in the case of municipalities, there be provisions in the charters or ordinances thereof which apply to officers, employees or candidates in such municipalities; and, the provisions of paragraph (a) of this subsection shall not be construed so as to limit the political activity in general or special elections of officials appointed as the heads or directors of state administrative agencies, boards, commissions or committees or of the members of state boards, commissions or committees whether they be salaried, nonsalaried or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) of this subsection shall not be construed so as to limit the political activity in general, special, primary, bond, referendum or any other election of any kind or nature of the governor, the elected members of the governor's cabinet or the members of the legislature. The provisions of paragraphs (b) and (c) of this subsection shall apply to all officers and employees of the state, or of any county or municipality thereof, whether elected, appointed or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum or any other election of any kind or nature. Those officers and employees under the state merit system who are employed by state agencies receiving federal funds and who are not otherwise exempted from paragraph (a) of this subsection in general or special elections shall not be eligible to hold party offices or membership on any county or state executive committee.

(2) Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

History.—§2, ch. 25138, §1, ch. 25360, 1949; §8, ch. 26870, 1951; (1), §7, ch. 29615 and §5, ch. 29936, 1955; (1)(d) §1, ch. 59-208.
Note.—Formerly §875.46.

104.32 Supervisor of registration; delivery of books to successor.—Any supervisor of registration who wilfully fails or refuses to promptly comply with the demand of his suc-

cessor for the delivery of registration books, papers, and blanks connected with his office shall, upon conviction, be guilty of a misdemeanor.

History.—§8, ch. 3879, 1889; RS 2779; §9, ch. 4328, 1895; GS 3820; RGS 5881; CGL 8144; §8, ch. 26870, 1951.
Note.—Formerly §98.21.

104.33 Precinct registration officer; delivery of books.—Any precinct registration officer who wilfully fails or refuses to promptly comply with the demand of the supervisor of registration to deliver the registration books and papers connected with his office shall, upon conviction, be guilty of a misdemeanor.

History.—§8, ch. 3879, 1889; RS 2778; §9, ch. 4328, 1895; GS 3821; RGS 5882; CGL 8145; §8, ch. 26870, 1951.
Note.—Formerly §98.19.

104.34 Circulating charges against any candidate; requirements.—It shall be unlawful for any candidate or other person, during eighteen days preceding the day of any election, to publish or circulate or cause to be published or circulated any charge against or attack against any candidate unless such charge or attack has been personally served upon the candidate at least eighteen days prior to the day of election, and any person failing to comply with this section shall, upon conviction, be guilty of a misdemeanor. Any answer to a charge or attack that contains defensive matter shall not be construed to be a charge or attack.

History.—§10, ch. 6470, 1913; RGS 5925; CGL 8189; §8, ch. 26870, 1951.
Note.—Formerly §875.38.

104.35 Distribution of literature against a candidate on election day.—It shall be a misdemeanor for any candidate or other person to distribute or cause to be distributed on the day of any election any pictures, cards, literature, or other writing against any candidate.

History.—§11, ch. 5929, 1909; RGS 5906; CGL 8170; §8, ch. 26870, 1951.
Note.—Formerly §875.24.

104.36 Distribution of literature, etc., near polling places.—On the day of any election it shall be unlawful for any person to distribute any political pamphlets, cards or literature of any kind, or solicit votes, or approach any elector in an attempt to solicit votes within 100 yards of any polling place. All peace officers or election officials shall arrest any persons violating the provisions of this section in their presence. Any person violating the provisions of this section shall be, upon conviction, guilty of a misdemeanor.

History.—§ § 1-3, ch. 19263, 1939; CGL 1940 Supp. 8170(2); §8, ch. 26870, 1951.
Note.—Formerly §875.25.

104.37 Political literature, circulated prior to election; requirements.—

(1) All political advertisements and all campaign literature published or circulated prior to or on the day of any election shall be signed by the author thereof, and if the same is being published and circulated by a club or committee, then it shall be signed by the chairman and secretary of such club or committee, and if such literature is in circular form it shall have upon it the name of the printer or publisher. All political advertisements appearing in newspapers shall be marked "paid advertisements."

(2) All printed political advertisements of candidates running for office in general elections shall bear the name of the political party with which the candidate is affiliated. This provision is intended to be broad in scope and shall include all media such as posters, signs, billboards, cards, circulars, letters, newspaper and magazine ads and any other form of advertising.

(3) When any candidate running for office in a general election, uses the media of radio or television, it shall be distinctly announced in such broadcasts or telecasts, the name of the political party with which such candidate is affiliated.

(4) Any person who wilfully violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

History.—§9, ch. 6470, 1913; RGS 5924; CGL 8188; §8, ch. 26870, 1951; §1, ch. 61-145.
Note.—Formerly §875.37.

104.371 Political advertisement defined.—Political advertisement is an expression by any mass media, attracting public attention, whether radio, television, newspaper, magazine, periodical, direct mail, display or by means other than the spoken word in direct conversation which shall transmit any idea furthering the candidacy for public office of any person.

History.—§45, Ch. 28156, 1953.

104.372 Rates for publication or broadcasting.—No person or corporation within the state, publishing a newspaper or other periodical, or operating a radio or television station or network of stations in Florida, shall charge a candidate for state or county public office for political advertising or for political broadcasts, a rate in excess of the regular local rate regularly charged by such person or corporation for commercial advertising or for commercial broadcasts of similar character and classification; nor shall such a person or corporation charge one political candidate in a county a higher rate than another political candidate; and no candidate or political committee shall pay for political advertising or broadcasts any rate or charge in excess of such regular local rates regularly charged. Any person or corporation violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

History.—§27, ch. 29934, 1955; §1, ch. 61-265.

104.38 Newspaper assailing candidate in an election; space for reply.—If any newspaper in its columns assails the personal character of any candidate for nomination or for election in any election, or charges said candidate with malfeasance or misfeasance in office, or otherwise attacks his official record, or gives to another free space for such purpose, such newspaper shall upon request of such candidate immediately publish free of cost any reply he may make thereto in as conspicuous a place and in the same kind of type as the matter that calls for such reply, provided such reply does

not take up more space than the matter replied to. Any person or firm failing to comply with the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

History.—§12, ch. 6470, 1913; RGS 5927; CGL 8191; §8, ch. 26870, 1951; §46, ch. 28156, 1953.
Note.—Formerly §875.40.

104.381 Sale of alcoholic beverages prohibited; time prohibited.—All bar rooms, saloons, cocktail lounges, and other places for the sale of intoxicating beverages at retail within the area of any state, county, or municipal, general or primary elections shall be closed during the hours the polls are open; provided the board of county commissioners or governing body of any municipality as the case may be, may enlarge the time for such closing not to exceed twelve o'clock midnight of the evening preceding the day of such election until seven o'clock in the morning of the day thereafter and during the time hereby or so fixed the sale of all alcoholic beverages is prohibited, provided, however, that this section shall not require any vendors licensed under §561.34, subsections (1) and (2), to close their place of business. Any person who shall violate this section shall, upon conviction, be guilty of a misdemeanor.

History.—§8, ch. 26870, 1951; §1, ch. 28194, 1953.

104.39 Witnesses as to violations.—Any person violating any provisions of the election code shall be a competent witness against any other person so violating and may be compelled to attend and testify as any other person can be. The testimony given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. Any person so testifying shall not be liable to indictment or punishment by information, nor to prosecution or punishment for the offense with reference to which his testimony was given and may plead the giving of testimony in bar to such indictment, information or prosecution.

History.—§61, ch. 6469, 1913; RGS 5917; CGL 8181; §8, ch. 26870, 1951.
Note.—Formerly §875.32.

104.40 Felony penalty.—The penalty for every felony under this chapter not otherwise specifically provided herein shall be imprisonment in the state prison for not more than one year or by fine of not more than five thousand dollars or by both such fine and imprisonment.

History.—§8, ch. 26870, 1951.

104.41 Violations not otherwise provided for.—Any violation of the election code not otherwise provided for shall be punished as a misdemeanor.

History.—§8, ch. 26870, 1951.

104.42 Fraudulent registration and illegal voting; investigation.—The board of county commissioners in all counties may appropriate not in excess of five thousand dollars for the purpose of investigating fraudulent registrations and illegal voting.

History.—§ §12, 14, ch. 17899, 1937; CGL 1940 Supp. 369(4); §8, ch. 26870, 1951.
Note.—Formerly §100.40.
cf.—§129.02 et seq., county annual budget.

104.43 Grand juries; special investigation.—The grand juries of every county shall, upon the request of any candidate or qualified voter, make special investigation when it convenes during a campaign preceding any election day to determine whether there shall be any violation of the provisions of the election code, and shall return indictments when sufficient ground is found.

History.—§17, ch. 6470, 1913; RGS 5932; CGL 8196; §8, ch. 26870, 1951.
Note.—Formerly §875.45.

104.44 Conflicting laws repealed.—All local laws that conflict with the election code of 1951 shall stand repealed after January 1st, 1954.

History.—§8, ch. 26870, 1951.

104.45 Municipality may adopt state election laws.—Upon presentation of a petition signed by twenty-five qualified electors in a municipality, a municipality may upon official approval by the governing authority under the charter, adopt the state election laws for conducting a municipal election. In such event the words "city clerk or appropriate official" are inserted wherever the words "supervisor of registration" appear.

History.—§8, ch. 26870, 1951.

104.451 Municipal elections; change of dates for cause.—

(1) In any municipality when the date of the municipal elections falls on the same date as any state-wide general or special election, and voting machines are not available for both elections, the municipality may provide that the municipal primary and general elections may be held within thirty days prior to or subsequent to the state-wide general or special election.

(2) The dates of said municipal elections shall be designated by appropriate ordinances and resolutions adopted by said municipalities.

History.—§§1, 2, ch. 59-493.

104.46 Pamphlet and manual prepared of the election code.—A pamphlet of a reprint of the general laws pertaining to elections and a manual of the election code of 1951 outlining the duties of clerks, inspectors and other election officials, and including instructions to electors for their use at any election, each adequately indexed, shall be prepared by the secretary of state. He shall have printed a sufficient number of these pamphlets and manuals and mail copies to all boards of county commissioners for use of the clerks, inspectors and other election officials, the cost of printing shall be paid out of funds appropriated for conducting elections. Any citizen may purchase a copy by payment of the actual cost of printing and distribution as determined by the secretary of state.

History.—§8, ch. 26870, 1951; §47, ch. 28156, 1953.

CHAPTER 107

CONVENTIONS FOR RATIFYING OR REJECTING PROPOSED AMENDMENTS TO CONSTITUTION OF UNITED STATES

107.01 Conventions constituted.—Whenever the congress shall propose, to conventions in the several states, an amendment to the constitution of the United States, for ratification or rejection, and shall not have provided the manner in which such conventions shall be constituted, the conventions in this state shall be chosen and constituted in the manner in this chapter prescribed and shall function in accordance with this chapter.

History.—§1, ch. 16180, 1933; CGL 1936 Supp. 319(1).

107.02 Delegates.—Conventions shall consist of sixty-seven delegates from the state at large. Each delegate shall possess the qualifications of a member of the house of representatives of the legislature of this state; and each shall hold office from the date of his election and until the convention shall have discharged the duties for which it was selected.

History.—§2, ch. 16180, 1933; CGL 1936 Supp. 319(2).

107.03 Election of delegates.—The delegates composing the convention shall be elected at a special election which shall be held in each county of this state on a date to be fixed by the governor, not less than five months and not more than ten months after the date of the proposal by the congress. The governor shall issue his call for such election at least forty-five days prior to the date thereof, which, as soon as issued, shall be published by the secretary of state at least one time, in a newspaper of general circulation in each county. Such election shall be conducted, except as herein specified, in all respects in the manner and form prescribed by the laws of this state for holding general elections.

All electors who were duly qualified to vote in the last preceding general election shall be qualified to vote in such special election without further registration. The registration books in each county shall be opened ten days after the governor shall issue his call and shall remain open, in each county, until and including the tenth day before the election, during which time all persons who have not been registered, though entitled to be or who shall have become entitled to registration since the last general election, shall be permitted to register. During the time in which the registration books are required to be kept open by this section, any registered voter shall be permitted to qualify to vote in such election.

Provided: That if any general election be held in this state within one year after the date of the proposal by the congress, such delegates shall be chosen at such general election and all electors qualified to vote in such general election shall be qualified to vote for such delegates, unless the governor, by his proclamation, shall require such delegates to be chosen at a special election, in which event they shall be elected as herein provided.

History.—§3, ch. 16180, 1933; CGL 1936 Supp. 319(3).

107.04 Candidates file application; fee and petition for name on official ballot.—Any person desiring to become a candidate for election as a delegate to said convention shall file a sworn application with the secretary of state on such form as that official shall prescribe, not less than twenty days before the date of election, in which shall be stated his name in full, his residence, his age, his color and his occupation. Such application shall also state, under oath, that the applicant is a citizen of the United States and of the state and that he is a qualified elector of the county in which he resides. The applicant may also state whether or not he favors the ratification of the proposed amendment or opposes it and whether or not he desires his name to appear upon the ballot as favoring or opposing such amendment or as unpledged.

If the applicant shall request that his name appear on the ballot as favoring or as opposing the amendment, his application shall be accompanied by a qualification fee of twenty-five dollars and by one or more petitions, requesting that his name be placed upon the official ballot, and signed by not fewer than five hundred qualified electors. It shall be permissible for any number of qualified voters to join in one or more petitions requesting the placing on the official ballot of the names of more than one candidate but not exceeding the total number to be elected. Any applicant may withdraw his name at any time before the ballots are actually printed.

History.—§4, ch. 16180, 1933; CGL 1936 Supp. 319(4).

107.05 Official ballots.—The ballots shall be prepared by the secretary of state and distributed by him to the county commissioners in the several counties at least ten days prior to such election. They shall contain the substance of the proposed amendment and in alphabetical order (1) the names of all candidates who shall have declared in favor of the ratification of such amendment; and (2) the names of all candidates who shall have declared against the ratification of such amendment; and (3) the

names of all candidates who shall have qualified without pledging themselves either for or against the amendment. When delegates are elected at general elections as provided in §107.03, such matters shall be printed on the general election ballots. In either event, in addition to the names of unpledged candidates printed on said ballots and whether there be any such names on said ballots or not, there shall be provided, under the caption "(3)" blank lines in equal number to the number of persons who may be elected as such delegates.

History.—§5, ch. 16180, 1933; CGL 1936 Supp. 319(5).

107.06 Clerks and inspectors; compensation fixed.—The board of county commissioners of each county shall appoint clerks and inspectors of election for such special election in accordance with the general election laws, except that such appointments may be made at any time more than five days prior to the election; whereupon they shall publish the names of such inspectors and clerks in a newspaper printed in the county. The clerks and inspectors of election shall receive compensation at the rate of five dollars per diem for each day actually and necessarily served in performing their duties as such. Such compensation, together with other lawful expenses incurred by the several boards of county commissioners, shall be paid as provided in §107.11, after the several boards of county commissioners shall have certified the same to the board of state canvassers and such accounts shall have been approved by such board of state canvassers.

History.—§6, ch. 16180, 1933; CGL 1936 Supp. 319(6).

107.07 Canvass of returns.—Within three days after the date of the special elections the county commissioners shall meet and canvass the returns thereof in their respective counties and transmit the same to the secretary of state. Within fourteen days after the date of the special elections the board of state canvassers shall meet and canvass such returns. The board shall thereupon declare the sixty-seven candidates who receive the greatest number of votes in the state at large, to have been elected as delegates to the convention; and shall immediately issue a certificate of election to each of such persons. In case of a tie the board of state canvassers shall select the delegates from those receiving the tie votes.

History.—§7, ch. 16180, 1933; CGL 1936 Supp. 319(7).

107.08 Convention time and place.—The delegates to the convention shall meet in such place as shall be provided for that purpose by the secretary of state, at the state capitol at Tallahassee on the second Tuesday in the month following their election, at twelve o'clock noon. They shall thereupon constitute a convention to ratify or reject the proposed amendment to the constitution of the United States.

History.—§8, ch. 16180, 1933; CGL 1936 Supp. 319(8).

107.09 Convention powers; quorum; compensation.—The convention shall have power to ratify or reject the proposed amendment to the constitution of the United States for which it shall have been selected; to choose a president and a secretary and all other necessary officers, clerks and attaches to fill vacancies in its membership; and to make rules governing its procedure. It shall be the sole judge of the election and qualifications of its members. A majority of the total number of delegates elected to the convention shall constitute a quorum.

The delegates to such convention shall serve without compensation or expenses; but the secretary and other officers, clerks and attaches shall receive such compensation as may be fixed by the convention.

The convention shall have no other power than that hereby expressly conferred or is necessarily incident to the purpose of its creation; any other action attempted to be taken by it shall be utterly null, void and of no effect.

History.—§9, ch. 16180, 1933; CGL 1936 Supp. 319(9).

107.10 Certification of convention action.—When the convention shall have agreed, by "yea" and "nay" vote of a majority of the total number of delegates elected, to the ratification or rejection of the proposed amendment to the constitution of the United States, a certificate to that effect shall be executed by its president and secretary and filed with the secretary of state of Florida. A copy of the minutes of its proceedings, likewise signed by such officials, shall also be filed with the secretary of state. The secretary of state of Florida, after the filing of such certificate, shall transmit a copy thereof, certified under the great seal of Florida, to the secretary of state of the United States.

History.—§10, ch. 16180, 1933; CGL 1936 Supp. 319(10).

107.11 Appropriation for expenses.—For the purpose of defraying the expenses of preparing for, conducting, holding and declaring the result of the election provided for by this chapter and also for the purpose of defraying the expenses allowed by this chapter for the holding of sessions of the convention as herein provided, to be audited by the comptroller, there is appropriated out of the general revenue fund of the state of Florida a sufficient sum of money for the payment of all amounts necessary to be expended under the terms of this chapter, which sums of money shall be disbursed by the state of Florida pursuant to warrants drawn by the comptroller upon the treasurer for the payment of same.

History.—§11, ch. 16180, 1933; CGL 1936 Supp. 319(11).

TITLE X

OFFICES, OFFICERS AND PUBLIC RECORDS

CHAPTER 110

MERIT SYSTEM OF PERSONNEL ADMINISTRATION

110.01 Merit system.—There is hereby created a merit system of personnel administration covering the employees of the state board of health, the Florida industrial commission, the Florida crippled children's commission, the state and district welfare boards, the merit system council, the hospital planning division of the Florida development commission, and the employees of such other state agencies as the governor, other constitutional officers, or the Florida public utilities commission, may direct in accordance with the provisions of this chapter.

History.—§1, ch. 29933, 1955; §1, ch. 63-279.

110.02 State personnel board.—

(1) There is hereby created the state personnel board which shall consist of the governor, who shall be the chairman, the secretary of state, the comptroller, the commissioner of agriculture, the attorney general, the superintendent of public instruction, and the treasurer.

(2) The state personnel board shall meet at such times and places as shall be specified by the governor or any three members thereof.

History.—§, ch. 29933, 1955.

110.03 Powers and duties of board.—The state personnel board shall have the following duties:

(1) To appoint the members of the merit system council in accordance with the provisions of this chapter.

(2) To adopt and amend such rules and regulations as may be necessary to effect the purposes of this chapter, provided that the regulations previously adopted by the existing merit system council and applicable to employees served by the Florida merit system council shall continue to be applicable to such employees and to any additional employees of other state agencies brought within the purview of this chapter until such time as the same may be altered or amended by the state personnel board; and provided further, that such board shall not amend such rules or regulations in such manner as to deprive any agency of this state of the receipt of federal grants made available to this state on condition of the maintenance of a merit system for personnel administration.

(3) To make biennial reports to the legislature, together with recommendations, and to perform such other duties as may be elsewhere specified in this chapter, or, if not prohibited, as in the judgment of such board are deemed necessary to effectuate the provisions hereof.

History.—§3, ch. 29933, 1955.

110.04 Merit system council.—

(1) There is hereby established a merit system council, which shall be composed of five members appointed by the state personnel board. The members of the existing merit system council shall be members of the council authorized by this chapter until the state personnel board shall make appointments in accordance with this chapter. The initial appointments shall be made within ninety days of the effective date of this chapter.

(2) The members of the council shall be citizens of this state and shall be in sympathy with the application of merit principles to public employment. No member of the council shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization, or shall hold, or be a candidate for, any other public office. No person shall be appointed as a member of the council who has held an elective public office or position in a political party within the year immediately preceding his appointment. No member of the merit system council may be removed from office prior to expiration of his term except for cause and after being given an opportunity for public hearing.

(3) Members of the merit system council shall be appointed for overlapping terms of four years each, except that the initial appointments shall be as follows: two members for terms of one year each; the other three members each for a term of two, three, and four years, respectively.

(4) Members of the council shall be paid twenty-five dollars for each day devoted to the work of the council but not more than one thousand dollars in any year. They shall be reimbursed for traveling expenses as provided in §112.061.

History.—§3, ch. 29933, 1955; (4) §19, ch. 63-400.

110.05 Duties of merit system council.—The merit system council shall hold regular meetings not less often than bimonthly and such additional meetings as may be required for the proper discharge of its duties. It shall be the duty and the function of the merit system council:

(1) To represent the public interest in the improvement of personnel administration.

(2) After public hearings to recommend the adoption for consideration by the state personnel board, of rules and regulations effectuating the merit system of personnel administration as contemplated by this chapter. Such rules and regulations shall include provision for the classification of positions, the establishment of salary schedules and minimum personnel standards for the positions so classified and for periodic payroll audits of such positions. They shall also provide for the holding of examinations to determine the qualifications of applicants, and for temporary appointments without such examinations for periods not exceeding six months. They shall also provide for promotions, transfers, demotions, separations, tenure, reinstatement, appeal, and such other matters as may be found necessary for the maintenance of a sound merit system of personnel administration.

(3) To hear such appeals and make such decisions or recommendations as may be authorized by this chapter, or by rules adopted by the state personnel board.

(4) The council shall be responsible for the promotion of public understanding of the purposes, policies and practices of the merit system and for assistance and advice to the merit system director and to any other state agency in fostering merit system practices, and for securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards under the merit system.

History.—§4, ch. 29933, 1955.

110.06 Classified service and exemptions.—(1) The classified service to which this chapter shall apply shall include all full-time positions in the following agencies or departments not exempt by this chapter:

(a) The agencies now under the existing Florida merit system, including the director and staff of the merit system council;

(b) Any state agencies under the jurisdiction of the governor which may be placed under the merit system by executive order of the governor.

(c) Any other state agency or department which may be placed under the merit system by action of the executive authority thereof and with the approval of the state personnel board.

(d) Any agency or department which may be placed under the merit system by act of the legislature.

(e) Positions included within the classified service established by this chapter shall not be removed therefrom.

(2) Exempt positions shall include all positions in the state service not included in subsection (1) of this section and shall specifically include the following:

(a) Officers elected by popular vote and persons appointed to fill vacancies in such offices.

(b) Temporary or part-time officers and employees of the legislature.

(c) Members of boards and commissions and heads of departments appointed by the governor or the cabinet acting as the board of commissioners of state institutions or the board of conservation, and a secretary to the administrative head of each board, commission or department; those division heads or other high-level employees under such boards or commissions or within such departments who participate in the formulation of policy and who are not in agency units receiving federal grants in aid, and the designation of whom shall be made by the board, commission or department head involved, subject to the approval of the state personnel board.

(d) Not more than three administrative assistants or deputies, together with a secretary for each such assistant or deputy, for each board or commission or head of a department appointed by the governor or the cabinet acting as the board of commissioners of state institutions.

(e) Such administrative assistants, confidential secretaries, and receptionists employed in the governor's office as may be designated by him.

(f) Officers, attendants, and employees of the state judiciary, judges, referees, receivers, jurors, and notaries public.

(g) Officers and members of the teaching staffs of state universities and other state institutions of learning, and student employees of such institutions.

(h) Patient or inmate help in state charitable, penal and correctional institutions.

(i) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the legislature or a committee thereof, or by authority of the governor.

(j) Internes, trainees, and part-time professional and technical employees paid by fees, stipends, or on a part-time salary basis.

(k) All employees exempted by the merit

system regulations heretofore adopted by the Florida merit system council, and any other employees who may hereafter be exempted by the state personnel board, or legislative act.

History.—§5, ch. 29933, 1955; (2)(c) §1, ch. 61-258.

110.07 Status of employees.—

(1) Employees of an agency already covered by an existing merit system other than employees covered by the Florida merit system will have the same status if transferred to the merit system provided by this chapter as they may have acquired under such other merit system. Employees of an agency not previously covered by a merit system who are made subject to the provisions of this chapter shall be given status as follows:

(a) An employee who shall have been continuously employed for not less than one year immediately preceding the date on which the position in which he is employed is made subject to the provisions of this chapter shall be given status in the classified service without an examination.

(b) An employee who shall have been employed for less than one year on the date the position in which he is so employed is made subject to the provisions of this chapter shall be required to pass such test or examination as may be required by rules and regulations adopted by the state personnel board.

(c) Persons appointed to fill vacancies in the classified service of an agency under the merit system established by this chapter shall achieve permanent status only in accordance with the rules and regulations adopted pursuant to this chapter.

History.—§6, ch. 29933, 1955.

110.08 Examinations.—Under the supervision of the merit system council, the merit system director shall be responsible for the conduct of such promotional and competitive examinations and entrance examinations as may be necessary and required under this chapter. Such examinations shall be of such character as to determine the qualifications, fitness, and ability of the persons tested to perform the duties of the class of positions for which such tests or examinations are given. Adequate public notice shall be given by the merit system director prior to all examinations except for promotion within a department or agency.

History.—§7, ch. 29933, 1955.

110.09 Suspensions, reductions, demotions, discharges, layoffs, and transfers.—

(1) Any employee in the classified service may be terminated for cause by the agency or officer by whom he is employed. The state personnel board by rule shall establish a procedure in accordance with the provisions of this chapter for the suspension, reduction in pay, demotion, and discharge of employees in the classified service for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the provisions of the rules prescribed by the state personnel board, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, or any other just cause; and for the investigation and hearing of appeals on such suspension, reduction, demotion, or discharge of an employee. Such rule shall provide for appeals to the merit system council, provided that such appeal must be filed with the council in writing within twenty days from the date notice of suspension, demotion, or discharge, in writing is delivered or mailed to the employee. The council shall conduct hearings on such appeals, and within thirty days after the completion thereof shall make its finding and decision which shall be in writing, and copies thereof shall be submitted to the employee, employing agency concerned, and the state personnel board. The decision of the merit system council shall be final; except that in the case of a discharged employee, the personnel board by an affirmative vote of a majority thereof, may in its own discretion and after notice to all parties, within thirty days of the filing of the decision of the merit system council, review the same and accept, reject or alter such decision.

(2) The state personnel board may order the reinstatement of an employee, with or without back pay, which order shall be binding on the agency concerned. The action of the board shall be in writing and shall be served on the parties to such appeal either in person or by mail.

(3) The board shall also provide by rule for transfer or layoff, within an agency or department, of an employee when it becomes necessary to abolish a position because of a shortage of funds or work, or a material change in duties or organization; provided that such rule shall not allow an employee the right to be transferred from a classified position in one agency or department to a classified position in any other agency or department.

(4) The board shall also provide regulations for preparing and distributing lists of employees who have been laid off because of shortage of funds or work, and such lists shall be made available to other departments or agencies so that trained and qualified personnel may be specially considered by such departments or agencies for re-employment.

History.—§8, ch. 29933, 1955.

***110.091 Uniform termination for state employees.**—The state personnel board is hereby authorized to establish and prescribe a uniform termination order and report to be filed for all employees whose employment with the state is terminated. All state agencies shall prepare and deliver to the comptroller a report of the termination of employees in such cases as may be prescribed by the state personnel board. The comptroller is hereby authorized to establish and maintain a permanent file of such termination reports as an activity of his office and to act as agent of the state personnel board in handling matters pertaining to such files and reports. The contents of such reports shall be disclosed only to those officers or employees

authorized by regulation of the state personnel board.

History.—§1, ch. 63-482.
*Note.—Effective January 1, 1964.

110.10 Administrative costs and appropriation.—

(1) The administrative expenses and cost of operating the merit system shall be paid by the various divisions of the state government, and each such division shall be authorized to include in its budget estimates its pro-rata share of such cost. To establish an equitable division of the costs, the amount to be paid by each division shall be determined in such proportion as the service rendered to each division bears to the total service rendered by the department.

(2) To provide funds for administrative costs for any agency which is unable at the time of its application to provide such funds out of its then current budget, there is hereby appropriated out of the general revenue the sum of fifty thousand dollars which shall be allocated by and with the approval of the budget commission to the merit system herein established to pay the costs of administration for such agencies, as contemplated in subsection (1) of this section.

History.—§9, ch. 29933, 1955.

110.11 Services to political subdivisions.— Subject to the rules approved by the state personnel board, the merit system director may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the agency to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements.

History.—§10, ch. 29933, 1955.

110.12 Oaths; testimony; records.—The members of the state personnel board, the members of the merit system council, and the director shall have power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor.

History.—§11, ch. 29933, 1955.

110.13 Political activities and unlawful acts prohibited.—

(1) No person in the classified service shall be appointed to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration; provided, however, that letters of inquiry, recommendations and references by public employees or public officials shall not be considered political pressure unless any such letter contains a threat, intimidation, irrelevant, derogatory or false information. And provided further, that for the purposes of this section the term "political pressure" in addition to any appropriate meaning which may be ascribed thereto by lawful authority shall include the use of official authority or influence in any manner prohibited by this chapter.

(3) No employee in the classified service, and no member of the merit system council shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political organization or purpose, or solicit or take any part in soliciting any such assessment, subscription, or contribution of any employee in the classified service.

(4) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(5) Upon a showing of substantial evidence by the personnel director that any officer or employee in the state service has knowingly violated any of the provisions of this section, the state personnel board shall notify the officer or employee so charged and the appointing authority under whose jurisdiction the officer or employee serves. If the officer or employee charged so desires, the state personnel board shall hold a public hearing, or shall authorize the merit system council to hold a public hearing, and submit a transcript thereof, together with its recommendations, to the state personnel board. Relevant witnesses shall be allowed to be presented and testify at such hearing. If the officer or employee shall be found guilty by the state personnel board of the violation of any provision of this section, the board shall direct the appointing authority to dismiss or suitably discipline such officer or employee; and the appointing authority so directed shall comply.

(6) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment

made under any provision of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and the rules.

(7) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

History.—§12, ch. 29933, 1955.

110.14 Penalties.—

(1) Any person who willfully violates any provision of this chapter or of any rule or regulation adopted pursuant to the authority herein granted shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $1000, or by imprisonment for not longer than six months, or by both such fine and imprisonment.

(2) Any person who is convicted of a misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if he is an employee of the state, shall forfeit his position.

History.—§13, ch. 29933, 1955.

110.15 Awards to state employees.—

(1) The state personnel board may make awards to state employees who:

(a) Propose procedures or ideas which hereafter are adopted and which will result in eliminating or reducing state expenditures or improving operations; provided, such proposals are placed in effect, or

(b) By their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement on the operations of the state government.

(2) Awards for superior accomplishments shall be made in accordance with procedures and standards established by the state personnel board.

(3) Any award made by the state personnel board under the provisions of this section shall be paid from the appropriation available to the state agency affected by the award or from any specific appropriation therefor.

(4) The board may adopt rules and regulations to carry out the provisions of this section, and may appoint merit award boards made up of state officers, employees or citizens to consider employee proposals, special acts, special services, or superior accomplishments, and to make recommendations to the board as to the merits of the proposals, special acts, special services, or superior accomplishments, and whether or not the proposals, special acts, special services or superior accomplishments, justify an award.

(5) Any award granted under the provisions of this section shall be limited to one hundred fifty dollars unless a larger award is made by the legislature.

(6) When requested by the state personnel board the merit system agency may furnish such assistance as may be necessary to carry out the provisions of this section. Any expenditures made or costs incurred by the merit system agency for the purposes of this section may be paid from funds available for the support of the merit system agency.

History.—§1, ch. 61-221.
Note.—Formerly §111.10.

CHAPTER 111

COMPENSATION AND ACCOU NTS OF CERTAIN OFFICIALS

111.02 Perquisites.—All perquisites fixed by law accruing from the administration of any state officer shall be faithfully accounted for, reported and turned over to the state treasurer once each month with a certificate as to the correctness of such accounting. The state treasurer shall receive all such funds and issue his receipt to the officer transmitting the same.

History.—§2, ch. 6447, 1913; RGS 207; §2, ch. 8491, 1921; §2, ch. 11335, 1925; RGS 207; CGL 239, 478.

111.03 Detailed account of fees to be kept; monthly statements.—In all state administrative offices where fees or perquisites of any nature or character are allowed to be collected, or are collected or received by any person connected with such office, a detailed account thereof shall be kept in a book provided for that purpose and such book shall be carefully preserved and treated as a public record of the office. At the end of each month a detailed statement of such receipts shall be made and verified under the oath of the head or acting head of such office, which statement together with the amounts received during said month by any and all persons connected with such office shall be delivered to the state treasurer, for which amounts receipts shall issue in due course and the amounts shall be placed in the general revenue fund of the state. The state treasurer shall preserve the statements so delivered to him as a public record of his office. Where fees or other compensation or perquisites are allowed by law to be collected or received by any person in any state office for any work or service done or rendered in connection with the administration of such office, such fees, perquisites and compensation shall be collected and duly accounted for as herein provided.

History.—§1, ch. 6448, 1913; RGS 208; CGL 240.

111.04 Officer failing to comply with law subject to removal.—Any person failing to comply with the provisions of §111.03 shall be regarded as having committed misfeasance in office and shall be subject to removal, suspension or discharge as provided by law.

History.—§2, ch. 6448, 1913; RGS 209; CGL 241.

111.05 Officer reinstated after suspension; back pay.—An officer who is lawfully entitled to resume the duties of his office after his suspension by the governor shall suffer no loss of salary or other compensation because of his suspension. His compensation which is unpaid because of his suspension is appropriated and shall be paid from the source and in the manner in which the compensation of the office is normally paid. If funds sufficient to pay his unpaid compensation are not available in the proper source, the deficit is appropriated and shall be paid from the general funds of the state or of the political subdivision under which the office exists, as the case may be.

History.—§1, ch. 57-71.

CHAPTER 112

PERSONS ELIGIBLE TO OFFICE; RETIREMENT; GROUP INSURANCE; EXPENSES

112.01 Conviction of certain offenses to exclude from office.—All persons convicted of bribery, larceny, perjury, or any other infamous crime, or who shall make or become directly or indirectly interested in any bet or wager, the result of which shall depend upon any election, or who shall hereafter fight a duel, or send or accept a challenge to fight, or who shall be second to either party, or be the bearer of such challenge or acceptance, shall be excluded from every office of honor, power, trust or profit, civil or military, within this state, and from the right of suffrage; but the legal disability shall not accrue until after trial and conviction by due form of law; provided, however, that nothing in this section shall be so construed as to remove or affect any punishment or legal disability resulting from convictions heretofore.

History.—§§1, 3, ch. 3705, 1887; RS 211; GS 295; RGS 393; CGL 458.

112.02 Residence.—All persons employed to work for the state or for any county of the state, shall be bona fide residents of the state for two years next prior to such employment, except only where after due diligence no person can be found in the state possessing the required qualifications necessary to the particular employment.

History.—§1, ch. 16183, 1933; CGL 1936; Supp. 478(2); §7, ch. 22858, 1945.

112.03 Unlawful employment.—It is unlawful for any officer or board, either state or county, to employ any person to work for the state or for any county in the state, who has not been a bona fide resident of the state for the last past two years at the time of such employment, except only when after due diligence no such resident of the state can be found possessing the required qualifications necessary to fill the particular employment.

History.—§2, ch. 16183, 1933; CGL 1936 Supp. 478(2).

112.04 Penalty.—Any officer or board or member of any official board, either state or county, violating the provisions of §§112.02 and 112.03 shall be deemed guilty of a misdemeanor, and upon conviction punished accordingly. Any officer violating §§112.02 and 112.03 shall be subject to removal by the governor.

History.—§3, ch. 16183, 1933; CGL 1936 Supp. 478(2), 7546(1).

112.05 Retirement.—Whenever any state official or state employee has attained the age of seventy years or more, and has served the state as either an official or employee or both for as much as twenty consecutive years or more or for an aggregate time of thirty years or more, or whenever any state official or employee, irrespective of age, has served the state as either an official or employee or both for thirty consecutive years or more, or for as much as an aggregate of thirty-five years or more, such official or employee may retire from his office as such official or employee with the right to be paid, and shall be paid monthly on his own requisition during the remainder of his natural life one-half the amount of the average monthly salary received during the last ten years of such service; and sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the state treasury not otherwise appropriated. Provided, that military service in the armed forces of the United States shall be computed as a part of the time specified hereinabove as entitling a state official or employee to the benefits of this section. This section shall apply only to persons retired or persons who are on a state payroll June 30, 1953 and remain continuously on a state payroll until eligible to retire. This section shall not affect any state official or employee who has already retired under any retirement act, except that no cabinet officer qualifying shall receive less than four thousand, five hundred dollars per year.

History.—§1, ch. 12293, 1927; CGL 242; §1, ch. 17274, 1935; §1, ch. 20499, 1941; §1, ch. 22828, 1945; §1, chs. 28147, 28148, 1953.

Note.—Formerly §121.001.

cf.—Ch. 122 State and county officers and employees retirement system.

112.051 Merit systems; retirement or transfer of employees aged 65 to 70.—

(1) Any employee of the state who is within the merit system established by chapter 110, or who is protected by any other merit system plan or system providing for tenure, except instructional personnel employed in the public school system, may be retired by the agency or department in which he is employed on the basis of his age and without specifying charges or other cause for such retirement when such employee has reached sixty-five years of age.

Such employee may be retired in accordance with the following conditions:

(a) Has reached age sixty-five and

(b) Is eligible for retirement under any state retirement system.

(2) The department or agency which is within any merit system, in which any employee who is over sixty-five years of age is employed shall have the discretion to continue such employee in employment after he attains age sixty-five, but when such employee has reached the age of seventy years of age he shall be automatically retired and separated from the state employment within thirty days thereafter unless

(a) Such employee has submitted a request in writing to the state agency in which he is employed at least sixty days before his seventieth birthday; and

(b) Such department has given written notice of consent for continuation of such employment.

(3) Any employee who has attained age sixty-five may be transferred to some job requiring less responsibility and less arduous duties by the department in which he is employed when determination is made that such employee is not able to satisfactorily carry out the full duties of his position. Such transfer shall not be subject to appeal by the employee and may be accompanied by appropriate reduction in salary in line with the duties and classification of the position to which the employee is transferred. In the event of such transfer the agency or department concerned shall furnish to the state personnel board in writing the reasons for the transfer, together with the name and classification of the employee concerned, who shall also be furnished a copy in writing of the notice to the state personnel board.

(4) This act shall take effect December 31, 1961.

History.—§§1-4, ch. 61-289.
cf.—Ch. 122, State and county retirement system.

112.061 Per diem and traveling expenses of public officers, employees, and authorized persons.—

(1) LEGISLATIVE INTENT.—There are inequities, conflicts, inconsistencies and lapses in the numerous laws regulating or attempting to regulate traveling expenses of public officers, employees, and authorized persons in the state, it is the intent of the legislature:

(a) To remedy same and to establish uniform maximum rates, and limitations, with certain justifiable exceptions, applicable to all public officers, employees, and authorized persons whose traveling expenses are paid by a public agency.

(b) To preserve the standardization and uniformity established by this law:

1. The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

2. The provisions of any special or local law, present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict.

(2) DEFINITIONS.—For the purposes of this section the following words shall have the meaning indicated:

(a) Agency or public agency—Any officer, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality or any other separate unit of government created pursuant to law.

(b) Agency head or head of the agency—The highest policy making authority of a public agency, as herein defined.

(c) Officer or public officer—An individual who in the performance of his official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

(d) Employee or public employee—An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

(e) Authorized person—

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of his official duties, or

2. A person who is called upon by an agency to contribute time and services as consultant or advisor, or

3. A person who is a candidate for an executive or professional position.

(f) Traveler—A public officer, public employee, or authorized person, when performing authorized travel.

(g) Travel expense, traveling expenses, necessary expenses while traveling, actual expenses while traveling, or words of similar nature—The usual ordinary and incidental expenditures necessarily incurred by a traveler.

(h) Common carrier—Train, bus, commercial airline operating scheduled flights, or rental cars of an established rental car firm.

(i) Travel day—A period of twenty-four hours consisting of four quarters of six hours each.

(j) Travel period—A period of time between the time of departure and time of return.

(k) Class A travel—Continuous travel of twenty-four hours or more away from official headquarters.

(l) Class B travel—Continuous travel of less than twenty-four hours which involves overnight absence from official headquarters.

(m) Class C travel—Travel for short or day

trips where the traveler is not away from his official headquarters overnight.

(3) AUTHORITY TO INCUR TRAVELING EXPENSES.—

(a) All travel must be authorized and approved by the head of the agency from whose funds the traveler is paid.

(b) Traveling expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed by this section.

(c) Travel by public officers or employees serving temporarily in behalf of another agency or partly in behalf of more than one agency at the same time, or authorized persons who are called upon to contribute time and services as consultants or advisors, may be authorized by the agency head. Complete explanation and justification must be shown on the travel expense voucher or attached thereto.

(d) Traveling expenses of public employees for the sole purpose of taking merit system or other job placement examinations, written or oral, shall not be allowed under any circumstances, except that upon prior written approval of the agency head, candidates for executive or professional positions may be allowed traveling expenses pursuant to this section.

(4) OFFICIAL HEADQUARTERS.—The official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located; except that:

(a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of his work is performed, or such other city, town or area as may be designated by the agency head; provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.

(b) When any state employee is stationed in any city or town for a period of over thirty days, such city or town shall be deemed to be his official headquarters and he shall not be allowed per diem or subsistence, as provided in this section, after the said period of sixty days has elapsed, unless this period of time is extended by the express approval of the budget commission.

(c) A traveler may leave his assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from his regular duties shall be taken as annual leave and authorized in the usual manner and he shall not be reimbursed for traveling expenses in excess of the established rate for per diem allowable had he remained at his assigned post.

(5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.—For purposes of reimbursement and methods of calculating fractional days of travel the following principles are prescribed:

(a) The travel day for Class A travel shall be a calendar day (midnight to midnight). The travel day for Class B travel shall begin at the same time as the travel period. For Class A and Class B travel, the traveler shall be reimbursed one-fourth of the authorized rate of per diem for each quarter, or fraction thereof, of the travel day included within his travel period. Only full quarters spent outside the state shall be reimbursed at the authorized out-of-state rate of per diem. All other quarters, or fractions thereof, shall be reimbursed at the authorized in-state rate of per diem.

(b) A traveler shall not be reimbursed on a per diem basis for Class C travel, but shall receive subsistence as provided in this section, which allowance for meals shall be based upon the following schedule:

Breakfast—When travel begins before 6:00 a.m. and extends beyond 8:00 a.m.

Lunch—When travel begins before 12:00 noon and extends beyond 2:00 p.m.

Dinner—When travel begins before 6:00 p.m. and extends beyond 8:00 p.m., or when travel occurs during nighttime hours due to special assignment.

No allowance shall be made for meals when travel is confined to city or town of the official headquarters or immediate vicinity.

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are divided into the following groups, and maximum rates to be determined by the agency head:

(a) *Out-of-state.*—

1. All travelers may be allowed for subsistence when traveling out-of-state on official business to attend a convention or conference which will serve a direct public purpose with relation to the public agency served by the person attending such meeting, either of the following:

a. Up to twenty dollars per diem, or

b. Up to the amounts permitted in paragraph (c) of this subsection for meals, plus actual expenses for lodging at single occupancy rate to be substantiated by paid bills therefor.

2. All public officers may be allowed for subsistence up to twenty dollars per diem when traveling out-of-state on other official business.

3. Public employees while accompanying a public officer, when traveling out-of-state on other official business may be allowed for subsistence the same rate of per diem as is allowed the public officer.

4. All other travelers may be allowed for subsistence up to sixteen dollars per diem when traveling out-of-state on other official business.

(b) *In-state.*—

1. All travelers may be allowed for subsistence when traveling in-state on official business to attend a convention or conference which will serve a direct public purpose with relation to the public agency served by the person attending such meeting, either of the following:

a. Up to twenty dollars per diem, or

b. Up to the amounts permitted in paragraph (c) of this subsection for meals, plus actual expenses for lodging at single occupancy rate to be substantiated by paid bills therefor.

2. Public officers may be allowed for sub-

sistence when traveling in-state on other official business the following rates:

a. The governor, members of the state cabinet, and members of the legislature, as follows:

(I) While the legislature is in session, twenty-five dollars per diem.

(II) While the legislature is not in session, up to twenty dollars per diem, and

b. All other public officers up to sixteen dollars per diem.

3. Public employees while accompanying a public officer, when traveling in-state on other official business may be allowed for subsistence the same rate of per diem as is allowed the public officer.

4. All other travelers may be allowed for subsistence up to fourteen dollars per diem when traveling in-state on other official business.

(c) *Meals only.*—All travelers may be allowed for subsistence while on Class C travel on official business, up to the following amounts:

Breakfast	$1.25
Lunch	1.75
Dinner	3.00

(7) TRANSPORTATION.—

(a) All travel must be by a usually traveled route. In case a person travels by an indirect route for his own convenience any extra costs shall be borne by the traveler and reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route.

The agency head shall designate the most economical method of travel for each trip, keeping in mind the following conditions:

1. The nature of the business.

2. The most efficient and economical means of travel (considering time of the traveler, cost of transportation and per diem or subsistence required).

3. The number of persons making the trip, and the amount of equipment or material to be transported.

(b) The state comptroller may provide any form he deems necessary to cover travel requests for traveling on official business and when paid by the state. All outstanding transportation request books shall be cancelled on or before January 1, 1964, and unused portions of such books returned to the state comptroller.

(c) Transportation by common carrier when traveling on official business and paid for personally by the traveler, shall be substantiated by a receipt therefor. Federal tax shall not be reimbursable to the traveler.

(d) The use of privately-owned vehicles for official travel in lieu of public-owned vehicles or common carrier may be authorized by the agency head if a public-owned vehicle is not available. Whenever travel is by privately-owned vehicle, the traveler shall be entitled to a mileage allowance at a fixed rate not to exceed ten cents per mile or the common carrier fare for such travel, to be determined by the agency head. Reimbursement for expenditures related to the operation, maintenance, and ownership of a vehicle shall not be allowed when privately-owned vehicles are used on public business and reimbursement is made pursuant to this paragraph, except as provided in subsection (8) of this section.

All mileage shall be shown from point of origin to point of destination and when possible shall be computed on the basis of the current state road department map. Vicinity mileage necessary for conduct of official business is allowable but must be shown as a separate item on the expense voucher.

(e) Transportation by chartered vehicles when traveling on official business may be authorized by the agency head when necessary or where it is to the advantage of the agency, provided the cost of such transportation does not exceed the cost of transportation by privately-owned vehicle pursuant to paragraph (d) of this subsection.

(f) The agency head may grant monthly allowances in fixed amounts for use of privately-owned automobiles on official business in lieu of the mileage rate provided in paragraph (d) of this subsection. Allowances granted pursuant to this paragraph shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and whether any of the expenses incident to the operation, maintenance, and ownership of the automobile are paid from funds of the agency or other public funds. Such allowance may be changed at any time, and shall be made on the basis of a signed statement of the traveler, filed before the allowance is granted or changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to paragraph (d) of this subsection.

(g) No contracts may be entered into between a public officer or employee, or any other person, and a public agency, in which a depreciation allowance is used in computing the amount due by the agency to the individual for the use of a privately-owned vehicle on official business; provided, any such existing contract shall not be impaired.

(h) No traveler shall be allowed either mileage or transportation expense when he is gratuitously transported by another person, or when he is transported by another traveler who is entitled to mileage or transportation expense.

(8) OTHER EXPENSES.—The following incidental traveling expenses of the traveler may be reimbursed:

(a) Taxi fare.

(b) Ferry fares; and bridge, road and tunnel tolls.

(c) Storage or parking fees.

(d) Communication expense.

(e) Convention registration fee while attending a convention or conference which will serve a direct public purpose with relation to

the public agency served by the person attending such meetings.

(9) TRAVEL AGENCIES.—The state comptroller may pay to properly qualified travel agencies located in the state, for the purchase of tickets issued in exchange for state of Florida transportation requests to be used for travel on common carriers, upon such travel agencies obtaining an annual permit from the state comptroller at a cost of twenty-five dollars and under such rules and regulations, including a requirement for a ten thousand dollar bond to be furnished by the travel agency, as the state comptroller may deem necessary.

(10) RULES AND REGULATIONS.—

(a) The state comptroller shall promulgate such rules and regulations and prescribe such forms as may be necessary to effectuate the purposes of this section.

(b) Each agency shall promulgate such additional rules and regulations not in conflict with the rules and regulations of the state comptroller, as may be necessary to effectuate the purposes of this section. Such rules and regulations shall be recorded in the official minutes of the agency or maintained in a special file in the main office of the agency.

(11) FRAUDULENT CLAIMS.—Claims submitted pursuant to this section shall not be required to be sworn to before a notary public or other officer authorized to administer oaths but any claim authorized or required to be made under any provision of this section shall contain a statement that the expenses were actually incurred by the traveler as necessary traveling expenses in the performance of his official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who wilfully makes and subscribes any such claim which he does not believe to be true and correct as to every material matter, or who wilfully aids or assists in, or procures, counsels, or advises the preparation of presentation under the provisions of this section of a claim which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished accordingly. Whoever shall receive an allowance or reimbursement by means of a false claim shall be civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

(12) The state comptroller shall furnish a uniform travel voucher form which shall be used by all state officers, employees, and authorized persons, when submitting traveling expense statements for approval and payment. No traveling expense statement shall be approved for payment by the comptroller unless made on the form prescribed and furnished by him.

History.—§§1, 3, ch. 22830, 1945; am. §§1-3, ch. 23892, 1947; §§1, 3, ch. 25040, 1949; §§1, 3, ch. 26910, 1951; (6) r. by §1, ch. 28303, 1953; (1), (4), §1, ch. 29628, 1955; (1) §1, ch. 57-230; (4) (a) §1, ch. 61-183; (6) n. by §1, ch. 61-43; (1) §1, ch. 63-5; (1)(a)n. §1, ch. 63-192; (5) §1, ch. 63-122; §1, ch. 63-400.

cf.—§250.19 Expenses for travel on military business.
§340.05 Florida state turnpike authority, compensation.

112.07 Fixing terms of office of certain officers.—

(1) The terms of office of the successors to the incumbent members of the state road department, the Florida industrial commission, the director of the state beverage department, the hotel commissioner, and the state motor vehicle commissioner, shall expire with the first Monday in January, A.D. 1945, and thereafter the terms of office of said officials shall begin and run concurrently with the regular terms of office of the successive governors of the state.

(2) The terms of office of the successors to the incumbent members of the state racing commission shall expire on the first Monday in January, A.D. 1945, and thereafter the terms of office of said officials shall be for two years beginning in each instance on the first Tuesday after the first Monday in January and ending with the first Monday in January each two years thereafter.

(3) The governor is hereby authorized to make appointments and issue commissions for the full term of any of the offices covered by this section or for any fractional part of such term, but nothing herein contained shall be construed to repeal or modify any existing law requiring confirmation by the senate of the appointment of any such official, or any repeal or modification of any requirement of law as to the qualification, eligibility or other limitation upon the appointment, suspension or removal of any such official, inasmuch as the purpose of this section is to cause the terms of office of all the officials named in this section to expire concurrently with the terms of office of the successive governors of Florida.

History.—§§1-3, ch. 20299, 1941.

112.08 Group insurance for public employees.—From and after the passage of this law, each and every county, county board of public instruction, governmental unit, department, board, or bureau, of the state, be, and each of them is hereby authorized, empowered and permitted to provide for life, health, accident, hospitalization or annuity insurance, or all of any kinds of such insurance, for the employees thereof, upon a group insurance plan, and to that end to enter into agreements with insurance companies to provide such insurance.

History.—§1, ch. 20852, 1941.

112.09 Evidence of election to provide insurance.—The election to exercise such authority shall be evidenced by resolution, duly recorded in the official minutes, adopted by the board of county commissioners in the case of a county, by the county board of public instruction, in the case of a school board and by the members of the board, or department head if an individual, in the case of any state department, board or bureau, and by the governing body by resolution or ordinance in the case of any other governmental unit of the state of Florida.

History.—§2, ch. 20852, 1941.

112.10 Deduction and payment of premiums.—Upon the request in writing of any employee,

the proper officials of each and every county, county board of public instruction, governmental unit, department, board or bureau of the state, are hereby authorized and empowered to deduct from the wages of such employee, periodically, the amount of the premium which such employee has agreed to pay for such insurance, and to pay or remit the same directly to the insurance company issuing such group insurance.

History.—§3, ch. 20852, 1941.

112.11 Participation voluntary.—The participation in such group insurance by any employee shall be entirely voluntary at all times. Any employee may upon any pay day, withdraw or retire from such group insurance plan, upon giving his employer written notice thereof, and directing the discontinuance of deductions from wages in payment of such premiums.

History.—§4, ch. 20852, 1941.

112.12 Premiums for insurance of school teachers.—Provided that in event any school board should include school teachers under any policy provided for by this law, then no part of the premium therefor as to such teachers shall be paid from any public funds.

History.—§5-A, ch. 20852, 1941.

112.13 Insurance additional to workmen's compensation.—The insurance permitted and allowed under this law shall be in addition to, and in no manner in lieu of the provisions of the Florida workmen's compensation law.

History.—§6, ch. 20852, 1941.

112.14 Purpose and intent of law.—It is hereby declared to be the purpose and intent of this law to make available upon a voluntary participation basis to the several employees aforesaid, the economics, protection and benefits of group insurance not available to each employee as an individual.

History.—§5, ch. 20852, 1941.

112.16 Change in position or reclassification; continuance or resumption of membership in retirement system.—

(1) Any person who is a participant in any state or county retirement system, who changes his position of employment, or who is reclassified so that under any existing law such person would participate in a different retirement system, may continue to participate and come under the same retirement system in which he participated or came under before changing positions or being reclassified so long as such person remains in the employ of the state or county and continues to make the contributions required by law. Any person who has changed positions or been reclassified heretofore may come back under and participate in the retirement system to which he belonged before such change or reclassification upon payment of all back contributions, plus three per cent interest per annum, that he would have been required by law had he continued to participate and come under such system continuously, such election to be made and payment to be made on or before the time of retirement.

(2) The provisions of this section shall supersede any existing law relating to state and county retirement systems or pensions, provided nothing herein shall be construed to apply to state supreme court justices, as provided in chapter 25; nor to circuit judges as provided by chapter 38; nor to members of the department of public safety as provided by chapter 321; nor to members of Duval county employees pension fund as provided in chapter 23259, Acts, 1945, as amended by chapter 27520, Acts, 1951, and chapter 27523, Acts, 1951.

History.—§§1, 2, ch. 57-752.

112.171 Employee wage deductions.—The state or any of its departments, agencies, bureaus, commissions and officers; the counties, municipalities and special districts of the state and the departments, agencies, bureaus, commissions and officers thereof are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as shall be authorized and requested by such employee or employees and for such purpose as shall be authorized and requested by such employee or employees and shall pay such sums so deducted as directed by such employee or employees.

It is the intent and purpose of this section to vest in the public officers, agencies and commissions herein enumerated the sole power and discretion to approve or disapprove requested deductions and the approval of and making of approved deductions shall not require the approval or making of other requested deductions.

History.—§1, ch. 59-409.

CHAPTER 113

COMMISSIONS

113.01 Fee for commissions issued by governor.—A fee of ten dollars is prescribed for the issuance of each commission of every kind issued by the governor of the state and attested by the secretary of state; except that no fee shall be required for issuance of commissions to officers of the Florida national guard; and, except that the fee is five dollars for commission issued to notary public; and, excepting further that no fee shall be required for the issuance of a commission as a notary public to a veteran of the Spanish American war, world war I, world war II and the Korean war who has a disability rating by the United States of fifty per cent or more.

History.—§1, ch. 14669, 1931; §1, ch. 15925, 1933; §1, ch. 17133, 1935; CGL 1936 Supp. 406(1), 460(4), 479(1); §1, ch. 28296, 1953.
cf.—§117.01 Appointment, term of office, powers, bond and oath—notary public.
§§15.08, 15.09 Commission fees.

113.02 Fee to be paid before commissions issued.—No commission shall be issued by the governor or attested by the secretary of state or bear the seal of the state until the fee fixed and required by §113.01 shall first be paid as therein provided.

History.—§2, ch. 14699, 1931; CGL 1936 Supp. 460(2).

113.03 Disposition of proceeds.—All fees shall be paid by the secretary of state into the state treasury and shall be used for such purposes as the legislature may determine.

History.—§3, ch. 14669, 1931; CGL 1936 Supp. 460(3).

113.04 Fidelity bond premiums.—When any state officer or employee is required by statute or by the head of any state department to secure and give a fidelity bond, the premium therefor shall be paid from the necessary and regular expense account of the department to which such officer or employee shall be attached.

History.—§1, ch. 17755, 1937; CGL 1940 Supp. 459(1).
cf.—§237.31 Bonds required for school officials.
§113.07(4) Cost and payment of premium on bond.

113.05 No commission to issue until bond filed, etc.—No commission shall be issued by the governor of this state to any person who is by law required to give bond before he shall enter upon the duties of his office until after such bond shall have been duly executed, approved and filed in the office where it is required by law to be deposited, and official notice thereof given to the governor.

History.—§1, ch. 227, 1849, RS 212; §1, ch. 5178, 1903; GS 296; RGS 394; CGL 459.

113.06 Record of commission, oath and acceptance.—Every commission issued by the governor shall be recorded in the office of the secretary of state in a book of commissions and an index made thereof, and the oath of office of the person named in said commission shall be endorsed on said commission, and accompanying the commission there shall be transmitted to each officer a printed acceptance of said commission, and his oath of office, which shall be subscribed and taken by such officer, and returned to the office of the secretary of state and filed therein, and a note thereof made on the record of said commission by the secretary of state.

History.—§2, ch. 12, 1845; RS 213; GS 297; RGS 395; CGL 460.

113.07 Bond by surety company; when required.—

(1) In all cases where public officials, not honorary, either state, county or district, are now, or shall hereafter be required to post fidelity or performance bonds, all such bonds shall be written by surety companies authorized by law to do business in the state.

(2) The provisions of this law shall not apply to deputy sheriffs nor to notaries public.

(3) No such official shall be qualified to hold office or perform the duties thereof until such surety bond has been filed.

(4) The cost of the premium on such bond shall be paid out of the general revenue fund of the state, or out of the county or out of the various districts, depending upon the class into which such officer belongs. In the event any excess premium over the base premium rate should be charged in the procurement of the bonds herein provided for, such excess premium shall be paid by the individual officer or official.

History.—§§1-4, ch. 20523, 1941.
cf.—§198.07 Appointment of agents of commissioner of revenue.
§113.04 Fidelity bond premium.

CHAPTER 114

VACATING OFFICE

114.01 Office deemed vacant in certain cases.—Every office shall be deemed vacant in the following cases:

(1) By the death of the incumbent.

(2) By his resignation.

(3) By his removal.

(4) By his ceasing to be an inhabitant of the state, district, county, town or city for which he shall have been elected or appointed.

(5) By his neglect or refusal to qualify according to law within sixty days after his election or appointment, or by his refusal to accept the office.

(6) When any office created or continued by the constitution or laws shall not have been filled by election or appointment under the constitution or law creating or continuing such office.

(7) The conviction of the incumbent of any felony, or an offense involving a violation of his official oath.

(8) The decision of a competent tribunal declaring void his election or appointment, and his removal by said tribunal.

(9) The governor may also declare vacant the office of every officer required by law to execute an official bond, when a judgment shall be obtained against such officer for the breach of the condition of such bond.

(10) If any officer shall be required by law to give a bond in the performance of any duty of his office, and shall fail so to do, the governor may declare the office vacant.

History.—§1, ch. 1633, 1868; RS 214; GS 298; RGS 396; CGL 461.

114.02 Absence from state of certain officers.—When any administrative officer of the executive department shall desire to absent himself from the state he shall be permitted to do so upon notifying the governor in writing of such intention, but he shall return to the state and to the performance of his duties whenever requested by the governor to do so, and upon his failure so to do the governor may declare his office vacant and may fill the same as provided by law.

History.—Ch. 1749, 1870; RS 215; GS 299; RGS 397; CGL 462.

114.03 Administrative officers of executive department not to absent themselves.—The secretary of state, the attorney general, comptroller, treasurer, superintendent of public instruction and commissioner of agriculture shall reside at the capital of the state; and, without the consent of the governor and a majority of his cabinet, no member of said cabinet shall absent himself for a longer period of time than thirty days. And in case any incumbent shall fail to comply with and observe the requirements herecf, it shall be deemed an abandonment and vacation of the office, and the governor may fill such vacancy and office according to law.

History.—Ch. 1845, 1871; RS 216; GS 300; RGS 398; CGL 463.

114.04 Filling vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a state, district or county office (other than a member or officer of the legislature), the governor shall fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and in cases requiring the confirmation or the advice and consent of the senate, the person so appointed may hold until the end of the next ensuing session of the senate unless an appointment be sooner made and confirmed and consented to by the senate.

History.—§2, ch. 1633, 1868; RS 217; GS 301; RGS 399; CGL 464.

cf.—§100.111 Vacancies, filling.

CHAPTER 115

LEAVES OF ABSENCE TO OFFICIALS

115.01 Leave of absence for military service.—Any county or state official of the state, subject to the provisions and conditions hereinafter set forth, may be granted leave of absence from his office, to serve in the volunteer forces of the United States, or in the national guard of the state, or in the regular army or navy of the United States, when the same shall be called into active service of the United States during war between the United States and a foreign government.

History.—§1, ch. 7393, 1917; RGS 400; CGL 465.

115.02 Governor to grant application; proviso.—When any such officer shall volunteer or be called into the service of the United States during war, the governor shall, upon application being made by such officer, grant such officer leave of absence during the time he shall be retained in such military service; provided, such service shall not extend beyond the term of office of such officer, in which event the office shall be filled by election at the expiration thereof.

History.—§2, ch. 7393, 1917; RGS 401; CGL 466.

115.03 Appointment of deputy; bond.—Before applying for such leave of absence as above mentioned, such officer shall appoint a capable and competent deputy to take over and perform the duties of the office, and the bond of such officer shall be in full force during the remainder of his term of office, in addition to which such deputy shall be required to furnish good and sufficient bond in a sum of not more than one-half of the amount of the bond of the officer appointing him as such deputy, for the faithful performance of such duties.

History.—§3, ch. 7393, 1917; RGS 402; CGL 467.
cf.—§113.04 Payment of premium on bond.

115.04 Apply to certain officers.—The provisions of §§115.01-115.06 shall only apply to such officers as are now authorized by law to appoint deputies.

History.—§4, ch. 7393, 1917; RGS 403; CGL 468.

115.05 Duties of deputy.—Any deputy qualifying under the provisions of §§115.01-115.06 shall perform all of the duties that may devolve upon the officer appointing him, and he shall sign all official papers and documents in the name of the officer so appointing him as such deputy, and his said acts as such deputy shall in all respects be as binding as if performed by the officer appointing such deputy.

History.—§5, ch. 7393, 1917; RGS 404; CGL 469.

115.06 Reassumption of duties.—Upon his being mustered out of the service of the United States, such officer granted leave under §115.01 shall immediately enter into the duties of his office for the remainder of the term for which he was elected.

History.—§6, ch. 7393, 1917; RGS 405; CGL 470.

115.07 Officers' and employees' leave of absence.—All officers or employees of this state, or of the several counties or municipalities of this state, who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the national guard, shall be entitled to leave of absence from their respective duties, without loss of pay, time or efficiency rating, on all days during which they shall be engaged in field or coast defense exercise or other training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active duty; provided that leaves of absence granted as a matter of legal right under the provisions of this section shall not exceed seventeen days in any one annual period; provided, further, that leaves of absence for additional or longer periods of time without pay for assignment to duty with civilian conservation corps units or other functions of a military character may be granted in the discretion of employing or appointing authority of any state, county or municipal employee and when so granted shall have the force and effect of other leaves of absence authorized by this section.

History.—§1, ch. 17975, 1937; CGL 1940 Supp. 470(1); §1, ch. 26852, 1951.
cf.—§250.48 Leaves of absence.

115.08 Definitions.—The term active military service as used in this law shall signify active duty in the Florida defense force or federal service in training or on active duty with any branch of the army of the United States, the United States navy, the marine corps of the United States, the coast guard of the United States, and service of all officers of the United States public health service detailed by proper authority for duty either with the army or the navy, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

The term period of active military service as used in this law shall begin with the date of entering upon active military service, and shall terminate with death or a date thirty

days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

History.—§2, ch. 20718, 1941.

115.09 Leave to public officials for military service.—All state and county officials in the state, and all others who hold office under the government of the state, and who are officers or enlisted men either in the Florida defense force, the national guard, the naval militia, marine corps, unorganized militia, United States army reserve, United States navy reserve, United States marine corps reserve, United States coast guard reserve, or officers or enlisted men in any other class of the militia, or county school officers, and all municipal officials in the state, may, subject to the provisions and conditions hereafter set forth, be granted leave of absence from their respective offices and duties to perform active military service, the first thirty days of any leave of absence to be with full pay and the remainder without pay.

History.—§1, ch. 20718, 1941; §1, ch. 20863, 1941.

115.10 Leave to be granted by governor.—Application for such leave of absence shall be made to the governor of the state and may be granted or denied by the governor in his discretion, as the public interest may require.

History.—§3, ch. 20718, 1941.

115.11 Leave not to extend beyond term of office.—In the event that the term of office of an official on leave shall expire during such leave, the office of that official shall be filled by election or appointment as may be required by law; provided, however, that said official on leave shall have the right to qualify and become a candidate for such office, and, if nominated or elected shall have the same rights and privileges herein accorded to an incumbent.

History.—§4, ch. 20718, 1941.

115.12 Rights during leave.—During such leave of absence such official shall be entitled to preserve all seniority rights, efficiency ratings, promotional status and retirement privileges. The period of active military service shall, for purposes of computation to determine whether such person may be entitled to retirement under the laws of the state, be deemed continuous service in the office of said official. While absent on such leave without pay, said official shall not be required to make any contribution to any retirement fund.

History.—§5, ch. 20718, 1941.

115.13 Resumption of official duties.—Upon said officer terminating his active military service, he shall immediately enter upon the duties of his office for the unexpired portion of the term for which he was elected or appointed.

History.—§6, ch. 20718, 1941.

115.14 Employees.—All employees of the state, and of the several counties of the state, and of the municipalities or political subdivisions of the state, may, in the discretion of the employing authority of such employee, be granted leave of absence under the terms of this law, and upon such leave of absence being granted, said employee shall enjoy the same rights and privileges as are hereby granted to officials under this law, insofar as may be.

History.—§7, ch. 20718, 1941.

115.15 Adoption of federal law for employees.—The provisions of section 8 of chapter 720 Acts of Congress of the United States, approved September 16, 1940 (Title 50 App. Section 308, U. S. C. A.), insofar as it relates to the re-employment of public employees granted a leave of absence on active military duty under this law, shall be applicable in this state and the refusal of any state, county, or municipal official to comply therewith shall subject him to removal from office.

History.—§8, ch. 20718, 1941.

CHAPTER 116

POWERS AND DUTIES OF OFFICERS

116.01 Payment of public funds into treasury.—Every state and county officer within this state, authorized to collect funds due the state or county, shall pay all sums officially received by him into the state or county treasury promptly, within thirty days after the first day of the month next succeeding the day receiving the same.

No officer shall hereafter be entitled to receive any commission or compensation for collecting said funds, where he fails or refuses to pay the same over for thirty days after the expiration of the time for payment as provided in this section.

History.—§§1, 2, ch. 6205, 1911; RGS 406; CGL 471.
cf.—§219.07 Disbursements of public funds collected.

116.02 Payment of commissions on unremitted funds prohibited; penalty.—It is unlawful for any state or county officer or any board of county officers, required to audit the accounts of officers under the laws of this state, to approve or pay any commissions on funds collected and not paid over as required by §116.01 and any officer violating the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not exceeding one thousand dollars or by imprisonment in the state prison for a term not exceeding one year.

History.—§3, ch. 6205, 1911; RGS 5328; CGL 7461.

116.03 Officers to report fees collected.—Each state and county officer who receives all or any part of his compensations in fees or commissions, or other remuneration, shall keep a complete report of all fees and commissions, or other remuneration collected by him, and shall make a report to the state comptroller of all such fees and commissions, or other remuneration, annually on the 31st day of December of each and every year. Such report shall be made upon forms to be prescribed from time to time by the state comptroller, and shall show in detail the source, character and amount of all his official expenses and the net amount that the office has paid up to the time of making such report. All officers shall make out, fill in and subscribe and properly forward to the state comptroller such reports, and to swear to the accuracy and competency of such reports.

History.—§§1, 2, ch. 6815, 1915; RGS 407; CGL 472; §1, ch. 24198, 1947.
cf.—§298.401 Tax collectors and assessors; compensation; general drainage; service.

116.04 Failure of officer to make sworn report of fees.—Any officer who shall fail or refuse to make, subscribe and swear, or to file with the comptroller a report of all fees, commissions or other remuneration collected by him, as required by law, or if any officer shall knowingly or willfully make false or incomplete reports, or in any report violate any of the provisions of §116.03 he shall be guilty of a misdemeanor, and upon conviction he shall be punished by a fine of not more than one thousand dollars, or by imprisonment not exceeding six months, for each offense.

History.—§2, ch. 6815, 1915; RGS 5356; CGL 7491.
cf.—§775.06 Alternative punishment.

116.05 Examination and publication by comptroller.—The comptroller shall have examined and verified any of the reports received under §116.03 whenever in his judgment the same may be necessary, and the comptroller

shall cause the matter and things in each of said reports to be published one time in a newspaper published in the county in which such report originated, in such form as he shall direct, and the expense of such publication shall be paid by the county commissioners of such county.

History.—§3, ch. 6815, 1915; RGS 408; CGL 473.

116.06 Summary of reports; certain officers not required to report fees.—A summary of all such reports shall be included by the comptroller in his annual report to the governor; provided, that jurors, notaries public and county surveyors shall not be required to make such reports as provided for in §116.03.

History.—§4, ch. 6815, 1915; RGS 409; CGL 474.

116.07 Account books to be kept by sheriffs and clerks.—All sheriffs and clerks of the circuit court and ex-officio clerks of the boards of county commissioners of this state, shall keep books of account and of record in accordance with forms to be approved by the state auditor, except such books and forms are now otherwise provided for by law.

History.—§1, ch. 5716, 1903; GS 814; RGS 410; CGL 475.

116.08 County commissioners to furnish books.—The county commissioners shall furnish the books provided for in §116.07.

History.—§2, ch. 5176, 1903; GS 815; RGS 411; CGL 476.
cf.—§28.22 Record book to be kept.

116.09 Penalty for failure.—Any officer who shall neglect or refuse to comply with the duties imposed by §116.07 shall be subject to suspension from office by the governor.

History.—§4, ch. 5176, 1903; GS 817; RGS 412; CGL 477.

116.10 Nepotism prohibited.—Any state officer, member of state board, county officer, member of county board or commission, city official, or his appointee, who shall knowingly employ, either directly or indirectly, any person related within the fourth degree, either by consanguinity or by affinity, to such state officer, member of state board, county officer, member of county board or commission, city official, or his appointee, shall be deemed guilty of misfeasance and malfeasance in office and subject to removal therefor; provided, however, that the provisions of this section shall not apply to the officers above who employ only one person related to them as above set out.

History.—§1, ch. 16088, 1933; CGL 1936 Supp. 478(1).

116.11 Penalty.—Any state officer, member of state board, county officer, member of county board or commission, city official, or his appointee, violating the provisions of §116.10 shall forfeit all compensation, salary, fees or emoluments of such office during the time that such state officer, member of state board, county officer, member of county board or commission, city official or his appointee violates the provisions of §116.10.

History.—§2, ch. 16088, 1933; CGL 1936 Supp. 478(1).

116.12 State officials' and employees' purchase of motor vehicles.—It shall be unlawful for any state officer or employee to purchase or contract for the purchase of any motor vehicle for the use of himself or another to be paid for out of funds of the state or any department thereof unless a specific appropriation directly and expressly authorizing the purchase of such motor vehicle has been made, and it shall be unlawful for the comptroller of the state to issue or pay any warrant in violation of this section. For the purpose of this section an appropriation for the purchase of motor vehicles shall not be deemed to be expressly made by the legislature unless an item authorizing the purchase of such motor vehicle in specific terms has been mentioned in the appropriation out of which the same is proposed to be made. This section shall extend to and include the purchase of motor vehicles of all kinds, provided this section shall not apply to purchase of motor vehicles by the state road department.

History.—§1, ch. 13810, 1929; CGL 1936 Supp. 1363(1);§1, ch. 20716, 1941; am. §7, ch. 22858, 1945.

116.13 Sale of property by heads of state institutions without permission prohibited.—The superintendents of state asylums, and the presidents and principals of all state educational institutions are prohibited from selling or otherwise disposing of property belonging to the state, except in cases where they have previously obtained permission from their respective boards of commissioners or trustees.

History.—§1, ch. 4181, 1893; GS 3493; RGS 5373; CGL 7507.

116.14 Receipts required from purchasers of state property.—Upon the sale of any state property by the superintendent and presidents of state institutions as provided by law, they shall take receipt for the same from the purchaser, which receipt shall be forwarded, together with the proceeds of the sale, to the state treasurer.

History.—§2, ch. 4181, 1893; GS 3494; RGS 5374; CGL 7508.

116.15 Penalty for violation of §§116.13 and 116.14.—Any violation of §§116.13 and 116.14 shall subject the offender, upon conviction thereof, to a fine of not less than fifty nor more than five hundred dollars, at the discretion of the court.

History.—§3, ch. 4181, 1893; GS 3495; RGS 5375; CGL 7509.

116.16 Motor vehicles; purchase by board of control and commissioners of state institutions.—The state board of control, and the board of commissioners of state institutions are hereby authorized, subject to the approval of the budget commission, to purchase automobiles, trucks, tractors and other automotive equipment for the use of institutions under the management of said board of control and said board of commissioners of state institutions.

History.—§1, ch. 20896, 1941; §6, ch. 26859, 1951.
cf.—§116.12 State officials' and employees' purchase of motor vehicles.

116.18 Motor vehicles; purchase by department of agriculture.—The department of agriculture is hereby authorized to purchase all necessary trucks for exhibit and laboratory use by said department, provided such purchases

are within the appropriations for necessary and regular expense of such department, or within the motor vehicle appropriation therefor.

History.—§2-A, ch. 20896, 1941.

116.19 Motor vehicles; exempted departments.—No part of §§116.16-116.20 and §216.25 is intended to apply to the Florida board of forestry and parks, the state road department, the Florida industrial commission, the railroad commission, the state department of public safety or the state beverage department.

History.—§3, ch. 20896, 1941; §1, ch. 23854, 1947; §24, ch. 57-1.

116.20 Motor vehicles; appropriation required for purchase.—It shall be unlawful for any state officer or employee, agency, department or institution not included within the provisions of §§116.16 and 216.25 to purchase, or contract for the purchase of, any motor vehicle for the use of himself, or another, to be paid for out of the funds of the state, or any department thereof, unless the legislature shall make specific appropriation authorizing the same. Provided, however, that the provisions of this section shall not apply to the departments, their officers, agents and employees, excepted in §116.19 and provided further, that the purchases authorized in §§116.16 and 216.25, may be made in the manner and form as therein set forth.

History.—§4, ch. 20896, 1941.

116.21 Unclaimed bond money; limitation.—(1) The sheriffs and clerks of the courts of the various counties of the state are hereby authorized at their discretion on or before the 25th day of September of each and every year hereafter to pay into the fine and forfeiture fund of their respective counties any or all unclaimed bond and evidence moneys in their hands or custody by virtue of their office as sheriff or clerk, which unclaimed bond and evidence money came into their hands in cases which have been finally disposed of or bonds estreated and no information filed, or defendant bound over and no information filed, or in which no case has been made, prior to January 1 of the preceding year and for which moneys claim has not been made.

(2) The sheriffs and clerks of the various courts of the respective counties may, during the month of July of each year, hereafter make and compile a list of any or all unclaimed bond and evidence moneys which came into their hands as provided in subsection (1) above. Such compilation shall list in addition to the name of the defendant, the names of such bondsmen, if known, and shall specify the respective amounts of such unclaimed bonds or evidence moneys. Such list or compilation shall be published one time during the month of July in a newspaper of general circulation in the county served by such sheriff or clerk and said notice shall specify that unless such bond moneys or evidence moneys are claimed on or before the first day of September after such publication that same shall be declared forfeited to such county. Proof of such publication shall be made by the publisher of such newspaper and shall be filed and recorded in the minutes of the county commissioners of such county.

(3) Persons having or claiming any interest in said funds or any portion of them shall file their written claims with the sheriff or clerk of the court of the county having custody of such funds within the time specified by said notice and shall make sufficient proof to said sheriff or clerk of his ownership and upon so doing shall be entitled to receive any part of the moneys so claimed. Unless claim is filed within such time as aforesaid, all claims in reference thereto are forever barred.

(4) The cost of publishing the notices as required by subsection (2) shall be paid by the county commissioners, and the sheriff or the clerk shall receive as compensation the regular fee allowed by statute for the collection of fines, fees and costs adjudged to the state upon the amounts remitted to the fine and forfeiture fund. Upon such payment to the fine and forfeiture fund, the sheriff or clerk shall be released and discharged from any and all further responsibility or liability in connection therewith.

History.—§§1-4, ch. 22050, 1943.

116.22 Definitions; forfeiture of personal property in custody of clerks of various courts.—In construing this act and each and every section, word, phrase or part thereof, where the context permits, the term "personal property" or "chattels personal" shall include all property of any kind except real estate and anything permanently attached thereto.

History.—§1, ch. 61-380.

116.23 Forfeiture of personal property or chattels personal in the custody and control of the clerk of the circuit court.—(1) All personal property or chattels personal listed, used, offered or received in evidence at the trial of any criminal or quasi-criminal case in any circuit court, criminal court of record, court of record, civil and criminal court of record, county court, county judge's court, or any other state court in this state having criminal jurisdiction and wherein a verdict or judgment was returned or entered, and the time for taking an appeal from said verdict or judgment having expired, and said property not having been disposed of and a claim not having been made or filed therefor, within sixty days from the time for taking an appeal shall be subject to forfeiture under the provisions of this act as hereinafter set forth.

(2) All personal property and chattels personal in the custody and control of the clerk of any circuit court, criminal court of record, court of record, civil and criminal court of record, county court, county judge's court, or any other court of this state except municipal courts having criminal jurisdiction, and of any judge of any such state court not having a clerk, and said property having been in the custody and control of said clerk or judge for seven years or more and not having been disposed of, and no claim for said property having been made or filed for the same during said time shall be subject to forfeiture as hereinafter set forth.

History.—§2, ch. 61-380.

116.24 Disposition and appraisal of personal property or chattels personal held by the clerk of the circuit court under this chapter.—

(1) The clerk of every court mentioned in §116.23(1) (except the clerk of the circuit court) and the judge of any state court having criminal jurisdiction and not having a clerk shall, at the expiration of sixty days after the expiration of the time for taking an appeal from any verdict or judgment entered in any criminal or quasi-criminal case, deliver to the clerk of the circuit court of the county where said trial occurred all personal property or chattels personal listed, used, offered or received as evidence at said trial and not previously disposed of. Said clerk or judge aforesaid shall also within sixty days deliver and turn over to the clerk of the circuit court any and all personal property or chattels personal that have been held or been in possession of said clerk or judge for seven or more years and not previously disposed of. All of the personal property and chattels personal above mentioned shall be subject to forfeiture under the provisions of this act.

(2) When the clerk, (except the clerk of the circuit court) or judge, if the trial court has no clerk, delivers the property mentioned in subsection (1) to the clerk of the circuit court, there shall also be delivered with said property a report or return setting forth the following information: Style and number of the case; the name and address of each defendant; the offense charged; the verdict or judgment rendered and entered; an itemized list of all property listed, used, offered or received in evidence at the trial of said case, with the appraised value thereof (said appraisal may be made by the clerk or judge or under his direction); the names of the owners of the property and all lien holders, with their respective addresses and if any of the property is a motor vehicle subject to registration, then the names and addresses of the owner and lien holder, if any, as evidenced by a certificate of title as shown by the record of the motor vehicle commissioner. Said report or return, when filed with the clerk of the circuit court shall become a part of the records of said case.

(3) The clerk of the circuit court of each judicial circuit in this state, shall sixty days after the expiration of the time for taking an appeal from any verdict or judgment entered in any criminal or quasi-criminal case tried in the circuit court, make and file in said case a report or return setting forth the information called for in subsection (1) and when said report or return is made it shall become a part of the records thereof. The said clerk shall also make and file in the office of the clerk of the circuit court within sixty days a report or return showing all personal property or chattels personal that have been held or have been in possession of the said clerk for seven or more years, setting forth in said report the information called for in the report or return mentioned in subsection (1) and when said report or return is filed it shall become a part of the records in said case.

(4) It shall be the duty of the clerk of the circuit court after the property herein mentioned is delivered to him, to keep it until disposed of as hereinafter provided.

History.—§3, ch. 61-380.

116.25 Proceedings for forfeiture, notice of holding and order to show cause.—

(1) The report or return heretofore mentioned, that is filed with or made by the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county wherein the case was tried shall have jurisdiction, without regard to value, under and by virtue of that provision of Art. V, §6(3), of the state constitution, under which the circuit court may be given jurisdiction of "such other matters as the legislature may provide." The report or return shall be sufficient as a petition or libel, notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The return may be amended at any time before final judgment, provided a copy of said amendment shall be furnished to any person, firm or corporation that has filed a claim to the property prior to the filing of the amendment. In event an amendment is filed to the report or return, then the court may allow time for the claimant or any person, firm or corporation who may have filed a claim prior to said amendment, to reply to the amended report or return.

(2) Upon the filing of said report or return, the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the property held by said clerk, giving notice that he holds said property and directing that all persons, firms or corporations owning, having or claiming any interest therein or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within twenty days from personal service of said citation, when personal service is had. Personal service shall be made on all parties in Florida having liens noted upon a certificate of title as shown by the records in the office of the motor vehicle commissioner.

(3) The citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT IN AND FOR
COUNTY, FLORIDA.

IN RE: FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY (Then set out description of property to be forfeited)

THE STATE OF FLORIDA

TO: ALL PERSONS, FIRMS, AND CORPORATIONS OWNING, HAVING OR CLAIMING ANY INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby noti-

fied that the above described property is held in the custody of the Clerk of the above Court, under and by virtue of the Laws of Florida, Acts of 1961, and is now in the possession of said Clerk of the above County. YOU AND EACH OF YOU are hereby further notified that a Petition, under said Chapter has been filed in the above styled Court, seeking the forfeiture of the above described property. YOU AND EACH OF YOU ARE HEREBY DIRECTED AND REQUIRED to file your claim, if any you have, and show cause, on or before the _____ day of _____, 19 _____, if not personally served with process herein, and within twenty days from personal service, if personally served with process herein, why the said property should not be forfeited pursuant to the Laws of Florida, Acts of 1961. Should you fail to file your claim as herein directed judgment will be entered against you in due course. Persons not personally served with process may obtain a copy of the Petition to forfeiture filed herein from the undersigned Clerk of Court.

WITNESS my hand and official seal of the above mentioned Court at _____, Florida, this _____ day of _____, 19_____

Clerk of the above mentioned Court

(COURT SEAL)

By _____

Deputy Clerk

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than twenty-one nor more than thirty days from the posting or publication thereof, and as to those personally served with process within twenty days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the appraised value of the property held is shown by the return to be five hundred dollars or less, the above citation shall be served on all persons, firms or corporations not personally served by posting said citation at three public places in the county; one of which shall be at the front door of the courthouse; if the value of the property is more than five hundred dollars, the citation shall be published for two consecutive weeks in some newspaper of general circulation in the county where the property is held, if there be such a newspaper published in the county and if not, then notice of publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed in said cause and become a part of the record thereof. Failure of the record to show proof of publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—§4, ch. 61-380.

116.26 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the held property, may, at any time after said claim is filed with the clerk of court, obtain possession of the held property by filing a petition therefor with the clerk of the circuit court and posting with him, to be approved by said clerk, a surety bond, payable to the governor of the state in twice the amount of the value of said property as fixed in the return to or by the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to said clerk the value of the property together with all costs of the proceedings, if judgment of forfeiture be entered. Upon posting of such bond with the clerk and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—§5, ch. 61-380.

116.27 Proceedings when no claim is filed.—When no claim is filed in the cause within the time required, the clerk shall enter a default against all persons, firms and corporations, claiming or having any interest in and to the property held by the clerk and the cause may then proceed in the same manner as a common law action after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—§6, ch. 61-380.

116.28 Proceedings when claim is filed.—When one or more claims are filed in the cause, the cause shall be tried upon the issues made thereby, with the petition for forfeiture, with any affirmative defenses being deemed denied without further pleadings. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property held, after which the cause shall proceed as in other common law cases; except claimant shall prove to the satisfaction of the court, that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes and laws of this state; and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of this state and said property had been offered or received in evidence at the trial for said violation, then such conviction and the offering or receiving of said property in evidence at such trial shall be prima facie evidence that the claimant had reason to believe that the property might be used for or in connection with a violation of a criminal statute and law of this state, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such violation. Trial of all

such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim when filed.

History.—§7, ch. 61-380.

116.29 Judgment of forfeiture.—On final hearing the report or return of the clerk of the circuit court or the clerk of any other court heretofore mentioned, or the judge of any court not having a clerk as heretofore referred to, shall be taken as prima facie evidence that the property therein described, and delivered to the clerk of the circuit court was or had been used in or in connection with the violation of some law of the state, and shall be sufficient predicate for a judgment of forfeiture in absence of other proofs and evidence. The burden shall be upon the claimant to show that the property was not so used or if so used that the claimant had no knowledge of such violation and no reason to believe that the property so held was, would be or had been used for the violation of a statute or law of the state. Where such property is incumbered by a lien or retain title agreement under circumstances wherein the lien holder had no knowledge that the property was, had been or would be used in violation of the statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests; subject however, to the lien of such innocent lien holder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction, sale, and allocation thereof to some governmental agency, function or use, or otherwise as the court may determine. Sales of such property may be at a public or private sale, as the court may determine and direct, to the highest and best bidder therefor for cash, after public notice as the court may direct, which notice shall be not less than ten nor more than thirty days after the date of such forfeiture order. Notice of such sale shall be published once only at least seven days prior to the sale.

Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property, or portion thereof subject to forfeiture, and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest in the held property and permit the claimant to redeem the property upon the payment of a sum equal to said value and costs, which sum shall be disposed of as would the proceeds of a sale of property under a judgment of forfeiture.

History.—§8, ch. 61-380.

116.30 Disposition of proceeds of forfeiture.—All sums received from a sale or other disposition of the held property shall be paid into the fine and forfeiture fund and shall become a part thereof.

History.—§9, ch. 61-380.

116.31 Fees for services; expenses.—

(1) The fee of any clerk of court for preparing the report or return taken and considered as the state's petition or libel in rem shall be five dollars. The fee of the clerk of the circuit court in connection with services of said clerk in the forfeiture proceedings contemplated by this chapter shall be ten dollars. The fees of all other officers shall be those provided by law for like services in other cases and matters. The fees provided by this section shall be paid from the general fund or the fine and forfeiture fund of the county.

(2) The reasonable cost of posting the citation or of publication as required by this chapter and the cost for the safekeeping of property in the custody of the clerk of the court shall be paid from the general fund or the fine and forfeiture fund of the county.

History.—§10, ch. 61-380.

116.32 State attorney to represent state.—Upon the filing of the return or report with or by the clerk of the circuit court, the clerk of the circuit court shall furnish the state attorney with a copy thereof and a copy of the citation and the state attorney shall represent the state in the forfeiture proceedings. The attorney general shall represent the state in all appeals from judgments of forfeiture to the supreme court. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—§11, ch. 61-380.

116.33 Exercise of police power.—It is deemed by the legislature of the state, that this act is necessary for the more efficient and speedy method of forfeiture of property that is held by the clerks of the circuit court of Florida, and a lawful exercise of the police power of the state for the protection of the public welfare of the people of the state. All the provisions of this act shall be liberally construed for the accomplishment of the purposes herein mentioned. This act is to be considered as cumulative and not an exclusive method of forfeiture.

History.—§12, ch. 61-380.

116.34 Facsimile signatures.—

(1) SHORT TITLE.—This act may be cited as the uniform facsimile signature of public officials act.

(2) DEFINITIONS.—As used in this section:

(a) Public security means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(b) Instrument of payment means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) Instrument of conveyance means an instrument conveying any interest in real property.

(d) Authorized officer means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security, instrument of conveyance or instrument of payment is required or permitted.

(e) Facsimile signature means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(3) USE OF FACSIMILE SIGNATURE.—Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security or instrument of conveyance, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed.

(b) Any instrument of payment.

(c) Any official order, proclamation or resolution; provided, however, that this shall not apply to the signing of legislative bills or veto messages.

Upon compliance with this act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(4) METHOD OF USE OF FACSIMILE SEAL.—When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(5) VIOLATION AND PENALTY.—Any person who knowingly, without authorization or with intent to defraud, uses on any of the documents referred to in subsection (3), a facsimile signature, or any reproduction of it, of any authorized officer, or any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions, shall be punished by imprisonment in the state prison not exceeding 10 years or in the county jail not exceeding 1 year or by fine not exceeding $5,000.00 or by both such fine and imprisonment.

(6) UNIFORMITY OF INTERPRETATION.—This section shall be so construed as to effectuate its general purpose to make uniform the law of states which enact it.

History.—§§1-6, ch. 63-441.

CHAPTER 117

NOTARIES PUBLIC

117.01 Appointment, term of office, powers, bond and oath.—The governor may appoint as many notaries public as to him shall seem necessary, each of whom shall be at least twenty-one years of age, a citizen of the United States, and a permanent resident of the state for one year; and upon the death, removal or resignation of any such notaries public, to appoint others in their room, which said notaries public shall hold their respective offices for four years, and shall use and exercise such office of notary public for such places and within such limits and precincts as the governor shall direct, to whose protestations, attestations and other instruments of publication due credence shall be given. Every notary public shall, prior to his or her executing the duties of said office, give bond to the governor for the time being, in the penalty of $500.00 conditioned for the due discharge of his said office, and also take an oath that he will honestly, diligently and faithfully discharge the duties of a notary public. Said bond shall be approved and filed in like manner and place as the bonds of county officers of the county in which the person so appointed notary public shall reside; provided, however, where such bond is executed by a surety company for hire, duly authorized to transact business in Florida, said bond may be approved by the state comptroller.

History.—Act Sept. 13, 1822; §1, ch. 4544, 1897; RS 218; GS 302; RGS 413; CGL 479; §1, ch. 21765, 1943; §1, ch. 63-138.
cf.—§113.01 Fee for commissions issued by governor.
Ch. 137, Bonds of county officers.

117.02 Women eligible.—

(1) Women over twenty-one years of age are eligible to appointment by the governor as notaries public, and to hold and exercise the office thereof upon the same terms and conditions, and with the same powers and emoluments, as notaries now appointed by the governor.

(2) Any woman who is commissioned as a notary public and subsequently changes her name by marriage or any other method, may continue to hold her commission under the name in which it was issued until said commission shall have expired. Upon expiration, she shall then apply for a new commission using her correct name, except those married women who use their maiden name, or the name in which said commission was issued, in their occupation or profession.

History.—§1, ch. 4742, 1899; GS 303; RGS 414; CGL 480; §2, ch. 63-138.

117.03 May administer oaths.—In all cases where it may be necessary to the due and legal execution of any writing or document whatever to be attested, protested or published under the seal of his office, any notary public may administer an oath, and make certificate thereof, which shall have the same effect as if administered and certified by a justice of the peace; and any person making a false oath before a notary public shall be guilty of perjury in like manner as if the same was made before any justice of the peace of this state, and be subject to like penalties, forfeitures and disabilities as are prescribed by law in cases of willful and corrupt perjury.

History.—Sept. 13, 1822; RS 219; GS 304; RGS 415; CGL 481.

117.04 May solemnize marriages and take acknowledgments.—Notaries public are authorized to solemnize the rites of matrimony, and to take renunciation and relinquishment of dower, and the acknowledgments of deeds and other instruments of writing for record, as fully as justices of the peace and other officers of this state are; and for so doing they shall be allowed the same fees as allowed by law to other officers for like services.

History.—§2, ch. 1127, 1860; RS 220; GS 305; RGS 416; CGL 482.

117.05 Fees.—The fees of notaries public shall be as follows: For protesting bills of exchange, promissory notes, noting protest of captain of vessel and all other papers necessary to be protested, both for non-acceptance and non-payment, including the entering and registering of same, issuing certificates with seal, all necessary notices and postage and each and every act necessary to perfect such protest, two dollars; administering each oath, ten cents; attending at a demand, tender or deposit and noting the same, one dollar; each certificate with seal thereto, fifty cents; each order for survey, fifty cents; copying any paper necessary to be copied, the same as allowed clerks of the circuit court.

History.—Ch. 3874, 1889; RS 221; GS 306; RGS 417; CGL 483.
cf.—§320.04(2) Motor vehicle licenses; service charge.
§330.09(2) Aircraft, licenses; duties of tax collectors; service charge.
§116.06 Certain officers not required to report fees.

117.06 Validity of acts prior to first day of April, 1903.—Any and all notarial acts that were done by any notary public in the state prior to the first day of April, 1903, which would have been valid had not the term of office of the notary public expired, are declared to be valid.

History.—§1, ch. 5217, 1903; GS 307; RGS 418; CGL 484.

117.07 Must state time of expiration of commission; and affix seal.—Every notary public in the state shall add to his or her official signa-

ture to any acknowledgment taken before, or certificate made before him or her, relating to or affecting the sale, mortgage, transfer or assignment of any interest in and to any real or personal property, a statement of the time of the expiration of his or her commission as such notary public in words and figures as follows: "My commission expires_____" (Herein insert the date when commission expires.) A notary seal shall be affixed to all documents notarized and shall include the words "Notary Public—State of Florida at Large." Such seal may also include the name of the notary public.

History.—§1, ch. 5218, 1903; GS 308; RGS 419; CGL 485; §3, ch. 63-138.

117.08 Notary public acting after expiration of commission.—Every notary public in this state who shall take any acknowledgment of any instrument as a notary public, or who makes any certificate as such, after the expiration of his commission, shall, upon conviction, be punished by fine not exceeding one hundred dollars, or imprisonment not to exceed three months.

History.—§2, ch. 5218, 1903; GS 3496; RGS 5376; CGL 7510. cf.—§775.06 Alternative punishment.

117.09 Penalties.—

(1) Every notary public in the state shall require reasonable proof of the identity of the person whose signature is being notarized and such person must be in the presence of the notary public at the time the signature is notarized. Any notary public violating the above provision shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500.00 or by imprisonment for not more than 6 months or by both such fine and imprisonment. It shall be no defense under this section that the notary public acted without intent to defraud.

(2) Any notary public in this state who shall falsely or fraudulently take any acknowledgment of any instrument as a notary public or who falsely or fraudulently makes any certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on any written instrument shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the state prison not exceeding 5 years or by a fine not exceeding $5,000.00 or by both such fine and imprisonment.

History.—§4, ch. 63-138.

CHAPTER 118

COMMISSIONER OF DEEDS

118.01 Appointment and power to take acknowledgments.—The governor may name, appoint and commission one or more commissioners in each of such of the states and territories of the United States, the District of Columbia, and in any foreign country, as he may deem expedient; and such commissioner shall continue in office for four years, and shall have authority to take the acknowledgment and proof of the execution of any deed, mortage or other conveyance of any lands, tenements or hereditaments lying or being in this state, and any contract, letter of attorney, or any other writing under seal to be used or recorded in this state, and such acknowledgment or proof taken or made in the manner directed by the laws of this state and certified by any one of the said commissioners before whom the same shall be taken or made under his seal, which certificate shall be endorsed on or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law for all purposes, as if the same had been made or taken before the proper officer of this state.

History.—§1, Jan. 28, 1831; RS 222; §1, ch. 4757, 1899; GS 309; RGS 420; CGL 486.

118.02 May administer oaths.—Every commissioner appointed by virtue of this chapter may administer an oath to any person who shall be willing and desirous to make such oath before him, and such affidavit made before such commissioner shall be as good and effectual to all intents and purposes as if taken by any magistrate resident in this state and competent to take the same.

History.—§2, Jan. 28, 1831; RS 223; GS 310; RGS 421; CGL 487.

118.03 Oath of office.—Every commissioner appointed as aforesaid before he shall proceed to perform any duty under and by virtue of this law shall take and subscribe an oath before a notary public or justice of the peace in the city or county in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of this state, which oath shall be filed in the office of the secretary of state.

History.—§3, Jan. 28, 1831; RS 224; GS 311; RGS 422; CGL 488.

118.04 Official acts validated.—Any and all official acts heretofore done by any commissioner of deeds, whose commission is more than four years old are declared valid.

History.—§4, ch. 4557, 1899; GS 312; RGS 423; CGL 489.

CHAPTER 119

PUBLIC RECORDS

119.01 Public records open to examination by citizens.—All state, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.

History.—§2, ch. 5942, 1909; RGS 424; CGL 490.

119.02 Penalty.—Any official who shall violate the provisions of §119.01 shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months.

History.—§2, ch. 5942, 1909; RGS 425; CGL 491; §1, ch. 17173, 1935.
cf.—§775.06 Alternative punishment.

119.03 Photographing public records.—In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any such person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the court house as may be, to be determined by the board of county commissioners of the said county. Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the board of county commissioners of said county.

History.—§§1, 2, ch. 6922, 1915; RGS 426; CGL 492.

119.04 Photographing and destruction of public records; alternative procedure.—Any state, county, or district officer, board, department, commission, institution, or other such agency may apply for permission to destroy any public records in the custody of the applicant, either with or without photographing the records prior to their destruction. The application shall be submitted to the secretary of state, the attorney general, and the state auditor, which officers shall constitute ex officio the public records screening board. The public records screening board may approve or disapprove the application, and if it approves it shall specify whether the records shall be photographed prior to their destruction. The public records screening board shall inform the state librarian of its approval of an application to destroy public records. Upon the request of the state librarian, any public records the destruction of which has been approved by the public records screening board shall be delivered into the custody of the state librarian and shall not be destroyed except in his discretion. Photographs made pursuant to this law shall have the same force and effect as the originals thereof would have. Section 92.35, relating to admissibility in evidence, is applicable to public records photographed pursuant to this law. This law is supplemental in nature and provides an alternative procedure to other provisions of law authorizing the photographing of public records.

History.—§1, ch. 57-66.

CHAPTER 120

ADMINISTRATIVE PROCEDURE ACT

PART I RULE MAKING (§§120.011-120.071, 120.09)

PART II ADMINISTRATIVE ADJUDICATION PROCEDURE (§§ 120.20-120.28)

PART III JUDICIAL REVIEW (§§ 120.30-120.331)

PART 1 RULE MAKING

120.011 Legislative intent for part I.—It is the intent of the legislature to establish a uniform procedure to be used by agencies in adopting rules and to provide notice of the adoption and content of rules, and that part I shall supersede all other laws on the same subject. Subsequent inconsistent laws shall supersede part I of this chapter only to the extent that they do so by express reference. No rule shall have retroactive effect unless expressly so provided, nor shall a rule impair or take away vested rights or benefits, other than procedural rights or benefits.

History.—§1, ch. 61-280.

120.021 Definitions.—For the purpose of part I:

(1) Agency means any state board, commission, department, or officer authorized by law to make rules, except the legislative and judicial departments of government, the military, and the governor.

(2) Rule means rule, order, regulation, standard, statement of policy, requirement, procedure, or interpretation of general application, including the amendment or repeal thereof, adopted by an agency to implement, interpret or make specific the law enforced or administered by it, or to govern its organization or procedure affecting the rights, duties, privileges or immunities of, or procedures available to the public or interested parties; but rule shall not include matter concerning only the internal management of the agency, nor special traffic regulations adopted by the state road department pursuant to chapter 317, or the Florida highway code of 1955.

History.—§1, ch. 61-280; (2) §1, ch. 63-552.

120.031 Adoption of rules.—In addition to other rule-making requirements imposed by law:

(1) Only rules adopted by an agency in the manner and form provided in part I shall be valid or effective, and then only if reasonably necessary to effectuate the specific authority granted to the agency by law and not in conflict or inconsistent therewith.

(2) Each rule adopted shall be accompanied by a reference to the legal authority pursuant to which the rule was adopted and a reference to the specific law being implemented, interpreted, or made specific.

History.—§1, ch. 61-280.

120.041 Filing and taking effect of rules.—

(1) Each agency shall file with the secretary of state a certified copy of each rule adopted by it.

(2) Copies of all agreements, cooperative and reciprocal, or contracts and amendments thereto between federal and state agencies, between the several states and their agencies, and between state agencies and local units of government shall be filed with the secretary of state but shall not be published.

(3) Each rule hereafter adopted shall become legally effective only upon filing but shall not become operative until thirty days after the summary of the rule is published in the register except for emergency rules as provided in subsection (4). The operative date of any rule may be postponed subsequent to thirty days after the summary is published in the register by specifying such date in the rule adopted.

(4) In any particular proceedings in which a state agency makes a finding, including a statement of facts constituting an alleged emergency, in writing, that the adoption of a rule is necessary for the immediate preservation of the public health, peace, and safety or general welfare, a rule may be adopted as an emergency rule. A rule adopted as an emergency rule shall remain in effect ninety days, unless such a rule so adopted be deemed necessary as a permanent rule, in which case it shall be adopted in the manner otherwise provided in this part.

(5) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, but such statement shall not be printed in the code.

History.—§1, ch. 61-280; §2, ch. 63-552.

120.051 Publication and distribution of rules.—

(1) The secretary of state shall:

(a) Conduct a systematic and continuing study of the rules and regulations of this state for the purpose of reducing their number and bulk, removing redundancies and unnecessary

repetitions, and make such changes in style and form as shall be required to comply with the rules promulgated under paragraph (c).

(b) Publish in a permanent compilation entitled Florida administrative code all rules adopted by each agency, and publish a monthly bulletin entitled the Florida administrative register containing a summary of and an index to all rules filed during the preceding month. Supplementation of the code shall be made monthly or as often as is practicable.

(c) Prescribe by rule the style and form required of rules submitted for filing and to establish the forms, constructions and procedures for the execution of part I.

(d) Correct grammatical, typographical and like errors not affecting the construction or meaning of the rules and regulations.

(e) All rules and regulations general in form but of such local or limited application as to make their inclusion in the Florida administrative code or any revision or supplement thereof impracticable, undesirable or unnecessary shall be omitted therefrom but shall be filed in the office of the secretary of state. The exclusion of such local or limited rules from publication in the Florida administrative code shall not affect their validity or effectiveness.

(f) Make copies of the Florida administrative code and register available for sale at a price fixed by the secretary of state. Copies shall be made available to other state agencies at cost.

(g) Furnish free copies of the Florida administrative code to the following: one set each to the supreme court of the United States; the circuit court of appeals of the fifth circuit of the United States; the federal district courts within the state; the Florida supreme court; the Florida district courts of appeal; the Florida circuit courts; the Florida senators and representatives in congress; each member of the senate and house of representatives of Florida; the cabinet officers of the state; the state library and the libraries of the university of Florida, the Florida state university, Florida agricultural and mechanical university; two sets each to the law libraries of the university of Florida, Florida agricultural and mechanical university, Stetson university, and the university of Miami; three sets to the library of the attorney general of the state.

(2) Notwithstanding any other provisions of law each agency may print its rules in cooperation with and through the secretary of state; copies of such rules desired by an agency for distribution by it may be obtained from the secretary of state and shall be paid for from the agency's appropriations.

History.—§1, ch. 61-280; §3, ch. 63-552.

120.061 Revolving fund; appropriation.—

(1) There is hereby created and established in the state treasury a revolving fund to be known as the secretary of state's publication revolving trust fund and there is hereby appropriated to said revolving trust fund from the general revenue fund of the state the sum of ten thousand dollars.

(2) All moneys collected by the secretary of state from sales of the code, register and supplements thereto shall be deposited in the revolving trust fund for the purpose of paying the printers' contract cost for the preparation and publication of same and postage for mailing, and for contract costs of other legal indexes and publications prepared by the secretary of state as required in carrying out the purpose of these sections.

(3) The unencumbered balance of money in the revolving trust fund at the beginning of each biennium shall not be in excess of ten thousand dollars. Any excess of such balance shall be transferred to the general revenue fund. An amount sufficient to bring the revolving trust fund up to ten thousand dollars is appropriated and shall be transferred from the general revenue fund for the purposes set forth in this section.

(4) All fees collected by the secretary of state for services rendered under these sections shall be deposited in the revolving trust fund.

History.—§8, ch. 29777, 1955; §1, ch. 61-292; §4, ch. 63-552.
Note.—Formerly §120.17.

120.071 Service of process on state agencies.—Each agency shall designate a person within the agency upon whom service of process may be served. The name and address of such person shall be filed with the secretary of state. If the person's name is not so filed, service of process may be had on the agency by serving the secretary of state in the name of the agency concerned.

History.—§1, ch. 61-280.

120.09 Disqualification of members of any commission, administrative body, etc.; substitutions; effect of orders, judgments, etc.—

(1) Any member of a commission elected by the people of the state and authorized by the statutes to exercise judicial powers may be disqualified, either voluntarily or involuntarily, from serving in a particular investigation, inquiry, hearing, trial, appeal, matter or thing on the same grounds, in the same manner and to the same extent as circuit judges may be disqualified from acting in a judicial capacity. In the event a commissioner is disqualified as aforesaid the governor shall appoint a circuit judge to serve temporarily in such pending matter in lieu of the disqualified commissioner. Provided, however, the provisions of this section shall not apply to the state insurance commissioner and the commissioner of agriculture.

(2) Any member of a commission, authority, administrative body or governmental agency existing under the laws of the state may be disqualified, either voluntarily or involuntarily, for bias, prejudice, interest or other causes, to serve in a particular investigation, inquiry, hearing, trial, appeal, matter or thing. If the disqualified member holds his membership by appointment the appointing power shall appoint a substitute to serve temporarily in such pending matter in lieu of the disqualified member

If the disqualified member is an elected official and is not authorized by the statutes to exercise judicial powers the governor shall appoint a substitute to serve temporarily in such pending matter in lieu of such disqualified member. Provided, however, the provisions of this section shall not apply to the state insurance commissioner and the commissioner of agriculture.

(3) Any judgment, order, determination or decision made with respect to any investigation, inquiry, hearing, trial, appeal, matter or thing by any commission, authority, administrative body or governmental agency, consisting in whole or in part of persons appointed under the provisions of this law, shall be as conclusive and effective as if such judgment, order, determination or decision had been rendered by the commission, authority, administrative body or governmental agency as it was constituted prior to any substitution of members hereunder.

History.—Comp. §§1-3, ch. 26854, 1951.

PART II

ADMINISTRATIVE ADJUDICATION PROCEDURE

120.20 Legislative intent for part II.—It is the intent of the legislature to establish minimum requirements for the adjudication of any party's legal rights, duties, privileges or immunities by state agencies. Subsequent inconsistent laws shall supersede part II only to the extent that they do so by express reference.

History.—§2, ch. 61-280.

120.21 Definitions.—As used in this part:

(1) Agency means the governing body of any state board, commission or department, or state officer who constitutes the agency authorized by law to adjudicate any party's legal rights, duties, privileges or immunities, except the legislature, courts and governor.

(2) Adjudication means agency proceeding for the formulation of an order.

(3) Order means the whole or any part of the final decision (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing.

(4) Party means individuals, partnerships, corporations, associations, or public or private organizations of any character, and any other agency allowed to intervene in an agency proceeding.

(5) License means the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.

(6) Licensing means agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(7) Agency proceeding means any agency process as defined in subsections (2), (3), (5) and (6).

History.—§2, ch. 61-280.

120.22 Hearing guaranteed.—Any party's legal rights, duties, privileges or immunities shall be determined only upon public hearing by an agency unless the right to public hearing is waived by the affected party, or unless otherwise provided by law.

History.—§2, ch. 61-280.

120.23 Notice of hearing.—Parties affected by agency action shall be timely informed by the agency of the time, place, and nature of any hearing; the legal authority and jurisdiction under which the hearing is to be held; and the matters of fact and law asserted. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives. Each agency shall adopt appropriate rules of procedure for notice and hearing.

History.—§2, ch. 61-280.

120.24 Conduct and record of hearing.—

(1) All hearings shall be presided over by the agency, or by a member of the agency, or by a hearing examiner supplied by the agency who shall be competent by reason of training or experience.

(2) The agency shall, by stenographic or mechanical device, accurately and completely preserve the testimony and exhibits in the agency proceeding, and the recommended order of the hearing examiner or member of the agency, if any, together with all pleadings, briefs and requests filed in the agency proceeding which shall constitute the exclusive record for any final order. Where any agency order rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

History.—§2, ch. 61-280.

120.25 Agency's and hearing examiner's powers.—The agency, member of the agency, or the hearing examiner shall have authority, subject to the agency's published rules, to

(1) Administer oaths and affirmations,

(2) Issue subpoenas authorized by law,

(3) Rule upon offers of proof and receive relevant evidence,

(4) Take or cause depositions to be taken

whenever the ends of justice would be served thereby,

(5) Regulate the course of the hearing,

(6) Hold conferences for the settlement or simplification of the issues by consent of the parties,

(7) Dispose of procedural requests or similar matters, and

(8) Enter any order to carry out the purposes of this law, or as to a member of the agency or hearing examiner make recommended orders to the agency, as the case may be, which orders shall include findings of fact.

History.—§2, ch. 61-280.

120.26 Procedure for due process.—The agency shall afford all parties authorized by law to participate in an agency proceeding the right, to

(1) Present his case or defense by oral and documentary evidence,

(2) Submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts,

(3) Submit for the consideration of the hearing examiner, member of the agency, or the agency if it receives the evidence, proposed findings and conclusions and supporting reasons therefor,

(4) Submit exceptions to the order of the agency or to a recommended order, if one is made, and make oral arguments in support of any such exceptions,

(5) Make offers of settlement or proposals of adjustment,

(6) Be accompanied, represented, and advised by counsel or to represent himself, and

(7) Be promptly notified of the denial in whole or in part of any written application, petition or other request, and of any other agency action affecting substantive or procedural rights taken in connection with any agency proceeding.

History.—§2, ch. 61-280.

120.27 Evidence.—The hearing examiner, member of the agency, or agency shall give probative effect to evidence which would be admissible in civil proceedings in the courts of this state, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter agencies must handle and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise effect shall be given to the rules of evidence recognized by law in this state.

History.—§2, ch. 61-280.

120.28 Separation of functions.—No hearing examiner shall, in any proceeding where he presided as hearing examiner or a factually related proceeding, participate or advise the agency in entering its order except through his recommended order.

History.—§2, ch. 61-280.

PART III

JUDICIAL REVIEW

120.30 Declaratory judgment on validity of rules.—

(1) Any affected party may obtain a judicial declaration as to the validity, meaning or application of any rule by bringing an action for a declaratory judgment in the circuit court of the county in which such person resides or in which the executive offices of the agency are maintained. This subsection shall not apply to chapter 212.

(2) In addition to any other ground which may exist, any rule may be declared invalid, in whole or in part, for a substantial failure to comply with the provisions of this chapter, or in the case of any emergency rule, upon the ground that the facts recited in the statement do not constitute an emergency.

History.—§3, ch. 61-280.

120.31 Review of agency orders.—

(1) As an alternative procedure for judicial review, and except where appellate review is now made directly by the supreme court, the final orders of an agency entered in any agency proceeding, or in the exercise of any judicial or quasi-judicial authority, shall be reviewable by certiorari by the district courts of appeal within the time and manner prescribed by the Florida appellate rules. If judicial review is sought under this section, the petition shall so state. The venue of the proceedings for such review shall be the appellate district which includes the county wherein hearings before the hearing officer or agency, as the case may be, are conducted, or if venue cannot be thus determined, then the appellate district wherein the agency's executive offices are located.

(2) In cases where certiorari is granted pursuant to this section, the court may issue its mandate, or order, with directions to the agency to enter such order in the proceedings as is appropriate on the record, or the court may remand the cause for such further proceedings, including the taking of testimony, as may to the court seem necessary or proper:

(a) To accord the parties due process of law;

(b) To establish a sufficient record, for review;

(c) To accord the parties their constitutional, statutory or procedural rights; and

(d) To accomplish the purposes and objectives of the law pursuant to which the administrative proceeding was initiated.

(3) When supersedeas is not otherwise pro-

vided for, any such ruling or order of an agency, may in appropriate cases, be superseded upon an application for supersedeas showing good cause therefor, made to the agency, or the court. If the order has the effect of suspending or revoking a license, supersedeas shall be granted, as of right, upon such conditions as shall be reasonable, and in any event the order granting supersedeas shall specify the conditions upon which supersedeas is granted.

(4) When appropriate, a party may attack an adverse order by mandamus, prohibition or injunction, and costs shall be assessed as provided in other civil actions.

History.—§3, ch. 61-280.

120.321 Inapplicability of §120.041 (3), (4) to chapter 601.—Nothing contained in section 120.041 (3) and (4) shall affect or repeal the provisions of chapter 601.

History.—§4, ch. 61-280.

120.331 Effective date.—This act shall take effect July 1, 1961. Each agency has until June 30, 1962, to rewrite its rules existing prior thereto in the style and form prescribed by the secretary of state, who shall adopt such original rules no later than August 1, 1961; provided further, that rules not complying with the foregoing shall be ineffective after June 30, 1962. No hearing is required to be held on the adoption of rules rewritten as required in this section in which no change in substance was made. Any hearing or other proceedings affected by part II or part III of this act shall continue unabated or unaffected by the passage of part II or part III of this act.

History.—§6, ch. 61-280.

CHAPTER 122

STATE AND COUNTY OFFICERS AND EMPLOYEES RETIREMENT SYSTEM

122.01 State and county officers and employees retirement system; consolidation; divisions.—

(1) Chapter 121, the state officers and employees compulsory retirement system, and chapter 134, the county officers and employees compulsory retirement system are hereby consolidated and shall be known as the "state and county officers and employees retirement system."

(2) Any person who is employed after the effective date of this chapter, (July 1, 1955), by a county having a retirement system shall be a compulsory member of this retirement system unless he becomes a member of a local county retirement system at the time of employment.

(3) The rights of members of the retirement system established by former chapters 121 and 134, Florida Statutes, shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter.

(4)(a) The state and county officers and employees retirement system shall be deemed to be divided into two divisions to be designated division A and division B.

Division A of this system shall consist of those members of the system who were employed prior to July 1, 1963, who did not elect to become members of division B; and §§122.01 to 122.20, inclusive and §§122.34 to 122.36, inclusive shall control with respect to division A and membership therein.

Division B of this system, established for the purposes and within the contemplation of section 218(d) (6) of the federal social security act ((42 USCA §418 (d) (6))) for the purpose of affording to the members of said division B the opportunity to obtain federal social security coverage, shall consist of those members of the system who elected to or were required to become members of division B, as hereinafter provided and §§122.21 to 122.36 shall control with respect to division B and membership therein.

(b) Notwithstanding any provision to the contrary contained in this chapter, §122.34 shall apply with respect to sheriffs and "high hazard" deputy sheriffs, as provided for herein, to the extent that the provisions of such sections are at variance or in conflict with the sections otherwise applicable, and with respect to members who are classified as "high hazard" members as hereinafter defined, the provisions of §122.03, §122.08, §122.27, and §122.28 shall be subject to the provisions of §122.34.

(5) Notwithstanding any provision contained herein to the contrary, the provisions of this chapter relating to age for retirement under §122.08 shall be subject to amendment or modification by subsequent legislation at any time and all other provisions of this chapter relating to the administration of the system or to the duties, rights, privileges, requirements, and benefits of those persons who become members on or after July 1, 1963, shall be subject to amendment, modification, deletion or substitution by act of the 1965 legislature of the state and all such legislation shall apply retroactively to July 1, 1963, with respect to those persons who become members on or after July 1, 1963; provided, however, that such

legislation shall not set the age for retirement, as specified in §122.08(1) to exceed the age of sixty-five years, nor shall such legislation affect any benefit which becomes payable to, or with respect to, such members prior to July 1, 1965.

History.—§§1, 25, 26, ch. 29801, 1955; §1, ch. 57-382; §§1 and 2, ch. 63-555.
cf.—For history notes on chapters consolidated see table of repealed sections.

122.02 **Definitions.**—The following words and phrases as used in this chapter shall have the following meaning unless a different meaning is plainly required by the context:

(1) "State and county officers and employees" shall include all full-time officers or employees who receive compensation for services rendered from state or county funds, or from funds of drainage districts or mosquito control districts of a county or counties, or from funds of the state board of administration or from funds of closed bank receivership accounts or from funds of any state institution or who receive compensation for employment or service from any agency, branch, department, institution or board of the state, or any county of the state, for service rendered the state or county from funds from any source provided for their employment or service regardless of whether the same is paid by state or county warrant or not; provided that such compensation in whatever form paid shall be specified in terms of fixed monthly salaries by the employing state or county agency or state or county official and shall not include amounts allowed for professional employees for special or particular service or for subsistence or traveling expenses; provided further the comptroller shall prescribe appropriate procedure for contribution deduction out of such compensation in accordance with the provisions of this chapter, provided further that such officers and employees defined herein shall not include those officers and employees excepted from the provisions by §122.18 of this law.

(a) Any employee of a county agricultural conservation association who has heretofore made contributions to the retirement trust fund by virtue of administrative interpretation, may continue to contribute to the retirement trust fund; provided further, any former employee of a county agricultural conservation association, upon making proper payments to the retirement trust fund in accordance with this chapter, may claim such prior service.

(2) "Average final compensation" shall mean the average salary of the ten best contributing years of the last fifteen years prior to retirement, or the career average since July 1, 1945, which ever is greater. A year shall be twelve running months. In the event that an officer or employee has not contributed to the retirement trust fund for at least ten years, then the average final compensation shall mean the average salary of the last ten years service.

(3) "Salary" shall mean the fixed monthly compensation paid officers and employees, and where officers' or employees' compensation is derived from fees set by statute, salary shall be the total cash remuneration received from such fees. Under no circumstances shall salary include fees paid professional persons for special or particular services.

(4) (a) In determining the aggregate number of years of service of any officer or employee the time of military service between 1939 and 1946 by the employee on leave of absence shall be added to the years of state or county service. Credit for any other military service shall not exceed four years; provided that those individuals who were employed by the war manpower commission in Florida (or on military leave from the war manpower commission) prior to November 16, 1946, by the national reemployment service in Florida subsequent to June 30, 1933, the Florida state employment service subsequent to June 30, 1935, or in the readjustment allowance or employment service departments of the veterans administration in Florida between July 1, 1944 and January 1, 1950, and who continued in employment with the state or any county without more than one interruption in the performance of service, this interruption not to exceed five years, shall be entitled to credit for continuous service for all such employment with the named agency or department, and shall have such time added to their aggregate number of years of service; provided, further, that any such employee claiming such credit shall pay into the state and county officers and employees retirement trust fund an amount equivalent to the amount which would have been placed in the fund had such employee been paying into the fund from July 1, 1945 on the basis of the wages paid to such employee by the federal government, plus interest thereon at the rate of three per cent per annum; and provided, further, that such persons shall furnish proper proof from the governmental agency showing the payment of wages for such service and such persons are not claiming and have not been allowed credit for such service in a federal or any other retirement system. Leave of absence shall be construed to cover any officer or employee of the state or county who was serving as such during the calendar year of 1940, or any time subsequent thereto, and who resigned his employment in time of war or national emergency to enter military service, and who thereafter returned to his former employment with the state or county as soon as possible after release from military service.

(b) Any person claiming prior service credit under the provisions of this subsection shall pay into the state and county officers and employees retirement trust fund a contribution equal to five per cent of the earnings received during the period being claimed, plus three per cent interest thereon compounded annually, such interest to commence and run from July 1, 1945, with respect to service prior thereto and from dates of employment with respect to service subsequent to June 30, 1945, and such interest shall run to date of payment in full of all such contributions and interest.

(5) If compensation for accumulated annual leave is due and payable and is paid to the

surviving spouse and the necessary contribution is made to the retirement trust fund, time for accumulated annual leave, not to exceed thirty working days, shall be added to the aggregate number of years service and to the member's age, provided such time is needed to make the member eligible for retirement benefits at the time of death, in which event the retirement benefits shall be computed on the basis of the retirement age specified in §§122.08(1) and 122.08(2)(a) if the member died prior to July 1, 1963, or on the basis of a retirement age of sixty-five years if the member died on or after July 1, 1963. Otherwise aggregate number of years of service shall mean the total number of years, and fractional parts of years, of service of any officer or employee omitting intervening years and fractional parts of years, when such officer or employee may not be employed by the state or county. Provided that any nonacademic employee of a school board shall receive a full year's service credit for all years under the following conditions:

(a) Provided all necessary contributions have been made to the retirement trust fund.

(b) Provided the employee is employed and receives salary for the full school year.

History.—§2, ch. 29801, 1955; (1)(a) n. §1, ch. 57-364; (4) §2, ch. 57-364 and §1, ch. 57-813; (5) §3, ch. 57-364; (1)(a), (2), (4), (5) §2, ch. 61-119; (1)(a) §1, ch. 61-469; (4)(a) §1, ch. 61-422; (5) §1, ch. 63-453; §3, ch. 63-555.

122.03 Contributions; participants; prior service credit.—

(1) From and after July 1, 1955, the officer or board paying salaries to officers or employees entitled to the benefits of this law shall deduct six per cent from each installment of salary of each officer or employee so long as such officer or employee shall hold office, or be employed and said amount so deducted shall be deposited in a special trust fund hereby established in the state treasury, to be known as the "state and county officers and employees retirement trust fund." Provided further, whenever any county now or hereafter authorized by law to take over and perform the functions of a municipality, exercises such power and takes over functions heretofore performed by a municipality, and as a result thereof municipal employees become county employees and are paid salaries from county funds, such employees who are members and continue to be members of a municipal retirement system shall not be eligible to participate in the state and county officers and employees retirement trust fund. Such employees, whose pension or retirement rights are otherwise preserved, who by merger, transfer or assignment of governmental units or functions, become county employees, shall not lose their municipal pension or retirement rights, or any reserves accrued to their benefit during their period of employment with a municipality and the county is authorized to pay into such municipal retirement system during the period that such employees remain as county employees the sums of money previously paid by the municipality for the benefits of such employees, and may make appropriate deductions from the employees' salaries to preserve their retirement benefits. Provided further, such employees who by merger, transfer or assignment of government units or functions, become county employees shall have six months from the date they become county employees to elect to remain in the retirement system of which they were members as municipal employees or become compulsory members of the state and county officers and employees retirement system. Such employees becoming compulsory members of the state and county officers and employees retirement system shall be classed as new members of the state and county officers and employees retirement system and any service rendered by such employees as municipal officers or employees, prior to becoming compulsory members of the state and county retirement system, shall not be allowed.

(2) Any officer or employee who held office or was employed by the state or a county of the state on July 1, 1945 or October 1, 1950 and has been holding office or has been continuously employed from April 1, 1955:

(a) May receive credit for prior service rendered subsequent to 1945;

(b) Credit for service rendered prior to July 1, 1945 shall be continuous except that one period of absence not more than five years shall be allowed, and in computing such service credit, the period of absence shall not be creditable service.

(c) Provided any person receiving prior service credit under (a) or (b) pays into the retirement trust fund the amount he would have paid had he been a member since July 1, 1945, plus three per cent interest per annum; provided further that no officer or employee shall make contributions under this section for less than ten years or for his total service being claimed, whichever is less.

(3) Any officer or employee claiming prior service under subsection (2) of this section shall make the required payment on or before the time of actual retirement.

(4) Any officer or employee who formerly rejected the provisions of the retirement law may elect to become a member of the retirement system at any time. Any person becoming a member under this subsection shall not receive any prior service credit.

(5) Any state or county officer or employee who prior to becoming a state or county officer or employee was a member of the department of public safety pension fund, and who is not receiving retirement benefits under said fund, shall be a compulsory member of the state and county officers and employees retirement system, and if any such state or county officer or employee has not received a refund from the department of public safety pension fund, the amount he has paid into said fund, plus the amount the state has paid into said fund to match the employee's payment, shall be transferred from the department of public safety pension fund to the state and county officers and employees retirement trust fund, or if such person has received a refund from the department of public safety pension fund, then any

such state or county officer or employee shall, within twenty-four months from the time such person becomes a state or county officer or employee, or within twenty-four months from July 1, 1963, whichever is the later date, pay into the state and county officers and employees retirement trust fund five per cent of the salary he has received from the department of public safety, beginning with July 1, 1945, to June 30, 1955, inclusive and from July 1, 1955, six per cent of the salary he has received from the department of public safety, plus three per cent per annum interest thereon. Thereupon the total time spent with the department of public safety since its creation in chapter 19551, acts of 1939, shall be added to and computed with such person's service as a state or county officer or employee. No state or county officer or employee who is receiving benefits under the department of public safety pension fund shall be eligible to become a member of the state and county officers and employees retirement trust fund.

(6) Any official court reporter now a member of the state and county officers and employees retirement system may claim credit for all prior service as a secretary to a circuit judge doing court reporting work by paying into the retirement trust fund five per cent of the total earnings received by such person for such service as a secretary to a circuit judge doing court reporting work, or in the alternative may elect to pay on earnings in the sum of two hundred fifty dollars per month for the number of months of service as a deputy court reporter, plus three per cent interest per annum, and provided that no credit may be extended for service prior to July 1, 1945.

(7) Any officer or employee who held office or was employed by the state or a county of the state continuously from May 1, 1959, and who has not previously received credit for, or is not eligible to claim credit for, prior years of service under subsection (2); or any officer or employee who holds office or is employed by the state or a county of the state on June 1, 1961, and is continuously employed; or any officer or employee who holds office or is employed by the state or county of the state after June 1, 1961, and who is continuously employed for three years, during which period of time no back payments may be made:

(a) May claim credit for all prior years of service under the conditions hereinafter set forth.

(b) Credit for service prior to July 1, 1955, may be allowed, provided a contribution of five per cent of all salary received in the period being claimed, plus three per cent interest compounded annually, is made to the state and county officers and employees retirement trust fund on or before the time of actual retirement.

(c) Credit for service subsequent to July 1, 1955, may be allowed, provided a contribution of six per cent of all salary received in the period being claimed, plus three per cent interest compounded annually, is made to the state and county officers and employees retirement trust fund on or before the time of actual retirement.

(d) Prior service allowance may be made only for those periods in which state or county records of service and salary are available, or at least three affidavits and such other information as might be required by the state comptroller to meet the provisions of this law.

(e) Interest shall be computed as due on the total amount of the contributions for prior service and shall be computed as of July 1, 1945, to date of payment in full.

(8) Any state or county officer or employee who is receiving workmen's compensation payments may contribute to the retirement trust fund during the time such compensation is being received. The amount of contribution shall be based on the last full month's salary received prior to the date of injury. Any officer or employee making the required contribution shall be allowed credit for such period not to exceed three hundred fifty weeks.

(9) Any widow of a county official or former county official, who was formerly employed full time in the office of the county official and who is presently employed by the said county official or is a county official of any such county and who did not receive compensation for a period of more than ten years as such employee, may receive credit for retirement purposes as provided for in this chapter by:

(a) Contributing to the said retirement trust fund on a salary computed on the basis of one third of the compensation received by the said county official for the period of time the said employee did not receive any compensation, and interest on said contribution shall be paid at the rate of three per cent per annum from July 1, 1945.

(b) Submitting affidavits from one assistant state auditor and two county officials or former county officials from any such county to substantiate said employment.

History.—§3, ch. 29801, 1955; (3) §1, ch. 57-363; (6)n. §1, ch. 57-350; (7), (8)n. §2, ch. 57-363; (7)(d) §1, ch. 57-1986; (1) §1, ch. 59-203; (5) §1, ch. 59-285; (7) §1, ch. 59-303; (1), (2)(c), (5), (7)(b), (c), (8) §2, ch. 61-119; (7) §1, ch. 61-291; (9) n. §1, ch. 61-434; (5) §9, ch. 63-555.

122.04 Compulsory participation.—The provisions of this law shall be compulsory as to all persons who enter the employment of the state or county of the state on or after July 1, 1947, and there shall be deducted from the salary of every officer and employee who thereafter enters the employment of the state or county of the state six per cent as provided for in §122.03. All persons entering the service of the state or county of the state after July 1, 1947 shall be considered new employees or new officers and no prior service of such employees or officers shall be computed as part of their aggregate number of years of service under this law, except employees in military service on leave of absence who return immediately from military

service to the service of the state or county of the state. Provided further that any person who is employed after the effective date of this chapter by a county having a retirement system shall be a compulsory member of this retirement system unless he becomes a member of its local retirement system.

History.—§4, ch. 29801, 1955.

122.05 Legislator services included.—

(1) The aggregate days of service heretofore or hereafter rendered the state legislature, as a member of the senate or house of representatives by any participants of the state and county officers and employees retirement system shall be computed as a part of the aggregate years of state or county service of such participant in said retirement system, and it shall be the duty of state officials administering the provisions of said system to allow any such participant such legislative service, together with other service rendered by such participant to the state or county.

(2) The comptroller and other state officials administering said retirement system shall make the contribution deductions required by law from the compensation hereafter received by any of the said participating members of the legislature for service rendered the state legislature in the same manner as in the case of other state employment.

(3) Any member of the legislature on the effective date of this chapter may claim credit for all prior service as such member by paying into the state and county officers and employees retirement trust fund the required amount as computed by the comptroller, plus three per cent interest per annum and upon making such payment shall be entitled to receive credit for his full terms as such legislator. Provided further that any member of the legislature who previously had vested rights under the retirement law would not have his benefits accumulated at the time he takes office as such legislator reduced by virtue of such service as a legislator.

(4) Any member of the legislature who had vested rights under the retirement law, prior to becoming a member of the legislature, may use the average salary of the best ten years of the last fifteen years of creditable service earned prior to becoming a member of the legislature.

History.—§5, ch. 29801, 1955; (4) n. §1, ch. 59-461; (3) §2, ch. 61-119.

122.06 Legislative employee services included.—

(1) Aggregate days of attache service heretofore or hereafter rendered the state legislature by any participant of the state and county officers and employees retirement system shall be computed as a part of the aggregate years of state service of such participant in said retirement system, and it shall be the duty of state officials administering the provisions of said system to allow any such participant such legislative attache service, together with other service rendered by such participant to the state or county.

(2) The comptroller and other state officials administering said retirement system shall make the contribution deductions required by law from the compensation hereafter received by any of the said participating attaches for service rendered the state legislature in the same manner as in the case of other state employment.

History.—§§6, 7, ch. 29801, 1955.

122.061 Hospital districts and county hospital corporations; officers and employees included.—

(1) Boards of hospital districts and county hospital corporations may elect to bring employees of such districts or corporations under the provisions of the retirement law. Once this election is made it may not be revoked and all present and future employees shall be compulsory members of the state and county officers and employees retirement system.

(2) All boards of hospital districts and county hospital corporations who now have officers and employees participating in the state and county officers and employees system will continue to have such coverage as provided by chapter 122. The presumption being that such boards have elected to come under the law.

(3) The rights of any officer or employee who is a member of the state and county officers and employees retirement system or who is receiving benefits under the provisions of chapter 122, by virtue of attorney general's opinion and comptroller's rulings rendered prior to the declaratory decree of the circuit court of the second judicial circuit of Florida, March, 1957, shall not be impaired or reduced.

(4) The provisions of this section shall not apply to the north Broward hospital district nor to the south Broward hospital district, both in Broward county, it being the express intention hereof that the officials and employees of the two said districts shall not be eligible for membership in the state and county officers and employees retirement system.

History.—§§1-4, ch. 57-47.

122.07 Seasonal state employment included; time limit and procedure for claiming.—

(1) Any seasonal state employee who works for and draws compensation from the state, or any of its departments, for a period of more than six months during the fiscal year, that is, from July 1 of any year to June 30 of the following year, inclusive, but who works the remainder or a part of such fiscal year in the same or a similar capacity for another state or department thereof, may receive credit for the actual time employed by another state or department thereof, provided that such employee shall comply with the conditions hereinafter specified.

(2) Any state employee in the classification

set forth in §122.01 may elect to receive credit as a state employee under the state and county officers and employees retirement system and shall thereupon within thirty days after the end of each fiscal year file with the comptroller upon a form to be provided by the comptroller a statement under oath stating his name and permanent address within this state, the nature of his employment in the state during said fiscal year, giving the dates of commencement and termination thereof, the nature of his work within the state, together with his compensation from the state during said period, together with a statement that he was employed in employment of the same character out of the state during the remainder of such fiscal year and such other information as may, in the opinion of the comptroller, be necessary or appropriate in the carrying out of this section. Such statement shall be accompanied by a cash payment to the comptroller by such employee of an amount equal to six per cent plus the state's percentage of contribution of the salary drawn by such employee during his last full month of employment by the state or any department thereof, for each month during said fiscal year for which such employee was not employed by the state, or any department thereof, but was employed by some other state. The comptroller shall thereupon examine said statement, and if the same complies with this law, the comptroller shall thereupon deposit said payment in said retirement trust fund and shall advise such person that he is entitled to credit for said additional contribution under said state and county officers and employees retirement system. The fiscal year herein referred to shall be from July 1 to June 30 of the succeeding calendar year.

(3) If such person fails, or does not elect to file said statement and make said tender within thirty days after the end of such fiscal year, such employee shall forfeit any right to credit for such time of unemployment in Florida.

History.—§8, ch. 29801, 1955; (2) §2, ch. 61-119.

122.08 Requirements for retirement; classifications.—There shall be two retirement classifications for all state and county officers and employees participating herein as hereafter provided in this section:

(1)(a) Any state or county officer or employee who has attained the age of sixty years or more, and has accumulated service with the state and county for at least ten years in the aggregate within the contemplation of this law, and who has made or makes contributions to the state and county officers and employees retirement trust fund for five or more years as prescribed in this law, may voluntarily retire from office or employment and be entitled to receive retirement compensation, the amount of which shall be two per cent for each year of service rendered, based upon the average final compensation, payable in equal monthly installments, upon his own requisition. Requisition requirements shall be set by the comptroller.

(2)(a) Any state or county officer or employee who has attained the age of fifty-five or more (but less than sixty) and has accumulated at least ten years service in the aggregate within the contemplation of this law and who has made or makes contributions to the state and county officers and employees retirement trust fund for five or more years as prescribed by this law may elect to retire and receive a reduced benefit, which would be the actuarial equivalent of the benefits provided in subsection (1) of this section.

(b) Any county officer or employee who has served as sheriff or a full-time deputy sheriff for the last ten years or more of his employment and has attained the age of fifty or more (but less than sixty) and accumulated at least ten years' service in the aggregate within the contemplation of this law, and who has made or makes contributions to the state and county officers and employees retirement trust fund for five or more years, as prescribed by this law, may elect to retire and receive a reduced benefit, which would be the actuarial equivalent of the benefits provided in subsection (1) of this section.

(3) Any state or county officer or employee shall have the right at any time prior to receipt of his first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provisions that if such officer or employee dies after retirement compensation installments have commenced the excess if any of his total contributions made to the retirement trust fund, without interest, over the total retirement compensation received by him shall be paid in accordance with the beneficiary designation of this law. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable to him.

(4) Any state or county officer or employee shall have the right at any time prior to receipt of his or her first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation, or one half thereof if so designated, so long as such spouse shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable such officer or employee. Any state or county officer or employee who becomes eligible for retirement and continues to hold office or be employed shall be construed to have selected the option herein which will afford the surviving spouse the greatest amount of benefits. Should such officer or employee die before retiring, his surviving spouse shall be entitled to receive either the accumulated contributions of such officer or employee at the date of death or the reduced retirement compensation to which the surviving spouse would have been entitled under such option, calculated on the assumption that such

at the time of retirement to change the option so provided; and, should the option be changed or not at the time of retirement, such option shall be effective immediately upon retirement and thereafter may not be revoked.

(5) Tables for computing the actuarial equivalent shall be approved by the comptroller.

(6) Any person retiring under the disability provision of this chapter shall not be entitled to the options of subsection (4) of this section.

(7) On and after January 1, 1955 any member of this retirement system who is adjudged insane and who dies prior to a guardian being appointed and who at the time of his death is eligible for retirement shall be conclusively presumed to have retired and elected to take a reduced retirement benefit which would provide one-half of the said reduced benefit for the surviving spouse.

(8) No state or county official or employee who has a shortage in his accounts, as certified by the state auditing department, may retire or receive any benefits under this chapter so long as such shortage exists.

(9) Any member of the retirement system whose rights have been preserved under §122.01 (3), and who has had thirty years of service may exercise the option provided for in subsection (4) of this section as it applies to persons who are eligible for normal retirement benefits.

(10) The surviving spouse of any deceased state or county officer or employee, when said decedent is less than fifty-five years of age and has accumulated at least twenty-five years service in the aggregate within the contemplation of this chapter and has made contributions to the state and county officers and employees retirement trust fund for five or more years as prescribed by this chapter, may elect to pay into the state and county officers and employees retirement trust fund an amount equivalent to the amount which would have been paid into the trust fund had such decedent lived and continued his employment or service until he had thirty years service based on the said decedent's wages for the twelve month period preceding his death; if such payments are made, then and in that event said surviving spouse shall be entitled to collect under that provision of this chapter which will afford the surviving spouse the greatest amount of benefits. It is herein expressed that the surviving spouse shall have the same right to exercise any election or option granted under the provisions of this chapter as existed in the decedent. The provisions of this subsection shall be retroactive to April 1, 1957, and expire for any surviving spouse who has not made full payment and adjustment with the comptroller on or before December 31, 1959.

History.—§9, ch. 29801, 1955; (1) §3, (2)(b)n. §4, (4) §5, ch. 57-363; (9)n. §1, ch. 57-210; (10)n. §1, ch. 59-465; (1)-(3), (10) §2, ch. 61-119; (4) §4, ch. 63-555.

122.09 Disability retirement; medical examinations.—Whenever any officer or employee of the state or county of the state has service credit as such officer or employee for ten years within the contemplation of this law, the last five years of which must be continuous unbroken service, and who is regularly contributing to the state and county officers and employees retirement trust fund and shall while holding such office or employment become permanently and totally disabled, physically or mentally, or both, from rendering useful and efficient service as such officer or employee, such officer or employee may retire from his office or employment, and upon such retirement he shall be paid, so long as his permanent and total disability continues, on his own monthly requisition, from the state and county officers and employees retirement trust fund hereinafter established, retirement compensation as provided in §122.08; provided that no officer or employee retiring under this section shall receive less than fifty per cent of his average final compensation not to exceed seventy-five dollars, provided further that the minimum benefits shall not apply to an officer or employee who has attained the age of sixty or is receiving disability payments from social security. No officer or employee of the state and county of the state shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians and surgeons, to be selected by the governor for that purpose, and found to be disabled in the degree and in the manner specified in this section. Any officer or employee retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the governor for that purpose and paid from the retirement trust fund herein provided for, at such times as the budget commission shall direct to determine if such total disability has continued and in the event it be disclosed by said examination that said total disability has ceased to exist, then such officer or employee shall forthwith cease to be paid benefits under this section. Reference to §122.08 is for the purpose of computing benefits only. Any person heretofore retired under this section shall be eligible to qualify for the minimum benefits provided herein; however, minimum benefits shall not be paid retroactive.

History.—§10, ch. 29801, 1955; §4, ch. 57-364; §2, ch. 61-119.

122.10 Separation from service; refund of contributions.—

(1) Should any officer or employee leave the service of the state before accumulating aggregate time of ten years toward retirement, such officer or employee shall be entitled to a refund of one hundred per cent of his contributions made to the retirement trust fund without interest, provided however that any such officer or employee may leave such contributions in said retirement trust fund for a period not exceeding five years pending reemployment, and upon reemployment by the state or county within those five years receive credit for such prior service. Any such officer or employee who fails to be reemployed by the state or a county of the state within those five years

shall be refunded one hundred per cent of his contributions to the retirement trust fund, without interest, and all prior service credit shall be forfeited should he be reemployed at a later date. Should any officer or employee who has ten or more years service within the contemplation of this law leave the service of the state and county, such officer or employee may leave said contributions in the retirement trust fund and receive the same retirement benefits as provided for current employees in §122.08, provided however that such officer or employee shall have made contributions as required by this law, or such officer or employee may elect to accept a refund of one hundred per cent of his contributions to the fund, without interest. Any officer or employee who accepts such refund shall be forever barred from receiving prior service credit under the provisions of this law. No officer or employee who has received benefits under this law shall be entitled to a refund.

(2) Any former members of the state or county retirement law. Provided further, that former chapters 121 and 134, that terminated their service after ten or more years of service and received a refund of fifty per cent of their retirement contributions may, upon written request to the comptroller, receive a refund of any balance credited to their account provided they are not members of the state and county retirement system under chapter 122.

(3) Any person who hereafter elects to receive retirement benefits under §112.05, shall not be entitled to the retirement benefit of this chapter, except for the refund of his contributions to the retirement trust fund as provided in this section; likewise any person who elects to receive retirement benefits under this chapter shall thereby become ineligible to receive retirement benefits under §112.05.

History.—§1) ch. 29801, 1955; (2) n. §2, ch. 59-461; (1) §2, ch. 61-119; (3) n. §7, ch. 63-555.

122.11 Reemployment after refund.—Any state or county officer or employee whose contributions have been refunded as provided in §122.10 and who is subsequently reemployed by the state or a county of the state shall be treated as those persons who enter employment of the state or a county of the state the first time as provided in §122.03.

History.—§12, ch. 29801, 1955

122.12 Designation of beneficiary; death of participant; forfeiture of contributions after benefits paid; survivor benefits.—

(1) Any officer or employee may file, in writing, a designation of beneficiary and it shall be the duty of the comptroller to refund one hundred per cent, without interest, of the contributions made to the retirement trust fund by such deceased officer or employee to such designated beneficiary. The officer or employee shall have the privilege of changing, in writing, the designated beneficiary at any time. Upon failure to designate a beneficiary, the refund shall be made to the persons in the same order as designated in §222.15, for wages due deceased employees. If the deceased officer or employee has received any benefits under this law, no refund shall be made unless such officer or employee has elected to accept benefits under §122.08(3) or (4).

(2) Provided further any heir who received a refund under §10 of chapter 22938, laws of 1945, or §10 of chapter 22831, laws of 1945, shall be entitled to receive any accumulated retirement contributions credited to the deceased officer or employee's account.

History.—§13, ch. 29801, 1955; (2) n. §5, ch. 57-364; (1) §2, ch. 61-119.

122.13 Administration of law; appropriation.—The state comptroller, by and with the consent and approval of the state budget commission, shall make such rules and regulations as are necessary for the effective administration of this chapter, and the cost is hereby annually appropriated and shall be paid into the state and county officers and employees retirement trust fund out of the intangible tax fund in the state treasury in the amount necessary to administer efficiently the state and county retirement systems established by at the end of each fiscal year, beginning with the fiscal year 1959-60, the administrative cost of the state and county retirement system for the fiscal year just ended, shall be refunded to the general revenue fund from interest earned on investments made subsequent to June 30, 1959.

History.—§14, ch. 29801, 1955; §2, ch. 59-285; §2, ch. 61-119.

122.14 Retirement trust fund; investment board; approved investments.—A board to consist of the governor, the state comptroller and the state treasurer, shall be authorized and empowered to invest in bonds of the United States or in bonds the payment of which is secured by §16, Art. IX, of the state constitution, or in bonds the payment of which is secured by §18, Art. XII, of the state constitution, county bonds containing a pledge of the full faith and credit of the county or district involved, provided that such bonds are approved by the state board of administration as to legal and fiscal sufficiency, bonds of the Florida state improvement commission, or any other state agency, which have been approved as to legal and fiscal sufficiency by the state board of administration and which contain a sole pledge of the eighty per cent surplus two cents second gasoline tax accruing under the provisions of §16, Art. IX, of the state constitution, or in such other securities in which domestic life insurance companies are permitted to invest by Florida law, any of the funds of the state and county officers and employees retirement trust fund as they may deem necessary and feasible.

History.—§15, ch. 29801, 1955; §2, ch. 61-119.
cf.—§16, Art. IX, Const. Board of Administration; gasoline and like taxes, distribution and use; etc. §18 Art. XII, Const. School bonds for capital outlay.

122.15 Benefits exempt from taxes and execution.—

(1) The pensions, annuities, or any other benefits accrued or accruing to any person un-

der the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

(2) This subsection shall have no effect upon this section except that the comptroller of the state may, upon written request from the retired member, deduct premiums for group hospitalization insurance from the retirement benefit paid such retired member.

History.—§16, ch. 29801, 1955; (2) n. §1, ch. 59-305.

122.16 Employment after retirement.—

(1) (a) Any person who has accepted and is receiving retirement compensation under this chapter shall have such compensation suspended during any period of reemployment in any capacity whatsoever by the state or any political subdivision or any department, branch or agency thereof. Any person receiving retirement compensation under this chapter who becomes reemployed by the state or any political subdivision, department, branch, or agency thereof shall furnish timely notice in writing to the agency by which he is becoming employed, and to the comptroller of the fact that he is prohibited from receiving retirement compensation and salary at the same time and should he fail to do so, and should he receive and retain both benefits and compensation, he shall forfeit all of the benefits of this chapter forever.

(b) The reemployment by the state, or any political subdivision, department, branch or agency thereof, of any person who has accepted and is receiving retirement compensation under this chapter shall have no effect on the average final compensation or the aggregate number of years of service of such person, nor shall any deductions for retirement contributions be made from the salary paid such person with respect to such reemployment.

(c) This section shall not be applicable to licensed physicians receiving retirement compensation hereunder, whose part-time services are required for state purposes in the preservation of the health of state convicts or other inmates of state institutions and who have been or may hereafter be employed for such state purposes and the compensation for such services does not exceed seventy-five dollars per month. This subsection shall have the effect of suspending retirement payments during any period that such physician is otherwise employed by the state other than that stated in this subsection. Upon completion of any such other state service such physician shall be returned to the retirement roll and again be eligible to receive retirement benefits.

(d) Any officer or employee eligible to receive benefits under this chapter and workmen's compensation benefits under chapter 440 may receive both so long as the total of retirement and workmen's compensation benefits does not exceed the average final compensation as defined in §122.02. If such total exceeds the average final compensation, the retirement benefits shall be reduced by the amount of such excess.

(e) The term political subdivision as used in this section shall not include municipalities.

(f) Any retired officer or employee who returned to state or county employment, prior to the enactment of this section, and forfeited all benefits forever may be returned to the retirement roll and receive benefits in the same amount being received at the time of such reemployment. Provided no such officer or employee shall have received both retirement benefits and compensation for employment at the same time. Provided further that benefits shall be payable from July 1, 1957 only.

(g) Persons who have previously retired and who are holding office or employment on October 29, 1957 may have their membership in the state and county retirement system reinstated by making the necessary contributions to the retirement trust fund for the period of reemployment. Any person reinstating his membership as herein provided may transfer to division "B" of the retirement system provided all necessary contributions have been made to the state and county retirement trust fund prior to the effective date of the agreement with the federal department of health, education and welfare.

History.—§17, ch. 29801, 1955; (1)(e) n. §6, ch. 57-364; (1)(f) n. §1, ch. 57-803; (1)(g) n. §1, ch. 57-1982; (1)(g) §2, ch. 61-119.

122.17 Appropriation.—There is hereby annually appropriated and shall be paid into the state and county officers and employees retirement trust fund, for county officers and employees, out of the intangible tax fund and for state officers and employees out of the intangible tax fund, or any other source provided by law, an amount equal to the total amount paid in the said fund by all participating officers or employees. A sufficient amount to make such payments as provided in this chapter is hereby appropriated from the state and county officers and employees retirement trust fund, provided that such matching contributions shall be adjusted in accordance with the refunds made to officers and employees during the period from July 1, 1961 to June 30, 1963.

History.—§§18, 23, ch. 29801, 1955; §6, ch. 59-285; §2, ch. 61-119; §1, ch. 61-478.
cf.—§199.31 Appropriations for retirement system.

122.18 Certain officers and employees not covered.—This chapter shall not apply to justices of the supreme court or judges of the circuit court who are members of another state retirement system applicable to supreme court judges or circuit judges, nor shall it apply to members of the teachers' retirement system or members of the department of public safety retirement system and shall not operate to repeal §§25.101, 38.14, 38.19, 112.05, 238.01-238.16 and 321.01-321.23, nor to affect the rights of any person enjoying the benefits or entitled to enjoy the benefits of such sections.

History.—§§19, 20, ch. 29801, 1955.
cf.—Ch. 123 Retirement of supreme court justices, district court of appeal judges and circuit court judges.

122.19 Change of positions; election of retirement systems; exceptions.—

(1) (a) Any person who is a participant in any state or county retirement system, who changes his position or employment, or who is reclassified so that under any existing law such person would participate in a different retirement system, may continue to participate and come under the same retirement system in which he participated or came under before changing positions or being reclassified so long as such person remains in the employ of the state or county and continues to make the contributions required by law.

(b) Any member of the Duval county employees pension fund who becomes an elected state or county official, certified by the secretary of state, may become a member of the state and county officers and employees retirement system as a new member upon assuming office, however, no prior service shall be allowed unless such official withdraws from the Duval county employees pension fund, the same to be certified by Duval county, and complies with §122.03.

(2) The provisions of this section shall supersede any existing law relating to state and county retirement systems or pensions, provided nothing herein shall be construed to apply to state supreme court justices, or circuit judges who are members of another state retirement system applicable to supreme court justices or circuit judges, nor to members of the department of public safety retirement system nor to members of Duval county employees' pension fund as provided in chapter 23259, acts of 1945, as amended by chapters 27520 and 27523, acts of 1951.

History.—§21, ch. 29801, 1955; (1)(b) n. §1, ch. 63-568.

122.20 Blind vending-stand operators; participation by.—

(1) All blind or partially-sighted persons who are now employed or licensed by the Florida council for the blind as vending-stand operators or who may hereafter be so licensed or employed are hereby declared to be state employees within the meaning of the state and county officers and employees retirement system, and except as hereinafter provided shall be entitled to all the rights and benefits of other state employees thereunder.

(2) Vending-stand operators who are employed on June 15, 1953 shall have the privilege of rejecting the provisions of this law provided that written notice of the employees' rejection shall be filed with the proper state officials within a period of sixty days from June 15, 1953. After such period all employees who have not filed a written rejection as provided herein shall be deemed to have made a final and irrevocable decision to participate in the state officers and employees retirement system.

(3) Blindness shall not be deemed a retirable disability within the provisions of the state and county retirement system for such employees as are contemplated by this section.

(4) Participation in the state officers and employees retirement system shall be compulsory for all vending-stand operators licensed and employed after June 15, 1953.

History.—§22, ch. 29801, 1955.

122.21 Activation of division B.—Sections 122.21 to 122.33, inclusive, shall control with respect to division B of this system and membership therein, and shall prescribe the method for activating such division.

History.—§2, ch. 57-382.

122.22 Applicable law.—Sections 122.01 to 122.20, inclusive, in relation to administration of division B and to duties, rights, privileges and benefits of members of this division under this system, shall apply to said division B and membership therein, except to the extent that the provisions of §§122.21 to 122.33, inclusive, may be at variance or in conflict therewith.

History.—§2, ch. 57-382.

122.23 Definitions.—In addition to those definitions set forth in §§122.02 the following words and phrases used in §§122.21 to 122.33 inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter, with its two divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the federal social security act.

(3) "Administrator"—the comptroller of Florida as the administrator of this system as provided in §122.13.

(4) "Agreement"—the modification of that certain agreement entered into October 23, 1951, between the state of Florida and the secretary of health, education and welfare, pursuant to §650.03, which makes available to members of division B of this system the provisions of said agreement.

(5) "State agency"—Florida industrial commission within the provisions and contemplation of chapter 650.

(6) "Division"—division B of this system.

History.—§2, ch. 57-382.

122.24 Membership in division B.—Officers and employees, within the contemplation of this system, may become members of division B of this system in the manner and under circumstances as follows:

(1) An officer or employee who is a member of this system on June 19, 1957 or who becomes such a member after June 19, 1957, and prior to execution of the agreement in pursuance of affirmative referendum as hereinafter provided, may transfer to this division by electing to do so in writing filed with the administrator. While membership in this division shall date from the filing of such election with the administrator, for the purposes of contributions to the system and benefits to members under this division, membership in this division shall take effect upon the date of execution of the agreement. A form for the election to transfer

to this division shall be prescribed and furnished to the members of this system by the administrator. Such form shall prescribe the date by which the executed election must be returned by the members in order for such members to be eligible for participation in the referendum provided in §122.25. Executed elections received after such date shall be effective for transfer of membership to this division if returned prior to the date the agreement is entered into. Provided further, that any member electing to belong to division B may withdraw therefrom prior to the date the agreement is entered into.

(2) A person who becomes a member of this system after execution of the agreement shall become a member of division B of the system.

(3) (a) A person who is in a position covered by this system and who is not a member of this system but is eligible to become a member thereof shall, but only for the purposes of subsection 218 (d) of the social security act (other than paragraph (8) of said subsection), be regarded as a member of this system. If such person becomes a contributing member of this system after December 31, 1957, he shall become a member of division B as required by §122.24(2). In addition he may, under the conditions prescribed by section 218(d)(6)(E) of the social security act, and if still in a position covered by this system, obtain division B coverage effective January 1, 1956, or the date he first occupied a position covered by this system, whichever is the later, by filing a written request therefor with the administrator by December 1, 1959, and paying the contributions and interest incident to such coverage.

(b) Under the conditions prescribed by section 218(d)(6)(F) of the social security act, a person who was a member of division A of this system on December 31, 1957, and who is still such a member, may transfer to division B of this system by filing a written request therefor with the administrator by December 1, 1959. Social security coverage incidental to such elective membership in division B shall be effective as of January 1, 1956, or the date such person became a member of this system, whichever is the later.

History.—§2, ch. 57-382; (3) n. §3, ch. 59-285.

122.25 **Referendum.**—If by the date fixed in said form of election furnished by the administrator to the members of this system there shall have been filed with the administrator executed forms of election evidencing that not less than one hundred members of this system have chosen to become members of this division, the administrator shall so notify the governor of Florida. It is the legislative intent and request that the governor shall thereupon provide for the holding of a referendum, to be participated in by eligible members, in pursuance of the provisions of §650.10, for the purpose of extending social security benefits to members of this division. Should the results of the referendum be such as to justify the governor's making the certification provided by §650.10(2), and section 218(d)(3) of the federal social security act, he is requested to make such certification, and the state agency is authorized and directed to take appropriate action under chapter 650, and in conformity with applicable federal social security laws, to accomplish the purpose of extending social security coverage to the members of this division, effective January 1, 1956, or as soon thereafter as shall be permissible under then existing federal laws and regulations.

History.—§2, ch. 57-382.

122.26 **Funds.**—There shall be paid into the state and county officers and employees retirement trust fund, provided in §122.17, contributions by members of this division for benefits payable to members under this system, and all amounts appropriated for such purpose by the state. There is hereby created in the state treasury a fund to be known as the social security contribution trust fund, into which shall be deposited contributions required of members for social security coverage, and such amounts as may be appropriated by the state for that purpose.

History.—§2, ch. 57-382; §2, ch. 61-119.

122.27 **Contributions.**—From and after the date of the execution of the agreement, the officer or board paying the salary of a member of this division shall withhold the following from such salary:

(1) Four per cent of such salary, which shall constitute the contribution of the member to this system with respect to retirement and other benefits payable under this system. The officer or board so withholding such percentage of salary shall without delay deposit the same in the state and county officers and employees retirement trust fund.

(2) The percentage of such salary which shall constitute the contribution of the member required for social security coverage as now or hereafter fixed by relevant federal statutes. The officer or board so withholding such percentage of salary shall deposit the same without delay in the social security contribution trust fund.

(3) Any contributions made by a member of division B during the calendar years 1956 and 1957, for state and county retirement contributions, in excess of four per cent of the member's total salary shall be returned to the member on the effective date of the member's retirement or applied to any shortage which may exist in the member's retirement account.

History.—§2, ch. 57-382; (3) n. §4, ch. 59-285; (1), (2) §2, ch. 61-119.

122.28 **Benefits.**—The relevant provisions of §§122.01 to 122.20, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of this system in relation to members in division A hereof, shall apply with equal force and effect to members of this division, with the following exceptions:

(1) For the period of service of the member prior to the effective date of his social security coverage hereunder, retirement benefits shall be computed on average final compensation at the rate of two per cent for each year of service rendered prior to such effective date and as provided in §122.08. For the period of membership in this division the member's retirement compensation shall be computed on average final compensation at the rate of one and one half per cent for each year of service rendered after the effective date of said social security coverage.

(2) Members of this division retiring under the disability provisions of this chapter shall receive not less than twenty per cent of their average final compensation.

(3) For those persons who become members of the retirement system on or after July 1, 1963, the amount of such retirement compensation shall not exceed that amount which when added to the member's estimated annual primary insurance amount under social security coverage equals eighty per cent of his average final compensation. The estimated annual primary insurance amount of the member shall be determined by the administrator on the basis of the social security coverage in effect on the member's retirement date, assuming that payment of such primary insurance amount shall commence at the later of the member's sixty-fifth birthday or actual age of retirement, and that the member earned his average final compensation in each year between his date of retirement and his sixty-fifth birthday for those members retiring prior to age sixty-five.

History.—§2, ch. 57-382; (3) n. §5, ch. 63-555.

122.29 Records and reports.—The administrator shall maintain accurate accounts of each member of this division; and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the federal social security act and regulations in relation to the social security coverage of such member. The administrator shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of this system.

History.— §2, ch. 57-382.

122.30 Appropriations.—

(1) There is hereby appropriated from the intangible tax fund of the state the sum of one thousand dollars, or so much thereof as may be necessary, to defray the cost of the holding of such referendum, and the same shall be payable upon proper requisition of the person or agency designated by the governor to hold and conduct said referendum.

(2) There is hereby annually appropriated from the intangible tax fund of the state to Florida industrial commission as the state agency, as provided by chapter 650, a sum not to exceed ten thousand dollars to defray the expenses of such agency in connection with its continuing duties in relation to the social security coverage provided by this law.

(3) If under the agreement social security coverage is retroactively applicable to members of this division, there is appropriated out of the state and county officers and employees retirement trust fund and into the social security contribution trust fund the amount required by applicable federal laws and regulations to be paid with respect to periods prior to date of execution of the agreement.

(4) There is hereby anually approriated, for county officers and employees, out of the intangible tax fund of the state and for state officers and employees out of the intangible tax fund, or any other source provided by law, and there shall be paid into the described funds such appropriated amounts, as follows:

(a) Into the state and county officers and employees retirement trust fund an amount equal to the total amount paid into said trust fund by the members of this division; and

(4) There is hereby annually appropriated, trust fund the amount required by the federal social security act, related statutes and rules and regulations thereunder, to be paid by the state with respect to the social security coverage of members of this division, as herein provided.

(5) There is appropriated a sufficient amount out of the state and county officers and employees retirement trust fund to the administrator to make payments to members of this division as provided.

(6) There is appropriated out of the social security contribution trust fund for payment into the contribution fund established by §650.06, from time to time, such amounts as may be required for the social security coverage of the members of this division.

(7) In addition to amounts appropriated by other provisions of this chapter or other laws to defray cost of administration of this system, there is hereby appropriated out of the intangible tax fund of the state for use of the administrator in his administration of the two divisions of this system, the sum of one hundred thousand dollars, or so much thereof as may be required for that purpose.

(8) If in any fiscal year the amounts provided in this chapter to be paid into the state and county officers and employees retirement trust fund by the state for members in divisions A and B of this system, and the amount required to be paid by the state into the social security contribution trust fund for the members in division B of this system, as herein provided, shall exceed the amount available for such purposes in the intangible tax fund, until the date of adjournment of the first session of the legislature subsequent to the occurring of such deficiency, there is appropriated from the general revenue fund of the state and payable into the state and county officers and employees retirement trust fund and the social security contribution trust fund, or either of said latter funds, an amount equal to such deficiency.

(9) There is hereby created a board of trustees of five members for the state and county officers and employees retirement sys-

tem. Three of said trustees shall be county officials and two shall be state employees all of whom shall be appointed by the comptroller, to serve at the pleasure of the comptroller. It shall be the duty of the said board of trustees to make a thorough study of the state and county retirement system and to make recommendations to the legislature each two years as to needed changes in such system. There is hereby appropriated the sum of twenty thousand dollars of the intangible tax fund of the state for the 1957-1959 biennium, which may be expended by the said board through the comptroller in carrying out their duties hereunder.

(10) There is hereby appropriated out of the state and county officers and employees retirement trust fund and into the social security contribution trust fund the amount required by applicable federal laws and regulations to be paid with respect to 1956, 1957, 1958, and 1959 social security coverage of the members of this system who transfer from division A to division B thereof between July 1, 1959, and December 1, 1959, and of the deemed members of this system who became contributing members after December 31, 1957, and who, by December 1, 1959, qualify for retroactive social security coverage. Provided the accounts of such members, for the calendar years 1958 and 1959, are adjusted to comply with the accounts of members transferred to division B under the 1957 law.

History.—§2, ch. 57-382; (10) n. §5, (4) §7, ch. 59-285; (3)-(5), (6), (8), (10) §2, ch. 61-119.

122.31 Future amendments.—Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—§2, ch. 57-382.

122.32 Repealer.—It is the legislative intent that members of this system be provided with social security coverage only in pursuance of the method prescribed herein for becoming members of this division, anything in chapter 650 to the contrary notwithstanding, provided however that the officials and employees of any county or counties which have prior to June 19, 1957, elected to accept social security under the provisions of chapter 650 shall not be affected hereby; provided further, all present and future employees of such counties shall remain in or become members of division A as provided in §122.01 of the state and county officers and employees retirement system; and chapter 29968, acts of 1955, chapter 410, Florida Statutes, are hereby repealed; and provided, that nothing contained in the provisions of this law shall repeal or in any way affect chapter 23259, laws of 1945, as amended.

History.—§2, ch. 57-382.

122.33 Failure of referendum.—Should a majority of the eligible members of this division fail to vote in favor of social security coverage, the provisions of this law shall cease to be of any effect, except that the appropriation provided in §122.30(1) shall remain valid and undisturbed and provided further that the provisions and appropriation contained in §122.30(9) providing for a board of trustees shall remain in full force and effect in any event. In such event, the members of this division shall by virtue of the force and effect of this provision be considered not to have transferred to this division and the executed election to do so, filed with the administrator, shall be considered void and of no effect, and membership in this system shall not be disturbed by reason of the election so made.

History.—§2, ch. 57-382.

122.34 Special provisions for certain sheriffs and full time deputy sheriffs.—

(1) The provisions of this section shall apply with respect to members who are sheriffs of the several counties of the state or who are full time deputy sheriffs designated as "high hazard" full time deputy sheriffs, as certified by the sheriff and approved by the comptroller, except those sheriffs or full time deputy sheriffs holding office or employed on or before July 1, 1963, who are then fifty-five years old or older, and who elect in writing, filed with the comptroller within ninety days after July 1, 1963, to reject this section, and such members who do not so elect to reject this section hereinafter shall be referred to as "high hazard" members.

(2) All "high hazard" members shall contribute two and one half per cent of each installment of salary, to the state and county officers and employees retirement trust fund, which percentage shall be in addition to the percentage required in §122.03, or in §122.27 whichever is applicable.

(3) Any "high hazard" member who has been classified within the contemplation of this section as a "high hazard" member for the last ten years or more of his employment and who is serving as a "high hazard" member, and who has made the additional contributions to the state and county officers and employees retirement trust fund provided in subsection (2) for a period of not less than five years or who makes total contributions in amount equal to five years of contribution based on his then current rate of salary, may retire under §122.08 (1) or §122.28, whichever is applicable, if the "high hazard" member has attained the age of fifty-five years. For the purpose of estimating the annual primary insurance amount under social security coverage under §122.28(3) for such "high hazard" member, the administrator shall estimate the primary insurance amount as the amount the member shall be entitled to receive at the later of age sixty-two or his retirement age.

(4) Any "high hazard" member within the contemplation of this section who has been classified as a "high hazard" member for the last ten years or more of his employment, and who is serving as a "high hazard" member, and who has made the additional contributions to the state and county officers and employees retirement trust fund provided in subsection (2)

for a period of not less than five years or who makes total contributions in amount equal to five years of contributions based on his then current rate of earnings, may retire under §122.08(2)(b) or §122.28, whichever is applicable if the "high hazard" member has attained the age of fifty years or more (but less than fifty-five).

(5) Any "high hazard" member who becomes eligible to retire under any other section of chapter 122 shall not receive a refund of the additional two and one half per cent contributions provided for in this section unless he requests in writing to the comptroller a lump-sum refund of all his contributions to the state and county officers and employees retirement trust fund in lieu of monthly retirement benefits. However, any "high hazard" member who changes position or is reclassified or otherwise becomes ineligible for classification as a "high hazard" member for any reason before retiring, or before becoming eligible to retire under any other section of chapter 122 shall lose all benefits under this section and may receive a refund of the additional two and one half per cent contribution without interest or leave the additional two and one half per cent contribution in the state and county officers and employees retirement trust fund pending reclassification as a "high hazard" member; provided further, should any member receive a refund and be reinstated as a "high hazard" member, he shall pay into the state and county officers and employees retirement trust fund the full amount refunded plus three per cent interest compounded annually from date of refund to date of repayment. Should such member apply for another refund before such payment is made, the interest on the first refund shall be deducted from the second refund, interest to be figured from date of first refund through date of second application for refund, at three per cent interest compounded annually.

History.—§6, ch. 63-555.

Note.—See also ch. 63-448 with similar provisions which was passed prior to the enactment of ch. 63-555.

122.35 Funding.—

(1) Commencing July 1, 1967, §§122.17 and 122.30(4) shall be of no further force and effect and each officer or board paying salaries to members and withholding contributions required of members under this chapter for purposes of providing retirement benefits and social security benefits to or on behalf of such members, shall budget, set aside and pay over to:

(a) The state and county officers and employees retirement trust fund an amount equal to the amount of member contributions paid to such fund as specified in §§122.03, and 122.27, but excluding any additional contributions required of "high hazard" members under §122.34, and

(b) The social security contribution trust fund an amount equal to the amount of member contributions paid to such fund as specified in §122.27.

(c) The monthly amounts set aside and paid over to the state and county officers and employees retirement trust fund and to the social security contribution trust fund in accordance with this subsection shall be paid on the first day of each calendar month after July 1, 1967. The funds required for payment of such monthly amounts shall be appropriated out of the intangible tax fund, or any other source provided by law.

(2) Each year, commencing July 1, 1967, the state shall make any additional contributions to the retirement system benefits necessary to fund the benefits provided under the retirement system, as determined from regular biennial actuarial valuations of the retirement system.

History.—§8, ch. 63-555.

CHAPTER 123

SUPREME COURT JUSTICES, DISTRICT COURT OF APPEAL JUDGES AND CIRCUIT JUDGES RETIREMENT SYSTEM

123.01 Supreme court justices, district court of appeal judges and circuit judges retirement system established; divisions.—

(1) A retirement system for supreme court justices, district court of appeal judges and circuit judges of the state is hereby established, which shall be administered by and under the supervision of the state comptroller.

(2) The judicial retirement system shall be deemed to be divided into three divisions, to be designated division A, division B, and division C, for the purposes and within the contemplation of §218(d) (6) of the federal social security act (42 USCA §418(d) (6)), for the purpose of affording to members of said divisions B and C the opportunity to obtain federal social security coverage.

(a) Division A of this system shall consist of those members of the system who are members as of July 1, 1963, and who do not elect to become members of division B, as hereinafter provided. Sections 123.01 to 123.21, inclusive, shall control with respect to division A and membership therein.

(b) Division B of this system shall include those members, as of July 1, 1963, who elect to become members of division B, as hereinafter provided. Sections 123.22 to 123.33, inclusive, shall control with respect to division B and membership therein.

(c) Division C of this system shall include those persons who are required to become members of said division, as hereinafter provided. Sections 123.34 to 123.43, inclusive, shall control with respect to division C and membership therein.

History.—§1, ch. 29838, 1955; §1, ch. 57-422; §1, ch. 63-462.

123.02 Salary deductions; transfer of contributions paid under §§25.122 and 38.17.—

(1) From and after July 1, 1963, there shall be deducted from the salary of each supreme court justice, district court of appeal judge and circuit judge covered by the provisions of this chapter an amount equal to eight per cent of the total salary of such participant, including all amounts paid by any county of this state, so long as he shall hold office. The amounts deducted shall be deposited in the judicial retirement trust fund in the state treasury.

(2) The amount contributed under §§25.122 and 38.17 by any such judge or justice accepting the provisions of this chapter shall be transferred to the judicial retirement trust fund. There is hereby appropriated out of any funds in the general revenue fund in the state treasury not otherwise appropriated a sufficient

amount to meet the requirements of this section.

(3) There is hereby annually appropriated and shall be paid into the judicial retirement trust fund out of any funds in the state treasury not otherwise appropriated an amount equal to the total amount paid into the said fund by all participating justices and judges.

History.—§2, ch. 29838, 1955; §2, ch. 57-422; §2, ch. 61-119; (1) §2, ch. 63-462.

123.03 Transfer from other retirement systems; acceptance by nonmembers; payment of back contributions.—

(1) Any supreme court justice, district court of appeal judge or any circuit judge now a member of the circuit judges' retirement system or member of any other retirement system authorized by state law for Florida state or county officers or employees and in office on July 1, 1959, may, at his option, become a participant under this chapter in the following manner: On or before January 1, 1960, such supreme court justice, district court of appeal judge or circuit judge shall notify the state comptroller, in writing, of his election to come within the provisions of this chapter and shall pay into the state treasury an amount equal to the difference between six per cent of his salary including all amounts paid by any county of this state from July 1, 1955, to the date of said notification and the amount of any contributions theretofore made by him for the same period of time under the provisions of §25.122 or §38.17 plus three per cent interest per annum thereon.

(2) Any supreme court justice or circuit judge in office on the effective date of this chapter who is not a member of any state retirement system, or who has failed to make the necessary payments into any such system to enable him to receive full credit for all service as such supreme court justice or circuit judge may, at his option, elect to come within the provisions of this chapter and receive, under the provisions hereof, the full benefits of this chapter for his entire service as such justice or judge by paying into the judicial retirement trust fund, on or before January 1, 1956, a sum equal to two per cent of his total salary, including any supplement from any county, received as such justice or judge while not a member of any state retirement system or a sum equal to two per cent of such total salary received during any period during which he failed to make the necessary payments into any such system.

(3) Any supreme court justice, district court of appeal judge or circuit judge who, prior to becoming a supreme court justice, district court of appeal judge or circuit judge, was a member of any other retirement system authorized by state law for Florida state or county officers or employees, and who is not receiving retirement benefits under said fund, may be a member of the supreme court justices, district court of appeal judges and circuit judges retirement system, and if any such supreme court justice, district court of appeal judge or circuit judge has not received a refund from the retirement system authorized by state law for Florida state or county officers or employees, the amount he has paid into the said fund shall be transferred from the retirement system authorized by state law for Florida state or county officers or employees' fund to the judicial retirement trust fund, or if such supreme court justice, district court of appeal judge or circuit judge has received a refund from the retirement system authorized by state law for Florida state or county officers or employees, then any such supreme court justice, district court of appeal judge or circuit judge shall within twenty-four months from the time such person becomes a supreme court justice, district court of appeal judge or circuit judge or within twenty-four months from the time this chapter becomes a law, whichever is the later date, pay into the judicial retirement trust fund five per cent of the salary he has received from the state and county as an officer or employee beginning with July 1, 1945, plus three per cent interest per annum thereon. Thereupon the total time spent as a state or county officer or employee shall be added to and computed with such person's service as a supreme court justice, district court of appeal judge or circuit judge as provided for in this chapter. Provided further that the service credit as a state or county officer or employee shall be computed at two per cent. No supreme court justice, district court of appeal judge or circuit judge who is receiving benefits under any other retirement system authorized by state law for Florida state or county officers or employees pension trust fund shall be eligible to become a member of the supreme court justices, district court of appeal judges and circuit judges retirement system.

(4) The total time spent by any supreme court justice or district court of appeal judge or circuit judge, electing to take the benefits of this chapter, as a state or county officer or employee prior to July 1, 1945, without regard to previous membership in or contribution to any other retirement system for such period of time, shall be added to and computed with such person's service as a supreme court justice or district court of appeal judge or circuit judge as provided by this chapter; provided, also, that service as a state or county officer or employee subsequent to July 1, 1945, may be credited as provided herein if such justice or judge pays into the judicial retirement trust fund, five per cent of the salary he has received as such state or county officer or employee between July 1, 1945, and July 1, 1955, and six per cent of the salary he has received since July 1, 1955, plus three per cent interest per annum thereon, as such state or county officer or employee. Provided further, the annual service credit provided for in this subsection shall also be computed at two per cent. Any justice or judge electing to take the benefits of this subsection shall do so on or before January 1, 1960, and shall on or before said date, notify the comptroller in writing of such election.

Said notice to the comptroller shall be accompanied with full payment of said required contribution for prior service rendered subsequent to July 1, 1945.

History.—§3, ch. 29838, 1955; (3) §3, ch. 57-422; (1),(4) n. §1, ch. 59-233; (2)-(4) §2, ch. 61-119.
cf.—§25.122 Notice by justice taking advantage of act; deductions from salary.
§38.17 Deductions, from salary of circuit judges; election.

123.04 Qualifications for retirement.—

(1) Any person electing to take the benefits of this chapter who has attained the age of sixty years, and who has served as a supreme court justice, or district court of appeal judge, or circuit judge for at least ten years in the aggregate, or had ten years of otherwise creditable service either before or after passage of this law and who has served as a supreme court justice, district court of appeal judge or circuit judge, and any person electing to take the benefits of this chapter who, without regard to his age, was serving in an elected term of office as supreme court justice or circuit judge on July 1, 1955, and thereafter during said term of office completed at least twenty years of service in the aggregate, may resign or retire with the right to be paid, and shall be paid on his own requisition in equal monthly installments during the remainder of his natural life, from the judicial retirement trust fund, retirement compensation in accordance with the table of benefits provided in this chapter or as provided in §123.13.

(2) A board to consist of the governor, the state comptroller, and the state treasurer, shall be authorized and empowered to invest in bonds of the United States or in bonds the payment of which is secured by §16 of Art. IX of the constitution of the state, or in bonds the payment of which is secured by §18 of Art. XII of the constitution of Florida, county bonds containing a pledge of the full faith and credit of the county or district involved, provided that such bonds are approved by the state board of administration as to legal and fiscal sufficiency, bonds of the Florida state improvement commission, or any other state agency, which have been approved as to legal and fiscal sufficiency by the state board of administration and which contain a sole pledge of the eighty per cent surplus two cents second gasoline tax accruing under the provisions of §16 of Art. IX of the state constitution, or in such other securities in which domestic life insurance companies are permitted to invest by Florida law, any of the funds of the judicial retirement trust fund as they may deem necessary and feasible.

(3) Any justice of the supreme court, district court of appeal judge or circuit judge who has attained the age of fifty-five years or more, but less than sixty years and has accumulated at least ten years service in the aggregate within the contemplation of this law, and who has made or makes contributions to the judicial retirement trust fund for five or more years of creditable service as prescribed by this law may elect to retire and receive a reduced benefit which would be the actuarial equivalent of the benefits provided in subsection (1) of this section.

History.—§4, ch. 29838, 1955; §4, ch. 57-422; (1) §1, ch. 59-420; (3) n. §2, ch. 59-233; §2, ch. 61-119.
cf.—§340.21 Bonds eligible for investment.
§665.45 Insurance companies authorized to invest in share accounts of federal and Florida building and loan associations.
§123.40 Benefits, division C.

123.05 Termination of service prior to retirement; refund; reassumption of service.—

(1) Any person who has served as a supreme court justice, district court of appeal judge or circuit judge, or both, for an aggregate period of less than ten years, either before or after the passage of this chapter, and whose service is terminated, may, at his option, either receive from the state a refund, without interest, of all contributions made by him under this chapter during said period, or leave said contributions in the judicial retirement trust fund for a period not to exceed seven years after termination of service and upon reassumption of office as a supreme court justice, district court of appeal judge or circuit judge receive credit for such previous period of service in computing his aggregate number of years of service.

(2) Any person who has served as a supreme court justice, district court of appeal judge or circuit judge, or both, for an aggregate period not less than ten years, either before or after the passage of this chapter, and whose service is terminated, may, at his option, either receive from the state a refund, without interest, of all contributions made by him under this chapter during said period or leave said contributions in the judicial retirement trust fund and receive retirement benefits as provided by this chapter upon attaining sixty years of age.

(3) Should any justice or judge leave the service of the state before accumulating aggregate time of ten years toward retirement, such justice or judge shall be entitled to a refund of one hundred per cent of his contributions made to the retirement trust fund, without interest, provided however that any such justice or judge may leave such contributions in said judicial retirement trust fund for a period not exceeding seven years, and upon reassumption of office as a supreme court justice, district court of appeal judge or circuit judge within those seven years receive credit for such prior service. Any such justice or judge who fails to resume office as such judge or justice within those seven years shall only be entitled to a refund of one hundred per cent of his contribution to the retirement fund, without interest, and all prior service shall be forfeited should he resume office as such justice or judge at a later date.

(4) Any person who has served as a supreme court justice, district court of appeal judge, or circuit judge and who returns to state or county service shall, upon the termination of his services as such justice or judge, have the right to transfer to any state or county re-

tirement system provided by law, provided such justice or judge has not received any benefits under this law. Such justice or judge so returning to state or county service and electing to transfer to another retirement system shall receive the same percentage credit for each year's service as such justice or judge as allowed by the system transferred to.

History.—§5, ch. 29838, 1955; (1)-(3), (4) n. §5, ch. 57-422; (1)-(3) §2, ch. 61-119.

123.06 Retirement benefits; basis.—

(1) Any supreme court justice, district court of appeal judge, or circuit judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive, retirement compensation the annual amount of which shall be three and one-third per cent of his average final compensation, as the term is herein defined, for each year of service rendered as such supreme court justice, district court of appeal judge or circuit judge or any combination of years served as such justice or judge, but in no event to exceed annually his average final compensation; provided, each supreme court justice in office on July 1, 1957 shall receive retirement compensation, the annual amount of which shall be five per cent of his average final compensation, as the term is herein defined for each year of service rendered as a justice of the supreme court, but in no event to exceed his final compensation.

(2) The average final compensation as used in this chapter shall mean the average cash compensation received from the state and county as salary for the best ten years of the last fifteen years of service. A year shall mean twelve consecutive months.

History.—§6, ch. 29838, 1955; §6, ch. 57-422.
cf.—§123.40 Benefits, division C.

123.07 Reduced retirement benefits with excess to beneficiary.—

(1) Any supreme court justice, district court of appeal judge or circuit judge shall have the right at any time prior to receipt of his or her first monthly installments of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation (or one-half thereof if so designated) so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable such supreme court justice, district court of appeal judge or circuit judge.

(2) Any supreme court justice, district court of appeal judge or circuit judge shall have the right at the time of retirement but prior to receipt of his first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that if such justice or judge dies after retirement compensation installments have commenced the excess if any of his total contributions made to the retirement trust fund, without interest, over the total retirement compensation received by him shall be paid in accordance with the beneficiary designated in the comptroller's office, or in the absence of such designation to his lawful heirs. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable to him.

(3) Any supreme court justice, district court of appeal judge or circuit judge who becomes eligible for retirement may select one of the options provided in this section and continue to hold office or be employed. Should such supreme court justice, district court of appeal judge or circuit judge die before retiring, his surviving spouse shall be entitled to receive either the accumulated contributions of such supreme court justice, district court of appeal judge or circuit judge at the date of death or the reduced retirement compensation to which the surviving spouse would have been entitled to under such option, calculated on the assumption that such supreme court justice, district court of appeal judge or circuit judge retired on his date of death. Any supreme court justice, district court of appeal judge or circuit judge shall have the right at any time prior to actually retiring to change the option selected. The selection of an option under this section will become effective immediately after date of selection. Provided further that should the option be changed at the time of retirement, such option shall become effective immediately upon retirement.

(4) Tables for computing the actuarial equivalent shall be approved by the comptroller.

(5) Any supreme court justice, district court of appeal judge or circuit judge who becomes eligible to make a selection of an option for the benefit of surviving spouse shall be construed to have selected the option as provided in said section which will afford the surviving spouse the greatest amount of benefit.

History.—§7, ch. 29838, 1955; (1)-(3), (4)n. §7, ch. 57-422; (5) n. §3, ch. 59-233; (2) §2, ch. 61-119.

123.08 Disability retirement; periodic physical examination.—Whenever any supreme court justice or circuit judge of the state has served as justice or judge for not less than ten years within the contemplation of this law, the last five years of which must be continuous unbroken service, and who is regularly contributing to the judicial retirement trust fund and shall while holding such office become permanently and totally disabled, physically or mentally, from rendering useful and efficient service as justice or judge, such justice or judge may retire from his office or employment, and upon such retirement he shall be paid, so long as his permanent and total disability continues, on his own monthly requisition, from the judicial retirement trust fund hereinafter established, retirement compensation as provided in this law. Every justice or judge retiring

under this section shall not receive less than twenty-five per cent of his average final compensation. No justice or judge shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians and surgeons, to be selected by the governor for that purpose and found to be disabled in the degree and in the manner specified in this section. Any justice or judge retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the governor for that purpose. Any judge or justice who shall, in the opinion of said physician or surgeon recover fully from such permanent and total disability shall forthwith cease to be paid benefits under this section. No judge retiring hereunder shall be entitled to the options contained in §123.07.

History.—§8, ch. 29838, 1955; §24, ch. 57-1; §2, ch. 61-119.
cf.—§§123.17-123.20 which also provide for disability retirement.

123.09 Practice of law prohibited.—No justice of the supreme court, district court of appeal judge or circuit judge shall engage in the practice of law in this state while drawing retirement compensation provided for by any law of this state for judges.

History.—§9, ch. 29838, 1955; §8, ch. 57-422.
cf.—§123.20 Practice of law prohibited.

123.10 Reassumption of office after refund.—Any justice or judge whose contributions have been refunded as provided in §123.05 and who subsequently reassumes office as such justice or judge shall be treated as those justices or judges assuming office the first time as provided herein.

History.—§10, ch. 29838, 1955.

123.11 Death prior to or after retirement; refund or forfeiture of benefits.—Should any justice or judge die before retiring under the provisions of this law, the heirs, legatees, beneficiary or personal representatives of such deceased justice or judge of the state, shall be entitled to a refund of one hundred per cent, without interest, of the contributions made to the retirement trust fund by such deceased justice or judge. Any justice or judge may file, in writing, a designation of beneficiary and it shall be the duty of the comptroller to pay the refund provided for herein for the deceased justice or judge to such designated beneficiary. The justice or judge shall have the privilege of changing in writing the designated beneficiary at any time. If the deceased justice or judge has received any benefits under this law, no refund shall be made except where this chapter expressly authorizes the same.

History.—§11, ch. 29838, 1955; §2, ch. 61-119.

123.12 Rights under other retirement systems preserved.—Nothing herein contained shall affect the rights that any justice of the supreme court, district court of appeal judge or circuit judge may have acquired or may hereafter acquire under any existing retirement law, and the membership of any such justice or judge in any existing and applicable retirement system shall continue to exist and remain inviolate to the same extent as if this chapter had never passed unless voluntarily renounced or subordinated in favor of the provisions of this chapter in the manner provided for under §123.03; provided, however, that no person while accepting retirement compensation under the terms and provisions hereof shall at the same time receive retirement compensation from the state under any other law relating to retirement of judges.

History.—§12, ch. 29838, 1955; §9, ch. 57-422.

123.13 Optional retirement benefits.—

(1) A supreme court justice, district court of appeal judge or circuit judge who becomes eligible for retirement in accordance with the provisions of this chapter, and who had theretofore accepted or elected to accept the provisions of §25.112 or §38.14, shall be entitled to receive and shall upon retirement receive as retirement compensation to be paid during the remainder of his natural life two-thirds of the total salary being paid to such justice or judge at the time of his retirement, or at his option receive the retirement compensation provided under the terms of this chapter.

(2) Any supreme court justice who becomes eligible for retirement in accordance with the provisions of this chapter, and, who had theretofore accepted or elected to accept the provisions of §25.101, shall be entitled to receive and shall upon retirement receive as retirement compensation to be paid during the remainder of his natural life, one hundred per cent of the total salary being paid to such justice or judge at the time of his retirement, or at his option receive the retirement compensation provided under the terms of this chapter.

History.—§13, ch. 29838, 1955; §10, ch. 57-422.

123.14 Circuit judges; back contributions.—Upon the payment to the comptroller of the state of the full amount he would have been required to contribute had he duly, timely and properly made such contributions, any circuit judge shall be entitled to credit in the circuit judges' retirement act, established and existing by virtue of chapter 38, for all periods of prior service as a circuit judge of the state in the same manner and to the same extent as if he had duly, timely and properly made such contribution, and upon the making of such payments, shall have the election to continue as a member of the retirement system established under said chapter 38, or to participate under the provisions of this chapter.

History.—§14, ch. 29838, 1955.

123.15 System compulsory for new justices and judges; exceptions.—The provisions of this law shall be compulsory for all supreme court justices, district court of appeal judges and circuit judges who take office for the first time on or after July 1, 1955, and the retirement provisions in chapters 25 and 38, shall

not be applicable to those justices or judges covered by this section. Provided, however, any person who shall be a member of any state retirement system at the time of his election or appointment as a supreme court justice, district court of appeal judge or circuit judge, may elect to remain in said system, such election to be made in writing and filed with the comptroller within thirty days from the date he shall assume office.

History.—§15, ch. 29838, 1955; §11, ch. 57-422.

123.16 Appropriation.—The amounts necessary to meet the requirements of the judicial retirement trust fund, after taking into account the amount of contributions made as provided herein, shall be appropriated by the legislature. If the amounts appropriated for this purpose are insufficient, there is hereby appropriated annually the additional amounts necessary to meet the requirements of this fund.

History.—§16, ch. 29838, 1955; §12, ch. 57-422; §2, ch. 61-119; §1, ch. 61-195.

123.17 Judicial retirement for disability.—(1) The commission provided for in §17(2) of Art. V, state constitution, may, in accordance with rules of procedure established by the supreme court, and after notice and hearing, retire any justice or judge for disability with compensation as hereinafter provided. Upon a determination by the commission, in accordance with its rules, that a justice or judge be retired for disability, the clerk of the commission shall forward to the comptroller of the state a certificate certifying the findings and judgment of the commission. The judgment of the commission shall contain the effective date of the disability and shall specify the retirement plan chosen by or for the retired justice or judge.

(2) A justice or judge retired by the commission for disability shall receive two-thirds of his then compensation if he has served for ten years or more. A justice or judge retired by the commission for disability who has served less than ten years shall receive one-third of his then compensation and in addition to said one-third shall receive an additional three and one-third per cent of his compensation at time of retirement for each year served prior to his retirement.

(3) Nothing herein contained shall affect the rights that any justice or judge may have acquired or may hereafter acquire under any existing retirement law, and a justice or judge retired by the commission for disability may advise the commission which retirement plan he desires to be retired under and the commission shall include such election in its judgment of disability. In the event the disability of the justice or judge renders him incapable of making a selection of alternative retirement plans the commission may select the plan most favorable under the circumstances of the particular case and include this selection in its judgment.

(4) Any justice or judge retired for disability shall have the right at any time prior to receipt of the first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable such justice or judge. In the event the disability of the justice or judge renders him incapable of making such election the commission may elect the plan most favorable under the circumstances of the particular case and include this election in its judgment.

History.—§§1-4, ch. 57-421.
cf.—§123.08 which also provides for disability retirement.

123.18 Judicial retirement for disability; transfer of amounts contributed under other retirement laws.—The amounts contributed under §§25.122, 38.17 and 123.02 by any justice or judge accepting the retirement compensation provided in §123.17(2) shall be transferred to a special fund in the state treasury, which is hereby established and designated as "the judicial disability retirement trust fund."

History.—§5, ch. 57-421; §2, ch. 61-119.

123.19 Judicial retirement for disability; disappearance or unexplained absence.—In the event of the disappearance of a justice or judge or his unexplained absence for a period of one hundred and eighty days, the commission may, in accordance with its rules, retire said justice or judge for disability. In such cases the commission shall exercise the available selections or elections as in the case of a justice or judge unable to make such choices by reason of his disability and shall incorporate same in its judgment of disability.

History.—§6, ch. 57-421.

123.20 Judicial retirement for disability; practice of law prohibited.—No justice or judge shall engage in the practice of law in this state while drawing retirement compensation provided for by any law of this state for justices or judges.

History.—§7, ch. 57-421.
cf.—123.09 Prohibiting the practice of law.

123.21 Judicial retirement for disability; appropriation.—There is hereby appropriated and shall be paid annually into the judicial disability retirement trust fund out of any funds in the state treasury not otherwise appropriated sufficient money to meet the requirements of this law. There is hereby appropriated annually out of any funds in the state treasury not otherwise appropriated a sufficient amount (not to exceed seven hundred and fifty dollars), to efficiently administer the provisions of this law.

History.—§8, ch. 57-421; §2, ch. 61-119.

123.22 Activation of division B.—Sections 123.22 to 123.33, inclusive, shall control with respect to division B of this system and mem-

bership therein, and shall prescribe the method of activating such division.

History.—§3, ch. 63-462.

123.23 Applicable law.—Sections 123.01 to 123.21, inclusive, in relation to administration of division B and to duties, rights, privileges, and benefits to members of this division under this system, shall apply to said division B and membership therein, except to the extent that the provisions of §§123.22 to 123.33, inclusive, may be at variance or in conflict therewith.

History.—§3, ch. 63-462.

123.24 Definitions.—The following words and phrases used in §§123.22 to 123.33, inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter, with its three divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the federal social security act.

(3) "Administrator"—the comptroller of Florida as the administrator of this system as provided in §123.01 hereof.

(4) "Agreement"—the modification of that certain agreement entered into October 23, 1951, between the state of Florida and the secretary of health, education, and welfare, pursuant to §650.03, which makes available to members of division B of this system the provisions of said agreement.

(5) "State agency"—the Florida industrial commission within the provisions and contemplation of chapter 650.

(6) "Division"—division B of this system.

History.—§3, ch. 63-462.

123.25 Membership in division B.—Supreme court justices, district courts of appeal judges, and circuit judges may become members of division B of this system in the manner and under circumstances as follows:

A supreme court justice, district court of appeal judge, or circuit judge who is a member of this system on July 1, 1963, and prior to execution of the agreement in pursuance of affirmative referendum as hereinafter provided, may transfer to this division by electing to do so in writing filed with the administrator. While membership in this division shall date from the filing of such election with the administrator, for the purposes of contributions to the system and benefits to members under this division, membership in this division shall take effect upon the date of execution of the agreement. A form for the election to transfer to this division shall be prescribed and furnished to the members of the system by the administrator. Such form shall prescribe the date by which the executed election must be returned by the members in order for such members to be eligible for participation in the referendum provided hereinafter. Executed elections received after such date shall be effective for transfer of membership to this division if returned prior to the date the agreement is entered into. Any member electing to belong to division B may withdraw therefrom prior to the date the agreement is entered into.

History.—§3, ch. 63-462.

123.26 Referendum.—If by the date fixed in said form of election furnished by the administrator to the members of the system there shall have been filed with the administrator executed forms of election evidencing that not less than ten members of this system have chosen to become members of this division, the administrator shall so notify the governor of Florida. It is the legislative intent and request that the governor shall thereupon provide for the holding of a referendum, to be participated in by eligible members, in pursuance of the provisions of §650.10, for the purpose of extending social security benefits to members of this division. Should the results of the referendum be such as to justify the governor's making the certification provided by §650.10 (2) and §218(d) (3) of the federal social security act, he is requested to make such certification, and the state agency is authorized and directed to take appropriate action under chapter 650, and in conformity with applicable federal social security laws, to accomplish the purpose of extending social security coverage to the members of this division, effective January 1, 1959, or as soon thereafter as shall be permissible under then existing federal laws and regulations.

History.—§3, ch. 63-462.

123.27 Funds.—There shall be paid into the judicial retirement system trust fund contributions by members of this division for benefits payable to members under the system. Contributions required of members for social security coverage shall be deposited into the social security contribution trust fund.

History.—§3, ch. 63-462.

123.28 Contributions.—From and after the date of the execution of the agreement, the officer or party paying the salary of a member of this division shall withhold eight per cent of such salary, which shall constitute the contribution of the member of this division with respect to retirement and other benefits payable under the system, and in addition thereto, the entire contribution for each member required for social security coverage as now or hereafter fixed by relevant federal statutes. The officer or party so withholding such percentages shall, without delay, deposit retirement contributions into the judicial retirement system trust fund and social security contributions into the social security contribution trust fund.

History.—§3, ch. 63-462.

123.29 Benefits.—The relevant provisions of §§123.01 to 123.21, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of the

system in relation to members in division A, shall apply with equal force and effect to members of this division with the following exceptions:

(1) Section 123.06(1) shall read with respect to members of division B: Any supreme court justice, district court of appeal judge, or circuit judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive, retirement compensation from the judicial retirement trust fund the annual amount of which shall be three and one-third per cent of his average final compensation, as the term is herein defined, for each year of service rendered as such supreme court justice, district court of appeal judge, or circuit judge or any combination of years served as such justice or judge, provided, however, that in no event shall such retirement compensation which may otherwise be payable between the member's date of retirement and his sixty-fifth birthday exceed his average final compensation and further provided that such retirement compensation as may otherwise be payable subsequent to the member's sixty-fifth birthday shall not exceed that amount which, when added to his estimated annual primary insurance amount as provided under social security coverage at age sixty-five, as determined by the administrator, equals his average final compensation. Should this limitation with respect to retirement compensation payable after the member's sixty-fifth birthday be applicable, the amount of retirement compensation shall be adjusted accordingly.

History.—§3, ch. 63-462.

123.30 Records and reports.—The administrator shall maintain accurate accounts of each member of this division; and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the federal social security act and regulations in relation to the social security coverage of such member. The administrator shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of this system.

History.—§3, ch. 63-462.

123.31 Appropriations.—

(1) If under the agreement, social security coverage is retroactively applicable to members of this division, there is appropriated out of the judicial retirement system trust fund and into the social security contribution trust fund the amount required by applicable federal laws and regulations to be paid with respect to periods prior to date of execution of the agreement.

(2) All amounts required for retroactive social security coverage for members of division B shall be charged against the individual account of such members within the judicial retirement system trust fund and shall be repaid to the judicial retirement system trust fund within one year from date of payment, and the officer or party paying the salary of such member shall deduct the same from the salary of the member in twelve equal monthly payments.

History.—§3, ch. 63-462.

123.32 Future amendments.— Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—§3, ch. 63-462.

123.33 Failure of referendum.—Should a majority of the eligible members of the judicial retirement system fail to vote in favor of social security coverage, the provisions of §§123.22 to 123.32, inclusive, shall cease to be of any effect. In such event, the members of this division shall by virtue of the force and effect of this provision be considered not to have transferred to this division and the executed election to do so, filed with the administrator, shall be considered void and of no effect, and membership in the system shall not be disturbed by reason of the election so made.

History.—§3, ch. 63-462.

123.34 Activation of division C.—Sections 123.34 to 123.43, inclusive, shall control with respect to division C of this system and membership therein, and shall prescribe the method of activating such division.

History.—§4, ch. 63-462.

123.35 Applicable law.—Sections 123.01 to 123.21, inclusive, in relation to administration of division C and to duties, rights, privileges, and benefits to members of this division under the system, shall apply to said division C and membership therein, except to the extent that the provisions of §§123.34 to 123.43, inclusive, may be at variance or in conflict therewith.

History.—§4, ch. 63-462.

123.36 Definitions.—The following words and phrases used in §§123.34 to 123.43, inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter with its three divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the federal social security act.

(3) "Administrator"—the comptroller of Florida as the administrator of this system provided in §123.01.

(4) "Division"—division C of the system.

History.—§4, ch. 63-462.

123.37 Membership in division C.—Supreme court justices, district courts of appeal judges, and circuit judges who become members of the system on or after July 1, 1963, shall become members of division C of the system.

History.—§4, ch. 63-462.

123.38 Funds.—There shall be paid into the judicial retirement system trust fund contributions by members of this division for benefits payable to members under the system. Contri-

butions required of members for social security coverage shall be deposited into the social security contribution trust fund now existing.

History.—§4, ch. 63-462.

123.39 **Contributions.**—From and after July 1, 1963, the officer or party paying the salary of a member of this division shall withhold eight per cent of such salary, which shall constitute the contribution of the member of this division with respect to retirement and other benefits payable under the system, and in addition thereto one half of the entire contribution of the member required for social security coverage as now or hereafter is fixed by relevant federal statutes. The officer or party so withholding such contribution shall, without delay, deposit retirement contributions into the judicial retirement system trust fund and social security contributions into the social security contribution trust fund.

History.—§4, ch. 63-462.

123.40 **Benefits.**—The relevant provisions of §§123.01 to 123.21, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of the system in relation to members in division A shall apply with equal force and effect to members of this division with the following exceptions:

(1) Section 123.04 "Qualification for retirement" shall read with respect to members of division C:

(a) Any person electing to take the benefits of this chapter who has attained the age of sixty-five years, and who has served as a supreme court justice, or district court of appeal judge, or circuit judge for at least ten years in the aggregate, or had ten years of otherwise creditable service either before or after passage of this law, may retire with the right to be paid, and shall be paid on his own requisition in equal monthly installments during the remainder of his natural life, from the judicial retirement trust fund, retirement compensation in accordance with §123.06 as it pertains to members of this division.

(b) Any justice of the supreme court, district court of appeal judge, or circuit judge who has attained the age of fifty-five years or more and has accumulated at least ten years service in the aggregate within the contemplation of this law, and who has made or makes contributions to the judicial retirement trust fund for five or more years of creditable service as prescribed by this law may elect to retire and receive a reduced benefit which would be the actuarial equivalent of the benefits provided in paragraph (a).

(2) Section 123.06(1) "Retirement benefits; basis"—shall read with respect to members of division C:

Any supreme court justice, district court of appeal judge, or circuit judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive retirement compensation the annual amount of which shall be equal to the formula benefit hereinafter defined reduced by the annual maximum primary insurance amount as provided under social security coverage as in effect on the members retirement date. The formula benefit is equal to three and one third per cent of the average final compensation of the member, as the term is herein defined, for each year of service rendered as such supreme court justice, district court of appeal judge or circuit judge or any combination of years served as such justice or judge, but in no event to exceed his average final compensation.

History.—§4, ch. 63-462.

123.41 **Records and reports.**—The administrator shall maintain accurate accounts of each member of this division; and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the federal social security act and regulations in relation to the social security coverage of such member. The administrator shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of the system.

History.—§4, ch. 63-462.

123.42 **Appropriations.**—There is hereby annually appropriated and shall be paid into the social security contribution trust fund out of funds in the state treasury not otherwise appropriated, an amount equal to the total amount paid into the said fund by the members of this division.

History.—§4, ch. 63-462.

123.43 **Future amendments.**—Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—§4, ch. 63-462.

123.44 **Failure of referendum by eligible members of division B.**—Should a majority of the eligible members of division B of the judicial retirement system fail to vote in favor of social security coverage as provided in this chapter and thereby make such coverage nonapplicable to members of division C, the provisions of §§123.34 to 123.43, inclusive, shall cease to be of any effect. In such event, by virtue of the force and effect of this provision persons required to become members of division C in accordance with §123.37 shall instead become members of the system in accordance with §§123.01 to 123.21, inclusive.

History.—§4, ch. 63-462.

TITLE XI

COUNTY ORGANIZATION, OFFICERS AND REGULATIONS

CHAPTER 124

COMMISSIONERS' DISTRICTS

124.01 Division of counties into districts; county commissioners, etc.—

(1) There shall be five county commissioners' districts in each county, which shall be numbered one to five, inclusive, and shall be as nearly equal in proportion to population as possible.

(2) There shall be one county commissioner for each of such county commissioners' districts, who shall be elected by the qualified electors of the county, as provided by Art. VIII, §5, of the state constitution.

(3) The board of county commissioners shall from time to time, fix the boundaries of the above districts so as to keep them as nearly equal in proportion to population as possible; provided, that changes made in the boundaries of county commissioner districts pursuant to this section shall be made only in odd-numbered years.

(4) County commissioners' districts now existing shall remain as now constituted until changed by the board of county commissioners, as provided by the constitution and in this chapter.

(5) This section shall not apply to Dade county.

History.—§§1, 2, ch. 3723, 1887; RS 573; GS 765; RGS 1469; CGL 2147; §1, ch. 24108, 1947; (3) §1, ch. 59-459.

124.02 Notice of change of boundaries of district to be given by publication.—

(1) Whenever the boundaries of existing county commissioners' districts are, from time to time, changed by the board of county commissioners, it shall cause an accurate description of the boundaries of such districts, as changed, to be entered upon its minutes and a certified copy thereof to be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper published in said county.

(2) If there be no newspaper published in such county, then three copies of said minutes shall be posted for four consecutive weeks in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse.

(3) Proof of such publication or posting shall be entered on the minutes of the board. The publication or posting of such copy shall be for information only and shall not be jurisdictional.

History.—§5, ch. 3723, 1887; RS 575; GS 766; RGS 1470; CGL 2148; §1, ch. 24108, 1947.

124.03 Description of district boundaries to be furnished secretary of state.—Whenever the boundaries of existing county commissioners' districts are, from time to time, changed by the board, it shall cause its clerk to forthwith furnish the secretary of state with a certified copy of its minutes, reflecting the description of the boundaries of the district, as changed, who shall record a description of such boundaries in his office in a book kept for that purpose.

History.—§6, ch. 3723, 1887; RS 576; GS 767; RGS 1471; CGL 2149; §1 ch. 24108, 1947.

124.04 Election districts not to lie in more than one county commissioner's district.—The boundary lines of election districts shall never be so located or altered as to lie partly in one county commissioner's district and partly in another. Whenever county commissioners' districts are changed as aforesaid, the election district shall also be changed, if necessary, so as to comply with the requirements of this section.

History.—§7, ch. 3723, 1887; RS 577; GS 768; RGS 1472; CGL 2150; §1, ch. 24108, 1947.

CHAPTER 125

COUNTY COMMISSIONERS; POWERS, DUTIES AND COMPENSATION

125.01 Powers and duties.—The board of county commissioners, at any legal meeting, may elect one of their number chairman, and make such orders concerning the care of and the improvement of the corporate property of the county as may be deemed expedient, and also:

(1) To build and keep in repair county buildings, roads and bridges.

(2) To cause county buildings to be insured in the name of the "Board of County Commissioners of_____ County," for the benefit of the county, whenever the same shall be deemed expedient; and in case there are no public buildings, to provide suitable rooms for county purposes.

(3) To represent the county in the prosecution and defense of all legal causes.

(4) To have care and provide for the poor and indigent people of the county.

(5) To alter, lay out, maintain, establish, vacate or discontinue any road or highway in their respective counties.

(6) To grant licenses for keeping ferries and toll bridges for a term of years not exceeding ten, and to prescribe the rate of ferriage or toll.

(7) To order the county clerk to transcribe any book or books of record whenever the same are not properly bound or are mutilated.

(8) To fix and approve bonds of county officers, as provided by law.

(9) To regulate the compensation of the

county clerk while acting for the county or for the board of county commissioners.

(10) To issue bonds in their respective counties for the purpose of erecting a court house, jail, to build or construct roads and to fund the present outstanding indebtedness, and to prescribe the rate of interest thereon.

(11) To apportion and order the levy of all county taxes in accordance with the law, either for specific or general purposes, except when otherwise provided by law.

(12) To approve all accounts against the counties.

(13) To make such regulations, and pass such resolutions for the protection and preservation of the bridges in their respective counties as they may deem necessary to secure that object.

(14) To fine any person who may be guilty of contempt to their body while in session in a sum of not exceeding twenty dollars, or to imprison such person not exceeding twenty-four hours for such offense.

(15) To adopt a seal.

(16) To perform all other acts and duties which may be authorized by law.

(17) To require fences around public or residential swimming pools in said county, outside of municipalities, so as to relieve attractive nuisances, and may prescribe reasonable regulations which such fences must meet in order to protect the public health, welfare and safety.

History.—§1, ch. 1882, 1872; §1, ch. 3039, 1877; RS 578; GS 769; §1, ch. 6842, 1915; RGS 1475; CGL 2153; (17) §1, ch. 59-436.
cf.—§159.03 Powers re revenue bonds.
§455.06 Motor vehicle liability insurance.

125.02 County commissioners may make appropriations for dipping vats.—County commissioners may appropriate such amounts of moneys as they may deem adequate and necessary for the purpose of constructing dipping vats and of cooperating with the officials of the state livestock board in the eradication of the southern cattle tick and the prevention and control of hog cholera and other contagious, infectious and communicable diseases of animals.

History.—§22, ch. 7345, 1917; RGS 1476; CGL 2154.

125.03 Commissioners required to employ prosecuting attorney.—The county commissioners of any county wherein there shall be no county court or criminal court of record or court of record for the trial of criminal causes shall employ an attorney at law to prosecute all persons, charged with the commission of any kind of offense against the laws of the state in or before the county judge's court.

History.—§1, ch. 7331, 1917; RGS 1477; §1, ch. 10206, 1925; CGL 2155.
cf.—Ch. 36, County judge's court.

125.04 Compensation of prosecuting attorney.—The compensation of the attorney so employed by the county commissioners as provided by §125.03 shall be not less than three hundred dollars or more than six hundred dollars per annum, payable monthly, and in addition thereto said attorney shall be entitled to and shall receive the same fees for conviction as are now or may hereafter be provided by law for attorneys in county courts as conviction fees in cases prosecuted before county court. Said conviction fees to be taxed as part of the cost in each case in which such conviction shall be had before the court of the county judge. Said compensation and fees shall be payable out of the fine and forfeiture fund of the county.

History.—§2, ch. 7331, 1917; RGS 1478; §2, ch. 10206, 1925; CGL 2156.
cf.—Sec. 34.11 Compensation; prosecuting attorney.

125.041 Same; estreated bonds.—

(1) The prosecuting attorney for the county judge's court shall receive ten per cent of each cash bond which is estreated in such court and ten per cent of each bail bond with a surety or sureties which is estreated in such court and collected; provided that he shall in no event receive a greater sum on account of any such bond than would be payable to him as a conviction fee if the defendant were convicted, and provided that in the event a defendant whose cash bond has been estreated is subsequently arrested, tried and convicted, such prosecuting attorney shall receive as compensation for said conviction only the amount, if any, by which the conviction fee otherwise allowed by law exceeds the amount received by or payable to him on account of such cash bond estreature.

(2) This section shall have no application within the counties of Citrus, Hernando, Gilchrist and Levy.

History.—§§1, 2, ch. 59-469; (2) §1, ch. 61-76; (2) §1, ch. 63-358.
Note.—Ch. 63-358 effective January 1, 1964.

125.05 County may purchase bloodhounds.—The county commissioners may purchase not less than two good trained bloodhounds for the use of the sheriff in pursuit of criminals, and shall make suitable provision for their shelter, safe-keeping and maintenance.

History.—§1, ch. 5415, 1905; RGS 1479; CGL 2184.

125.06 Duties of sheriff.—The sheriff shall feed and attend to said bloodhounds so as to keep them in good condition, and shall train them for effective use in the pursuit of criminals, and shall exercise them at least once a week.

History.—§2, ch. 5415, 1905; RGS 1480; CGL 2185.

125.07 County engineer; duties and compensation.—The county commissioners may employ a county engineer, whenever in the judgment of such commissioners the work and affairs of the county require the attention and services of such engineer. And such county engineer shall have general supervision and control of all road work of the county, subject only to the order of the board of county commissioners. The compensation of such engineer shall be fixed by the county commissioners, and shall be payable out of the county general revenue fund or road and bridge fund.

History.—§1, ch. 6479, 1913; RGS 1481; CGL 2186; §1, ch. 61-213.
cf.—§336.03 County engineer; duties, compensation.

125.08 Certain contracts to be let only by competitive bids.—No contract shall be let by

the board of county commissioners of any county having a population of more than thirty-nine thousand according to the last past federal census, for the working of any road or street, the construction or building of any bridge, the erecting or building of any house, nor shall any goods, supplies or materials for county purposes or use be purchased when the amount to be paid therefor by the county shall exceed one thousand dollars, unless notice thereof shall be advertised once each week for at least two weeks in some newspaper of general circulation in the county, calling for bids upon the work to be done or for the goods, supplies or materials to be purchased by the county, and in each such case the bid of the lowest responsible bidder shall be accepted, unless the county rejects all bids because the same are too high; and no contract shall be let by the board of county commissioners of any county having a population of less than thirty-nine thousand and more than ten thousand according to the last past federal census, for the working of any road or street, the construction or building of any bridge, the erecting or building of any house, nor shall any goods, supplies or materials for county purposes or use be purchased when the amount to be paid therefor by the county shall exceed five hundred dollars, unless notice thereof shall be advertised once each week for at least two weeks in some newspaper of general circulation in the county, calling for bids upon the work to be done or for the goods, supplies or materials to be purchased by the county, and in each case the bid of the lowest responsible bidder shall be accepted, unless the county commissioners shall reject all bids because the same are too high; and no contract shall be let by the board of county commissioners of any county having a population of less than ten thousand according to the last past federal census, for the working of any road or street, the construction or building of any bridge, the erecting or building of any house, nor shall any goods, supplies or materials for county purposes or use be purchased when the amount to be paid therefor by the county shall exceed three hundred dollars, unless notice thereof shall be advertised once each week for at least two weeks in some newspaper of general circulation in the county, calling for bids upon the work to be done or for the goods, supplies or materials to be purchased by the county, and in each case the bid of the lowest responsible bidder shall be accepted, unless the county commissioners shall reject all bids because the same are too high.

History.—§1, ch. 5969, 1909; RGS 1486; CGL 2191; §1, ch. 27198, 1951; §10, ch. 27991, 1953.
cf.—§336.44 Counties, contracts for construction; procedure; bonds.

125.081 County, municipal and district purchases may be made under state contract.—Any county officer, board, bureau or department and any municipality and any district having the power to make purchases from public funds may, after complying with all laws limiting, restricting or defining the manner or means of making such purchase, make any purchase of any goods, supplies or materials under any state contract (if the terms of such contract permit) established by the state or any department or board or commission thereof, when the state contract price for such goods, supplies or materials is in each case lower and better than any bid received or offer made for the sale of such goods, supplies or materials and the purchase of such goods, supplies or materials at said contract price is herewith authorized and determined to be for a state purpose.

History.—§1, ch. 28218, 1953.
cf.—Ch. 287 State purchasing commission.

125.09 To inspect offices.—The county commissioners shall, at least once every three months, inspect the offices and records of the county judge, sheriff and clerk of the circuit court and other officers of their respective counties, and see that the laws prescribing and regulating the duties of said officers are being fully complied with; and they shall report to the governor of the state any failure on the part of such officers to perform their duties.

History.—§1, ch. 4141, 1893; GS 770; RGS 1487; CGL 2196.

125.10 Completing work in vacated offices.—Whenever the term of any of such officers shall have expired, or any of said officers shall have died, resigned or been removed from office, leaving undone any work required by law to be done by said officer, and for which he has received the compensation, the county commissioners may have such work done by the successor of such officer, at the expense of the county, and may recover the amount paid out by them to have said work done by suit in the name of the county, on the official bond of said officer whose duty it was to have done said work, and the state attorney of the circuit in which said county is situated shall institute and conduct said suit.

History.—§2, ch. 4141, 1893; GS 771; RGS 1488; CGL 2197.

125.11 To keep open books.—The board of county commissioners shall keep proper minutes of their proceedings and proper books of accounts of their dealings with the county finance. They shall keep their books open for inspection.

History.—Ch. 156, 1847; ch. 370, 1851; ch. 863, 1859; RS 579; GS 772; RGS 1489; CGL 2198.

125.15 To sue and be sued in the name of county.—The county commissioners shall sue and be sued in the name of the county of which they are commissioners. A change in the persons composing the board of county commissioners shall not abate the suit, but it shall proceed as if such change had not taken place.

History.—§§1, 3, ch. 3242, 1881; RS 580; GS 773; RGS 1493; CGL 2202.

125.17 Clerk.—The clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners. He shall keep their minutes and accounts, and perform such other duties as their clerk as the board

may direct. He shall have custody of their seal, and shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed. And he may give copies of writings in his custody as the clerk of said board, attested by his signature and authenticated by said seal.

History.—§583, RS 1892; RS 583; GS 776; RGS 1498; CGL 2261.

125.22 Commissioners may lease space for county purposes.—Whenever by reason of the burning or other loss of any court house in any county in this state, or the rebuilding or repairing thereof, or of there being therein inadequate space to accommodate the offices of the county officers of such county, and for the holding of any court or courts or the transaction of any other matters now required to be conducted in the court house of the county, and the determination of such fact by the board of county commissioners be entered by them in their minutes, it shall become lawful thereupon for the board of county commissioners of such county to lease any additional building or buildings, or space in any additional building or buildings, as may be determined necessary by the board of county commissioners of such county for the transaction of the business of the county, including offices for any of the county officers of such county and the holding therein of any of the court or courts now provided to be held in the county court house, or for the meeting of the grand jury of the county, and to pay from any funds of such county available therefor any rental agreed to be paid by said board of county commissioners for the use of such additional building or buildings, or space in any additional building or buildings so leased by said county board, and any business of the county transacted in any building or buildings, or space therein so leased as herein provided for, and the holding of any court or courts therein provided to be held in such county, or the convening therein of the grand jury of the county, is declared to be legal, valid and binding for any and all purposes and upon any and all persons whomsoever; provided, however, no lease made under the authority of this section shall be for a term of more than two years.

History.—§1, ch. 14492, 1929; CGL 1936 Supp. 2276(19).

125.221 Holding of court and meeting of grand jury; place other than courthouse.—In the event there is not suitable available space in the courthouse due to construction or reconstruction, destruction or other good reasons, for the holding of any court or courts now provided to be held in the county courthouse, or for the meeting of the grand jury of the county, the county commission, with the approval of the court, may designate some other place or places located in the county seat for the holding of court or courts or for the meeting of the grand jury.

History.—§1, ch. 29795, 1955.

125.222 Auxiliary county offices, court proceedings.—All proceedings, except trial by jury, had in any of the several counties of this state in connection with any civil, equity or criminal action may be conducted in auxiliary county offices where such offices have been established and are maintained under authorization of law, provided adequate space and facilities are available therein and provided all records of such proceedings be kept and maintained in the county offices at the county seat.

History.—§1, ch. 57-331.

125.23 Fire control units; declared to be county purposes.—The establishment and maintenance of county fire control units are declared to be county purposes.

History.—§1, ch. 17024, 1935; CGL 1936 Supp. 2181(19).

125.24 Fire control units; commissioners authorized to establish and maintain.—The boards of county commissioners may establish and maintain county fire control units.

History.—§2, ch. 17024, 1935; CGL 1936 Supp. 2181(20).

125.25 Fire control units; agreements with Florida board of forestry.—The said boards of county commissioners may enter into agreements with the Florida board of forestry for the establishment and maintenance of said county fire control units, under such terms as shall be agreed upon by the said board of county commissioners and such Florida board of forestry, and in pursuance of such fire prevention and control work as may be agreed upon between them in accordance with the established policy, program and procedure of the Florida board of forestry; provided, however, that unless otherwise provided in writing by and between the board of county commissioners and the Florida board of forestry, any and all sums payable to the said Florida board of forestry by the board of county commissioners shall be payable in equal monthly installments due and payable in advance on the first of each and every month.

History.—§3, ch. 17024, 1935; CGL 1936 Supp. 2181(21); §1, ch. 21997, 1943.

125.26 Fire control units; taxes for payment of expenses.—In order to defray the cost and expense, or any portion of the cost and expense, necessary for the establishment and maintenance of said county fire control units, the said county commissioners may pay such costs and expenses from the general revenue fund of the county, and in order to provide for the payments thereof from the general revenue fund, the said county commissioners may levy annually a tax upon all the taxable property in said county; provided, however, that the gross annual proceeds of such tax shall not in any year exceed a sum in dollars equal to the total number of acres embraced and comprised within such county multiplied by three cents; and provided, further, that if a sum in dollars equal to the total number of acres embraced and comprised within said county multiplied by three cents cannot be obtained by multiplying the total assessed valuation of all taxable property by two mills, then shall the said county commissioners pay the sum in dollars equal

to multiplying the total assessed valuation of all taxable property by two mills.

History.—§4, ch. 17024, 1935; CGL 1936 Supp. 2181(22); §2, ch. 21997, 1943.

125.27 Fire control units; authority of state board of forestry.—The state board of forestry may enter into agreements to carry out the purposes of §§125.23-125.26 with such county or counties as shall elect to proceed under the authority hereby given, and said board of forestry may cooperate with said counties in the establishment and maintenance of such county fire control units and supplement the funds appropriated from the general revenue fund of said county or counties with funds accruing to said state board of forestry, to be used in the establishment and maintenance of such county fire control units.

History.—§5, ch. 17024, 1935; CGL 1936 Supp. 2181(23).

125.28 Fire control units; referendum necessary to discontinue operations hereunder.—Whenever any board of county commissioners shall elect and decide to proceed under the power and authority granted by §§125.23-125.27, and shall, in pursuance thereof, enter into any agreement with the state board of forestry, it shall not thereafter have authority to discontinue operations hereunder or to cease to levy the tax herein provided for or to rescind its agreement with the state board of forestry unless and until authorized so to do by a majority vote of the qualified electors of such county. The submission of the question to a vote of the people may be at any general or special election now provided for by law, and the laws pertaining to and governing the general or special election at which the question is submitted, shall govern the referendum election to be held on the question of the discontinuance of the maintenance of such county protective units.

History.—§6, ch. 17024, 1935; CGL 1936 Supp. 2181(24).

125.29 Fire control units; referendum necessary to begin operations hereunder.—

(1) No board of county commissioners which is not now engaged in fire control work shall hereafter be authorized under the provisions of §§125.23-125.28 to establish and maintain any fire control unit, unless and until the terms of this law shall be ratified by a majority of those qualified electors of the county who cast their votes on the express referendum question (as hereinafter stated) of whether or not the terms of this law shall be ratified. The submission of said question to a vote of the electors may be at any special or general election now provided for by law, and the laws pertaining to and governing such special or general election shall govern the referendum election to be held on the establishment and maintenance of fire control units. The question or matter to be decided and determined by said electors at said election shall be stated upon the ballots used in said election as follows:

For a county fire control unit.

Against a county fire control unit.

The result of such election shall be canvassed and returned as general elections for the elections of county officers in said county are canvassed and returned, and the result thereof shall be certified to the board of county commissioners by the county canvassing board. Provided, however, that before an election can be held in any county as provided herein, the owners of a majority of the privately owned acreage in such county shall petition the board of county commissioners of such county therefor.

(2) Any board of county commissioners is authorized to establish and maintain a fire control unit under the provisions of §§125.23 to 125.28, inclusive, if the establishment thereof has been approved by a majority of the votes cast upon the question of the establishment of a fire control unit by the qualified electors voting thereon at any general or special election heretofore held.

(3) All referendum elections heretofore held in any county to determine whether or not a county fire control unit should be established and the terms of said fire control laws ratified, where a majority of the votes cast on the referendum question favored the establishment of the unit and the ratification of said laws, are hereby declared to have been duly held and that said vote duly ratified and approved such units and said laws within the meaning and intendment of the legislature, and the said referendum elections are hereby approved, confirmed and validated.

(4) All fire control agreements heretofore made by the county commissioners of any county and the Florida board of forestry and parks or the Florida board of forestry are hereby confirmed and validated; provided, however, the parties to such agreements may by mutual consent change or alter such agreements to meet new conditions and circumstances.

History.—§11, ch. 17024, 1935; CGL 1936 Supp. 2181(27); §3, ch. 21997, 1943; §§1-3, ch. 22635, 1945.

125.30 Protection of plants and livestock.—The boards of county commissioners may in the exercise of their sound discretion, appropriate and expend moneys for the purpose of purchasing poisons or other insecticides, fungicides or disinfectants for the use of farmers, fruit growers, and livestock owners, in combatting or suppressing outbreaks of serious insect pests, plant diseases, or diseases or parasites of livestock.

History.—§1, ch. 17991, 1937; CGL 1940 Supp. 2739(31).

125.301 Eradication of rattlesnakes.—

(1) Any person who presents the body of a dead rattlesnake to the sheriff of the county in which said rattlesnake was killed shall receive a bounty of two dollars and fifty cents upon reasonable proof that said rattlesnake was killed in the county from which said bounty is being claimed.

(2) Payment of said bounty shall be made by the clerk of the circuit court, upon presentation of a certificate by the sheriff of said county that he has proof that said rattlesnake was killed in said county; said payment shall be

made from the general fund of the county in which said rattlesnake was killed and presented for payment.

(3) Any dead rattlesnake so presented for payment of bounty shall be destroyed by the sheriff of the county to whom presented.

(4) The pigmy rattlesnake, commonly known as the ground rattler, is expressly excluded from the said bounty payment.

(5) Participation in this program shall be permissive subject to the approval of the board of county commissioners of the county desiring to participate in said program.

(6) This law shall not be applicable to domestically raised rattlesnakes, but solely to wild ferrae naturi snakes.

History.—§§1-6, ch. 59-87.

125.31 Investment of surplus public funds; regulations.—

(1) The boards of county commissioners are hereby authorized and empowered, by resolution to be adopted from time to time, in their discretion to invest and reinvest any surplus public funds in their control or possession in negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States government at the then prevailing market price for such security.

(2) All securities purchased by any such board under the authority of this law shall be properly earmarked and immediately placed for safekeeping in a safety deposit box in some bank or institution carrying adequate safety deposit box insurance within such county, and no withdrawal of such securities in whole or in part shall be made from such safety deposit box except upon authority evidenced by resolution of the board of county commissioners of such county.

(3) When the money invested in such securities is needed in whole or in part for the purposes originally intended, the board of county commissioners of such county is authorized to sell such security or securities at the then prevailing market price and to pay the proceeds of such sale into the proper account or fund of the county.

(4) For the purposes of this law, the term "surplus funds" is defined as funds in any general or special account or fund of the county held or controlled by the county commissioners of such county which in reasonable contemplation will not be needed for the purposes intended within a period of six months from the date of such investment.

History.—§§1-4, ch. 21691, 1943.
cf.—§129.02(4)(b) Capital budget, investment.

125.311 County dumps.—The board of county commissioners is authorized to appropriate and expend county funds for the purpose of acquiring land within the county and to establish thereon dumps for the deposit of rubbish and garbage by its citizens.

History.—§1, ch. 29710, 1955.

125.32 Vice-chairman; powers, duties, etc.—

(1) Each board of county commissioners from time to time may appoint one of its members as vice-chairman of such board, to hold office during the pleasure of the board.

(2) In the absence of the chairman from the county or in event of his incapacity to act on account of illness or any other cause, the vice-chairman shall have and exercise the same powers as the chairman.

(3) The signature of the clerk of the circuit court or of any of his deputies to any instrument signed by the vice-chairman of the board of county commissioners shall constitute a sufficient certificate of the authority of the vice-chairman to act, as set out in subsection (2).

History.—§§1-3, ch. 21957, 1943.

125.33 Closing, vacating and abandoning roads, streets, etc.—

(1) The board of county commissioners upon request of the United States government or any branch thereof, is hereby authorized and empowered to close, vacate, and abandon any public or private street, road, alley, way, or other place used for travel, or any portion thereof, within their jurisdiction, and outside the corporate limits of any town or city.

(2) The action of the board of county commissioners in closing, vacating and abandoning any road or street, as herein authorized, shall be evidenced by resolution duly adopted and entered upon its minutes. The request of the United States government or any branch thereof to such board to take such action shall be in writing, and shall be spread upon the minutes of the board of county commissioners. Notice of the adoption of such a resolution by the board of county commissioners shall be published one time within thirty days following its adoption, in one issue of a newspaper of general circulation published in the county, and if there is no such newspaper, then certified copies of the resolution shall be posted for a period of two weeks, one copy at the courthouse of the county, and one copy at each terminus of the road or street, or portion thereof, therein ordered closed and abandoned.

(3) The actions of the board of county commissioners of each county heretofore taken, closing, vacating or abandoning any such street or road, as herein described, and appearing in the minutes of said board, are hereby ratified, approved, and confirmed in all respects, and such streets and roads are hereby declared closed, vacated and abandoned.

(4) The authority and method of vacating, closing and abandoning such roads and streets herein provided shall be in addition to the authority and method provided in the highway code.

History.—§§1-4, ch. 22067, 1943.
cf.—§§177.15, 192.29, 192.30 Vacation of streets and alleys.
§§336.09-336.11 Closing and abandonment of roads.
§340.07(3) Closing and abandonment of roads; turnpike authority.
§422.04 Closing of roads; housing projects.
§779.14 Closing and restricting use of highway.

125.331 Closing, vacating and abandoning certain parks.—

(1) The boards of county commissioners

with respect to property located outside the corporate limits of any municipality, are hereby authorized:

(a) To vacate, abandon, discontinue and close any existing park, other than a state or federal park, and to renounce and disclaim any right of the county and the public in and to the land constituting such park;

(b) To renounce and disclaim any right of the county and the public in and to any land or interest therein acquired by purchase, gift, devise, dedication or prescription for park purposes, other than lands acquired for state and federal parks; and

(c) To renounce and disclaim any right of the county and the public in and to land, other than land constituting or acquired as a state or federal park, delineated on any recorded map or plat as a park.

(2) Upon petition to the board of county commissioners by the owner of land that

(a) Abuts upon any existing park or upon any land delineated upon any recorded map or plat as a park, or

(b) Adjoins lands acquired for park purposes in the manner described in subsection (1) (b) hereof, shall adopt a resolution declaring that the board of county commissioners, at a definite time and place, will consider the advisability of exercising the power granted to it by subsection (1) with respect to a park or any land delineated upon any recorded map or plat as a park, or with respect to any land acquired in the manner described in subsection (1) (b).

(3) After the adoption of the resolution, all subsequent actions of the boards of county commissioners shall follow the procedure set forth in the highway code relating to the vacating, abandoning and discontinuing of streets, roads and highways other than state and federal highways located outside of any municipality, as far as said sections are applicable. All land owners owning lots or parcels of land in any platted subdivision of record, of which the park sought to be closed is a part, shall be mailed notice to their last known address, as disclosed by the last tax assessment roll of said county, at least twenty-eight days before said hearing, and the proof of mailing of such notice to land owners shall be filed with the board by the clerk of the circuit court.

(4) Should either twenty percent of the lot owners or the owners of twenty percent of the lots in the subdivision in which said park is located, or the owner of any lot in said subdivision located within four hundred feet of said park and on which lot any building exists, object at said hearing before the board to said petition initiated as to the closing of said park, the board of county commissioners of said county involved shall deny said petition, and said commissioners shall not have the discretion to close said park.

History.—§§1-4, ch. 28206, 1953.

125.34 Conveyance of county land for proposed national park, forest, or monument.—

(1) The board of county commissioners of any county wherein may lie all or a part of the area of an established or proposed national park, national forest or national monument is hereby empowered to convey to the United States, or any department thereof required by law to hold title thereto, without cost, any lands or interests therein belonging to such board of county commissioners or its county, upon request of the United States or any of its departments.

(2) No such conveyance shall be deemed to warrant the title to any such lands or to represent any state of facts concerning the same, but shall operate only to transfer such right, title or interest therein and thereto as such board of county commissioners or its county may have.

(3) All such conveyances may be executed in the name of the county by its board of county commissioners, by its chairman or vice-chairman, and attested by its clerk or deputy clerk, and shall bear the official seal of said board of county commissioners. No such conveyances shall be required to be witnessed or acknowledged, but shall be entitled to record when executed as herein provided.

History.—§§1-3, ch. 23670, 1947.

125.35 County authorized to sell real and personal property.—The board of county commissioners is expressly authorized to sell and convey any property, real or personal, belonging to the county, whenever such board shall determine that it is to the best interest of the county to do so. Provided, however, that no sale of any real property shall be made unless notice thereof shall be published once a week for at least two weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold and, in each case, the bid of the highest bidder, complying with the terms and conditions set forth in such notice, shall be accepted, unless the board of county commissioners shall reject all bids because the same are too low. The board of county commissioners may require a deposit to be made or a surety bond to be given, in such form or in such amount as the board shall determine, with each bid submitted.

History.—§1, ch. 23829, 1947.

125.36 County authorized to sell real and personal property; price and terms.—In exercising the powers conferred in §125.35, the board of county commissioners may sell any such property, real or personal, not needed for county purposes, for such price and upon such terms and conditions as said board shall deem proper, provided that, in giving notice for the sale of real estate, the terms and conditions shall be stated in such notice. In making any sale of property under this law, the board of county commissioners is hereby authorized and empowered to convey title in such property to the purchaser thereof and to execute the proper conveyance thereof.

History.—§2, ch. 23829, 1947.

125.37 Exchange of county property.—Whenever, in the opinion of the board of county commissioners, the county holds and possesses any real property, not needed for county purposes, and such property may be to the best interest of the county exchanged for other real property, which the county may desire to acquire for county purposes, the said board of county commissioners of any county is authorized and empowered to make such an exchange. Provided, however, before any exchange of property shall be effected, a notice, setting forth the terms and conditions of any such exchange of property, shall be first published, once a week for at least two weeks, in a newspaper of general circulation published in the county, before the adoption by the board of county commissioners of a resolution authorizing the exchange of properties.

History.—§3, ch. 23829, 1947.

125.38 Sale of county property to United States, or state.—If the United States, or any department or agency thereof, the state or any political subdivision or agency thereof, or any municipality of this state, or corporation or other organization not for profit which may be organized for the purposes of promoting community interest and welfare, should desire any real or personal property that may be owned by any county of this state or by its board of county commissioners, for public or community interest and welfare, then the United States, or any department or agency thereof, state or such political subdivision, agency, municipality, corporation or organization may apply to the board of county commissioners for a conveyance or lease of such property. Such board, if satisfied that such property is required for such use and is not needed for county purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of such property. The fact of such application being made, the purpose for which such property is to be used, and the price or rent therefor shall be set out in a resolution duly adopted by such board. In case of a lease, the term of such lease shall be recited in such resolution. No advertisement shall be required.

History.—§4, ch. 23829, 1947.

125.39 Nonapplicability to county lands acquired for delinquent taxes.—The provisions of this law shall not be construed to cover the sale or disposition of those lands acquired by any county for delinquent taxes and which are described in the book designated "county lands acquired for delinquent taxes," on file in the office of the clerk of the circuit court of any county, or any land conveyed to any county for a specific purpose and containing a reversionary clause whereby said land shall revert to the grantor or grantors upon failure to use said real property for such purpose.

History.—§5, ch. 23829, 1947.

125.40 Other laws unaffected by this chapter.—The provisions of this law are cumulative and the same shall not be deemed to limit, repeal, modify or amend any law now in existence, empowering any county to make disposition of its real or personal property.

History.—§6, ch. 23829, 1947.

125.41 Conveyance of land by county.—

(1) Deeds of conveyance of lands, the title to which is held by any county or in the name of its board of county commissioners may be in substantially the following form:

THIS DEED, made this.....day of..... 19....., by _____ County, Florida, party of the first part, and _____, party of the second part,

WITNESSETH that the said party of the first part, for and in consideration of the sum of $_____ to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, his heirs and assigns forever, the following described land lying and being in _____ County, Florida:

_____

_____

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairman or Vice-Chairman of said Board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST: _____
Clerk (or Deputy Clerk)
Circuit Court

_____

_____ County, Florida
By its Board of County Commissioners

By _____
Its Chairman (or Vice-Chairman)

(2) No such deed of conveyance shall be required to be witnessed or acknowledged, but shall be entitled to record when properly executed.

(3) All deeds of conveyance by any county or by its board of county commissioners shall convey only the interest of the county and such board in the property covered thereby, and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

History.—§§1, 2, 3, ch. 23831, 1947; §11, ch. 25035; 1949.
cf.—§194.56 Form of county deed.

125.42 Water, sewage, gas, power, telephone and other utility lines along county roads and highways.—

(1) The board of county commissioners, with respect to property located without the corporate limits of any municipality are authorized to grant a license to any person or private corporation to construct, maintain, repair, operate and remove lines for the transmission of water, sewage, gas, power, telephone and other public utilities under, on, over, across and along any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription; provided, however, said board of

county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public.

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair said road or highway promptly, restoring the same to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating such license; and

(d) In addition to the foregoing provisions, as may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however to termination by the licensor, in event the road or highway shall be closed, abandoned, vacated, discontinued or reconstructed.

(3) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(4) In the event of widening or repair or reconstruction of any such road the licensee shall move or remove such water, sewage, gas, power, telephone and other utility lines at no cost to said counties.

History.—§§1-3, ch. 23850, 1947; (1), (2), (4)n. §1, ch. 57-777.

125.43 Common functions, powers and duties; authority to contract.—

(1) The boards of county commissioners of the several counties, or any two or more of them, be, and they are hereby authorized to enter into and carry into effect contracts and agreements relating to the common powers, duties and functions of said boards of county commissioners, or to the common powers, duties and functions of any two or more of said boards of county commissioners.

(2) The boards of county commissioners of the several counties, or any two or more of them, be, and they are hereby authorized to enter into and carry into effect contracts and agreements for the performance of any of their several common functions, powers and duties by a central agency or common agent of said contracting boards.

(3) Nothing in this section shall be construed to grant to the boards of county commissioners any new or additional powers and duties, or to assign to them any new or additional functions, but this section shall be construed only to allow contracts and agreements for the carrying on of functions and performance of duties heretofore provided by law or which may be provided at this or any subsequent session of the legislature.

(4) This section is declared to be remedial in nature and purpose and to have for its object the authorizing of boards of county commissioners to enter into and carry into effect contracts and agreements in order to coordinate their efforts and cooperate effectively to the end that the work and functions of each may efficiently and economically implement the other in rendering service to the people of the state, and this section shall be liberally construed to effectuate such purpose.

History.—§§1-4, ch. 26731, 1951.
cf.—§154.05 Cooperation and agreements between counties.

125.44 Authority to dispose of unclaimed dead bodies.—Whenever the dead body of a human being shall remain unclaimed by any relative of the deceased person for a period of ten days after death, the board of county commissioners of the county within which such body may be shall have and is hereby given the authority and power to give such body for any educational or research purpose to any medical school, dental school, school of nursing or other college or university, whether within or without the state.

History.—§1, ch. 26798, 1951.
cf.—§245.12 Distribution of dead bodies.
§470.18 Use of bodies in embalming schools.

125.45 Sheriffs' offices and jails; expenses of equipping, operating, etc.—

(1) The county commissioners are hereby authorized to furnish or pay for the following services, equipment and materials upon the requisition of the several sheriffs:

(a) Fuel for the maintenance and operation of the county jail.

(b) Radio equipment, cost of operation, installation and maintenance.

(c) Refrigerators at the jail for keeping food.

(d) Bedding for jails.

(e) Stoves, kitchen utensils such as pots, pans, knives, forks, trays, etc. for the preparation of food and feeding of prisoners.

(f) Identification bureau materials and equipment for fingerprinting and for the making and developing of photographs.

(g) Local and long distance telephone and telegraph bills for the necessary operation of sheriffs' offices.

(h) General office equipment and supplies such as furniture, typewriters, forms prescribed by auditing department, stationery, paper clips and miscellaneous supplies and equipment generally used by the sheriff's offices and jails.

(2) The county commissioners of each county shall pay for the following services, equipment and materials upon requisition of the several sheriffs:

(a) For the cost of operation and maintenance of radio equipment now owned by the counties or the sheriff, or when hereafter purchased by and with the consent of the county commissioners.

(b) Bedding in the opinion of the county commissioners necessary in the operation of the county jail.

(c) Stoves, kitchen utensils such as pots,

pans, knives, forks, trays, etc. necessary in the opinion of the county commissioners for the preparation of food and the feeding of prisoners.

(d) Necessary equipment and supplies used by the sheriffs of the respective counties in the operation of an Identification Bureau.

(e) Fuel necessary for the maintenance and operation of the county jail.

(f) Refrigerators which in the opinion of the county commissioners are necessary for the healthful and economical operation of the county jail.

(g) Local and long distance telephone and telegraph bills necessary in the apprehension of criminals.

(h) General office equipment and supplies such as furniture, typewriters, forms prescribed by auditing department, stationery, paper clips and miscellaneous supplies and equipment generally used by the sheriff's offices and jails, necessary in the opinion of the county commissioners, in the operation of an efficient sheriff's office and county jail.

History.—§§1, 2, ch. 26947, 1951.

125.46 Power to make regulations for government of county recreation areas.—

(1) The board of county commissioners shall have power to make necessary regulations, not inconsistent with the constitution and laws of the United States or this state or the sanitary code, for the government of parks, bathing beaches, waterways, recreation areas and the like owned and operated by the county. Such regulations shall be recorded in the minutes of the meetings of the board and shall be promulgated by posting copies thereof at the courthouse for four consecutive weeks or by publication once each week in a newspaper published in the county for the same period.

(2) Such regulations shall be enforced as are the criminal laws. Violation thereof shall be a misdemeanor.

History.—§1, ch. 28036, 1953.

125.47 County historical commission; creation; members.—

(1) The county commissioners are hereby authorized to create a historical commission for their particular county. Such commission shall be known as the county historical commission. It shall consist of not more than ten members, or fewer than five members, all of whom except one shall be selected by the county commissioners. The clerk of circuit court of such county shall be a member of the historical commission and shall be its secretary. One or more members of the board of county commissioners may also be selected to serve on the historical commission.

(2) In selecting citizens to serve on the historical commission the board of county commissioners shall consider the interest of such citizens in the history and cultural lore and development of the county.

(3) The chairman of the county historical commission shall be named by the county commissioners. The members of the historical commission shall receive no compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§1, 2, ch. 28306, 1953; (3) §19, ch. 63-400.

125.48 County historical commission; meetings; county historian.—As soon as practicable after said commission has been created by appropriate action of the board of county commissioners the said commission shall meet at an appropriate place and shall arrange a time for holding regular meetings of the commission, and for such other meetings as shall be necessary and it may adopt such rules of organization and procedure as it may deem necessary and determine the duties of its members and employees. The commission may, when necessary, appoint a clerk to be known as "county historian."

History—§3, ch. 28306, 1953.

125.49 County historical commission; duties.—It shall be the duty of such commission to collect, arrange, record and preserve historical material and data, including books, pamphlets, maps, charts, manuscripts, family histories, U. S. census records, papers and other objects and material illustrative of and relating to the history of such county and of Florida; to procure and preserve narratives of the early pioneers, their exploits, perils, privations and achievements; to collect material of every description relative to the history of its Indian tribes and wars, and relative to its soldiers, its schools and its churches.

History.—§4, ch. 28306, 1953.

125.50 County historical commission; power to mark historical locations.—Such commission may upon its own initiative or upon petition of municipalities or historical societies, mark by proper monuments, tablets or markers, the location of forts, Indian mounds or other places in such county where historical events have occurred.

History.—§5, ch. 28306, 1953.

125.51 Recording historical data.—The clerk of the circuit court of such county, shall file and record, without charge, in a book or books which shall be furnished such clerk by the said board of county commissioners all such historical material and data that said commission may direct to be filed and recorded.

History.—§6, ch. 28306, 1953.

125.52 Expenses of commission from county funds; limitation.—The board of county commissioners is hereby authorized to pay the expenses of such commission out of the general fund of the county, but such expenses shall not at any time exceed three thousand dollars per annum for counties with 200,000 population, or more, and fifteen hundred dollars for counties with less population.

History.—§7, ch. 28306, 1953.

125.53 Repository for findings, collections, etc., of commission.—The board of county commissioners is hereby authorized to provide suitable and adequate space as a repository for

the findings, collections and other material of the said historical commission.

History.—§8, ch. 28306, 1953.

125.54 Watershed protection and flood prevention; county contribution for federal survey.—The county commissions of the several counties may, and are authorized to, contribute county funds, where necessary to insure complete coverage, toward a survey being conducted by the federal government pursuant to public law 566, as amended, known as the watershed protection and flood prevention act.

History.—§1, ch. 57-414.

125.55 Authority to accept contributions for roads outside municipalities.—The boards of county commissioners are authorized to accept materials or financial contributions for the construction or repair of streets and roads outside of municipalities where the condition of said streets and roads is critical and the county is unable to construct or repair the same due to other commitments of county equipment.

History.—§1, ch. 59-433.

125.56 Adoption of building code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state is authorized, in its discretion, to adopt a building code to provide for the safe construction, erection, alteration, and repair of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider the adoption of a building code by a majority of the members of the board of county commissioners of such county, the said board shall call a public hearing not less than thirty nor more than sixty days from the date of such determination. Notice of said public hearing shall be posted at the courthouse door for not less than thirty days prior to the date of such public hearing, published once each week for four consecutive weeks prior to such date in a newspaper of general circulation within such county, and said notice shall contain the time, date and place for said meeting. At said meeting the board shall hear all interested parties. Thereafter, at any regular meeting of the board of county commissioners of such county, or at any special meeting of said board called for said purpose, the board may adopt a building code consistent with the terms and purposes of this act, which shall be known thereafter as the county building code. Upon adoption, the code shall be in full force and effect throughout the unincorporated area of such county. Nothing herein contained shall be construed to prevent the board of county commissioners from amending or repealing such code at any regular meeting of such board.

(2) The board of county commissioners of each of the several counties may provide a schedule of inspection fees in order to defer the costs of inspection and enforcement of the provisions of this act, and of any building code adopted pursuant to the terms of this act, providing said schedule of fees shall not in any event exceed one fifth of one per cent of the total costs of the construction, erection, alteration or repair, as the case may be, of any building or proposed building.

(3) The board of county commissioners of each of the several counties may employ a building inspector and such other personnel as it deems necessary to carry out the provisions of this act, and may pay reasonable salaries for such services.

(4) After adoption of the building code as herein provided, it shall be unlawful for any person, firm or corporation to construct, erect, alter or repair any building within the territory embraced by the terms of this act, without first obtaining a permit therefor from the appropriate board of county commissioners, or from such persons as may by resolution be directed to issue said permits, upon the payment of such reasonable fees as shall be set forth in the schedule of fees adopted by said board; said board is hereby empowered to revoke any such permit upon a determination by said board that the construction, erection, alteration or repair of the building for which permit was issued is in violation of or not in conformity with the said building code.

(5) Any person, firm or corporation violating any of the provisions of this act or any duly adopted county building code shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law for conviction of a misdemeanor.

(6) Nothing herein contained shall be construed as affecting any special or general act of local application heretofore or hereafter adopted or passed.

(7) The provisions of this act shall not be applicable in any county until the question has been approved by a majority of the qualified electors of said county at an election to be held for the purpose of approval or disapproval of the terms hereof. Such election may be held only in such counties where a majority of the board of county commissioners have approved the same by appropriate resolution.

History.—§§1-5, 7, 8, ch. 63-290.

CHAPTER 126
NEW COUNTIES

126.01 First meeting of commissioners.—The board of county commissioners of any new county in the state, whether such county has heretofore been created or may be hereafter created, may hold a meeting immediately upon the receipt of the commissions by the members of such boards of county commissioners or at any time thereafter prior to the time named for the first meeting of the board of county commissioners in the act creating such new county. Such meeting shall be held upon three days' written notice to all the members, which notice shall be served in person on each member of such board of county commissioners or left at the usual place of abode of such member with a member of the family of such county commissioner over the age of twelve years. Such notice shall be signed by at least two members of the board of county commissioners and may be served by any person over the age of eighteen years. Proof of service shall be made by affidavit of the person or persons serving such notice, and a copy of such notice together with proof of service shall be filed with the board of county commissioners at such meeting and spread upon the minutes of such meeting of the board of county commissioners. Such meeting shall be held at the place named as the temporary county site; provided, however, that such meeting may be held upon agreement in writing signed by all the members of the board of county commissioners when all the members are present at such meeting, and which written agreement shall be filed and spread upon the minutes of the meeting of the board of county commissioners. In case of meetings held after due notice, three members shall constitute a quorum.

History.—§1, ch. 8520, 1921; CGL 2277.
cf.—§8.02 Congressional districts; new counties.

126.02 First meeting of commissioners; organization, etc.—At the meeting provided for in §126.01 the board of county commissioners may organize, may approve the bond of their county officials, may arrange for temporary quarters and offices for such board of county commissioners and other county officers, may arrange for purchase or otherwise secure supplies for the county officers of such new county where such supplies may by law be purchased by the county, may publish notice for bids for furnishing such supplies where publication of notice is required by law, and may do such other acts and things as may be proper and necessary to be done for the speedy organization of the county government and the qualification of the officers thereof.

History.—§2, ch. 8520, 1921; CGL 2278.

126.03 First meeting of commissioners; record.—At any such meeting one member of the board of county commissioners shall act as secretary and keep a full, accurate and complete minute and record of all acts and things done at such meeting, which minute and record shall be turned over to the clerk of the circuit court of such county upon the due qualification of such clerk, and by such clerk recorded in the minutes of the proceedings of the board of county commissioners of such new county as shall also be recorded by such clerk in the same book and in the said minutes the proof of notice of such meeting, and a copy of such notice or the agreement for the meeting, as the case may be, and such record when so made by the clerk of the circuit court shall be signed by at least three members of the board of county commissioners.

History.—§3, ch. 8520, 1921; CGL 2279.

126.04 First meeting of commissioners; successive or adjourned meetings.—More than one meeting may be held in the manner and for the purpose and upon the notice or agreement provided in this chapter or any meeting may be adjourned to a different definite time and adjourned meetings may be held.

History.—§4, ch. 8520, 1921; CGL 2280.

CHAPTER 127

RIGHT OF EMINENT DOMAIN TO COUNTIES

127.01 Counties delegated power of eminent domain.—

(1) All counties of the state are delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose; and the absolute fee simple title to all property so taken and acquired shall vest in such county, unless the county seeks to condemn a particular right or estate in such property.

(2) Provided, however, that no county shall have the right to condemn any lands outside its own county boundaries, for parks, playgrounds, recreational centers or other recreational purposes; and provided, further, that in all actions now pending or which hereafter may be instituted by a county to acquire title, by eminent domain, to any lands for parks, playgrounds, recreational centers, or other recreational purposes, the party or parties, whose lands are sought to be taken shall, in such condemnation suit have the right to present an issue before the court as to the necessity for the proposed taking, and the amount of land required for the purpose sought, and thereupon it shall be the duty of the court to receive and hear all relevant testimony on the issues created, and the court shall determine such issues as other issues of fact and law are determined before the court in equity, without regard to or presumption in favor of any prior determination by the county commissioners or the exercise of discretion by them. Only land for the taking of which there is a public necessity as determined in accordance with this subsection shall be condemned for any of the purposes referred to in this subsection. Any party shall have the right of appeal, with supersedeas, as is now provided by law for appeals generally from the circuit court to the appropriate district court of appeal, or, if authorized by §4, Art. V of the state constitution to the supreme court.

History.—§1, ch. 7338, 1917; RGS 1503; CGL 2281; §1, ch. 22802, 1945; §18, ch. 63-559.
cf.—Ch. 73, Eminent domain.

127.02 County commissioners may authorize acquirement of property by eminent domain.—The board of county commissioners may, by resolution, authorize the acquirement by eminent domain of property, real or personal, for any county use or purpose designated in such resolution.

History.—§2, ch. 7338, 1917; RGS 1504; CGL 2282.
cf.—Ch. 73 Eminent domain.

CHAPTER 128

COUNTY FINANCES; REGULATIONS

128.01 Comptroller to furnish forms for financial statements.—The comptroller shall prescribe a form or forms of financial statements or reports to be made by the county commissioners and clerk of the circuit court of each of the counties of the state, which shall provide for and require an accurate report of all the receipts, disbursements, unpaid warrants and assets and liabilities of such counties, in such form and manner as to set forth a comprehensive and complete statement and report of the administration, conduct and condition of the financial affairs of each such county, and all separate funds thereof. Such forms may be altered from time to time by said comptroller, and he may prescribe and promulgate rules for the effectual administration and enforcement of the provisions of this chapter and prescribe and alter, from time to time, such other forms and books as may be necessary in connection with and conforming to the provisions of this chapter.

History.—§1, ch. 6428, 1913; §1, ch. 6813, 1915; RGS 1517; CGL 2295.

128.02 Duty of county officers to make sworn statements of county finances. — The county commissioners and clerks of the circuit court shall make out, fill in and subscribe such reports or statements of county finances, upon the form or forms prescribed by said comptroller, from time to time, and swear to the accuracy and completeness of the same to the best of their knowledge, information and belief, and file the same with the comptroller of the state at such times as the same may be called for and required by said comptroller.

History.—§2, ch. 6428, 1913; §2, ch. 6813, 1915; RGS 1518; CGL 2296.

128.03 Copies of financial statements to be preserved.—The clerk of the circuit court of each county shall preserve in his office, in a substantial book provided for that purpose, complete and accurate copies of every such financial report or statement, with the signatures and affidavits thereon, which said reports and records shall be a part of the public records of the boards of county commissioners and open at all times to the use and inspection of the public.

History.—§3, ch. 6428, 1913; §3, ch. 6813, 1915; RGS 1519; CGL 2297.

128.04 Public inspection of reports; publication; expense.—All of said reports made as aforesaid to the comptroller shall likewise be kept by him for permanent reference, and be subject to the inspection of the public at any time. The comptroller shall cause each of said reports, in condensed form, to be published in at least one newspaper published in the county from which said reports shall be received, and cause a copy of such publication to be transmitted to the governor for his information; the expense of which publication shall be paid from the general fund of the county.

History.—§4, ch. 6428, 1913; §4, ch. 6813, 1915; RGS 1520; CGL 2298.

128.05 Examination of reports; comptroller may employ examiner.—The comptroller shall cause every such financial report or statement to be examined and verified by a person employed for that purpose by the comptroller, whenever in the judgment of the comptroller the same may be requisite or necessary, and for that purpose all of the books of account of the clerk of the circuit court, county commissioners and other county officers shall be open to the inspection of the comptroller, or his representative.

History.—§5, ch. 6428, 1913; §5, ch. 6813, 1915; RGS 1521; CGL 2299.

128.06 Removal of officers for failure to make reports.—If any county commissioner or clerk shall fail, decline or refuse to make, subscribe or swear to, file or return any of said financial statements or reports, or shall knowingly make, consent, subscribe or swear to any financial statement or report which shall be false or untrue in any particular, or shall otherwise violate any of the provisions of this chapter or fail to keep or perform or shall violate any rule or regulation adopted under the provisions of this chapter the comptroller shall certify said fact to the governor of the state, and to the state attorney and county solicitor of the proper county. The failure or refusal of any county commissioner or clerk of the circuit court to conform or comply with any of the provisions of this chapter, or to such rules and regulations as shall be prescribed under the provisions of this chapter, shall be cause for removal by the governor.

History.—§7, ch. 6428, 1913; §7, ch. 6813, 1915; RGS 1522; CGL 2300.

128.08 Failure of county officers to swear to or file financial statements.—If any county commissioner or clerk of the circuit court shall decline, refuse or fail to make, subscribe or swear to or to file with said comptroller any of the financial statements or returns re-

quired by law, at the time required by the comptroller under the provisions of law, or if any such county commissioner or clerk shall knowingly or willfully make, consent, subscribe, swear to or file any such financial report or statement which shall be false, incomplete or untrue in any respect, or otherwise in any respect violate any of the provisions of this chapter, or any of the rules and regulations therein provided for, he shall be guilty of a misdemeanor, and, upon conviction, he shall be punished by imprisonment for not more than one year in the county jail, or by a fine not exceeding five thousand dollars.

History.—§6, ch. 6428, 1913; §6, ch. 6813, 1915; RGS 5324; CGL 7457.

cf.—§775.06 Alternative punishment.

CHAPTER 129

COUNTY ANNUAL BUDGET

129.01 Budget system established. — There is hereby established a budget system for the control of the finances of the boards of county commissioners of the several counties of the state, as follows:

(1) There shall be prepared, approved, adopted, and executed, as prescribed in this chapter, for the fiscal year ending September 30, 1952, and for each fiscal year thereafter, an annual budget for the following funds:

(a) General fund
(b) Road and bridge fund
(c) Fine and forfeiture fund
(d) Capital outlay reserve fund
(e) Bond interest and sinking fund, and
(f) Special district operating fund

which shall control the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.

(2) Each budget shall conform to the following general directions and requirements:

(a) The budget shall be prepared, summarized, and approved by the board of county commissioners of each county and filed with the comptroller of the state on or before August 1, of each year. Such budget shall be prepared and submitted on forms and in accordance with regulations prescribed by the said comptroller. The said comptroller is hereby empowered and authorized to make such reasonable rules and regulations regarding forms, uniform classification of accounts, and filing of the budget as shall be necessary.

(b) The budget shall be balanced; that is, the total of the estimated receipts, including balances brought forward, shall equal the total of the appropriations and reserves. It shall conform to the uniform classification of accounts prescribed by the comptroller. The receipts division of the budget shall include ninety-five per cent of all receipts reasonably to be anticipated from all sources, including taxes to be levied, and one hundred per cent of the amount of the balances, both of cash and liquid securities, estimated to be brought forward at the beginning of the fiscal year. The appropriation division of the budget shall include itemized appropriations for all expenditures authorized by law, contemplated to be made or incurred for the benefit of the county during the said year, and provision for the reserves authorized by this chapter.

(c) Provision may be made for the following reserves:

A reserve for contingencies may be provided in a sum not to exceed ten per cent of the total of the budget.

A reserve for cash balance to be carried over may be provided for the purpose of paying expenses from October 1, of the ensuing fiscal year until the time when the revenues for that year are expected to be available. This reserve may be not more than twenty per cent of the total receipts and balances of the budget; provided that for the bond interest and sinking fund budget, this reserve may be not more than the total maturities of debt (both principal and interest) that will occur during the ensuing fiscal year, plus the sinking fund requirements, computed on a straight line basis, for any outstanding obligations to be paid from the fund.

(d) An appropriation for "outstanding indebtedness" shall be made to provide for the payment of vouchers which have been incurred in and charged against the budget for the current year or a prior year, but which are expected to be unpaid at the beginning of the ensuing year for which the budget is being prepared. The appropriation for the payment of such vouchers shall be made in the same fund for which the expenses were originally incurred.

(e) Any surplus arising from an excess of the estimated cash balance over the estimated amount of unpaid obligations to be carried over in a fund at the end of the current fiscal year may be transferred to any of the other funds of the county, and the amount so transferred shall be budgeted as a receipt to such other funds; provided, that no such surplus in a fund raised for debt service shall be transferred to another fund, except to a fund raised for the same purposes in the same territory, unless the debt of such territory has been extinguished in which case it may be transferred to any other fund raised for that territory; provided, further, that no such surplus in a capital outlay reserve fund may be transferred to another fund until such time as the projects for which such capital outlay reserve fund was raised have been completed and all obligations paid.

History.—§1, ch. 6814, 1915; RGS 1524; CGL 2302; §1, ch. 26874, 1951.

129.02 Requisites of budgets.—Each budget shall conform to the following specific directions and requirements:

(1) General fund budget shall contain an estimate of receipts by source, including any taxes now or hereafter authorized by law to

be levied for any county-wide purpose, except those county-wide purposes provided for in the budgets enumerated below, any tax millage limitation to the contrary notwithstanding, and including any balance brought forward as provided herein; and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of the county government now or hereafter authorized by law, except those functions and activities provided for in the budgets enumerated below, and of unpaid vouchers of the general fund; also of the reserve for contingencies and of the balances, as hereinbefore provided, which should be carried forward at the end of the year.

(2) The road and bridge fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that need to be incurred to carry on all work on roads and bridges in the county except that provided for in the capital outlay reserve fund budget and in district budgets pursuant to this chapter, and of unpaid vouchers of the road and bridge fund; also of the reserve for contingencies and the balance, as hereinbefore provided, which should be carried forward at the end of the year.

(3) The fine and forfeiture fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that need to be incurred to carry on all criminal prosecution as provided in §142.01, and all other law enforcement functions and activities of the county now or hereafter authorized by law, and of indebtedness of the fine and forfeiture fund; also of the reserve for contingencies and the balance, as hereinbefore provided, which should be carried forward at the end of the year.

(4) Capital outlay reserve fund budget shall contain an estimate of receipts by source, including any taxes authorized by law to be levied for that purpose, and including any balance brought forward as provided for herein; and an itemized estimate of expenditures for capital purposes to give effect to general improvement programs. It shall be a plan for the expenditure of funds for capital purposes, showing as income the revenues, special assessments, borrowings, receipts from sale of capital assets, free surpluses, and down payment appropriation to be applied to the cost of a capital project or projects, expenses of issuance of obligations, engineering, supervision, contracts, and any other related expenditures. It may contain also an estimate for the reserves as hereinbefore provided and for a reserve for future construction and improvements. No expenditures or obligations shall be incurred for capital purposes except as appropriated in this budget, except for the preliminary expense of plans, specifications and estimates.

(a) Under the provision herein set forth, a separate capital budget may be adopted for each district in the county, or a consolidated capital budget may be adopted providing for the consolidation of capital projects of the county and the several districts within the county into one budget, treating borrowed funds and other receipts as special revenue earmarked for capital projects as separately itemized appropriation for each district project or county project, as the case may be.

(b) Any funds in the capital budget not required to meet the current construction cost of any project may be invested in any securities of the federal government or in securities of any county of the state pledging the full faith and credit of such county or pledging such county's share of the gas tax provided for in §16 of Art. IX of the constitution of Florida.

(5) A bond interest and sinking fund budget shall be made for each county and for each district within the county having bonds outstanding. The budget shall contain an estimate of receipts by source, including any taxes authorized by law to be levied for that purpose, and including any balances brought forward as provided herein; and an itemized estimate of expenditures and reserves as follows: The bond interest and principal maturities in the year for which the budget is made shall be determined and estimates for expenses connected with the payments of such bonds and coupons, commissions of the tax collector, and of the assessor of taxes, and expenses of refunding operations, if any are contemplated, shall be appropriated. A sufficient "cash balance to be carried over" may be reserved as set forth hereinbefore. The sinking fund requirements provided for in the said reserve may be carried over either in cash or in securities of the federal government and of the local governments in Florida, or both.

(6) Special district operating fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of each special district within the county as now or hereafter provided by law, and of the indebtedness of each special district operating fund; also of the reserves for contingencies and the balances, as hereinbefore provided, which should be carried forward at the end of the year.

History.—§2, ch. 6814, 1915; RGS 1525; CGL 2303; §2, ch. 26874, 1951; (2) §10, ch. 27991, 1953.
cf.—§104.42 Fraudulent registration, illegal voting; investigation.
§125.31 Investment of surplus funds.
§193.32 Annual tax levies, limitations.

129.03 Preparation and adoption of budget.—(1) On or before July 1 of each year the county assessor of taxes shall certify to the county auditor his estimate of the total valuations against which taxes may be levied, reasonably to be expected by him to be spread upon the general tax roll of the current year,

separately of homestead real property and of non homestead property in the entire county and in each district in the county in which taxes are authorized by law to be levied by the board of county commissioners for funds under its control.

(a) If at any time after the certification of his estimates, and before equalization of the tax roll, it shall appear to the assessor of taxes that the said estimates, or any of them, were in error by ten per cent or more, he shall immediately certify his revised estimate to the county auditor and such revised estimate shall be substituted for the original estimate at any time before the final adoption of the budget.

(b) Immediately upon the equalization of the tax roll by the board of county commissioners, the assessor of taxes shall certify to the board of county commissioners the actual assessed valuation of property, as prescribed above, in each district and in the entire county.

(c) In preparing the budget, the latest figure so certified shall be used as the basis for estimating the taxes to be levied, and the millage rate required to be levied, based on the latest figure thus certified and calculated as provided in this chapter, to raise the amount estimated to be received from taxes, shall be noted on each tentative budget and each official budget, on the same line with the amount estimated to be raised from taxes.

(2) On or before July 15, of each year the county auditor, after tentatively ascertaining the proposed fiscal policies of the board for the ensuing fiscal year, shall prepare and present to the board a tentative budget for the ensuing fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward, and all estimated expenditures, reserves and balances to be carried over at the end of the year.

(a) The board of county commissioners shall receive and examine the tentative budget for each fund and shall require such changes to be made as it shall deem necessary; provided that the budget shall remain in balance. The county auditor's estimates of receipts other than taxes, and of balances to be brought forward, shall not be revised except by a resolution of the board, duly passed and spread on the minutes of the board; provided that the board may allocate to any of the funds of the county any anticipated receipts, other than taxes levied for a particular fund, except receipts designated or received to be expended for a particular purpose.

(b) Upon receipt of the tentative budgets and the completion of any revisions made by the board, the board shall prepare a statement summarizing all of the tentative budgets. This summary statement shall show, for each budget and the total of all budgets, the proposed tax millages, the balances, the reserves, and the total of each major classification of receipts and expenditures, classified according to the classification of accounts prescribed by the comptroller. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, and the advertisement shall state that the board will meet on a day fixed in the advertisement, not earlier than one week and not later than two weeks from the date of the advertising, for the purpose of hearing requests and complaints from the public regarding the budgets. The board shall meet upon the day fixed in the advertisement, and from day to day thereafter if it deems it necessary, for the purpose of holding a public hearing and making whatever revisions in the budgets it may deem necessary, and shall thereupon tentatively adopt the budgets, and the tentative budgets shall be filed in the office of the county auditor as a public record.

(c) The board of county commissioners shall require the county auditor to transmit forthwith to the comptroller of the state two copies of each of the tentative budgets as adopted. Each budget so transmitted shall be certified by the chairman of the board of county commissioners and by the county auditor as a true and correct copy of the budget as adopted by the board of county commissioners.

(d) If the budget of any county has not been properly prepared as to form, the said comptroller shall report such deficiencies to the board of county commissioners of the county concerned immediately and the said board shall forthwith correct the deficiencies and file a copy of the corrected budget. The examination of the budgets of the several counties by the comptroller shall be completed within thirty days after they are filed in his office.

(e) The budgets as tentatively adopted by the boards of any county shall be considered as finally adopted and as official thirty days from the date the budgets were transmitted to the said comptroller and no report of exceptions to the budgets as filed has been made by the comptroller as authorized herein. Upon approval as to form of the county budgets as hereinabove prescribed, the state comptroller shall make a certificate upon each of such budgets attesting its approval and return one copy of each budget to the respective boards of county commissioners. The other copy of the budgets shall be filed in the office of the said comptroller and shall be evidence of the said budgets or any of their provisions. The certificate shall give the date upon which the budget finally became official and effective.

(f) The budgets as finally adopted as provided herein, and all amendments thereto, shall be kept in a substantial book as a public record in the office of the county auditor.

Sufficient reference in words and figures to identify the particular transactions shall be made in the minutes of the board to record its actions with reference to the budgets.

History.—§3, ch. 6814, 1915; RGS 1526; CGL 2304; §1, ch. 19115, 1939; §3, ch. 26874, 1951; (2) (c) §11, ch. 57-1.

129.04 Fiscal year.—The fiscal year of each county of the state shall commence on the first day of October, and end on the 30th day of September of each year, and whenever the word "year" appears in this chapter, it shall be construed as meaning the fiscal year as hereby established.

History.—§4, ch. 6814, 1915; RGS 1527; CGL 2305.

129.05 Method of determination of millage to be levied.—After the equalization of the tax roll and the certification of the valuations by the assessor of taxes, and after the final adoption of the budget for each fund, the board shall proceed to fix the millage rate for each fund as provided by law. The board shall determine the millage to be levied for each fund by dividing the applicable assessed valuation into an amount, ninety-five per cent of which is the amount budgeted to be received from taxes, using the nearest one-quarter of a mill or other fraction or decimal ordinarily used in the county.

History.—§5, ch. 6814, 1915; ch. 7810, 1919; RGS 1528; CGL 2306; §1, ch. 16286, 1933; §7, ch. 22000, 1943; §4, ch. 26874, 1951.
cf.—§193.31 Rate of taxation; apportionment, etc.
§193.32 Annual tax levies; limitations.
§344.26 State board of administration; duties concerning debt service.

129.06 Execution and amendment of budget.—

(1) Upon the final adoption of the budgets as provided in this chapter, the budgets so adopted shall regulate the expenditures of the county and district, and the itemized estimates of expenditures shall have the effect of fixed appropriations and shall not be amended or altered or exceeded except as provided in this chapter.

(a) All expenses incurred in the fiscal year for which the budget is made shall be vouchered and charged on the financial records against the budget of that fiscal year, and to carry out this purpose the board may hold its books open for thirty days after the expiration of the fiscal year. Any such expenses not paid in the same fiscal year shall be budgeted and charged to the appropriation for outstanding indebtedness in the ensuing year's budget. Any such expenses not vouchered and charged against the proper year's budget shall be charged against the budget of the year in which the voucher is approved, and charged against the itemized appropriation that it should have been charged against if it had been vouchered in the year when the expense was incurred.

(b) The cost of the investments provided in this chapter, or the receipts from their sale or redemption, shall not be treated as expense or income, but the investments on hand at the beginning or end of each fiscal year shall be carried as separate items at cost in the fund balances; provided, that the amounts of profit or loss received on their sale shall be treated as income or expense, as the case may be.

(2) The board at any time within a fiscal year may amend a budget for that year as follows:

(a) Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased by motion recorded in the minutes, provided that the total of the appropriations of the fund be not changed;

(b) Appropriations from the reserve for contingencies may be made to increase the appropriation for any particular expense in the same fund, or to create an appropriation in the fund for any lawful purpose, but no expenditures shall be charged directly to the reserve for contingencies.

(c) The reserve for future construction and improvements may be appropriated by resolution of the board for the purpose or purposes for which the reserve was made.

(d) A receipt of a nature from a source not anticipated in the budget and received for a particular purpose, including but not limited to grants, donations, gifts, or reimbursement for damages, may, by resolution of the board spread on its minutes, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget. Such receipts and appropriations shall be added to the budget of the proper fund.

(3) Transfers may be made between funds only for the following purposes.

(a) To correct errors in handling receipts and disbursements.

(b) Budgeted transfers.

(4) All unexpended balances of appropriations at the end of the fiscal year shall revert to the fund from which the appropriation was made, but reserves for sinking funds and for future construction and improvements may not be diverted to other purposes.

History.—§6, ch. 6814, 1915; RGS 1529; CGL 2307; §5, ch. 26874, 1951.

129.07 Unlawful to exceed the budget; certain contracts void; commissioners contracting excess indebtedness personally liable.—It is unlawful for the board of county commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted for each item in each fund, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in §129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be

prosecuted in any court in this state for the collection of same, and the members of the board of county commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for.

History.—§7, ch. 6814, 1915; RGS 1525; CGL 2308; §6, ch. 26874, 1951.

129.08 County commissioner voting to pay illegal claim or for excess indebtedness.—Each member of the board of county commissioners voting to incur an indebtedness against the county in excess of the expenditure allowed by law, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, shall be guilty of malfeasance in office and subject to suspension and removal from office as now provided by law, and shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for not more than six months, for each offense.

History.—§2, ch. 6814, 1915; RGS 5332; CGL 7465.
cf.—§775.06 Alternative punishment.

129.09 County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, shall be personally liable for such amount, and he shall be guilty of a misdemeanor and punished in the same manner and subject to the same penalties as members of said board of county commissioners.

History.—§2, ch. 6814, 1915; RGS 5333; CGL 7466.

129.10 Local laws not affected.—Nothing in §§129.01-129.07 shall be construed or applied to abrogate or repeal any of the laws creating, defining, or prescribing the duties and powers of county budget commissions.

History.—§7, ch. 26874, 1951; §18, ch. 29615, 1955.

CHAPTER 130

COUNTY BONDS

130.01 Purposes for which county bonds may issue.—Whenever the board of county commissioners of any county shall deem it expedient, or to the best interests of such county, to issue the county bonds of their county, for the purpose of constructing paved, macadamized, or other hard-surfaced highways, or erecting a court house or jail, or other public buildings, and funding the outstanding indebtedness of the county, or for any of such purposes, they shall determine by resolution to be entered in their records, what amount of bonds is required for such purpose, the rate of interest to be paid thereon, and the time when the principal and interest of such bonds shall be due and when payable.

History.—§1, ch. 2088, 1877; RS 591; §1, ch. 4711, 1899; GS 786; RGS 1531; CGL 2309.

130.02 Commissioners may levy tax.—When any county bonds shall have been issued by the county commissioners of any county of the state, under authority of law, for the purpose of erecting a courthouse, jail, armory, or other county buildings, it shall be the duty of such county commissioners to levy annually, by tax upon taxable property in the county, a sum sufficient to pay the interest upon the said bonds, and also a sum sufficient to raise the amount annually required as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds.

History.—§1, ch. 4286, 1893; GS 787; RGS 1532; CGL 2310.
cf.—§193.32 Annual tax levies; limitations.
§288.31 Financing armories.

130.03 Election required before issuance of bonds.—Bonds shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders, who are qualified electors residing in such county, shall participate, which said election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by §§100.201-100.351 and said election or any subsequent elections for the same purpose shall be subject to all the provisions of said chapter.

History.—§3, ch. 2088, 1877; RS 593; GS 789; RGS 1534; CGL 2312; §1, ch. 14715, 1931; CGL 1936 Supp. 457(1).
cf.—§130.18 Bond election to build bridges over navigable streams.

130.04 Notice for bids and disposition of bonds.—In case the issuing of bonds shall be authorized by the result of such election, the county commissioners shall cause notice to be given by publication in a newspaper published in the county, or in some newspaper published in the same judicial circuit, if there be none published in the county, that they will receive bids for the purchase of county bonds at the clerk's office, on a date not less than ten days nor more than sixty days from the first publication of such notice. The notice shall specify the amount of bonds offered for sale, the rate of interest, and the time when principal and installments of interest shall be due and payable. Any and all bids shall be rejected if the commissioners shall deem it to the best interest for the county so to do, and they may cause a new notice to be given in like manner inviting other bids for said bonds; provided, that when the rate of interest on said bonds exceeds five per cent per annum, said bonds shall not be sold for less than ninety-five cents on the dollar, but when any bonds have heretofore been provided for by election, and the rate of interest is five per cent per annum, or less, that in such cases the county commissioners may accept less than ninety-five cents upon the dollar, in the sale of said bonds, or for any portion of said bonds not already sold; provided, however, no bonds shall be

sold for less than ninety cents on the dollar.

History.—§6, ch. 2088, 1877; RS 596; §1, ch. 5200, 1903; GS 792; RGS 1537; §1, ch. 8551, 1921; CGL 2315; §1, ch. 61-113; §1, ch. 63-118.

130.05 Security may be required of bidders.—The county commissioners may require of all bidders for said bonds that they give security by bond, running to the county commissioners, with sureties, that the bidder will comply with the terms of the bid, and any bidder whose bid shall be accepted shall, with his sureties, be liable to the county for all damages on account of the non-performance of the terms of his bid.

History.—§8, ch. 2088, 1877; RS 597; GS 793; RGS 1538; CGL 2316.

130.06 Form of bids.—All bids for bonds shall specify the amount of bonds bid for, the denomination required and the time when the bidder will comply with his bid, and shall also specify whether the bid is in current money or in evidences of indebtedness against the county.

History.—§9, ch. 2088, 1877; RS 598; GS 794; RGS 1539; CGL 2317.

130.07 Form of bonds.—The county commissioners may prescribe the form and the denominations of the bonds to be issued, and such bonds may be issued with or without interest coupons, as may be deemed expedient.

History.—§7, ch. 2088, 1877; RS 599; GS 795; RGS 1540; CGL 2318.

130.08 Disposition of proceeds.—The proceeds of all bonds sold for money shall be paid over to the county trustees, or to the other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said county trustees, to be distributed by them for the purposes for which such bonds were sold, and for no other purposes.

History.—§10, ch. 2088, 1877; RS 600; GS 796; RGS 1541; CGL 2319.

130.09 Cancellation of exchanged evidences of indebtedness.—When such bonds shall be sold or exchanged for the evidence of indebtedness of the county, such evidence shall be cancelled in such manner that the same cannot again be used, and memorandum of all such evidences of indebtedness shall be made in the minutes of the board, so that the same may be identified. Such cancelled vouchers shall be sealed in an enclosure and filed for future reference.

History.—§11, ch. 2088, 1877; RS 601; GS 797; RGS 1542; CGL 2320.

130.10 Tax for interest and sinking fund.—When any county bonds shall have been issued in pursuance of this chapter, the county commissioners shall levy annually by tax upon the taxable property in the county a sum sufficient to pay the interest of said bonds, and also a sum sufficient to meet the amount annually required to be raised as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds.

History.—§12, ch. 2088, 1877; RS 602; GS 798; RGS 1543; CGL 2321.

130.11 Bond trustees.—Unless otherwise provided by law, when the county commissioners shall have issued bonds, as aforesaid, they shall appoint by resolution of their board, to be recorded in the minutes, a financial committee of three persons, who shall be resident free holders of the county, to be styled "Trustees of county bonds," who shall each give bond running to the chairman of the board of county commissioners and his successors in office, with sufficient securities, in such sums as may be required by the county commissioners, conditioned that the said trustee shall faithfully discharge the trust confided to him, and shall pay over and duly account for all such sums of money as may come into his hands by virtue of such trust, which said bonds shall be approved as to the form and the sufficiency of sureties by the board of county commissioners; and the county commissioners may, from time to time, as circumstances may require, demand additional security from any such trustees; or, the commissioners may in like manner appoint a responsible trust company, organized and qualified to do business, under the laws of the state, with its principal place of business in such county, which shall be styled, "trustee for county bonds," and which shall give bond running to the chairman of the board of county commissioners and his successors in office, with sufficient securities in such sum as may be required by the county commissioners, conditioned that the said trustee shall faithfully discharge the trust confided to it and shall pay over and duly account for all such sums of money as may come into its hands, by virtue of such trust, which said bond shall be approved as to form and the sufficiency of sureties by the county commissioners and the county commissioners may from time to time, as circumstances may require, demand additional security from any such trustee. The county commissioners may, if they so elect, by resolution recorded in the minutes of said board, waive the requirement of a bond of such trust company, when appointed trustee of county bonds, and take and accept in lieu thereof a bond in the usual form conditioned upon the proper accounting for all moneys deposited in said trust company and the moneys received by said trust company as trustee of county bonds shall be held by it as money deposited in any other county depository and the bond required of it as such depository shall secure the proper accounting for said moneys, which bond shall be approved by the board of county commissioners as to form, amount and sufficiency of sureties.

History.—§13, ch. 2088, 1877; RS 603; GS 799; §1, ch. 7337, 1917; RGS 1544; §1, ch. 12425, 1927; CGL 2322; §7, ch. 22858, 1945.

130.12 Collector to pay taxes to trustees, etc.—All money collected to pay the interest,

or for a sinking fund of said bonded debt, shall be paid over by the tax collector, or person receiving the same on account of taxes collected or property sold therefor, to the said trustees, or to the other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, and the said trustees, or the said other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, are required to pay out of the moneys so received the interest of said county bonds, and to invest the residue in the bonds aforesaid, or if the said bonds cannot be had at par or at such premium as to said trustees or to the said other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, may seem reasonable and just, then such residue may be invested in United States, state, county or municipal bonds bearing interest; or in the event such bonds cannot be acquired to advantage, such funds shall be deposited in the savings department of national banks or state banks of the state, or savings banks organized and existing under the laws of this state, at the prevailing rate of interest, to be held as an accumulating fund for the ultimate redemption of said county bonds.

History.—§14, ch. 2088, 1877; RS 604; GS 800; §1, ch. 6473, 1913; RGS 1545; CGL 2323.

130.13 Annual report of trustees.—The said trustees shall annually on such day as may be required by the board of county commissioners render a report to the said board, in which they shall state the amounts of money received and for what purposes and from what sources, severally, and when received, and where and how the same has been invested, and enumerating the kind and amount of securities held therefor, describing the same separately, and such other matters as may be required by the board in order to have a full understanding; which said report shall be published at length by order of the board.

History.—§15, ch. 2088, 1877; RS 605; GS 801; RGS 1546; CGL 2324.

130.14 Resignation and removal of trustees.—The said trustees, or either of them, may resign at any time by a communication in writing to the board of county commissioners, and any number of said trustees may be removed for cause by the judge of the circuit court of the circuit in which the county is situated, upon petition signed by any bondholder or tax payer, setting forth the cause of complaint; but no trustee shall be removed without notice, and an opportunity to be publicly heard, unless it appears that the accused trustee has absented himself so that notice could not be served.

History.—§16, ch. 2088, 1877; RS 606; GS 802; RGS 1547; CGL 2325.

130.15 Filling of vacancies in board of trustees.—In all cases where vacancies shall occur, they shall be filled by nomination by the trustees, and the confirmation by the board of county commissioners; and in case the said trustees do not, within fifteen days after written notice of the existence of such vacancy, nominate a suitable person to fill such vacancy, the board of county commissioners shall nominate a suitable person to fill such vacancy, whose nomination shall be confirmed by an order of the circuit court, and the person so appointed as trustee shall give security as hereinbefore provided.

History.—§17, ch. 2088, 1877; RS 607; GS 803; RGS 1548; CGL 2326.

130.16 Compensation of trustees.—The said trustees shall have such compensation for their services as follows: for receiving the first ten thousand dollars, one and one-half per cent; for all over ten thousand dollars, one-half of one per cent; for disbursements, the same as allowed for receiving, to be paid out of the county treasury.

History.—§18, ch. 2088, 1877; RS 608; GS 804; RGS 1549; CGL 2327.

130.17 Building bridges over navigable streams; determination of amount of bonds required.—Whenever a majority of the members of any board of county commissioners, in either of the counties of the state, shall vote to acquire any property, or right, or to double deck, or parallel, or build any bridge, authorized in the highway code; or when a petition signed by ten per cent of the duly-qualified electors of any county is presented to the board of county commissioners of such county and praying any bridge be acquired, or double decked or built, authorized by the highway code, then such board of county commissioners shall immediately employ thoroughly competent and reliable experts who shall perform such service and give such information as required and shall be paid for such service out of the general revenue fund of such county; and such board of county commissioners shall then promptly determine the amount of county bonds required for such purposes, the rate of interest to be paid thereon, and the time when the principal and interest of such bonds shall become due and where payable.

History.—§3, ch. 6536, 1913; RGS 1553; CGL 2347.
cf.—§336.47 County bridges, construction; joint bridges; double-decking bridges.

130.18 Calling and conduct of election for bonds to build bridges over navigable streams.—Bonds shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such county, shall participate, which said election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by §§100.201-100.351 and said election or any subsequent elections for the same purpose shall be subject to all the provisions of said chapter.

History.—§4, ch. 6536, 1913; RGS 1554; CGL 2348; §1, ch. 14715, 1931; CGL 1936 Supp. 457(1).

130.19 Result of election; issuance and sale of bonds.—If the election shall result "FOR BONDS" then the board of county commissioners of such county shall forthwith proceed and provide for the payment of the interest and principal of such bonds, and for the issuance, sale, disposition thereof, expenditure of proceeds realized therefrom, and for trustees therefor unless otherwise provided by law, as provided by §§130.03-130.16.

History.—§5, ch. 6536, 1913; RGS 1555; CGL 2349.

130.20 Time warrants in newly created counties.—The board of county commissioners of any newly created county may, at any time within six months after the date at which the law creating the county shall become effective, issue interest-bearing time warrants in an aggregate sum not exceeding the amount of one-half of one per cent of the total tax assessed valuation of such county; provided, that where such time warrants shall come within the purview of §6 of Art. IX of the constitution of the state, the said time warrants shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such county, shall participate, which said election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by chapter 103, and said election shall be subject to all the provisions of said chapter.

History.—§1, ch. 8518, 1921; CGL 2350; §1, ch. 14715, 1931; CGL 1936 Supp. 457(1).

130.21 Time warrants in newly created counties; interest and date of maturity.—Such warrants shall bear interest at the rate of six per cent per annum, payable annually, and shall mature on or before a date five years after the date of the issue of such warrants.

History.—§2, ch. 8518, 1921; CGL 2351.

130.22 Time warrants in newly created counties; distribution and use of proceeds.—The proceeds derived from the sale of such warrants shall be distributed by the board of county commissioners between the several funds of the county in such proportion as the county commissioners may deem expedient, and shall be used to pay the current expenses of the county, which are proper to be paid from such funds.

History.—§3, ch. 8518, 1921; CGL 2352.

130.23 Time warrants in newly created counties; payment of interest and creation of sinking fund.—The board of county commissioners of each county issuing such interest-bearing time warrants may pay from the general revenue fund of such county each year the accrued interest on such interest-bearing time warrants to the holders thereof, and they shall set aside from the general revenue fund of such county such sum each year as a sinking fund, which together with accrued interest thereon will be sufficient to pay at least one-fifth of the amount due and required to pay off the said warrants at the end of the said five year period, thereby creating a sinking fund during the said period of five years sufficient to pay off the entire obligation at the end of the said five year period.

History.—§4, ch. 8518, 1921; CGL 2353.

130.24 Obligations valid when signed by officers who retire before delivery.—All bonds, notes, coupons or other obligations, signed by the duly authorized officers of any county, municipality, political subdivision or any public body, board or agency of the state, shall be valid and binding obligations, although before the date of delivery, the persons signing such bonds, notes, coupons or other obligations shall have ceased to be officers of the county, municipality, political subdivision, public body, board or agency issuing the same.

History.—§1, ch. 8552, 1921; CGL 2354.

130.25 Change of time of maturity of installments of bonds.—In any county in this state where an election has been held prior to June 14, 1921 authorizing the sale of the bonds of such county for the purpose of building or constructing hard-surfaced roads, and the payment of such bonds has been provided to be in installments, maturing at intervals longer than one year; the board of county commissioners in such county may change the times of maturity of such installments, and the amounts thereof, for any portion of such bonds not already sold, so that the installments shall mature annually; provided, that the amounts of such installments as so changed shall not change the final maturity of the entire amount of such bond issue as provided by the said election.

History.—§1, ch. 8554, 1921; CGL 2356.

CHAPTER 131

REFUNDING BONDS OF COUNTIES, CITIES, ETC.

131.01 Taxing units may refund obligations.—The governing authority of any county, city, town, municipal corporation or taxing district of the state may by resolution authorize the issuance of refunding bonds for the purpose of refunding any bond, note, certificate of indebtedness or other obligation for the payment of which the credit of said county, city, town, municipal corporation or taxing district is pledged, at or prior to maturity in the manner provided in this chapter.

History.—§1, ch. 11855, 1927; CGL 2378.

131.02 Taxing units may refund obligations; issuance; delivery; cancellation of refunded obligations.—Said refunding bonds may be issued within three months prior to the date of maturity of the obligations proposed to be refunded, or if said outstanding obligations shall be callable, within three months prior to the callable date. Refunding bonds may be delivered under the provisions of this chapter at any time regardless of the date of maturity or optional dates of the obligations refunded, upon the surrender by the holder of a like amount of the obligations refunded. All obligations refunded under the provisions of this chapter shall be immediately canceled in such manner as the governing authority shall prescribe.

History.—§2, ch. 11855, 1927; CGL 2379.

131.03 Taxing units may refund obligations; form; registrar; maturity; interest; execution; sale.—Said refunding bonds may be in coupon or registered form, or may be coupon bonds with privilege of registration as to principal only or as to both principal and interest, under such terms and conditions as the governing authority may prescribe. The governing authority may designate a bank or trust company within the state to act as registrar for said bonds. All bonds issued hereunder shall mature in annual installments of not less than three per cent of the total amount thereof, beginning not more than three years after date and running not longer than twenty-five years after date. They shall bear interest at a rate not exceeding six per cent per annum, payable annually or semi-annually, and shall be executed in such a manner as the governing authority shall determine. Said bonds may be sold at public or private sale, and said bonds shall not be sold for less than ninety-five per cent of their par value and accrued interest to date of delivery.

History.—§3, ch. 11855, 1927; CGL 2380.

131.04 Special assessments; pledge of credit; tax; exemptions from debt limitations.—All special assessments levied on account of any improvement to finance which the obligations so refunded were issued, upon collection shall be paid into the sinking fund for the payment of the refunding bonds, and the proceeds of said special assessments shall be used for no other purpose. For the payment of all bonds issued under the provisions of this chapter, the full faith and credit of the county, city, town, municipal corporation or taxing district, shall be pledged, and there shall be levied annually upon all taxable property therein, a tax sufficient to provide for the payment of said bonds and the interest thereon at maturity. All bonds issued hereunder for the purpose of refunding obligations which are excepted from any limitation of indebtedness, shall likewise be excluded in applying any limitation of indebtedness prescribed by any statute of the state or city or town charter.

History.—§4, ch. 11855, 1927; CGL 2381.

131.05 Disposition of proceeds of sale.—In the event refunding bonds are issued under the provisions of this chapter prior to the date of maturity or option date of the obligations proposed to be refunded, the proceeds of said refunding bonds shall be deposited in a bank or trust company within the state, which depository shall give a surety bond, or other such bonds as are authorized by law to be accepted for securing county and city funds, satisfactory to the comptroller of the state for the full amount of money so deposited, and the funds so deposited shall only be withdrawn with the approval of the state comptroller, for the purpose of paying the obligations to refund which said bonds were issued.

History.—§5, ch. 11855, 1927; CGL 2382.

131.06 No other proceedings required.—No proceedings shall be required for the issuance of bonds hereunder, except such as are prescribed by this chapter, any provisions of the general laws of the state or of any special act or municipal charter applicable to the political subdivision issuing said bonds, to the contrary notwithstanding.

History.—§6, ch. 11855, 1927; CGL 2383.

CHAPTER 132

GENERAL REFUNDING LAW

132.01 How chapter may be cited.—This chapter may be cited as the general refunding law.

History.—§1, ch. 15772, 1931; CGL 1936 Supp. 2383(1).

132.02 Taxing units may refund obligations.—

(1) Each county, city, town, special road and bridge district, special tax school district, and other taxing districts in this state, herein sometimes called a unit, may issue, pursuant to a resolution or resolutions of the governing body thereof (meaning thereby the board or body vested with the power of determining the amount of tax levies required for taxing the taxable property of such unit for the purpose of such unit) and either with or without the approval of such bonds at an election, except as may be required by the constitution of the state, bonds of such unit for the purpose of refunding any or all bonds, coupons, or interest on any such bonds, or coupons or paving certificates of indebtedness or interest on any such paving certificates of indebtedness, now or hereafter outstanding, or any other funded debt, all of which are herein referred to as bonds, whether such unit created such indebtedness or has assumed, or may become liable therefor, and whether indebtedness to be refunded has matured or to thereafter become matured.

(2) In the event any such unit having outstanding bonded or other funded debt shall have been, or shall hereafter be, abolished otherwise than by annexation to, or consolidation with, a like political subdivision or district, the territory within such unit shall be deemed to be a taxing district within the meaning of this chapter, and the board of county commissioners of the county wherein such abolished unit, or any part thereof, is situate, or the governmental authority having power or authority to levy a tax for the retirement of the indebtedness to be refunded, shall be the governing body thereof, and may issue refunding bonds in behalf of such unit for the purpose of refunding its outstanding indebtedness, and may provide for the annual levy of ad valorem taxes without limitation as to rate or amount fully sufficient to pay principal of and interest on such refunding bonds, the tax to be levied on the same property which would have been taxable for payment of the outstanding indebtedness had such taxing unit not been abolished or dissolved.

(3) If the territory of such abolished unit lies in more than one county, the territory in each county shall be deemed to be a taxing district in such county and the board of county commissioners of each county within which any of such territory is situate, or the governmental authority having power or authority to levy a tax for the retirement of the indebtedness to be refunded, may issue refunding bonds as herein provided for the purpose of refunding such portion of the indebtedness of the abolished unit as shall be chargeable against the territory in said county; provided, however, that nothing in this section shall affect or limit the powers of the state board of administration in the issuance of refunding bonds under §16 of article IX of the constitution of this state.

History.—§2, ch. 15772, 1931; CGL 1936 Supp. 2383(2); §1, ch. 22001, 1943.

132.03 Interest; maturity; payment; right to redeem in advance.—Such resolution or resolutions shall determine the rate or rates of interest to be paid, not exceeding six per cent per annum, payable annually or at shorter intervals, and the maturity or maturities of the bonds which shall be at a time or times not exceeding sixty years from the date of the bonds, (except that in the issuance of bonds of taxing districts where the maturities are fixed under the constitution, then such maturities shall be in accordance with the maturities fixed in the constitutional provision), as well as determine the medium of payment and the place or places in Florida or any other state at which the

principal and interest shall be payable. In the discretion of the governing body the right to redeem all or any of the bonds at par before maturity may be reserved upon terms and conditions to be fixed by resolution.

History.—§3, ch. 15772, 1931; CGL 1936 Supp. 2383(3).

132.04 Redemption before maturity.—Any such unit may obligate itself to redeem any or all of the refunding bonds before maturity on such terms and conditions as the resolution authorizing such bonds may determine. Bonds subject to redemption shall state the manner of giving notice of intention to redeem (which may be by publication without actual notice), and when such notice has been given such bonds shall not bear interest after the date fixed in such notice of redemption, nor shall coupons maturing thereafter be valid; provided that adequate funds for their redemption shall have been provided and set aside by such unit.

History.—§4, ch. 15772, 1931; CGL 1936 Supp. 2383(4).

132.05 Form; execution; delivery.—The refunding bonds herein provided for may be issued in registered form, or may be coupon bonds with the privilege of registration either as to principal only or as to both principal and interest, and shall be executed in the manner and by the officials provided in the resolution authorizing same. Except one signature on each bond, the signatures on the bonds and coupons may be facsimile signatures. Bonds and coupons duly executed by officials then in office may be negotiated and delivered after such officials have ceased to hold such office. The authentication or certificate of a registrar may be required on the bonds.

History.—§5, ch. 15772, 1931; CGL 1936 Supp. 2383(5).

132.06 Separate series of bonds; rates of interest.—One resolution may provide for several separate series of refunding bonds. Each of such series and separate bonds of the same series may have different terms and provisions from the others. The same bonds may bear different rates of interest at different times. Bonds issued for the purpose of refunding accrued interest may be non-interest bearing or may bear a lower rate than other bonds of the same series as may be provided in the resolution.

History.—§6, ch. 15772, 1931; CGL 1936 Supp. 2383(6).

132.07 Maturity date.—Such resolution may provide that all or any part of the bonds issued thereunder shall mature in annual installments beginning at such time after date and running to such time, not longer than sixty years after date as said resolution may provide.

History.—§7, ch. 15772, 1931; CGL 1936 Supp. 2383(7).

132.08 Exchange of bonds.—Bonds issued under this chapter may be exchanged for not less than an equal principal amount and accrued interest of indebtedness to be retired thereby, including indebtedness not yet due, if the same be then redeemable or if the holders thereof be willing to surrender the same for retirement, but otherwise shall be sold and the proceeds thereof shall be applied to the payment of such indebtedness and accrued interest due or redeemable which may be so surrendered.

History.—§8, ch. 15772, 1931; CGL 1936 Supp. 2383(8).

132.09 Notice of sale; bids and award; private sale.—When sold, the refunding bonds (except as otherwise expressly provided) shall be sold pursuant to the terms of a notice of sale which shall be published at least twice. The first publication to be not less than seven days before the date fixed for the sale and to be published in a newspaper published in the unit, or if no newspaper is published in the unit, then in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper published in Tallahassee, and in the discretion of the governing body of the unit may be published in a financial newspaper in the city of New York. Such notices shall state the time and place and when and where sealed bids will be received, shall state the amount of bonds, their dates, maturities, denominations and interest rate or rates (which may be a maximum rate), interest payment dates, an outline of the terms, if any, on which they are redeemable or become payable before maturity, the amount which must be deposited with the bid to secure its performance if accepted, and such other pertinent information as the governing body of the unit may determine. The notice of sale may require the bidders to fix the interest rate or rates that the bonds are to bear subject to the terms of the notice and the maximum rate permitted by this chapter. The award of the bonds shall be made by the governing body of the unit to the bidder making the most advantageous bid which shall be determined by the governing body in its absolute and uncontrolled discretion. The right to reject all bids shall be reserved to the governing body of the unit. If no bids are received at such public sale, or if all bids are rejected, the bonds may be sold without notice at private sale at any time within one year thereafter, but such bonds shall not be sold at private sale on terms less favorable to the unit than were contained in the best bid at the prior public sale.

History.—§9, ch. 15772, 1931; CGL 1936 Supp. 2383(9).

132.10 Minimum sale price.—No bonds shall be sold under this chapter at less than ninety-five per cent of par, with accrued interest to date of delivery thereof.

History.—§10, ch. 15772, 1931; CGL 1936 Supp. 2383(10).

132.11 Amount of refunding bonds to be sold.—In case of refunding bonds which are not exchanged for bonds outstanding but are sold, only such amount thereof shall be delivered as is necessary to provide for the payment of matured bonds and legally accrued interest and of such unmatured bonds as the holders thereof have agreed in writing to surrender upon payment of a sum not exceeding par and legally accrued interest.

History.—§11, ch. 15772, 1931; CGL 1936 Supp. 2383(11).

132.12 Exchange without notice.—In the case of refunding bonds which are exchanged for bonds outstanding and are not sold, such

exchange may be made by the unit without the requirement of the publication of any notice thereof.

History.—§12, ch. 15772, 1931; CGL 1936 Supp. 2383(12).

132.13 Delivery of bonds sold.—In case of refunding bonds which are not exchanged for bonds outstanding but are sold, they shall not be delivered until payment in full has been received therefor. Pursuant to agreement between unit and purchaser made either before or after the sale of the bonds, the bonds may be delivered in deferred installments and the total purchase price shall be divided and paid on the installments as may be agreed, but delivery shall not be deferred more than one year after the sale.

History.—§13, ch. 15772, 1931; CGL 1936 Supp. 2383(13).

132.14 Exchange in lieu of sale.—As hereinbefore provided the refunding bonds instead of being sold may be exchanged for bonds or for interest on bonds or interest on overdue interest on bonds to refund which they are issued. The principal and accrued interest of the refunding bonds shall not exceed the amount of the obligations refunded.

History.—§14, ch. 15772, 1931; CGL 1936 Supp. 2383(14).

132.15 Provision for conditional increase of rate of interest.—If the refunding bonds bear a lower rate of interest than the bonds for which they are exchanged, either the resolution authorizing the bonds or the refunding bonds themselves may provide that the refunding bonds shall bear the lower rate of interest only so long as the unit shall not be in default of any agreement or obligations to the holders and that after any such default, or at the option of the holders after any such default, the refunding bonds shall bear the same rate of interest as the bonds for which they were exchanged. The unit may impose limitations on the right to exercise such option, and may provide that the option may only be exercised after a period of default, or by the holders of a certain amount or proportion of bonds, all as provided in the said resolution or in the refunding bonds, and if the right to the higher interest accrues may agree to substitute new bonds and coupons bearing such higher interest.

History.—§15, ch. 15772, 1931; CGL 1936 Supp. 2383(15).

132.16 Sinking fund.—The resolution authorizing the refunding bonds may contain an agreement on the part of the unit to provide a sinking fund for such bonds, and said resolution may provide for payments of such sinking fund, the investment thereof, the administration thereof, and the application thereof to the payment, purchase and redemption of the refunding bonds.

History.—§16, ch. 15772, 1931; CGL 1936 Supp. 2383(16).

132.17 Pledge of anticipated revenues.—The resolution authorizing refunding bonds may assign, pledge, or set aside as a trust for the payment of principal or interest of refunding bonds or for a sinking fund for the bonds, subject to prior liens or contract obligations, and on, or subject to, such terms and conditions as may be stated, any unpaid taxes or assessments whether due or to grow due, and any revenues due or to grow due, or proceeds of sale of improvements or properties of the unit. The resolution authorizing the bonds may contain agreement to collect and pay over the moneys derived from such source.

History.—§17, ch. 15772, 1931; CGL 1936 Supp. 2383(17).

132.18 Pledge of fixed portion of revenues.—The resolution authorizing the refunding bonds may pledge to the payment of principal and interest of such refunding bonds or to a sinking fund for the bonds, a fixed proportion, or a proportion to be determined from time to time as provided in said resolution, of the moneys from time to time collected either by taxation of any kind, whether upon real or personal property, or collected from other revenues or receipts of the unit, and such resolution may provide that the said fixed proportion or the proportions so determined out of each dollar collected by the unit shall be applied to the payment of the principal or interest of the refunding bonds, or be paid into or set aside as a sinking fund for the bonds.

History.—§18, ch. 15772, 1931; CGL 1936 Supp. 2383(18).

132.19 Priority of payment of refunding bonds.—The resolution authorizing the bonds may provide that the unit shall first set aside out of the tax collections the amount required in any year for the payment of principal and interest of refunding bonds and for the sinking fund for the bonds, before any tax collections shall be set aside or applied to the payment of any bonds of the unit that may thereafter be issued, except bonds thereafter issued to pay or refund bonds then outstanding.

History.—§19, ch. 15772, 1931; CGL 1936 Supp. 2383(19).

132.20 Proportionate taxes for sinking fund.—The resolution authorizing the refunding bonds may provide that in addition to all other amounts to be paid into a sinking fund for such bonds, such sums shall be levied, assessed and collected for such sinking funds as bear a stated proportion of taxes of any kind which are imposed or collected for all purposes other than the payment of refunding bonds issued pursuant to this chapter, so that for every dollar of tax imposed or collected for all such purposes a stated amount shall be imposed for the said sinking fund.

History.—§20, ch. 15772, 1931; CGL 1936 Supp. 2383(20).

132.21 Pledge of special assessments.—In the discretion of the governing board there may be pledged to the payment of any or all such bonds the collections or proceeds of any or all uncollected special assessments, subject, however, to any other outstanding pledge of such assessment previously made.

History.—§21, ch. 15772, 1931; CGL 1921 Supp. 2383(21).

132.22 Levy of ad valorem tax for payment of bonds.—In each year while any of the bonds shall be outstanding there shall be levied by or under the authority of the governing board

upon all taxable property in the unit, an ad valorem tax sufficient to pay the interest and principal of such refunding bonds and any sinking funds which may be provided for by the bonds, or by the proceedings authorizing the sale, provided, however, that when there shall be in any fund or funds provided for such bonds, interest and sinking fund, an amount exceeding the amount at that time required for such fund or funds, the ad valorem tax required by this section for the current year may be reduced in the amount of such excess. It is expressly provided that in the case of taxing districts where bonds have been issued and are outstanding, which bonds are payable exclusively out of special assessments levied for the payment of such bonds, that no authority to levy an ad valorem tax upon the property of such taxing district shall be conferred or exist under this chapter, unless the same shall be duly authorized or approved by the affirmative vote of a majority of the taxpayers who are freeholders in said unit voting at an election called and held under the provisions of law relating to the issuance of bonds under §6 of article IX of the constitution as amended and such election shall be called within sixty days after the governing body of such taxing district shall receive a petition requesting the same signed by a number of freeholders equal to twenty-five per cent of the qualified electors who are freeholders residing in such district and by the holder or holders of a majority in amount of the bonds or outstanding indebtedness to be refunded, but nothing in this chapter shall preclude the issuance of refunding bonds under this chapter when such refunding bonds are issued and are provided to be supported by the proceeds of special assessments of the same kind and character as were provided for the issue which is refunded.

History.—§22, ch. 15772, 1931; CGL 1936 Supp. 2383(22).

132.23 Tax by municipalities; bonds to constitute general obligations; debt limit inapplicable.—In case of refunding bonds issued by municipalities it shall be the duty of the governing board of the municipality charged by law with determining and fixing the amount of general property taxes for any fiscal year of the municipality, to ascertain the amount of (1) principal and interest of refunding bonds due in such year for which moneys are not in hand, (2) principal and interest of refunding bonds due prior to such year and which are then or will be in default in such year, together with interest thereon, (3) sinking fund payments due in such year or due prior to such year and which are then or will be in default in such year, (4) such additional sum as may be necessary to make up for the estimated failure to collect taxes in such year. The said governing body of the municipality shall determine and fix the total of said sums as the amount to be raised by tax in addition to all other taxes for said fiscal year. The said amount shall thereupon be apportioned against, and levied and assessed on, all property subject to taxation in the manner provided by law, for taxes for other purposes in the municipalities and shall be collected and applied to such purpose by the official of the municipality charged by law with duty of apportioning, levying, assessing, collecting and applying taxes for other purposes. The refunding bonds issued in pursuance of this chapter by municipalities shall be general and unlimited obligations of the municipalities and the full faith and credit of the municipality is hereby irrevocably pledged for their payment. The municipality and each and every official and governing board thereof shall levy, assess, apportion and collect on and from all taxable real and personal property in the municipality such taxes as shall be sufficient to pay the interest and principal of the refunding bonds as they become due and payable. No other section of this chapter or of any other law, or of any agreement or resolution made by the municipality shall be construed to limit or restrict the powers or obligations of the municipality under this chapter and the provisions of any resolution of the municipality made pursuant to this chapter shall be construed as supplemental hereto for the greater protection of the refunding bonds, and shall not be construed as limiting or restricting the application of this section. All refunding bonds issued pursuant to the provisions of this chapter shall not be subject to any limitation or indebtedness prescribed by any statutes, charter or other special act relating to the municipality.

History.—§23, ch. 15772, 1931; CGL 1936 Supp. 2383(23).

132.24 Elections, notice, etc.—Any election which may be held to determine whether any such refuding bonds shall be issued, if required by the constitution of the state, shall be called, noticed and conducted, and the result thereof determined and declared as shall have been or may be required by law for the issuance of any bonds of the unit proposing to issue the bonds herein authorized; but if an election be not required by the constitution and nevertheless be held, it may be called, noticed and conducted, and the result thereof determined and declared, in such manner as the governing body may provide by resolution. It shall not be necessary to hold any election for the issuance of any refunding bond, except in those cases in which an election is required by the constitution of the state.

History.—§24, ch. 15772, 1931; CGL 1936 Supp. 2383(24).

132.25 Creation and maintenance of sinking fund.—The governing authority of any unit in contracting for the sale of any bonds may provide for the creation and maintenance of the necessary sinking fund out of proceeds of sales of lands, and levy of taxes, and proceeds of mortgages.

History.—§25, ch. 15772, 1931; CGL 1936 Supp. 2383(25).

132.26 Chapter supplemental and additional.—This chapter is intended as a supplemental and additional grant of power to each and all the various units of the state as hereinabove

defined and shall apply as well to all municipalities whether heretofore or hereafter incorporated either under general or special act, and shall not supplant or repeal any existing powers for the issuance of funding or refunding bonds or any provisions of law of bonds issued under such powers, or for the custody of moneys provided for such payment, but shall nevertheless repeal all laws and parts of laws, general or special, so far as the same may be inconsistent with the complete exercise of any and all powers herein granted or may deny the right to exercise any power herein granted as to the levy of taxes upon all taxable property of such unit or as to the custody of moneys provided for the payment of bonds or as to any other thing.

History.—§26, ch. 15772, 1931; CGL 1936 Supp. 2383(26).

132.27 Chapter complete within itself.—This chapter constitutes full authority for the things herein authorized, and no proceedings, publications, notices, consents or approval shall be required for the doing of the things herein authorized except as are herein prescribed and required. This chapter shall be deemed complete within itself, except insofar as other laws are specifically made applicable, nor shall powers hereby granted be restricted or limited by any other law.

History.—§27, ch. 15772, 1931; CGL 1936 Supp. 2383(27).

132.28 Chapter applicable to school districts.—In the event that any school district shall be authorized by the constitution and laws of this state to legally issue refunding bonds the provisions of this chapter shall be deemed to apply to such school district.

History.—§29, ch. 15772, 1931; CGL 1936 Supp. 2383(28).

132.29 Validation.—Refunding bonds provided to be issued under this chapter shall be subject to validation and judicial proceedings in like manner and with like force and effect as bonds generally are provided to be validated by judicial proceedings under the laws of this state.

History.—§30, ch. 15772, 1931; CGL 1936 Supp. 2383(29).

132.30 Chapter applicable to all taxing districts.—This chapter shall apply to taxing districts of every character and description provided for under the general or special laws of this state, whether consisting of portions of a county or of territory located in more than one county.

History.—§31, ch. 15772, 1931; CGL 1936 Supp. 2383(30).

132.31 No other proceedings required.—No proceedings shall be required to be taken as to the issuance of any refunding bonds under this chapter except those prescribed by this chapter, any provisions of any other laws, general or special, to the contrary nothwithstanding.

History.—§33, ch. 15772, 1931; CGL 1936 Supp. 2383(32).

132.32 Replacement of bonds.—In case any coupon bonds and the coupons thereunto appertaining, or any registered bonds, shall become mutilated or be destroyed, a new bond shall be prepared at the expense of the applicant, and be executed and delivered, of like tenor, amount, date and series in exchange and substitution for the mutilated or destroyed bond or coupons. In case of destruction the applicant for a substituted bond shall furnish to the unit satisfactory evidence of its destruction and shall also give such security and indemnity as may be required for it.

History.—§34, ch. 15772, 1931; CGL 1936 Supp. 2383(33).

CHAPTER 135

COUNTY BUILDINGS; ERECTION, MAINTENANCE, LEASE, ETC.

135.01 Notice and tax.—Whenever any board of county commissioners shall deem it necesary to erect or repair any courthouse, jail, or other county building, erect an addition or additions to any courthouse, jail or other county building, they shall give notice for thirty days in some newspaper published in said county, or in some newspaper published in the judicial circuit, if there be none published in the county, that at the next regular meeting of the board after the publication of the said notice, such question or questions, will be acted upon by said board. If, at said meeting, a majority of said board shall determine that it is necessary to erect, repair, or build addition or additions to, such building or buildings, they may levy a building tax not exceeding five mills per annum, for not more than thirty consecutive years in lieu of all other county building tax. The tax levied shall be assessed and collected at the same time and in the same manner as other state and county taxes are levied and collected.

History.—§1, ch. 3421, 1883; RS 609; GS 808; §1, ch. 5698, 1907; RGS 1556; §1, ch. 9333, 1923; CGL 2384; §1, ch. 25469, 1949; §1, ch. 31402, 1956.

135.02 Contract for building.—The contract for the building of such courthouse or other public building or buildings, or repairs or additions to such courthouse or other public building or buildings, shall be in writing and shall be filed in the office of the clerk of the circuit court, and the said contract shall provide that the whole amount due under such contract shall not be paid until the said building or buildings, repairs or additions shall have been inspected and accepted by the county commissioners; and not less than ten per cent of the original contract price shall remain unpaid until such final inspection and acceptance of the work by the county commissioners; providing however, that such inspection by the county commissioners shall be completed within thirty days after the supervising architect, engineer or agency shall certify that the contract has been completed and further that any unpaid amount of the contract price shall become due and payable on the thirty-first day after such certification providing that inspection by the county commission shall not reveal sufficient cause to prevent acceptance by the county commission.

History.—§§2, 3, ch. 3421, 1883; RS 610; §1, ch. 4590, 1897; GS 809; RGS 1557; §2, ch. 9333, 1923; CGL 2385; §1, ch. 59-136.

135.03 Cold storage curing and drying plants.—Whenever the county commissioners of any county in this state shall determine that the problem of storing its products to await favorable marketing conditions, is of sufficient importance in such county to warrant the same, they shall have the right to provide for the erection and operation in such county of a cold storage curing and drying plant for the storing of animal and vegetable products, and to expend public moneys therefor, and same is hereby declared to be a proper county purpose for such expenditure.

History.—§1, ch. 10104, 1925; CGL 2386.

135.04 Same; plans, specifications and estimates.—Upon the making of such determination, it shall be the duty of the county commissioners of such county to cause to be made out detailed plans and specifications of the proposed cold storage curing and drying plant proposed to be erected and operated by it, together with an estimate of the probable cost of completion thereof, a statement of the probable business to be expected in its operation, and such other statement of facts as may be required by the board of commissioners of state institutions.

History.—§2, ch. 10104, 1925; CGL 2387.
cf.—Ch. 272, board of commissioners of state institutions.

135.05 Same; examination by board of commissioners of state institutions.—The board of commissioners of state institutions shall cause the said plans and specifications, submitted to it as provided for in §135.04 to be examined and make diligent inquiry as to the practicability of the proposed cold storage curing and drying plant described therein, and the probable business which would result from the operation of the same where and as proposed and if they approve of same, to cause their approval to be entered of record and certified to the county commissioners of the county so proposing such cold storage curing and drying plant.

History.—§3, ch. 10104, 1925; CGL 2388.

135.06 Same; one-half of cost paid by county.—Upon the approval of the plans and specifications aforesaid, and the certification

thereof as aforesaid, the county commissioners of the county in which such cold storage curing and drying plant is proposed to be so erected, shall make up and cause to be deposited with the state treasurer a sum equal to one-half of the approved estimated cost of said project, and for that purpose the said county commissioners may expend any portion of the general county fund not otherwise appropriated and any part of the agricultural fund of said county.

History.—§4, ch. 10104, 1925; CGL 2389.
cf.—§282.001(3) All state receipts to general revenue fund.

135.07 Same; one-half of cost paid by state.—Upon the deposit of said one-half of the approved estimated cost of said cold storage curing and drying product, as provided for in §135.06, with the state treasurer, the state treasurer shall set aside and apportion a like amount out of any moneys in the state treasury not otherwise appropriated, for the purpose of providing the remainder of the whole cost of completion, and any and all sums of money in the state treasury not otherwise appropriated are hereby appropriated for the purpose of carrying out the purpose and intent of §§135.03-135.19.

History.—§5, ch. 10104, 1925; CGL 2390.

135.08 Same; contracts; building.—All contracts for the erection of cold storage curing and drying plants under §§135.03-135.19 shall be advertised and let by the board of commissioners of state institutions and all work shall be done under the supervision of and paid only upon approval by the board of commissioners of state institutions, upon itemized statements, audited and approved by the comptroller.

History.—§6, ch. 10104, 1925; CGL 2391.

135.09 Same; public storage; rates, rules, etc.; funds.—From and after the erection and putting into operation of any such cold storage curing and drying plant as provided for in §§135.03-135.19, storage of animal and vegetable products therein shall be open to the public upon payment of such storage charges and compliance with such reasonable rules and regulations for the government thereof as the commissioners of state institutions may from time to time prescribe, and all moneys realized from storage fees shall be kept in a separate and sacred fund to be expended only for the payment of the legitimate and necessary expenses of operation and the establishment of a sinking fund for the repayment to the state of the one-half of the purchase price hereinbefore provided to be advanced and paid by the state.

History.—§7, ch. 10104, 1925; CGL 2392.
cf.—§282.001(3) All state receipts to general revenue fund.

135.10 Same; title to property; supervision.—The legal title to all cold storage curing and drying plants provided for in §§135.03-135.19 shall vest in the state for the use and benefit of the county wherein said cold storage curing and drying plant is located and the said cold storage curing and drying plant shall always be under the supervision and control of the state through the board of commissioners of state institutions until the complete repayment to the state by the county of all funds advanced or paid by the state for the erection of any such cold storage curing and drying plant, and upon the repayment of such amounts to the state, said board of commissioners of state institutions shall make out and deliver to the said county a complete release, satisfaction and discharge of all claims against it under the sections aforesaid.

History.—§8, ch. 10104, 1925; CGL 2393.

135.11 Same; storage receipts.—All animal and vegetable products received or accepted in any such cold storage curing and drying plant for storage shall be represented by a receipt in writing, giving the weight or other unit measurement of the article stored, the date stored, the name of the person, firm or corporation storing the same, and the rate of storage charged. Such receipt shall be negotiable by endorsement and the same rules of law and custom shall apply to and govern such cold storage curing and drying receipts as govern warehouse receipts under laws of this state.

History.—§9, ch. 10104, 1925; CGL 2394.

135.12 Same; bonds may be issued.—For the purpose of enabling any county in this state to provide funds for the erection and operation of a cold storage curing and drying plant under §§135.03-135.19, said county may provide for the calling and holding of an election to provide for the issuance and sale of bonds therein in like manner and with the same procedure as counties are now or may hereafter be authorized by law to provide for the issuance of bonds for building roads and bridges, the proceeds of such bonds to be used to defray the one-half cost of erection and operation of said plant as hereinbefore provided.

History.—§10, ch. 10104, 1925; CGL 2395.
cf.—Ch. 130 County bonds.

135.13 Same; storage fees, and disposition of proceeds.—Only reasonable fees for storage of articles in any such cold storage curing and drying plant shall be charged or collected and the same shall be so fixed as to provide for a sinking fund for the retirement of the cost of erection after deducting of operating expenses, and the board of commissioners of state institutions may fix such fees and charges and provide for the keeping, remittance and application of all funds charged and collected from the public by any such cold storage curing and drying plant, until the state shall be fully reimbursed for all amounts of money advanced by it in the erection of such plant, after which full title and right of control shall pass to the county in which any such plant is located.

History.—§11, ch. 10104, 1925; CGL 2396.

135.14 Same; laws applicable.—All laws and provisions of law regulating and governing the conduct of warehouses and the issuance and negotiation of warehouse receipts under the laws of Florida shall apply to and govern all cold storage curing and drying receipts and products stored in any cold storage curing and drying

plant under the terms of §§135.03-135.19, except that in no case shall any action sounding in tort be maintained against any county of this state.

History.—§12, ch. 10104, 1925; CGL 2397; §7, ch. 22858, 1945.

135.15 Same; state marketing bureau to cooperate.—The state marketing bureau shall cooperate with the persons storing agricultural and animal products in any such cold storage curing and drying plant and assist in marketing such products to the best advantage and provide facilities therefor.

History.—§13, ch. 10104, 1925; CGL 2398.

135.16 Same; attorney general to approve title to realty.—Before any moneys provided for by §§135.03-135.19 shall be expended in the erection of any cold storage curing and drying plant in any county of this state, the legal title to the real estate upon which the same is proposed to be and is erected shall be passed upon and approved by the attorney general.

History.—§14, ch. 10104, 1925; CGL 2399.

135.17 Same; additions.—Whenever any cold storage curing and drying plant is put in operation under the provisions of §§135.03-135.19, and the storage facilities provided thereby shall be found to be insufficient to accommodate the public demand, an addition and enlargement of the same may be made upon like proceedings and in like manner and subject to the same conditions as for the erection of any such cold storage curing and drying plant as hereinbefore provided.

History.—§15, ch. 10104, 1925; CGL 2400.

135.18 Same; rules and regulations.—The board of commissioners of state institutions shall promulgate rules and regulations not inconsistent with the provisions of §§135.03-135.19, for the government and operation of cold storage curing and drying plants under said sections, so as to secure the most economical administration of the affairs of same and the greatest benefit to the public to be accommodated.

History.—§16, ch. 10104, 1925; CGL 2401.

135.19 Same; appointment and dismissal of employees.—All employees required for the management and operation of any cold storage curing and drying plant under §§135.03-135.19 shall be appointed by the county commissioners of the county but may be removed or dismissed by the board of commissioners of state institutions for incompetency or neglect of duty, upon complaint made and proved of such fact.

History.—§17, ch. 10104, 1925; CGL 2402.

CHAPTER 136

COUNTY DEPOSITORIES

136.01 Banks to be county depositories.— Any bank, national or state, authorized to do business in this state which will, as to the various funds hereinafter referred to, offer satisfactory inducement as to security as herein provided is hereby created and designated a county depository for the funds for which such security shall be furnished and may receive such public funds in the manner and method hereinafter provided. The funds hereinabove referred to shall include: county funds, funds of all county officers, and funds of the county board of public instruction; the enumeration of said funds being herein made, not by way of limitation, but of illustration, and it being the intent hereof that all funds of such county or of the board of county commissioners or the several county officers or of the board of public instruction of such county, shall be included.

History.—§2, ch. 6932, 1915; RGS 1559; §1, ch. 2527, 1921; CGL 2404; §1, ch. 14691, 1931; §1, ch. 19549, 1939; §7, ch. 24337, 1947; am. §10, ch. 26484, 1951; §1, ch. 59-23.
cf.—§237.32 Provisions as to depositories of school funds.

136.02 Method of qualifying as depository; securities to be deposited; pro rata division of deposits.—

(1) Any bank as described in the foregoing section desiring to become a county depository as herein provided shall make satisfactory deposit with or to the credit of the comptroller of the state, of securities of the kind herein authorized approved by the comptroller and in an amount to be determined by the comptroller, conditioned that said bank insure the safekeeping, proper accounting for and payment over to the proper authority of all money that may come into its possession by virtue of its acting as said depository, and further conditioned that it will in all respects duly and faithfully perform the duties imposed upon it by reason of acting as such depository. When a bank or banks in the county offer satisfactory inducement as to security as herein provided, the comptroller of the state shall issue his certificate showing that said bank has qualified as a county depository, and the securities deposited by such bank as herein provided shall secure all funds, jointly and severally, that shall be deposited in such banks by any and all officials of the several counties, by the several boards of county commissioners and the boards of public instruction of the several counties. When a bank or banks in the county qualify as a county depository as herein provided, such bank or banks shall be eligible to receive deposits of the funds of the officers and boards herein mentioned, and shall be entitled to its or their pro rata share of the deposits of the board of county commissioners and board of public instruction of such county; but in case no bank within the county should qualify, then the said board of county commissioners and board of public instruction shall divide such deposits among the banks in some other county or counties which have qualified as county depositories as herein provided; provided, however, that nothing herein contained shall prohibit county officials, boards of county commissioners or boards of public instruction from recognizing and accepting the insurance coverage afforded by the federal deposit insurance corporation, which is now recognized by §659.24 (2), nor the payment of interest on any funds under the terms of such agreement as may be entered into between the proper depositing officials or boards and the banks, provided the payment of such interest is permitted by state or federal law. If at any time a bank ceases to be qualified as a county depository, the comptroller shall revoke the certificate of qualification of such bank and shall advise the several boards and officers of such county of such revocation and until again qualified hereunder such bank shall not be eligible to receive or retain deposits of any of the funds herein mentioned.

(2) On the first day of each month each county official and board maintaining funds on deposit in any such bank shall make and file with the clerk of the circuit court of such county a written report setting forth the balance of each fund on deposit in each bank in which such funds are deposited as of the close of business of the preceding month, and setting forth the estimate of such officer or board of the highest balance expected to be on deposit in each such bank during the ensuing month. Not later than the fifth of each month the clerk of the circuit court shall consolidate the reports of all of said officers and boards as to each such bank and shall file such consolidated report with the comptroller of the state.

(3) If at any time after a bank has qualified as a county depository as herein provided, the security furnished by it becomes insufficient or inadequate, the comptroller of the state shall have authority, on such terms, conditions, and penalties as he may prescribe, to require other

securities of the kind herein authorized in such additional amounts to be provided as he may deem necessary. If, at any time after a bank has qualified as a county depository as herein provided, the security furnished by it becomes, by reason of decreases in balances or deposits, more than sufficient to meet the requirements, the comptroller shall have the authority to authorize the security to be decreased to not less than the amount necessary to provide adequate safeguards for the funds deposited.

(4) The securities to be deposited by such banks desiring to qualify as a county depository hereunder, shall consist of bonds of the United States, bonds the payment of whose principal and interest is guaranteed by the United States, federal certificates of indebtedness, bonds or certificates of the several states, county and municipal bonds or certificates, county or county school time warrants, issued by any of the counties or cities of the state, or by any of the state agencies, departments or commissions authorized to issue bonds or certificates, or issued by authorities created by the state legislature, and bonds or other obligations issued by a housing authority pursuant to the housing authorities law of this state (chapter 421), or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof. Such bonds or certificates may be general obligations of the issuing authority or they may be secured by utility revenues, or other revenues, or by excise taxes, or they may be secured by a limited ad valorem tax; provided, however, that none of the above bonds or certificates shall be accepted as security for the funds herein mentioned unless such bonds or certificates shall have qualities pertinent to bank investment; and provided further, that except as to bonds of the United States or bonds the payment of whose principal and interest is guaranteed by the United States or federal certificates of indebtedness, or state, county or municipal general obligation bonds, the bonds or certificates herein mentioned shall be rated in one of the highest four classifications by established nationally recognized investment rating services.

(5) The fact that a county or municipal officer or member of a public board or body, including a county school officer and an officer of any district within a county is a stockholder or an officer or director of a bank will not bar such banks from qualifying as a depository of funds coming under the jurisdiction of any such county or municipal officer, provided it shall appear in the records of the state or county agency that the governing body of such agency has investigated and determined that such county officer or member of a public board or body as aforesaid has not favored such bank or banks over other qualified banks and that there is no violation of subsection (1).

History.—§3, ch. 6932, 1915; RGS 1560; CGL 2405; §2, ch. 14691, 1931; §2, ch. 19549, 1939; §2, ch. 59-23; (1) §1, ch. 59-306; (4) §1, ch. 61-165; (5) n. §1, ch. 63-112.
cf.—§237.32 Provisions as to depositories of school funds.
§659.21 Security of deposits.

136.03 County funds to be paid into depositories; triplicate receipts to be issued.—Tax collectors and all other persons having, receiving or collecting any money payable to the county funds not otherwise provided for, shall pay the same to the bank or banks qualified to receive the same. Each bank receiving any money, as provided in this chapter, shall make receipt for same in triplicate, one copy of which the said banks will carefully preserve and keep, one copy to be given to the person from whom money was received and one copy to be given to the board for which said money was received.

History.—§4, ch. 6932, 1915; RGS 1561; CGL 2406.
cf.—§237.32 Provisions as to depositories of school funds.

136.04 Depositories to keep demand and time deposits separate; how interest on deposits credited.—Each bank acting as a depository shall keep all daily balance accounts which are subject to immediate checking, in an account or accounts separate from all savings or time deposit accounts. Funds in a saving or time deposit account shall not be subject to check without being transferred to the checking account by order of the board or officer having control of the same. Each board or officer at all times may transfer money from one of the classes or types of accounts to another. Interest shall be paid by banks receiving savings or time deposit accounts at such rate or rates as may be agreed upon with respect to such savings or time deposit accounts by the bank and the board or officer having control of such account. All interest earned on any of such deposits shall be credited to the account and fund on which it was earned, and all interest shall be computed and credited quarterly.

History.—§5, ch. 6932, 1915; RGS 1562; §2, ch. 8527, 1921; CGL 2407, §3, ch. 59-23.
cf.—§237.32 Provisions as to depositories of school funds.

136.05 County board to keep set of books; overdrawing prohibited.—The board of county commissioners shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board.

History.—§6, ch. 6932, 1915; RGS 1563; CGL 2408.
cf.—§237.32 Provisions as to depositories of school funds.

136.06 How funds drawn from depositories.—All money drawn from any depository qualified under the provisions of this chapter shall be upon a check or warrant issued by the board or officer drawing the same, said check or warrant, both as to number and amount, person to whom drawn and purpose for which drawn shall be recorded in the minutes of the board having ordered the same drawn, and each

check or warrant so drawn shall be signed by the chairman of said board, attested by the clerk or secretary of said board with the corporate seal thereof affixed; provided, however, that money under the control of any board of public instruction may be withdrawn as may be otherwise provided by law.

History.—§7, ch. 6932, 1915; RGS 1564; CGL 2409; §4, ch. 59-23.

cf.—§237.32 Provisions as to depositories of school funds.
§129.08 County commissioners voting to pay illegal claims, etc.
§129.09 County auditor not to sign illegal warrants.

136.07 Depositories to make reports; board to publish monthly statements.—Any bank acting as depository shall, at the end of each and every month, file with each board and officer for which it is a depository, and with the comptroller of the state, a report, as to each account on deposit with it, showing the balances on hand at the beginning of the month, all sums received and paid out during the month, balances on hand at the end of the month, and shall return with said report all checks or warrant or warrants properly cancelled which the said bank has paid during the month; each board shall make and publish a statement monthly and at such other time as now required, or at such other times as may be required by the comptroller or the board of county commissioners and other such reports and statements regarding the conditions of each and every fund, as now or as may be hereafter required by law.

History.—§8, ch. 6932, 1915; RGS 1565; CGL 2410; §6, ch. 59-23.

cf.—§237.32 Provisions as to depositories of school funds.

136.08 Accounts subject to examination by authorized persons.—The accounts of each and every board and the county accounts of each and every bank acting as depository, mentioned or provided for in this chapter, shall at all times be subject to the inspection and examination of the county auditor, the state auditor and the state comptroller or persons designated by him.

History.—§9, ch. 9632, 1915; RGS 1566; CGL 2411.

cf.—§237.32 Provisions as to depositories of school funds.

CHAPTER 137

BONDS OF COUNTY OFFICERS

137.01 Bonds required by county officers.—Each of the county officers of whom a bond is or shall be required by law, shall, before he is commissioned, give bond, with not less than two sureties, or a surety company as hereinafter specified, to the governor of the state and his successors in office, conditioned for the faithful performance of the duties of his office, which shall be approved by the board of county commissioners and comptroller, and be filed with the secretary of state.

History.—§1, ch. 3724, 1887; RS 616; GS 822; RGS 1568; CGL 2416.

cf.—§237.31, for provisions as to bonds of school officials.

137.02 Bond of tax collector.—The tax collector of each county shall give bond in a sum to be fixed by the board of county commissioners of the respective county, subject to the approval of the comptroller as to amount and surety. In fixing said bond the board of county commissioners shall take into consideration the amount of money likely to be in the custody of the collector at any one time.

History.—§5, ch. 3724, 1887; RS 617; GS 823; RGS 1569; §1, ch. 10033, 1925; CGL 2417.

137.03 Bonds of other county officers.—The county surveyor of each county shall give a bond in the sum of one thousand dollars. The county assessor of taxes shall give a bond the amount of which to be fixed by the board of county commissioners at not less than one thousand nor more than ten thousand dollars. In fixing the amount of said bond, the board of county commissioners shall take into consideration the amount of money likely to be in the custody of the assessor at any one time.

History.—§7, ch. 3724, 1887; ch. 3844, 1889; RS 618-619; GS 824; RGS 1570; CGL 2418; §1, ch. 28294, 1953.
cf.—§237.31, Bonds of school officials.

137.04 County commissioners to give bond.—Each and every county commissioner of the several counties of the state, elected or appointed to such office before he is commissioned, shall be required to give a good and sufficient bond with not less than two sureties, or a surety company duly authorized under the laws of the state, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the board of county commissioners and the comptroller of the state. The premium of the bonds given with surety companies as sureties shall be paid out of the county treasury.

History.—§1, ch. 6477, 1913; RGS 1571; CGL 2419.
cf.—§237.31, Bonds of school officials.

137.05 Duty of county commissioners.—The county commissioners of the various counties of the state shall at their regular meeting in January and June of each year examine carefully as to the sufficiency of bonds of the county officers of their respective counties, and if by reason of death, assignment or insolvency of any of the sureties on the bonds of said officers, they have reason to believe that the sufficiency of said bond has become impaired, they shall at once report the same to the governor, who shall call upon and require such officer or officers to execute and file with the proper officer a new bond for the same amount, under the same conditions as his former bond.

History.—§2, ch. 4413, 1895; GS 825; RGS 1572; CGL 2420.
cf.—§237.31, Bonds of school officials.

137.06 Failure to give new bond; misfeasance.—Upon the failure of any state or county officer to give the new bond required by §137.05, within sixty days after he is called upon to do so, such failure on the part of any county officer shall be deemed and held to be a misfeasance within the meaning of the constitution; and the governor shall suspend such officer, as provided in §15 of Art. IV of the constitution, and shall at once appoint a successor to fill such vacancy, who after giving the bond required and otherwise qualifying, shall take charge of the office to which he has been appointed, and perform the duties of the same until his successor shall have been elected and qualified, or the officer suspended be reinstated; and in all cases where officers are liable to impeachment under the constitution, the failure to give the bond as hereinbefore mentioned shall constitute a ground of impeachment.

History.—§3, ch. 4413, 1895; GS 826; RGS 1573; CGL 2421.
cf.—§237.31, Bonds of school officials.

137.07 Failure to perform duties.—If the comptroller of the state, or the boards of county commissioners of the various counties, shall fail to perform the duties required by §§17.19, 137.05, and 237.31, respectively, they shall be liable to the state or county for any loss which may be sustained by the state or county, by reason of such failure, such sum to be recovered by suit in any county in which such comptroller or county commissioners may reside.

History.—§4, ch. 4413, 1895; GS 827; RGS 1574; CGL 2422.

137.08 Sums for which sureties may be bound.—In every bond in which the amount of the bond shall not exceed one thousand dollars, there shall be at least two sureties, each bound for the full amount of the bond.

In every bond so specified in which the amount of the bond shall exceed one thousand dollars, each surety may bind himself for a specified sum, and the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

History.—§9, ch. 3724, 1887; RS 620; GS 828; RGS 1575; CGL 2423.

cf.—§237.31, Bonds of school officials.

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein unincumbered and not exempt from sale under legal process to make good his bond. Every such bond shall be approved by the board of county commissioners and by the comptroller when they and he are satisfied in their judgment that the same is legal, sufficient and proper to be approved.

History.—§10, ch. 3724, 1887; RS 621; GS 829; RGS 1576; CGL 2424.

137.10 Provisions not applicable to surety companies.—The provisions of this chapter requiring two sureties and justification by surety shall not apply where such surety is a surety company authorized to do business in this state.

History.—GS 830; RGS 1577; CGL 2425.

cf.—§237.31, Bonds of school officials.

CHAPTER 138

COUNTY SEATS

138.01 Petition to change county seat.—The qualified electors in any county in this state wishing to change their county seat, shall present to the board of county commissioners of such county a petition signed by one-third of the qualified electors, who are taxpayers on real or personal property, praying for a change of the location of such county seat.

History.—§1, ch. 1890, 1872; RS 622; GS 831; §1, ch. 6239, 1911; RGS 1578; CGL 2426.

138.02 Commissioners to order election.—The county commissioners of any county in this state, upon receiving such petition as is specified in §138.01 shall order an election to be held at the several precincts of such county for the location of such county seat, giving not less than thirty days' notice thereof, and no person shall be allowed to vote in such elections except those qualified to vote under the general election laws of Florida.

History.—§2, ch. 1890, 1872; RS 623; GS 832; §2, ch. 6239, 1911; RGS 1579; CGL 2427.

138.03 Conduct and return of election.—All elections held under the provisions of this chapter shall be conducted in the manner prescribed by law for holding general elections in this state, except as herein provided, and the returns of all such elections shall be made to the county commissioners or the clerk thereof.

History.—§3, ch. 1890, 1872; RS 624; GS 833; §3, ch. 6239, 1911; RGS 1580; CGL 2428.

138.04 Names of towns, etc., for county seat to be filed with clerk.—Names of all towns, villages or cities, put forward as candidates for the county seat of any county in this state under the provisions of this chapter shall be filed with the clerk of the circuit court of such county not later than fifteen days before the date set for holding said election.

History.—§4, ch. 6239, 1911; RGS 1581; CGL 2429.

138.05 Form of ballot.—The clerk of the circuit court of any county in this state, when the names of the towns, villages and cities required in §138.04 have been furnished him, shall have printed, at the expense of the county, a suitable ballot to be used in said election, said ballot to contain, in alphabetical order, the names of all such towns, villages and cities, and no other places shall be printed on the said ballots; provided, that in counties where the use of voting machines is now or may hereafter be authorized by law, the requirements of this section shall, in so far as practicable, be adapted to the use of said voting machines.

History.—§5, ch. 6239, 1911; RGS 1582; CGL 2430.

138.06 Canvass and result of election; contests.—The county commissioners shall, not later than five days after the aforesaid election is held, publicly canvass the same, and the place receiving a majority of all the votes cast shall be the county seat for the next ten years. The result declared upon such canvass may be contested by five or more taxpayers, qualified electors who voted in such election for a candidate place other than the place declared elected, by proceeding in chancery for an injunction against the removal by the county commissioners of the county records and county offices to the place declared elected, or by mandamus to compel the removal of the county offices and records to the place alleged in such proceedings to have been elected; and the court in which any such proceeding shall be properly instituted, may inquire into the legality of such election, the qualification of electors voting therein, and render judgment or decree in favor of the place duly elected by the qualified electors, and may make such interlocutory orders or decrees, and issue such process as shall be necessary to the protection of its jurisdiction, or may be incidental to the principal relief sought; provided, that such action shall be brought within three years from the time of such election.

History.—Ch. 3301, 1881; §6, ch. 6239, 1911; §10, sub-§15, ch. 7838, 1919; RGS 1583; CGL 2431.

138.07 Second election when no place receives majority vote.—Should three or more places be put forward and voted for as the county seat of any county in this state, and the county commissioners of such county find that upon the canvass of the said election, as provided for in §138.06, that any of such places have received a majority of all the votes cast at said election, the place receiving such a majority shall be declared the county seat as aforesaid, but should the county commissioners find that no place has received a majority of all the votes cast in said election, they shall proceed at once without a petition to call a second election to be held within thirty days of the first election, and in the same manner and places as prescribed for the first election.

History.—§7, ch. 6239, 1911; RGS 1584; CGL 2432.

138.08 The two places receiving highest vote to be placed on ballot in second election.—Should the second election, as provided for in §138.07, be necessary to select the place as county seat of any county in this state, the clerk of the circuit court shall prepare the ballot as aforesaid, dropping the names or name of all places voted for in the first election except the two places receiving the highest vote in the same, and no other places shall be voted for nor shall the vote of any other place or places be counted or considered by the county commissioners in canvassing the result of such election.

History.—§8, ch. 6239, 1911; RGS 1585; CGL 2433.

138.09 Canvass of votes of second election; establishing county seat.—The county commissioners shall, within five days after the election provided for in §138.07 is held, meet and publicly canvass the same, and the place receiving the majority of all the votes cast shall be the county seat for the next ten years, and the said county commissioners shall erect, as soon as possible, a courthouse and jail, and provide suitable offices for all the county officers who are required by law to keep their offices at the courthouse at the place so selected as the county seat aforesaid.

History.—§9, ch. 6239, 1911; RGS 1586; CGL 2434.

138.10 Counties having constructed a new courthouse within twenty years.—The provisions of this chapter shall not apply to any county having constructed a new courthouse within the past twenty years, other than a county having constructed a courthouse of wood, in which the county seat is situated, in any town or city not located on any line of railroad transportation.

History.—§10, ch. 6239, 1911; §1, ch. 6480, 1913; RGS 1587; CGL 2435.

138.11 Unlawful use of money in election to change county seat. — Any person using money, goods or chattels in any election to change the county seat of any county, to secure votes or influence for any place as the county seat of any county in this state, shall, upon conviction thereof, be imprisoned in the state prison not exceeding two years.

History.—§10, ch. 6239, 1911; §1, ch. 6480, 1913; RGS 5904; CGL 8168.
cf.—§775.06 Alternative punishment.

CHAPTER 142

FINE AND FORFEITURE FUND, COUNTY

142.01 Fine and forfeiture fund contents.—There shall be in every county of this state a separate fund to be known as the fine and forfeiture fund. Said fund shall consist of all fines and forfeitures collected in the county under the penal laws of the state, all costs refunded to the county, all funds arising from the hire or other disposition of convicts and the proceeds of any special tax that may be levied by the county commissioners for expenses of criminal prosecutions. Said funds shall be paid out only for criminal expenses, fees and costs where the crime was committed in the county, and the fees and costs are a legal claim against the county, in accordance with the provisions of this chapter.

History.—§1, ch. 4323, 1895; §1, ch. 4672, 1899; GS 961; RGS 1774; CGL 2825.
cf.—§9, Art. XVI Florida constitution.

142.02 Levy of a special tax.—The board of county commissioners of every county may levy a special tax, not to exceed two mills, upon the real and personal property of the respective counties, to be assessed and collected as other county taxes are assessed and collected, for such costs of criminal prosecutions.

History.—§1, ch. 4323, 1895; §1, ch. 4672, 1899; GS 962; RGS 1775; CGL 2826.

142.03 Disposition of fines and forfeitures; reports.—All fines imposed under the penal laws of this state, and the proceeds of all forfeited bail bonds or recognizances, shall be paid into the fine and forfeiture fund of the county in which the indictment was found or the prosecution commenced, and judgment must be entered therefor in favor of the state for the use of the particular county. The county commissioners of each county shall require a full report from all justices of the peace and clerks of county criminal courts, circuit courts, and the county judges, once in each month, within thirty days after the expiration of said month, of the amount of fines imposed by their courts and of bonds forfeited and judgments rendered on said forfeited bonds, and into whose hands they had been paid or placed for collection, the date of conviction in each case, the term of imprisonment and the name of the officer to whom commitment was delivered. If any justice of the peace, county judge, clerk of the criminal court or circuit court, shall fail to make such report for any month the board of county commissioners shall immediately report to the governor any such failure or refusal of such justice of the peace, county judge, clerk of county, county criminal and circuit court to make such monthly report, and the governor may, in his discretion, suspend such officer or officers from office. The county commissioners may withhold any fees or costs of any officer until said officer collects and pays over to the depository legally entitled to receive the same all such fines and forfeitures or furnishes a satisfactory excuse for not doing so.

History.—§2, ch. 4323, 1895; GS 963; §1, ch. 5155, 1903; RGS 1776; CGL 2827.

142.04 Clerk to issue certificate.—The clerk of the circuit court shall issue a certificate under the seal of the court, and keep a stub copy of the same, to each witness appearing on the part of the state, stating therein the name of the case and the amount of compensation to which he is entitled, where the same is a claim against the county out of the fine and forfeiture fund.

History.—§1, ch. 4323, 1895; GS 964; §1, ch. 4326, 1895; RGS 1777; CGL 2828.

142.05 Clerk not entitled to fee.—The clerk issuing the certificate shall not be entitled to receive any fee for performing the duty herein imposed. Said clerk shall make out a pay roll in duplicate giving the name of each witness summoned for the state before the court, the number of days of attendance, miles traveled and the amount he is entitled to. The witness shall sign same in presence of a witness and the clerk shall certify to the correctness of the pay roll.

History.—§1, ch. 4323, 1895; §1, ch. 4326, 1895; GS 965; CGL 2829; §1, ch. 20416, 1941.

142.06 Form of pay roll.—The form of this pay roll shall be prescribed by the county commissioners, and filed in the clerk of the circuit court's office for the information and use of the county commissioners in reviewing the acts of the clerk issuing certificates to witnesses appearing on behalf of the state; and the county commissioners may reject any witness certificate or any portion thereof that they may deem illegal and pay into the fine and forfeiture fund the amount rejected out of any fees or costs going to the clerk issuing the certificate, in case the clerk fails to at once pay the amount.

History.—§1, ch. 4323, 1895; §1, ch. 4326, 1895; GS 966; RGS 1779; CGL 2830.

142.07 Pay rolls.—Where the witness on behalf of the state appears in any case in county courts, county judge's courts or county criminal courts of record, the clerks of said courts shall make out pay rolls as prescribed in the preceding section. Said pay rolls shall be sworn to by said clerks and presented to the clerk of the circuit court, to be filed with the said clerk. If said clerk of the circuit court is satisfied of the correctness and legality of the pay roll he shall issue certificates to each witness legally and properly on said pay roll for the amount due him in the same manner as for witnesses in the circuit court, and such certificates shall constitute the same claim against the county, and be receivable for fines and forfeitures or any special tax levied for criminal costs.

History.—§5, ch. 4323, 1895; GS 967; RGS 1780; CGL 2831; §1, ch. 24306, 1947.

142.08 Clerk responsible.—If any portion of said certificates are rejected by the county commissioners, the clerk of the court where the witness appeared shall be held responsible for the same, and if immediate payment is not made by said clerk, the county commissioners shall deduct the amount rejected from any fees going to said clerk.

History.—§5, ch. 4323, 1895; GS 968; RGS 1781; CGL 2832.

142.09 If defendant is not convicted, or dies.—If the defendant is not convicted, or the prosecution is abated by the death of the defendant, or if the costs are imposed on the defendant and execution against him is returned no property found, or if a nolle prosse be entered, in each of these cases the fees of witnesses and officers arising from criminal causes shall be paid by the county in the manner specified in §§142.10-142.12; provided, that when a committing magistrate holds to bail or commits a person to answer to a criminal charge and an information is not filed or an indictment found against such person, the costs and fees of such committing trial shall not be paid by the county, except the costs of executing the warrants.

History.—§§3, 7, ch. 4323, 1895; GS 970; RGS 1782; CGL 2833.
cf.—§939.14 County not to pay cost.

142.10 Officer to make out accounts as directed.—The officer shall make out his account against the county in such form as the county commissioners may require, stating the services for which the fee is charged, the title of the case in which the services were performed, and the facts which, under the provisions of §142.09, make the fees a good claim against the county, including all legal charges and costs before justices of the peace, and present the same to the board of county commissioners, with the affidavit that the same is correct.

History.—§8, ch. 4323, 1895; §2, ch. 4672, 1899; GS 971; RGS 1783; CGL 2834.
cf.—§939.08 Costs to be certified by county commissioners before audit.

142.11 Powers and duties of county commissioners.—The county commissioners may reject all or any portion of any account which is not a valid claim against the county, and shall allow and pay the same only when it is just, correct and reasonable, and no constructive mileage or illegal or unnecessary item or charge in any frivolous case shall be allowed.

History.—§8, ch. 4323, 1895; §2, ch. 4672, 1899; GS 972; RGS 1784; CGL 2835.

142.12 County commissioners to audit; how payable.—The county commissioners shall audit all bills and accounts and order a warrant, signed by the chairman and countersigned by the clerk of the circuit court, under the seal of the court, for the amount that they may find to be due, payable out of the fine and forfeiture fund, and a copy of all such warrants shall be kept by the clerk of the circuit court.

History.—§8, ch. 4323, 1895; §2, ch. 4672, 1899; GS 973; RGS 1785; CGL 2836.

142.13 Right of officer to test validity.—Whenever any officer shall have presented to the county commissioners any bill or account against any county and such bill or account or any part thereof shall have been rejected by the county commissioners, such officer may test the validity of his said charge, bill or account, by suit against the county, and may recover a judgment for the amount or such part thereof as shall be a legal claim for services rendered in the performance of duty, with interest thereon; provided, that no such claim shall be sued on more than one year after its final rejection by the county commissioners.

History.—§2, ch. 4672, 1899; GS 975; RGS 1786; CGL 2837.

142.15 Prisoner confined in different county.—Where the prisoner is confined in the jail of a different county from the one in which the crime was committed, then the sheriff's bill for feeding such prisoner shall be presented to the board of county commissioners of the county in which the crime is alleged to have been committed, and paid by such county. If the sheriff should subsequently collect any such fees for feeding a prisoner, he shall pay the same to the county depository, to go into the fine and forfeiture fund. The county commissioners shall see that there is always set aside and retained in the fine and forfeiture fund out of the moneys collected from the special tax authorized to be collected for such fund, enough cash to pay for keeping and feeding such prisoners.

History.—§9, ch. 4323, 1895; ch. 4527, 1897; GS 977; RGS 1788; CGL 2839.

142.16 Change of venue.—In case of change of venue in any case, all fines and forfeitures in such case go to the county in which the indictment was found, and the fees of all officers and witnesses are a charge upon the county in which the indictment was found, in like manner as if the trial had not been removed. All costs and fees arising from the coroner's inquests shall be a charge upon the county where the inquest is held, and shall be payable from the general revenue fund of the county.

History.—§10, ch. 4323, 1895; GS 978; RGS 1789; CGL 2840.

142.17 Comptroller to prepare blanks.—The comptroller shall prepare suitable blanks and forms to be used in connection with the auditing of all claims under this chapter, and furnish the clerks of the circuit courts with a printed copy of the same.

History.—§1, ch. 4430, 1895; GS 980; RGS 1791; CGL 2842.

142.18 Duty of county commissioners.—The county commissioners of the respective counties shall adopt forms furnished in accordance with §142.17, and have printed a sufficient number of said blanks for the use of the officers of their respective counties.

History.—§2, ch. 4430, 1895; GS 981; RGS 1792; CGL 2843.

CHAPTER 143

COUNTY SURVEYOR

143.01 Duties of the county surveyor.—The county surveyor shall make accurate surveys of all lands in his county which he shall be requested to survey by any person claiming the same or an interest therein, or which he may be required to survey by an order of the court, and he shall make a plat of same, if requested.

History.—§§1, 2, ch. 56, 1845; RS 646; GS 987; RGS 1800; CGL 2851.
cf.—§100.041 Officers chosen at general elections.
§137.01 Bonds required of county officers.
§137.03 Bonds required of other county officers.

143.02 Oath.—The said surveyor shall take an oath before any officer authorized to administer the same, faithfully to perform the duties of his office; and the surveyor shall swear his chain bearers.

History.—§2, ch. 56, 1845; RS 647; GS 988; RGS 1801; CGL 2852.

143.03 Deputies.—The county surveyor may appoint deputies, and all acts of a deputy surveyor so appointed shall be of the same force and validity as though done by the county surveyor in person; and the county surveyor shall be responsible for the acts of his deputy.

History.—§§1, 3, ch. 3437, 1883; RS 648; GS 989; RGS 1802; CGL 2853.

143.04 Fees.—The county surveyor shall be entitled to the following fees, viz.: For every day's actual service, he shall receive five dollars per day from the day he leaves his home until the survey is finished; and the person employing such county surveyor shall pay the chain bearers.

History.—§1, ch. 717, 1855; RS 649; GS 990; RGS 1803; CGL 2854.
cf.—§116.06 Certain officers not required to report fees.

CHAPTER 145

COMPENSATION OF COUNTY OFFICIALS

145.011 Legislative intent.—

(1) In compliance with §§20 and 21, Art. III, state constitution, it is the intent of the legislature to provide for the compensation of the several county officers by this law of general and uniform operation. The legislature understands that the word "general" means "whole, class or total," and that the word "uniform" means "equal, not arbitrary and discriminatory."

(2) In consideration of the findings and determinations made by the legislature based on the criteria in subsection (3) that the functions, powers, duties and responsibilities vary as between county officers within any particular county and as between the same county officer in the several counties, the legislature does establish for the several county officers the compensation provided in §§145.031-145.11.

(3) The legislature finds that each county varies from and is different from each of the other counties in the following respects:

(a) *Population*—The number of persons; the number of families; the amount of personal income; the number of children, adults, aged and infirm; the number of motorists; the distribution of population; the number and extent of the metropolitan and congested areas; the number of transients;

(b) *Area*—The number of square miles; the geographical location within the state; the amount of lake and ocean front; and the number of pieces of property; the extent of improved property;

(c) *Economically*—The economic development; the type of industry; the dynamics; the potential; and

(d) *Government*—The services, governmental and proprietary, required by the populace; the existence or nonexistence of national and state parks, military installations, forests, institutions and other governmental ownership of property and facilities; amount of taxes levied and collected; the amount of work required to be done for the state; the existence or nonexistence of other governmental units or officers (special districts, constables, municipal tax assessors and collectors, etc.); and the number of persons employed by the governmental units or officers.

(4) Any board of county commissioners may, with the concurrence of any county officer receiving compensation from fees, by resolution guarantee and appropriate a salary in lieu of fees, provided that such salary shall not exceed the net income prescribed herein and all fees collected by such officer are turned over to the board of county commissioners. A copy of any such resolution adopted shall be filed with the comptroller and state auditing department.

History.—§1, ch. 61-461.

145.021 Definitions.—For the purpose of this chapter, the following words have the meaning indicated:

(1) Compensation means the annual salary or net income, as determined by applicable law.

(2) Net income means the residue from fees and commissions, not to exceed the amounts indicated, of a county officer receiving fees and commissions after deducting all reasonable expenditures for his employees' salaries and the necessary expenditures for the proper operation of his office.

(3) Salary means stated remuneration to be paid in equal installments.

History.—§1, ch. 61-461.

145.031 Board of county commissioners.—The members of the board of county commissioners of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$ 4,200.00
(2)	Baker	2,100.00
(3)	Bay	3,600.00
(4)	Bradford	1,200.00
(5)	Brevard	7,500.00
(6)	Broward	7,000.00
(7)	Calhoun	1,800.00
(8)	Charlotte	3,600.00
(9)	Citrus	3,000.00
(10)	Clay	2,400.00
(11)	Collier	3,600.00
(12)	Columbia	3,000.00
(13)	Dade	Home rule
(14)	DeSoto	1,200.00
(15)	Dixie	1,620.00
(16)	Duval	10,800.00
(17)	Escambia	7,200.00
(18)	Flagler	1,200.00
(19)	Franklin	2,400.00
(20)	Gadsden	1,200.00
(21)	Gilchrist	1,500.00
(22)	Glades	1,800.00
(23)	Gulf	1,200.00
(24)	Hamilton	1,500.00
(25)	Hardee	1,800.00
(26)	Hendry	2,400.00
(27)	Hernando	2,100.00
(28)	Highlands	2,400.00
(29)	Hillsborough	14,500.00

(30)	Holmes	1,800.00
(31)	Indian River	2,400.00
(32)	Jackson	3,000.00
(33)	Jefferson	1,500.00
(34)	Lafayette	1,500.00
(35)	Lake	4,800.00
(36)	Lee	3,900.00
(37)	Leon	4,200.00
(38)	Levy	2,100.00
(39)	Liberty	1,800.00
(40)	Madison	1,500.00
(41)	Manatee	6,600.00
(42)	Marion	3,600.00
(43)	Martin	2,400.00
(44)	Monroe	4,800.00
(45)	Nassau	2,400.00
(46)	Okaloosa	5,400.00
(47)	Okeechobee	1,800.00
(48)	Orange	8,000.00
(49)	Osceola	3,000.00
(50)	Palm Beach	9,200.00
(51)	Pasco	3,000.00
(52)	Pinellas	11,000.00
(53)	Polk	10,800.00
(54)	Putnam	2,400.00
(55)	St. Johns	2,800.00
(56)	St. Lucie	2,400.00
(57)	Santa Rosa	3,600.00
(58)	Sarasota	6,200.00
(59)	Seminole	2,400.00
(60)	Sumter	2,400.00
(61)	Suwannee	1,800.00
(62)	Taylor	2,400.00
(63)	Union	1,800.00
(64)	Volusia	8,000.00
(65)	Wakulla	2,400.00
(66)	Walton	2,100.00
(67)	Washington	1,800.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.041 Board of public instruction.—The members of the board of public instruction of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$ 1,200.00
(2)	Baker	1,500.00
(3)	Bay	1,200.00
(4)	Bradford	1,200.00
(5)	Brevard	2,400.00
(6)	Broward	3,000.00
(7)	Calhoun	1,200.00
(8)	Charlotte	1,200.00
(9)	Citrus	1,500.00
(10)	Clay	2,400.00
(11)	Collier	1,800.00
(12)	Columbia	1,200.00
(13)	Dade	Home rule
(14)	DeSoto	900.00
(15)	Dixie	1,620.00
(16)	Duval	3,000.00
(17)	Escambia	2,400.00
(18)	Flagler	1,200.00
(19)	Franklin	1,200.00
(20)	Gadsden	1,200.00
(21)	Gilchrist	900.00
(22)	Glades	1,200.00
(23)	Gulf	1,200.00
(24)	Hamilton	1,500.00
(25)	Hardee	1,200.00
(26)	Hendry	2,100.00
(27)	Hernando	1,500.00
(28)	Highlands	1,200.00
(29)	Hillsborough	2,400.00
(30)	Holmes	1,200.00
(31)	Indian River	1,200.00
(32)	Jackson	900.00
(33)	Jefferson	1,500.00
(34)	Lafayette	1,500.00
(35)	Lake	1,200.00
(36)	Lee	1,200.00
(37)	Leon	1,200.00
(38)	Levy	720.00
(39)	Liberty	1,800.00
(40)	Madison	1,500.00
(41)	Manatee	2,400.00
(42)	Marion	1,500.00
(43)	Martin	1,200.00
(44)	Monroe	1,800.00
(45)	Nassau	1,800.00
(46)	Okaloosa	3,600.00
(47)	Okeechobee	1,200.00
(48)	Orange	1,200.00
(49)	Osceola	900.00
(50)	Palm Beach	3,000.00
(51)	Pasco	1,800.00
(52)	Pinellas	2,400.00
(53)	Polk	3,600.00
(54)	Putnam	1,200.00
(55)	St. Johns	1,200.00
(56)	St. Lucie	1,200.00
(57)	Santa Rosa	2,400.00
(58)	Sarasota	900.00
(59)	Seminole	600.00
(60)	Sumter	1,800.00
(61)	Suwannee	1,800.00
(62)	Taylor	2,400.00
(63)	Union	1,500.00
(64)	Volusia	2,400.00
(65)	Wakulla	1,200.00
(66)	Walton	1,500.00
(67)	Washington	1,800.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.051 Clerk of circuit court.—The clerk of circuit court of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$10,500.00
(2)	Baker	8,500.00
(3)	Bay	10,000.00
(4)	Bradford	8,000.00
(5)	Brevard	12,000.00
(6)	Broward	14,500.00
(7)	Calhoun	7,500.00
(8)	Charlotte	9,000.00
(9)	Citrus	8,000.00
(10)	Clay	8,500.00
(11)	Collier	9,000.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	7,500.00
(15)	Dixie	7,500.00
(16)	Duval	15,800.00
(17)	Escambia	11,500.00
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	7,500.00
(21)	Gilchrist	9,000.00

(22)	Glades	7,500.00
(23)	Gulf	8,500.00
(24)	Hamilton	7,500.00
(25)	Hardee	7,500.00
(26)	Hendry	9,500.00
(27)	Hernando	8,000.00
(28)	Highlands	8,500.00
(29)	Hillsborough	14,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	9,000.00
(33)	Jefferson	7,500.00
(34)	Lafayette	5,400.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	9,000.00
(39)	Liberty	7,500.00
(40)	Madison	8,250.00
(41)	Manatee	10,500.00
(42)	Marion	10,000.00
(43)	Martin	9,000.00
(44)	Monroe	10,000.00
(45)	Nassau	10,500.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	7,500.00
(48)	Orange	11,500.00
(49)	Osceola	8,000.00
(50)	Palm Beach	10,000.00
(51)	Pasco	8,500.00
(52)	Pinellas	14,500.00
(53)	Polk	10,000.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	10,000.00
(57)	Santa Rosa	11,000.00
(58)	Sarasota	10,750.00
(59)	Seminole	10,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	7,500.00
(64)	Volusia	12,000.00
(65)	Wakulla	7,500.00
(66)	Walton	8,500.00
(67)	Washington	7,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.061 County judge.—The county judge in the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$10,500.00
(2)	Baker	9,000.00
(3)	Bay	10,000.00
(4)	Bradford	8,000.00
(5)	Brevard	12,000.00
(6)	Broward	17,000.00
(7)	Calhoun	7,500.00
(8)	Charlotte	10,000.00
(9)	Citrus	8,000.00
(10)	Clay	8,500.00
(11)	Collier	9,000.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	7,500.00
(15)	Dixie	7,500.00
(16)	Duval	18,500.00
(17)	Escambia	14,500.00
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	9,000.00
(21)	Gilchrist	6,000.00
(22)	Glades	7,500.00
(23)	Gulf	8,500.00
(24)	Hamilton	7,500.00
(25)	Hardee	7,500.00
(26)	Hendry	9,850.00
(27)	Hernando	8,000.00
(28)	Highlands	8,500.00
(29)	Hillsborough	18,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	9,000.00
(33)	Jefferson	7,500.00
(34)	Lafayette	6,500.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	9,000.00
(39)	Liberty	4,200.00
(40)	Madison	8,250.00
(41)	Manatee	12,500.00
(42)	Marion	10,000.00
(43)	Martin	9,500.00
(44)	Monroe	10,000.00
(45)	Nassau	9,600.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	7,500.00
(48)	Orange	16,000.00
(49)	Osceola	8,000.00
(50)	Palm Beach	18,500.00
(51)	Pasco	8,700.00
(52)	Pinellas	18,000.00
(53)	Polk	17,500.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	12,000.00
(57)	Santa Rosa	11,000.00
(58)	Sarasota	8,000.00
(59)	Seminole	9,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	6,500.00
(64)	Volusia	12,000.00
(65)	Wakulla	7,500.00
(66)	Walton	8,500.00
(67)	Washington	7,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.071 Sheriffs.—The sheriffs of the following counties shall receive as compensation the amounts indicated:

(1)	Alachua	$11,700.00
(2)	Baker	9,840.00
(3)	Bay	10,000.00
(4)	Bradford	8,000.00
(5)	Brevard	13,000.00
(6)	Broward	11,500.00
(7)	Calhoun	7,500.00
(8)	Charlotte	9,000.00
(9)	Citrus	8,000.00
(10)	Clay	9,000.00
(11)	Collier	9,000.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	8,500.00
(15)	Dixie	7,500.00

(16)	Duval	15,800.00
(17)	Escambia	14,500.00
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	7,500.00
(21)	Gilchrist	6,000.00
(22)	Glades	7,500.00
(23)	Gulf	9,000.00
(24)	Hamilton	7,200.00
(25)	Hardee	7,500.00
(26)	Hendry	9,850.00
(27)	Hernando	8,500.00
(28)	Highlands	8,500.00
(29)	Hillsborough	14,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	9,000.00
(33)	Jefferson	7,500.00
(34)	Lafayette	6,000.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	9,000.00
(39)	Liberty	6,000.00
(40)	Madison	8,250.00
(41)	Manatee	10,500.00
(42)	Marion	10,000.00
(43)	Martin	9,500.00
(44)	Monroe	10,000.00
(45)	Nassau	10,500.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	7,500.00
(48)	Orange	11,500.00
(49)	Osceola	8,000.00
(50)	Palm Beach	14,000.00
(51)	Pasco	8,500.00
(52)	Pinellas	12,500.00
(53)	Polk	12,000.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	10,000.00
(57)	Santa Rosa	11,000.00
(58)	Sarasota	12,000.00
(59)	Seminole	10,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	7,500.00
(64)	Volusia	12,000.00
(65)	Wakulla	7,500.00
(66)	Walton	8,500.00
(67)	Washington	7,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.08 Superintendent of public instruction.—The superintendent of public instruction of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$12,000.00
(2)	Baker	8,000.00
(3)	Bay	10,000.00
(4)	Bradford	8,500.00
(5)	Brevard	13,500.00
(6)	Broward	15,600.00
(7)	Calhoun	7,500.00
(8)	Charlotte	9,000.00
(9)	Citrus	8,000.00
(10)	Clay	9,000,00
(11)	Collier	10,500.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	7,500.00
(15)	Dixie	7,500.00
(16)	Duval	16,000.00
(17)	Escambia	(§230.302)
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	9,000.00
(21)	Gilchrist	6,000.00
(22)	Glades	7,500.00
(23)	Gulf	9,000.00
(24)	Hamilton	6,000.00
(25)	Hardee	7,500.00
(26)	Hendry	9,500.00
(27)	Hernando	8,000.00
(28)	Highlands	8,500.00
(29)	Hillsborough	18,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	10,800.00
(33)	Jefferson	7,925.00
(34)	Lafayette	7,600.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	10,200.00
(39)	Liberty	7,500.00
(40)	Madison	8,250.00
(41)	Manatee	10,000.00
(42)	Marion	10,000.00
(43)	Martin	8,000.00
(44)	Monroe	10,000.00
(45)	Nassau	10,500.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	8,300.00
(48)	Orange	15,000.00
(49)	Osceola	8,000.00
(50)	Palm Beach	16,000.00
(51)	Pasco	8,610.00
(52)	Pinellas	(§230.321)
(53)	Polk	15,000.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	....as set by county school board
(57)	Santa Rosa	11,000.00
(58)	Sarasota	(§230.321)
(59)	Seminole	10,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	8,300.00
(64)	Volusia	12,000.00
(65)	Wakulla	6,000.00
(66)	Walton	8,500.00
(67)	Washington	8,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.09 Supervisor of registration.—The supervisor of registration of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$ 6,500.00
(2)	Baker	1,800.00
(3)	Bay	4,200.00
(4)	Bradford	900.00
(5)	Brevard	8,000.00
(6)	Broward	11,000.00

(7)	Calhoun	1,800.00
(8)	Charlotte	4,800.00
(9)	Citrus	3,000.00
(10)	Clay	3,000.00
(11)	Collier	3,000.00
(12)	Columbia	4,800.00
(13)	Dade	Home rule
(14)	DeSoto	1,500.00
(14)	Dixie	1,500.00
(16)	Duval	13,500.00
(17)	Escambia	7,500.00
(18)	Flagler	1,500.00
(19)	Franklin	2,400.00
(20)	Gadsden	1,800.00
(21)	Gilchrist	2,400.00
(22)	Glades	1,140.00
(23)	Gulf	2,600.00
(24)	Hamilton	3,000,00
(25)	Hardee	1,500.00
(26)	Hendry	3,900.00
(27)	Hernando	2,700.00
(28)	Highlands	7,200.00
(29)	Hillsborough	8,000.00
(30)	Holmes	1,200.00
(31)	Indian River	3,000.00
(32)	Jackson	4,200.00
(33)	Jefferson	2,400.00
(34)	Lafayette	2,000.00
(35)	Lake	6,000.00
(36)	Lee	3,500.00
(37)	Leon	6,000.00
(38)	Levy	1,500.00
(39)	Liberty	3,000.00
(40)	Madison	2,400.00
(41)	Manatee	6,000.00
(42)	Marion	6,000.00
(43)	Martin	3,000.00
(44)	Monroe	6,000.00
(45)	Nassau	4,200.00
(46)	Okaloosa	4,500.00
(47)	Okeechobee	2,400.00
(48)	Orange	7,500.00
(49)	Osceola	4,800.00
(50)	Palm Beach	7,500.00
(51)	Pasco	4,800.00
(52)	Pinellas	9,500.00
(53)	Polk	9,000.00
(54)	Putnam	4,800.00
(55)	St. Johns	4,800.00
(56)	St. Lucie	4,800.00
(57)	Santa Rosa	4,500.00
(58)	Sarasota	7,000.00
(59)	Seminole	6,000.00
(60)	Sumter	1,800.00
(61)	Suwannee	1,680.00
(62)	Taylor	2,400.00
(63)	Union	1,200.00
(64)	Volusia	8,000.00
(65)	Wakulla	2,400.00
(66)	Walton	4,800.00
(67)	Washington	1,800.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.10 Tax assessor.—The tax assessors of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$10,500.00
(2)	Baker	7,500.00
(3)	Bay	10,000.00
(4)	Bradford	8,000.00
(5)	Brevard	12,000.00
(6)	Broward	12,000.00
(7)	Calhoun	7,500.00
(8)	Charlotte	9,000.00
(9)	Citrus	8,000.00
(10)	Clay	8,500.00
(11)	Collier	9,000.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	7,500.00
(15)	Dixie	7,500.00
(16)	Duval	15,800.00
(17)	Escambia	11,500.00
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	7,500.00
(21)	Gilchrist	7,500.00
(22)	Glades	7,500.00
(23)	Gulf	8,500.00
(24)	Hamilton	7,500.00
(25)	Hardee	7,500.00
(26)	Hendry	9,500.00
(27)	Hernando	8,000.00
(28)	Highlands	8,500.00
(29)	Hillsborough	14,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	9,000.00
(33)	Jefferson	7,500.00
(34)	Lafayette	4,200.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	9,000.00
(39)	Liberty	5,000.00
(40)	Madison	8,250.00
(41)	Manatee	10,500.00
(42)	Marion	10,000.00
(43)	Martin	9,000.00
(44)	Monroe	10,000.00
(45)	Nassau	10,500.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	7,500.00
(48)	Orange	11,500.00
(49)	Osceola	8,000.00
(50)	Palm Beach	10,000.00
(51)	Pasco	7,500.00
(52)	Pinellas	14,000.00
(53)	Polk	11,000.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	10,000.00
(57)	Santa Rosa	11,000.00
(58)	Sarasota	10,750.00
(59)	Seminole	10,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	6,500.00
(64)	Volusia	12,000.00
(65)	Wakulla	5,000.00
(66)	Walton	8,500.00
(67)	Washington	7,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.11 Tax collector.—The tax collector of the following named counties shall receive as compensation the amounts indicated:

(1)	Alachua	$10,500.00
(2)	Baker	7,500.00
(3)	Bay	10,000.00
(4)	Bradford	8,000.00
(5)	Brevard	12,000.00
(6)	Broward	12,000.00
(7)	Calhoun	7,500.00
(8)	Charlotte	9,000.00
(9)	Citrus	8,000.00
(10)	Clay	8,500.00
(11)	Collier	9,000.00
(12)	Columbia	9,000.00
(13)	Dade	Home rule
(14)	DeSoto	7,500.00
(15)	Dixie	7,500.00
(16)	Duval	15,800.00
(17)	Escambia	11,500.00
(18)	Flagler	7,500.00
(19)	Franklin	7,500.00
(20)	Gadsden	7,500.00
(21)	Gilchrist	7,500.00
(22)	Glades	7,500.00
(23)	Gulf	8,500.00
(24)	Hamilton	7,500.00
(25)	Hardee	7,500.00
(26)	Hendry	9,500.00
(27)	Hernando	8,000.00
(28)	Highlands	8,500.00
(29)	Hillsborough	14,500.00
(30)	Holmes	7,500.00
(31)	Indian River	9,000.00
(32)	Jackson	9,000.00
(33)	Jefferson	7,500.00
(34)	Lafayette	4,200.00
(35)	Lake	12,000.00
(36)	Lee	9,500.00
(37)	Leon	12,000.00
(38)	Levy	9,000.00
(39)	Liberty	4,200.00
(40)	Madison	8,250.00
(41)	Manatee	10,500.00
(42)	Marion	10,000.00
(43)	Martin	9,000.00
(44)	Monroe	10,000.00
(45)	Nassau	10,500.00
(46)	Okaloosa	10,000.00
(47)	Okeechobee	7,500.00
(48)	Orange	10,000.00
(49)	Osceola	8,000.00
(50)	Palm Beach	10,000.00
(51)	Pasco	8,500.00
(52)	Pinellas	14,000.00
(53)	Polk	10,000.00
(54)	Putnam	9,000.00
(55)	St. Johns	9,500.00
(56)	St. Lucie	10,000.00
(57)	Santa Rosa	11,000.00
(58)	Sarasota	10,750.00
(59)	Seminole	10,000.00
(60)	Sumter	7,500.00
(61)	Suwannee	8,200.00
(62)	Taylor	9,000.00
(63)	Union	6,500.00
(64)	Volusia	12,000.00
(65)	Wakulla	5,000.00
(66)	Walton	8,500.00
(67)	Washington	7,500.00

History.—§1, ch. 61-461; §1, ch. 63-560.

145.12 Record and report of fees collected; disposition of excess fees.—

(1) Each state and county officer who receives all or any part of his compensation in fees or commissions, or other remuneration, shall keep a complete record of all fees and commissions, or other remuneration collected by him, and shall make a report to the board of county commissioners of all such fees and commissions, or other remuneration, annually on the 31st day of December of each and every year. Such report shall be made upon forms to be prescribed from time to time by the state comptroller, and shall show in detail the source, character and amount of all his official expenses and the net amount that the office has paid up to the time of making such report. All officers shall make out, fill in and subscribe and properly forward to the board of county commissioners such reports, and to swear to the accuracy and competency of such reports.

(2) The board of county commissioners of each county shall on the 15th day of January and the 15th day of July, of each year, notify the governor of the failure of any county official or officials to comply with the provisions of subsection (1) with reference to the filing of the reports required thereunder, specifying the name of the official and the office held by him at the time of such failure. Any county official who has failed to comply with the terms of said section by filing the detailed itemized report called for thereunder within fifteen days after the expiration of the semi-annual period above named, may be suspended by the governor in his discretion.

(3) Each and every such officer shall pay annually hereafter into a special fund all money in excess of the sum to which they are, under the provisions of this chapter entitled, and as annual compensation herein allowed, the board of county commissioners shall create such fund and shall expend the proceeds thereof for the purpose of equipping, maintaining, and supplying said office, from which said money is derived, with the necessary books, furniture, fixtures and all other things now supplied or furnished by the board of county commissioners and paid for by them from the general revenue of the county; provided, that should the funds so created exceed the amount necessary for the purposes provided in this section, then the board of county commissioners may, with the approval of the state comptroller, transfer same to the general county funds including the general county school fund.

(4) Whenever a tax collector or a tax assessor in any county of the state is ready to pay into a special fund, as he is required by law annually to do, all money in excess of the sum to which he is under the provisions of law entitled as annual compensation, he shall divide said excess sum into two portions and pay over to the board of public instruction for the county current school fund of the county one portion, which portion shall be an amount that shall

bear the same proportion to the entire excess fees of his office to be paid over as the total sum of the fees received by such officers for the assessment and collection of all school taxes bears to the total fees received by and paid into his office.

History.—§3, ch. 7334, 1917; RGS 1815; §3, ch. 8497, 1921; §3, ch. 9270, 1923; §3, ch. 11954, 1927; CGL 2867; §1, ch. 14502, 1929; CGL 1936 Supp. 2877(1); §1, ch. 24101, 1947; §2, ch. 14502, 1929; CGL 1936 Supp. 2877(2); §4, ch. 8497, 1921; §4, ch. 9270, 1923; §4, ch. 11954, 1927; CGL 2868; §1, ch. 20891, 1941; transferred and renumbered by §2, ch. 61-461.

cf.—§116.03 Officers to report fees collected.
§298.401 Tax assessors, collectors compensation, etc.
§283.21 Purchase of blank books, stationery, etc.
§236.29 Apportionment and use of county current school fund.

145.13 Construction of chapter 145.—Chapter 145 shall not be construed to repeal, affect or modify any local or special law, or general law of local application enacted prior to or during this session of the legislature as to compensation of county officers, travel expenses of county officers or payment of extra compensation to the chairman of any board of county commissioners or board of public instruction; provided, however, if any county officer's compensation prescribed herein is more than that provided in any local or special law, or general law of local application, this law shall control and be applicable, except that the salary provided in a local bill adopted by a referendum shall control whether such amount is over or under the amount provided for herein.

History.—§3, ch. 61-461; §2, ch. 63-560.

145.14 Compensation of county officials who are paid by fees or commissions.—Each county official whose compensation for his official duties is paid wholly or partly by fees or commissions, and whose compensation is not provided for herein shall receive as his yearly compensation for his official services from the whole or part of the fees or commissions so collected, the following sum only: all the net income from his office not to exceed seven thousand five hundred dollars unless otherwise provided by law.

History.—§3, ch. 63-560.

CHAPTER 150

COUNTY FREE PUBLIC LIBRARIES

(See sections 257.13-257.25 providing for operating grants for public libraries.)

150.01 Free public libraries authorized.—The board of county commissioners of the several counties of the state may establish, operate and maintain a free public library, or free library service for that county.

History.—§1, ch. 14756, 1931; CGL 1936 Supp. 2934(5).

150.02 Notice of meeting of commissioners.—The board of county commissioners in any county, before taking action to provide for the establishment, operation and maintenance of a free library or free library service in such county, shall cause notice of such contemplated action to be given by publication once each week for two successive weeks in some newspaper designated by such board, published in such county, giving the date of the meeting at which such action is proposed to be taken.

History.—§2, ch. 14756, 1931; CGL 1936 Supp. 2934(6).

150.03 Library board; members; appointment; terms; vacancies.—When in any county the board of county commissioners thereof shall have determined to establish, operate and maintain for such county a free public library, such library shall be administered by a library board, composed of five members who shall be citizens of the county, of either sex, appointed by the governor of the state. Of the board first appointed, one member shall be appointed for a term of one year, two members shall be appointed for a term of two years; and two members shall be appointed for a term of three years. Thereafter, upon the expiration of the terms of the members so appointed, successor members shall be appointed for terms of four years. A vacancy in the membership of the county library board shall be filled for the unexpired portion of the term by the governor of the state.

History.—§3, ch. 14756, 1931; CGL 1936 Supp. 2934(7); §1, ch. 29648, 1955

150.04 Library board; organization; officers; powers; employees.—The members of the library board shall meet and organize within thirty days after the appointment and annually thereafter, and shall elect one member president, another secretary and another treasurer, whose duties shall be those usually pertaining to said respective offices. The library board may establish rules and regulations for its own government and that of the library or library service not inconsistent with law, and may elect and employ a librarian and such assistants or employees as to said board may seem reasonable and proper, and fix their salaries, duties and compensation.

History.—§4, ch. 14756, 1931; CGL 1936 Supp. 2934(8).

150.05 Budget; reports.—On or before July 1 of each year, the library board shall file with the board of county commissioners a tentative budget for the ensuing fiscal year; and on or before November 1 of each year, the chairman of the library board shall file with the county board a report of the operation of the library during the last fiscal year, giving such statistics and other information as may be required by said county board.

History.—§5, ch. 14756, 1931; CGL 1936 Supp. 2934(9); §2, ch. 29648, 1955.

150.06 Contracts with municipalities.—

(1) In carrying out the provisions of this chapter, the board of county commissioners of any county may either acquire and provide for the maintenance and operation of a free library for the county, or may provide free library service to the citizens of the county by entering into a contract therefor with any municipality or with any nonprofit library corporation or association in said county owning a free public library, or with any other county or municipality in this state owning a free public library.

(2) Any municipality or any nonprofit library corporation or association owning a free public library in said county may enter into a contract with the county library board to receive the service of books and technical assistance from the county library upon such terms as may be agreed upon by the county library board and the governing body of the library contracting therewith.

History.—§6, ch. 14756, 1931; CGL 1936 Supp. 2934(10); §1, ch. 20918, 1941; §1, ch. 28034, 1953.
cf.—§125.43 Powers and duties of county commissioners.

150.07 Title to library to be in county.—When under the provisions of this chapter, the board of county commissioners of any county shall establish any free library for such county, the title and ownership of such library shall be in the county.

History.—§7, ch. 14756, 1931; CGL 1936 Supp. 2934(11).

150.071 Gifts and bequests.—The county library board is authorized to receive on behalf of the county any gift, bequest, or devise for the county free library. Said county library board shall turn over to the board of county commissioners any moneys received under the provisions of this section, to be deposited in the county free library fund.

History.—§2, ch. 28034, 1953.

150.08 Taxation, appropriation; warrants; payments.—

(1) When the board of county commissioners of any county shall have determined, under

the provisions of this chapter, to establish, operate, and maintain a free library or free library service for such county, said commissioners shall levy an annual tax, in the same manner and at the same time as other county taxes are levied, not exceeding one mill upon all taxable property within such county not already taxed for library purposes, or shall appropriate from the general fund of the county a sum not to exceed the yield of a one mill tax, for the purpose of providing the funds required to pay the expenses of the operation and maintenance of such free library or free library service.

(2) All funds of the county free library, whether derived from taxation or otherwise, shall constitute a separate fund to be known as the county free library fund, and shall be expended only for library purposes. The expenses incurred by the county library board shall be paid by warrants drawn by the board of county commissioners, payable out of the county free library fund.

(3) The county library board shall not make expenditures or incur indebtedness in any year in excess of the amount available for library purposes.

History.—§8, ch. 14756, 1931; CGL 1936 Supp. 2934(12); §2, ch. 20918, 1941; §3, ch. 28034, 1953; (1), §3, ch. 29648, 1955.

CHAPTER 153

WATER AND SEWER SYSTEMS

PART I—COUNTY WATER SYSTEM AND SANITARY SEWER FINANCING LAW (§§153.01-153.20)

PART II—COUNTY WATER AND SEWER DISTRICT LAW (§§153.50-153.88)

PART I—COUNTY WATER SYSTEM AND SANITARY SEWER FINANCING LAW

153.01 Short title.—This chapter shall be known and may be cited as the "County water system and sanitary sewer financing law."

History.—§1, ch. 29837, 1955.

153.02 Definitions.—As used in this chapter the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) The word "county" shall mean any of the several counties of the state operating under the authority granted by this chapter.

(2) The term "county commission" or the word "commission" shall mean the board of county commissioners of any county operating under the powers granted by this chapter.

(3) The term "water system" shall mean and shall include any plant, wells, pipes, tanks, reservoirs, system, facility, or property used or useful or having the present capacity for future use in connection with the obtaining and supplying water for human consumption, fire protection, irrigation, consumption by business, or consumption by industry, and, without limiting the generality of the foregoing definition shall embrace all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(4) The term "water system improvements" shall include all water pipes or lines, valves, meters, and other water supplying equipment within the county other than such equipment as constitute a part of the water supply system and shall embrace water mains and laterals for the carrying of water to the premises connected therewith and for carrying such water from some part of the water supply system.

(5) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, and, without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, intercepting sewers, pressure lines, mains, and all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(6) The term "sewer improvements" shall include all sanitary sewers within the county other than such mains and lines as constitute a part of a sewage disposal system, and shall embrace sewer mains and laterals for the reception of sewage from premises connected therewith and for carrying such sewage to some part of the sewage disposal system.

(7) The word "facility" shall mean such water systems, sewage disposal systems, water system improvements and/or sewer improvements or additions thereto as are defined by this chapter.

(8) The word "cost" as applied to a water supply system or extensions or additions thereto or to water supply improvements or to a sewage disposal system or extensions or additions thereto or to sewer improvements shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense and such other expense as may be necessary or incident to the financing herein authorized. Any obligation or expense heretofore or hereafter incurred by the county in connection with any of the foregoing terms of cost

may be regarded as a part of such cost and reimbursed to the county out of the proceeds of bonds issued under the provisions of this chapter.

(9) The term "water revenue bonds" shall mean special obligations of the county which are payable solely from water service charges and which shall in no way pledge the property, credit, or general tax revenue of the county.

(10) The term "sewer revenue bonds" shall mean special obligations of the county which are payable solely from sewer service charges and which in no way pledge the property, credit, or general tax revenue of the county.

(11) The term "general obligation bonds" shall mean general obligations of the county which are payable from unlimited ad valorem taxes or from such taxes and additionally secured by a pledge of water service charges or sewer service charges or special assessments, or all of them.

(12) The word "bonds" shall include water revenue bonds, sewer revenue bonds, and general obligation bonds.

(13) The word "sewage" shall include any substance that contains any of the waste products, excrement or other discharge from the bodies of human beings or animals as well as such other wastes as normally emanate from dwelling houses.

History.—§2, ch. 29837, 1955.

153.03 General grant of power.—Any of the several counties of the state which may hereafter come under the provisions of this chapter as hereinafter provided are hereby authorized and empowered:

(1) To purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems, or both, within such county and any adjoining county or counties and to purchase and/or construct or reconstruct water system improvements or sewer improvements, or both, within such county and any adjoining county or counties and to operate, manage and control all such systems so purchased and/or constructed and all properties pertaining thereto and to furnish and supply water and sewage collection and disposal services to any of such counties and to any municipalities and any persons, firms or corporations, public or private, in any of such counties; provided, however, that none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate limits of any municipality without the consent of the council, commission or body having general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality. No county shall furnish any of the facilities provided by this chapter to any property already being furnished like facilities by any municipality without the express consent of the council, commission or body having general legislative authority in the government of such municipality;

(2) To issue water revenue bonds and/or sewer revenue bonds or general obligation bonds of the county to pay all or a part of the cost of such purchase and/or construction or reconstruction;

(3) To fix and collect rates, fees and other charges for the service and facilities furnished by any such water supply system or water system improvements and sewage disposal system or sewer improvements and to fix and collect charges for making connections with the water system of the county;

(4) To receive and accept from the federal government or any agency thereof grants for or in aid of the planning, purchase, construction, reconstruction, or financing of any facility and to receive and accept contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such grants and contributions may be made;

(5) To acquire in the name of the county by gift, purchase as hereinafter provided or by the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property as it may deem necessary for the efficient operation or for the extension of or the improvement of any facility purchased or constructed under the provisions of this chapter and to hold and dispose of all real and personal property under its control; provided, however, that no county shall have the right to exercise the right of eminent domain over any such lands or rights or interests therein or any personal property owned by any municipality within the state nor to exercise such right with respect to any privately owned water supply system or sewage disposal system including without limitation ponds, streams and surface waters constituting a part thereof, provided any such system is primarily used, owned or operated by an industrial or manufacturing plant for its own use as a water supply system or in disposing of its industrial wastes.

(6) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter and to employ such consulting and other engineers, superintendents, managers, construction and accounting experts and attorneys and such other employees and agents as it may deem necessary in its judgment and to fix their compensation;

(7) Subject to the provisions and restrictions as may be set forth in the resolution hereinafter mentioned authorizing or securing any bonds issued under the provisions of this chapter to enter into contracts with the government of the United States or any agency or instrumentality thereof or with any other county

or with any municipality, private corporation, co-partnership, association, or individual providing for or relating to the acquisition and supplying of water and the collection, treatment and disposal of sewage;

(8) To acquire by gift or purchase at a price to be mutually agreed upon, any of the facilities or portions thereof, provided for by this chapter, which shall, prior to such acquisition, have been owned by any private person, group, firm, partnership, association or corporation; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the board of county commissioners, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided, further, that in the event said board cannot agree as to the price to be paid by the said board of county commissioners, then the board of county commissioners shall exercise the right of eminent domain.

(9) To enter into agreements and contracts with building contractors erecting improvements within any duly platted subdivision within the county, the terms of which said agreements or contracts may provide that such building contractors shall install within such subdivision water mains, lines and equipment and sewer mains and lines, to be approved by the county commission, said mains and lines to run to a point or location to be agreed upon, at which said point or location said mains and lines shall be connected to the water supply system or water system improvements and/or to the sewage disposal system or sewer improvements of the county. In the event such agreements or contracts are entered into they shall provide that upon the connection of the mains or lines within the subdivision to the water or sewer facilities of the county said mains, lines and equipment running to the various privately owned parcels of land within such subdivision shall become the property of the county and shall become a part of the county water system improvements and/or sewer improvements; and,

(10) To restrain, enjoin or otherwise prevent any person or corporation, public or private, from contaminating or polluting (as defined in §387.08) any source of water supply from which is obtained water for human consumption to be used in any water supply system or water system improvement as authorized by this chapter, and to restrain, enjoin or otherwise prevent the violation of any provision of this chapter or any resolution, rule or regulation adopted pursuant to the powers granted by this chapter; provided, however, that this chapter shall not apply to or affect any existing contract that a municipality may have for water or sewage disposal without the consent of both parties to said contract but this subsection shall not authorize the institution or prosecution of any proceeding hereunder nor the adoption of any resolution, rule or regulation which shall in anywise affect the right of any industrial or manufacturing plant to discharge industrial waste into any nonnavigable or navigable waters unless such waters are now being used or are hereafter used hereunder as a source of water for human consumption and unless the industrial wastes of any such plant are not being discharged into such waters prior to the time that action is taken by the commission under this chapter to include such water as a part of any water supply system.

History.—§3, ch. 29837, 1955; (1), (8) §1, ch. 57-774; (5), (8) §§1, 2, ch. 57-1985.

cf.—§387.08 Penalty for deposit of deleterious substance in lakes, streams, rivers, ditches, etc.

153.04 Construction of water supply systems, water system improvements, sewage disposal systems, and sewer improvements.—Whenever the county commission of any of the several counties of the state by resolution chooses to exercise the powers granted by this chapter it shall make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings and estimates of costs and of revenues as it may deem necessary to prepare or have prepared so that such county commission shall have available to it a comprehensive study and report setting forth either or both of the following:

(1) The type and estimate of costs of each water supply system, the purchase or construction of which shall be deemed by it to be desirable and feasible, together with the location thereof, and of each integral part, and also setting forth what water system improvements, if any, it deems necessary to purchase or construct to protect the health of and render fire protection to the inhabitants of the county, together with the location by terminal points and route of each such improvement, a description thereof by its material, nature, character and size and an estimate of the cost of its purchase or construction.

(2) The type of treatment and estimate of cost of each sewage disposal plant or system, the purchase, or construction of which shall be deemed by the county commission to be desirable and feasible, together with the location thereof and of each integral part, and also setting forth what sewer improvements, if any, it deems necessary to purchase or construct to protect the health of the inhabitants of the county, together with the location by terminal points and route of each such improvement, a description thereof by its material, nature, character and size and an estimate of the cost of its purchase or construction.

If such study and report reveals, or if it is a fact that any parcel, plot or area of land proposed to be served by county owned and operated facilities as contemplated by this chapter is being served or there is available to it for service such facilities which are owned and operated by private individuals, copartnerships, corporations or associations, then the county is hereby prohibited from furnishing

the facilities provided by this chapter to such property without the written consent of the owner or owners of such privately-owned facilities.

The obtaining of such surveys, investigations, studies, borings, maps, plans, drawings and estimates is hereby declared to be a county purpose and the costs thereof may be paid out of the general funds of the county.

Upon receipt of such report the county commission may authorize the purchase and/or construction of such facilities as it may deem feasible and practicable.

All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of the funds provided by this chapter.

The state hereby consents to the use of all state lands lying under water which are necessary for the accomplishments or purposes of this chapter.

History.—§4, ch. 29837, 1955.

153.05 Water system improvements and sanitary sewers; special assessments.—

(1) Any county may provide for the construction or reconstruction of a facility and for the levying of special assessments upon benefited property under the provisions of this section. The initial proceeding hereunder shall be the passage at any lawful meeting of the commission of a resolution ordering the construction or reconstruction of such facility under and subject to the provisions of this section, indicating the location by terminal points and route and either giving a description of the improvements by its material, nature, character and size or giving two or more such descriptions with the direction that the material, nature, character and size shall be subsequently determined in conformity with one of such descriptions. Water system improvements or sewer improvements need not be continuous and may be in more than one locality or street. The resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby, and the property against which assessments are to be made for the cost of such improvement shall be designated as a district, followed by a letter or number or name to distinguish it from other districts, after which it shall be sufficient to refer to such improvement and property by such designation in all proceedings and assessments, except in the notices provided by subsections (3) and (4) of this section. The boundaries of any district created by authority of this subsection may be coextensive with or wholly within any district which may be created by authority of §153.08; but the boundaries of any district created under this subsection shall not be partly within and partly without any district created under said §153.08.

(2) As soon as may be after the passage of such resolution the engineer for the county shall prepare in duplicate plans and specifications of each improvement ordered thereby and an estimate of the cost thereof. Such cost may include, in addition to the items of cost set forth in §153.02(8) the cost of re-laying streets and sidewalks necessarily torn up or damaged and shall include the following items of incidental expense: (a) Printing and publishing of notices and proceedings, costs of abstracts of title, and (b) any other expense necessary or proper in conducting the proceedings and work provided for in this section.

If the resolution shall provide alternative descriptions of material, nature, character and size, such estimate shall include an estimate of the cost of the improvement of each such description.

The engineer shall also prepare in duplicate a tentative apportionment of the estimated cost as between the county and each lot or parcel of land subject to special assessment under the resolution, such apportionment to be made in accordance with the provisions of the resolution and the provisions of subsection (6) of this section in relation to apportionment of cost in the preliminary assessment roll. Such tentative apportionment of estimated cost shall not be held to limit or restrict the duties of the engineer in the preparation of such preliminary assessment roll. One of the duplicates of such plans, specifications and estimate and such tentative apportionment shall be filed with the clerk of the circuit court in the county and the other duplicate shall be retained by the engineer in his files, all thereof to remain open to public inspection.

(3) The county commission upon the filing with it of such plans, specifications, estimate and tentative apportionment of cost shall publish once in a newspaper published in the county a notice stating that at a regular meeting of the commission on a certain day and hour, not earlier than ten days from such publication, the commission will hear objections of all interested persons to the confirmation of such resolution, which notice shall state in brief and general terms a description of the proposed improvement with the location thereof and shall also state that plans, specifications, estimate and tentative apportionment of cost thereof are on file in the office of such clerk. The commission shall keep a record in which shall be inscribed, at the request of any person, firm or corporation having or claiming to have an interest in any lot or parcel of land, the name and post-office address of such person, firm or corporation, together with a brief description or designation of such lot or parcel, and it shall be the duty of the commission to mail a copy of such notice to such person, firm or corporation at such address, at least ten days before the time for the hearing as stated in such notice, but the failure of the commission to keep such record or so to inscribe any name or address or to mail any such notice shall not constitute a valid objection to holding the hearing as provided in this section or to any

other action taken under the authority of this section.

(4) At the time named in such notice, or to which an adjournment may be taken by the commission, the commission shall receive any objections of interested persons and may then or thereafter repeal or confirm such resolution with such amendments, if any, as may be desired by the commission and which do not cause any additional property to be specially assessed.

(5) All objections to any such resolution on the ground that it contains items which cannot be properly assessed against property, or that it is, for any default or defect in the passage or character of the resolution or the plans or specifications or estimate, void or voidable in whole or in part, or that it exceeds the power of the commission, shall be made in writing, in person or by attorney, and filed with the commission at or before the time or adjourned time of such hearing. Any objections against the making of any improvement not so made shall be considered as waived, and if an objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issues presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within ten days.

(6) Promptly after the completion of the work, the engineer for the county shall prepare a preliminary assessment roll and file same with the clerk, which roll shall contain the following:

(a) A description of the lots and parcels of land within the district, which shall include all lots and parcels which abut upon the sides of that part of any street in which a water supply system, water system improvement or sanitary sewer, except a curb sewer, is to be constructed or reconstructed, all lots and parcels which abut upon the side or sides of any street in or along which side or sides a sanitary curb sewer shall have been constructed or reconstructed, and all lots and parcels which are served or are to be served by such water supply system, water system improvement or sanitary sewer. Such lots and parcels shall include all property, whether publicly or privately owned. There may also be given, in the discretion of the engineer, the name of the owner of record of each lot or parcel, where practicable, and in all cases there shall be given a statement of the number of feet of property so abutting, which number of feet shall be known as frontage; provided, however, no parcel of land upon which is located an industrial or manufacturing plant discharging industrial wastes into any navigable or nonnavigable waters shall be included in such assessments unless the owners of such industrial or manufacturing plants shall request the board of county commissioners for such inclusion and no such industrial or manufacturing plant shall be entitled to enjoy the benefits of any such water system or sewage disposal system except those so requesting or those which subsequently agree to pay such amount as the board of county commissioners shall determine, which shall in no event be less than the amount which the industrial or manufacturing plant would have been required to pay had it been included in the assessment roll together with interest thereon at the rate of five per cent per annum.

(b) The total cost of the improvement, and the amount of incidental expense.

(c) An apportionment as between the county and property included in the preliminary assessment roll of the cost of each improvement, including incidental expense, to be computed as follows:

1. To each lot or parcel of land, to the property or curb line of which a water supply lateral or sanitary sewer lateral shall have been laid, shall be apportioned the cost of such lateral or laterals,

2. To abutting property shall be apportioned according to frontage two-thirds or such larger proportion as may be fixed by the resolution ordering the improvement of either the cost of the sewer improvement or the cost of an eight-inch sanitary sewer as estimated by the engineer (whichever be the lesser), not including therein the cost of laterals, pumping station or outlet, and/or the cost of the water system improvement, and

3. To the county shall be apportioned the remaining cost of the water system improvements or sewer improvements; provided, however, that in the case of lots or parcels which abut on more than one street or which have irregular shapes or unusual depths or which are served or are to be served by such sewer improvement although not abutting upon either side of the street in which such improvement is constructed, the apportionment shall be made under such rules and regulations as the commission shall deem to be fair and equitable.

(7) The preliminary roll shall be advisory only and shall be subject to the action of the commission as hereinafter provided. Upon the filing with the commission of the preliminary assessment roll, the commission shall publish once in a newspaper published in the county a notice stating that at a meeting of the commission to be held on a certain day and hour, not less than twelve days from the date of such publication, which meeting may be a regular, adjourned or special meeting, all interested persons may appear and file written objections to the confirmation of such roll. Such notice shall state the class of the improvement and the location thereof by terminal points and route. Such meeting of the commission shall be the first regular meeting following the completion of the notice hereinabove required, unless the commission shall have provided for a special meeting for such purpose.

(8) At the time and place stated in such notice the commission shall meet and receive the objections in writing of all interested persons as stated in such notice. The commission may adjourn the hearing from time to time.

After the completion thereof the commission shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on such roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which the commission decides each such lot or parcel has received or will receive on account of such improvement. If any property which may be chargeable under this section shall have been omitted from the preliminary roll or if the prima facie assessment shall not have been made against it, the commission may place on such roll an apportionment to such property. The commission shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation such assessment roll shall be delivered to the county tax assessor. The assessments so made shall be final and conclusive as to each lot or parcel assessed unless proper steps be taken within ten days in a court of competent jurisdiction to secure relief. If the assessment against any property shall be sustained or reduced or abated by the court, the county tax assessor shall note that fact on the assessment roll opposite the description of the property affected thereby. The amount of the special assessment against any lot or parcel which may be abated by the court, unless the assessment upon the entire district is abated, or the amount by which such assessment is so reduced, may be, by resolution of the commission, made chargeable against the county at large; or, in the discretion of the commission, a new assessment roll may be prepared and confirmed in the manner hereinabove provided for the preparation and confirmation of the original assessment roll.

(9) Any assessment may be paid at the office of the county tax collector within thirty days after the confirmation thereof, without interest. Thereafter all assessments shall be payable in equal annual installments, with interest at six per cent per annum from the expiration of said thirty days in each of the succeeding twenty calendar years at the time or times in each year at which general county taxes are payable; provided, however, that the commission may by resolution fix a shorter period of payment for any assessment; and provided, further, that any assessment may be paid at any time before due, together with interest accrued thereon to the date of payment.

(10) All assessments shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general county taxes falling due in the same year or years in which such assessment or installments thereof fall due, and any assessment or installment not paid when due shall be collectible in the same manner and at the same time as such general taxes are or may be collectible, with the same attorney's fee, interest and penalties and under the same provisions as to forfeiture and the right of the county to purchase the property assessed as are or may be provided by law in the case of county taxes; provided, however, that no such sale of any property for general county taxes or for an installment or installments of any such assessment and no perfecting of title under any such sale shall divest the lien of any installment of such assessment not due at the time of the sale. Collection of such assessments, with such interest and with a reasonable attorney's fee and costs, but without penalties, may also be made by the county by proceedings in a court of equity to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state; or by an action in rem in the manner provided by law for the foreclosure and collection of ad valorem taxes; provided that any such proceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings, immediately become and be due and payable. Nevertheless, if, prior to any sale of the property under decree of foreclosure in such proceedings, payment be made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (9) of this section, with interest as required by said subsection and by this subsection (10) and all costs including attorney's fee, such payment shall have the effect of restoring the remaining installments to their original maturities as provided by the resolution passed pursuant to said subsection (9), and the proceedings shall be dismissed. It shall be the duty of the county to enforce the prompt collection of assessments by one or the other of the means herein provided, and such duty may be enforced at the suit of any holder of bonds issued under this chapter in a court of competent jurisdiction by mandamus or other appropriate proceedings or action. Not later than thirty days after the annual sale of property for delinquent taxes of the county, or if such property or taxes are not sold by the county, then within sixty days after such taxes become delinquent, it shall be the duty of the commission to direct the attorney or attorneys whom the commission shall then designate, to institute actions within three months after such direction to enforce the collection of all special assessments for local improvements made under this section and remaining due and unpaid at the time of such direction (unless theretofore sold at tax sale). Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state. It shall be lawful to join in one action the collection of assessments against any or all property assessed by virtue of the same assessment roll unless the court shall deem such joinder prejudicial to the interest of any defendant. The court shall allow a reasonable attorney's

fee for the attorney or attorneys of the county, and the same shall be collectible as a part of or in addition to the costs of the action. At any sale pursuant to decree in any such action, the county may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by a county, including the certificate of sale thereof, may be sold or otherwise disposed of, for cash or upon terms, the proceeds of such disposition to be placed in the fund provided by subsection (11) of this section; provided, however, that no sale or other disposition thereof shall be made unless notice calling for bids therefor to be received at a stated time and place shall have been published in a newspaper published in the county one time at least one week prior to such disposition.

(11) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any sewer improvement or improvements for which bonds shall have been issued under the provisions of this chapter, are hereby pledged to the payment of the principal of and the interest on such bonds and shall when collected be placed in a separate fund, properly designated, which fund shall be used for no other purpose than the payment of such principal and interest.

(12) Each school district and other political subdivision wholly or partly within the county and each public agency or instrumentality owning property within the county shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of such county, district, political subdivision, or public agency or instrumentality which private owners of real estate possess or are subject to hereunder, and such real estate shall be subject to liens for said assessments in all cases where the same property would be subject had it at the time the lien attached been owned by a private owner.

History.—§5, ch. 29837, 1955; (1) §1, ch. 57-323.

cf.—§153.08 Creation of district; general obligation bonds.
§192.08 Exemption of state property from taxes.
§192.27 Taxes against state properties; notice.

153.06 Issuance of bonds.—The county commission is hereby authorized to provide by resolution at one time or from time to time for the issuance of either water revenue bonds, sewer revenue bonds, or general obligation bonds of the county for the purpose of paying all or any part of the cost of any one or more of the following: A water supply system or systems; extensions and additions thereto; water system improvements; a sewage disposal system or systems; extensions and additions thereto; and sewer improvements. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per cent per annum, shall mature at such time or times not exceeding fifty years from their date or dates as may be determined by the county commission, and may be made redeemable before maturity at the option of the county at such price or prices and under such terms and conditions as may be fixed by the county commission prior to the issuance of the bonds. The county commission shall determine the form of the bonds including any interest coupons to be attached thereto, and the manner of the execution of the bonds and shall fix the denomination or denominations of the bonds and place or places of payment of principal or interest which may be at any bank or trust company within or without the state. In case any officer whose signature or facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. Bonds may be issued in coupon or in registered form or both as the county commission may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to bond principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other statute and the county commission may sell such bonds in such manner either at public or private sale and for such price as it may determine to be for the best interests of the county, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per cent per annum computed with relation to the absolute maturity of the bonds in accordance with the standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the county may, under like restrictions issue interim receipts or temporary bonds with or without coupons exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The county commission may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the state and without the proceeding or happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.

The proceeds of such bonds shall be used solely for the payment of costs of the water supply system or systems or the water system improvements or the sewage disposal system or systems or the sewer improvements, for the purchase, construction or reconstruction of

which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the county commission may provide in the authorizing resolution. If the proceeds of such bonds, by error of estimates or otherwise shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and unless otherwise provided in the authorizing resolution shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be paid into the fund provided under the provisions of this chapter for the payment of principal of and the interest on such bonds.

History.—§6, ch. 29837, 1955.

153.07 General obligation bonds.—No general obligation bonds shall be issued by the county unless the issuance of such bonds shall be approved by a majority of the votes that are cast in an election in which a majority of the freeholders who are qualified electors residing in the county shall participate. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner required by law for the issuance of bonds of the county.

For the payment of the principal and the interest on any general obligation bonds of the county issued under the provisions of this chapter the county commission is hereby authorized and required to levy annually a special tax upon all taxable property within the county over and above all other taxes authorized or limited by law sufficient to pay such principal and interest as the same respectively become due and payable, and the proceeds of all such taxes shall when collected be paid into a special fund and used for no other purpose than the payment of such principal and interest; provided, however, that there may be pledged to the payment of such principal and interest the proceeds of such water service charges and/or sewer service charges, and in the event of such pledge the amount of the annual tax levy herein required may be reduced in any year by the amount of such proceeds actually received in the preceding year and then remaining on deposit to the credit of such fund for the payment of such principal and interest, provided, further, no such special taxes shall be levied with respect to any parcel of property and the improvements thereon used for industrial or manufacturing purposes unless such industrial or manufacturing plant is using or shall use and is accepting or shall accept the benefits of any such water system or sewage disposal system.

History.—§7, ch. 29837, 1955.

153.08 Water and sewer district general obligation bonds.—The county commission is hereby authorized to establish within the county such water and sewer districts as it may deem necessary. For the purpose of providing for and financing the facilities provided for in this chapter, general obligation bonds may be issued covering the facilities located in such district and to be paid by general ad valorem taxes levied in and collected from such district or districts; provided, however, that no such general obligation bonds for such district or districts shall be issued by the county unless the issuance of such bonds shall be approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such district or districts shall participate. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner required by law for the issuance of bonds of the county.

For the payment of the principal and the interest thereon on any such general obligation bonds issued for the benefit of such district or districts issued under the provisions of this chapter the county commission is hereby authorized and required to levy annually a special tax upon all taxable property within the said district or districts over and above all other taxes authorized or limited by law sufficient to pay such principal and interest as the same respectively become due and payable, and the proceeds of all such taxes shall when collected be paid into a special fund and used for no other purpose than the payment of such principal and interest; provided, however, that there may be pledged to the payment of such principal and interest the proceeds of such water service charges and/or sewer service charges and in the event of such pledge the amount of the annual tax levied herein required may be reduced in any year by the amount of such proceeds actually received in the preceding year and then remaining on deposit to the credit of such fund for the payment of such principal and interest.

No such special taxes shall be levied with respect to any parcel of property and the improvements thereon used for industrial or manufacturing purpose unless such industrial or manufacturing plant is using or shall use and accepting or shall accept the benefits of any such water system or sewage disposal system.

Revenue bonds as authorized by §153.09 may be issued to finance facilities located in any district created under the authority of this section.

History.—§8, ch. 29837, 1955; §2, ch. 57-323.
cf.—§153.05 Special assessments; water and sewer systems.

153.09 Water revenue bonds and sewer revenue bonds.—Water revenue bonds may be used only in connection with the acquisition, construction or operation of water supply systems or water system improvements, and sewer revenue bonds may be used only in connection with the acquisition, construction and operation of sewage disposal systems and sewer improvements. Water revenue bonds and/or sewer reve-

nue bonds issued under the provisions of this chapter shall not be deemed to constitute a pledge of the faith and credit of the county but such bonds shall be payable solely from the funds provided therefor under the provisions of this chapter. All such bonds shall contain a statement on their face substantially to the effect that the county is not obligated to pay such bonds or the interest thereon except from such funds and that the faith and the credit of the county is not pledged to the payment of the principal of or the interest on such bonds. The issuance of water revenue bonds and/or sewer revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the county to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this chapter.

The resolution authorizing the issuance of water revenue bonds under the provisions of this chapter shall pledge the revenues to be received but shall not convey or mortgage any water supply system or water system improvements, or any part thereof, and the resolution authorizing the issuance of sewer revenue bonds under the provisions of this chapter shall pledge the revenue to be received but it shall not convey or mortgage any sewage disposal system or sewer improvements or any part thereof and either water revenue bonds or sewer revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond holders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county commission in relation to the purchase, construction, reconstruction, improvement, maintenance, operation, repair and insurance of the water supply system or systems and the water system improvements and the sewage disposal system or systems and the sewer improvements and provisions for the custody, and safe-guarding and application of all moneys, and for the employment of consulting engineers in connection with such purchase, construction, reconstruction or operation. Such resolution may set forth the rights and remedies of the bond holders and may restrict the individual right of action by bond holders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition to the foregoing, such resolution may contain such other provisions as the county commission may deem reasonable and proper for the security of bond holders. Except as in this chapter otherwise provided, the county commission may provide for the payment of the proceeds of the sale of the bonds and revenues of the water supply system or systems and of any water system improvements or of the sewage disposal system or systems and of any sewer improvements to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

The resolution providing for the issuance of water revenue bonds and/or sewer revenue bonds may also contain such limitations upon the issuance of additional water revenue bonds and/or sewer revenue bonds as the county commission may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

No water revenue bonds or sewer revenue bonds shall be issued under the authority of this chapter unless the county commission shall have theretofore found and determined the estimated cost of the facilities or systems on account of which such bonds are to be issued, the estimated annual revenues of such facilities or systems, and the estimated annual cost of maintaining, repairing and operating such facilities or systems, nor unless it shall appear from such estimate that the annual revenues will be sufficient to pay such cost of maintenance, repair and operation and the interest on such bonds and the principal thereof as such interest and principal shall become due.

If the approval of the issuance of water revenue bonds or sewer revenue bonds at an election of the freeholders who are qualified electors residing in the county shall be required by the constitution of the state, such election shall be called, noticed and conducted and the result thereof determined and declared as shall have been or may be required by law for the issuance of bonds of the county.

History.—§9, ch. 29837, 1955.

153.10 Call for bids.—As soon as practicable after the authorization of bonds under the provisions of this chapter or the appropriation of moneys for the construction of water system improvements or sewer improvements, the commission shall publish once, in a newspaper published in the county, and, if the estimated cost exceeds ten thousand dollars, in a newspaper of general circulation in the state, a notice calling for sealed bids to be received by the commission on a date not earlier than fifteen days from the first publication, for the construction of the work. The notice shall refer in general terms to the extent and nature of the improvement or improvements and may identify the same by the short designation indicated in the initial resolution and by reference to the plans and specifications on file. If the initial resolution shall have given two or more alternative descriptions of the improvement as to its material, nature, character and size, and if the commission shall not have theretofore determined upon a definite description, the notice shall call for bids upon each of such descriptions. Bids may be requested for the work as a whole or for any part thereof separately and bids may be asked for any one or more improvements authorized by the same or different resolutions, but any bid covering work upon more than one improvement shall be in such form as to permit a separation of cost as

to each improvement. The notice shall require bidders to file with their bids either a certified check upon an incorporated bank or trust company for two and one-half per cent of the amount of their respective bids or a bid bond in like amount with corporate surety satisfactory to the attorney for the county to insure the execution of a contract to carry out the work in accordance with such plans and specifications and to insure the filing, at the making of such contract, of a bond in the amount of the contract price with corporate sureties satisfactory to such attorney conditioned for the performance of the work in accordance with such contract. The commission shall have the right to reject any and all bids, and if all bids are rejected the commission may readvertise.

History.—§10, ch. 29837, 1955; §2, ch. 57-774.

153.11 Water service charges and sewer service charges; revenues.—

(1) The county commission shall in the resolution providing for the issuance of either water revenue bonds or sewer revenue bonds, or both, fix the initial schedule of rates, fees and other charges for the use of and for the services furnished or to be furnished by the facilities, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with and use any such facility by or through any part of the water system of the county. After the system or systems shall have been in operation the county commission may revise such schedule of rates, fees and charges from time to time. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times to pay the cost of maintaining, repairing and operating the system or systems including the reserves for such purposes and for replacements and depreciation and necessary extensions, to pay the principal of and the interest on the water revenue bonds and/or sewer revenue bonds as the same shall become due and the reserves therefor, and to provide a margin of safety for making such payments. The county commission shall charge and collect the rates, fees and charges so fixed or revised and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the county or of the state or of any sanitary district or other political subdivision of the state.

Such rates, fees and charges shall be just and equitable and may be based or computed upon the quantity of water consumed and/or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

In cases where the amount of water furnished to any building or premises is such that it imposes an unreasonable burden upon the water supply system an additional charge may be made therefor or the county commission may if it deems advisable compel the owners or occupants of such building or premises to reduce the amount of water consumed thereon in a manner to be specified by the county commission or the county commission may refuse to furnish water to such building or premises.

In cases where the character of the sewage from any manufacturing or industrial plant or any building or premises is such that it imposes an unreasonable burden upon any sewage disposal system, an additional charge may be made therefor, or the county commission may, if it deems it advisable, compel such manufacturing or industrial plant or such building or premises to treat such sewage in such manner as shall be specified by the county commission before discharging such sewage into any sewer lines owned or maintained by the county.

(2) The county commission may charge any owner or occupant of any building or premise receiving the services of the facilities herein provided such initial installation or connection charge or fee as the commission may determine to be just and reasonable.

(3) No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all of the users of the facilities provided by this chapter and owners, tenants and occupants of property served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the county commission of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of such public hearing setting forth the schedule or schedules of rates, fees and charges shall be given by one publication in a newspaper published in the county at least ten days before the date fixed in said notice for the hearing, which said hearing may be adjourned from time to time. After such hearing such preliminary schedule or schedules, either as originally adopted or as modified or amended, shall be adopted and put into effect and thereupon the resolution providing for the issuance of water revenue bonds and/or sewer revenue bonds may be finally adopted. A copy of the schedule or schedules of such rates, fees and charges finally fixed in such resolution shall be kept on file in the office of the clerk of the circuit court in the county and shall be open to inspection by all parties interested. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional property thereafter served which fall within the same class without the necessity of any hearing or notice. Any change or revision of any rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided, but if such change or revision be made substantially pro rata as to all classes

of service no notice or hearing shall be required.

History.—§11, ch. 29837, 1955.

153.12 Collection of charges.—Upon the construction of a sewage disposal system and the financing of such construction by the issuance of sewer revenue bonds under the provisions of this chapter, the owner, tenant or occupant of each lot or parcel of land within the county which abuts upon a street or other public way containing a sanitary sewer served or which may be served by such disposal system and upon which lot or parcel a building shall have been constructed for residential or commercial use and which lot or parcel shall not already be served by, or have available to it for service, a sanitary sewer, shall, if so required by the rules and regulations of the county commission or by resolution thereof, connect such building with such sanitary sewer and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the county commission.

The county commission may provide in the resolution authorizing the issuance of water revenue bonds or sewer revenue bonds under the provisions of this chapter that the charges for the services furnished by any facility constructed or reconstructed by the county under the provisions of this chapter shall be included in single bills to be rendered for all the services furnished to the premises, and that if the amount of such charges so included shall not be paid within thirty days from the rendition of any bill, the county commission shall discontinue furnishing water to such premises and shall disconnect the same from the water supply system of the county. Any such resolution may include any or all of the following provisions, and may permit the county commission to adopt such resolution or take such other lawful action as shall be necessary to effectuate such provisions, and the county commission is hereby authorized to adopt such resolutions and to take such other action:

(1) That the county may require the owner, tenant or occupant of each lot or parcel of land within the county who is obligated to pay the rates, fees or charges for the services furnished by any facility purchased, constructed or reconstructed by the county under the provisions of this chapter to make a reasonable deposit with the county commission in advance to insure the payment of such rates, fees or charges and to be subject to application to and payment thereof if and when delinquent.

(2) That if any rates, fees or charges for the use and services of any sewage disposal system or sewer improvements by or in connection with any premises not served by the water works system of the county shall not be paid within thirty days after the same shall become due and payable, the owner, tenant or occupant of such premises shall cease to dispose of sewage or industrial waste originating from or on said premises by discharge thereof directly or indirectly into the sewer system of the county until such rates, fees or charges with interest, shall be paid; that if such owner, tenant or occupant shall not cease such disposal at the expiration of such thirty-day period it shall be the duty of any district, private corporation, board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for the use on such premises within five days after the receipt of notice of such delinquency from the county; and that if such district, private corporation, board, body or person shall not, at the expiration of such five-day period, cease supplying water to or selling water for use on such premises, then the county may unless it has theretofore contracted to the contrary, shut off the supply of water to such premises.

History.—§12, ch. 29837, 1955.

153.13 Application of revenues.—All revenues derived from any water supply system, water system improvement, sewage disposal system or sewer improvements for either of which a single issue of water revenue bonds or sewer revenue bonds shall be issued, except such part thereof as may be required to pay the cost of maintaining, repairing and operating such system or systems and to provide reserves therefor as may be provided in the resolution authorizing the issuance of such water revenue bonds or sewer revenue bonds, shall be set aside at such regular intervals as may be provided in such resolution and deposited for the credit of the following separate funds for the following purposes:

(1) Sinking fund for the payment of interest on and the principal of such water revenue bonds and/or sewer revenue bonds as the same shall become due, necessary charges of paying agents for paying such interest and principal, and any premium upon bonds retired by call or purchase before their maturity or respective maturities, including the accumulation of reserves for such purposes; and

(2) A fund for anticipated renewals and replacements and extraordinary repairs.

The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the water revenue bonds and/or sewer revenue bonds and, except as may otherwise be provided in such resolution, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over the other.

The county commission shall at the close of each fiscal year make or cause to be made a comprehensive report of its operations of the water supply system or systems and sewage disposal system or systems under its control during the preceding fiscal year, including all matters relating to rates, revenues, expenses for maintenance, repair and operation and of

replacements and extensions, principal and interest retirements and the status of all funds, and there shall be set forth in such report the budget recommended by the commission for the current fiscal year. A copy of such annual report shall be filed with the clerk of the circuit court in the county and shall be open to the inspection of all interested persons. Any surplus of the gross revenues remaining at the end of any fiscal year after making the required deposits for the credit of the separate funds set forth above, and not appropriated in the budget for the then current fiscal year, shall be paid into the sinking fund.

History.—§13, ch. 29837, 1955.

153.14 Trust funds.—All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds shall provide that any officer to whom, or any bank, trust company or other fiscal agent to which such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution may provide.

History.—§14, ch. 29837, 1955.

153.15 Remedies.—Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such resolution, and may enforce and compel the performance of all duties required by this chapter or by such resolution to be performed by the county or by the county commission, including the fixing, charging and collecting of rates, fees and charges for services and facilities furnished by the water supply system, water system improvement, sewage disposal system or sewer improvements and the levying and collecting of any special assessments.

History.—§15, ch. 29837, 1955.

153.16 Water revenue refunding bonds.—The county commission is hereby authorized to provide by resolution for the issuance of water revenue refunding bonds of the county for the purpose of refunding any water revenue bonds then outstanding and issued under the provisions of this chapter. The county commission is further authorized to provide by resolution for the issuance of water revenue bonds of the county for the combined purposes of (1) paying the cost of any extension, addition or reconstruction of a water supply system or systems or water system improvements or the cost of a new water supply system or systems or water system improvements; and (2) refunding such water revenue bonds of the county which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding and which then shall have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of holders thereof, and the rights, powers, privileges, duties and obligations of the county or of the county commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

History.—§16, ch. 29837, 1955.

153.17 Sewer revenue refunding bonds.—The county commission is hereby authorized to provide by resolution for the issuance of sewer revenue refunding bonds of the county for the purpose of refunding any sewer revenue bonds then outstanding and issued under the provisions of this chapter. The county commission is further authorized to provide by resolution for the issuance of sewer revenue bonds of the county for the combined purposes of (1) paying the cost of any extension, addition or reconstruction of a sewage disposal system or systems or sewer improvements or the cost of a new sewage disposal system or systems or sewer improvements; and (2) refunding such sewer revenue bonds of the county which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding and which then shall have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of holders thereof, and the rights, powers, privileges, duties and obligations of the county or of the county commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

History.—§17, ch. 29837, 1955.

153.18 Exemption of property from taxation.—As proper facilities for the furnishing of water for human consumption and fire protection and proper facilities for the treatment, purification and disposal of sewage are essential for the health of the inhabitants of the county and for its industrial and commercial development, and as the exercise of the powers conferred by this chapter to effect such purposes constitutes the performance of essential county functions, and is hereby declared to be a county purpose, and as the facilities constructed under the provisions of this chapter, constitutes public property and is used for county purposes, the county shall not be required to pay any taxes or assessments upon any such facilities or any part thereof.

History.—§18, ch. 29837, 1955.

153.19 Private water supplies.—No jurisdiction hereunder shall be exercised by the board of county commissioners over any privately owned industrial water supply system or the disposition of industrial or manufacturing wastes nor shall any rule or regulation be adopted or suit instituted or prosecuted hereunder designed or intended to control or regu-

late the same, unless one of the following conditions exists:

(1) That prior to the utilization of any waters for the disposition of industrial or manufacturing waste, such waters were being used as a source of, or as a part of a water supply system under this chapter, or

(2) In the case of an industrial or manufacturing plant that is connected with and using any facility authorized by this chapter; but any such rule, regulation or suit shall be limited to the particular waters or the particular industrial or manufacturing plant affected by one of the above conditions; provided, however, this shall not restrain or prevent the state board of health in anywise from instituting a suit or taking other action in event said plant or manufacturing company shall pollute the waters in the state as defined in §387.08.

History.—§19, ch. 29837, 1955.

cf.—§387.08 Penalty for deposit of deleterious substances in lakes, streams, rivers, ditches, etc.

153.20 Alternative method.—This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred upon the commission by other laws, and shall not be regarded as in derogation of any powers now existing. This chapter being necessary for the welfare of the inhabitants of the several counties of the state shall be liberally construed to effect the purposes thereof.

This chapter shall not repeal any local or special act or law conferring upon any of the several counties or county commissions the powers and duties or any of them imposed hereby, but it shall be deemed to be an alternative or additional method for such counties or county commissions to effect the purposes of this chapter.

History.—§§20, 22, ch. 29837, 1955.

PART II

COUNTY WATER AND SEWER DISTRICT LAW

153.50 Short title.—This law may be known and cited as the "county water and sewer district law."

History.—§1, ch. 59-466.

153.51 Legislative intent.—It is declared as a matter of legislative determination that the extensive growth of population and attendant industry and commerce throughout the state has given rise to public health and water supply problems of state-wide concern, in that many unincorporated areas of the counties of the state are not served by water and sewer facilities normally and generally provided and maintained by the municipalities of the state or their agencies or instrumentalities or by private corporations or persons and are not otherwise adequately provided for; that many of such unincorporated areas are in extreme

need of such sewage disposal and water supply facilities, and that it is the intent and purpose of this law to provide means for the counties of the state to alleviate such conditions in such unincorporated areas.

History.—§2, ch. 59-466.

153.52 Definitions.—As used in this law, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

(1) "District" shall mean any unincorporated contiguous area comprising part but not all of the area of any county created into and existing as a water and sewer district pursuant and subject to this law, having the rights, powers and privileges granted in this law.

(2) "Board of county commissioners" shall mean the board of county commissioners of the county in which a district created pursuant to this law is located.

(3) "District board" shall mean the board of county commissioners of any county constituting the governing body of any district as provided for in this law, and acting for and on behalf of such district as a body corporate and politic.

(4) "Sewer system" shall mean and shall include any plant, system, facility or property and additions, extensions and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage of any nature or originating from any source, including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources; and without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains and all necessary appurtenances and equipment, all sewer mains and laterals for the reception and collection of sewage from premises connected therewith, and shall include all real and personal property and any interest therein, rights, easements and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

(5) "Water system" shall mean and include any plant, system, facility or property and additions, extensions and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the development of sources, treatment or purification and distribution of water for domestic or industrial use and, without limiting the generality of the foregoing, shall include dams, reservoirs, storage tanks, mains, lines, valves, pumping stations, laterals, and pipes for the purpose of carrying water to the premises connected with such system and shall include all real and personal property and any interests therein, rights, easements and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

(6) "Cost" as applied to the acquisition and construction of a water system or a sewer system or extensions, additions or improvements thereto shall include the cost of construction or reconstruction, acquisition or purchase, the cost of all labor, materials, machinery and equipment, cost of all lands and interest therein, property, rights, easements and franchises of any nature whatsoever, financing charges, interest prior to and during construction and for not more than two years after completion of the construction or acquisition of such water system or sewer system or extensions, additions or improvements thereto, the creation of initial reserve or debt service funds, bond discount, cost of plans and specifications, surveys and estimates of costs and revenues, cost of engineering, financial and legal services, and all other expenses necessary or incidental in determining the feasibility or practicability of such construction, reconstruction or acquisition, administrative expenses and such other expenses as may be necessary or incidental to financing authorized by this law, and including reimbursement of the county or any other person, firm or corporation for any moneys advanced to a district for any expenses incurred by a district or county in connection with any of the foregoing items of cost, or the creation of such district.

(7) "Assessable improvements" shall mean that portion or portions of a sewer system or a water system of a local nature and of benefit to the premises or lands served thereby and particularly, without limiting the generality of the foregoing, with reference to a sewer system, shall include, without being limited to, laterals and mains for the collection and reception of sewage from premises connected therewith, local or auxiliary pumping or lift stations, treatment plants or disposal plants, and other appurtenant facilities and equipment for the collection, treatment and disposal of sewage; and with reference to a water system shall include such mains and laterals and other distribution facilities, pumping stations, and sources of supply as are of benefit to the property served by such water system together with incidental equipment and appurtenances necessary therefor.

(8) "District clerk" shall mean the clerk of the circuit court and ex officio clerk of the board of county commissioners in and for any county having or establishing a district pursuant to this law, who shall be clerk and treasurer of the district.

(9) "Revenue bonds" shall mean bonds or other obligations secured by and payable from the revenues derived from rates, fees and charges collected by a district from the users of the facilities of any water system or sewer system, or both, and which may be additionally secured by a pledge of the proceeds of special assessments levied against benefited

property or by a pledge of the full faith and credit of the district, or both.

(10) "General obligation bonds" shall mean bonds or other obligations secured by the full faith and credit and taxing power of the district and payable from ad valorem taxes levied and collected on all taxable property in the district, without limitation of rate or amount, and may be additionally secured by the pledge of either or both the proceeds of special assessments levied against benefited property, or revenues derived from said water system or sewer system, or both.

(11) "Assessment bonds" shall mean bonds or other obligations secured by and payable from special assessments levied against benefited lands, and which may be additionally secured by a pledge of the full faith and credit of the district.

History.—§3, ch. 59-466.

153.53 Establishment of districts in unincorporated areas.—Subject to this law the board of county commissioners of any county may establish one or more districts as it shall in its discretion determine to be necessary in the public interest, provided that any such district shall consist of only unincorporated contiguous areas of such county comprising part but not all of the areas of such county. As used herein, "unincorporated areas" shall mean all lands outside of the incorporated boundaries of towns, cities, or other municipalities of the state whether existing under the general law or special act and shall include any lands, areas or property within the district of any special tax district, school district or any other public corporations or bodies politic of any nature whatsoever, except municipalities.

History.—§4, ch. 59-466.

153.54 Same; petition for; report by county commissioners.—Upon receipt of a petition duly signed by not less than twenty-five qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(1) A general description of the proposed improvements to be made in such district.

(2) A general estimate of the cost of the proposed improvements;

(3) The present condition of water and sewer facilities in the area comprising such proposed district;

(4) Findings with respect to the necessity or reasonableness of the inclusion of lands proposed to be included within the district with reference to the benefits to be derived or able to be derived by such included lands from such proposed improvements, and the necessity or reasonableness of the exclusion of lands adjacent to or within such proposed district with reference to such benefits.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

History.—§5, ch. 59-466.

153.55 Same; public hearing; findings of commission.—Upon submission of any such report the board of county commissioners shall hold a public hearing upon such report and the question of the creation of such district, giving at least twenty days' notice of such hearing by advertisement in a newspaper published in the county and circulating in the area of the proposed district or by posting as provided in §153.56 if no such newspaper be published. At such hearing any taxpayer, property owner, qualified elector or other interested or affected person may make written objections to the creation of such proposed district or the exclusion of any lands therefrom, or the inclusion of any lands therein, the desirability or the feasibility of such proposed improvements or to any other matter, which objections, if any, together with any evidence submitted therewith shall be given full and open consideration by the board of county commissioners. If upon due consideration of such preliminary report, any such objections and any other pertinent matters, such board of county commissioners shall be satisfied that the construction and acquisition of said improvements is feasible and desirable and of benefit to all the lands included in such proposed district or that certain lands shall be included or excluded, and that the creation of said district is necessary in the public interest, it shall so determine and record such findings and determination, together with an accurate description of the proposed boundaries of the proposed district and the proposed corporate name of such district, by resolution duly adopted. If the board of county commissioners shall after such hearing deem the creation of such proposed district inadvisable and not in the public interest, it shall make such a finding and determination and no further proceedings shall be taken for the creation of the proposed district under such petition; provided, however, that such finding and determination shall not be deemed to bar the creation of any proposed district at any future time in the manner provided in this law upon the filing of a new petition therefor as provided in this law.

History.—§6, ch. 59-466.

153.56 Call election to determine creation of district, issuance of bonds.—If the board of county commissioners shall deem that the creation of the proposed district is necessary in

the public interest as provided in §153.55, it shall call an election for the purpose of submitting to the qualified electors residing in said proposed district the question of the creation and establishment of said district and may also submit at a separate election to be held at the same time, to the qualified electors who are freeholders residing in such district, the question of the issuance of general obligation bonds of said district to pay all or part of the cost of the proposed improvements. Said election shall be held not less than thirty days from the date of the first publication or posting of the notice thereof and such notice shall be published once a week for four successive weeks in a newspaper published in the county and circulating in the area of the proposed district, and if no such newspaper be published in the county and circulating in the district, such notice shall be posted in at least ten different public places within the district. Except as otherwise provided in this law, said election shall be held and conducted pursuant to the general laws of the state applicable thereto, provided, that if the question of the issuance of general obligation bonds is to be voted upon, the election thereon shall conform to the applicable provisions of the constitution and statutes of Florida relating to freeholder elections. Said call for election of the qualified electors and notice thereof shall include a description of the proposed boundaries of said district, which need not be by metes and bounds but shall be in such detail as to give a reasonable and accurate description thereof and shall further specifically recite that said district, if created, shall be authorized:

(1) To construct or acquire a sewer system or water system or both for said district and any improvements, additions and extensions thereto and to have exclusive control and jurisdiction thereof;

(2) To finance the cost of such construction or acquisition of such improvements by the issuance of either its revenue bonds, general obligation bonds or assessment bonds, as defined in this law, or any combination thereof;

(3) Said notice shall further expressly state that such district, if created and established, shall constitute a special tax district, all the property within which shall be subject to the levy of ad valorem taxes without limitation of rate or amount to secure payment of any of its general obligations, and for the maintenance of such district within the limitations of this law.

The notice of the separate election of the qualified freeholder electors, if held at the same time, shall be in substantially the form provided in the applicable statutes of Florida relating to freeholder elections.

Such elections may be held at any time, including the dates upon which general or primary elections are held in such county.

History.—§7, ch. 59-466.

153.57 Ballots and election officials.—The inspectors and clerks for said election or elections shall be appointed by and the ballots to be voted shall be prepared and furnished by the board of county commissioners, which shall designate the polling place or places at which such election or elections shall be held. The inspectors and clerks shall make returns to the board of county commissioners.

History.—§8, ch. 59-466.

153.58 Election results; resolution of commission; publication of notice of estoppel.—(1) Immediately after any such election or elections the board of county commissioners shall hold a meeting and shall canvass the votes cast at said election or elections and declare the results thereof by resolution.

If a majority of the qualified electors who vote in said election on the creation of such district shall vote in favor of creation of said district the board of county commissioners shall by resolution declare the district duly created, and forthwith cause an estoppel notice to be published one time in a newspaper published in the county and circulating in the district, or if there be no such newspaper, posted in at least ten public places in the district. Said notice shall recite the due creation of said district pursuant to this law and the affirmative vote of the majority of the qualified electors voting thereon at said election duly called and held; and shall further recite the substance of the provisions of said notice of election set forth in §153.56 and that all of the proceedings had and actions taken in the creation of said district, the holding of said election and an accurate description of said district are on file in the office of the clerk of the circuit court open to public inspection, and shall state that any action or proceeding of any kind or nature questioning the validity of the creation and establishment of said district, including but not limited to, the exclusion or inclusion of lands therein, or other pertinent matters, shall be commenced within twenty days after the first publication of such notice in the circuit court in and for the county. If no such action or proceeding shall be commenced or instituted within twenty days after the first publication or posting of such notice, then all taxpayers, property owners or persons residing within said district or any other interested parties, public, private or corporate within the county and all the persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceedings which question the validity of the creation and establishment of said district and the boundaries thereof.

If a majority of the qualified freeholder electors residing in the district shall participate in the separate freeholder election on the question of the issuance of general obligation bonds, in the event a separate freeholders election is held at the same time as the election on the creation of the district, and a majority of such qualified freeholder electors shall vote in favor of the issuance of such general obligation bonds then such general obligation bonds

shall be deemed approved, but shall not be issued unless the district shall be duly created at the election of the qualified electors referred to above.

(2) If the qualified electors who vote in said election on the creation of such district shall vote against the creation of such proposed district, a new petition pertaining to any part of the same area just considered by the board of county commissioners shall not be acted upon by the board of county commissioners until after the expiration of nine months from the date of the election defeating the creation of said proposed district, even though such new petition shall have been filed by petitioners other than those who originally filed the petition just acted upon by the board of county commissioners, unless twenty-five per cent of the qualified electors of the area petition to have an election.

History.—§9, ch. 59-466; (2)n. §1, ch. 63-94.

153.59 Circuit court, jurisdiction.—The circuit court in and for any county so establishing a district is vested with jurisdiction in any such proceedings or suits affecting the creation of such districts and all matters pertinent thereto and shall give preference and priority to any such actions or proceedings pending in such court subject to existing statutes.

History.—§10, ch. 59-466.

153.60 County commissioners ex-officio governing board.—The board of county commissioners of the county in which any such district is created shall be the ex-officio governing board of such district. Such district shall be a body corporate and politic, exercising essential governmental functions and shall have the power to sue and be sued; to contract; to adopt and use a common seal and alter the same at pleasure; to purchase, hold, lease or otherwise acquire and convey such real property and personal property and interests therein as may be necessary or proper to carry out the purposes of this law. The clerk of the circuit court shall be ex-officio the clerk and treasurer of the district, and the county tax collector shall be ex-officio the tax collector of the district.

History.—§11, ch. 59-466.

153.61 Expenses of election, etc.—The preliminary expenses for the creation and incorporation of any such district, including election expenses, expenses for legal, financial or other services in connection with the preliminary report undertaken pursuant to §153.54, shall be payable out of general county funds, but shall be a reimbursable expense to be paid from the proceeds of any bonds or other obligations issued by said district to accomplish the purposes of this law.

History.—§12, ch. 59-466.

153.62 District board; powers.—The district board for and on behalf of any district created hereunder in addition to and supplementing other powers granted in this law, is authorized and empowered:

(1) To make rules and regulations for its own government and proceedings and to adopt an official seal for the district;

(2) To employ engineers, attorneys, accountants, financial or other experts and such other agents and employees as said district board may require or deem necessary to effectuate the purposes of this law, or to contract for any of such services;

(3) To construct, install, erect, acquire and to operate, maintain, improve, extend, or enlarge and reconstruct a water system or a sewer system or both within said district and the environs thereof and to have the exclusive control and jurisdiction thereof; to issue its general obligation bonds, revenue bonds or assessment bonds, or any combination of the foregoing, to pay all or part of the cost of such construction, reconstruction, erection, acquisition or installation of such water system, sewer system or both; provided that the total amount of all general obligation indebtedness of the district issued pursuant to this law shall not exceed fifteen per cent of the assessed value of the taxable property in the district at the time of the creation of such district, to be ascertained by the assessed valuations for county taxes in effect at the time of the creation of such district.

(4) To levy and assess ad valorem taxes without limitation of rate or amount on all taxable property within said district for the purpose of paying principal of and interest on any general obligation bonds which may be issued for the purposes of this law, not in excess of the total amount of such general obligation bonds provided for in subsection (3).

(5) To regulate the use of sewers and the supply of water within the district and to prohibit the use and maintenance of outhouses, privies, septic tanks or other unsanitary structures or appliances;

(6) To fix and collect rates, fees and other charges to persons or property or both for the use of the facilities and services provided by any water system or sewer system or both and to fix and collect charges for making connections with any such water system or sewer system and to provide for reasonable penalties on any users or property for any such rates, fees or charges that are delinquent;

(7) To acquire in the name of the district by purchase, gift or the exercise of the right of eminent domain, such lands and rights and interest therein, including lands under water and riparian rights and to acquire such personal property as it may deem necessary in connection with the construction, reconstruction, improvement, extension, installation, erection or operation and maintenance of any water system or sewer system or both and to hold and dispose of all real and personal property under its control; provided, however nothing herein contained shall authorize the power of eminent domain to be exercised beyond the limits of the district.

(8) To exercise exclusive jurisdiction, control and supervision over any water system or sewer system or both, or any part thereof owned, operated and maintained by the district and to make and enforce such rules and regulations for the maintenance and operation of any water system or sewer system or both as may be, in the judgment of the district board, necessary or desirable for the efficient operation of any such systems or improvements in accomplishing the purposes of this law;

(9) To restrain, enjoin or otherwise prevent the violation of this law or of any resolution, rule or regulation adopted pursuant to the powers granted by this law;

(10) To join with any other district or districts, cities, towns, counties or other political subdivisions, public agencies or authorities in the exercise of common powers;

(11) To contract with municipalities or other private or public corporations or persons to provide or receive a water supply or for sewage disposal, collection or treatment;

(12) To prescribe methods of pretreatment of industrial wastes not amenable to treatment with domestic sewage before accepting such wastes for treatment and to refuse to accept such industrial wastes when not sufficiently pretreated as may be prescribed, and by proper resolution to prescribe penalties for the refusal of any person or corporation to so pretreat such industrial wastes;

(13) To require and enforce the use of its facilities whenever and wherever they are accessible;

(14) To sell or otherwise dispose of the effluent, sludge or other byproducts as a result of sewage treatment;

(15) To accomplish construction by holding hearings, advertising for construction bids, and letting contracts for all or any part or parts of the construction of any water system or sewer system or both, to the lowest responsible bidder or bidders or rejecting any and all bids at its discretion, provided that the district may purchase supplies, material and equipment as well as expend for construction work in an amount not to exceed one thousand dollars total cost of each transaction without advertising or receiving bids;

(16) To construct and operate connecting, intercepting or outlet sewers and sewer mains and pipes and water mains, conduits or pipe lines in, along or under any streets, alleys, highways or other public places or ways within the state or any municipality or political subdivision necessary for the purposes of the district;

(17) Subject to such provisions and restrictions as may be set forth in the resolution authorizing or securing any bonds or other obligations issued under the provisions of this law, to enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any county, municipality, district, authority or political subdivision, private corporation, partnership, association or individual providing for or relating to the treatment, collection and disposal of sewage, or the treatment, supply and distribution of water and any other matters relevant thereto or otherwise necessary to effect the purposes of this law, and to receive and accept from any federal agency, grants or loans for or in aid of the planning, construction, reconstruction or financing of any water system or sewer system or both and to receive and accept aid or contributions or loans from any other source of either money, property, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made.

History.—§13, ch. 59-466.

153.63 Revenue bonds; issuance, etc.—The district board for and on behalf of any district is authorized to provide from time to time for the issuance of revenue bonds to pay all or part of the cost of a water system or sewer system, or both, or any additions, extensions or improvements thereto. The principal of and interest on any such bonds shall be payable from the rates, fees, charges or other revenues derived from the operation of any such system or systems in the manner provided in this law and the resolution authorizing such revenue bonds and pledging such revenues. Such revenue bonds may also be additionally secured by the pledge of special assessments levied pursuant to this law, or by a pledge of the full faith and credit of said district. The revenue bonds of each issue shall be dated, shall bear interest at such rate or rates as shall not exceed six per cent per annum, shall mature at such time or times not exceeding forty years from their date or dates as may be determined by the district board and may be made redeemable before maturity, at the option of the district board, under such terms and conditions and at such prices as may be fixed by the district board prior to the issuance of such bonds. The district board shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. Such authorizing resolution may further provide that such bonds may be executed manually or by the engraved, lithographed or facsimile signature of the chairman of the district board. The seal of the district may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the district clerk; provided, however, that the signature of at least one of the officials executing such revenue bonds shall be a manual signature. In case any officer whose signature or a facsimile of whose signature shall appear on the bonds shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all

purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this law shall be and constitute and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state. The bonds may be issued in coupon or registered form as the district board may determine in such authorizing resolution and provision may be made for the registration of any coupon bonds as to principal alone and also as to principal and interest, and for the reconversion of coupon bonds or of any bond registered as to principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law and the district board may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the district, but no such sale shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of six per cent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid for the redemption of any bonds prior to maturity.

The proceeds of the sale of any such bonds shall be used solely for the payment of the costs of the construction or acquisition of any water system or sewer system or both or the reconstruction or construction or acquisition of extensions, improvements and additions thereto, and shall be disbursed in such manner and under such restrictions, as the district board may provide in the authorizing resolution. Prior to the preparation or issuance of definitive revenue bonds, the district board may, under like restrictions, issue interim receipts or temporary notes or other form of such temporary obligations without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The district board may also provide for the replacement of any bonds which shall have become mutilated and be destroyed or lost upon proper indemnification. Revenue bonds may be issued under the provisions of this law without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this law.

A resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds secured on a parity with the bonds theretofore issued, as the district board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such authorizing resolution.

Revenue bonds shall not be deemed to constitute an indebtedness of the district, and shall not be included in the amount of general obligation bonds which the district is authorized to issue under any other provision of this law, unless the full faith and credit of the district is pledged as additional security for such revenue bonds.

History.—§14, ch. 59-446.

153.64 Schedule of rates and fees. — The district board shall fix the initial schedule of rates, fees or other charges for the use of and the services and facilities to be furnished by any such water system or sewer system to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or used by any such system or systems of the district. After the system or systems shall have been in operation the district board may revise the schedule of rates, fees and charges from time to time; provided, however, that such rates, fees and charges shall be so fixed and revised so as to provide some, which, with other funds available for such purposes, shall be sufficient at all times to pay the expenses of operating and maintaining such water system or sewer system or both, including reserves for such purposes, the principal of and interest on revenue bonds as the same shall become due and reserves therefor, and to provide a margin of safety over and above the total amount of any such payments, and to comply fully with any convenants contained in the proceedings authorizing the issuance of any bonds or other obligations of the district. The district shall charge and collect such rates, fees and charges so fixed or revised, and such rates, fees and charges shall not be subject to the supervision or regulation by any other commission, board, bureau, agency or other political subdivision or agency of the county or state.

Such rates, fees and charges shall be just and equitable and uniform for users of the same class and where appropriate may be based or computed either upon the quantity of water consumed or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises or upon the number or average number of persons residing or working in or otherwise using or occupying such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors as may be determined by the district board on any other equitable basis.

No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all the users of the proposed sewer system or water system, or both, or owners, tenants or occupants served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees and charges shall be given by one publication in a newspaper published in the county and circulating in the district at least ten days before the date fixed in such notice for the

hearing, which may be adjourned from time to time. If there be no such newspaper published in the county and circulating in the district the notice of such rate hearing shall be posted as provided for in §153.56 regarding the posting of the notice calling the election creating the district. After such hearing such schedule or schedules, either as initially adopted, or as modified or amended, may be finally adopted. A copy of the schedule or schedules of such rates, fees or charges finally adopted shall be kept on file in the office of the district clerk and shall be open at all times to public inspection. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional users or properties thereafter served which shall fall in the same class, without the necessity of any hearing or notice. Any change or revision of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided; provided however, that if such changes or revisions be made substantially pro rata as to all classes of service no hearing or notice shall be required.

History.—§15, ch. 59-466.

153.65 Trust funds; trustees.—The proceeds of all bonds or other obligations issued under this law and all revenues derived from the operation of any water system or sewer system for the payment of all or part of the cost of which any bonds or other obligations authorized by this law have been issued shall be and constitute trust funds, and shall be used and applied only in accordance with the proceedings authorizing the issuance of any revenue bonds, general obligation bonds or other obligations issued pursuant to this law, and the district may appoint trustees, within or without the state, under trust agreements or indentures to hold and administer the proceeds of any such bonds or other obligations or any such revenues.

History.—§16, ch. 59-466.

153.66 Covenants of district board with bond holders.—In addition to the other provisions and requirements of this law any resolution authorizing the issuance of revenue bonds, general obligation bonds, assessment bonds or any other obligations issued hereunder, may contain provisions and the district board is authorized to provide and may covenant and agree with the several holders of such bonds as to:

(1) Reasonable deposits with the district in advance to insure the payment of rates, fees or charges for the facilities of the system;

(2) The discontinuance of the services and facilities of any water system or sewer system, or both, for delinquent payments for either water services or sewer services, and the terms and conditions of the restoration of such service;

(3) Contracts with private or public owners of a water system or sewer system not owned and operated by the district for the discontinuance of service to any users of the water system or sewer system, as the case may be, owned and operated by the district;

(4) Limitations on the powers of the district to construct, acquire or operate, or permit the construction, acquisition or operation of any plants, structures, facilities or properties which may compete or tend to compete with any water system or sewer system;

(5) The manner and method of paying service charges and fees and the levying of penalties for delinquent payments;

(6) Subject to this law the manner and order of priority of the disposition of revenues or redemption of any bonds or other obligations;

(7) Terms and conditions for modification or amendment of any provisions or covenants in any such proceedings authorizing the issuance of bonds or other obligations;

(8) Provisions for and limitations on the appointment of a trustee for bondholders for any water system or sewer system;

(9) Provisions as to the appointment of a receiver of any sewer system or water system or both, on default of principal or interest on any such bonds or other obligations or the breach of any covenant or condition of such authorizing proceedings or the provisions and requirements of this law;

(10) Provisions as to the execution and entering into of trust agreements regarding the holding and disposition of revenues derived from such systems and the proceeds of bonds issued for the cost of acquisition or construction or improvement of a water system or sewer system or both, or for any other purposes necessary to secure any such revenue bonds;

(11) Provisions as to the maintenance of any such systems and reasonable insurance thereof;

(12) Any other matters necessary to secure such bonds and the payment of the principal and interest thereof.

All such provisions of the bond proceedings and all such covenants and agreements in addition to the other provisions and requirements of this law shall constitute valid and legally binding contracts between the district and several holders of any such bonds and shall be enforceable by any such holder or holders by mandamus or other appropriate action, suit or proceeding in law or in equity in any court of competent jurisdiction.

History.—§17, ch. 59-466.

153.67 Unpaid fees to constitute lien.—In the event that the fees, rates or charges for the services and facilities of any water or sewer system shall not be paid as and when due, any unpaid balance thereof and all interest accruing thereon shall be a lien on any parcel or property affected thereby. Such liens shall be superior and paramount to the interest on such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of county taxes and shall be on a parity with the lien of any such county taxes. In the event that

any such service charge shall not be paid as and when due and shall be in default for thirty days or more the unpaid balance thereof and all interest accrued thereon, together with attorneys fees and costs, may be recovered by the district in a civil action, and any such lien and accrued interest may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property.

History.—§18, ch. 59-466.

153.68 General obligation bonds, election; issuance, tax levy.—The district board is hereby authorized to provide by resolution from time to time for the issuance of general obligation bonds pledging the full faith and credit of the district for the payment thereof, for the purpose of paying all or part of the cost of the acquisition or construction or improvement of a water system or a sewer system or both, provided however, that the issuance of such bonds, or of any revenue bonds, assessment bonds or other obligations for which the full faith and credit of the district shall have been pledged as additional security shall have been approved at an election of the qualified electors who are freeholders residing in said district, such election to be called, noticed and conducted in the manner provided in the constitution and statutes of Florida for freeholder elections. For the payment of the principal of and the interest on any general obligation bonds of the district issued under the provisions of this law, the district board is hereby authorized and required and in such resolution authorizing the issuance of general obligation bonds shall authorize and require the levy annually of a special tax upon all taxable property within the district over and above all other taxes authorized or permitted by law sufficient to pay such principal and interest as the same shall become due and payable, and the proceeds of all such taxes, when collected, shall be paid into a special fund and used for no other purposes than the payment of such principal and interest, or reserves therefor; provided however, that there may be pledged as additional security for the payment of such principal and interest the proceeds of such rates, fees and charges made for the services and facilities of any such water system or sewer system or both, or the proceeds of special assessments levied to finance the cost of assessable improvements, or both, and in the event of such pledge or pledges the amount of the annual tax herein required may be reduced in any year subject to and in accordance with the proceedings authorizing the issuance of such general obligation bonds.

In the event the full faith and credit of the district is pledged as additional security for the payment of any revenue bonds or assessment bonds issued hereunder, the district board shall in the manner set out above for general obligation bonds provide for and authorize the levy of a special tax annually on all taxable property in the district sufficient in amount to comply with the proceedings authorizing such revenue bonds or assessment bonds for which the full faith and credit of the district is pledged as additional security.

History.—§19, ch. 59-466.

153.69 County tax assessor ex-officio tax assessor for district.—The amount of any such annual taxes so levied for general obligation bonds or as additional security for revenue bonds or assessment bonds shall be certified by the district board to the tax assessor of the county who shall be ex-officio tax assessor for the district and such taxes shall be levied and collected in the same manner as other general county taxes.

History.—§20, ch. 59-466.

153.70 Provisions of §153.63 applicable to general obligation bonds.—Any general obligation bonds shall be authorized by resolution of the district board and the provisions of §153.63 relative to maturities, execution, rate or rates of interest, redemption prior to maturity, registration, method of sale, and all other matters in said §153.63 not inconsistent with the other provisions in this law relating to general obligation bonds, shall apply to any general obligation bonds issued hereunder.

History.—§21, ch. 59-466.

153.71 Publication of notice of issuance of bonds.—Prior to the issuance of any revenue bonds, general obligation bonds, assessment bonds or other obligations, the district board may, in its discretion, publish a notice at least once in a newspaper published in the county and circulating in the district, or posted in the manner provided in §153.56 if there be no such newspaper, stating the date of adoption of the resolution authorizing such obligations, and the amount, maximum rate of interest and maturity of such obligations and the purpose in general terms for which such obligations are to be issued, and further stating that any action or proceedings authorizing the issuance thereof, or of any covenants made therein, must be instituted within twenty days after the first publication of such notice, or the validity of such obligations or proceedings or covenants shall not be thereafter questioned in any court whatsoever. If no such action or proceeding is so instituted within such twenty-day period then the validity of such obligations, proceedings and covenants shall be conclusive, and all persons or parties whatsoever shall be forever barred from questioning the validity of such obligations, proceedings or covenants in any court whatsoever.

History.—§22, ch. 59-466.

153.72 Bonds; qualities of negotiable instruments; rights of holders.—All revenue bonds, general obligation bonds or assessment bonds issued hereunder shall be and constitute, and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of Florida, and

shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such bonds shall be necessary except such as are required by this law. The provisions of this law shall constitute an irrevocable contract between said district and the holders of any such bonds or coupons thereof issued pursuant to the provisions hereof. Any holder of such bonds may either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by this law or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes, revenues, assessments or other funds pledged for the payment of the principal and interest thereof.

History.—§23, ch. 59-466.

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in §153.52, and for the levying of special assessments upon benefited property for the payment thereof, under the provisions of this section.

(1) The initial proceeding under this section shall be the passage by the district board of a resolution ordering the construction or reconstruction of such assessable improvements, indicating the location by terminal points and routes and either giving a description of the improvements by its material, nature, character and size or giving two or more descriptions with the directions that the material, nature, character and size shall be subsequently determined in conformity with one of such descriptions. Sewer or water improvements need not be continuous and may be in more than one locality or street. The resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby, and the property against which assessments are to be made for the cost of such improvement may be designated as an assessment district, followed by a letter or number or name to distinguish it from other assessment districts, after which it shall be sufficient to refer to such improvement and property by such designation in all proceedings and assessments, except in the notices required by this section.

(2) As soon as possible after the passage of such resolution the engineer for the district shall prepare in duplicate plans and specifications for each improvement ordered thereby and an estimate of the cost thereof. Such cost shall include, in addition to the items of cost as defined in this law, the cost of relaying streets and sidewalks necessarily torn up or damaged and the following items of incidental expenses:

(a) Printing and publishing notices and proceedings.

(b) Costs of abstracts of title, and

(c) Any other expense necessary or proper in conducting the proceedings and work provided for in this section, including the estimated amount of discount, if any, upon the sale of assessment bonds or any other obligations issued hereunder for which such special assessments are to be pledged. If the resolution shall provide alternative descriptions of material, nature, character and size, such estimate shall include an estimate of the cost of the improvement of each such description.

The engineer shall also prepare in duplicate a tentative apportionment of the estimated total cost of the improvement as between the district and each lot or parcel of land subject to special assessment under the resolution, such apportionment to be made in accordance with the provisions of the resolution and in relation to apportionment of cost provided herein for the preliminary assessment roll. Such tentative apportionment of total estimated cost shall not be held to limit or restrict the duties of the engineer in the preparation of such preliminary assessment roll. One of the duplicates of such plans, specifications and estimates and such tentative apportionment shall be filed with the district clerk and the other duplicate shall be retained by the engineer in his files, all thereof to remain open to public inspection.

(3) The district clerk upon the filing with him of such plans, specifications, estimates and tentative apportionment of cost shall publish once in a newspaper published in the county and circulating in the district, or posted as provided in §153.56 if there be no such newspaper, a notice stating that at a meeting of the district board on a certain day and hour, not earlier than fifteen days from such publication or posting, the district board will hear objections of all interested persons to the confirmation of such resolution, which notice shall state in brief and general terms a description of the proposed assessable improvements with the location thereof, and shall also state that plans, specifications, estimates and tentative apportionment of cost thereof are on file with the district clerk. The district clerk shall keep a record in which shall be inscribed, at the request of any person, firm or corporation having or claiming to have any interest in any lot or parcel of land, the name and post office address of such person, firm or corporation, together with a brief description or designation of such lot or parcel, and it shall be the duty of the district clerk to mail a copy of such notice to such person, firm or corporation at such address, at least ten days before the time for the hearing as stated in such notice, but the failure of the district clerk to keep such record or so to inscribe any name or address or to mail any such notice shall not constitute a valid objection to holding the hearing as provided in this section or to any other action taken under the authority of this section.

(4) At the time named in such notice, or

to which an adjournment may be taken by the district board, the district board shall receive any objections of interested persons and may then or thereafter repeal or confirm such resolution with such amendments, if any, as may be desired by the district board and which do not cause any additional property to be specially assessed.

(5) All objections to any such resolution on the ground that it contains items which cannot be properly assessed against property, or that it is, for any default or defect in the passage or character of the resolution or the plans or specifications or estimate, void or voidable in whole or in part, or that it exceeds the power of the district board, shall be made in writing in person or by attorney, and filed with the district clerk at or before the time or adjourned time of such hearing. Any objections against the making of any assessable improvements not so made shall be considered as waived, and if any objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issues presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within twenty days.

(6) Whenever any resolution providing for the construction or reconstruction or assessable improvements and for the levying of special assessments upon benefited property for the payment thereof shall have been confirmed, as hereinabove provided, or at any time thereafter, the district board may issue assessment bonds payable out of such assessments when collected. Said bonds shall mature not later than two years after the last installment in which said special assessments may be paid, as provided in subsection (11), and shall bear interest at not exceeding six per cent per annum. Such assessment bonds shall be executed, shall have such provisions for redemption prior to maturity, shall be sold in the manner and be subject to all of the applicable provisions contained in §153.63 for revenue bonds, except as the same are inconsistent with the provisions of this section. The amount of such assessment bonds for any assessable improvement, prior to the confirmation of the preliminary assessment roll provided for in subsection (10), shall not exceed seventy per cent of the estimated amount of the cost of such assessable improvements which are to be specially assessed against the land and real estate to be specially benefited thereby, as shown in the estimates of the engineer for the district referred to in subsection (2). The amount of such assessment bonds for any assessable improvement to be issued, after the confirmation of the preliminary assessment roll provided for in subsection (10), including any assessment bonds theretofore issued, shall not exceed the amount of special assessments actually confirmed and levied by the district board as provided in subsection (10).

Such assessment bonds shall be payable from the proceeds of the special assessments levied for the assessable improvement for which such assessment bonds are issued; provided, however, that any district may pledge the full faith and credit of such district for the payment of the principal of and interest on such assessment bonds if the issuance of such assessment bonds shall be approved by the qualified electors who are freeholders residing in said district in the manner provided in the constitution and statutes of Florida.

(7) After the passage of the resolution authorizing the construction or reconstruction of assessable improvements has been confirmed as provided in subsection (4), the district may publish at least once in a newspaper published in the county and circulating in the district, or post in the manner provided in §153.56 if there be no such newspaper, a notice calling for sealed bids to be received by the district board on a date not earlier than fifteen days from the first publication for the construction of the work, unless in the initial resolution the district board shall have declared its intention to have the work done by district forces without contract. The notice shall refer in general terms to the extent and nature of the improvement or improvements and may identify the same by the short designation indicated in the initial resolution and by reference to the plans and specifications on file. If the initial resolution shall have given two or more alternative descriptions of the assessable improvements as to its material, nature, character and size, and if the district board shall not have theretofore determined upon a definite description, the notice shall call for bids upon each of such descriptions. Bids may be requested for the work as a whole or for any part thereof separately and bids may be asked for any one or more of such assessable improvements authorized by the same or different resolutions, but any bid covering work upon more than one improvement shall be in such form as to permit a separation of cost as to each improvement. The notice shall require bidders to file with their bids either a certified check drawn upon an incorporated bank or trust company in such amount or percentage of their respective bids, as the district board shall deem advisable, or a bid bond in like amount with corporate surety satisfactory to the district board to insure the execution of a contract to carry out the work in accordance with such plans and specifications and insure the filing at the making of such contract, of a bond in the amount of the contact price with corporate surety satisfactory to the district conditioned for the performance of the work in accordance with such contract. The district board shall have the right to reject any or all bids, and if all bids are rejected the district board may readvertise or may determine to do the work by the district forces without contract.

(8) Promptly after the completion of the work, the engineer for the district, who is

hereby designated as the official of the district to make the preliminary assessment of benefits from assessable improvements, shall prepare a preliminary assessment roll and file the same with the district clerk which roll shall contain the following:

(a) A description of abutting lots and parcels of land or lands within the district which will benefit from such assessable improvements and the amount of such benefits to each such lot or parcel of land. Such lots and parcels shall include the property of the county and any school district or other political subdivision. There shall also be given the name of the owner of record of each lot or parcel where practicable, and in all cases there shall be given a statement of the number of feet of property so abutting, which number of feet shall be known as the frontage.

(b) The total cost of the improvement and the amount of incidental expense.

(9) The preliminary roll shall be advisory only and shall be subject to the action of the district board as hereinafter provided. Upon the filing with the district clerk of the preliminary assessment roll, the district clerk shall publish at least once in a newspaper published in the county, and circulating in the district, or if there be no such newspaper, post in the manner provided in §153.56, a notice stating that at a meeting of the district board to be held on a certain day and hour, not less than fifteen days from the date of such publication or posting, which meeting may be a regular, adjourned or special meeting, all interested persons may appear and file written objections to the confirmation of such roll. Such notice shall state the class of the assessable improvements and the location thereof by terminal points and route.

(10) At the time and place stated in such notice the district board shall meet and receive the objections in writing of all interested persons as stated in such notice. The district board may adjourn the hearing from time to time. After the completion thereof the district board shall either annul or sustain or modify in whole or in part the preliminary assessment as indicated on such roll, either by confirming the preliminary assessment against any or all lots or parcels described therein or by cancelling, increasing or reducing the same, according to the special benefits which the district board decided each such lot or parcel has received or will receive on account of such improvement. If any property which may be chargeable under this section shall have been omitted from the preliminary roll or if the preliminary assessment shall not have been made against it, the board may place on such roll an apportionment to such property. The district board shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation such assessment roll shall be delivered to the district clerk. The assessment so made shall be final and conclusive as to each lot or parcel assessed unless proper steps be taken within thirty days in a court of competent jurisdiction to secure relief. If the assessment against any property shall be sustained or reduced or abated by the court, the district clerk shall note that fact on the assessment roll opposite the description of the property affected thereby. The amount of the special assessment against any lot or parcel which may be reduced or abated by the court, unless the assessment upon the entire district be reduced or abated, or the amount by which such assessment is so reduced, may by resolution of the district board be made chargeable against the district at large; or, at the discretion of the district board, a new assessment roll may be prepared and confirmed in the manner hereinabove provided for the preparation and confirmation of the original assessment roll.

(11) Any assessment may be paid at the office of the district clerk within sixty days after the confirmation thereof, without interest. Thereafter all assessments shall be payable in equal installments, with interest at not exceeding eight per cent per annum from the expiration of said sixty days in each of the succeeding number of years which the district board shall determine by resolution, not exceeding twenty; provided however, that the district board may provide that any assessment may be paid at any time before due, together with interest accrued thereon to the date of payment, if such prior payment shall be permitted by the proceedings authorizing any assessment bonds or other obligations for the payment of which such special assessments have been pledged.

All such special assessments shall be collected by the tax collector of the county in which the district is located at the same time as the ad valorem taxes of the district and general county taxes are collected by the tax collector of such county, and the district shall certify to the county tax collector in each year a list of all such special assessments and a description of and name of the owners of the properties against which such special assessments have been levied and the amounts due thereon in such year, and interest thereon, and any deficiencies for prior years.

All assessments shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general county taxes falling due in the same year or years in which such assessments or installments thereof fall due, and any assessment or installment not paid when due shall be collectible with such interest and with a reasonable attorney's fee and costs, but without penalties, by the district by proceedings in a court of equity to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state; provided that any such pro-

ceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings, immediately become due and payable. Nevertheless, if prior to any sale of the property under decree of foreclosure in such proceedings, payment be made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (10), and by this subsection and all costs including interest and attorney's fee, such payment shall have the effect of restoring the remaining installments to their original maturities as provided by the resolution passed pursuant to this subsection and the proceedings shall be dismissed. It shall be the duty of the district to enforce the prompt collection of assessment by the means herein provided, and such duty may be enforced at the suit of any holder of bonds issued under this law in a court of competent jurisdiction by mandamus or other appropriate proceedings or action. Not later than thirty days after the annual installments are due and payable, it shall be the duty of the district board to direct the attorney or attorneys whom the district board shall then designate, to institute action within two months after such direction to enforce the collection of all special assessments for assessable improvements made under this section and remaining due and unpaid at the time of such direction. Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state. It shall be lawful to join in one action the collection of assessments against any or all property assessed by virtue of the same assessment roll unless the court shall deem such joinder prejudicial to the interest of any defendant. The court shall allow a reasonable attorney's fees for the attorney or attorneys of the district, and the same shall be collectible as a part of or in addition to the costs of the action. At the sale pursuant to decree in any such action, the district may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by a district may be sold or otherwise disposed of, the proceeds of such disposition to be placed in the fund provided by subsection (1) of this section; provided, however, that no sale or other disposition thereof shall be made unless the notice calling for bids therefor to be received at a stated time and place shall have been published in a newspaper published in the county and circulating in the district, or posted in the manner provided in §153.56 if there be no such newspaper, at least twenty days prior to such disposition.

(12) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any assessable improvements for which assessment bonds shall have been issued under the provisions of this law, or which have been pledged as additional security for any other bonds or obligations issued under this law, shall be used only for the payment of principal of or interest on such assessment bonds or other bonds or obligations.

(13) The county in which the district is located and each school district and other political subdivision wholly or partly within the district shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of such county, school district or other political subdivision which private owners of real estate possess or are subject hereunder, and such real estate of any such county, school district and political subdivision shall be subject to liens for said assessments in all cases where the same property would be subject to such liens had it at the time the lien attached been owned by a private owner.

History.—§24, ch. 59-466.

153.74 Issuance of certificates of indebtedness based on assessments for assessable improvements.—The district board may, after any assessments for assessable improvements are made, determined and confirmed as provided in §153.73, issue certificates of indebtedness for the amount so assessed against the abutting property or property otherwise benefited, as the case may be, and separate certificates shall be issued against each part or parcel of land assessed, which certificates shall state the general nature of the improvement for which the said assessment is made. Said certificates shall be payable in annual installments in accordance with the installments of the special assessments for which they are issued. The district board may determine the interest to be borne by such certificates at a rate no greater than six per cent per annum, and may sell such certificates at either private or public sale at not exceeding par and accrued interest and determine the form, manner of execution and other details of such certificates. Such certificates shall recite that they are payable only from the special assessments levied and collected from the part or parcel of land against which they are issued. The proceeds of such certificates may be pledged for the payment of principal of and interest on any revenue bonds or general obligation bonds issued to finance in whole or in part such assessable improvements, or, if not so pledged, may be used to pay the cost or part of the cost of such assessable improvements.

The district may also issue assessment bonds or other obligations payable from a special fund into which such certificates of indebtedness referred to in the preceding paragraph may be deposited; or, if such certificates of indebtedness have not been issued, the district may assign to such special fund for the benefit of the holders of such assessment bonds or

other obligations, or to a trustee for such bondholders, the assessment liens provided for in §153.73(10), unless such certificates of indebtedness or assessment liens have been theretofore pledged for any bonds or other obligations authorized hereunder. In the event of the creation of such special fund and the issuance of such assessment bonds or other obligations, the proceeds of such certificates of indebtedness or assessment liens deposited therein shall be used only for the payment of the assessment bonds or other obligations issued as provided in this section. The district is hereby authorized to covenant with the holders of such assessment bonds or other obligations that it will diligently and faithfully enforce and collect all the special assessments and interest and penalties thereon for which such certificates of indebtedness or assessment liens have been deposited in or assigned to such fund, and to foreclose such assessment liens so assigned to such special fund or represented by the certificates of indebtedness deposited in said special fund, after such assessment liens have become delinquent and deposit the proceeds derived from such foreclosure, including interest and penalties, in such special fund, and to further make any other necessary covenants deemed necessary or advisable in order to properly secure the holders of such assessment bonds or other obligations.

The assessment bonds or other obligations issued pursuant to this section shall have such dates of issue and maturity as shall be deemed advisable by the district board; provided, however, that the maturities of such assessment bonds or other obligation shall not be more than two years after the due date of the last installment which will be payable on any of the special assessments for which such assessment liens, or the certificates of indebtedness representing such assessment liens, are assigned to or deposited in such special fund.

Such assessment bonds or other obligations issued under this section shall bear interest at not exceeding six per cent per annum, shall be executed, shall have such provisions for redemption prior to maturity, shall be sold in the manner and be subject to all of the applicable provisions contained in §153.63 for revenue bonds, except as the same are inconsistent with the provisions of this section.

All assessment bonds or other obligations issued under the provisions of this law, except certificates of indebtedness issued against separate parcels of land as provided in this section, shall be and constitute and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

History.—§25, ch. 59-466.

153.75 Annual reports of district board.—The district board shall cause to be made at least once each year a comprehensive report of its water system or sewer system or both including all matters relating to rates, revenues, expenses of maintenance, repair and operation and renewals and capital replacements, principal and interest requirements and the status of all funds and accounts. Copies of such report shall be filed with the district clerk and shall be open to public inspection.

History.—§26, ch. 59-466.

153.76 Exemption from taxation.—As the exercise of the powers conferred by this law constitutes the performance of essential public functions and as any water system or sewer system or both constructed under the provisions of this law constitute public property used for public purposes such districts and all properties, revenues, or other assets thereof, and all bonds issued hereunder and the interest thereon, shall be exempt from all taxation by the state, or any political subdivision, agency or instrumentality thereof.

History.—§27, ch. 59-466.

153.77 District bonds as securities for public bodies.—All revenue bonds, general obligation bonds or assessment bonds issued pursuant to this law shall be and constitute legal investments for state, county, municipal and all other public funds and for banks, savings banks, insurance companies, executors, administrators, trustees and all other fiduciaries, and shall also be and constitute securities eligible as collateral security for all state, county, municipal or other public funds, subject to the restrictions and limitations of chapters 18, 136, 237, 518 and 654, 656 through 661, 665 through 668 inclusive.

History.—§28, ch. 59-466.

153.78 Bonds as payment for services.—Any district is authorized to enter into agreements for the delivery of any revenue bonds, general obligation bonds or assessment bonds at one time or from time to time as full or partial payment for the services of any engineer or work done by any contractor who may have been retained or hired or been awarded a contract for the construction of all or any part of a water system or sewer system; provided, however, that any such bonds so delivered for payment of such services or work performed shall have been authorized and issued in the manner provided in this law and shall otherwise conform to the provisions hereof.

History.—§29, ch. 59-466.

153.79 Contracts for construction of improvements, sealed bids.—All contracts let, awarded or entered into by the district for the construction, reconstruction or acquisition or improvement of a water system or a sewer system or both or any part thereof, if the amount thereof shall exceed one thousand dollars, shall be awarded only after public advertisement and call for sealed bids therefor, in a newspaper published in the county circulating in the district, or, if there be no such newspaper, then in a newspaper published in the state and circulating in the district, such advertisement to be published at least once at least three weeks before the date set for the

receipt of such bids. Such advertisements for bids in addition to the other necessary and pertinent matter shall state in general terms the nature and description of the improvement or improvements to be undertaken and shall state that detailed plans and specifications for such work are on file for inspection in the office of the district clerk and copies thereof shall be furnished to any interested party upon payment of reasonable charges to reimburse the district for its expenses in providing such copies. The award shall be made to the responsible and competent bidder or bidders who shall offer to undertake the improvements at the lowest cost to the district and such bidder or bidders shall be required to file bond for the full and faithful performance of such work and the execution of any such contract in such amount as the district board shall determine, and in all other respects the letting of such construction contracts shall comply with applicable provisions of the general laws relating to the letting of public contracts. Nothing in this section shall be deemed to prevent the district from hiring or retaining such consulting engineers, attorneys, financial experts or other technicians as it shall determine, in its discretion, or from undertaking any construction work with its own resources, without any such public advertisement.

History.—§30, ch. 59-466.

153.80 Consolidation of systems.—Any water system or sewer system of a district may be combined into a single consolidated system for purposes of financing or of operation and administration, or both.

History.—§31, ch. 59-466.

153.81 Ad valorem maintenance tax.—In addition to the ad valorem taxes authorized to be levied to pay the principal of and interest on general obligation bonds, or as additional security for revenue bonds or assessment bonds, any district is authorized to levy a special ad valorem maintenance tax of a sufficient number of mills upon the dollar of assessed valuation of property subject to taxation in the district to pay for the maintenance and operation and other corporate purposes of said district; provided, however, that such special maintenance tax shall in no event exceed five mills during any one year. Such special maintenance tax shall be levied and collected in the manner provided herein for ad valorem taxes levied and collected for debt service on bonds issued pursuant to this law.

History.—§32, ch. 59-466.

153.82 Handling of taxes and special assessments, district treasurer.—All ad valorem taxes or special assessments levied and collected in any district in the manner provided herein shall when received be paid over by the proper officials of the county in which the district is located to the treasurer of the district to be applied as provided in this law and in the proceedings authorizing the issuance of any bonds or other obligations pursuant to this law.

History.—§33, ch. 59-466.

153.83 Free water and sewer services prohibited. — The same rates, fees and charges shall be fixed and collected from any county, school district or other political subdivision using the services and facilities of the water system or sewer system, or both, as are fixed and collected from other users of such facilities in the same class. No free water or sewer services shall be rendered by the district and no discrimination shall exist in the fees, rates and charges for users of the same class.

History.—§34, ch. 59-466.

153.84 Contracts enforceable by bondholders.—Any contract entered into by any district shall be deemed to have been made for the benefit of any holders of bonds issued pursuant to this law to the extent necessary, and the terms of any such contract shall be enforceable by such bondholders in any appropriate legal proceeding. Any such contract if made with another public body or municipality may be enforceable without the requirement of formal consideration.

History.—§35, ch. 59-466.

153.85 Conveyance of property without consideration.—Any municipality or political subdivision is authorized to sell, lease, grant or convey any real or personal property to any district and any such sale, grant, lease or conveyance may be made without formal consideration.

History.—§36, ch. 59-466.

153.86 District approval of construction of water and sewerage facilities.—No sewage disposal plant or other facilities for the collection and treatment of sewage or any water treatment plant or other facilities for the supply and distribution of water, shall be constructed within any district unless the district board shall give its consent thereto and approve the plans and specifications therefor; subject, however, to the terms and provisions of any resolution authorizing any bonds and agreements with bondholders.

History.—§37, ch. 59-466.

153.87 Mortgage or sale by board of district property prohibited; rights of bondholders protected.—No district board shall have power to mortgage, pledge, encumber, sell or otherwise convey all or any part of any water system or sewer system, or both, except that the district board may dispose of any part of such system or systems as may be no longer necessary for the purposes of the district. The provisions of this section shall be deemed to constitute a contract with all bondholders. All district property shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against such prop-

erty nor shall any judgment against a district be a charge or lien on its property or revenues; provided, that nothing herein contained shall apply to or limit the rights of bondholders to pursue any remedy for the enforcement of any lien or pledge given by a district on revenues derived from the operation of any water system or sewer system, or both.

History.—§38, ch. 59-466.

153.88 Construction of law.—

(1) The provisions of this law shall be liberally construed to effect its purposes and shall be deemed cumulative, supplemental and alternative authority for the exercise of the powers provided herein. The exercise of the powers provided in this law and the issuance of bonds or other obligations hereunder shall not be subject to the limitations or provisions of any other law or laws except as expressly provided herein.

(2) Nothing herein contained shall be construed to affect any local or special act in force and effect on June 19, 1959.

History.—§§39, 41, ch. 59-466.

CHAPTER 154

COUNTY PUBLIC HEALTH UNITS

154.01 Health units authorized.—The several counties of the state, and cities therein, may cooperate with the state board of health in the establishment and maintenance of full-time local health units in such counties for the control and eradication of preventable diseases, and inculcate modern scientific methods of hygiene, sanitation and the prevention of communicable diseases.

History.—§1, ch. 14906, 1931; CGL 1936 Supp. 2934(22); §7, ch. 22858, 1945.
cf.—§232.32 Cooperation with local health units by school officials.

154.02 Tax; disposition of proceeds; reports.—To enable such counties to execute the purposes of this chapter, every county in the state with a population exceeding 100,000, according to the last state census, may levy an annual tax of not exceeding one-half mill, and every county in the state with a population exceeding 40,000 according to the last state census, and not exceeding 100,000, may levy an annual tax of not exceeding one mill, and every county in the state with a population not exceeding 40,000 according to the last state census, may levy an annual tax not exceeding two mills, on the dollar on all taxable property in such county, the proceeds of which, when collected, shall be paid to the state board of health for deposit with the state treasurer. Such funds in the hands of the state treasurer shall be known as the full-time local health unit trust funds of the county by which such funds were raised; and said funds shall be expended by the state board of health solely for the purpose of carrying out the intent and object of this chapter in such county. The state board of health shall render to the county commissioners of any such county providing such funds a semiannual financial statement of the disbursement thereof, so long as said moneys shall continue to be disbursed by or under the direction of the state board of health.

History.—§2, ch. 14906, 1931; CGL 1936 Supp. 2934(23); §19, ch. 29615, 1955; §2, ch. 61-119.
cf.—§193.32 Annual tax levies—limitations.
§282.001(3) All state receipts to general revenue fund.
§282.002(18) Exception.

154.03 Cooperation with state board of health and United States government.—The county commissioners of every county may agree with the state board of health upon the expenditure by the state board of health in such counties of any funds allotted for that purpose by the state board of health or received by it for such purposes from private contributions or other sources, and such funds shall be paid to the state treasurer and shall form a part of the full-time local health unit trust fund of such county, and shall be expended by the state board of health solely for the purpose of this chapter. The state board of health is further authorized to arrange and agree with the United States government through its duly authorized officials for the allocation and expenditure by the United States of funds of the United States in the study of causes of disease and prevention thereof in such full-time local health units when and where established by the state board of health under this chapter.

History.—§3, ch. 14906, 1931; CGL 1936 Supp. 2934(24); §2, ch. 61-119.

154.04 Personnel of health units; duties; compensation, etc.—The personnel of the minimum full-time local health unit shall consist of a director, who shall be a doctor of medicine, a public health nurse, a sanitary officer and a clerk. All of the members of such personnel shall be selected from those especially trained in public health administration and practice, so far as the same shall relate to the duties of their respective positions. They shall be employed by the board of county commissioners; provided, however, that no such personnel shall be employed by the board of county commissioners unless such said personnel shall be approved by the state health officer. The duties and compensation of said personnel shall be fixed and determined by the state board of health upon the approval of the board of county commissioners. Such employees shall devote their entire time to the control of preventable diseases and the education of the public in modern scientific methods of sanitation, hygiene and the control of communicable disease in cooperation with and under the supervision of the state board of health.

History.—§4, ch. 14906, 1931; CGL 1936 Supp. 2934(25).

154.05 Cooperation and agreements between counties.—Two or more counties may combine in the establishment and maintenance of a single full-time local health unit for the counties which combine for that purpose, and pursuant to such combination or agreement such counties may cooperate with one another and the state board of health and contribute to a joint fund in carrying out the purpose and intent of this chapter. The duration and nature of such agreement shall be evidenced by resolutions of the board of county commissioners of such counties and shall be submitted to and approved by the state board of health. In the event of any such agreement, a full-time local health unit shall be established and maintained by the state board of health in and for the benefit of the counties which have entered into such an agreement; and, in such case, the funds raised by taxation pursuant to this chapter by each such county

shall be paid to the state treasurer for the account of the state board of health and shall be known as the full-time local health unit trust fund of the counties so cooperating. Such trust funds shall be used and expended by the state board of health for the purposes specified in this chapter in the counties which have entered into such agreement. In case such an agreement is entered into between two or more counties, the work contemplated by this chapter shall be done by a single full-time local health unit in the counties so cooperating, and the nature, extent and location of such work shall be under the control and direction of the state health officer.

History.—§5, ch. 14906, 1931; CGL 1936 Supp. 2934(26); §2, ch. 61-119.

cf.—§125.43 Common functions, authority to contract.

CHAPTER 155

COUNTY HOSPITALS

155.01 County commissioners may act as trustees of stock of hospitals.—Whenever the owners of a majority of the outstanding capital stock of a corporation created for and engaged solely in the operation of a hospital shall execute a trust deed, or deeds, conveying a majority of the capital stock of such corporation to the board of county commissioners of the county in which such hospital is located, in trust to be held and administered by such board of county commissioners as trustees with authority to vote said stock at all meetings of the stockholders of such corporation and to expend all dividends declared upon such stock in the hospitalization of the indigent citizens of the county who need hospital treatment, with provisions that should the properties of such corporation cease for a period of six months to be used primarily for hospital purposes or should the hospital so maintained be not maintained open to the practice of all duly licensed physicians and surgeons resident in the county where the same is located that the trust shall then, but not before, be terminated and the ownership of the stock so placed in trust shall revert to the respective persons executing the trust deed, or deeds, their heirs, legatees or assigns; the board of county commissioners may accept such trust and act as trustee thereunder.

History.—§1, ch. 17834, 1937; CGL 1940 Supp. 2934(28).

155.02 Rule against perpetuities inapplicable.—No such trust shall be invalid by reason of the rule against perpetuities nor shall the rights of the persons creating the same, their heirs, legatees or assigns, to receive back their stock upon the termination of said trust be impaired or denied by reason of any application of the statutes of uses or the rule against perpetuities.

History.—§2, ch. 17834, 1937; CGL 1940 Supp. 2934(29).

155.03 Duties of county commissioners.—Should the board of county commissioners accept such trust, it shall administer the same until the termination of the trust; providing, however, that nothing herein shall require the board of county commissioners to expend any funds of the county in the maintenance of such hospital or the administration of such trust.

History.—§3, ch. 17834, 1937; CGL 1940 Supp. 2934(30).

155.04 County hospitals; petition; election; establishment.—Whenever the board of county commissioners of any county in the state shall be presented with a petition signed by five per cent of the resident freeholders of such county, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county named therein, and shall specify in said petition the maximum amount of money proposed to be expended in purchasing or building said hospital, such board of county commissioners shall submit the question to the qualified electors of the county who are freeholders at the next general election to be held in the county, or at a special election called for that purpose, first giving thirty days notice thereof in one or more newspapers published in the county, if any be published therein, or posting written or printed notices in each precinct of the county, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the said county which tax shall not exceed five mills on the dollar, and be for the issue of the county bonds, to provide funds for the purchase of the site, or sites, and the erection thereon of a public

hospital and hospital buildings, and for the support of same, which bonds shall be payable within thirty years, which said election shall be held at the usual places in such county for voting upon county officers, and shall be canvassed in the same manner as the vote for the county officers is canvassed. The ballots to be used in any election at which such hospital question is submitted, shall be printed with a statement substantially as follows:

For a _____ mill tax for a bond issue for a public hospital, and for maintenance of same:

YES_____

NO_____

If a majority of the freeholders who are qualified electors shall participate in said election and a majority of the votes cast at such election on the proposition so submitted shall be in favor of said tax for such bond issue, the board of county commissioners shall levy a tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "hospital fund", and shall be paid out on the order of the hospital trustees for the purposes authorized by this law, and for no other purposes whatever.

History.—§1, ch. 20905, 1941; §1, ch. 26513, 1951.
cf.—§193.32 Annual tax levies—limitations.

155.05 County hospitals; establishment without election.—If the county commissioners of any such county, by reason of funds on hand, or donations, or otherwise, are able to build and establish a public hospital without issuing bonds as provided in §155.04, then such board of county commissioners is hereby authorized and empowered to establish such public hospital and, without any election, to levy an annual tax for the maintenance thereof, such tax not to exceed five mills on the dollar and to be collected in the same manner as the tax provided for in §155.04.

History.—§2, ch. 20905, 1941.
cf.—§193.32 Annual tax levies—limitations.

155.06 County hospitals; trustees; appointment, etc.—Should a majority of all votes cast upon the question be in favor of establishing such county public hospital, or should the board of county commissioners of any county establish a county public hospital as provided in §155.05, the governor of the state shall immediately proceed to appoint five trustees chosen from the citizens at large from such county, with reference to their fitness for such office, who shall constitute a board of trustees for said public hospital. On the original appointment of said trustees, two of said trustees shall be appointed for a term of one year, one for a term of two years, one for a term of three years and one for a term of four years and thereafter upon the expiration of said original appointments, their successors shall be appointed by the governor of the state for a term of four years.

History.—§3, ch. 20905, 1941.

155.07 County hospitals; organization; officers; powers; etc.—The said trustees shall within ten days after their appointment, qualify by taking the oath of office and organize a board of hospital trustees by the election of one of their members as chairman, one as secretary and treasurer, and by the election of such other officers as they deem necessary. Such chairman shall be executive officer of the board of trustees and shall enforce and carry out all the orders of the board of trustees contained in resolutions duly adopted and entered on the minute books of the meetings of the board of trustees. He shall preside at all meetings, countersign all vouchers and warrants issued by the secretary and treasurer hereinafter provided for. In the absence of the chairman, vouchers and warrants may be countersigned by any other member of the board of trustees selected by the members of the board of trustees as chairman pro tem. The chairman shall give bond in a sum to be fixed by the board of county commissioners for the faithful performance of his duties in some reputable bonding company authorized to do business in the state, and said bond shall be made payable to the governor of Florida and his successors in office. No member of said board of trustees shall receive any compensation for his services as such trustee; but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 20905, 1941; §19, ch. 63-400.

155.08 County hospitals; seal; evidence; etc.—The board of trustees as herein constituted shall adopt a common seal, and certification under the seal of the board of hospital trustees, signed by the chairman and attested by the secretary and treasurer, shall constitute sufficient evidence.

History.—§5, ch. 20905, 1941.

155.09 County hospitals; secretary; minutes; accounts; etc.—The board of trustees shall elect from its members a secretary and treasurer whose duties it shall be to keep full and correct minutes of all the proceedings of the board of trustees, and keep a separate itemized account of all the expenditures and disbursements by said board of trustees. Said minutes and accounts shall be open to public inspection at any time on demand of any taxpayer in such district. The secretary and treasurer shall give bond in a sum to be fixed by the board of county commissioners for the faithful performance of his duties in some reputable bonding company authorized to do business in the state, and said bond shall be made payable to the governor of Florida and his successors in office.

History.—§6, ch. 20905, 1941.

155.10 County hospitals; rules and regulations.—The board of trustees shall make and adopt such by-laws and rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this law, or the

ordinance of the city or town wherein such hospital is located. They shall have exclusive control of the expenditures of all moneys collected to the credit of the hospital fund.

History.—§7, ch. 20905, 1941.

155.11 County hospitals; deposit of moneys; bank; payments.—All moneys received for such hospital shall be deposited in any bank designated by the said board of trustees, and placed to the credit of the hospital fund and can be paid out only as bills for material supplies, equipment, wages, salaries, or other items of expense, whatsoever, shall have been audited by the secretary and treasurer and approved by a majority of the members of the board of trustees in regular session. When so approved by a majority of said members, upon vouchers issued by the secretary and treasurer, warrant may be drawn for same and when countersigned by the chairman of said board of trustees shall be authenticated. Provided, it shall be unlawful to pay any money out of said hospital fund until the provisions of this section have been complied with.

History.—§8, ch. 20905, 1941.

155.12 County hospitals; general powers of trustees; duties; tax levies; etc.—The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation and shall also have power to remove such appointees and shall in general, carry out the spirit and intent of this law in establishing and maintaining a county hospital. The board of hospital trustees shall hold meetings at least once each month, and keep a complete record of all its transactions. Three members of said board shall be required to constitute a quorum for the transaction of business and two or more of said trustees shall visit and examine said hospital twice each month. The board shall, during the first week in January in each calendar year, if its books and records are kept on a calendar year basis, or, during the first week of the fiscal year, if its books and records are kept on a fiscal year basis, and if it is the desire of the board to report on the fiscal rather than the calendar year, file with the board of county commissioners of said county a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures made during the year and shall certify to the said board of county commissioners the amount necessary for the improvement and maintenance of such public hospital, so established, during the ensuing year, and the said board of county commissioners shall, at its annual meeting for the purpose of determining the amount to be raised for all county purposes, levy a sufficient tax upon all the assessed value of the taxable property in the county, as will produce the sum required by the said board of trustees' report, but said hospital levy together with the levy necessary to liquidate the bonds aforesaid, shall not exceed ten mills on the assessed valuation. No trustee shall have a personal, pecuniary interest, either directly or indirectly, in the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding.

History.—§9, ch. 20905, 1941; §1, ch. 61-321.
cf.—§193.32 Annual tax levies—limitations.

155.13 County hospitals; vacancies in trustees.—Vacancies in the board of trustees occasioned by resignations, removal, or otherwise, shall be reported to the governor of the state, who shall fill such vacancies in a like manner as the original appointments; appointees shall hold office for the remainder of the term in which the vacancy occurred.

History.—§10, ch. 20905, 1941.

155.14 County hospitals; bonds; maturities; interest; etc.—Whenever any county in this state shall have provided for the appointment of hospital trustees and has voted a tax for hospital purposes, as authorized by law, the said county shall issue bonds in anticipation of the collection of such tax in such sum and amounts as the board of hospital trustees shall certify to the board of county commissioners of said county to be necessary for the purpose contemplated by such tax, but such funds in the aggregate shall not exceed the amount which might be realized by said tax based on the amount which may be yielded on the property valuation of the year in which the tax is voted, and such bonds shall mature in not to exceed thirty years from date and shall be in sums of not less than one hundred dollars, nor more than one thousand dollars, drawing interest at a rate not exceeding six per cent per annum, payable annually or semi-annually; said bonds shall be payable at the pleasure of the county after five years and each of said bonds shall provide that it is subject to this condition and shall not be sold for less than provided by law for other county bonds and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this law, and be numbered consecutively and redeemable in the order of their issue.

History.—§11, ch. 20905, 1941; §2, ch. 26513, 1951.

155.15 County hospitals; procuring lands for hospital.—If the board of hospital trustees and the owners of any property desired by them for hospital purposes, cannot agree as to the price to be paid therefor, they shall report the facts to the board of county commissioners and condemnation proceedings shall be instituted by the said board of county commissioners and prosecuted in the name of the county by the attorney for the county commissioners of such county.

History.—§12, ch. 20905, 1941.

155.16 County hospitals; residents; nonresidents; fees; contagious diseases; etc.—Every hospital established under this law shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits, but the board of

hospital trustees may extend the privileges and use of such hospital to persons residing outside of such county upon terms and conditions as such board of trustees may from time to time, by its rules and regulations, prescribe. Every such inhabitant or person who is not a pauper shall pay to such board or such officer as it shall designate, a reasonable compensation for occupancy, nursing, care, medicine, and attendance, according to the rules and regulations prescribed by the said board. Such hospital always shall be subject to such rules and regulations as said board may adopt in order to render the use of said hospital of the greatest benefit to the greatest number; and said board may exclude from treatment and care any indigent or pay case having a communicable or contagious disease where such disease may be a detriment to the best interest of such hospital and a source of contagion or infection to the patient in its care, and all inhabitants and persons who shall willfully violate any rules and regulations of such hospital.

History.—§13, ch. 20905, 1941.

155.17 County hospitals; rules for physicians, nurses, etc.—When such hospital is established, the physician, nurses, attendants, the person sick therein and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there shall be subject to such rules and regulations as said board of trustees may prescribe.

History.—§14, ch. 20905, 1941.

155.18 County hospitals; discrimination against doctors; etc.—The board of trustees of any hospital organized under this chapter is authorized to promulgate rules and regulations governing the granting and revoking of privileges to treat patients in the hospital. Such rules shall provide that only those persons licensed to practice medicine and surgery, i.e., medical doctors and osteopathic physicians, may be granted privileges to treat patients in the hospital. Such doctors and physicians may retain their privileges so long as they comply with the rules and regulations of the board of trustees.

History.—§15, ch. 20905, 1941; §1, ch. 61-378.

155.19 County hospitals; training school for nurses.—The board of trustees may establish and maintain in connection with such hospital and as part thereof, a training school for nurses, and upon completion of the prescribed course of training shall give to such nurses who satisfactorily complete the said course, a diploma.

History.—§16, ch. 20905, 1941.

155.20 County hospitals; charity patients; hospital charges.—The board of hospital trustees shall have power to determine whether or not patients presented to such public hospital for treatment are subjects of charity, and shall fix the charges for occupancy, nursing, care, medicine and attendance, other than medical or surgical attendance, of those persons able to pay for same, as the board of trustees may deem just and proper, the receipts therefor to be paid by him to the "hospital fund."

History.—§17, ch. 20905, 1941.

155.21 County hospitals; donations; etc.—Any person or persons, firm, organization, corporation or society, public or private, desiring to make donations of money, personal property or real estate for the benefit of such hospital shall have the right to vest title of the money, personal property or real estate so donated in said county, to be controlled when accepted by the board of hospital trustees of said hospital, according to the terms of the deed, gift, devise or bequest of such property.

History.—§18, ch. 20905, 1941.

155.22 County hospitals; purposes are public.—The purpose for which any county hospital established under the provisions of this law shall be used, are hereby declared public purposes.

History.—§19, ch. 20905, 1941.

155.23 County hospitals; federal loans, aid, etc.—The board of county commissioners of any county desiring to establish and maintain a hospital under the provisions of this law shall be and are hereby authorized and empowered to negotiate and make agreements with any federal agency lending or granting money for the purpose of erecting public hospitals and may match any funds so loaned or granted by such federal agency for the purpose of establishing or constructing a public hospital under the provisions of this law.

History.—§20, ch. 20905, 1941.

155.24 County hospitals; additional funds.—In addition to the tax which may be levied under the provisions of this law, the board of county commissioners may allocate to the "hospital funds" any other public moneys in possession of said board of county commissioners, not otherwise appropriated or allocated to other uses.

History.—§21, ch. 20905, 1941.

155.25 Levy authorized for county hospital purposes.—

(1) Whenever any board of county commissioners shall deem it necessary to erect, equip or repair a public hospital in the county or erect and equip an addition or additions to any public hospital, they shall give notice for thirty days in some newspaper published in said county, or in some newspaper published in the judicial circuit, if there be none published in the county, that at the next regular meeting of the board after the publication of said notice, such question or questions will be acted upon by said board. If, at said meeting, a majority of said board shall determine that it is necessary to erect, equip, repair or build addition or additions to such public hospital, they may levy a hospital building, repair and equipment tax not exceeding five mills per annum, for not more than fifteen consecutive years. The tax shall be assessed and collected at the same time

and in the same manner as other state and county taxes are levied and collected.

(2) The tax, levied, assessed and collected as aforesaid, shall be accumulated from year to year until utilized and expended for the public hospital purposes aforesaid.

(3) The provisions hereof shall be cumulative and in addition to all the other provisions of chapter 155, and nothing herein contained shall be held to repeal, alter or amend any of the provisions of said chapter 155 nor repeal, alter or amend any of the provisions of any special or local law.

(4) The provisions of this section shall not apply to Okaloosa county nor shall the provisions hereof confer the authority hereinabove provided for upon or to the county commissioners of said county.

History.—§§1-4, ch. 57-393.

CHAPTER 156

DRAINAGE OF SWAMPS AND OVERFLOWED LANDS

156.01 Powers of board of county commissioners.—The board of county commissioners of any county in this state, when conducive to the public health, convenience or welfare, or where the same will be of public benefit or utility, may cause to be constructed, as hereinafter provided, any drain, ditch or water course within said county.

History.—§1, ch. 4178, 1893; GS 922; RGS 1706; CGL 2757.

156.02 Petition and procedure.—Before the board of county commissioners shall establish any drain, ditch or water course, there shall be filed with the clerk of such county a petition, signed by two or more of the land owners whose lands will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus, and shall give a bond with good and sufficient sureties, payable to the state, to be approved by the clerk, conditioned to pay all of the expenses in case the board of county commissioners shall fail to establish said proposed ditch, drain or water course. Said board shall, at their next regular session, appoint three resident freeholders not interested in the construction of the proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said board, preparatory to commencing their duties as hereinafter specified; and the clerk thereupon shall issue to said viewers a certified copy of the petition and order of the board, who shall proceed, at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line of the said ditch, drain or water course from its source to its outlet; and they shall cause stakes to be set along said line, numbered progressively down stream, at each one hundred feet, and they shall make a computation of the total number of cubic yards of earth to be excavated or removed from said ditch, drain or water course and an estimate of the total cost of construction of the whole work. And they shall set apart and apportion to each parcel of land and to each corporate road or railroad, and to the county when public highways are benefited, a share of said work, in proportion to the benefits that will result to each from such improvement, and give the location of each share, its length in feet, and the estimated number of cubic yards of earth to be removed therefrom, and the price per cubic yard, and the cost of construction of each share or allotment separately, and specify the manner in which the work shall be done; and they shall accurately describe, as the same is described on the county tax books, each parcel of land to be assessed for the construction of said ditch, giving the number of acres in each tract assessed and the estimated number of acres benefited, the amount that each tract will be benefited by the construction of said work, and the amount that each tract is assessed for. And they shall also ascertain and give the names of the owners of the lands that are assessed for the construction of said work, as far as they can be ascertained by reasonable inquiry and search of the public records, and report also if said ditch or drain will be of public utility; provided, that no pond, lake or tract of overflowed land containing less than three acres shall come under the provisions of this chapter.

History.—§2, ch. 4178, 1893; GS 923; RGS 1707; CGL 2758.

156.03 Further duties of viewers.—Whenever a public ditch, drain or water course is located wholly or in part in the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated and the cost of same, on each tract of land, and deduct the same from the assessment thereon.

History.—§3, ch. 4178, 1893; GS 924; RGS 1708; CGL 2759.

156.04 Assessment.—All lands benefited by a public drain, ditch or water course, shall be assessed, in proportion to the benefits for the construction thereof, whether it passes through the lands or not, and the viewers in estimat-

ing the benefits to lands not traversed by said ditch shall not consider what benefits such lands shall receive, after some other ditch or ditches shall have been constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands.

History.—§4, ch. 4178, 1893; GS 925; RGS 1709; CGL 2760.

156.05 Powers of viewers.—In locating a public ditch, drain or water course, the viewers may vary from the line described in the petition as they may deem best, provided they commence the ditch at the point described in the petition, and follow down the line therein described as near as practicable; and provided further, that when there is not sufficient fall in the length of the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet. And when it will not be detrimental to the usefulness of the whole work, they shall, so far as it is practicable, locate the ditch on the division line between the lands owned by different persons, and they shall, so far as practicable avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch may appear before said viewers and freely express their opinions on all matters pertaining thereto.

History.—§5, ch. 4178, 1893; GS 926; RGS 1710; CGL 2761.

156.06 Damages.—In locating a public ditch, drain or water course, the viewers shall estimate the damages, if any, that any person will sustain by reason of the construction of said ditch, and assess such damages to the parties owning the lands benefited in proportion as each tract of land is assessed for the benefits.

History.—§6, ch. 4178, 1893; GS 927; RGS 1711; CGL 2762.

156.07 Meeting and adjournment.—The viewers may proceed immediately to perform their said duties, or adjourn from time to time as it may seem best to their convenience, and file their report with the clerk at least four weeks before the next regular meeting of said board of county commissioners. And if the viewers find the proposed ditch or drain not of public benefit or utility, they may report against the location of the same, giving their reasons therefor.

History.—§7, ch. 4178, 1893; GS 928; RGS 1712; CGL 2763.

156.08 Duty of clerk.—The clerk, on report being filed, as provided in §156.07, if it be in favor of the proposed work, shall cause a notice to be given by publication, for three consecutive weeks, by posting three written copies of said notice in three public places in the township or townships where the proposed work is located, and one at the door of the court house in said county, of the pendency of the petition mentioned in §156.02, and the time set for the hearing thereof, which notice shall state briefly the proposed beginning, course and terminus of said ditch, with the names of the owners of land who will be affected thereby, so far as can be ascertained by them. And at the same time the clerk shall mail a copy of the said notice to all non-residents whose address is known to him, or can be ascertained by him.

History.—§8, ch. 4178, 1893; GS 929; RGS 1713; CGL 2764.

156.09 To establish or dismiss petition.—The board of county commissioners, at the time set for the hearing of the petition set forth in §156.02 shall, if there be no remonstrance filed, proceed to hear such petition, and if they find that the viewers' report is made in accordance with the provisions of this chapter, and if it be in favor of the proposed work, they shall establish the same as specified in the report. But, if the viewers report against the proposed work, the board shall dismiss the petition, and tax the costs as herein provided.

History.—§9, ch. 4178, 1893; GS 930; RGS 1714; CGL 2765.

156.10 Rights of third party.—Any person interested in the location of the proposed work may file with the board of commissioners, at or before the time set for the hearing of the petition, a remonstrance against the ditch as located by the viewers on and across his lands; or any person deeming his assessment too high, or damages allowed him too low, may remonstrate for such reason against the actions of the viewers. But such person shall file a bond with two freehold sureties, for the payment of all costs and expenses caused by such remonstrance, if the action of the viewers be sustained by reviewers to be appointed as hereinafter provided. And thereupon, said board of commissioners shall appoint three disinterested freeholders of the county, not akin to any person interested in the proposed work, as reviewers, to meet at a specified time and place preparatory to commencing said review, and the clerk shall issue to said reviewers a certified copy of the petition and remonstrance, and order of the board appointing said reviewers.

History.—§10, ch. 4178, 1893; GS 931; RGS 1715; CGL 2766.

156.11 Duty of reviewers.—Such reviewers shall meet at the time and place specified in the order issued to them by the clerk and proceed to review the action and report of the viewers, as well as the entire premises through which the proposed work extends, and shall be vested with all powers granted to the viewers originally, except that if they find the proposed work of public benefit or utility, they shall not change the line of any ditch as located by the viewers at any other places than those contemplated in the remonstrance, and

then only far enough to do justice to the party remonstrating. And they shall obtain from the clerk the report of the viewers, which they shall carefully preserve and return to the clerk when they have completed their review, and they shall file with the clerk a report of their proceedings in the premises, after having subscribed and sworn to the same, at any time before the next regular meeting of said board and if the reviewers sustain the action of the viewers and make no change in the proposed work, their report need only state, that after having made full examination of the viewers' report as well as the entire premises through which the proposed work extends, they find the action of the viewers just and correct and that they sustain and approve the action of the same.

History.—§11, ch. 4178, 1893; GS 932; RGS 1716; CGL 2767; §7, ch. 22858, 1945.

156.12 Report of reviewers.—Upon filing of the report of the reviewers, as required by §156.11, the clerk shall, when the board of commissioners convenes in regular session, record the same, together with the proceedings had in the matter of the petition, and if said reviewers sustain and approve the action of the viewers, without change, all costs occasioned in consequence of the remonstrance shall be taxed against the parties remonstrating, and a fee bill shall issue thereon by the clerk and be collected as provided by law.

History.—§12, ch. 4178, 1893; GS 933; RGS 1717; CGL 2768.

156.13 Changes; costs.—If the reviewers find the proposed work of public benefit or utility, and do not sustain the entire action of the viewers, but make changes in favor of the remonstrance, the costs occasioned in consequence of the filing of the remonstrance shall be taxed as a part of the total cost of the work as the same is taxed against the parties benefited in proportion to their benefit; and if the reviewers find the proposed work not of public benefit or utility, the entire costs shall be taxed against the petitioners and collected as provided in §156.12.

History.—§13, ch. 4178, 1893; GS 934; RGS 1718; CGL 2769.

156.14 Duty of county commissioners.—Upon the filing of the report of the reviewers, the board of county commissioners shall, if they find such report made in accordance with the provisions of this chapter, establish the same as described in the report of the viewers, as they find the same sustained, corrected or changed in the report of the reviewers.

History.—§14, ch. 4178, 1893; GS 935; RGS 1719; CGL 2770.

156.15 Meeting of viewers and reviewers.—Whenever the board of county commissioners establish a public ditch, drain or water course, they shall order the viewers, if same is established without remonstrance, according to the viewers' report, or reviewers, if same is established according to their report, to meet at a time and place specified after the lapse of ten days, and make a final report, in which they shall specify the time in which each share or allotment of the ditch shall be constructed or completed, and they shall apportion the costs of the location thereof, the damages, if any, and compensation to laborers who assisted in making out the ditch, and award to each person or corporation owning lands assessed for the construction of said work their proportionate share of said costs and expense, and shall specify the time in which said costs and expense be paid to the county depository, and file their report with the clerk after having subscribed and sworn to the same. And the viewers and reviewers shall file with their reports an account of the names of the laborers and the time each one was employed by them, and all compensation and damages allowed by them shall be collected as other taxes are collected, and paid out, when collected, on an order from the clerks to the parties entitled thereto.

History.—§15, ch. 4178, 1893; GS 936; RGS 1720; CGL 2771.

156.16 Review.—Any person or corporation aggrieved thereby may have reviewed by certiorari any final orders or judgment of the board of commissioners in the manner and within the time prescribed by the Florida appellate rules.

History.—§16, ch. 4178, 1893; GS 937; RGS 1721; CGL 2772; §41, ch. 63-512.

156.17 Consolidation of appeals.—If more than one appeal be taken the judge of the circuit court shall order the cases to be consolidated and tried as one case, and the rights of each party shall be determined by the jury in its verdict.

History.—§17, ch. 4178, 1893; GS 938; RGS 1722; CGL 2773.

156.18 Duty of clerk.—As soon as the final report of the viewers or reviewers is filed, the clerk shall let the jobs of digging and constructing each share or allotment, separately, of the entire work. And he shall give notice for three consecutive weeks, by posting in three public places in the vicinity of the proposed work, and at the court house door in said county, of the time when, and the places where, he will let to the lowest responsible bidder, each and every share or allotment thereof, commencing at the one including the outlet, and thence in succession up stream, to and including the source. And no bid shall be entertained which exceeds more than twenty per cent over and above the estimated cost of constructing in any case. The clerk shall receive a bond from the contractors, with two freehold sureties, payable to the state, for not less than double the amount for which the same is let, to be by him approved, conditioned that he will faithfully perform and fulfill his contract, and pay all damages that may accrue by reason of the failure to complete the job according to contract.

History.—§18, ch. 4178, 1893; GS 939; RGS 1723; CGL 2774.

156.19 Reletting job.—A job not completed within the fixed time, may be relet by the clerk to the lowest responsible bidder, subject to the conditions contained in §156.18; but the clerk may, for a good cause shown, give further time to any contractor, not to exceed sixty days.

History.—§19, ch. 4178, 1893; GS 940; RGS 1724; CGL 2775.

156.20 Duty of county surveyor.—The county surveyor, on being notified by any contractor that his job is completed, shall inspect the same, and if found satisfactory and according to contract, accept the same and give the contractor a certificate of acceptance stating that said job is completed according to specifications of said ditch.

History.—§20, ch. 4178, 1893; GS 941; RGS 1725; CGL 2776.

156.21 Where route in two counties.—Whenever the route of a proposed ditch extends into two or more counties, the petition shall be signed by one or more of the land owners in each county, whose land will be liable to be assessed for the construction of said ditch, and filed with the clerk of the county containing the head or source of the proposed ditch at least ten days previous to the meeting of the board of county commissioners, and thereupon the clerk of such county shall transcribe and transmit to the clerk of each other county interested, a certified copy of said petition, and the board of commissioners of each county interested, shall appoint three disinterested freeholders of their respective counties, as viewers, in like manner as provided for the appointment of viewers on a ditch in but one county, to meet and act conjointly at such time and place as the board of county commissioners of the county where the petition is filed may designate, and they shall have the same powers, and perform the same duties, as heretofore set forth, and they shall file a report of their proceedings with the clerk of each of the counties where interested, and each county shall bear its just and equal proportion of the expense of said work.

History.—§21, ch. 4178, 1893; GS 942; RGS 1726; CGL 2777.

156.22 Commissioners to act conjointly.—Boards of commissioners shall act in the same manner, so far as applicable, as required by this chapter for establishing ditches in but one county, and they shall act conjointly.

History.—§22, ch. 4178, 1893; GS 943; RGS 1727; CGL 2778.

156.23 Manner of cleaning ditches.—Such joint ditch shall be cleaned and repaired, or enlarged, in like manner as for ditches in but one county, by the joint action of the public officers of the counties interested.

History.—§23, ch. 4178, 1893; GS 944; RGS 1728; CGL 2779.

156.24 Draining public road and railroad.—When any ditch established under this chapter drains, either in whole or in part, any public or corporate road or railroad, or benefits any of such roads, so the bed or traveled track is made better by the construction of such ditch, the viewers or reviewers shall apportion to the same such portion of the costs and expenses thereof as to private individuals, and require them to pay such costs in like manner as individuals.

History.—§24, ch. 4178, 1893; GS 945; RGS 1729; CGL 2780.

156.25 Duty of sheriff.—The orders issued by the clerk to viewers and reviewers shall be served by the sheriff, and he shall be paid such fees as are allowed by law for similar services, which cost shall be added to the cost of constructing such ditch or drain, and paid out of the fund provided for the same.

History.—§25, ch. 4178, 1893; GS 946; RGS 1730; CGL 2781.

156.26 Majority to act.—A majority of viewers or reviewers shall be competent to act; provided, that when a ditch extends into more than one county, a majority from each county must be present.

History.—§26, ch. 4178, 1893; GS 947; RGS 1731; CGL 2782.

156.27 Lien.—The amount of assessments made by the viewers, and confirmed by the board of county commissioners, shall be a lien upon the lands so assessed, from the date of the order of board of commissioners establishing the ditch; and such order, together with the report of the viewers on which the ditch is established, shall be a notice to all the world of the existence of such lien.

History.—§27, ch. 4178, 1893; GS 948; RGS 1732; CGL 2783.

156.28 Extent of chapter.—This chapter shall apply whenever practicable to any organized system of drainage now operating or that may hereafter be operated in this state.

History.—§28, ch. 4178, 1893; GS 949; RGS 1733; CGL 2784.

CHAPTER 157

DRAINAGE BY COUNTIES

157.01 Public ditch, drain or canal.—Whenever it shall be deemed necessary or expedient, for sanitary or agricultural purposes or conducive to the public health, convenience or welfare, or public utility, or for the benefit of any lands that are low, wet, submerged or liable to become submerged, to establish a public ditch, drain or canal in any of the counties of this state by a majority of those owning the lands through which such proposed ditch, drain or canal shall run or by those owning the greater part of the lands through which such proposed ditch, drain or canal shall run, and by a majority of those owning lands or by those owning the greater part of the lands contiguous thereto, that are benefited by such ditch, drain or canal, the majority of those owning such lands or those owning the greater part of such lands as aforesaid, shall present a petition to the county commissioners of the county in which such ditch, drain or canal is to be located, with a plat of said lands, showing the general course of such proposed ditch, drain or canal, setting forth the cause for the same, its length and the lands to be benefited thereby. Upon filing such petition and plat with the county commissioners, they shall lay the same over until the next regular meeting and give notice by publication for three weeks, in some newspaper published in the county, of the date when they will consider said petition, citing all persons who may be interested to appear and present any reason why such petition should not be granted.

History.—§1, ch. 5035, 1901; GS 950; §1, ch. 6457, 1913; §1, ch. 6958, 1915; §1, ch. 7307, 1917; RGS 1734; CGL 2785.
cf.—§298.66 Penalty for obstructing public drains.

157.02 Action on petition by county commissioners.—Should the county commissioners,

when the petition mentioned in §157.01, has been considered, deem it improper to grant the same it shall then be denied, but should they deem it proper to grant the same, they shall then enter an order of record that the said petition be granted.

History.—§2, ch. 5035, 1901; GS 951; §2, ch. 6457, 1913; RGS 1735; CGL 2786.

157.03 Commissioners to appoint committee; report of plans and estimate; letting contract; right-of-way for drains.—When the county commissioners shall order that such ditch, drain or canal, shall be established, they shall appoint a committee of three disinterested freeholders who are citizens of the county, who may employ a surveyor, and shall cause an accurate survey to be made of the proposed ditch, drain or canal, and shall establish the commencement, route, and terminus of said ditch, drain or canal, the width, length, and depth thereof, and shall make and present to the county commissioners, at their next regular meeting, or at a meeting as soon thereafter as practicable, plans, specifications and profiles for said construction, together with an estimate of the approximate cost of said ditch, drain or canal, and the annual cost of its maintenance, and upon this report of the said committee, the board of county commissioners shall advertise once a week for three weeks, in a newspaper published in the said county, for bids for the construction of said ditch, drain or canal, and the same shall be given to the lowest responsible bidder; provided, the board of county commissioners may, if they deem it for the best interest of all concerned, reject all bids; and in case said bids are rejected they may advertise for further bids. Whenever the survey for any proposed ditch, drain or canal, shall run through the lands of anyone who shall object thereto, the board of county commissioners may proceed to condemn the right-of-way for such ditch, drain or canal, and pay therefor out of the funds arising from the levy and assessments hereinafter provided for.

History.—§3, ch. 5035, 1901; GS 952; §3, ch. 6457, 1913; RGS 1736; CGL 2787.

157.04 Bond required before letting contract.—Before letting contract for the construction of any such ditch, drain or canal, the board of county commissioners shall require the contractor to give a good and sufficient bond payable to the governor of the state, for the construction and completion of said work according to plans and specifications and the terms and provisions of the contract.

History.—§4, ch. 5035, 1901; GS 953; §4, ch. 6457, 1913; RGS 1737; CGL 2788.

157.05 Work done under supervision of committee; when completed, report to commissioners; payments.—The work shall be done under the supervision of the committee as hereinbefore provided, and when completed, the committee shall report the same to the board of county commissioners, who shall also inspect such work together with the engineer in charge, and approve the same before final payment is made to the contractor, and the report of said work, together with the approval of the work by the board of county commissioners and the said engineer, shall be entered upon the minutes of the board of county commissioners; provided, that the board of county commissioners may, during the progress of the said work, if they think proper to do so, make payment in installments on said work of not to exceed eighty per cent of the value of the work so done, to be certified by the engineer in charge, reporting to the board of county commissioners. Such engineer shall be appointed by said committee subject to the approval of the board of county commissioners.

History.—§5, ch. 5035, 1901; GS 954; §5, ch. 6457, 1913; RGS 1738; CGL 2789.

157.06 Committee to view land before letting contract; assessment; hearing complaints; collection of tax, etc.—If said ditch, drain or canal has been ordered, but before letting the contract therefor, the committee hereinbefore provided for shall view the lands to be benefited by such ditch, drain or canal, as shown by the petition and plat presented to the board of county commissioners, and, after the cost of construction is ascertained, they shall assess each parcel according and in proportion, as it shall be benefited by said ditch, drain or canal, for all expenses that may be incurred in the construction of said ditch, drain or canal, including the interest charges, the expenses of the committee and engineer, and for any condemnation proceedings, together with their estimate of the amount per acre for annual maintenance of said ditch, drain or canal, and shall file a report of the same with the board of county commissioners, who shall at once give notice by publishing in a newspaper published in said county, once a week for two weeks prior to the next regular meeting, that they will, at their next regular meeting, hear complaints from the owners or agents of any lands affected, against the assessment so made, and the board of county commissioners may equalize the assessment so made, but cannot raise or lower the total amount of the assessment so made by the said committee. After hearing such complaints, if any, or equalizing the assessment, if they shall see fit to do so, they shall then turn over to the tax assessor the said assessment, with instructions to enter the same as the levy upon the lands in the regular tax assessment book; said assessment may be levied for one year or in yearly assessments for a period not to exceed thirty years, according as it may be deemed advisable, the manner in which the same is to be levied to be determined by the board of county commissioners and entered of record, when the same is turned over to the tax assessor. The same shall be collected by the tax collector in like manner as other taxes are collected, and made a special fund for the payment of the indebtedness incurred in the construction and annual maintenance of said ditch, drain or canal.

History.—§6, ch. 5035, 1901; GS 955; §6, ch. 6457, 1913; RGS 1739; CGL 2790.

157.07 Where cost of construction exceeds estimated cost commissioners to assess difference.—Whenever any public drain or auxiliary thereto has been constructed, is now in process of construction, or may hereafter be constructed by the board of county commissioners, under the provisions of any law now in force, or that may hereafter be enacted, and the actual cost of the construction of said drain or auxiliary shall have exceeded or may exceed the estimated cost thereof, said board of county commissioners shall assess against the lands benefited or to be benefited by said drain or auxiliary thereto, the difference between the estimated cost thereof and the actual cost thereof.

History.—§1, ch. 5378, 1905; RGS 1740; CGL 2791.

157.08 Assessments; validation.—After the special drainage district has been constituted and the assessments have been made and levied by the board of county commissioners, and before awarding the contract for the construction of any such ditch, drain or canal, the board of county commissioners shall, as soon as practicable, issue and sell district drainage bonds for the total amount of such assessments, less the interest charges. Said bonds shall bear interest not to exceed six per cent per annum, payable semi-annually, with interest coupons attached thereto, and shall be issued in denominations of not exceeding one thousand dollars. The board of county commissioners shall, in issuing and selling said bonds, and in disbursing the proceeds thereof, act in substantial conformity with the provisions of these statutes applicable to the issue and sale of bonds for the purpose of constructing hard surfaced highways or public buildings; with the exception, that the assessments for the payment of interest and to provide a sinking fund for the payment of the bonds shall be assessed and collected only upon the taxable property within the boundary of such special drainage district; and the bond trustees shall reside in the county, but not necessarily in the drainage district, but in no case shall district bonds be issued or sold against any drainage district for a greater amount than the assessment imposed upon lands in such district, and the bonds shall be issued in such maturities as will enable them to be paid in installments from time to time as fast as substantial amounts shall accumulate from the collection of the assessments. And the validity of all bonds issued under this chapter may be determined and established in the manner provided by law for the validation of bonds issued by cities and municipalities.

History.—§7, ch. 5035, 1901; GS 956; §7, ch. 6457, 1913; §2, ch. 6958, 1915; RGS 1741; CGL 2792.

cf.—Ch. 75 Validation of municipal bonds.
Ch. 130 County bonds.

157.09 Compensation of committee.—The committee appointed by the county commissioners for the purpose aforesaid shall receive compensation for their services as may be agreed upon; provided, they shall not be paid more than five dollars per day for time actually spent by each man.

History.—§9, ch. 5035, 1901; GS 958; §8, ch. 6457, 1913; RGS 1743; CGL 2794.

157.10 Application to lateral ditches.—The provisions of this chapter with reference to locating, surveying, cutting and maintaining the same, and every other provision of said chapter with reference to such public ditch, drain or canal, are made applicable to all lateral ditches and drains that may be deemed necessary or expedient for the drainage and benefit of lands lying in the vicinity of such public ditch, drain or canal, that may be reached, drained or benefited by lateral ditches or drains.

History.—§12, ch. 5201, 1903; GS 959; RGS 1744; CGL 2795.

157.11 Lateral drains may be established; commissioners may enlarge district or widen any drain; cost; proviso.—Lateral drains may be established in like manner as main ditches, drains or canals. Such lateral ditches, drains or canals may be made a part of the original plat and survey of such main ditch, drain or canal, and may be in the original petition therefor, or may be established in like manner under the provisions of this chapter, at any time after the completion of such main ditch, drain or canal. Any drain or lateral that has been constructed, or which may hereafter be constructed, under the provisions of this or any prior act, shall be and remain under the exclusive control and direction of the board of county commissioners, and no drain shall be connected therewith or cut into the same without the consent of the board of county commissioners first obtained in writing, stating how such connection shall be made, and the connection shall then be made in such manner as the said board shall direct; and any person failing to observe the direction of the board in making such connection shall be guilty of a misdemeanor. The said board of county commissioners may enlarge or extend any drain and drainage district, or deepen or widen any drain, and assess the property benefited and raise the money and pay the cost thereof under the same conditions and procedure provided herein for the establishment and construction of drains; provided, that a drain may be deepened and widened upon the petition of one-fourth of the owners of property, or the owners of one-fourth of the property originally assessed for the construction thereof. Any mistake, oversight, miscalculation or error in any proceedings had under this chapter may be corrected, and shall thereafter be deemed and held as valid and binding as if the same had not occurred.

History.—§13, ch. 5035, 1901; GS 960; §9, ch. 6457, 1913; §3, ch. 6958, 1915; RGS 1745; CGL 2796.

157.12 Duty of bond trustees to borrow money to pay interest on bonds until collection of first assessment; may issue notes; notes and bonds lien against lands; committee may issue notes.—Whenever any drainage district has

been constituted and district drainage bonds issued by the board of county commissioners, as provided in this chapter, the bond trustees shall borrow such money as shall be found necessary to pay the semi-annual installments of interest on said bonds until the collection of the first assessment levied against the lands in the drainage district, and said trustees may issue their negotiable notes, bearing interest at not more than eight per cent per annum, as evidence of and security for such loan as they may procure, and should there not be money to the credit of said drainage fund to pay any future installment of interest at the maturity thereof, the same shall be provided by the trustees in like manner; and the owner and holder of any such note or notes shall have by virtue thereof a lien against the lands in the drainage district, and the moneys raised by the assessments levied thereon for the payment of said note or notes. Bonds issued under this chapter shall be a lien upon the lands embraced within such drainage district, and such lien shall be prior in dignity to all others except taxes. Should the committee, provided for in §157.03, find it necessary to raise money to meet any expense incurred in the discharge of its duties before funds shall be provided by issue and sale of bonds, as herein stipulated, then and in that event the said committee, with the approval of the board of county commissioners, may issue negotiable promissory notes for such amount as shall be found necessary, said notes to bear interest not to exceed eight per cent per annum, and the owner and holder thereof shall have a like lien and be afforded like protection as herein provided for the holder of notes issued by the bond trustees.

History.—§10, ch. 6457, 1913; §4, ch. 6958, 1915; RGS 1746; CGL 2797.

157.13 Use of surplus of bond proceeds.—Should there remain any of the proceeds of the sale of said special drainage district bonds after paying for the construction of the improvements for which said bonds were issued, such surplus shall be held by the bond trustees and paid out by them, upon the order of the board of county commissioners, for the repair and maintenance of the public ditches, drains or canals within said special drainage district.

History.—§11, ch. 6457, 1913; RGS 1747; CGL 2798.

157.14 Owner may pay whole tax in one sum; county commissioners may make new assessments where former assessments found illegal; time in which assessments may be questioned in collateral proceedings.—Any person owning lands assessed for the purposes hereinbefore specified, may, at any time, pay in full the total amount assessed against his property and obtain a release therefrom from the board of county commissioners, and the same shall be entered upon the minutes of the board of county commissioners, and the board of county commissioners shall instruct the tax assessor to thereafter omit the said property, so released, from further assessment for said purpose. And in the event any of the assessments herein provided for shall be found to be irregular or illegal, the said board of county commissioners may make new and other assessments in accordance with the provisions of this chapter, correcting such irregularities, until the owners of the land assessed shall have paid the amount for which they are properly assessable; and in no case shall the validity of any assessment be questioned in any direct or collateral proceedings brought more than three months after the report of the committee assessing the lands benefited shall be filed with the board of county commissioners and equalized and approved by said board.

History.—§12, ch. 6457, 1913; §5, ch. 6958, 1915; RGS 1748; CGL 2799.

157.15 County commissioners may issue bonds to pay script; decrease of assessment.—The county commissioners may, with the consent of the holder of any script issued under the provisions of any existing law to raise money to pay for the construction or the deepening or widening of any ditch, drain or canal, issue bonds for a corresponding or longer period, and sell the same and pay the script, or exchange with the holder thereof, cancel the original script and lower the annual assessment in accordance with the longer time the bonds may run.

History.—§13, ch. 6457, 1913; §6, ch. 6958, 1915; RGS 1749; CGL 2800.

157.16 Enlarging drains and assessing cost.—Whenever, heretofore or hereafter, a public drain or auxiliary thereto shall have been constructed by the board of county commissioners of any county under any law now in force, or that hereafter may be in force, the said board of county commissioners upon a petition of one-fourth of the owners of the property originally assessed for said drain, shall enlarge or deepen said drain or auxiliaries thereto and assess the cost of such enlargement or deepening of said drain or auxiliaries thereto against the lands benefited thereby.

History.—§2, ch. 5378, 1905; RGS 1753; CGL 2804.

157.17 Assessment to maintain drains.—Whenever any public drain or auxiliaries thereto shall have been constructed by the board of county commissioners of any county under any law now in force, or that may hereafter be in force, the said board of county commissioners may assess against the lands benefited by said drain or auxiliaries thereto the necessary cost of the maintenance and repair of said drain or auxiliaries thereto.

History.—§3, ch. 5378, 1905; RGS 1754; CGL 2805.

157.18 Awarding contract for enlarging or repairing drains.—Whenever it shall become necessary in the opinion of the county commissioners to enlarge or deepen any drain or auxiliary thereto, heretofore constructed, or that may hereafter be constructed, or to contract for the maintenance or repair thereof, the contract for doing such work shall be let

to the lowest bidder therefor, after public advertisement for such time as the county commissioners shall provide by resolution.

History.—§4, ch. 5378, 1905; RGS 1755; CGL 2806.

157.19 Where actual cost exceeds estimated cost; additional work; assessment for same.—Whenever during the construction of any drain or auxiliary thereto, and before the completion thereof, it shall be made evident to the board of county commissioners that the actual cost thereof will exceed the estimated cost thereof, or that further or additional work is necessary to complete said drain or auxiliary not covered or provided for in the original contract of construction, the said board of county commissioners may enter into any or all additional contracts for the additional work necessary to complete said drain or auxiliary thereto without advertising for bids thereon, and they shall make the best contract they can for the interests of the property owners, whose lands have been and will further be assessed to construct said ditch or auxiliary, and said board of county commissioners, shall make all further and necessary assessments against the lands already assessed to pay all necessary costs and charges for the full completion of said drain or auxiliary.

History.—§5, ch. 5378, 1905; RGS 1756; CGL 2807.

157.20 Appointment of committee to view work and make assessments; report to commissioners; form of assessment.—Whenever it shall become necessary to raise money for any of the purposes set out in §§157.07 and 157.19 the board of county commissioners shall appoint three competent and disinterested persons who are citizens of the county who shall view the work and all lands benefited by said drain or auxiliaries thereto, both those lands lying immediately along said drain or auxiliaries and those adjacent thereto, and shall assess against each parcel of land according and in proportion as each shall be benefited, its proportionate share of such additional cost of such drain or auxiliary above the estimated cost thereof, which said assessment shall be reported to the county commissioners at a regular meeting of said board, which said assessment shall show each parcel of land so assessed, the amount of said assessment and the names of the several owners, unless the said owners by diligent inquiry cannot be ascertained, when the names shall be given as unknown.

History.—§6, ch. 5378, 1905; RGS 1757; CGL 2808.

157.21 Enlargement of drains; appointment of committee; report to commissioners; letting contract; contractor's bond; payments; assessment.—Whenever the board of county commissioners shall have determined upon a petition, filed as provided in §157.16, to enlarge or deepen any drain, they shall appoint a committee of the three competent and disinterested persons who are citizens of the county, who shall cause an accurate survey to be made of the proposed work, and shall establish the depth or width to which the same shall be deepened and shall make and present to the county commissioners at their next regular meeting, an estimate of the cost of said work, and upon the report of said committee to them, said county commissioners shall advertise not less than two weeks in a newspaper published in the county, for bids on said work, to be given to the lowest responsible bidder, with the privilege of rejecting all bids that may be offered, should the same be considered unreasonable; and in case the said bids are rejected, they may again advertise for further bids. The said board of county commissioners shall require of the person whose bid is accepted for said work a good and sufficient bond for the faithful performance of said contract, which said work shall be done under the supervision of the committee appointed as aforesaid. When the work shall be completed the committee shall certify the same to the board of county commissioners who shall also inspect such work before final payment is made to the contractor, and such confirmation with the report of the committee that the work has been done according to contract, shall be made a matter of record; provided, that nothing in this chapter shall prevent the county commissioners from making payments in installments during the progress of the work, if deemed expedient. Before letting such contract, the committee appointed by the commissioners shall view the lands to be benefited by the enlargement or deepening of said drain or auxiliary and assess each parcel according and in proportion as each shall be benefited, both those lands lying immediately along such ditch, drain or canal, and those adjacent thereto, for all the expenses that may be incurred in the enlarging or deepening of said drain and keeping the same in repair from year to year, and shall file a report of the same with the board of county commissioners, which said report shall show the several tracts of lands assessed and the names of the owners thereof, and the amounts assessed against each tract; provided, however, that if the owners of any tract cannot be ascertained by diligent inquiry, said tract shall be assessed as unknown.

History.—§7, ch. 5378, 1905; RGS 1758; CGL 2809.

157.22 Repairing drains; appointment of committee; report to commissioners; contract; bond; assessment, etc.—Whenever it shall become known to the board of county commissioners that it is necessary to repair any public drain or auxiliary thereto the said board of county commissioners shall appoint a committee of three competent and disinterested persons who are citizens of the county who shall ascertain the amount necessary for the repair of said work, and who shall report the same to the board of county commissioners at their next regular meeting, and upon the report of said committee to them they shall advertise not less than thirty days in a newspaper published in the county for bids on said work to be given to the lowest responsible bid-

der. Before letting the contract for the work, the said county commissioners shall require a sufficient bond from the contractor for the faithful performance of said work; when the work shall be completed the committee shall certify the same to the board of county commissioners who shall also inspect said work before final payment is made to the contractor, and such confirmation with the report of the committee that the work has been done according to contract shall be made a matter of record. Before letting such contract the committee appointed by the commissioners shall view the lands benefited by such drain or auxiliary and shall assess each parcel according and in proportion as each may be benefited, both those lands lying immediately along the drain or auxiliary thereto and those adjacent thereto for all the expenses that may be incurred in the repair of such drain, and shall file a report of the same with the board of county commissioners. Said report shall show each tract and parcel of land assessed, the amount of said assessment, and the names of the several owners, unless the owner cannot be ascertained by diligent inquiry, when the same may be assessed as unknown.

History.—§8, ch. 5378, 1905; RGS 1759; CGL 2810.

157.23 Objections to report of committee fixing assessment; notice; hearing; equalization; assessments; collection by tax collector.—Whenever the report of any committee appointed under the provisions of this chapter, showing the amount of assessment against any lands for work done, or to be done, in accordance with the provisions of this chapter shall have been filed with the board of county commissioners, they shall at once give notice by publishing in a newspaper published in said county, for not less than two weeks prior to a regular meeting that they will at their next regular meeting hear complaints from the owner or agent of any real estate against the assessment so made against said property and the said county commissioners shall have the full power to equalize the assessments so made against said real estate, but cannot raise or lower the entire assessment so made by the committee so appointed by them to make said assessment and said assessment when equalized shall, by the county commissioners when they are satisfied that such assessments are just and proper, be turned over to the tax assessor with instructions to levy such assessment upon such parcels of land as aforesaid; provided, that when the assessment shall have been made under §§157.07, 157.17 or 157.19, the notice published by the county commissioners shall only be required to contain the name of the drain or auxiliary thereto and the total amount of the assessment; and provided further, that when the assessment is made under §157.16, if no other lands are assessed than those assessed for the original construction of the drain or auxiliary thereto, then the notice given by the county commissioners need not contain anything but the name of said drain or auxiliary and the total amount of said assessment, but if the assessment is made under §157.16 and any other lands are assessed than those assessed for the original cost of the drain or auxiliary then the notice given by the county commissioners shall, in addition to the name of the drain and the total amount of the assessment give the several additional tracts of land so assessed, the owners thereof and the amount of assessment against such additional tracts of land. Said assessments may be levied for one year or in yearly assessments for two, three, four or six years, according as it may be deemed advisable and for the best interests of those concerned, and shall be collected by the tax collector in like manner as other taxes are collected, and made a special fund for the cancellation or redemption of the indebtedness incurred in the construction of said drain or auxiliary as aforesaid.

History.—§9, ch. 5378, 1905; RGS 1760; CGL 2811.

157.24 Commissioners may issue interest bearing script against land to borrow money or pay for work; lien on land assessed.—When any assessments under the provision of this chapter have been ordered by the county commissioners they may issue script bearing six per cent interest against the lands assessed, redeemable in one, two, three, four or six years, as the case may be, upon which they may borrow money with which to pay for the work aforesaid, or shall have the right to pay said script when issued for the cost of the work contracted for, direct to the contractor at its face value, and such script shall be a lien upon the lands assessed as aforesaid until such script shall be redeemed, and the indebtedness fully satisfied; provided, that no lien shall lie or be enforced against any tract of land for more than the amount so assessed against said tract.

History.—§10, ch. 5378, 1905; RGS 1761; CGL 2812.

157.25 Compensation of committee; irregular assessment corrected.—The committee appointed by the county commissioners for the purposes aforesaid shall receive such compensation for their services as may be agreed upon.

In the event any of the assessments herein provided for shall be declared illegal by any court on account of any irregularities therein, the said board of county commissioners may make new and other assessments in accordance with the provisions of this chapter, correcting said irregularities until the owners of the lands assessed shall have paid the amount for which they are properly assessable.

History.—§12, ch. 5378, 1905; RGS 1763; CGL 2814.

157.26 Repair and maintenance of drains under supervision of county commissioners.—All ditches, drains and canals heretofore or hereafter constructed in any county of the state under the provisions of this chapter, shall for the purpose of maintenance and repair be and remain under the supervision and control of the board of county commissioners of the county where located.

History.—§1, ch. 6190, 1911; RGS 1764; CGL 2815.

157.27 Proceedings for making repair to drains, etc.—When it shall be made to appear to the board of county commissioners of any county that any such ditch, drain or canal within said county is in need of repair, that fact shall be entered upon the minutes of said board and published in at least one issue of a newspaper published in said county in and with the minutes of said board, and unless good cause to the contrary shall be shown by one or more interested owners of land to be taxed for said purpose, at the next regular meeting of the board, an order may be entered directing such repairs to be made.

History.—§2, ch. 6190, 1911; RGS 1765; CGL 2816.

157.28 Awarding contracts for repair, etc.—If the estimated cost of repairing any such ditch, drain or canal shall not exceed the sum of one hundred dollars, the board of county commissioners shall have full power to have the same done in such manner as said board may see fit; but if such estimated cost shall exceed one hundred dollars, then the contract shall be let to the lowest responsible bidder after giving four weeks' previous notice by advertising once each week in some newspaper published in the county, or by posting in five conspicuous places in the commissioners' district in which such ditch, drain or canal shall be located, and all work done shall be subject to the approval and acceptance of the board of county commissioners.

History.—§3, ch. 6190, 1911; RGS 1766; CGL 2817.

157.29 Levy of tax for maintaining and repairing drains; assessment and collection of tax; sale of land for unpaid taxes.—For the purpose of paying the cost of maintaining and repairing any such ditch, drain or canal and auxiliaries thereto, the board of county commissioners of the several counties of the state, wherein any such ditch, drain or canal is, or may be, located shall, when deemed necessary, levy such tax as in the opinion of said board may be deemed necessary for said purpose, which tax shall be levied upon the same lands originally assessed for the construction of such drain; and the expense of maintenance shall be borne by said lands in the same relative proportion as the original expense of constructing said drain, and the tax so imposed shall be levied and assessed by the same officers at the same time and in the same manner as other taxes are assessed, and shall be collected by the county tax collector as other taxes are collected, and in case of default in the payment of such tax the same penalty shall obtain and the lands may be sold and conveyed in the same way that lands are sold and conveyed for the collection of other taxes, and the money so collected shall be preserved in a separate fund for the maintenance of the ditch, drain or canal for the original construction of which such lands were assessed.

History.—§4, ch. 6190, 1911; RGS 1767; CGL 2818.
cf.—§298.66 Penalty for obstructing drainage canals, etc.

157.30 Re-assessment of lands where attempt to establish ditch or canal irregular.—In all cases where there has been an attempt to establish a public ditch, drain or canal, in any of the counties of this state, and the county commissioners in pursuance of such attempt have proceeded to establish a public ditch, drain or canal, but there has been a failure to comply with the law, either in respect to the proceedings prior to the action by the county commissioners, or in respect to the subsequent proceedings, the lands specially benefited by such public ditch, drain or canal shall be subject to reassessment on account of such special benefit at any time within three years from the final completion of the work, or if bonds or scrip have been issued, at any time before said bonds or scrip shall become due, in case a former assessment shall be discovered to be defective, irregular, or not in compliance with law, or be declared by the judgment of a court to be void.

History.—§1, ch. 6963, 1915; RGS 1768; §1, ch. 9130, 1923; CGL 2819; §7, ch. 22858, 1945.

157.31 Notice of re-assessment for drainage.—In all such cases, the board of county commissioners, upon the matter being brought to its attention, shall cause to be published in some newspaper published in the county, once a week for a period of three weeks, a notice substantially in the following form:

"Notice of Re-assessment for Drainage.

Whereas, it has been discovered that the proceedings to establish a public ditch, drain or canal, commencing at _____ and running in a general_____ course through the following lands, viz._____ were defective, and the assessment in pursuance thereof made was invalid, or irregular and not made in compliance with law, now, therefore, notice is hereby given to all persons interested, that the County Commissioners of _____ county, will be in session at _____ o'clock in the forenoon, at the court house, on the_____ day of_____, 19____, for the purpose of providing for a reassessment of the property specially benefited by the said public ditch, drain or canal, and all persons interested are hereby notified to attend on the said day, and present objections, if any, to the said re-assessment, and are further notified that the board will give a hearing to all parties interested, and act on the said matter at the said meeting."

History.—§2, ch. 6963, 1915; RGS 1769; §2, ch. 9130, 1923; CGL 2820.

157.32 Reviewing complaints and making assessment against property benefited.—If it shall appear to the board, after hearing all parties interested, that the public ditch, drain or canal has been an actual special benefit to the property served by it, and that the proceedings for the establishment thereof have been carried out bona fide and without fraud, the board shall proceed to assess each parcel of land benefited thereby for the expenses incurred in the construction of such ditch, drain or canal in proportion to the benefit accruing,

and thereupon the board shall give notice once a week for two weeks, by publishing the same in some newspaper published in the county, that at its next regular meeting it will be in session for the purpose of reviewing the assessments and hearing complaints against the same. If no such complaints are filed in writing on the first day of the meeting of the board the assessments shall stand confirmed. If complaints are filed, the board shall hear and determine the same, and, if allowed, may modify or change the former assessments so as to equitably spread the burden on the property specially benefited.

History.—§3, ch. 6963, 1915; RGS 1770; CGL 2821.

157.33 Issuance of script to take up former script or bonds.—After the provisions of §§157.30-157.32 have been complied with, the board may issue script or bonds, as the case may be, to be delivered to the holder or holders of script or bonds issued pursuant to former proceedings upon surrender of the former script or bonds.

History.—§4, ch. 6963, 1915; RGS 1771; CGL 2822.

157.34 Re-assessments to have effect as original assessment.—All assessments made pursuant to the provisions of §§157.30-157.32, shall have the same force and effect as is provided in cases of original assessments, and payment thereof shall be provided for and be enforced in the same manner.

History.—§5, ch. 6963, 1915; RGS 1772; CGL 2823.

157.35 Assessments conclusive after lapse of six months.—After the lapse of six months from the final action of the board at its meeting to hear complaints against assessments, all assessments made shall be conclusive in any proceedings at law or in equity, in any court in this state.

History.—§6, ch. 6963, 1915; RGS 1773; CGL 2824.

157.36 Adjustment of drainage tax liens.—Boards of county commissioners may act as a board of adjustment in settling and adjusting all delinquent drainage tax liens levied for interest and sinking fund purposes in drainage districts created and established in their respective counties of Florida, under authority of this chapter or chapter 156, wherein the total delinquent drainage tax liens in such respective drainage districts are in excess of their respective total debt requirements.

History.—§1, ch. 17458, 1935; CGL 1936 Supp. 2824(1).

CHAPTER 158

EROSION PREVENTION DISTRICTS

158.01 Erosion prevention districts. — Authority is hereby granted for the establishment of erosion prevention in any of the counties of the state.

History.—§1, ch. 20926, 1941.

158.02 Establishment; petition; election; etc.—

(1) Whenever one or more election precincts in any of the said counties of this state shall desire to establish an erosion prevention district as shall by this law be provided, not less than twenty per centum of the registered voters of the said voting precinct or precincts may file a petition with the board of county commissioners of said counties, requesting that an election shall be called within said precinct or precincts to determine whether or not an erosion prevention district shall be established. At the time of the filing of said petition the persons signing the same shall deposit with the board of county commissioners a sum of money sufficient to defray the costs of said election, the amount necessary for such purpose shall be fixed by the board of county commissioners. When the said petition is presented to said board and the money necessary to defray the costs is herein determined, it shall be the duty of the board of county commissioners of said county within not less than sixty days thereafter to call an election to be held in the said voting precinct or precincts to determine the question as to whether or not said district shall be established. If a majority of the qualified electors residing in the said precinct or precincts shall vote in favor of the establishment of such a district, then upon the official determination of the results of said election by the board of county commissioners, then the said district is hereby declared to be legally established. It shall be the duty of the board of county commissioners of said county or counties to canvass the returns of said election for this purpose.

(2) The election herein provided for shall be conducted in the same manner and under the same laws, rules and regulations as primary elections are now provided for by law. It shall be the duty of the board of county commissioners to provide the necessary ballots, voting places, inspectors, clerks and deputies for the holding of said election. The said ballots shall be so drawn as to permit the voter to express in the affirmative or the negative his wishes with reference to the establishment or non-establishment of said district.

History.—§2, ch. 20926, 1941.

158.03 Commissioners; terms; organization; etc.—The said district shall be governed by a board of three commissioners, who shall be appointed by the governor and who shall serve without compensation, provided, however, that they shall be entitled to a fee of two dollars each for attendance upon board meetings in addition to any traveling expenses paid pursuant to §112.061. The said commissioners shall hold office for a period of four years or until their successors are appointed and qualified. They shall be required to take the same oath to perform the duties of their office as is required of all state and county officers of this state. When the said board is appointed, one member thereof shall be elected as chairman of the board and one member shall be elected as secretary. The board shall provide itself with a seal, which shall be affixed to all official documents and resolutions of the said board.

History.—§3, ch. 20926, 1941; §8, ch. 63-400.

158.04 Powers; resolutions; employees; etc. —The said district by and through its legally constituted board of commissioners is hereby authorized by resolution of said board to estimate and determine a plan necessary to prevent erosion in all or any of the said district, and may employ the services of a competent engineer, attorney and clerical assistance to aid them in the preparation of said plan and shall by said resolution determine the cost thereof, and is hereby authorized to do all things necessary, to construct, establish and erect all bulkheads, seawalls and other structures necessary to prevent the erosion as aforesaid, and is authorized to defray the costs thereof from any funds belonging to said district. The power and right of eminent domain are hereby granted to the boards of commissioners of said districts. They shall be entitled to file suits in courts of competent jurisdiction for the purpose of condemning such properties as may be necessary for the furtherance of the purposes of such districts, and to this end said districts are authorized to contract, sue and be sued and exercise all powers necessary to carry out the functions and purposes for which said districts are created.

History.—§4, ch. 20926, 1941.

158.05 Taxation; millage; warrants; etc. —The said board of commissioners by resolution shall request the county commissioners of said county or counties to levy on all taxable property within said district a millage sufficient to defray the costs of the works herein authorized to be carried on and to provide for interest

and sinking funds on any notes, certificates, time warrants or bonds as may be issued under the authority of this act, providing, however, the said millage shall in no case exceed ten mills on the dollar on all taxable property within said district, and it shall be the duty of the board of county commissioners to make such levy as shall be requested by the board of commissioners of such erosion prevention districts. The tax collectors of the respective counties are hereby authorized and required to collect the said taxes at the same time and in the same manner as other county taxes are collected and they shall deposit the sums derived therefrom in a safe depository within the county where said district is located, and may require such depository to post an adequate surety bond to insure the safety of said funds, and it shall be the duty of said depository to pay out said funds on warrants, checks or drafts signed by the chairman of the board of commissioners of said district and countersigned by its secretary. Tax collectors are hereby allowed to charge the same fees as authorized by law for the collection of other county taxes. No warrants, checks or drafts shall be drawn on the depository holding the funds of said district except on resolution of the board regularly adopted, specifying the purpose or purposes for which said warrants, checks and drafts are drawn, but the depository of said funds shall not be required to determine whether such resolution is passed nor the validity thereof before paying such checks, warrants or drafts, but shall only look to the form and signatures of the same; provided, however, that no tax shall be levied on any property in such district, nor shall any bonds, time-warrants, or certificates of indebtedness be issued as hereinafter in §§158.07-158.09 provided, excepting in connection with an erosion protection project for the payment of which a federal or other governmental agency, other than such district created hereunder, pay at least one-half of the cost.

Provided that for the Captiva erosion district the commissions paid to the county tax assessor and the county tax collector on the millage assessed for the assessments and collections of taxes for said district shall be at the rate of three per cent to said county tax assessor and three per cent to the said county tax collector. All commissions previously paid to said county tax assessor and said county tax collector are hereby ratified and confirmed.

History.—§5, ch. 20926, 1941; §1, ch. 59-265.

158.06 Obtaining federal funds and aid; etc.—The said board of commissioners of said districts, whenever it may be necessary to meet the requirements of the United States government with reference to obtaining of federal funds in the further prosecution of its work from any agency of the U. S. government, they are hereby authorized by resolution of such board, to appropriate, set aside, transfer and expend from any fund of such district, such sums of money as may be necessary to obtain said grant from the federal government or any of its agencies, and to do all things necessary and proper for such purpose.

History.—§6, ch. 20926, 1941.

158.07 Bonds; issuance; interest; maturity.—The board of commissioners of said districts be and they are hereby authorized and empowered to issue, deliver and sell interest bearing time warrants bonds and on certificates of indebtedness of the said district, in such sum as the board may determine to be necessary for the prosecution of the authority in them by this law vested. Such time warrants bonds certificates of indebtedness herein provided for shall be issued in denominations of from one hundred dollars to one thousand dollars, in the discretion of the board, and shall be payable to bearer, and shall be signed by the chairman of said board and counter-signed by the clerk thereof and shall have affixed thereto the official seal of the said board and shall bear interest at the rate not to exceed six per centum per annum and said interest may be represented by interest coupons attached to said time warrants, bonds or certificates of indebtedness payable to bearer and bearing the facsimile signatures of the chairman of said board and the secretary thereof. Said time warrants bonds or certificates of indebtedness shall mature at such time or times as may be determined by the said board.

History.—§7, ch. 20926, 1941.

158.08 Sale of bonds; validation, payment; etc.—Such time warrants, bonds or certificates of indebtedness herein provided for shall be sold at either public or private sale, as the board of commissioners may determine. If sold at private sale, the same shall not be sold for less than par, and if sold at public sale, public notice of sale shall be given by advertisement once each week for two consecutive weeks in a newspaper published in the county where the said district lies, and shall be sold to the highest bidder therefor, provided said board may reject any or all bids. The moneys derived from the sale of said time warrants shall be placed in the official depository of said district and be used for the purposes authorized by this law and shall be subject to the order of said board of commissioners as herein authorized. The said board of commissioners is hereby authorized, directed and empowered to pay the principal and interest maturing and becoming due on said time warrants, bonds or certificates of indebtedness from the current revenues of said districts and the board is hereby authorized, directed and empowered to transfer any necessary funds for such payments from any fund belonging to said districts. The said time warrants, bonds and certificates of indebtedness may be validated by proper proceedings in court, but validation thereof is not mandatory, nor necessary to the legality of said time warrants, bonds or certificates of indebtedness.

History.—§8, ch. 20926, 1941.

158.09 Election a prerequisite; conduct of election; voting lists; etc.—

(1) Section 158.07 shall be of no force and effect until there shall have been an election held

within the said district, in which election a majority of the freeholders who are qualified electors residing in said district shall participate. That said election for the issuance of the time warrants, bonds, or certificates of indebtedness shall be held at such time as shall be designated by the board of commissioners of such districts. It shall be the duty of the board of county commissioners of said counties to provide for the holding of said election in the same manner and under the same laws, rules and regulations as is now provided by general law for the holding of primary elections, costs of said election shall be paid by the district. Ballots shall be provided by the county commissioners so as to permit the electors to vote for or against the issuance of said time warrants, bonds, or certificates of indebtedness. It shall be the duty of the board of county commissioners of said counties to examine the registration books of the county supervisor of registration, and other public records of said counties, if necessary, to determine who are qualified electors and who are freeholders and reside within said district, and cause a list to be made of such persons who are thus qualified to vote in such election and shall furnish the inspectors and clerks of said voting precincts with such lists, which said list shall be the official list and no others shall be allowed to vote in said election, except it is proven that said list is in error, but said proof must be by the registration books of said counties, and the real estate records.

(2) If a majority of those voting are in favor of the issuance of said bonds, time warrants or certificates of indebtedness then the board of commissioners of said districts shall thereupon be and they are hereby authorized and empowered to issue and sell the same, as is provided by law. If a majority vote against the issuance of said bonds, time warrants or certificates of indebtedness, then none shall be issued. Elections to determine whether time warrants, bonds or certificates of indebtedness shall be issued shall not be held more often than annually. Provided, however, that any qualified elector who is a freeholder owning land in such districts and residing in any of the counties where such erosion districts are established shall be entitled to vote in any election held to determine whether time warrants, bonds or certificates of indebtedness shall be issued, and provided further that before such time warrants, bonds, or certificates of indebtedness shall be issued and sold a majority of all votes cast at said election shall be in favor of the issuance thereof.

History.—§9, ch. 20926, 1941.

158.10 Special taxing districts for purpose of protecting lands from damage by erosion, storm, etc., uniform tax levy.—

(1) Any special taxing district heretofore or hereafter created for the purpose of protecting the lands within said districts from damage by erosion, storms, tidal waves and currents, or high waters, and for the public benefit, by special act of the legislature of the state, through the governing board thereof, is hereby authorized to determine, assess, levy and collect a uniform tax upon the real property located within said district for the purpose of paying the expenses incident to organizing said district, making surveys, assessing benefits and damages, and paying other necessary costs and expenses incident to the administrative expense of operating said district for a period of two years from the effective date of the act creating any of said districts.

(2) Provided, that the governing board of any of such district shall have given notice of its intention to determine, assess and levy such a uniform tax as is herein provided, or as is provided in the act creating such district, by mailing to each property owner owning lands within such district, such notice by first class, United States mail, addressed to said property owner to his last known address. When no address of said property owner is known other than that shown on the books of the tax collector of the county in which said district is located, then mailing of such notice to the address shown by the books of such tax collector shall be deemed sufficient. The notice hereinbefore provided for, shall give notice of the date, time and place of such meeting of the governing board of any such taxing district, whereat it is intended to determine, assess and levy the uniform tax herein provided for, or as is provided for in the act creating such district, and which notice shall be mailed to each property owner, addressed as aforesaid, not less than fourteen days prior to the date upon which said governing board of such district shall meet for the purpose of determining, assessing and levying such uniform tax as aforesaid.

(3) Provided further, that notice of such meeting of such governing board for the purposes aforesaid, shall be published in a newspaper of general circulation published in the county in which such district may be located, once each week for two consecutive weeks prior to the date of such meeting of such board, which notice so published, shall give notice of the date, time and place of the meeting of the governing board of such district, whereat it will determine, assess and levy such uniform tax.

(4) Any uniform tax determined, assessed and levied by any special taxing district referred to in subsection (1) hereof for the purposes set forth in said subsection under the authority vested in the governing board of said taxing district by this section, or by the special act of the legislature creating said district, be and the same is hereby ratified and confirmed, providing, the requirements of this section as to the notices to be mailed and published, have been or are complied with, and such notices mailed and/or the publication thereof begun prior to October 4, 1949, and completed after October 4, 1949 or has theretofore been published, shall be deemed sufficient, when such notices are mailed and/or published the length of time required by this section.

(5) No tax levy in excess of five mills annually shall be levied upon the taxable property within such districts under the provisions of this section.

History.—§§1-3, ch. 26330, 1949.

CHAPTER 159

REVENUE BOND ACT OF 1953

159.01 Short title. — This chapter shall be known, and may be cited, as the "Revenue bond act of 1953."

History.—§1, ch. 28045, 1953.

159.02 Definitions.—As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

(1) The word "municipality" shall mean any city, town, village or port authority in the state, whether incorporated by special act of the legislature or under the general laws of the state.

(2) The word "unit" shall mean any county or municipality in the state, now or hereafter created or established.

(3) The term "governing body," as applied to a county, shall mean the board of county commissioners, and as applied to a municipality, shall mean the council, commission or other board or body in which the general legislative powers of the municipality shall be vested.

(4) The word "project" shall include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for the construction or the operation thereof, and shall embrace the following:

(a) As applied to a county, bridges, causeways and tunnels.

(b) As applied to a municipality, waterworks systems, bridges, causeways, tunnels, and harbor and port facilities.

(5) A project shall be deemed "self-liquidating" if, in the judgment of the governing body, the revenues and earnings thereof will be sufficient to pay the cost of maintaining, repairing and operating the project and to pay the principal and interest of revenue bonds (as hereinafter defined) which may be issued to pay the cost of such project or improvements thereof.

(6) The term "revenue bonds" shall mean the obligations issued by a unit under the provisions of this chapter to pay the cost of a self-liquidating project or improvements thereof and payable solely from the earnings of such project. And whenever the word "bonds" is used in this chapter, it shall be deemed to mean "revenue bonds."

(7) The word "bridge" and the word "tunnel" shall include not only the bridge or the tunnel but also all structures and equipment connected therewith and the approaches thereto and approach roads.

(8) The word "causeway" shall mean any raised road or way over and across any marshy ground, swamp, river, bay or water in the state, the bridges or tunnels and structures connected therewith, and the approaches thereto and approach roads.

(9) The term "waterworks system" shall mean and shall include water supply systems, water distribution systems and any integral part thereof, whether inside or outside the unit, and shall include but shall not be limited to reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filter stations, purification plants, hydrants, meters, valves and equipment.

(10) The term "harbor and port facilities" shall include docks, wharves, piers, warehouses, terminals, refrigerating plants, channels, turning basins, connecting railroads, breakwaters, causeways and bridges, and bulkheads and equipment.

(11) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a project as are deemed necessary to place such project in proper condition for the safe, efficient and economic operation thereof, or necessary to preserve a project or to maintain adequate service to the public.

(12) The term "cost of improvements" shall mean the cost of construction or acquiring improvements as hereinabove defined and shall embrace the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of all machinery and equipment, financing charges, cost of engineering and legal expenses, plans, specifications, surveys, and such other expenses as may be necessary or incident to such construction.

(13) The term "cost of a project" shall mean the cost of acquiring or constructing such project, and the cost of improvements, and shall include the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such acquisition or construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after the completion of construction, engineering and legal expenses, cost of plans, specifications, surveys, estimates of construction costs and of revenues, other expenses necessary or incident to determining the feasibility or practicability

of such acquisition or construction, administrative expenses, and such other expenses as may be necessary or incident to the financing herein authorized and to such acquisition or construction and the placing of the project in operation.

History.—§2, ch. 28045, 1953.

159.03 General powers. — The governing body of any unit in the state is hereby authorized and empowered:

(1) to acquire by purchase or to construct, or partly acquire and partly construct, and to improve, repair, reconstruct, own, operate and maintain any self-liquidating project, either inside or outside or partly inside and partly outside of the boundaries or the corporate limits of such unit;

(2) to issue revenue bonds of such unit, payable solely from earnings, to pay the cost of a project or improvement thereof;

(3) to fix and collect rates, fees, tolls, rentals or other charges for the services and facilities furnished by such project;

(4) to acquire in the name of the unit, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any project;

(5) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, and to employ such consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may, in the judgment of the governing body, be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this chapter; and

(6) to receive and accept from any Federal agency grants for or in aid of the planning, construction, reconstruction or financing of any project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

History.—§3, ch. 28045, 1953.

159.04 Neither credit nor taxing power pledged.—

(1) Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the unit issuing the same or a pledge of the faith and credit of such unit, but such bonds shall be payable solely from the funds hereinafter provided therefor from revenues. All such bonds shall contain a statement on their face to the effect that such unit is not obligated to pay the same or the interest thereon except from revenues and that the faith and credit of the unit are not pledged to the payment of the principal or interest of such bonds.

(2) The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the unit to levy or to pledge any form of taxation whatever therefor. And no holder of any such revenue bonds shall ever have the right to compel any exercise of the taxing power on the part of such unit to pay any such bonds or the interest thereon or to enforce payment of such bonds or the interest thereon against any property of the unit, nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of such unit.

History.—§4, ch. 28045, 1953.

159.05 Purchase of projects. — The governing body of any unit is hereby authorized to acquire by purchase, whenever it shall deem such purchase expedient, any self-liquidating project as hereinabove defined, or any such project, wholly or partly constructed, and any franchise, easements, permits and contracts for the construction of any such project, upon such terms and at such prices as may be reasonable and can be agreed upon between such governing body and the owner thereof, title to be taken in the name of the unit. The governing body may issue revenue bonds of the unit, as hereinafter provided, to pay the cost of the acquisition of such project.

History.—§5, ch. 28045, 1953.

159.06 Improvement of projects purchased. —It shall be the duty of the governing body at or before the time any such project shall be acquired by purchase, to determine what repairs, replacements, additions or betterments will be necessary to place the project in safe and efficient condition for use, and to cause an estimate of the cost of such improvements to be made. The governing body shall authorize such improvements before the sale of any revenue bonds for the acquisition of such project, and the cost of such improvements shall be paid for out of the proceeds of such bonds.

History.—§6, ch. 28045, 1953.

159.07 Construction of projects.—The governing body of any unit is hereby authorized and empowered to construct, whenever it shall deem such construction expedient, any self-liquidating project as hereinabove defined.

History.—§7, ch. 28045, 1953.

159.08 Revenue bonds.—

(1) The governing body of any unit shall have the power and it is hereby authorized to provide by ordinance or resolution, at one time or from time to time, for the issuance of revenue bonds of the unit for the purpose of paying all or a part of the cost as hereinabove defined of any one or more self-liquidating projects of the same class or of any improvements thereof. The principal and interest of such bonds shall

be payable solely from the special fund herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the governing body, and may be made redeemable before maturity, at the option of the unit, at such price or prices and under such terms and conditions as may be fixed by the governing body prior to the issuance of the bonds. The governing body shall determine the form of the bonds and the interest coupons to be attached thereto, the manner of executing the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone and also as to both principal and interest, and for the reconversion of any of the bonds registered as to both principal and interest into coupon bonds. Such bonds may be issued without regard to any limitation on indebtedness prescribed by any other law and shall not be included in the amount of bonds which any unit may be authorized to issue under any statute or charter. The governing body may sell such bonds in such manner and for such price as it may determine to be for the best interests of the unit, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the governing body may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The governing body may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

(2) The proceeds of such bonds shall be used solely for the payment of the cost of the project, and shall be disbursed in such manner and under such restrictions, if any, as the governing body may provide. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or resolution or in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of the principal of and the interest on such bonds.

(3) In the event that a unit has heretofore acquired or constructed a project as hereinabove defined, and, to pay the cost of such acquisition or construction or of improvements thereof, shall have issued revenue bonds or certificates of the unit payable from the revenues of such project, and in the further event that such unit shall desire to construct additions, extensions, improvements or betterments to such project or to acquire by purchase or to construct an additional project of the same class and to combine such additional project with the project theretofore purchased or constructed, and to refund such outstanding revenue bonds or certificates, such unit may provide for the issuance of a single issue of revenue bonds under the provisions of this chapter for the combined purposes (a) of refunding such revenue bonds or certificates then outstanding if they shall then be subject to redemption or can be acquired for retirement, and (b) of constructing such additions, extensions, improvements or betterments or of acquiring by purchase or of constructing such additional project of the same class, and the principal and interest of such revenue bonds shall be payable solely from the revenues derived from the operation of the combined projects.

(4) The ordinance or resolution providing for the issuance of the revenue bonds and the trust agreement hereinafter mentioned, may also contain such limitations upon the issuance of additional revenue bonds as the governing body may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such ordinance or resolution or by the trust agreement hereinafter mentioned. All moneys received from any bonds issued and sold under the provisions of this chapter shall be applied solely for the purposes for which the bonds shall be authorized or to the sinking fund created for the payment of such bonds.

(5) No revenue bonds shall be issued by a unit under the authority of this chapter unless the governing body of such unit shall have theretofore found and determined (a) the estimated cost of the project on account of which such bonds are to be issued, (b) the estimated annual revenues of such project, and (c) the estimated annual cost of maintaining, repairing and operating the project and the interest on such bonds and the principal thereof as such interest and principal shall become due.

History.—§8, ch. 28045, 1953.

159.09 Trust agreement. — In the discretion of the governing body, each or any issue of such bonds may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State. Such trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage any project or any part thereof. Either the ordinance or resolution providing for the issuance of revenue bonds or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit and the governing body thereof in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of the project, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the governing body. Such ordinance or resolution or such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition to the foregoing, such ordinance or resolution or such trust agreement may contain such other provisions as the governing body may deem reasonable and proper for the security of bondholders. Except as in this chapter otherwise provided, the governing body may provide, by ordinance or resolution or by such trust agreement, for the payment of the proceeds of the sale of the bonds and the revenues of the project to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the project affected by such trust agreement.

History.—§9, ch. 28045, 1953.

159.10 Revenues of projects.—

(1) The governing body shall fix and revise from time to time rates, fees, rentals, tolls or other charges for the use of each project or for the services and facilities furnished thereby and charge and collect the same. Such rates, fees, rentals, tolls or other charges shall be so fixed and adjusted, in respect of the aggregate of rates, fees, rentals, tolls or other charges from the project or projects for which a single issue of bonds is issued, as to provide a fund sufficient with other revenues, if any, of such project or projects to pay the cost of maintaining, repairing and operating such project or projects and the principal of and the interest on the revenue bonds as the same shall become due, and reserves for such purposes. Such rates, fees, rentals, tolls and other charges shall not be subject to supervision or regulation by any state commission, board, bureau or agency.

(2) All or a sufficient amount of the revenues derived from a project for which a single issue of bonds is issued, except such part thereof as may be required to pay the cost of maintaining, repairing and operating the project or projects and to provide such reserves therefor as may be provided for in the ordinance or resolution authorizing the issuance of the bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such ordinance or resolution or such trust agreement, in a sinking fund which is hereby pledged to, and charged with the payment of, (a) the interest upon such bonds as such interest shall fall due, (b) the principal of the bonds as the same shall fall due, and (c) any premium upon bonds retired by call or purchase as herein provided. The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the ordinance or resolution authorizing the issuance of the bonds or in such trust agreement, but, except as may otherwise be provided in such ordinance or resolution or such trust agreement, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

(3) If any city or town or any department, agency or instrumentality thereof elects to avail itself of the services and facilities afforded by a project financed by it under the provisions of this chapter, it shall pay for the same at the established rates as the charges therefor accrue, and the revenues so received shall be deemed to be a part of the revenues of such project.

History.—§10, ch. 28045, 1953.

159.11 Trust funds. — All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The governing body shall, in the ordinance or resolution authorizing the issuance of such bonds or in the trust agreement, provide for the payment of the proceeds of the sale of the bonds and the revenues

to be received to any officer who, or to any agency, bank or trust company which, shall act as trustee of such funds, and hold and apply the same to the purposes hereof, subject to such regulations as this chapter and such ordinance or resolution or trust agreement may provide.

History.—§11, ch. 28045, 1953.

159.12 Remedies of bondholders and trustee. —Any holder of revenue bonds issued under the provisions of this chapter or any of the coupons attached thereto, and the trustee under the trust agreement, if any, except to the extent the rights herein given may be restricted by ordinance or resolution passed before the issuance of the bonds or by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance or resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter, or by such ordinance or resolution or trust agreement, to be performed by the unit or its governing body or by any officer thereof, including the fixing, charging and collecting of rates, fees, rentals, tolls and other charges for the use of the project or for the services and facilities furnished thereby.

History.—§12, ch. 28045, 1953.

159.13 Revenue refunding bonds.—The governing body of any unit is hereby authorized to provide by ordinance or resolution for the issuance of revenue refunding bonds of such unit for the purpose of refunding any revenue bonds then outstanding and issued under the provisions of this chapter or any other law for the purpose of paying all or a part of the cost of a project as defined in this chapter. The governing body of any unit is further authorized to provide by ordinance or resolution for the issuance of a single issue of revenue bonds of the unit for the combined purposes of (1) paying the cost of any improvements of a project or of acquiring by purchase or of constructing an additional project or projects of the same class and of (2) refunding revenue bonds of the unit which shall theretofore have been issued for such project and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement. The issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the governing body and of the unit in respect of the same, shall be governed by the foregoing provisions of this chapter in so far as the same may be applicable.

History.—§13, ch. 28045, 1953.

159.14 Alternative method. — This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. This chapter, being necessary for the welfare of the inhabitants of the counties and municipalities of the state, shall be liberally construed to effect the purposes thereof.

History.—§14, ch. 28045, 1953.

CHAPTER 160

REGIONAL PLANNING COUNCILS

160.01 Establishment of regional planning councils; membership, terms, compensation, etc.—

(1) Any two or more counties and municipalities are hereby authorized and empowered to create and to establish a regional planning council to be composed of two representatives appointed thereto by each county commission and municipal legislative body desiring representation on such council, and to appropriate moneys from their respective public funds for the purpose of carrying out the provisions of this law. In addition, each governmental unit shall be entitled to appoint one additional representative for each fifty thousand population residing within the boundaries of the municipality or county. Participating governmental units may designate to membership ex-officio and without vote their chief planning officer and/or engineer.

(2) Members of such regional planning council representing counties and municipalities shall receive no compensation for their services, but shall be reimbursed for traveling expenses as provided in §112.061.

(3) The term of office of the members of any regional planning council shall be for staggered terms of three years. The method of filling vacancies shall be determined by the county commissions and municipal legislative bodies desiring representation on such council.

History.— §1, ch. 59-369; (2) §19, ch. 63-400.

160.02 Powers of council.—Any regional planning council created hereunder shall have the following powers:

(1) To adopt rules of procedure for the regulation of its affairs and the conduct of its business, and to appoint from among its members a chairman to serve annually, provided that such a chairman may be subject to reelection.

(2) To adopt an official name and seal.

(3) To maintain an office at such place or places within the state as it may designate.

(4) To employ and to compensate such personnel, consultants, and technical and professional assistants as it shall deem necessary to exercise the powers and perform the duties set forth in this law.

(5) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this law.

(6) To hold public hearings and sponsor public forums in any part of the regional area whenever it deems it necessary or useful in the execution of its other functions.

(7) To sue and be sued in its own name.

(8) To accept and receive, in furtherance of its functions, funds, grants and service from the federal government or its agencies; from departments, agencies and instrumentalities of state, municipal or local government; or from private or civic sources.

(9) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county or municipality represented on such council and, with the approval of the Florida development commission, to act as an agency to receive and to expend federal funds for planning.

(10) To act in an advisory capacity to the constituent local governments in regional, metropolitan, county and municipal planning matters involving land use, water resources, highways, recreational areas, public schools, sewage and garbage disposal, public libraries, urban redevelopment and other matters concerning the acquisition, planning, construction, development, financing, control, use, improvement and disposition of lands, buildings, structures, facilities, goods or services in the interest of the public, or for public purposes involving the expenditure of public funds.

(11) To cooperate, in the exercise of its planning functions, with federal and state agencies in planning for civil defense.

History.—§2, ch. 59-369.

CHAPTER 161

SHORE AND BEACH PRESERVATION

161.01 Short title.—This act may be known and cited as the shore and beach preservation act.

History.—§1, ch. 61-246.

161.02 Legislative findings.—It is hereby found as a matter of legislative determination that shores and beaches, in good condition and available in sufficient quantity to the public, are vitally important to the economy and the well-being of the people of Florida. It is, therefore, the purpose of this act to provide for shore and beach restoration and preservation programs for each of the several counties of the state bordering on either the Atlantic ocean or the gulf of Mexico. For purposes of this act, shore and beach preservation shall include, but not be limited to, erosion control, coastal flood control, shoreline and offshore rehabilitation, public beach acquisition, public beach development, public beach use-regulation, and regulation of work and activities likely to affect adversely the physical condition of the shore or beach. These and related purposes are hereby found to be necessary, proper and legitimate public and county purposes.

History.—§2, ch. 61-246.

161.03 County shore and beach preservation authority; board of county commissioners.—To carry out the shore and beach preservation program contemplated by §161.02, the board of county commissioners of any county and its successors in office, as an ex officio duty, are hereby severally constituted as the shore and beach preservation authority for their county. In this capacity, any such board may at its own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this act.

History.—§3, ch. 61-246.

161.04 Organizational and administrative expenses.—The board of county commissioners of any of said counties is authorized to use any available county funds to meet organizational and administrative expenses of its shore or beach preservation program. This shall not include expenditures for acquisition and construction of lands, works and facilities, or for the operation and maintenance of such. It may include, among other things, however, costs of studies, surveys, planning, engineering, coordination, negotiation and other activities incidental to acquisition and construction to the extent considered proper and desirable by the board.

History.—§4, ch. 61-246.

161.05 Personnel and facilities.—In carrying out the purposes of this act, a board of county commissioners may use to the extent feasible any personnel or facilities employed by or available to the county, and additionally may hire such personnel and contract for such services as may prove necessary or desirable, and, in accordance with established procedure, may contract with the engineering and industrial experiment station of the university of Florida for services, studies and advisory assistance from the coastal engineering laboratory of the university of Florida.

History.—§5, ch. 61-246.

161.06 Comprehensive county shore and beach preservation program.—The board of county commissioners of any of said counties, may, by assignments to legally qualified personnel, whose services are made available as provided in §161.05, initiate and carry on such studies and investigations as may be necessary to plan a logical and suitable program for comprehensive shore or beach preservation within its county. This program may incorporate all or part of the recommendations of the United States army corps of engineers concerning shore or beach restoration and erosion control, if there be any, and may additionally provide to an appropriate extent for the other aspects of shore or beach preservation defined in §161.02. In conducting its studies and making its plans for a shore or beach preservation program, the board shall hold sufficient public hearings to ascertain the views and feelings of affected property owners in the various localities of the county regarding the needs to be served and manner in which they should best be served. The board shall give proper and reasonable consideration to all evidence received in planning the shore or beach preservation program.

History.—§6, ch. 61-246.

161.07 Benefit categories or zones.—Upon adoption of a reasonably final plan of improve-

ment for the shore or beach preservation program, the board of county commissioners shall conduct, through the use of personnel competent and qualified in this field, an economic analysis of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating these benefits to their proper recipients by categories or zones of comparable benefits. Benefits found shall be further divided into two groups, consisting of:

(1) General benefits, or those which are public in nature, and

(2) Special benefits, or those specifically accruing to certain identifiable properties or groups of properties. From time to time, but no more often than once every two years or upon major changes in the plan of improvement, the board shall conduct in the same or similar manner a new analysis to better determine and allocate actual or expected benefits.

History.—§7, ch. 61-246.

161.08 Election for creation of shore and beach preservation district.—The board of county commissioners, as the county shore and beach preservation authority, shall have the power to create and establish one or more shore and beach preservation districts within the particular county. Proceedings for the establishment of such district or districts may be initiated by the board upon its own recognition of a need or mandatorily upon petition by ten per cent of the registered freeholders within any area proposed for a district, except that the boundaries of such proposed district must first be approved by the board as being suitable and consistent with the comprehensive shore and beach preservation plan, and no district may be established under this act for an area found or held to be not suitable for such purpose in any respect by the board of conservation acting as the beach erosion control agency for the state under §370.02. After approving the boundaries of a proposed district, the board shall then advertise its intention to establish the district by publishing notice once each week for four consecutive weeks in a newspaper having general circulation in the area of the proposed district. Not less than two weeks and not more than four weeks following publication of the fourth and final notice, a public hearing, duly advertised as a part of the published notice, shall be held at a central and prominent place within the area of the proposed district. After holding said public hearing, the board of county commissioners may establish the proposed district upon its own motion or may submit the question as to whether the proposed district shall or shall not be established to the freeholders of the proposed district. If the board of county commissioners, in its discretion, determines that a referendum should be held, then all freeholders of the proposed district area who are qualified electors as determined by the county supervisor of registration, shall be eligible to vote and the majority of those actually voting shall decide whether the proposed district shall or shall not be established. All such elections shall be conducted by and at the expense of the board. Elections for any particular proposed district shall be held not more than once in two years, except that this limitation shall not preclude all or part of an unsuccessful proposed district from being included within another proposed district for which the boundaries are sufficiently different in the eyes of the board to warrant an election.

History.—§8, ch. 61-246; §1, ch. 63-511.

161.09 Establishment of district by resolution.—Following a favorable vote at any election held to decide upon the creation of a shore or beach preservation district, or by a vote of the board of county commissioners as provided in §161.08, the board of county commissioners shall as soon as practicable officially establish such district by resolution, setting forth precise boundaries, the name, and any other specific information pertinent to the district in question. Such resolution shall be a valid and legal charter for the subject district for all required purposes, and shall be filed in the permanent records of the county. Districts established under the provisions of this act shall constitute public bodies corporate and politic, exercising public powers and all other powers and duties incident to such bodies. The board of county commissioners shall serve as the governing body for all districts created under this authority, and shall proceed as expeditiously as possible to determine and implement policy and program for each such district in accordance with the overall county program, except that the board may receive guidance in these matters for each district by a three-man advisory group which the board may appoint from any or each such district. Members of such advisory groups shall have no definite term of office, but shall serve at the pleasure of the board. To further provide for efficient administration of the district program, the board may hire such additional personnel or contract for such additional services as it considers necessary or desirable in each case. A uniform ad valorem tax of not to exceed one mill per year on all nonexempt taxable property within the district may be levied for a period of not more than two years to defray organizational and administrative costs of said district.

History.—§9, ch. 61-246; §2, ch. 63-511.

161.10 Cooperation with federal, state and other governmental entities.—The board of county commissioners, for itself or on behalf of any or all duly established shore or beach preservation districts within the county, may enter into co-operative agreements and otherwise co-operate with, and meet the requirements and conditions of, federal, state or other local governments or political entities, or any agencies or representatives thereof, for the purpose of improving, furthering and expediting the shore or beach preservation program. The board of county commissioners for and on behalf of each or any district created in accordance with this act is authorized to receive and accept from

any federal agency, grants for or in aid of any shore or beach preservation program contemplated by this act, and to receive and accept aid or contributions from any source, of money, property or other things of value. The commissioners are authorized to make application for federal participation in the cost of any shore or beach preservation program under any acts of congress and all amendments thereto.

History.—§10, ch. 61-246.

161.11 Co-ordination of county preservation activities.—The board of county commissioners shall co-ordinate the work and activity of all districts established hereunder and, to further insure harmony and consistency with the overall county shore or beach preservation plan, shall establish working liaison with each municipality and other agencies and groups involved in shore or beach preservation activity within the county.

History.—§11, ch. 61-246.

161.12 County shore line; supervisory and regulatory powers of board of county commissioners.—With the consent of the trustees of the internal improvement fund and of any municipality or other political authority involved, or when required, of the war department, the board of county commissioners may regulate and supervise all physical work or activity along the county shoreline, between the minus thirty foot contour of the Atlantic Ocean or Gulf of Mexico and as far inland as necessary, which might in any way affect the shore or beach preservation program. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, seawalls, bulkheads, jetties, piers and docks, and other coastal structures; dredging and filling of water bottoms for which permits have been processed in accordance with existing statutory authority including approval by the trustees of the internal improvement fund; excavation and earth moving in related upland areas. For this purpose, the board, with assistance as required from its professional personnel, may develop standards and criteria, issue permits and conduct inspections. All regulations and requirements prescribed by the board pursuant to this act may be enforced by mandatory injunction or other appropriate action in any court of competent jurisdiction.

History.—§12, ch. 61-246.

161.13 General powers of authority.—In order to most effectively carry out the purposes of this act, the board of county commissioners, as the county shore and beach preservation authority and as the governing body of each shore and beach preservation district established thereby, shall be possessed of broad powers to do all manner of things necessary or desirable in pursuance of this end; provided, however, nothing herein shall diminish or impair the regulatory authority of the trustees of the internal improvement fund under §253.03. Such powers shall specifically include, but not be limited to, the following:

(1) To make contracts and enter into agreements,
(2) To sue and be sued,
(3) To acquire and hold lands and property by any lawful means,
(4) To exercise the power of eminent domain,
(5) To enter upon private property for purposes of making surveys, soundings, drilling and examinations, and such entry shall not be deemed a trespass,
(6) To construct, acquire, operate and maintain works and facilities,
(7) To make rules and regulations, and
(8) To do any and all other things specified or implied in this act.

History.—§13, ch. 61-246.

161.14 Capital costs; district benefits tax levy.—To provide for the capital cost of the shore or beach preservation program, either by debt service or direct expenditure, the board of county commissioners as the governing body of each district created in accordance with this act may levy upon all taxable property within each district an ad valorem benefits tax in any amount necessary to meet the requirements of the program but not exceeding the reasonable ability of the district to pay. The tax shall be levied upon each taxable property in proportion to benefits said property will receive as determined by the most recent economic analysis of the program as provided for in §161.07. General benefits shall be uniformly applied on an ad valorem basis to the entire assessed valuation of each district, while special benefits shall be assigned to groups of specific properties which shall constitute zones because of the equal or comparable benefits each included property will receive. If the special benefits to all properties within any district are found to be equal or comparable, then the said district shall comprise only one tax zone. The proportional tax rate which each property within a district shall pay shall be determined by adding the general and special benefits assigned to its zone. The actual tax levy for any particular year shall depend on the revenue needs for that year. It shall be the duty of the board each year, sufficiently in advance of the preparation of the county tax roll, to establish the revenue requirements for each individual district for the fiscal year in question and certify this figure to the county tax assessor, who shall then assign shares of this total to each zone within the respective district according to the proportion of total benefits previously assigned. The share of total required revenue assigned each zone shall then be collected by an ad valorem levy on each taxable property within the zone. All taxes provided for in this act shall be levied and collected by the county in the same manner as other county taxes, and while unpaid shall constitute a lien of equal stature and dignity with other county taxes.

History.—§14, ch. 61-246.

161.15 Maintenance and operation tax levy.—In addition to the ad valorem benefits tax

for capital costs provided for in §161.14, the board of county commissioners may levy by the same procedure a maintenance and operation tax of not to exceed five mills per annum on all taxable properties within each district where such maintenance and operation funds are required. This tax shall not overlap the organizational and administrative tax provided for in §161.09, however, inasmuch as such continuing organizational and administrative costs may properly be defrayed as a part of maintenance and operation.

History.—§15, ch. 61-246.

161.16 Issuance of bonds.—The board of county commissioners, for and on behalf of each or any district created in accordance with this act, is authorized to provide from time to time for the issuance of bonds to obtain funds to meet the costs of the shore or beach preservation program; provided, however, that such issuance shall have first been approved at a duly conducted referendum election by freeholders within the subject district as provided for by law. The bonds of each issue shall be dated, shall bear interest at rates not to exceed six per cent, shall mature at such time not to exceed forty years from the date of issuance as determined by the board, and at the option of the board may be made redeemable before maturity under such terms and conditions and at such prices as fixed by the board prior to issuance. The board shall determine the form of such bonds, including any interest coupons to be attached thereto, the denomination of the bonds, and the place of payment of principal and interest which may be at any bank or trust company within or without the state. The resolution authorizing the issue may further provide that such bonds may be executed manually or by engraved, lithographed or facsimile signature. The appropriate seal may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the county clerk; provided, however, that at least one of the signatures of executing officials on the bonds shall be manual. Signatures, manual or facsimile, of executing officials shall continue to be valid for all purposes whatsoever regardless of whether or not signing officials are still in office at the time bonds are actually delivered. Bonds may be issued in coupon or registered form as the board may decide, and provision may be made for the registration of any coupon bonds as to principal alone or as to principal and interest, and for the reconversion of coupon bonds or any bond registered as to principal and interest. The issuance of bonds provided for in this act shall not be subject to any limitations or conditions contained in any other law, and the board may sell such bonds in such manner, either at public or private sale, and for such prices as it may determine to be in the best interests of the district concerned, but no such sale shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of six per cent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation, however, the amount of any premium to be paid for the redemption of any bonds prior to maturity. Prior to the preparation or issuance of definite bonds, the board may under like restrictions issue interim receipts or temporary notes or other form of such temporary obligations with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued under the provisions of this act without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or happening than specifically required by this act.

All bonds issued under this act shall constitute, and have all the qualities and incidents of, negotiable instruments under the law merchant and the negotiable instruments law of Florida, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. The provisions of this act shall constitute an irrevocable contract between the board and the holders of such bonds or coupons thereof issued pursuant to the provisions hereof. Any holder of such bonds issued under the provisions of this act, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action or mandamus, force and compel the performance of the duties required by this act or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes pledged for the principal and interest thereof as provided for in §161.14. Bonds issued under the provisions of this act shall not be subject to the consent or approval of any state board, commission or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

History.—§16, ch. 61-246.

161.17 Tax exemptions.—All properties, revenues and other assets of the board of county commissioners acting as the shore and beach preservation authority, or of any of the districts created thereby, shall, by recognition of its essential public function, be exempt from all taxation by the state or any political subdivision, agency or instrumentality thereof.

History.—§17, ch. 61-246.

161.18 Liberal construction. — The provisions of this act shall be liberally construed by all concerned in a manner to best accomplish the purposes and programs defined in §161.02.

History.—§18, ch. 61-246.

TITLE XII

CITIES AND TOWNS

CHAPTER 165

ORGANIZATION AND DISSOLUTION OF MUNICIPALITIES

165.01 Number of inhabitants necessary to incorporate.—It is lawful for the male and female inhabitants, who are freeholders and registered voters of any hamlet, village or town in this state, not less than one hundred fifty in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

History.—§1, ch. 2047, 1875; RS 658; GS 999; RGS 1825; CGL 2935; §1, ch. 23656, 1947; §1, ch. 26913, 1951.
Note.—Ch. 25758, Sp. laws of 1949, is specifically not repealed.

165.02 Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits to be designated, it is incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above are designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

History.—§3, ch. 1688, 1869; RS 659; GS 1000; RGS 1826; CGL 2936.

165.03 Publication of notice to assemble and organize.—Whenever any community of persons, both male and female, who are freeholders and registered voters, shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons, male and female, who are freeholders and who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

History.—§2, ch. 2047, 1875; RS 660; GS 1001; RGS 1827; CGL 2937; §2, ch. 23656, 1947.

165.04 Proceedings of meeting.—At the time and place designated in the notice aforesaid, the male and female inhabitants who are freeholders and registered voters present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said male and female inhabitants who are freeholders and registered voters a mayor and not more than nine and not less than five aldermen, who

shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in a like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified; provided that the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this state.

History.—§4, ch. 2047, 1875; RS 661; GS 1002; RGS 1828; CGL 2938; §3, ch. 23656, 1947.

165.05 Terms of aldermen.—All aldermen elected for any incorporated city or town shall be elected for and hold their office for the term of two years; provided, that at the first meeting of aldermen so elected they shall by lot divide their body into two classes, as nearly equal in number as possible, one of which class shall hold office for two years, and the other class shall hold their offices for the term of one year, and an election shall be held to elect the successor of each class, so as to have their successors elected at the expiration of the term of the said classes, respectively.

History.—§1, ch. 3314, 1881; RS 662; GS 1003; RGS 1829; CGL 2939.

165.06 Oath of officers.—As soon as convenient, within three days from the date of the said election, the mayor-elect, shall take before some judicial officer of this state the following oath of office, viz.: "I, A. B., do solemnly swear (or affirm) that I will support, protect and defend the constitution and government of the United States and of the State of Florida against all enemies, domestic or foreign, and that I will bear true faith, loyalty and allegiance to the same, and that I am entitled to hold office under the constitution; that I will faithfully perform all the duties of the office of mayor of _____ on which I am about to enter. So help me God." And the mayor, upon being so qualified, shall administer to the aldermen and the other officers-elect the like oath, and thereupon they shall be considered fully qualified to assume the functions and powers and enter upon their several duties as officers of the city aforesaid.

History.—§5, ch. 1688, 1869; RS 663; GS 1004; RGS 1830; CGL 2940.

165.07 Transcript of proceedings of meeting.—A fair and complete transcript of the proceedings of the said meeting shall be prepared by the city clerk, in which shall be embodied the notice by which the meeting was convened, the number of qualified electors present, the style or name, seal and territorial limits of the corporation, and the names of the officers-elect to which the mayor and aldermen shall attach their signatures, attested by the clerk and the corporate seal, which transcript shall be forthwith filed with the clerk of the circuit court in and for the county within which the corporate limits are located, and shall be by him duly entered upon the public records of the said county.

History.—§6, ch. 1688, 1869; RS 664; GS 1005; RGS 1831; CGL 2941.

165.08 Powers of corporation.—The provisions of §§165.01-165.07 having been complied with, the persons therein named, and their successors, shall thereupon constitute and become a body corporate with full power and authority to take and to hold property, real, personal and mixed, and to control and dispose of the same for the benefit and best interest of the corporation aforesaid, to sue and be sued, plead and be impleaded, and to do all such other acts and things as are incident to corporate bodies.

History.—§7, ch. 1688, 1869; RS 665; GS 1006; RGS 1832; CGL 2942.

165.09 Jurisdiction to extend over waters in limits.—The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits.

History.—§4, ch. 1855, 1871; RS 666; GS 1007; RGS 1833; CGL 2943.

165.10 President of council.—The city council shall, immediately after organization, proceed to elect one of its members president, who shall preside over the council. The president so elected shall, in case of the absence, sickness or other disability of the mayor, act as mayor for the time being and while so acting shall be disqualified from presiding over the council who shall elect a president pro tem., to preside so long as the disability of the mayor exists. No mayor of any municipal government shall be president of the city council.

History.—§§1, 3, ch. 1855, 1871; RS 667, 668; GS 1008; RGS 1834; CGL 2944.

165.11 Ordinances to be submitted to mayor.—All ordinances passed by the city council shall be submitted before going into effect, to the mayor or person acting as such, for his approval. If approved he shall sign the same, when it shall become a law. If disapproved, he shall return the same with his objections in writing to the city council, at their next regular meeting, who shall cause the same to be entered in full upon the record of their proceedings, and proceed to consider the mayor's objections, and to act upon the same. If, upon consideration, the city council shall pass the same by a two-thirds vote of the members present, which vote shall be entered upon the records, the ordinance or ordinances shall then become a law, the mayor's objections to the contrary notwithstanding. Any ordinance which shall not be returned to the city council at the next regular meeting of the council after its passage, shall become a law in like manner as if signed by the mayor or person acting as such.

History.—§2, ch. 1855, 1871; RS 669; GS 1009; RGS 1835; CGL 2945.

165.12 Qualifications of electors.—Any person who shall possess the qualifications requisite to an elector at general state elections, and shall have resided in the city or town for six months next preceding the election and shall have been registered in the municipal registration as shall be prescribed by ordinance, shall be a qualified elector of the municipality at

such election, except in cases in this chapter otherwise provided; and, provided that state or county registration shall not be required to qualify an elector of a city or town.

History.—§8, ch. 1688, 1869; §3, ch. 8850, 1889; RS 670; GS 1010; RGS 1836; CGL 2946.

165.13 Council may regulate registration and election.—The city or town council may establish rules, regulations and fees, for the registration of voters, for the annual election of municipal officers, and for filling of all vacancies which may occur in the city or town government, and for such other municipal elections as may be authorized by law.

History.—§1, ch. 2034, 1874; RS 671; GS 1011; RGS 1837; CGL 2947.

165.14 Election boards.—In all cities and towns in the state, in which it is provided that the general, primary and special elections of said cities and towns shall be conducted and held under the supervision and control of election boards, and where, under the provisions of law creating such election boards, any other method whatsoever for the selection of members of said boards is provided, other than the method of being elected by the people at a general or primary election, said method of selection is declared changed to conform to the provisions of §165.15.

History.—§1, ch. 16983, 1935; CGL 1936 Supp. 2947(1).

165.15 Election of members of boards of election.—All members of boards of elections in the cities and towns in the state shall be elected by the qualified electors thereof and the terms of office of the members of said election boards shall be for the period as hereafter fixed. The governing body of each city and town in the state, where under any law whatsoever elections are now controlled and held under the supervision of an election board, shall make provision for the nomination and election at each regular municipal primary and general election to be held in said cities and towns for the election of the members of such board as now constituted, the majority of whom shall be elected for a period of four years and the remainder of whom shall be elected for a period of two years. When the term of office of those elected for a period of two years shall have expired, their successors shall be chosen and their term of office shall be for a period of four years so that a majority of the members of said election board shall be elected at one election and the remainder shall be elected at the next election so that the term of office of each member shall be four years.

History.—§2, ch. 16983, 1935; CGL 1936 Supp. 2947(2).

165.16 Members of election boards shall not be candidates voted for in election.—No member of election boards shall be a candidate for any office to be voted for in said election for a period of one year after service upon said board.

History.—§3, ch. 16893, 1935; CGL 1936 Supp. 2947(3).

165.17 Applies to all elections; certain municipalities excepted.—Section 165.15 shall apply to all elections held within said cities and towns, whether primary elections, general elections or special elections; provided, however, that nothing therein contained shall apply to any municipality created under and pursuant to §9, Art. VIII, of the constitution of the state adopted at the general election of the year 1934.

History.—§§4, 5, ch. 16983, 1935; CGL 1936 Supp. 2947(4).

165.18 Powers of council concerning election returns, expulsion, etc.—The city or town council may judge of the election returns and qualifications of its own members, make such by-laws and regulations for their own guidance and government as they may deem expedient and enforce the same by fine or penalty, and compel attendance of its members; and two-thirds of the council may expel a member of the same or other officer of the city or town for disorderly behavior or malconduct in office.

History.—§10, ch. 1688, 1869; RS 672; GS 1012; RGS 1838; CGL 2948.

165.19 Ordinances and penalties.—The city or town council may pass all such ordinances and laws as may be expedient and necessary for the preservation of the public peace and morals, for the suppression of riots and disorderly assemblies and for the order and government of the city or town, and to impose such pains, penalties and forfeitures as may be needed to carry the same into effect. Provided, that such ordinances shall not be inconsistent with the constitution and laws of the United States or of this state; and provided, further, that for no one offense made punishable by the ordinances and laws of said city or town shall a fine of more than five hundred dollars be assessed, nor imprisonment for a period of time greater than sixty days.

History.—§1, ch. 3024, 1877; RS 673; GS 1013; RGS 1938; CGL 2949.

165.191 Authority to adopt published code by reference.

(1) As used in this section, the following terms shall have the meanings indicated as follows, unless the context otherwise requires:

(a) "Code" shall mean and include any published compilation of rules and regulations which have been prepared by various technical trade associations and shall include specifically, but shall not be limited to, building codes; plumbing codes; electrical wiring codes; health or sanitation codes; fire prevention codes; inflammable liquids codes; codes for the slaughtering, processing, and selling of meats and meat products for human consumption; codes for the production, pasteurizing and sale of milk and milk products, together with any other code which embraces rules and regulations pertinent to a subject which is a proper municipal legislative matter;

(b) "Public record" shall mean and include city, state or federal statute, ordinance, rule or regulation adopted prior to the exercise by the municipality of the authority to adopt or incorporate by reference as herein granted;

(c) "Published" shall mean printed, litho-

graphed, multigraphed, mimeographed, or otherwise reproduced.

(2) Any municipality is hereby authorized and empowered to adopt or incorporate by reference the provisions of any code or public record, or any portion thereof, without setting forth the provisions of such code or public record in full, provided that at least three copies of such code or public record (except Florida or federal statutes) which is adopted or incorporated by reference are filed in the office of the city clerk, and there kept available for public use, inspection and examination. The filing requirement herein required shall not be deemed to be complied with unless the required copies of such code or public record are filed with the city clerk for a period of ten days prior to the passage of the ordinance adopting or incorporating such code or public record by reference.

(3) Nothing contained in this section shall be deemed to relieve the municipality from any requirement of publishing any ordinance which adopts or incorporates any such code or public record by reference, but all provisions applicable to such publication shall be fully and completely carried out as if no code or public record was adopted or incorporated therein.

(4) Nothing contained in this section shall be deemed to permit the adoption of the penalty clauses by reference which may be established in the code or public record which is adopted or incorporated by reference, but all penalty clauses shall be set forth in full in the adopting ordinance and be published along with and in the same manner as the adopting ordinance is required to be published.

(5) Any subsequent amendments or revisions of any such code or public record may be adopted or incorporated by reference in the same manner as the original, as above authorized.

(6) Municipalities adopting any code or codes as provided for in this section are hereby authorized and empowered to provide for the appointment of officers boards, and/or commissions to administer or enforce such code or codes, except as otherwise provided by law.

(7) Muncipalities shall not be required to re-adopt any such code or public record heretofore adopted or incorporated by reference; but all previous adoptions or incorporations by reference, which would have been valid if this section had been in effect, are hereby ratified and declared effective, provided, however, that the requisite number of copies are forthwith filed with the city clerk, if they have not already been so filed.

History.—§§1-7, ch. 28000, 1953; (2) §1, ch. 29870, 1955.

165.192 Codification of ordinances.—

(1) Any municipality is hereby authorized and empowered to revise and codify its ordinances, or any part of them, into one or more volumes, either bound or in loose-leaf form, without the publication or posting of any part thereof, except that the ordinance adopting such revision or codification shall be enacted in accordance with the requirements for the passage of ordinances pertaining to such municipality. The ordinance adopting said revision or codification may provide for the repeal of certain ordinances and parts of ordinances by the deletion or omission of same from the revision or codification.

(2) Any revision or codification of ordinances heretofore adopted by any municipality at any time prior to May 14, 1953, which would have been valid if this section had been in effect, is hereby ratified and validated in all respects whatsoever.

History.—§§1, 2, ch. 28001, 1953.

165.20 Council to keep record and publish ordinances.—The city or town council shall keep or cause to be kept a regular record of their proceedings and ordinances, and they shall promulgate, without unnecessary delay, all laws and ordinances which they may enact by posting at the door of the city or town hall, and at one other public place within municipality, or by publishing the same in any newspaper in said city or town, in either case for a period of not less than four weeks.

History.—§27, ch. 1688, 1869; RS 674; GS 1014; RGS 1840; CGL 2950; §1, ch. 28166, 1953.

165.21 Appointment of deputies by city or town clerk.—The clerk of any city or town in the state may appoint a deputy clerk, who shall exercise the powers and perform the duties of such clerk during his absence or inability to act, and whose compensation shall be paid by the city or town clerk appointing him.

History.—§1, ch. 5462, 1905; RGS 1841; CGL 2951.

165.22 Meetings of council to be public; penalty.—All meetings of any city or town council or board of aldermen of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof.

Any city or town councilman, or member of any board of aldermen, or other city or town official, who shall violate the provisions of this section, shall, upon conviction, be fined not more than one hundred dollars, or be imprisoned not more than two months.

Such conviction shall immediately vacate the office held by such city or town councilman, or member of the board of aldermen, or other officer of such city or town.

History.—§§1, 2, 3, ch. 5463, 1905; RGS 1842, 5379, 5380; CGL 2952, 7514, 7515; §7, ch. 22858, 1945.
cf.—§775.06 Alternative punishment.

165.23 Other municipalities declared legally incorporated.—All cities and towns which now are and for ten years last past have been exercising municipal governments are declared legally incorporated.

History.—Ch. 8748, 1887; RS 726; GS 1100; RGS 1947; CGL 3080.

165.24 Acts made valid.—All acts and doings of cities and towns included in §165.23, and of the government and officers of the same,

done under any law of the state, are declared valid; and said municipal corporations and governments, and all the officers of the same, shall have the powers and privileges granted by law, approved February 4, A. D. 1869, and all subsequent laws relating to municipal corporations and the governments of the same.

History.—§2, ch. 1885, 1872; RS 727; GS 1101; RGS 1948; CGL 3081.

165.25 Voluntary retirement with half pay authorized for elective officers of cities or towns; appropriation.—From and after June 3, 1939, whenever any elective officer of any city or town of this state has held any elective office of such city or town for a period of twenty years or more consecutively, such elective officer may voluntarily resign or retire from such elective office with the right to be paid, and he shall be paid on his own requisition, by such city or town, during the remainder of his natural life, a sum equal to one half of the full amount of the annual or monthly salary that such city or town was authorized by law to pay said elective officer at the time of his resignation or retirement; and each city and town shall appropriate and provide in its annual budget sufficient moneys to meet the requirements of this section. In cases where an elective officer during his term of office entered or enters and served or serves in the armed forces of the United States during any period during which the United States was or shall be engaged in war and thereafter was or shall be appointed or again elected to the same elective office prior to discharge from such service in the armed forces, such time of service in the armed forces shall not be construed to be a break in consecutive service and shall be counted in determining the years of consecutive service of such elective officer.

History.—§1, ch. 19247, 1939; CGL 1940 Supp. 2998(1); §1, ch. 57-805.

165.26 Proceedings to surrender franchise.—Any city or town incorporated under the laws of this state may surrender its franchise in the following manner: Upon petition of one-third of the registered voters of such city or town, the mayor shall issue a proclamation ordering an election to be held in such city or town on a day not less than thirty nor more than sixty days from the issuance of the proclamation. Those wishing to vote in favor of a surrender shall have written or printed on their tickets the words, "For Surrender of the Franchise," and those wishing to vote against a surrender shall have written or printed on their tickets the words, "Against Surrender of Franchise." The election shall be conducted, and the returns canvassed, under such rules and regulations as the town or city council may prescribe. If two-thirds of the votes cast at such election shall be in favor of the surrender of such franchises they shall stand and be deemed surrendered from the thirtieth day after the election.

History.—§1, ch. 3317, 1881; RS 728; GS 1102; RGS 1949; CGL 3082.

165.27 Certificates of result of election.—The city or town council shall cause to be entered upon the minutes of its proceedings, immediately after the result of said election is declared. a certificate or declaration of the result thereof, and they shall also transmit a certified copy thereof to the secretary of state, and if the result is in favor of a surrender he shall give notice in two gazettes of such surrender and record such certificate in a book to be kept for that purpose.

History.—§1, ch. 3317, 1881; RS 729; GS 1103; RGS 1950; CGL 3083.

165.28 Payment of debts.—If such city or town, at the time of dissolution, shall owe any debt, any property or assets of such municipality which belonged thereto at the time of such dissolution, shall be subject to legal process for the payment of such debt; and, if it shall be necessary in order to pay any such debt, to levy any tax or taxes on the property in the territory or limits of the dissolved municipality, the same may be assessed and levied by order of the county commissioners of the county wherein the same is situated, and shall be assessed by the county assessor of taxes and be collected by the county tax collector. The proceedings in the assessment, collection, receipt and disbursements of such taxes shall be like the proceedings concerning county taxes as far as applicable.

History.—§1, ch. 3317, 1881; RS 730; GS 1104; RGS 1951; CGL 3084.

165.29 Sections not applicable in certain counties.—Sections 165.01-165.08 shall not apply to or be effective in any county having a population of not less than three hundred ninety thousand nor more than four hundred fifty thousand according to the latest official decennial census.

History.—§1, ch. 23615, 1947; §1, ch. 57-833; §1, ch. 61-3.

165.30 Municipal corporation, validity of existence; quo warranto.—Any person, or persons, association of persons, or corporation, who shall be the owner or owners of lands located and situate within the territorial boundary of a city, town or hamlet within the state shall have the right, upon refusal of the attorney general to institute proceedings in the name of the state upon the relation of such person or persons, to institute proceedings upon writs of quo warranto, or upon information in the nature of such writs ,in the name of the state, to attack or challenge the validity of the municipal corporation wherein such lands are located, and the legal existence of its corporate franchises. In all such proceedings, the said municipal corporation and the members of its governing body shall be made parties defendant. The information filed in such proceedings shall set forth under oath a prima facie case of right in the relator or relators to challenge the validity of the municipal corporation of the exercise by it of its municipal franchises.

History.—Comp. §1, ch. 25275, 1949.

CHAPTER 166

MUNICIPAL CHARTER AND CHARTER AMENDMENT

166.01 Municipalities may amend or alter their charters; proviso.—Every city and town in the state, whether incorporated by a special act or under the general laws of the state relating to cities and towns, in the manner herein prescribed, may alter or change the numbers, powers, duties, compensation, terms of office, and the time and manner of election or appointment of any and all officers and boards, whether created by or recognized in state legislation or ordinances; abolish any or all offices and boards, whether created by or recognized in state legislation or ordinances, and create such offices and boards as may be deemed proper for the government of such city or town, and provide the manner of their election or appointment, and otherwise determine the manner in which its corporate powers shall be exercised, by amending its charter, or adopting a new charter, consistent with the constitution and the general laws of the state; or whenever a city or town has, by special laws, greater or more extensive powers than those conferred on cities and towns by the general laws of the state, then and in that case, consistent with such special laws giving such city or town special powers and in other respects consistent with the constitution and general laws of the state; provided, however, that this article shall not be so construed as to authorize any city or town to enlarge its corporate powers beyond the limitations prescribed by law, except that it may extend its territorial boundaries as provided by law.

History.—§1, ch. 6940, 1915; RGS 1971; CGL 3127.

166.02 Charter or amendments proposed by charter board; board elected.—A charter or amendments to the charter of any city or town may be proposed only by a charter board, consisting of the number of members hereinafter designated, who shall be elected by the qualified voters of each city or town not oftener than once in every two years, at a time to be designated by resolution of the council or legislative department of such city or town, or at a time to be so designated on petition of twenty per cent of the qualified voters of such city or town; provided, that if said resolution is adopted, not more than ninety days and not less than forty days before any general city or town election, then the members of said board shall be elected at such general election.

History.—§2, ch. 6940, 1915; RGS 1972; CGL 3128.

166.03 Membership of board; qualifications of members.—Charter boards shall be composed of the following number of members: In cities and towns having a population of five thousand or less, five members; in cities having a population of more than five thousand and not more than twenty thousand, nine members; and in cities having a population of more than twenty thousand; fifteen members; the population in each instance to be determined by the federal or state census, as the case may be, next preceding the election of said board. The members of said board must be resident qualified voters of the city or town for which they are elected.

History.—§3, ch. 6940, 1915; RGS 1973; CGL 3129.

166.04 Council may by resolution call election for purpose of electing charter board; proviso.—Whenever the council or legislative department of any city or town deems it for the best interests of its citizens that a change be made in the form of the municipal government, it may adopt a resolution, by a majority vote of all its members, calling an election to be held on a day to be specified in said resolution, not less than forty days nor more than ninety days thereafter, for the purpose of electing a charter board by the qualified electors of such city or town; provided, however, that whenever any such election has been held, no other resolution for that purpose shall be adopted earlier than ninety days prior to the expiration of two years after the holding of such election.

History.—§4, ch. 6940, 1915; RGS 1974; CGL 3130.

166.05 Election may be called by petition to council; form of petition.—If the council or legislative department of any city or town shall not within ninety days after this act shall take effect, or within ninety days after the expiration of two years from the time a charter board was last elected therefor, adopt a resolution calling an election for the purpose of electing a

charter board, an election may then be called for that purpose on petition to the council or legislative department of such city or town, requesting the council or legislative department thereof to call such election as aforesaid. Said petition shall be signed by at least twenty per cent of the qualified voters of such city or town, and each signer thereof shall add to his signature his place of residence, giving the street and number, if any; and one of the signers of each separate paper containing the signatures of voters signing said petition shall make oath before an officer competent to administer oaths, that each signature to the paper appended is the genuine signature of the person whose name it purports to be. On the presentation to the council or legislative department of the city or town of such petition, whether on the same or different papers, said petition shall be immediately referred to the clerk or secretary of the council or legislative department and the registration officer or similar officer of said city or town, and provision shall at the same time be made for such clerical assistance as may be necessary for comparing the names on said petition with the registration books, so that the work may be completed within ten days. If the number of names on such petition are not sufficient to call an election, as herein provided, said officers shall retain said petition and receive additional petitions of the same character and for said purpose for a period of thirty days, unless the requisite number is sooner obtained, when they shall finally canvass the same and shall certify the result thereof to the council or legislative department of such city or town. If the requisite number of the signatures of qualified voters to warrant the calling of such election appear on said petition or petitions and from the certificate of the canvass thereof, and said election shall not have been called by the council or legislative department, then it shall forthwith adopt a resolution designating a day for the holding of such election, which shall not be less than forty days nor more than ninety days after the adoption of such resolution.

History.—§5, ch. 6940, 1915; RGS 1975; CGL 3131.

166.06 Notice of election.—Notice of said election shall be given by the clerk or secretary of the council or legislative department, by publishing the same in a newspaper published in such city or town once each week for four consecutive weeks next preceding said election, the first publication thereof to be not less than twenty-five days prior to such election; but if no newspaper is published in such city or town, then said notice shall be published as aforesaid in a newspaper published in the county, and three copies of said notice shall be posted at least twenty-five days before said election in said city or town, one at the city or town hall, and at two other conspicuous places in such city or town.

History.—§6, ch. 6940, 1915; RGS 1976; CGL 3132.

166.07 Manner of holding election.—The officers whose duty it is to provide for the holding of elections in such city or town shall make all necessary arrangements for the holding of such election for electing a charter board, and the same shall be held and the expenses thereof paid in the same manner as elections are therein held for the election by qualified voters of city or town officers; and the number of candidates equal to the number of members to be elected, who receive the highest number of votes at said election, shall be thereby elected members of the charter board.

History.—§7, ch. 6940, 1915; RGS 1977; CGL 3133.

166.08 Organization of charter board.—The members of said charter board shall, within thirty days after their election, meet and organize by electing a chairman and adopting rules of procedure. The clerk or secretary of the council or legislative department of such city or town shall be clerk of said board, and he shall keep minutes of all the proceedings of said board, and the same shall be entered in a book to be provided for that purpose, and shall be kept as a public record in his office. All meetings of said board shall be held at the city or town hall and shall be open to the public.

History.—§8, ch. 6940, 1915; RGS 1978; CGL 3134.

166.09 Duty of charter board; expenses of board.—The charter board, as soon as organized, shall consider a new charter or amendments to the charter, and shall draft such charter or amendments to the charter as they may deem proper, which draft shall be signed and adopted by a majority of all the members of said board, and their work shall be concluded within ninety days after their election. No resolution adopted or petition filed under the provisions of this chapter shall be construed as a limitation on the powers of said board in any manner other than as provided in this chapter. The expenses of said board shall be paid by the city or town when the same shall be certified by the chairman and secretary of said board to the proper offiicials of such city or town.

History.—§9, ch. 6940, 1915; RGS 1979; CGL 3135.

166.10 Submission of proposed charter or amendments to the qualified voters; form of ballot.—The charter or charter amendments proposed by the charter board shall be submitted to the qualified voters of the city or town at a general or special election at a time to be designated by said board, which shall be within sixty days after their final adjournment. Said board shall prescribe in the proposed charter or charter amendments the form of ballot to be used at such election, which shall be, as nearly as practicable, the same as required in other elections; and said board shall submit said proposed charter or charter amendments as a whole, and the subject matter of the proposed charter or charter amendment shall be briefly stated on the ballot, so that each voter shall have the opportunity of voting for or against the approval of the same.

History.—§10, ch. 6940, 1915; RGS 1980; CGL 3136.

166.11 Proposed charter or charter amendments to be published prior to election; notice

of election.—The clerk or secretary of the council or legislative department of such city or town shall have said proposed charter or charter amendments, together with a notice of the election, published in a newspaper published in such city or town once each week for four successive weeks next preceding said election, the first publication thereof to be not less than twenty-five days prior thereto; but if no newspaper is published in such city or town, the said charter or charter amendments and notice of election shall be published as aforesaid in a newspaper published in the county, and three copies of said charter or charter amendments and said notice of election shall be posted for at least twenty-five days prior to said election in said city or town, one at the city or town hall and at two other conspicuous places in said city or town.

History.—§11, ch. 6940, 1915; RGS 1981; CGL 8137.

166.12 Appointment of election commissioners; to hold election and canvass returns.—Said charter board shall appoint three of their number who shall act as a board of election commissioners for the purpose of holding said charter election and canvassing the returns and certifying the results thereof, and they shall have all the powers and perform all the duties pertaining to such election as the council or legislative department or other city or town officers have and perform in the holding of general city or town elections. Said charter elections shall be held, as nearly as may be, in the same manner as other city or town elections, and the expenses thereof shall be paid by the city or town.

If, at said election, a majority of the qualified voters voting thereat shall ratify the proposed charter or charter amendments, it or they shall, at the end of ninety days thereafter, unless a different time be therein provided, become the charter or part of the charter so amended, as the case may be.

History.—§12, ch. 6940, 1915; RGS 1982; CGL 8138.

166.13 Charter or charter amendments and returns to be recorded.—Whenever any charter or charter amendment shall be adopted as provided in §166.12, it, together with the certificate of the officers canvassing the returns of said election, shall be recorded among the ordinances of the city or town, and a certified copy thereof shall be recorded in the office of the clerk of the circuit court in the county in which such city or town is located, and also in the office of the secretary of state, in a book to be provided in each of said offices for that purpose, to be known and designated as "Municipal Charters," and when so recorded, the courts of this state shall take judicial notice thereof.

History.—§13, ch. 6940, 1915; RGS 1983; CGL 8139.

166.14 Rights vested under new charter or charter amendments.—Any city or town adopting a new charter or charter amendment under the provisions of this chapter shall succeed to the title, right and ownership of all property, uncollected taxes, dues, claims, judgments, decrees and choses in action held or owned by the municipal corporation or corporations, within its territorial boundaries, and the same shall pass to and be vested in such city or town, and it shall assume all debts and liabilities of the city or town of which it may be the successor by reason of the adoption of such charter or charter amendments as aforesaid.

History.—§14, ch. 6940, 1915; RGS 1984; CGL 8140.

166.15 Officers whose offices are abolished to hold office until successors elected.—All officers of any city or town, whose offices may be abolished by a new charter or charter amendments, shall hold office until their successors, under such new charter or charter amendment, shall be elected and qualified.

History.—§15, ch. 6940, 1915; RGS 1985; CGL 8141.

CHAPTER 167

GENERAL POWERS OF MUNICIPALITIES

167.01 Powers as to streets, sewers, ruins, etc.—The city or town council may regulate, improve, alter, extend and open streets, lanes and avenues, to cause encroachments and obstructions, decayed buildings and ruins to be removed; construct drains and sewers, and make to the parties injured thereby such reasonable compensation. and charge upon those benefited such reasonable assessments as may be agreed upon by said council and the said party or parties; and in case no such agreement can be made, then the council shall appoint five discreet persons, holders of real estate in said city or town, to ascertain and fix on the one hand a fair and equitable assessment, and on the other a just compensation, and that the said assessment shall be a lien on the real estate improved and assessed; and every person who enters his particular drain into the main drain, or common sewer, and receives a benefit therefrom draining his land, shall pay to the city or town his proportional part of making or repairing the same.

History.—§12, ch. 1638, 1868; §2, ch. 3024, 1887; RS 675; GS 1015; RGS 1843; CGL 2953.

167.02 Streets, pavements and sidewalks.—The city or town council may regulate and control the grading, construction and repairs of all streets, pavements and sidewalks, and require the owners of real estate within the corporate limits to construct uniform and substantial sidewalks around their several lots, and to keep the same in repair; and upon failure to do the same within the time and manner prescribed, the said council may have the same done, which shall be a lien against said lots, which lien may be enforced in the manner provided in §167.20.

History.—§3, ch. 3024, 1887; RS 676; GS 1017; RGS 1845; CGL 2955.

167.03 Citizens in cities and towns to keep streets in repair in certain cases.—The citizens of incorporated cities and towns in this state containing less than three thousand inhabitants, shall keep all public roads and streets in the limits of such cities and towns in good repair, agreeable to such ordinance, or ordinances, as may be enacted by the town council and approved by the mayor.

History.—§1, ch. 4772, 1899; GS 1018; RGS 1846; CGL 2956.

167.04 Ordinance in reference to §167.03.—The town council of each city or town in this state containing less than three thousand inhabitants, may pass an ordinance, or ordinances, for the keeping of the public roads and streets within the limits of their respective cities and towns in good repair, and to provide and enforce penalties for the violation of the same.

History.—§2, ch. 4772, 1899; GS 1019; RGS 1847; CGL 2957.

167.05 To abate nuisances and preserve public health.—The city or town council may prevent and abate nuisances; require owners and occupants of lots upon which pools of water are, or are likely to be, to fill them up; prevent or remove any accumulation of trash, filth, or other matter on or within their premises, and the streets adjacent, which may cause disease, or affect the health of the city or town; require the owners of lots, unoccupied as well as occupied, to keep down, by cutting and removing the same, all excessive growth of weeds and other noxious plants; regulate and compel persons to erect and keep in repair partition fences, and pass all laws and ordinances which may be necessary for the preservation of the public health.

History.—§14, ch. 1688, 1869; RS 677; GS 1020; RGS 1848; CGL 2958.

167.06 City council may have garbage removed.—The council of any city or town of this state, whether said city or town be incorporated under the general incorporation act, or under a special charter, may enter into an agreement with any individual, company or corporation for the gathering and disposal of its waste, garbage, night soil, dead animals and other refuse of said city or town, upon such terms and for such period of time, not to exceed thirty years, as may be agreed upon between said city or town council and individual, company or corporation; provided, that if such agreement involve a greater annual cost to said city or town than it is now paying for the same quality or amount of service, said agreement shall be ratified by a majority of votes of the freeholders of said city or town, and voting at an election to be held for that purpose; and provided further, that if such election be held, a copy of said agreement, together with a notice of said election shall be published in a newspaper in said city or town for four consecutive weeks prior to said election.

History.—§1, ch. 5258, 1903; GS 1047; RGS 1874; CGL 2984.

167.07 Ditching, filling, etc., by municipality.—If at any time the town or city council of any city or town in this state shall deem it necessary or expedient for the preservation of the public health, or for other good reason connected in any wise with the public welfare or the interests of the city or town and the people thereof, that any lot or lots, block or blocks, or vacant lands lying within the corporate limits of such city or town, which may be lower than any street or streets adjoining the same, or the grade established therefor, or which may be subject to overflow or to the accumulation of pools of water thereon, or which may require to be ditched, drained, filled in, graded or otherwise improved or developed, it is lawful for such city or town council to devise, adopt and carry into effect, continue and complete, either through its corporate officers, or through such agents, trustees or contractors

as said council may appoint or select, such plan or plans, scheme or schemes, for the ditching, draining, grading, filling, improving and developing of the lot or lots, block or blocks, or vacant lands aforesaid, as may in their judgment be expedient and necessary for the public interest and the public health, or to continue and complete any scheme or plan heretofore devised and adopted as aforesaid.

History.—§1, ch. 3164, 1870; RS 678; GS 1021; RGS 1849; CGL 2959.

167.08 May take property for purposes of §167.07.—It is lawful for such city or town council, in order to carry out the powers vested in them by §167.07, to take possession of, occupy, appropriate, use and control any land, timber, earth, sand, stone or other material owned by private individuals or corporations, lying in the territory proposed to be improved or adjacent thereto, as may be necessary for the proper and efficient carrying into effect of such proposed scheme or plan of drainage, ditching, grading, filling, or other public improvements aforesaid.

History.—§2, ch. 3164, 1870; RS 679; GS 1022; RGS 1850; CGL 2960.

167.09 Parks, streets, etc.—The city or town council or commission, whether created by special act or general law, may lay off such parks, public squares, streets, avenues, lanes, highways, canals, etc., as may seem necessary and expedient for the public health or interest, and open, fill in, grade, pave, dig, dredge, widen, deepen, and otherwise enlarge, change and improve the same; and the said city or town council or commission may alter, widen, fill in, grade, pave, change or divert the use of all or any part thereof or discontinue any public park, public square, street, avenue, highway or any other way which has heretofore been or shall hereafter be laid out, either by cities or persons, natural or artificial, fixed or established in any manner whatsoever; provided that no authority herein granted shall be applicable to any designated state road without the concurrence of the state road department.

History.—§3, ch. 3164, 1879; RS 680; ch. 5461, 1905; GS 1023; RGS 1851; CGL 2961; §1, ch. 25094, 1949; §10, ch. 26484, 1951.

167.10 May require owners to drain, fill, etc.—If at any time the city or town council shall deem it necessary or expedient for the preservation of the public health, or for other good reasons, that any lot or lots or vacant lands then lying and being within the corporate limits of the city or town, which may be lower than any street or streets adjoining the same, or the grade established therefor, or which may be subject to overflow or to the accumulation thereon of ponds of water, should be filled in, or ditched and drained, it is lawful for such city or town council to direct the owner or owners of said lot or lots or vacant lands to fill in the same to such grade, or to ditch or drain the same, in such manner as the council shall direct. Such notice to be given by a resolution of the council duly passed, a copy of which shall be served upon the owner or owners of said lot or lots or vacant land, or upon his or their agent, or if the owner is a non-resident, or cannot be found within the city or town, and has no known agent within such city or town, a copy of such resolution shall be published for two weeks in some newspaper published in said city or town, and a copy posted upon said lot or lots or vacant lands. If the said owner or owners shall not, within such time as such resolution shall direct, fill in, ditch or drain the lot or lots or vacant lands as therein directed, it is lawful for the city or town council to cause the same to be done and to charge and collect the expenses thereof upon the said owner or owners, which shall give the municipality a lien on such lot or land to be enforced as provided in §167.20.

History.—§3, ch. 3164, 1879; RS 681; GS 1029; RGS 1857; CGL 2967.

167.101 Fencing of private swimming pools.—Any municipality may by ordinance require and regulate the fencing of private swimming pools.

History.—§1, ch. 59-115.

167.11 Real estate specially benefited assessed one-third expense.—At any time within one year after any of the improvements or other work authorized and provided for in the preceding sections is completed, or any park, street, highway, or other way is laid out, altered, widened, graded. paved or discontinued, when, in the opinion of the city or town council any real estate, including that part of which may have been taken for that purpose, shall receive any benefit and advantage therefrom, beyond the general advantages to all real estate in the city or town where the same is situated, such city or town council may adjudge and determine the value of such benefit and advantage to any such real estate, and may assess upon the same a proportional share of the expense of laying out, altering, widening, grading, paving or discontinuance, but in no case shall such assessment exceed one-third the amount of such expense, the balance to be borne by the general tax. The city or town council may permit the person or persons liable for said amount to pay the same in installments, to be paid at such time and with such interest (not to exceed six per cent per annum) as it may determine, and may require said persons to issue to it negotiable obligations for said installments, which shall constitute a lien upon the property against which assessment is made.

History.—§4, ch. 3164, 1879; RS 682; GS 1030; §1, ch. 9175, 1923; RGS 1858; CGL 2968.

167.12 Irregular assessments may be re-made.—Any assessment upon real estate for the purposes in §167.11 enumerated, which has heretofore been made or which may hereafter be made, and which may be invalid by reason of any error or irregularity in the making thereof, and which has not been paid, or which has been recovered back, may be re-made by such city or town council to the amount for

which the original assessment ought to have been made or might be made under the provisions of this chapter, and the same shall be a lien upon the estate, and be enforced in the manner provided in §167.20.

History.—§5, ch. 3164, 1879; RS 683; GS 1031; RGS 1859; CGL 2969.

167.13 Damages to buildings, etc.—The expense to be assessed upon the estate, as herein provided, shall include all damages for the land and buildings taken, and in estimating such damages all buildings on the land, a part of which is taken, shall be included, and there shall be deducted therefrom the value of the materials removed, and all buildings or parts of buildings remaining thereon, and the damages for land taken shall be fixed at the value thereof before the laying out, altering or widening, and in the same manner and upon the same conditions as are provided by law in other cases of laying out, altering, widening, grading or discontinuance of streets and ways.

History.—§6, ch. 3164, 1879; RS 684; GS 1032; RGS 1860; CGL 2970.

167.14 Disposition of buildings, etc., when owner neglects.—If the owner of any buildings or materials on land, a part or the whole of which is taken for the purposes named in this chapter, after reasonable notice is given in writing from the city or town council, shall refuse or neglect to take care of the same as public safety or the preservation thereof demands, the city or town council may remove such buildings or materials, either upon the adjoining land of such owner or otherwise, or may sell the same at public auction after five days' notice of such sale, and hold the proceeds of the sale for the benefit of such owner, and the expense incurred by such city or town council, or the value thereof to the owner, shall be allowed in reduction of the damages which said owner is entitled to recover.

History.—§7, ch. 3164, 1879; RS 685; GS 1033; RGS 1861; CGL 2971.

167.15 Surrender of property to city.—Any person owning real estate abutting on any park, street, canal, highway or other way which may be laid out, altered, widened, graded or discontinued, or any public or private property filled in or otherwise improved, as heretofore provided for, and liable to assessment under this law, may, at any time before the estimate of damages is made, give notice in writing to the city or town council that he objects to the same, and elects to surrender his estate to the city or town where situated; and if said city or town council shall then adjudge that public convenience and necessity require the taking of such estate for the improvements named, they may take the whole of such abutting estate, and shall thereupon estimate the value thereof, excluding the benefit or advantages which have accrued from the laying out, alteration, widening, grading or discontinuance, or other improvements, and such owner shall convey the estate to such city or town, which shall pay him therefor the value so estimated, and the same may be recovered by an action of contract; and the city or town may sell any portion of said estate not needed for such improvements.

History.—§8, ch. 3164, 1879; RS 686; GS 1034; RGS 1862; CGL 2972.

167.16 Lien of assessment; installments.—All assessments made under this chapter shall constitute a lien upon the real estate so assessed, and if the owner of the estate shall give notice to the city or town council at any time before demand is made upon him for payment thereof, that he desires to have the amount of such assessment apportioned, said city or town council shall apportion the same into three equal parts, with interest thereon from the date of the apportionment, to the annual tax of said estate for the three years next ensuing; and all assessments laid upon real estate for any of the causes mentioned in this law, which shall remain unpaid after the same becomes due or payable, shall draw interest from the time when the same became due or payable until the payment thereof.

History.—§9, ch. 3164, 1879; RS 687; GS 1035; RGS 1863; CGL 2973.

167.17 Remedy of party aggrieved.—Any party aggrieved by the doings of such city or town council may apply by petition to the circuit court for the county in which the estate is situated at any term hereof, within one year after the passage of the order or after the proceedings upon which the application is founded; and after due notice to the city or town against which the petition is filed, a trial shall be had at the bar of the court in the same manner in which other civil causes are there tried by the jury, and if either party requests it, the jury shall review the place in question; provided, that if the municipality shall bring suit to enforce a lien in the premises within such year, the defendant shall make his objections to the order or proceedings aforesaid as defenses to such suit.

History.—§10, ch. 3164, 1879; RS 688; GS 1036; RGS 1864; CGL 2974.

167.18 Costs and lien in such proceedings.—If the jury shall not reduce the amount of the assessment complained of, the respondent shall recover costs against the petitioner, which costs shall be a lien upon the estate, and be collected in the same manner as the assessment; but if the jury shall reduce the amount of the assessment, the petitioner shall recover costs, and all assessments, shall be a lien upon the estate for one year after the final judgment in any suit or proceeding where the amount or validity of the same is in question, and be collected in the same manner as original assessments.

History.—§11, ch. 3164, 1879; RS 689; GS 1037; RGS 1865; CGL 2975.

167.19 Assessment of leasehold.—When an assessment is made upon an estate, the whole or any portion of which is leased, the owner of the estate shall pay the assessment and may thereafter collect of the lessee an additional

rent for the portion of the estate so leased, equal to ten per cent per annum on that portion of the whole sum so paid which the leased portion bears to the whole estate, after deducting from the whole sum so paid any amount he may have received for damages to the estate above what he has necessarily expended on such estate by reason of such damages.

History.—§12, ch. 3164, 1879; RS 690; GS 1038; RGS 1866; CGL 2976.

167.20 Acquisition and enforcement of lien.—In all cases mentioned in this chapter in which the municipality shall be entitled to liens on lands, such liens for improvements, assessments, work done and materials furnished, or either, may be acquired and enforced in the manner provided for the acquisition and enforcement of liens upon real property provided for by chapter 85. The owner shall also be personally liable for the said value. In case the land belongs to an infant, married woman, or person non compos mentis, suit in equity shall be brought to enforce a lien, service in such suit shall be made on such defendant and the court shall appoint a guardian ad litem for such defendant as in other cases.

History.—RS 691; GS 1039; RGS 1867; CGL 2977.

167.21 Wharves, vessels, bridges, ferries, fires, improvements.—The city or town council may construct wharves, quays and docks; regulate wharfage, dockage, and the moorings and anchorage of vessels within the corporate limits, unless otherwise provided by law; construct bridges, establish ferries, and fix the rates of ferriage and tolls; erect all necessary public buildings and control and dispose of the same as the interests of the city or town may require; make and sink wells, erect pumps, dig drains; pass all necessary laws to guard against fires and to insure the sweeping of chimneys; provide for the lighting of streets of the city or town; inclose and improve such public squares or parks as may adorn the city or town, and improve and beautify the public cemetery for the burial of the dead; and do and perform all such other act or acts as shall seem necessary and best adapted to the improvements and general interest of the city or town.

History.—§15, ch. 1688, 1869; RS 693; GS 1041; RGS 1868; CGL 2978.

167.22 Term for which franchise may be granted; conditions.—No municipality in the state shall give or grant any franchise or right to use any street for the purpose of operating along or across the same any street railroad, water works, telephone, gas or electric business or other business requiring the use of mains, pipes or wires in any street, for any term exceeding thirty years; or without reserving the right and requiring the grantee of such franchise or right, as a condition precedent of the taking effect of the grant, to give and grant to the municipality the right at and after the expiration of such term to purchase the street railroad, water works, telephone, gas or electric plant, or other property used under or in connection with such franchise or right, or such part of such property as the municipality may desire to purchase at a valuation of the property, real and personal, desired, which valuation shall be fixed by arbitration as may be provided by law. Any such franchise or right which shall be granted for a longer time or without conditions herein provided, shall be void.

History.—§1, ch. 4859, 1899; GS 1016; RGS 1844; CGL 2954.

167.23 Forfeiture of franchise in certain cases.—Whenever any street railroad, gas, electric lighting, telephone, telegraph, or other company or corporation, person, or firm, which has received or shall receive from any municipal corporation in this state any franchise, grant, right, privilege, license or immunity to use, or under which such company, corporation, person or firm, shall use, any of the streets, or parts thereof within such municipal corporation for the placing and maintaining in such streets of any tracks, pipes, wires, poles, or other things necessary to the carrying on of the business of such company, corporation, person or firm, shall violate any of the terms, conditions or provisions of such grant, privilege, right, license or immunity, or shall fail to comply with any reasonable provision of any ordinance of such municipal corporation regulating the use by such company, corporation, person or firm of the streets so used by such company, corporation, person or firm, and shall continue to violate the terms, conditions or provisions under which such franchise, grant, privilege, right, license or immunity was given, or to violate the reasonable provisions of such ordinance, regulating the use by such company, corporation, person or firm, of such streets, for a period of five days after said company or corporation shall have been notified in writing by the mayor or chairman of the board of public works, or president of the city council, of such municipal corporation, to desist from such violation, then said company, corporation, person or firm, shall be deemed to have forfeited and annulled, and shall thereby forfeit and annul, all of the said franchises, grants, privileges, rights, licenses and immunities, and such forfeiture shall be so declared by the judge of the circuit court of the county in which such municipal corporation shall be located, upon the affirmative finding of a jury trying the case, as prescribed in §§167.24-167.27.

History.—§1, ch. 4052, 1891; GS 1024; RGS 1852; CGL 2962.

167.24 Procedure.—Whenever any company, corporation, person or firm, mentioned in §167.23, shall fail to strictly comply with any of the said terms, conditions, or provisions of any franchise, grant, privilege, right, license, or immunity, or any reasonable provisions of any ordinance, regulating the use by such company, corporation, person or firm, of the streets so used by such company, the mayor of such municipality, and in case of his failure to act, then the chairman of the board of public works, or if there be no such officer, then the presi-

dent of the city council, shall notify in writing said company, by serving upon some general officer of such company, or some superintendent or other agent in charge of the property of such corporation, notice of its failure to comply with the terms, conditions or provisions of such franchise, grant, privilege, right, license, or immunity, or the reasonable provisions of such ordinance.

Said notice shall specify in a general way so as to be reasonably understood, the particular terms, conditions, or provisions of the franchise, grant, privilege, right, license, or immunity or ordinance, which have been, or are being violated, and shall name a time not less than five days thereafter, within which to strictly comply with such terms, conditions, or provisions. If any such company, corporation, person or firm shall, after service of such notice, fail to strictly comply with any of such terms, conditions or provisions, within the time therein prescribed, (not less than five days), then and from thenceforth said company, corporation, person or firm shall be deemed to have forfeited and annulled all of its said franchises, grants, privileges, rights, licenses and immunities, and a petition shall be filed in the name of such municipality in the office of the clerk of the circuit court for the county within which such municipality lies, addressed to the judge of the circuit court of said county, alleging a forfeiture and annulment by such company, corporation, person or firm, of such franchises, grants, privileges, rights, licenses or immunities so given, and setting out the facts upon which such forfeiture and annulment are claimed.

History.—§2, ch. 4052, 1891; GS 1025; RGS 1853; CGL 2963.

167.25 Pleading, practice and procedure.—Upon the filing of such petition as provided in §167.24 a copy thereof shall be made by the clerk of the circuit court, and shall be served upon such person or firm, or upon some general officer of such company or corporation, or upon some superintendent, or other agent in charge of the property of such company, corporation, person or firm, by the sheriff of said county, and such company, corporation, person or firm, within twenty days after such service, shall answer to such petition, and thereafter the petitioner and the respondent shall have twenty days within which to plead to the other's pleadings, unless greater time shall, for good cause shown, be granted by said judge, until an issue is joined. Whenever an issue of fact is joined, as to whether such terms, conditions or provisions have been violated, a jury of six qualified jurors shall be ordered by said judge, and shall be summoned to try the issue upon an early date to be designated by said judge, in or out of term time, for such trial. The usual provisions of law governing trials at law shall prevail, and the question of fact shall be submitted to the jury under the charges of the court, and the jury shall render a verdict accordingly. The verdict, if the facts constituting the forfeiture and annulment have been proven, shall be rendered as follows: "We the jury find the defendant guilty"; otherwise, "We the jury find the defendant not guilty."

History.—§3, ch. 4052, 1891; GS 1026; RGS 1854; CGL 2964; §34, ch. 29737, 1955.

167.26 Judgments.—If the jury find the defendant guilty, then a judgment shall be entered up declaring forfeited and annulled all the franchises, grants, privileges, rights, licenses and immunities under which said company, corporation, person or firm has used said streets for said purposes, and said municipality may remove from said streets all tracks, pipes, wire, poles, and other property of said company, as if no such franchise, grant, privilege, right, license or immunity had ever been given.

History.—§4, ch. 4052, 1891; GS 1027; RGS 1855; CGL 2965.

167.27 Appeals.—Either party to such proceedings shall have the same right of appeal as in cases at law, except that a supersedeas shall be obtained only upon an order of the circuit judge before whom the case was tried, upon an application therefor, and a hearing of both parties thereon, and upon such terms and conditions as may be prescribed by such judge.

History.—§5, ch. 4052, 1891; GS 1028; RGS 1856; CGL 2966.

167.28 Support of public schools, poor, etc.—The city or town council may provide for the support of the poor, the infirm and the insane, and establish public schools and provide for their maintenance.

History.—§21, ch. 1688, 1869; RS 699; GS 1048; RGS 1875; CGL 2985.

167.29 Establishing and maintaining library; election; tax.—Whenever the city or town council of any incorporated city or town in this state shall deem it advisable to establish and maintain a public library and reading room free for the use of the inhabitants of such city or town, they shall call an election to decide whether such public library and reading room shall be established in said city or town, and, if a majority of the registered voters of such city or town, at such an election, shall vote in favor of establishing and maintaining such public library, the city or town council of such incorporated city or town shall establish the same, and may levy a tax of not more than two mills on the dollar annually to be levied and collected in like manner as any other taxes of said city or town, and to be known as the "library fund."

History.—§1, ch. 6199, 1911; RGS 1876; CGL 2986.

167.30 Library board.—When any city or town council shall have decided by ordinance to establish and maintain a public library and reading room, they shall elect a library board to consist of five directors, to be chosen from the citizens at large, of which board neither the mayor nor any member of the city or town council shall be a member. Such directors first elected shall hold their office, one for the term

of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years, from the first day of July following their appointment, and one director shall be chosen annually thereafter for the term of five years; and in cases of vacancies by resignation, removal or otherwise, the council shall fill such vacancy for the unexpired term, and no director shall receive any pay or compensation for any service rendered as a member of such board, and such directors shall give such bond as the council may require. Such directors shall, immediately after their appointment, meet and organize by electing one of their number president, and such other officers as may be necessary.

Three of such board shall be a quorum. They may make and adopt such by-laws, rules and regulations for their own guidance, and for the government of the library and reading room as they may deem expedient, subject to the supervision and control of the city or town council, and not inconsistent with law. They shall have exclusive control of expenditures of all moneys collected or donated to the credit of the library fund, and of the renting or construction of any library building; and the supervision, care and custody of the grounds, rooms or buildings constructed, leased or set apart for the purpose.

History.—§2, ch. 6199, 1911; RGS 1877; CGL 2987.

167.31 Funds for support and maintenance; special fund; disbursements.—All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance or support of any public library, shall be kept for the use of such library, separate and apart from all other funds of said city, town or village, and shall be drawn upon and paid out by the treasurer of such city, town or village, upon vouchers signed by the president of the library board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner.

History.—§3, ch. 6199, 1911; RGS 1878; CGL 2988.

167.32 General powers of library board; appointment of librarian, etc.—The library board may purchase or lease grounds; erect, lease or occupy an appropriate building or buildings for the use of such library; appoint a suitable librarian and assistants; fix their compensation, and remove their appointments at pleasure; establish regulations for the government of such library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency; fix and impose by general rules, penalties and forfeitures for trespasses or injury to the library grounds, rooms, books or other property, or failure to return any book, or for violation of any by-laws or regulation; and shall have and exercise such power as may be necessary to carry out the spirit and intent of law, in establishing and maintaining a public library and reading room.

History.—§4, ch. 6199, 1911; RGS 1879; CGL 2989.

167.33 Free use of library by inhabitants of city; proviso.—Every library and reading room shall be forever free to the use of the inhabitants of the city or town, subject always to such reasonable regulation as the library board may adopt, to render said library and reading room of the greatest use to the inhabitants of said city or town, and the librarian may exclude from the use of the library and reading room any person who shall willfully violate or refuse to comply with rules and regulations established for the government thereof; persons so excluded may appeal to the library board.

History.—§5, ch. 6199, 1911; RGS 1880; CGL 2990.

167.34 Reports of library board to council.—The library board shall, on or before the second Monday in June in each year make a report to the city or town council of the condition of their trust, on the first day of June in such year, showing all moneys received or expended, the number of books and periodicals on hand, newspapers and current literature subscribed for or donated to the reading room department, the number of books and periodicals ordered by purchase, gift or obtained during the year, and the number lost or missing, the number of visitors attending, the number of and character of books loaned or issued, with such statistics, information and suggestions as they may deem of general interest, or as the city or town council may require, which report shall be verified by affidavit of the proper officers of said board.

History.—§6, ch. 6199, 1911; RGS 1881; CGL 2991.

167.35 Amendment of bylaws.—Any by-law or regulation established by the library board may be amended by the council of said city or town.

History.—§7, ch. 6199, 1911; RGS 1882; CGL 2992.

167.36 Penalty for violation of rules recovered by civil action.—Penalties imposed or accruing by any by-law or regulation of the library board may be recovered in a civil action before any justice of the peace or other court having jurisdiction; such action to be instituted in the name of the library board of the city or town library. And moneys collected in any such action shall be forthwith placed in the city treasury to the credit of the library fund.

History.—§8, ch. 6199, 1911; RGS 1883; CGL 2993.

167.37 Donation to library; title to vest in library board.—Any person may make any donation of money or lands for the benefit of such library, and the title of the property so donated may be made to and shall vest in the library board, and their successors in office, and such board shall thereby become the owners thereof in trust to the uses of the public library of such city or town.

History.—§9, ch. 6199, 1911; RGS 1884; CGL 2994.

167.38 Property exempt from execution and taxation.—The property of such library shall be exempt from execution, and shall also be exempt from taxation as other public property.

History.—§10, ch. 6199, 1911; RGS 1885; CGL 2995.

167.39 Circulating library.—The library board may authorize any circulating library, reading matter, or work of art, of any private person, association or corporation, to be deposited in the public library rooms, to be drawn or used outside of the rooms only on payment of such fees or membership as corporation or association owning the same may require. Deposits may be removed by the owner thereof at pleasure, but the books or reading matter so deposited in the rooms of any such public library shall be separately and distinctly marked and kept upon shelves apart from the books of the city or town library, and every such private or associate library or other property so deposited in any public library, while so placed or remaining, shall be subject to use and reading within the library room without charge by any person and inhabitant of said city or town, and entitled to the use of the free library.

History.—§11, ch. 6199, 1911; RGS 1886; CGL 2996.

167.40 To provide for election of officers.—The city or town council may provide for the election by the qualified voters of the city or town of a treasurer and assessor and a collector of city or town taxes, and such other executive officers as the council may deem expedient, who shall continue in office for one year, or until their successors are elected and qualified; provided, however, that it is lawful for the city or town council of any city or town to confer upon any qualified person the two offices of marshal and collector of taxes or the two offices of clerk and treasurer, or the offices of clerk, assessor and treasurer.

History.—§24, ch. 1688, 1869; RS 700; GS 1050; RGS 1888; CGL 2998.

167.41 Tax assessor may be abolished by ordinance of municipal corporation.—The governing authority of each municipal corporation of this state may abolish, by ordinance, the office of tax assessor and provide for the performance of the duties of such office by the tax collector of said municipal corporation.

History.—§1, ch. 15047, 1931; CGL 1936 Supp. 2998(1).

167.42 To regulate compensation of officers.—The city or town council may regulate and fix the compensation of the several municipal offices.

History.—§28, ch. 1688, 1869; RS 701; GS 1051; RGS 1889; CGL 2999.

167.421 Group insurance for municipal employees and officers.—

(1) AGREEMENTS TO PROVIDE.—Every municipality in Florida, whether created or incorporated under special or general act of the legislature, is authorized to provide life, health, accident, hospitalization, medical or annuity insurance, or all or any kinds of such insurance, for its employees and officers upon a group insurance plan and to that end to enter into agreements with insurance companies to provide such insurance.

(2) EVIDENCE OF ELECTION TO PROVIDE INSURANCE.—The election to exercise such authority shall be evidenced by resolution or ordinance duly recorded in the official minutes or records of the municipality, adopted by the council, commission or other governing body of the municipality.

(3) DEDUCTION AND PAYMENT OF PREMIUMS.—Upon the request in writing of any employee or officer, the proper officials of such municipality may deduct from the wages or salary of such employee or officer, periodically, the amount of the premium which such employee or officer has agreed to pay for such insurance, and to pay or remit the same directly to the insurance company issuing such group insurance.

(4) PARTICIPATION VOLUNTARY.—The participation in such group insurance by any employee or officer shall be entirely voluntary at all times. Any employee or officer may upon any pay day, withdraw or retire from such group insurance plan, upon giving his employer written notice and directing the discontinuance or deductions from wages in payment of such premiums.

(5) PAYMENT OF PREMIUMS BY MUNICIPALITY.—From and after passage of this law each and every municipality of Florida is authorized and empowered to pay any portion or all of the premiums or cost of any group insurance of such municipality promulgated pursuant to this law; provided, however, that the determination of the degree of participation in such costs by the municipality shall be determined by the council, commission or governing body of the municipality and shall be evidenced by resolution or ordinance thereof, in the official minutes or records of the municipality. The degree of participation by the municipality may be increased or decreased from time to time by ordinance or resolution.

(6) INSURANCE ADDITIONAL TO WORKMEN'S COMPENSATION.—The insurance authorized under this law shall be in addition to, and in no manner in lieu of, the provisions of the Florida workmen's compensation law.

(7) PURPOSE AND INTENT OF LAW.—It is declared to be the purpose and intent of this law to make available upon a voluntary participation basis to the employees and officers of municipalities the economic protection and benefits of group insurance not available to each employee as an individual; and to aid municipalities in obtaining and holding competent, skilled, and experienced employees and officers by authorizing participation by municipalities in the cost of such group insurance.

History.—§§1-7, ch. 61-118.

167.43 To impose and collect taxes.—The city or town council may raise, by tax and assessment upon all real and personal property, and by license on professions, business and occupations carried on within the corporation, all sums of money which may be required for the improvement and good government of the city, and for carrying out the powers and duties herein granted and imposed; and enforce the receipt and collection of the same in the

manner now provided by the laws of the state for the assessment and collection of state taxes and licenses.

History.—§1, ch. 3477, 1883; RS 702; GS 1052; RGS 1890; CGL 3000.

167.431 Municipalities authorized to levy tax on public services.—

(1) The several cities and towns in this state are hereby given the right, power, and authority, by nonemergency ordinance, to impose, levy and collect on each and every purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), water service, telephone service and telegraph service in their corporate limits, a tax (straight percentage, sliding scale, graduated or other basis) in an amount not to exceed ten per cent of the payments received by the seller of such utility service from the purchaser for the purchase of such utility service; provided, however, that the sale of natural gas to a public or private utility, including municipal corporations and rural electric cooperative associations, either for resale or for use as fuel in the generation of electricity shall not be deemed to be a utility service and purchases thereof under such circumstances shall not be taxable hereunder. In every case the tax shall be collected from the purchaser of such utility service and paid by such purchaser for the use of the city or town to the seller of such utility service at the time of the purchaser paying the charge therefor to the seller. It shall be the duty of every seller of such utility service, in acting as the tax collection medium or agency for the city or town, to collect from the purchaser, for the use of the city or town, any tax imposed and levied by ordinance enacted pursuant to this section and to report and pay over unto the city or town all such taxes imposed, levied and collected in accordance with the accounting and other provisions of the enacted ordinance. Any such ordinance may provide that federal, state, county and municipal governments and their commissions and agencies and other taxe supported bodies, public corporations, authorities, boards and commissions, shall be exempted from the payment of the taxes imposed and levied thereby and may also provide penalties for the violation of such ordinance. In the event any such ordinance imposes such a tax on the purchase of one of the utility services described herein and a competitive utility service or services are purchased in the city or town, then such ordinance shall impose a tax in like amount on the purchase of the competitive utility service or services whether privately or publicly owned or distributed; however, telephone service and telegraph service shall not be required to be considered competitive services.

(2) All laws, general and special, in conflict with the provisions of this section are hereby superseded to the extent of such conflict, it being the purpose and intent of the legislature to confer the right and authority hereby granted to the several cities and towns notwithstanding any limitations or restrictions which may be contained in any general or special law; but nothing contained in this section shall be construed to affect or repeal gross receipts taxes imposed by chapter 203.

History.—§§1, 2, ch. 22829, 1945; §7, ch. 24337, 1947; (1) §1, ch. 57-324.

167.432 Exemption of churches, utility tax.—All recognized churches of the state are hereby exempt from the payment of any utility tax imposed by any municipality on church property used exclusively for church purposes.

History.—§1, ch. 57-792.

167.44 Town valuation not to exceed state.—The city or town may make its own assessment of property for taxation, but the valuation of property by the municipality shall not exceed the last valuation thereof by the state for taxation. The total taxes levied upon any property by any municipal corporation in any one year shall not exceed one per cent upon such state valuation; but this provision is not to be so construed as to prevent the said corporation from levying sufficient tax to meet the payment of interest on its outstanding bonds, and to provide for the payment of the principal thereof when the same shall become due, or from levying such taxes for special purposes, or from making such special assessments of property as are in this chapter specified.

History.—§2, ch. 3477, 1883; RS 704; GS 1053; RGS 1891; CGL 301.

167.45 Special tax for water works and fire protection.—Every city and town is empowered to levy and collect a special tax annually for water works and fire protection upon all property within the corporate limits of any such city or town; provided, that it shall require a two-thirds vote of the city or town council to levy said tax, and that thirty days' notice of the intention to levy said tax shall be given by publication in some newspaper published in said town once in each week, provided further, that said tax shall not exceed five mills on the state valuation of the property within such corporation.

History.—§1, ch. 3605, 1885; RS 705; GS 1054; RGS 1892; CGL 3002.

167.46 Collection of and sale for taxes.—The tax collector of any city or town shall proceed substantially in the same manner in the collection of taxes and sale of property for the nonpayment of taxes as state tax collectors.

History.—§53, ch. 3681, 1887; RS 706; GS 1055; RGS 1893; CGL 3003.

167.47 Advertisement of tax sales.—The tax collector of any incorporated city or town, if there be no newspaper published within the said city or town, shall advertise the sale of any lands levied on for taxes by three written notices posted in three public places in said city or town.

History.—§2, ch. 2079, 1877; RS 707; GS 1056; RGS 1894; CGL 3004.

167.48 Limitations of appropriations and warrants.—It is not lawful for the govern-

ment of any city or town to make appropriations, in any one year, for a greater amount than is allowed to be collected by taxation; and it is not lawful for any officer of a municipal government to issue a warrant on the treasurer except in payment of an appropriation.

History.—§2, ch. 3477, 1883; RS 708; GS 1057; RGS 1895; CGL 3005.

167.49 Entry and endorsement of refusal or failure to pay warrants; penalty.—The treasurer of any city or town shall enter in a book to be kept for that purpose the fact of the refusal to pay, or nonpayment of, any warrant or order which may be presented to him as such treasurer, and to include in such entry a description of the warrant or order, by whom presented, the date of presentation and his reason for such refusal or nonpayment; and he shall, at the request of the person presenting the same, endorse on the back of such warrant or order the fact of such refusal or nonpayment and reason therefor.

Any treasurer of a municipal government who violates the provisions of this section shall be punished by a fine not exceeding one hundred dollars.

History.—§§1, 4, ch. 3465, 1883; RS 709, 2557; GS 1058, 3464; RGS 1896, 5329; CGL 3006, 7462.

167.50 Book to be furnished treasurer.—The city or town council shall furnish the treasurer with a book for the purposes mentioned in §167.49, which shall be open to the inspection of all citizens.

History.—§2, ch. 3465, 1883; RS 710; GS 1059; RGS 1897; CGL 3007.

167.51 Licenses may be required for stationary steam engineers in cities over five thousand population.—All cities over five thousand inhabitants may pass and enforce all ordinances that will compel each and every stationary steam engineer to take out a license to carry on their said vocation, in such sum as the said cities may impose; provided said sum shall not exceed the limits specified in the general revenue laws of the state. The provision regarding the amount of license shall not apply to cities which operate under a special charter when said charter grants the power to impose licenses without respect to the general revenue statute.

Licenses granted to stationary steam engineers shall be exposed in any public manner required by ordinance.

History—§1. ch. 5069, 1901; GS 1093, 1094, 1098; RGS 1940, 1941, 1945; CGL 3073, 3074, 3078.

167.52 Appointment of inspectors.—Cities of over five thousand inhabitants may provide by ordinance for an inspector of boilers and an examiner of stationary steam engineers, to inspect steam boilers, except marine and locomotive boilers used on regular lines of railway, and shall regulate by ordinance the qualifications of the said inspectors and examiners, their terms of office, salary or fees, and all other matters and things connected with their said duties. The office of inspector and examiner of stationary steam engineers may be combined in one person by ordinance.

History.—§2, ch. 5069, 1901; GS 1095, 1096; RGS 1942, 1943; CGL 3075, 3076.

167.53 Powers of examiner.—The examiner of stationary steam engineers may require by examination such qualifications of all stationary steam engineers aforesaid as would be reasonable in conserving public safety, and said examination shall be held at such times and places as may be required by ordinance.

History.—§3, ch. 5069, 1901; GS 1097; RGS 1944; CGL 3077.

167.54 Penalty for engineer accepting employment without passing examination.—Any stationary steam engineer who shall accept employment without first having passed examination and complied with the provisions of §167.53, and before taking out a license under the provisions of §167.51, shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year.

History.—§4, ch. 5069, 1901; GS 3798; RGS 5851; CGL 8093.
cf.—§775.06 Alternative punishment.

167.55 Penalty for employing other than licensed engineer.—Any employer, employing other than a licensed stationary steam engineer, as provided by §167.51, shall be punished by a fine of not more than one thousand dollars, or imprisonment not exceeding one year.

History.—§5, ch. 5069, 1901; GS 3799; RGS 5852; CGL 8094.
cf.—§775.06 Alternative punishment.

167.56 Penalty for refusal to allow boiler inspection.—Any employer or his manager or servant, who shall refuse the inspector of steam boilers, appointed under the provisions of §167.52, an opportunity to inspect the boiler or boilers in their charge or control, shall be guilty of a misdemeanor, and in such case the employer shall be equally guilty with his manager or servant when refusal is made by the said manager or servant. Each shall be punished by a fine of not exceeding one thousand dollars, or imprisonment not exceeding one year.

History.—§6, ch. 5069, 1901; GS 3800; RGS 5853; CGL 8095; §7, ch. 22858, 1945.
cf.—§775.06 Alternative punishment.

167.57 Cities and towns to fix rates and charges for water.—The corporate authorities of any city, town or village, now or hereafter incorporated under any general or special law of this state, in which any individual, company or corporation has been, or may hereafter be, authorized by such city, town or village to supply water to such city, town or village and the inhabitants thereof, may prescribe by ordinance maximum rates and charges for the supply of water furnished by such individual, company or corporation to such city, town or village and the inhabitants thereof, such charges to be just and reasonable; provided, that this section shall not be construed as to impair the validity of any valid contract heretofore entered into between any city, town or village and any person, firm or corporation for

the supply of water to such city, town or village or its inhabitants, but this section shall not be held to validate any contract heretofore made.

History.—§1, ch. 5070, 1901; GS 1099; RGS 1946; CGL 3079.

167.58 May take census.—Whenever any city or town council of any city or town in the state shall deem it necessary for any purpose to ascertain the number of bona fide inhabitants of such city or town, such city or town council shall by resolution declare the same to be the sense of said body, and whereupon they shall by resolution appoint some suitable person to do such work, and declare his compensation for such work.

History.—§1, ch. 5191, 1903; GS 1106; RGS 1953; CGL 3086.

167.59 Under regulations of council.—Such census shall be taken in such manner, and under such regulations as the council may determine.

History.—§2, ch. 5191, 1903; GS 1107; RGS 1954; CGL 3087.

167.60 Census taken, filed with clerk.—Whenever the said census shall be completed, the same shall be filed with the clerk of said city or town, and shall thereupon become legal evidence of the number of bona fide inhabitants of said city or town.

History.—§3, ch. 5191, 1903; GS 1108; RGS 1955; CGL 3088.

167.61 Municipalities required to keep books of account; annual financial reports; examinations of finances; penalty.—Every municipality in the state shall keep books of account. It shall also make stated financial reports at least as often as once a year, not later than the first day of November of each year, to the comptroller in accordance with forms and methods prescribed by him, which shall be applicable to all municipalities within the state; such reports shall be filed in the office of the comptroller as a part of the public documents of the state. Such reports shall contain an accurate statement in summarized form and also in detail of the financial receipts of the municipality from all sources, and of the expenditures of the municipality for all purposes, together with a statement in detail of the debt of said municipality at the date of said report, and of the purposes for which such debt has been incurred. The governor may authorize and direct the state auditor by himself, or by some competent person or persons appointed by him, to examine into the affairs of the financial department of any municipality within the state. And he shall direct the state auditor to make such examination whenever petitioned to do so by at least twenty per cent of the freeholder electors of any municipality.

On every such examination inquiry shall be made as to the financial condition and resources of the municipality, and whether the requirements of the constitution and laws have been complied with, and into the methods and accuracy of the municipality's accounts, and as to such other matters as the governor may prescribe. The state auditor, and every such examiner appointed by him, may administer an oath to any person whose testimony may be required on any such examination, and compel the appearance, attendance and testimony of any such person for the purpose of any such examination, and the production of books and papers. A report of each such examination shall be made, and shall be a matter of public record in the office of said state auditor and the expenses of any such examination shall be paid by said municipality.

Any municipal official who shall refuse to submit his books of account, records, vouchers, papers, warrants, or any other property in his possession or control belonging to any municipality in the state, or kept by him for the use of any municipality, to the state auditor, or other examiner for inspection or examination, may be suspended from office by the governor, and such refusal shall constitute a misdemeanor. And upon conviction therefor, such officer shall be punished by a fine of five hundred dollars, or six months' imprisonment in the county jail.

History.—§§1, 2, ch. 6817, 1915; RGS 1956, 5381; CGL 3089, 7516; §1, ch. 57-48; §5, ch. 61-530.

cf.—§775.06 Alternative punishment.

167.62 Cities required to provide day and night shifts of firemen; general alarm (cities of fifteen thousand or more).—Each city having a population of fifteen thousand, or more, according to the last federal census shall provide for two shifts of firemen, one shift to be on duty during the day and the other shift to be on duty during the night; provided, however, that all firemen whether on the day or night shift, shall be subject to call in case of general fire alarm during time when a fire emergency so requires.

History.—§1, ch. 7939, 1919; CGL 3090.

167.63 Number hours firemen required to remain on duty (cities of fifteen thousand or more).—No fireman provided under §167.62 shall be required to remain on duty more than fourteen hours per day, and the hours during which each shift is to be on duty shall be so divided, either by the shifts alternating from night to day shifts or otherwise so that neither shift shall be discriminated against in the number of hours during which the members thereof are required to be on duty. Provided, further, that nothing in §§167.62, 167.64 or this section, shall be construed as repealing any of the provisions of the law or ordinances of the cities affected, allowing vacation to firemen.

History.—§2, ch. 7939, 1919; CGL 3091.

167.632 Maximum hours of duty for firemen in certain cities.—

(1) Firemen of municipalities with a population of fifteen thousand or more, according to the most recent federal census, shall not be required to remain on duty more than one hun-

dred twenty hours in any two consecutive calendar weeks. The hours during which each shift is to be on duty shall be so divided, either by the shifts alternating from night to day, or otherwise, that neither shift shall be discriminated against in the number of hours during which the members thereof are required to be on duty; provided, however, that firemen may be required to remain on duty twenty-four hours per day, but only on alternate days, except when a fire emergency exists. Provided, however, that within all municipalities in this state having a population of not less than thirty thousand five hundred and not more than thirty-five thousand inhabitants according to the latest official census, firemen of such municipalities may be required to remain on duty up to but not exceeding one hundred forty-four hours in any two consecutive calendar weeks.

(2) Nothing in this section shall be construed as repealing any of the provisions of the laws or ordinances of the cities affected allowing vacation for firemen.

(3) This section shall not be applicable to:
(a) The city of Coral Gables.
(b) The city of Gainesville.
(c) The city of Tampa.
(d) The city of Tallahassee nor the fire department of said city.
(e) Cities in Duval County.
(f) Counties having population of not less than thirty-four thousand six hundred fifty nor more than thirty-six thousand inhabitants according to latest official census.
(g) Counties having a population of not less than sixty nor more than eighty thousand according to the last preceding federal census.
(h) Cities or municipalities located in counties having a population according to the 1950 federal census of not less than eighty thousand and not more than one hundred thousand.
(i) Counties having a population of not less than one hundred fourteen thousand seven hundred fifty nor more than one hundred twenty-two thousand according to the last preceding federal census.

History.—§§2-7, ch. 28099, 1953.

167.64 Term "Firemen" defined (cities of fifteen thousand or more).—The term "Firemen" as used in §§167.62, 167.63 and this section shall be construed to mean all those persons employed by any city affected by such sections, in any work in connection with the prevention and extinguishing of fires in said city by the said municipal government.

History.—§3, ch. 7939, 1919; CGL 3092.

167.65 Right of eminent domain conferred on cities and towns; purposes.—All cities and towns in the state may exercise the right and power of eminent domain, that is, the right to appropriate property, except state or federal, for the following uses or purposes: for streets, lanes, alleys and ways; for public parks, squares and grounds; for drainage and for raising or filling in land in order to promote sanitation and healthfulness; for reclaiming and filling when lands are low and wet, or overflowed altogether or at times, and entirely or partly; for the abatement of any nuisance; for the use of water pipes and for sewerage and drainage purposes; for laying wires and conduits under ground; for city buildings, waterworks, pounds and other municipal purposes, which shall be coextensive with the powers of the municipality exercising the right of eminent domain; and the absolute fee simple title to all property so taken and acquired shall vest in such municipal corporation, unless the city or town seeks to condemn a particular right or estate in such property.

History.—§1, ch. 6866, 1915; RGS 1957; CGL 3113.

167.66 Legislative department of city or town may authorize acquirement of property by eminent domain.—The city council or legislative department of any city or town, or any board of such city or town, as the case may be, having authority and jurisdiction over any of the subject mentioned in §167.65 may, by resolution, authorize the acquirement by eminent domain of property, real or personal, for any of such uses or purposes designated in such resolution. The procedure in acquiring said property shall be that prescribed and set forth in chapter 73.

History.—§2, ch. 6866, 1915; RGS 1958; CGL 3114.

167.67 Tax for municipal band; petition; referendum.—Cities and towns, however organized and irrespective of their form of government, may, when authorized as hereinafter provided, levy each year a tax not to exceed two mills for the purpose of providing a fund for the maintenance or employment of a band for municipal purposes.

Said authority shall be initiated by a petition signed by twenty-five per cent of the legal voters of the city or town as shown by the last regular municipal election. Said petition shall be filed with the council or commission and shall request that the following question be submitted to the voters, to-wit:

"Shall a tax of not exceeding two mills be levied each year for the purpose of furnishing a band fund?"

When such a petition is filed the council or commission shall cause such question to be submitted to the voters at the first following general election.

Said levy shall be deemed authorized if a majority of the votes cast at said election be in favor of the proposition, and the council or commission shall then levy a tax sufficient to support or employ such band, not to exceed two mills on the assessed valuation of such municipality.

All funds derived from said levy shall be expended as set out in this section by the council or commission.

History.—§§1, 2, 3, 4, 6, ch. 12410, 1927; CGL 3093, 3094, 3095, 3096 and 3098.

167.68 Cancellation of tax for municipal band; petition; referendum.—A petition like

that provided for in §167.67 may at any time be presented to the council or commission, asking that the following proposition be submitted, to-wit:

"Shall the power to levy a tax for the maintenance or employment of a band be canceled?"

Such submission shall be made at any general municipal election as provided for in said section, and if a majority of the votes cast be in favor of the question submitted, no further levy for such purpose shall be made until the question may be again voted upon favorably as provided in §167.67.

History.—§5, ch. 12410, 1927; CGL 8097.

167.69 Purchase of lands for national defense.—

(1) The several municipalities (cities and towns) of the state are hereby authorized, separately or jointly, to acquire land by grant, gift, lease, purchase or eminent domain either within or without their corporate limits for the purpose of leasing or selling such land to the United States for national defense purposes.

(2) The several municipalities of the state, separately or jointly, are hereby granted authority to incur obligations for the purchase or lease of such property, and the governing authorities of such municipalities are hereby authorized and empowered to make contracts for such purpose and also authorized to appropriate and cause to be raised by taxation or otherwise monies sufficient to pay such obligations.

(3) Any lands acquired, owned, leased, controlled or occupied by any municipality of the state for the purpose or purposes enumerated in subsection (1) shall be and are hereby declared to be acquired, owned, leased, controlled, occupied and maintained for a municipal and public governmental purpose and any land so acquired and subleased to the United States shall be deemed to be maintained for a municipal and public governmental purpose.

(4) Authority is hereby granted to each of the several municipalities of the state to lease or sublease to the United States for a period not to exceed ninety-nine years or to grant or sell to the United States for national defense purposes any land owned, leased or controlled by such municipalities.

(5) All land, while actually being used for the purpose or purposes of this section, shall be exempted during such period from all state, county, municipal and drainage taxes.

(6) This section shall not repeal any other laws relating to the subject matter hereof, but shall be deemed supplemental and cumulative.

History.—§§1-6, ch. 20836, 1941.

167.70 Cemeteries and burial grounds of municipal corporations. — Municipal corporations within this state owning or having title to any cemeteries or burial grounds, within this state, wherein any person is or may be buried, who served with the armed forces of the United States, at any time, or who served in any war wherein the United States was a combatant, are hereby authorized and permitted to enter into agreements with the United States for the care, upkeep and maintenance of said cemeteries or burial grounds, or any grave or graves therein, and to receive funds or other assistance for the care, upkeep, and maintenance aforesaid. The said municipal corporations shall have authority to sell, transfer or convey lots or tracts of land within said cemeteries to the United States and may receive conveyances from the United States.

History.—§1, ch. 20862, 1941.

167.71 Authorizing agreements with the federal housing administration for purpose of restricting use of certain defined areas.—

(1) Where in any municipality, in the state, the owners of more than half of the property in a certain area or areas within the boundaries of said municipality, sign a petition and file same with the governing body of said municipality, asking that the area or areas described in said petition shall have certain restrictions placed upon said area or areas, restricting the use of and the building upon the property within said area or areas in order that said area or areas may be approved by the federal housing administration for the loaning of money for the erection of buildings upon the property within said area or areas, the governing body of said municipality shall thereupon, by resolution, set a time for public hearing on said petition and cause to be published for four consecutive weeks prior to said hearing a copy of said petition and the proposed restrictions. At said hearing any property owner in the area or areas to be affected shall have the right to file in writing his or her objections or protest to the proposed restrictions. If at said hearing sufficient evidence is produced showing that the owners of more than half of the property within said area or areas are in favor of such restrictions being placed upon the property within the said area or areas and it seems advisable to the governing body of the said municipality that such restrictions be placed upon the property within said area or areas; thereupon the governing body of said municipality is authorized and empowered by proper resolution or ordinance to enter into an agreement with the federal housing administration for the purpose of restricting the use of and the building upon the property within said area or areas.

(2) After such agreement has been entered into between the said municipality and the federal housing administration, the same cannot be abandoned or changed without the joint agreement of the governing body of said municipality and the federal housing administration.

(3) In the event that the said federal housing administration shall cease to exist, then any agreement entered into with the said federal housing administration can only be changed or abandoned with the consent or permission of the successor or agency of said federal housing administration which is still collecting payments on any loans made by the federal housing ad-

ministration in these areas.

(4) The federal housing administration shall in no way be liable for any restrictions so placed upon the properties in any area or areas within any municipality by said municipality.

(5) This section shall not apply to any area or areas of any municipality which now has zoning or building restrictions which are in full force and effect.

(6) This section shall be deemed cumulative and shall not repeal any other laws not specifically in conflict with the provisions hereof.

History.—§§1-5, ch. 20897, 1941.

167.72 Homestead exemption; method of filing.—Every person entitled to a homestead exemption as provided by §7, Art. X, of the constitution of the state, upon filing an application therefor in proper form with the county tax assessor in the county in which such homestead is situated, shall be deemed thereby to have made application for such homestead exemption from the taxation of the municipality in which such homestead is located, and the municipal tax assessor shall treat said application and give it the same consideration as if it had been personally filed with him. It shall be the duty of the tax assessors of the municipalities in this state to obtain a copy of each application for homestead exemption on file in the office of, and approved by, the county tax assessor of the county in which such municipality is located, and it shall be the duty of the several county tax assessors to furnish such copies to municipal tax assessors in their respective counties when requested.

History.—§1, ch. 21988, 1943.

167.73 Charges for use of services and facilities of municipalities.—

(1) Any city, town or village maintaining or operating a service for the collection and disposal of garbage, trash, rubbish or other refuse may provide, by ordinance of its council, or other legislative body, by whatever name known, for the establishment and collection of reasonable charges to be paid to the city, town or village for the use of such service by each person, firm or corporation whose premises are served thereby; and if such charge is not paid when due, the service may be discontinued until such charge is paid, and the amount of any such charge that is delinquent may be recovered by due process of law.

(2) Each city, town or village owning, maintaining or operating any system of public recreation, any wharf, dock, yacht basin, airport, golf course, hospital, stadium, parking lot, or tourist camp, or any facility designed and intended to render a direct service to the users thereof, may provide, by ordinance of its council or other legislative body, by whatever name known, for the establishment and collection of reasonable fees and charges to be paid to the city, town or village for the use of such facility or service by each person, firm or corporation using the same.

(3) This law is intended as a supplemental and additional grant of authority to each city, town or village, and shall not impair, abridge or limit any existing powers held by it.

History.—§§1-3, ch. 21701, 1943.

167.74 Municipality; investment of surplus funds.—

(1) The governing board or body of any municipality in this state is hereby authorized and empowered, by resolution, in its discretion, to provide for the investment of any surplus municipal funds in its control or possession in negotiable direct obligation of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States government, at the then prevailing market price for such securities.

(2) All securities purchased by any such board under the authority of this law shall be properly earmarked and immediately placed for safekeeping in a safety deposit box in some bank or institution carrying adequate safety deposit box insurance within the county in which said municipality is situated, or shall be placed for safekeeping in an authorized bank or trust company within or without the state, receiving therefor proper safekeeping or trust receipts, and no withdrawal of such securities in whole or in part shall be made except upon authority evidenced by resolution of the governing board or body of said municipality.

(3) When the money invested in such securities is needed in whole or in part for the purpose originally intended, or when it is deemed prudent to discontinue any such investment, the governing board or body of such municipality is authorized to provide for the sale of such securities at the then prevailing market price and the payment of the proceeds of such sale into the proper account or fund of the municipality.

(4) For the purpose of this law, the term "surplus funds" is defined as funds in any general or special account or fund of the municipality held or controlled by the governing board or body of such municipality which in reasonable expectation will not be needed for the purposes intended within a period of thirty days from the date of such investment.

History.—§1, ch. 23813, 1947; §1, ch. 61-130.

167.75 Encroachments in public streets and alleys.—It is lawful for the governing bodies of municipalities in the state to adopt ordinances authorizing owners of adjacent real property to construct buildings or structures encroaching in, upon and over any public streets and public alleys located in any such municipalities within such limitations as they may prescribe, provided that every such encroaching building or structure shall be at least nine feet above the level of the ground, and to maintain any such existing encroachments until such buildings or structures are destroyed or removed; provided, however, that when any such encroachments extend in, upon, or over any rights of way within the jurisdiction of the state road department such encroachments shall not be authorized

without the prior consent of the state road department; and provided further, that nothing herein contained shall be construed to relieve the owners of such buildings and such structures of any negligence on their part on account of such encroachment.

Provided further, that any encroachment which occurs or has occurred in good faith through error in survey, measurement, or otherwise, and does not comply with said height requirement, may be permitted to remain and be maintained if such encroachment in no material way interferes with the proper use of such public streets or alleys.

History.—§1, ch. 23980, 1947; §1, ch. 28299, 1953; §1, ch. 63-333.

167.76 Apportionment of funds received from tax foreclosures.—Any municipality of the state may apportion proceeds derived from the sale of any lands acquired by said municipalities by reason of tax foreclosure proceedings or by any other proceedings by which said municipalities acquired property for tax liens thereon, which have heretofore been sold or which may hereafter be sold, to the several funds of the said municipalities in proportion to the interests of the several funds of said municipalities, according to the millage rates in existence and use for the year in which such proceeds of sale are or were received.

History.—§1, ch. 24281, 1947.

167.77 Lease of municipal owned lands for nonpublic use.—

(1) Whenever it has been determined by the governing body of a municipality that any of its real property may not be presently needed for municipal use, but may be so needed at some future time, said property may be leased for nonpublic uses for such reasonable rent, length of term, and conditions, as the governing body may in its discretion determine. The execution and delivery of said lease shall be subject to the same conditions and approvals which may be required by existing charter provisions of the municipality or special acts applicable thereto for the sale of property by deed.

(2) Nothing in this section shall be construed as in any manner affecting the existing power of municipalities to execute and deliver leases of municipal property for public purposes; but the powers granted hereby shall be additional to any other powers which municipalities may now have, to lease, sell, or otherwise dispose of their property.

History.—§§1, 2, ch. 57-9.

CHAPTER 168

POLICE POWER OF MUNICIPALITIES

168.01 Mayor to see that ordinances are executed and appoint police.—The mayor shall see that the ordinances of the city or town council are faithfully executed; and he may, with the consent of the council, organize and appoint such police force as may be deemed necessary to insure peace, good order and observance of law within the municipal limits, the compensation of the said police to be fixed and regulated by the city or town council.

History.—§25, ch. 1688, 1869; RS 717; GS 1068; RGS 1910; CGL 3043.

168.02 To cause arrest of offenders and try them.—The mayor may, by his mandate, directed to the city or town marshal, have brought before him, at such time and place within the corporate limits as he may designate, any person charged with a breach of the city or town ordinances, and he may require the attendance of witnesses, administer oaths, inquire and examine into the truth or falsity of such charge, determine from the evidence the guilt or innocence of the accused, fix the penalty within the limits prescribed by this chapter, and enforce the same.

History.—§25, ch. 1688, 1869; RS 718; GS 1069; RGS 1911; CGL 3044.

168.03 Process of municipal court; by whom executed.—The process of the mayor's court, or other municipal courts, of the cities and towns within the state shall extend to and may be served anywhere within the territorial limits of the county in which said city, or town, is located, and all summons, subpoenas, warrants and other process of the mayor's court, or other municipal courts, may be served and executed by the city, or town marshal, his deputies, or other executive officer of such courts, anywhere within the territorial limits of the county within which the court issuing the same is located.

History.—§1, ch. 6200, 1911; RGS 1912; CGL 3045.

168.04 Clerk and marshal may take affidavits and issue warrants.—The clerk may administer an oath to and take affidavit of any person charging another with an offense by breach of an ordinance, and may issue a warrant to the marshal to have the accused person arrested and brought before the mayor for trial. The marshal may, in the absence of the mayor and clerk from the police station, administer oaths to affidavits of complaints and issue warrants for the arrest of persons complained against.

History.—RS 719; GS 1070; RGS 1913; CGL 3046.

168.05 Markets.—The city or town council may establish market houses or places, and require each and every person who may have for sale any fresh meats or fresh fish to bring the same into the said markets so established, and offer such for sale only in such markets, and to make such police and sanitary regulations in regard to such markets and the sale of fresh meats and fresh fish therein as they may deem reasonable and just, and impose such pains, penalties and forfeitures as may be needed to carry such regulations into effect.

History.—§4, ch. 3024, 1877; RS 694; GS 1042; RGS 1869; CGL 2979.

168.06 Provisions, bread, liquors, weights and measures, gunpowder, etc.—The city or town council may require all persons bringing fresh provisions of any kind into the town or city to exhibit them for sale at stated hours; establish and regulate the weight and size of bread, the inspection of any provisions brought from the country to said market, for sale there, the gauging of liquors, the measurement and weighing of any produce or merchandise and the storing of gunpowder, and all naval and military stores, not the property of the United States, nor the state.

History.—§4, ch. 3024, 1877; RS 695; GS 1043; RGS 1870; CGL 2980.

168.07 Powers to regulate public amusements, hotels, public vehicles, etc.—The city or town council may regulate and restrain all tippling, barrooms and all places where beer, wine or spirituous liquor of any kind is sold, at retail or to be drunk upon the premises where sold, billiard saloons, ten pin alleys, theaters or public halls and all places used for public exhibitions, games, or amusements of any kind, and taverns, hotels and other houses for public entertainment; require all such places to be kept and used subject to such reasonable regulations as the council may prescribe; require

all keepers of such places to procure from the city or town a license for keeping the same, under such pains, penalties and forfeitures as the council may prescribe.

The city or town council may regulate the use of all carts, drays, wagons, hacks, omnibuses, hand carts, and every description of vehicles which may be kept for hire, and all livery stables, and require the same to be licensed and the conveyances numbered.

History.—§1, ch. 3163, 1879; RS 696; GS 1044; RGS 1871; CGL 2981.

168.08 Powers as to houses of ill fame and gambling.—The city or town council may suppress and prohibit all houses of ill fame, lotteries and all games or devices in the nature of lotteries, gambling and gaming houses, and authorize the destruction of all instruments or devices used for lotteries or for the purpose of gaming.

History.—§1, ch. 3163, 1879; RS 697; GS 1045; RGS 1872; CGL 2982.

168.09 As to keeping or running at large of animals.—The city or town council may regulate or prohibit the keeping in the corporate limits of the city or town, or the running at large within the said limits, of horses, cattle, swine, sheep, goats, geese and other animals, and impound the same and hold the same and, on notice to the owners, authorize the sale of the same or any portion thereof for the penalty imposed by any ordinance, and the costs, fees and expenses of the proceeding; license and regulate the running at large of dogs and authorize the killing of the same when running at large contrary to the provisions of any ordinances to that effect.

History.—§1, ch. 3163, 1879; RS 698; GS 1046; RGS 1873; CGL 2983.

168.10 May prohibit sale of fireworks.—Any municipality in this state may prohibit by ordinance the sale within its limits of any such fireworks as may be deemed objectionable by the council of such municipality.

History.—§1, ch. 4585, 1897; GS 1049; RGS 1887; CGL 2997.

168.11 May prevent sale of liquors in certain cases.—When the sale of spirituous liquors, wines or beer is wholly forbidden in any county or precinct pursuant to an election duly held for that purpose under the constitution and laws of this state, then any city or town incorporated under the general or special laws of this state relating thereto, and situated in such county or precinct so voting against such sale, may pass such reasonable ordinance or ordinances to prevent or suppress illegal sales of such intoxicants, while such sale is so forbidden, and affix such reasonable penalty or penalties thereto for the violation thereof, as such city or town council shall prescribe.

History.—§1, ch. 4931, 1901; GS 1071; RGS 1914; CGL 3047.

168.12 Impounding hogs or cattle.—No city or town in this state with less than five hundred bona fide inhabitants may impound any hogs of residents who live without the corporation, and no city or town in this state with less than twelve hundred bona fide inhabitants may impound any cattle of residents who live without the limits of its corporation.

History.—§1, ch. 4190, 1893; §1, ch. 4349, 1895; GS 1105; RGS 1952; CGL 3085; §7, ch. 22858, 1945.

168.13 Sale of municipal owned bridges to state road department, county, etc.—

(1) Where any bridge which is a connecting link or an essential part of a state highway of the state, has been constructed by any municipality of the state, and said municipality has issued its bonds or other obligations to pay all of the costs of construction of such bridge, the said municipality is hereby authorized and empowered to sell said bridge to the state road department, the county in which said bridge is located and/or to any proper state agency or commission now created or which hereafter may be created by law under and by a lease or rental agreement for the consideration and on a basis as hereinafter set forth, and the state road department, the county in which said bridge is located and/or any proper state agency or commission now created or which hereafter may be created by law is hereby authorized and empowered to purchase under and by any such lease or rental agreement such bridge, and to pay annually in semi-annual installments to said municipality such sum or sums as will be equal to the annual interest requirements of the said bonds or any and all other obligations or refunding bonds issued for the original bonds, and an additional amount which over a period of years will be sufficient to enable said municipality to pay off and retire said bonds or refunding bonds or to reimburse itself for the principal of said bonds, or such lesser lease purchase amount as may be agreed upon by the parties. When any purchase agreement as herein authorized has been fully performed such bridge shall become the property of the state as a part of the general state road system of Florida.

(2) Any bridge as mentioned and described in this section is hereby declared, designated and established as a state road of the system of state roads of this state with all the rights and privileges of designated state roads.

(3) This section shall be deemed cumulative and shall not repeal any other laws not specifically in conflict with the provisions hereof.

History.—§§1-3, ch. 20577, 1941.

168.14 Uncontaminated source of water essential.—It is hereby found and declared by the legislature of the state that uncontaminated sources of water supply for cities, towns and villages, and the inhabitants thereof, of this state, are essential to their health and welfare.

History.—§1, ch. 23974, 1947.

168.15 Definitions.—

(1) As used in §§168.14-168.18, the phrase "public water works" means and includes:

(a) Any municipal corporation of this state;

(b) Any special taxing district of this state;

(c) Any person or group of persons; and

(d) Any corporation engaged in the business in this state of supplying any city, town, village, or the inhabitants thereof, or any community of this state, with water for human consumption (among other purposes).

(2) As used in §§168.14-168.18, the phrase "public water supply area" means any contiguous area of land in this state, whether or not such land area be wholly dry or in part under water, owned, leased, or rented, or lawfully used by any public water works, from which land area such public water works derives its water supply or any part thereof.

(3) As used in §§168.14-168.18, the phrase "posted public water supply area" means any public water supply area the boundaries of which have been posted and maintained with signboards at intervals of not more than two hundred yards, bearing a notice (in letters not less than four inches in height, and easily seen and read) reading, "posted public water supply area," followed by the name of the public water works lawfully using such public water supply area. Provided, however, that in computing the maximum distance apart of such signboards, with the prescribed notice thereon, any body of water more than two hundred yards in width at the intersection of the shore of such body of water with any boundary line of the public water supply area may be disregarded, but a signboard with the prescribed notice thereon shall be erected and maintained at each such shore and boundary line intersection. Provided, however, further, that maintenance of seventy-five per centum of the total number of signboards, with the notices thereon aforesaid, prescribed for the boundaries of such public water supply area, shall be held and taken as substantial and sufficient compliance with the provisions of this law as to posting.

(4) As used in §§168.14-168.18, the phrase "civil trespass" means and includes

(a) Any entry or use, in any manner whatsoever, by any means or methods whatsoever, upon or of any posted public water supply area without the prior consent in writing of the public water works, or his, her, their or its authorized officers or agents, lawfully using such land area, except as hereinafter provided as to law enforcement officers; and

(b) The negligent or intentional destruction, removal, defacement, or injury of any signboard or the notice thereon, erected or maintained by any public water works pursuant to the provisions of this law.

(5) As used in §§168.14-168.18, the phrase "criminal trespass" means and includes

(a) Any entry by any human being upon any posted public water supply area, without the prior consent in writing of the public water works, or his, her, their or its authorized officers or agents, lawfully using such land area, except as hereinafter provided as to law enforcement officers; and

(b) The intentional destruction, removal, defacement, or injury of any signboard, or the notice thereon, erected or maintained by any public water works pursuant to the provisions of this law; and

(c) The negligent or intentional depositing, placing, dumping, or throwing, or causing to be deposited, placed, dumped, or thrown, upon any posted public water supply area of any filth, garbage, trash, refuse, debris, or human excreta, or of any animal excreta other than by any straying animal.

(6) Exceptions from definitions of civil and criminal trespass. There is hereby excluded from the foregoing definitions of civil and criminal trespass any entry upon any such posted public water supply area by any law enforcement officer of this state and of the United States, made or done by such law enforcement officer while actually engaged in the purposes of crime prevention or detection, or actually engaged in the pursuit, arrest, or removal of any person for violation of any of the criminal laws of this state and of the United States.

History.—§2, ch. 23974, 1947; §11, ch. 25035, 1949.

168.16 Additional remedy by injunction.—In addition to any other remedy, suit, action or proceeding now provided by law, any public water works sustaining or suffering any civil trespass or criminal trespass, as herein defined, shall be entitled to a preliminary and permanent injunction against the perpetrator or perpetrators, or person or persons, corporation or corporations, committing or causing such civil or criminal trespass, upon complaint and due proof filed for that purpose in the circuit court of the county in which the involved posted public water supply area or the greater portion thereof shall be located.

History.—§3, ch. 23974, 1947; §11, ch. 25035, 1949.

168.17 Penalties.—All criminal trespasses as defined in this law are hereby prohibited, and any person or corporation shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

History.—§4, ch. 23974, 1947.

168.18 Evidence; maps; notices; etc.—In any civil or criminal suit, action, or proceeding under this law, and in any civil suit, action, or proceeding in part based upon this law, a copy, certified by the clerk of the circuit court, or any map or plat of any posted public water supply area made and recorded in the office of such clerk, together with certified copy of any renewal certificate, in the manner hereinafter provided, shall be prima facie evidence of the posting of any public water supply area in the manner hereinabove specified; provided the date of the certificate or renewal certificate of the registered land surveyor upon such recorded map or plat be not more than one year in date prior to the offer of such certified copy of such recorded map or plat in evidence. Any public water works maintaining or lawfully using any posted public water supply area may cause a map or plat thereof to be made by a registered land surveyor of this state, in accordance with

the applicable provisions of §§177.03, 177.04, 177.05, 177.07, 177.09 and 177.11, and also showing:

(a) The location of each signboard, with notice thereon, erected along the boundaries of such posted public water supply area;

(b) A copy of the wording of the notices on such signboards; and containing the certificate of such land surveyor certifying that such public water supply area was duly posted on the date of his certificate in accordance with the provisions of this law. Any such map or plat made in conformity with this section of this law shall, upon presentation for filing, be filed and recorded by the clerk of any circuit court in the same manner and for the same fees as are provided by law for the filing and recording of plats of land subdivisions. Any public water works having caused a map or plat of its posted public water supply area to be prepared, filed and recorded, as herein provided, may from time to time have prepared and recorded new maps or plats of such posted public water supply area, or may cause any such recorded map or plat to be renewed by causing the water supply area lawfully used by it to be inspected by a land surveyor, and, if found by the land surveyor to be posted in compliance with the provisions of this law, by causing a certificate to that effect of such land surveyor, duly acknowledged by the land surveyor, to be filed for record with the clerk of the circuit court of the county in which the original map or plat of such posted public water supply area was recorded. The clerk of the circuit court to whom such acknowledged renewal certificate shall be presented shall record the same in the manner that deeds are recorded, and shall endorse upon the record of the original map or plat of such posted public water supply area a notation of or reference to such renewal certificate and the book and page of the record of such renewal certificate. The clerk of the circuit court so receiving and recording any such renewal certificate shall receive the same fees as provided by law for the recording of assignments of mortgages and notations on the record of the mortgage of such satisfaction.

History.—§5, ch. 23974, 1947.

CHAPTER 169

POWER OF MUNICIPALITY TO BORROW MONEY

169.01 Approval of majority of freeholders required before borrowing money.—The city or town council may borrow money or contract loans for the use of the city or town, whether from bodies corporate or individuals residing in or out of the state, and pledge the funds, credit and property of the corporation for the redemption of such loan or loans; provided, that when any city or town shall borrow money, contract loans, or issue bonds or other evidences of indebtedness pursuant to the provisions of this or the following chapter, and the said borrowing, contracting or issuance shall come within the purview of §6 of Art. IX of the constitution of the state, the same shall be done only after said borrowing, contracting or issuance shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such city or town, shall participate.

History.—§5, ch. 3024, 1877; RS 711; GS 1060; RGS 1898; CGL 3008.

169.02 Power to issue bonds.—The city or town council may issue bonds bearing such rates of interest as may be deemed best by the council, not exceeding the legal rate of interest in this state, whenever it may be necessary for the purpose of building or repairing the public works of the city, the widening and extension of streets or parks, payment of existing indebtedness of the city, or any other municipal purpose.

History.—§6, ch. 3024, 1877; RS 712; GS 1061; RGS 1899; CGL 3009.

cf.—§687.01 Legal rate of interest.

169.03 Issuance of bonds to be submitted to election.—Before any bonds are issued, the question of issuing them, as well as the amount to be issued, shall be submitted at an election as provided in §169.01, in such manner and after such public notice as may be deemed necessary by the city council; and should a majority of the votes cast in said election be in favor of issuing the bonds and the amount proposed to be issued, in that event it is lawful for them to be issued; otherwise not.

History.—§7, ch. 3024, 1877; RS 713; GS 1062; RGS 1900; CGL 3010.

169.04 Issuing bonds; purposes authorized; limitation of amounts; proviso; election.—Cities and towns may issue bonds for the purpose of building or repairing public buildings, or water works of the city or town, widening or extending streets or parks, purchasing or establishing gas or electric light plants for the city or town, or for any other municipal purpose, to an amount not exceeding ten per cent of the assessed value of the real and personal property within its incorporated limits; but this limitation shall not operate to prevent the issue by any city or town of additional bonds, which, with the existing bonded indebtedness, shall not exceed ten per cent of the assessed value of the real and personal property within its corporate limits; provided, that no bonds shall be issued by any city or town until the question of issuing same shall have been decided in favor of such bond issue by an election held for that purpose in the manner provided by §§100.201-100.351; provided, this section shall not apply to cities and towns which have special charters from the legislature.

History.—§5, ch. 3476, 1883; RS 714; §1, ch. 5465, 1905; GS 1063; RGS 1901; CGL 3011.

169.05 Form of bonds.—Bonds shall have the seal of the corporation, shall be signed by the mayor and city clerk, and shall be payable at such time and place as the city council may designate.

History.—§6, ch. 3024, 1877; RS 715; GS 1064; RGS 1902; CGL 3012.

169.06 Tax for bonds.—The city council shall assess and collect such taxes from the citizens and upon the property within the city, as shall be necessary for the payment of interest upon, as well as the final payment of

said bonds; provided, however, that all property shall be taxed upon the principle established by state taxation.

History.—§20, ch. 1688, 1869; RS 716; GS 1065; RGS 1903; CGL 3013.

169.07 Issue of coupon bonds for refunding bonded indebtedness.—Any city or town of the state, for the purpose of extending the time of payment of any bonded indebtedness, which from its limits of taxation such city or town is unable to pay at maturity, or when it appears to the trustees or council of such city or town for the best interest of the same, said city or town may, through its council or trustees, compound, settle, refund and retire any existing bonded indebtedness lawfully made and undertaken for the same by authority of law, and for this purpose, by resolution at any regular meeting introduced and passed, may issue its negotiable coupon bonds of such city or town, and such bonds shall be in the denomination of one hundred dollars, five hundred dollars or one thousand dollars, bearing interest at a rate not exceeding six per cent per annum, such interest to be paid semi-annually at such place or places as said council or trustees may elect; provided, however, that no bonded indebtedness of such city or town shall be so compounded, refunded or extended unless such bonded indebtedness is a valid and binding obligation of such city or town; which resolution shall also state the amount of existing bonded indebtedness to be refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of maturity, the rate of interest they shall bear and the place or places of payment of principal and interest.

History.—§1, ch. 4712, 1899; GS 1066; RGS 1904; CGL 3014.

169.08 Council may levy tax to pay principal and interest.—The said council or trustees shall annually levy a tax upon all real and personal property situated within the limits of the city or town, not to exceed fifty cents on the one hundred dollars of the assessed value of such property in any one year, sufficient to pay the semi-annual interest, and to pay not less than two per cent annually on the principal of said bonds, besides the expenses of assessing and collecting the same; and no bonds shall be issued under the provisions of this law, unless a levy as hereinbefore provided shall have been made sufficient to pay the first year's interest and two per cent of the principal of the said bonds; provided, however, that nothing herein contained shall be construed to authorize such city or town to levy any tax in excess of that authorized by the constitution and laws now in force and the provisions of this section and §169.07; provided further, that the bonds so issued shall not bear a rate of interest greater than the bonds refunded; provided, however, that any action taken under this chapter by any council, trustee or trustees, shall not be valid unless previous notice of the intention to consider such matter has been published once each week for at least four weeks in some newspaper of general circulation published in said city or town, and when no newspaper is published therein, in some newspaper published in the nearest city or town thereto in the same county, the said notice to state also the time and place of the meeting at which the matter is to be considered.

History.—§1, ch. 4712, 1899; GS 1067; RGS 1905; CGL 3015.

169.09 Cities and towns may issue certificates of indebtedness for amount assessed against abutting property; form; when payable; interest; payment of certificate and interest guaranteed; redemption; sale of certificates.—The city or town council, or commissioners, as the case may be, of all cities and towns in the state, whether incorporated and operating under the general laws of said state or under special act, may, after any assessment for municipal improvement is made, issue certificates of indebtedness for the amount so assessed against the abutting property or property benefited, as the case may be, and separate certificates shall be issued against each tract of land assessed, containing a description of the land and the amount of the assessment, together with the general nature of the improvement for which the said assessment is made, and the date thereof. Said certificates shall be payable in not less than one or more than ten years after date, in not more than ten equal installments, as the council or commissioners may determine, with interest to be fixed by the council or commissioners at a rate no greater than eight per cent per annum, payable annually from the date of the issuance of the certificates of indebtedness. The payment of such certificates and annual interest shall be guaranteed by the city or town, and in case of nonpayment of any interest or principal at maturity by the property owner the same shall be redeemed by the city or town at the option of the holder thereof; but said redemption by the city or town shall not discharge the lien or the assessment against the property, and in case of nonpayment of any interest or any installment upon any certificate issued under the provisions of this section, it shall be optional with the holder thereof to consider the whole of said sum expressed in said certificate as immediately due and payable with interest to date. The certificates when issued may be sold or disposed of by the council or commissioners, as the case may be, in payment for said work or improvements, or for cash, in the discretion of the council or commissioners, and all certificates of indebtedness constituting a lien upon property shall be payable at the office of the treasurer or depository of the city or town, as the case may be.

History.—§1, ch. 6864, 1915; RGS 1906; CGL 3016.

169.10 Cities and towns may levy tax for payment of improvement bonds already issued.—All cities and towns which have issued any improvement bonds under the provisions of §169.12, may levy a tax on all property tax-

able by such city or town for the purpose of paying either the principal or interest due upon any such bonds if the same shall, in the opinion of the council of such city or town, be necessary.

History.—§1, ch. 9299, 1923; CGL 3018.

169.11 Improvement bonds declared general obligation; city council authorized to levy tax for payment.—Any and all bonds which may hereafter be issued by any city or town in the state pursuant to §169.12, are declared to be the general obligations of said city or town, and the council of said city or town is authorized to levy a tax on all property taxable by such city or town, for the payment thereof, if necessary.

History.—§2, ch. 9299, 1923; CGL 3019.

169.12 Certificates may be deposited with treasurer as "improvement fund"; issue of improvement bonds; form; amount of bonds; proceeds.—The council or commissioners, at their option, instead of disposing of said certificates of indebtedness and guaranteeing the payment thereof, as above provided, may retain such certificates of indebtedness and deposit the same with the treasurer or depository, as the case may be, in a special and separate fund, to be known as the "improvement fund," and may issue and sell bonds, to be designated "improvement bonds," of the city or town, with interest coupons attached, to an amount not in excess of the aggregate amount of said certificates of indebtedness that shall, from time to time, be issued, bearing interest at a rate not to exceed six per cent per annum, payable semi-annually; or whenever certificates are not issued, but liens are entered in a book provided for that purpose, the council or commissioners, at their option, may issue and sell bonds, to be designated "improvement bonds" of the city or town, with interest coupons attached, to an amount not in excess of the aggregate amount of said liens so entered as aforesaid, and said bonds may be issued from time to time, bearing interest at a rate not to exceed six per cent per annum, payable semi-annually. Such bonds shall be issued with such maturities and in such form and denomination as the council or commissioners shall from time to time determine. Any bonds that shall be issued pursuant to the provisions of this section shall not be computed in determining the limitations of the bonded indebtedness prescribed by the special charter or general law under which such city or town shall be operating; provided, that the amount of such bonds so issued shall never exceed the amount of certificates of indebtedness deposited with the treasurer or depository, or the amount of liens assessed and entered as aforesaid, and the maturities of the bonds shall coincide substantially with the maturities of the installments of the certificates of indebtedness so deposited, or of the liens, and the rate of interest on the certificates or liens shall never be less than the rate of interest on the bonds. The proceeds of said certificates or liens when paid shall be used and applied exclusively to the payment and retirement of the bonds so issued, and all such bonds shall bear a certificate duly signed by the treasurer or depository, certifying that certificates of indebtedness equal in amount to the face value of the bonds being issued have been deposited by the city or town with such city treasurer or depository; or, when no certificates are issued and the improvement bonds are based on liens, then and in that event such bonds shall bear a certificate, duly signed by the clerk, certifying that the amount of said liens are equal in amount to the face value of the bonds being issued. The proceeds of all such certificates or liens shall be applied exclusively to the payment and retirement of such bonds when the same shall mature or become due. In case there shall not be sufficient money in the "improvement fund" to pay any installment of interest at maturity, the city or town shall borrow such an amount of money as shall be necessary for said purpose, issuing a note against said fund, due within not more than twelve months, and such note shall bear interest at not more than eight per cent per annum. Any law regulating the manner, price or terms of the sale of improvement lien certificates by any city or town shall apply to and govern the sale of improvement bonds by such city or town.

History.—§2, ch. 6864, 1915; RGS 1907; CGL 3017.

169.13 Optional with city or town to issue improvement bonds and exchange for certificates; proviso.—In all cases where certificates of indebtedness have been issued and sold by any city or town, and in all cases where contracts have been let, by the terms of which the contractor obligating to construct any municipal improvement has agreed to take certificates of indebtedness in payment for the work, and in all cases where certificates have heretofore been issued but not sold, it shall be optional with the city or town to issue improvement bonds and exchange the same for such certificates of indebtedness as the council or commissioners of such city or town shall deem expedient; provided, that after certificates have been sold, bonds shall not be exchanged therefor without the consent of the owner of the certificates.

History.—§3, ch. 6864, 1915; RGS 1908; CGL 3020.

169.14 Chapter not to be construed as repealing certain laws.—This chapter shall not be construed as repealing any general law or special charter provision under which any city or town is now or shall hereafter be operating, but the same shall be construed as conferring upon all cities and towns, whether incorporated under the general laws of Florida or under special charter acts, additional powers and an additional method of issuing and selling certificates and improvement bonds.

History.—§4, ch. 6864, 1915; RGS 1909; CGL 3021.

169.15 Investment of sinking funds of a municipality in delinquent tax anticipation

notes or current revenue notes.—Whenever any municipality shall, under the authority of and in accordance with law providing therefor, issue delinquent tax anticipation notes which are secured by a pledge of delinquent taxes and tax certificates, as authorized by law, and whenever such municipality, in accordance with the requirements of law, shall have adopted its budget for any fiscal year and have approved the tax roll and made the tax levy, as required by law, and shall issue against such budget, as now authorized by law current revenue notes, then or in either such case, the sinking fund trustees of such municipality may invest in said notes, or either of them, sinking fund money held by them as such trustees; provided, that no investment of sinking fund moneys shall be made under authority of this section except where the balance on hand in cash, or on deposit after such investment, shall at least equal the amount of all maturities for the next succeeding six months in the issue for which said fund was accumulated; and, provided further, that no sinking fund moneys shall be invested in delinquent tax anticipation notes except where, first, the aggregate combined investment of sinking funds in delinquent tax anticipation notes and current revenue notes shall not exceed thirty-five per cent of the sinking fund, and, second, the entire delinquent tax roll of said municipality be pledged for the payment of such issue and such issue of said delinquent tax notes shall be limited to not to exceed twenty per cent of the face value of said delinquent certificates exclusive of interest and penalties.

History.—§1, ch. 17124, 1935; CGL 1936 Supp. 3100(27).

CHAPTER 170

SUPPLEMENTAL AND ALTERNATIVE METHOD OF MAKING LOCAL MUNICIPAL IMPROVEMENTS

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.—Any city, town or municipal corporation of this state, hereinafter referred to as the municipality, whether organized under the general law, or under special act, or having a charter adopted by vote under an enabling act, (hereinafter referred to as the governing authority) may, by its governing authority, provide for the construction, reconstruction, repair, paving, repaving, hard surfacing, re-hard surfacing, widening, guttering and draining of streets, boulevards and alleys, for grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and re-hard surfacing sidewalks; and may order the construction or reconstruction of sanitary sewers, storm sewers and drains, including the necessary appurtenances thereto; and may provide for the payment of all or any part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous or other specifically benefited property.

History.—§1, ch. 9298, 1923; CGL 3022; §1, ch. 59-396.

170.02 Method of prorating special assessments.—Special assessments against property deemed to be benefited by local improvements, as provided for in §170.01, shall be assessed upon the property specially benefited by the improvement in proportion to the benefits to be derived therefrom, said special benefits to be determined and prorated according to the foot frontage of the respective properties specially benefited by said improvement, or by such other method as the governing body of the municipality may prescribe.

History.—§2, ch. 9298, 1923; CGL 3023.

170.03 Resolution required to declare special assessment.—When the governing authority of any municipality may determine to make any public improvement authorized by §170.01 and defray the whole or any part of the expense thereof by special assessments, said governing authority shall so declare by resolution stating the nature of the proposed improvement, designating the street or streets or sidewalks to be so improved or the location of said sanitary sewers, storm sewers and drains, and the part or portion of the expense thereof to be paid by special assessments, the manner in which said assessments shall be made, when said assessments are to be paid, what part, if any, shall be apportioned to be paid from the general improvement fund of the municipality, and said resolution shall also designate the lands upon which the special assessments shall be levied, and in describing said lands it shall be sufficient to describe them as "all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat hereinafter provided for." Such resolution shall also state the total estimated cost of the improvement.

History.—§3, ch. 9298, 1923; CGL 3024; §2, ch. 59-396.

170.04 Plans and specifications, with estimated cost of proposed improvement required before adoption of resolution.—At the time of the adoption of the resolution provided for in

§170.03, there shall be on file with the town or city clerk, or like officer, of the municipality adopting said resolution, an assessment plat showing the area to be assessed, with plans and specifications, and an estimate of the cost of the proposed improvement, which assessment plat, plans and specifications and estimate shall be open to the inspection of the public.

History.—§4, ch. 9298, 1923; CGL 3025; §3, ch. 59-396.

170.05 Publication of resolution.—Upon the adoption of the resolution provided for in §170.03, the municipality shall cause said resolution to be published one time in a newspaper of general circulation published in said municipality, and if there be no newspaper published in said municipality, the governing authority of said municipality shall cause said resolution to be published once a week for a period of two weeks in a newspaper of general circulation published in the county in which said municipality is located.

History.—§5, ch. 9298, 1923; CGL 3026.

170.06 Assessment roll.—Upon the adoption of the resolution aforesaid, the governing authority of the municipality shall cause to be made an assessment roll in accordance with the method of assessment provided for in said resolution, which assessment roll shall be completed and filed with the governing authority of the municipality as promptly as possible; said assessment roll shall show the lots and lands assessed, the amount of the assessment against each lot or parcel of land, and if said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon said assessment roll.

History.—§6, ch. 9298, 1923; CGL 3027.

170.07 Publication of assessment roll.—Upon the completion of said assessment roll, the governing authority of the municipality shall by resolution fix a time and place at which the owners of the property to be assessed, or any other persons interested therein may appear before said governing authority and be heard as to the propriety and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefor and as to the amount thereof to be assessed against each property so improved. Ten days notice in writing of such time and place shall be given to such property owners which shall be served by mailing a copy of such notice to each of such property owners at his last known address, the names and addresses of such property owners to be obtained from the records of the tax assessor or from such other sources as the city or town clerk or engineer deems reliable, proof of such mailing to be made by the affidavit of the clerk or deputy clerk of said municipality, or by the engineer, said proof to be filed with the clerk, provided, that failure to mail said notice or notices shall not invalidate any of the proceedings hereunder. Notice of the time and place of such hearing shall also be given by two publications a week apart in a newspaper of general circulation in said municipality, and if there be no newspaper published in said municipality the governing authority of said municipality shall cause said notice to be published in like manner in a newspaper of general circulation published in the county in which said municipality is located; provided that the last publication shall be at least one week prior to the date of the hearing. Said notice shall describe the streets or other areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the clerk of the municipality. Such service by publication shall be verified by the affidavit of the publisher and filed with the clerk of said municipality.

History.—§7, ch. 9298, 1923; CGL 3028; §4, ch. 59-396.

170.08 Equalizing board to hear complaints and adjust assessments; rebate of difference in cost and assessment.—At the time and place named in the notice provided for in §170.07, the governing authority of the municipality shall meet as an equalizing board to hear and consider any and all complaints as to such special assessments, and shall adjust and equalize the said assessments on a basis of justice and right, and when so equalized and approved by resolution or ordinance of the governing authority, such assessments shall stand confirmed, and remain legal, valid and binding first liens, upon the property against which such assessments are made, until paid; provided, however, that upon completion of the improvement the municipality shall credit to each of said assessments the difference in the assessment as originally made, approved and confirmed, and the proportionate part of the actual cost of said improvement to be paid by special assessments as finally determined upon the completion of said improvement, provided that in no event shall the final assessments exceed the amount of benefits originally assessed. Promptly after such confirmation, the assessments shall be recorded by the city clerk in a special book, to be known as the "improvement lien book," and the record of the lien in said book shall constitute prima facie evidence of its validity.

History.—§8, ch. 9298, 1923; CGL 3029; §5, ch. 59-396.

170.09 Priority of lien, interest and method of payment.—Said assessments shall be payable at the time and in the manner stipulated in the resolution providing for said improvements, and said special assessments shall remain liens, co-equal with the lien of other taxes, superior in dignity to all other liens, titles and claims, until paid, and shall bear interest at a rate not to exceed eight per cent per annum from the date of the acceptance of said improvement and may, by the resolution aforesaid, be made payable in not more than ten equal yearly installments, to which, if not paid when due, there shall be added a penalty at the rate of one per cent per month, until paid; provided that said assessments may be paid without interest at any

time within thirty days after the improvement is completed, and a resolution accepting the same has been adopted by the governing authority.

History.—§9, ch. 9298, 1923; CGL 3030; §6, ch. 59-396; §1, ch. 61-349.

170.10 Legal proceedings instituted upon failure of property owner to pay special assessment or interest when due; foreclosure; service of process.—Each annual installment provided for in §170.09 shall be paid upon the dates specified in said resolution, with interest upon all deferred payments, until the entire amount of said assessment has been paid, and upon the failure of any property owner to pay any annual installment due, or any part thereof, or any annual interest upon deferred payments, the governing authority of the municipality shall cause to be brought the necessary legal proceedings by a bill in chancery to enforce payment thereof with all accrued interest and penalties, together with all legal costs incurred, including a reasonable solicitor's fee, to be assessed as part of the costs and in the event of default in the payment of any installment of an assessment, or any accrued interest on said assessment, the whole assessment, with the interest and penalties thereon, shall immediately become due and payable and subject to foreclosure. In the foreclosure of any special assessment service of process against unknown, or nonresident defendants, may be had by publication, as now provided by law in other chancery suits. The foreclosure proceedings shall be prosecuted to a sale and conveyance of the property involved in said proceedings as now provided by law in suits to foreclose mortgages; or, in the alternative, said proceeding may be instituted and prosecuted under chapter 173.

History.—§10, ch. 9298, 1923; CGL 3031; §7, ch. 59-396.

170.11 Bonds may be issued to an amount not exceeding the amount of liens assessed for the cost of improvements to be paid by special assessment.—After the equalization, approval and confirmation of the levying of the special assessments for improvements as provided by §170.08 and as soon as a contract for said improvement has been finally let, the governing authority of the municipality may by resolution or ordinance authorize the issuance of bonds, to be designated "Improvement bonds series no. ____" in an amount not in excess of the aggregate amount of said liens levied for such improvements. Said bonds shall be payable from a special and separate fund to be known as the "Improvement fund, series no. ____" which shall be used solely for the payment of the principal and interest of said "Improvement bonds, series no. ____" and for no other purpose. Said fund shall be deposited in a separate bank account and all the proceeds collected by the city from the principal, interest and penalties of said liens shall be deposited and held in said fund. Said bonds so issued shall never exceed the amount of liens assessed, and said bonds shall mature not later than six months after the maturity of the last installment of said liens. Said bonds shall bear certificates signed by the clerk of the municipality certifying that the amount of liens levied, the proceeds of which are pledged to the payment of said bonds, are equal to the amount of the bonds issued. The bonds may be delivered to the contractor in payment for his work or may be sold at public or private sale for not less than par and accrued interest, the proceeds to be used in paying for the cost of the work. Said bonds shall not be a charge on, or payable out of, the general revenues of the city, but shall be payable solely out of said assessments, installments, interest and penalties. Any surplus remaining after payment of all bonds and interest thereon shall revert to the city and be used for any municipal purpose.

History.—§11, ch. 9298, 1923; CGL 3032; §8, ch. 59-396.

170.14 Governing authority of municipality required to make new assessments until valid assessment is made if special assessment is omitted or held invalid.—If any special assessment made under the provisions of this chapter to defray the whole or any part of the expense of any said improvement shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the governing authority of any municipality shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, or if the governing authority of a municipality shall have omitted to make such assessment when it might have done so, the governing authority of the municipality shall take all necessary steps to cause a new assessment to be made for the whole or any part of any improvement or against any property benefited by any improvement, following as nearly as may be the provisions of this chapter and in case such second assessment shall be annulled, said governing authority of any municipality may obtain and make other assessments until a valid assessment shall be made.

History.—§14, ch. 9298, 1923; CGL 3035; §11, ch. 59-396.

170.15 Governing authority of municipality may pay out of its general funds or any special fund for the purpose, portion of cost of improvement; items considered improvement cost.—The governing authority of any municipality may pay out of its general funds or out of any special fund that may be provided for that purpose such portion of the cost of any improvement as it may deem proper.

History.—§15, ch. 9298, 1923; CGL 3036; §12, ch. 59-396.

170.16 Assessment roll sufficient evidence of assessment and other proceedings of this chapter; variance not material unless party objecting materially injured thereby.—Any informality or irregularity in the proceedings in connection with the levy of any special assessment under the provisions of this chapter shall not affect the validity of the same where the assessment roll has been confirmed by the governing authority, and the assessment roll

as finally approved and confirmed shall be competent and sufficient evidence that the assessment was duly levied, that the assessment was duly made and adopted, and that all other proceedings adequate to the adoption of the said assessment roll were duly had, taken and performed as required by this chapter; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

History.—§16, ch. 9298, 1923; CGL 3037.

170.17 Denomination of bonds, interest, place of payment, form, signatures, coupons and delivery.—All bonds issued under this chapter shall be the denomination of one hundred dollars, or some multiple thereof, and shall bear interest at a uniform rate not exceeding six per cent per annum, payable annually or semi-annually thereafter until maturity, and ten per cent per annum after maturity, and both principal and interest shall be payable at such place or places as the governing authority may determine. The form of such bonds shall be fixed by resolution of the governing authority of the municipality and said bonds shall be signed by the mayor or chief executive officer of the municipality and the clerk or other like officers thereof, under the seal of the municipality; the coupons, if any, shall be executed by the facsimile signatures of said officers. The delivery of any bond and coupon so executed at any time thereafter shall be valid although before the date of delivery the person signing such bond or coupons shall cease to hold office.

History.—§17, ch. 9298, 1923; CGL 3038; §13, ch. 59-396.

170.18 Notice required where no newspaper is published in county in which municipality is situated.—Where by any of the provisions of this chapter any notice is required to be given by publication in a newspaper, if there be no newspaper published in the county in which the municipality is situated, then such notice shall be posted for the prescribed period of time in at least five public places in the municipality, one of which shall be the city or town hall, or the place of meeting of the governing authority, if there be no city or town hall.

History.—§18, ch. 9298, 1923; CGL 3039.

170.19 Construction and authority of chapter.—This chapter shall, without reference to any other law of Florida, be full authority for the issuance and sale of the bonds by this chapter authorized, and shall be construed as an additional and alternative method for the financing of the improvements referred to herein. No ordinance, resolution, election or proceeding in respect of the issuance of any bonds hereunder shall be necessary, except such as is required by this chapter, and no publication of any resolution, ordinance, election, notice or proceeding relating to the issuance of the bonds provided for by this chapter shall be required, except such as required by this chapter.

History.—§19, ch. 9298, 1923; CGL 3040; reenacted §14, ch. 59-396.

170.20 Bonds negotiable.—Bonds issued under §170.11 shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

History.—§20, ch. 9298, 1923; CGL 3041; §15, ch. 59-396.

170.21 Provisions of chapter supplemental, additional and alternative procedure.—This chapter shall not repeal any other law relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of procedure for the benefit of all cities, towns and municipal corporations of the state, whether organized under special act or the general law, and shall be liberally construed to effectuate its purpose.

History.—§21, ch. 9298, 1923; CGL 3042; reenacted §16, ch. 59-396.

CHAPTER 171

CONTRACTION AND EXTENSION OF MUNICIPAL TERRITORIAL LIMITS; CONSOLIDATION OF TAXING DISTRICTS

171.01 Contracting of territorial limits.—If any incorporated city or town shall desire to contract its territorial limits by excluding from its corporate limits and jurisdiction any portion of its incorporated territory it shall be lawful so to do in the following manner: The council of such city or town, by ordinance, shall declare its desire to exclude such district, describing the same by metes and bounds, and shall call an election of the registered voters of the remaining district of the said city or town to approve or disapprove of the said ordinance. Each election shall be held separately in the respective districts, but upon the same day; and thirty days' public notice shall be given of the time, purpose and place of said election, by proclamation issued by the mayor, which proclamation shall contain a copy of said ordinance. If two-thirds of the registered voters actually voting in each shall approve of such ordinance, the council shall thereupon, by ordinance, declare the new limits of the city or town, excluding therefrom the portion so excluded, and cause the said ordinance, together with the previous ordinance aforesaid, the mayor's proclamation aforesaid, and certificate of the result of such election, to be recorded in the records of the council, and also in the clerk's office in the county where such city or town is situated.

History.—§2, ch. 3163, 1879; RS 720; ch. 4601, 1897; §1, ch. 5197, 1903; GS 1072; RGS 1915; CGL 3048.

171.02 Landowners may petition court to have certain land excluded from corporation limits.—When any incorporated town (or city) containing less than one hundred and fifty qualified electors shall, owing to extent of territory, have embraced within the limits any lands which may from distance or other cause be virtually or commensurately excluded from the benefits of such municipal organization, it is lawful for any owners of such lands or three-fourths of them desiring to have the same excluded from such corporation limits and jurisdiction, to apply by petition to the circuit court in and for the county in which said incorporated town is situated, setting forth in said petition the limits of such incorporated town as then existing and the grounds of his or their objection to be included within the limits of such corporation; whereupon the circuit court shall order notice of said application to be served upon the mayor of said town or city and appoint a day for the hearing of such application.

If upon the hearing of said application the said court shall sustain the said objection, the said tract or tracts of land shall be excluded. Such petition may be heard and determined by said court in term time or vacation, and any question of fact may be determined by said court without a jury.

History.—§1, ch. 5197, 1903; GS 1073; RGS 1916; CGL 3049.

171.03 Effects of exclusion.—Whenever any portion of any city or town is excluded as aforesaid, such portion and the citizens thereof shall be thereby forever released from all debts, duties, or liabilities of the said city or town; and all public property, both real and personal, whether situated in the district so excluded or in the remaining district, and all rights and franchises belonging to such city or town at the time of exclusion, shall remain and be the property of such city or town.

History.—§3, ch. 3163, 1879; RS 721; GS 1074; RGS 1917; CGL 3050.

171.04 Extension of territorial limits.—

(1) If any incorporated city or town shall desire to change its territorial limits by the annexation of any unincorporated tract of land lying contiguous thereto and within the same county, it is lawful so to do in the following manner: If such tract contains less than ten registered electors, the council of said city or town shall, by ordinance duly passed and approved as provided by law, declare its intention to annex such tract of land to said city or town at the expiration of thirty days from the approval of said ordinance, which said ordinance shall thereupon be published once a week for four consecutive weeks in some newspaper published in such city or town; or if no newspaper is published in said city or town, then in a newspaper published in the same county, and if no newspaper is published in said county, then at least three printed copies of said ordinance shall be posted for four consecutive weeks at some conspicuous place in said city or town, and three copies in like manner in the

district to be annexed. If at any time before the expiration of the thirty days, any ten registered electors of said city or town, or any two owners of real estate in the district so proposed to be annexed, shall object to such annexation, they may apply by petition to the circuit court in and for the county in which said city or town is situated, setting forth in said petition the proposed proceedings of said city or town, and the grounds of their objection thereto; whereupon the said circuit court shall order notice of said application to be served upon the mayor of said city or town, and appoint a day for the hearing of said application; and all further action in the premises by the said city or town shall thereupon be stayed until the further order of the said court. If, upon the hearing of the said application, the said court shall sustain the said objection, the said tract of land shall not be annexed; otherwise the said application shall be dismissed and the said tract of land shall be annexed to the said city or town. Such petition may be heard and determined by said court either in term time or in vacation, and questions of fact may be determined by such a court without a jury, but each party may demand a jury if it so desires. If no objection is filed and notice served as aforesaid within the said thirty days, the said city or town may proceed by ordinance to annex the said tract of land and to redefine the boundary lines of the said city or town so as to include therein the said tract of land. If the tract of land so proposed to be annexed contains ten or more registered electors, the ordinance proposing to annex said tract of land shall be submitted to a separate vote of the registered electors of the said city or town and of said tract of land. Such election shall be called and conducted, and the expense thereof paid by the corporate authorities of said city or town; and the said tract of land shall not be annexed unless such annexation is approved by a majority of the registered electors actually voting at such election in said district and in said city or town, provided, that any unincorporated tract of land proposed to be so annexed shall, when annexed, constitute a reasonably compact addition to the incorporated territory with which it is combined; that if such tract of land is vacant and uninhabited, or if such tract of land is owned solely by only one individual person, firm or corporation, then and in either of such events, only one owner of real estate in the district so proposed to be annexed who objects to the proposed annexation, may apply by petition to the circuit court in and for the county in which said city or town is situated, in the same manner and with the same effect as hereinabove provided in cases where two owners of real estate are required to join in objecting to such proposed annexation. The term "one individual person" as used hereinabove shall include a man and wife who own property jointly. The method of annexation provided by this section is in addition to any other procedure provided by any special or local law, and no such special or local law is repealed or modified by this act.

(2) Any improved parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed under the provisions of this act shall not be severed, separated, divided or partitioned by the provisions of said ordinance; but shall, if intended to be annexed, or annexed, under the provisions of this act, be annexed in its entirety and as a whole; provided, however, that nothing herein contained shall be construed as affecting the validity or enforceability of any ordinance declaring an intention to annex land under the existing law that has been enacted by any municipality prior to the effective date of this act; provided, however, the owner of such property may waive the requirements of this section if such owner does not desire all of his tract or parcel included in said annexation, and providing further that nothing herein contained shall alter or repeal any local or special act pertaining to any municipality of the state.

This section shall be applicable to municipalities regardless of whether their boundaries have been previously fixed by special act or under general law. Provided however that nothing in this section shall apply to municipalities located in counties having home rule under the constitution, nor in any county having a population of more than 390,000 and less than 450,000.

History.—Ch. 1688, 1869; §2, ch. 3163, 1879; RS 722; GS 1075; RGS 1918; CGL 3051; §§1, 1A, ch. 28284, 1953; §1, ch. 61-350; §1, ch. 63-311.

171.05 Extending limits of cities of over ten thousand inhabitants.—The corporate limits of any city or town in this state having a population of over ten thousand inhabitants, may be at any time extended so as to include adjacent territory, whether incorporated or not, not then included within such limits, by ordinance to be passed by the council of such city or town, and approved by the mayor, or duly passed over his veto; such ordinance proposing to annex said territory shall be submitted to a separate vote of the registered electors of the said city or town and of the said territory. Such election shall be called and conducted and the expenses thereof paid by the corporate territories of the said city or town and the said territory shall not be annexed unless such annexation is approved by a majority of the registered electors actually voting in such election in said territory and in said city or town. Such ordinance shall provide for the registration, on registration lists to be used at such election, of all persons residing at the time of passage of such ordinance, within the entire territory to be included within the proposed city limits who would, if residing within the original corporate limits at that time, be eligible to qualify to vote for municipal officers at any city election. The method of annexation provided by this section is in addition to any other procedure provided by any special or local law,

and no such special or local law is repealed or modified by this act.

This section shall be applicable to municipalities regardless of whether their boundaries have been previously fixed by special act or under general law.

History.—§1, ch. 5464, 1905; RGS 1921; CGL 3045; §11, ch. 25035, 1949; §1, ch. 28072, 1953; §2, ch. 61-350.

171.06 Annexed property liable for city debts; provisos.—All public property, rights and franchises theretofore belonging to any city or town so annexed under §171.05, shall thereafter belong to the city or town annexing the same, which shall also assume and be liable for all the debts and obligations of the city or town so annexed, and the property and inhabitants of any city or town so annexed shall be consequently liable for all debts and obligations and subject to every species of taxation imposed upon the original inhabitants of the city or town to which they may be annexed; provided, however, that the real estate or other property which may be within any territory so annexed at the time of any such election shall not be liable for, nor taxed to pay any bond indebtedness of the city or town to which it may be annexed existing at the time of any such election; and, provided further, that the real estate or other property which may be within the city or town to which such annexation may be made shall not be liable for, or taxed to pay any bond indebtedness of any such city or town so annexed which may be existing at the time of such election.

History.—§2, ch. 5464, 1905; RGS 1922; CGL 3055.

171.07 Conduct of election, etc.—At any election held under the provisions of §171.05 at least one polling place shall be located within the territory proposed to be annexed, and at least one of the inspectors at every polling place shall be duly registered under the provisions of this chapter, and an inhabitant of the territory so annexed. And every such election shall be held and conducted by the city or town so proposing to extend its territory and according to this chapter and the ordinances passed pursuant to the same.

History.—§3, ch. 5464, 1905; RGS 1923; CGL 3056.

171.08 Not to apply to city of Jacksonville; proviso.—The provisions of §§171.05, 171.06 and 171.07 shall not affect the provisions of the special charter of the city of Jacksonville or any act amendatory thereof or extending its special powers or apply thereto unless the same shall be accepted or adopted by ordinance of said city specially passed for such purpose.

History.—§4, ch. 5464, 1905; RGS 1924; CGL 3057.

171.09 Annexation of one municipality to another.—If any incorporated city or town desires to annex or to be annexed to any other incorporated city or town lying contiguous thereto, such city or town shall so declare by ordinance duly passed and approved, and transmit a copy of said ordinance to the mayor of the city or town which it desires to annex or be annexed to. The mayor of such city or town shall submit the said ordinance to the council of said city or town, and if the same is affirmed and concurred in by the said council, the mayor shall notify the mayor of the city or town transmitting the same; whereupon each city or town shall call an election of their respective citizens, as provided in §171.01, and if a two-thirds majority of the registered voters actually voting in each city or town approve of said annexation, the same shall be duly consummated and the two cities or towns shall be consolidated under one municipal government under the name of the city or town to which the other city or town is annexed, and the corporate authorities of the latter shall cause all the proceedings had as aforesaid to be duly recorded in the clerk's office of the county wherein such city or town is situated.

History.—§3, ch. 3163, 1879; RS 723; GS 1076; RGS 1919; CGL 3052.

171.10 Effects of annexation.—All public property, rights and franchises theretofore belonging to the city or town so annexed shall thereafter belong to the city or town annexing the same, which shall also assume and be liable for all the debts and obligations of the city or town so annexed; and the property and inhabitants of any city or town so annexed shall be equally liable for all debts and obligations, and subject to every species of taxation imposed upon the original inhabitants of the city or town to which they are annexed.

History.—§3, ch. 3163, 1879; RS 724; GS 1077; RGS 1920; CGL 3053.

171.11 Consolidation of taxing district and city or town.—Wherever there exists in the state any district with power to levy or to collect taxes for any purpose whatsoever, and the boundaries of such district coincide with, or approximately coincide with, any town or city in said state, and the personnel of the council, commission or governing body of such district is the same as the personnel of the council, commission or governing body of such city or town, then, and in all such cases, such district may be consolidated with and merged into such city or town so as to exist only under the name of and to become and be one and the same with such city or town.

History.—§1, ch. 16851, 1935; CGL 1936 Supp. 3057(1).

171.12 Consolidation determined by election; form of ballot.—In order to effect a consolidation or merger of any such district with and into any city or town, the council, commission or governing body of such district and the council, commission or governing body of such town or city shall adopt a joint resolution resolving that said district shall be consolidated with and be merged into such city or town and that it shall exist only under the name of and be one and the same with such city or town. And such resolution shall provide for and call an election to determine whether said district shall be consolidated with and merged into such city or town. Such city or town or district shall prepare a ballot to be used at said election and

such ballot shall be in substantially the following form, to-wit:

OFFICIAL BALLOT

Shall the District of _____, in the County of _____, and State of Florida be consolidated with and be merged into the City (or Town) of _____, in the County of _____, and the State of Florida?

Make a cross mark (X) before your choice.

_____FOR MERGER

_____AGAINST MERGER

Such election shall be held within the boundaries of such district and of such city or town on a day not less than thirty days and not more than sixty days from the adoption of such joint resolution, the exact day to be fixed by said resolution. Said joint resolution shall be published once a week for at least two consecutive weeks prior to such election in a newspaper published within the boundaries of such district and of such city or town, and the publication of such joint resolution shall be deemed sufficient notice of said election.

Said election shall be conducted in all respects as are the general municipal elections held in such city or town and all persons qualified to vote in such general elections of such city or town shall be qualified to vote on the question of such merger and consolidation. The inspectors and clerk of said election shall make due return thereof to the council, commission or governing body of such city or town, which body shall receive, canvass and declare the result thereof, and if the majority of the votes cast at such election shall be for merger, then, upon declaring the result of such election, such district shall thereupon stand consolidated with and merge into such city or town and shall thereafter exist only under the name of and be one and the same with such city or town.

History.—§2, ch. 16851, 1935; CGL 1936 Supp. 3057(2).

171.13 Transfer.—After any district has been merged with any city or town then, and in such case, all of the rights, powers, privileges, duties, franchises, property and property rights, assets, tax assessments, tax levies and tax liens, tax certificates, choses in action and in possession, as well as all contracts and liabilities of such district, shall by such consolidation and merger be deemed transferred to such city or town.

History.—§3, ch. 16851, 1935; CGL 1936 Supp. 3057(3).

171.14 Debts, liabilities, outstanding bonds and issuance of refunding bonds after consolidation.—All debts and liabilities of such district shall, after such consolidation and merger, be the debts and liabilities of such city or town, and if such city or town or district shall have any outstanding bonds or if either such city or town or district is successor to or covers the same territory of any previous city or town which had any bonds outstanding, then all outstanding bonds of such previous city or town shall be deemed, considered and taken to be the bonds of its successor city or town, and such succeeding city or town may at any time refund all such outstanding bonds whether bonds of its own issue or bonds to which it has fallen heir by being successor to the city or town issuing them, and it may issue its new refunding bonds in the same manner and pursuant to the same procedure that is required to issue bonds to create an original indebtedness, and when such refunding bonds are issued, all laws and parts of laws in force at the time of the issuance of the original bonds being refunded shall be deemed as preserved and carried forward into and to continue as the law of such refunding bonds. And all laws and parts of laws coming into effect between the issuance of such original bonds and such refunding bonds which cannot be made applicable to such original bonds because of the constitutional inhibition against impairing the obligation of contract shall likewise be deemed as inapplicable to such refunding bonds when issued pursuant to the terms hereof; provided, however, the provisions of this paragraph shall not apply generally to all cities and towns throughout the state issuing refunding bonds, but shall apply only to cities and towns with which some district has merged pursuant to the terms of this chapter.

History.—§4, ch. 16851, 1935; CGL 1936 Supp. 3057(4).

171.15 Judgments after consolidation.—All valid judgments rendered by courts of competent jurisdiction against such district or such city or town shall, after such consolidation and merger, be regarded as judgments against said city or town, to the same effect, and with the same force and effect, as though such judgments had been rendered against such city or town, and for the payment of such judgments such city or town may levy such taxes, against such properties, as such city or town could have levied for the payment of its general obligation bonds at the time of the rendition of such judgments respectively and such judgments shall have the same lien, force and effect as they had at the time of their rendition, and as provided herein.

History.—§5, ch. 16851, 1935; CGL 1936 Supp. 3057(5).

CHAPTER 172

MUNICIPAL ELECTRIC AND GAS PLANTS

172.01 Electricity or gas plant may be constructed, purchased, leased or established and maintained.—Any city or town may, under the limitations of this chapter, construct, purchase, lease or establish and maintain within its limits one or more plants for the manufacture or distribution of gas or electricity for furnishing light for municipal use, and for the use of such of its inhabitants as may require and pay for the same as herein provided. Such plants may include suitable land, structures, easements, water privileges, stations, gasometers, boilers and engines, dynamos, machinery, pipes, conduits, hose, conductors, burners, lamps and other apparatus and appliances for making, generating, distributing and using gas or electricity for lighting purposes.

History.—§1, ch. 4600, 1897; GS 1078; RGS 1925; CGL 3058.

172.02 Procedure required before exercise of authority granted.—No city or town shall exercise the authority conferred in §172.01, until after a vote that it is expedient to exercise such authority shall have passed its city council, by a two-thirds vote of the members of said city or town council at a meeting duly called and held for that purpose, and received the approval of the mayor, and thereafter have been ratified by a majority of the voters voting thereon at an annual or special municipal election to be called and held for that purpose, and the result of such vote duly declared by the clerk of the said town or city council, and recorded in the minutes of such town or city.

History.—§§2, 3, ch. 4600, 1897; GS 1079; RGS 1926; CGL 3059; §7, ch. 22858, 1945.

172.03 Limitation upon holding elections.—When a vote has failed of passage as provided in §172.02, no similar vote shall be taken until after the expiration of one year thereafter.

History.—§3, ch. 4600, 1897; GS 1080; RGS 1927; CGL 3060.

172.04 Authority to issue bonds; procedure.—Any city or town establishing or purchasing a plant within its limits, as provided in this chapter, or reconstructing, extending or enlarging the same, as provided in §172.05, may pay for the same by the issue of bonds payable in a term of not exceeding thirty years and bearing interest at a rate not exceeding seven per cent, which shall not be disposed of for less than par and accrued interest; and the indebtedness thereby created shall not be included in the limit of indebtedness of such city or town provided by law; and the whole amount of bonds so issued by a city or town and outstanding shall not exceed at their par value the amount of seven per cent of the total valuation of the real and personal property within the limits of said city or town, according to the last preceding valuation of the same made by said city or town. The interest on such bonds and a sinking fund to meet the same at maturity shall be provided for by ordinance of the city or town council; provided, that when any city or town shall borrow money, contract loans or issue bonds or other evidences of indebtedness pursuant to the provisions of this chapter, and the said borrowing, contracting or issuance shall come within the purview of §6 of Art. IX of the constitution of the state, the same shall be done only after said borrowing, contracting or issuance shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders, who are qualified electors residing in such city or town, shall participate.

History.—§4, ch. 4600, 1897; GS 1081; RGS 1928; CGL 3061.

172.05 Reconstruction and extension of plant.—Any city or town owning a plant for the manufacture or distribution of gas or electricity may reconstruct, extend or enlarge the same; but no such reconstruction, extension or enlargement beyond the necessary and ordinary maintenance, repair and replacement thereof, except such increased appliances for the manufacture and distribution of gas and electricity as may be necessary to furnish the same to the takers, shall be undertaken or made, except by the vote provided by §172.04, in the case of the issue of bonds.

History.—§5, ch. 4600, 1897; GS 1082; RGS 1929; CGL 3062; §7, ch. 22858, 1945.

172.06 City or town may furnish light for inhabitants or municipal use under regula-

tions it establishes; not compelled to furnish light except on order of gas and electric light committee of city or town.—Any city or town having obtained a plant for the purpose as provided in this chapter, may manufacture, generate and distribute gas and electricity for furnishing light for municipal use, or for the use of its inhabitants, under such regulations as it may establish. No city or town shall be compelled to furnish gas or electricity to any person or corporation except upon the order of the gas and electric light committee of such city or town. Any person or corporation aggrieved by the refusal of any city or town supplying gas or electricity under the authority of this chapter to furnish the same, may appeal to such committee setting forth in such appeal what is required of the city or town in such details as the committee may require.

History.—§6, ch. 4600, 1897; GS 1083; RGS 1930; CGL 3063.

172.07 Books and accounts.—The books and accounts pertaining to the business authorized by this chapter shall be kept in a form to be prescribed by the board of gas and electric light committee.

History.—§7, ch. 4600, 1897; GS 1084; RGS 1931; CGL 3064.

172.08 City or town to fix price to be charged.—The price to be charged for gas or electricity to persons and corporations shall be fixed by the city or town council, and shall not be changed oftener than once in three months.

History.—§8, ch. 4600, 1897; GS 1085; RGS 1932; CGL 3065.

172.09 Purchase by city or town of established plant.—When any city or town shall decide as hereinbefore provided, to establish a plant, and any person, firm or corporation shall at the time of the vote required for such decision be engaged in the business of making, generating or distributing gas or electricity for sale for lighting purposes in such city or town, such city or town shall, if such person, firm or corporation shall elect to sell and shall comply with the provisions of this chapter, purchase of such person, firm or corporation before establishing a public plant, such portion of his, their or its gas or electric plant, and property suitable and used for such business in connection therewith, as lies within the limits of such city or town. If in such city or town a single corporation owns or operates both a gas plant and an electric plant, such purchase shall include both of such plants, but otherwise such city or town shall only be obliged to purchase the existing gas plant or plants, if it has voted only to establish a gas plant, and shall only be obliged to purchase the existing electric plant or plants if it has only voted to establish an electric plant. If the main gas works in the case of a gas plant, or the central lighting station, in the case of an electric light plant, lie within the limits of the city or town which has voted to establish a plant as aforesaid, such city or town shall purchase as herein provided the whole of such plant and property used in connection therewith lying within its limits, and the price to be paid therefor shall be its fair market value for the purposes of its use, no portion of such plant to be estimated, however, at less than its fair market value for any other purpose, including as an element of value the earning capacity of such plant, based upon the actual earnings being derived from such use at the time of the final vote of such city or town to establish a plant, and also any locations or similar rights acquired from private persons in connection therewith, plus the damages suffered by the severance of any portion of such plant lying outside of the limits of such city or town, and minus the amount of any mortgage or other incumbrance or lien to which the plant so purchased, or any part thereof, may be subject at the time of transfer of title; but such city or town may require that such plant and property be transferred to it free and clear of any mortgage or lien, unless the gas or electric committee of such city or town shall otherwise determine. Such value shall be estimated without enhancement on account of future earning capacity, good will, or of exclusive privileges derived from rights in the public streets. When any capital has been paid in, in property instead of cash, the valuation placed upon such property in estimating it as paid in capital shall not be conclusive in estimating its value under the foregoing provisions, but may be disputed by the city or town, and if shown to have been excessive, may be reduced by the authority fixing the price of the plant and property as hereinafter provided.

History.—§9, ch. 4600, 1897; GS 1086; RGS 1933; CGL 3066.

172.10 Procedure where part of plant is outside of town limits.—If the main gas works or central lighting station of such a plant do not lie within the limits of the city or town which has voted as aforesaid, then such city or town, shall only purchase that portion of such plant and property which lies within its limits, paying therefor upon the basis of value above established, but without allowance of damages on account of severance of plant. No city or town shall be obligated by this section to buy any apparatus or appliances covered by letters patent of the United States or embodying a patentable invention unless a complete right to use the same and all other apparatus or appliances necessary for such use within the limits of such city or town, to such extent as such city or town shall reasonably require such right, shall be assigned or granted to such city or town at a cost as low as the cost of such right would be to the person, firm or corporation whose plant is purchased.

History.—§9, ch. 4600, 1897; GS 1087; RGS 1934; CGL 3067.

172.11 Enforcing obligation of city or town.—Any persons, firm or corporation, desiring to enforce the obligation of any city or town under §172.09 to purchase any property, shall

file with the clerk of such city or town within thirty days after the passage of the final vote whereby such city or town shall have decided to establish a plant, a detailed schedule describing such property and stating the terms of sale proposed. If the parties fail to agree as to what shall be sold, or what the terms of sale and delivery in accordance with the provisions of this chapter shall be, either party may within sixty days after the filing of the schedule apply by petition to the circuit court having jurisdiction in said county, setting forth the facts and praying an adjudication between the parties; and thereafter such court shall, after giving both parties an opportunity to be heard, appoint a commission or jury as now provided by law in matters of eminent domain, and the exercise of the right thereof, who shall give the parties an opportunity to be heard, and shall thereafter determine by their award or verdict what property, real or personal, including rights and easements, shall be sold by the one and purchased by the other in accordance with the provisions of this chapter, and what the price, time and other conditions of the sale and delivery thereof shall be. Such commission or jury shall file their award or verdict in the office of the clerk of the circuit court having jurisdiction, for revision or confirmation by said court.

History.—§10, ch. 4600, 1897; GS 1088; RGS 1935; CGL 3068.

172.12 Aggrieved party may file with clerk of circuit court.—Any party aggrieved by the award or verdict of the commission or jury may within fourteen days after its filing or within such longer time as the court may allow, file objections thereto with the clerk of said court and apply to the court for a hearing on such award or verdict relative to any matter of fact or law pertaining to the same, and thereupon the court shall make and render its final judgment in the premises after due notice to all parties in interest and an opportunity given to be heard in the premises. The judgment of the court upon said award or verdict shall be final and binding, and said court shall have jurisdiction as in equity to compel compliance therewith, and may also issue and enforce such interlocutory decrees and orders as justice may require. Any party aggrieved by the final judgment of the circuit court may have a writ of error as in common law cases to the supreme court of the state, subject to all rules and laws in force in this state relating to writs of error.

History.—§11, ch. 4600, 1897; GS 1089; RGS 1936; CGL 3068.

172.13 Powers of owners cease.—Whenever the existing gas plant or electric plant of any person or corporation shall have been acquired by any city or town pursuant to the provisions of this chapter, the powers and rights of such person or corporation in relation to the manufacture and distribution of gas and electricity within the limits of such city or town, shall, from and after the date of such acquirement, cease and determine.

History.—§12, ch. 4600, 1897; GS 1090; RGS 1937; CGL 3070.

172.14 General laws apply.—All general laws of the state, and all ordinances or by-laws of any city or town availing itself of the provisions of this chapter, relative to the manufacture, use, generation or distribution of gas or electricity, or the quality thereof, or plant or appliances therefor, shall apply to such city or town so far as the same may be applicable and not inconsistent with this chapter, in the same manner as the same apply to persons and corporations engaged in making, generating or distributing gas or electricity therein.

History.—§13, ch. 4600, 1897; GS 1091; RGS 1938; CGL 3071.

172.15 No rights of cities impaired.—Nothing herein shall be construed to take away, restrict or impair any rights of any city, town or other authority which may now exist to revoke locations of wires, poles, conduits or pipes in, over or under their streets or ways; provided, however, that no city or town, having within its limits the main gas works in the case of a gas plant or the central lighting station in the case of an electric plant, or the major portion of the wires, poles, conduits, or pipes used in connection with any such works or plants, shall, except for a violation of the terms or conditions upon which the same were granted, or for a violation of law respecting the exercise thereof, revoke any rights heretofore granted, or which may be hereafter granted, to any person or corporation engaged in the business of making, generating or distributing gas or electricity for sale or lighting purposes, after the passage of the vote of the city council or town council and the vote of the electors of such city or town, as provided for in §172.02.

History.—§14, ch. 4600, 1897; GS 1092; RGS 1939; CGL 3072.

CHAPTER 173

FORECLOSURE OF MUNICIPAL TAX AND SPECIAL ASSESSMENT LIENS

173.01 Foreclosure of municipal tax certificates authorized.—The lien of any and all taxes, tax certificates and special assessments heretofore or hereafter imposed by any incorporated city or town in the state upon real estate may be foreclosed by such city or town by suit in chancery. The practice, pleading and procedure in any such suit shall be in substantial accordance with the practice, pleading and procedure for the foreclosure of mortgages of real estate, except as herein otherwise provided.

History.—§1, ch. 15038, 1931; CGL 1936 Supp. 3004(2).

173.02 Proceedings in rem against the lands.—Suits for the foreclosure of tax liens and special assessments under this chapter shall be in the nature of proceedings in rem against the lands upon which said taxes or special assessments are a lien or liens, and it shall not be material that the ownership of said lands be correctly alleged in said proceedings or that parties having an interest or interests in or liens or claims upon said lands be made parties to such proceedings by name or description or be served with process therein, except as hereinafter provided. In any such suit as many lots, parcels or tracts of land, regardless of ownership, and as many tax liens, tax certificates and assessment liens may be included in one suit as the complainant may desire. Any judgment or decree that may be rendered in any such suit shall be enforceable only against such lands.

History.—§2, ch. 15038, 1931; CGL 1936 Supp. 3004(3).

173.03 Conditions determining when suit may be brought; lands and claims included.—Suit may be brought at any time after any one or more of the following events, respectively: (1) After the expiration of two years from the date of any tax certificate issued and held by a city or town whose charter provides for or requires the issuing of tax certificates for delinquent taxes; (2) after the expiration of two years from the date any tax becomes delinquent which was imposed by a city or town whose charter does not provide for or require the issuing of tax certificates; or (3) after the expiration of one year from the date any special assessment or installment thereof becomes due and payable. There may be included in any suit all or any part of the lands upon which tax certificates have been outstanding or taxes have remained delinquent or any special assessment or installment thereof shall have been in default for the respective periods aforesaid, and there may be included therein all claims and demands of said city or town against said lands or any part thereof for taxes, tax certificates and special assessments or installments thereof which may be due and payable to such city or town at the time of the institution of such suit.

History.—§3, ch. 15038, 1931; CGL 1936 Supp. 3004(4).

173.04 Procedure for bringing foreclosure suit; certificate of attorney as to notice of suit; jurisdiction obtained by publication of notice of suit; form of notice.—Any suit hereby authorized shall be commenced by bill in chancery in the circuit court of the county in which such city or town is situated, in the name of the city or town whose taxes, tax certificates and special assessments are sought to be enforced, as complainant, and against any or all lands upon which any taxes, tax certificates and special assessments are delinquent (as the case may be) for the period aforesaid, as defendant, in which bill there shall be briefly described the levy and nonpayment of taxes and special assessments which are delinquent for the period aforesaid, and of all other taxes and special assessments then due and payable to said city or town and sought to be recovered in such bill, the lands proceeded against and the amount chargeable to each parcel or tract. It shall be unnecessary to name in such bill or proceedings any person owning or having any interest in or lien upon such lands as defendants. At least thirty days prior to the filing of any such bill in chancery, written notice of intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery; such notice shall briefly describe the particular

lot or parcel of land, shall state the amount of tax certificate and special assessment liens sought to be enforced and shall warn said owner and holders of liens, mortgages or other liens that on or after the day therein named said bill in chancery to enforce the same will be filed, unless paid on or before said date.

A certificate of the attorney shall be attached to the bill of complaint to the effect that said written notice has been given, and such certificate shall be prima facie evidence that the provisions of this section have been complied with. The complainant's counsel shall make diligent inquiry as to the address of the record title and holders of record liens other than judgments and the clerk of the circuit court shall mail by registered mail a copy of the notice hereinafter provided for, to such record owner and holders of record liens other than judgments at such last known address.

Jurisdiction of any of said lands and of all parties interested therein or having any lien thereon shall be obtained by publication of a notice to be issued as of course by the clerk of the circuit court in which such bill is filed on the request of complainant, once each week for not less than four consecutive weeks, directed to all persons and corporations interested in or having any lien or claim upon any of the lands described in said notice and said bill. Such notice shall describe the lands involved and the respective principal amounts sought to be recovered in such suit for taxes, tax certificates and special assessments on such respective parcels of land, and requiring all such parties to appear and defend said suit on or before a rule day specified in said notice, which shall be not less than four weeks after the date of the first publication of such notice. Said notice may be in substantially the following form, with blanks appropriately filed in:

_____ Name City or Town, Complainant, vs. Certain lands upon which _____ (here insert the word "taxes," or the words "special assessments" or both, as the case may be) are delinquent, Defendant.	IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA. IN CHANCERY.

NOTICE

To all persons and corporations interested in or having any lien or claim upon any of the lands described herein:

You are hereby notified that (name city or town) has filed its bill of complaint in the above named court to foreclose delinquent _____ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) with interest and penalties, upon the parcels of land set forth in the following schedule, the aggregate amount of such _____ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) interest and penalties, against said respective parcels of land, as set forth in said bill of complaint, being set opposite such parcels in the following schedule, to-wit:

DESCRIPTION OF LANDS

Amount of _____ (here insert the word "taxes," or the words "special assessments" or both, as the case may be).

In addition to the amounts set opposite each parcel of land in the foregoing schedule, interest and penalties, as provided by law, on such delinquent taxes and special assessments, together with a proportionate part of the costs and expenses of this suit, are sought to be enforced and foreclosed in this suit.

You are hereby notified to appear and make your defenses to said bill of complaint on or before the _____ day of _____, and if you fail to do so on or before said date the bill will be taken as confessed by you and you will be barred from thereafter contesting said suit, and said respective parcels of land will be sold by decree of said court for nonpayment of said taxes and assessment liens and interest and penalties thereon and the costs of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Court, this _____ day of _____.

_____
Clerk of said Court.

By _____
Deputy Clerk.

Proof of publication of said notice, as herein required, shall be by affidavit of the publisher or some agent or employee thereof filed in said cause.

History.—§4, ch. 15038, 1931; CGL 1936 Supp. 3004(5).
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

173.05 Parties; time for appearance, etc.—Every person interested in or having any lien upon any parcel of land described in the bill of complaint shall be deemed a party to said cause and may appear and defend said cause within the time specified in such notice. Any person not appearing and defending within such time shall be deemed to have confessed said bill, but the court may in its discretion and for cause shown enlarge the time within which any such person may appear and defend said cause.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.06 Affidavits and certificates as prima facie evidence; proof of validity or invalidity.—An affidavit or affidavits of the tax collector or other officer of complainant having the duty of issuing or collecting such taxes, special assessments or tax certificates, as to the existence of delinquent taxes, tax certificates and special assessments upon any parcel of land and the time when the same became due, the amount due thereon, including interest and penalties, and the non-payment thereof, shall be received in evidence as prima facie proof of the facts so

certified and of the validity of all proceedings in and about the levying and assessment of such taxes and special assessments and the issuing of such tax certificate or certificates.

Tax certificates shall be admissible in evidence and shall be prima facie valid.

No tax certificate shall be held invalid except upon proof that the property was not subject to taxation or that the taxes had been paid previous to any tax sale or prior to the institution of the suit.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.07 Tender of correct amount as condition precedent.—If any person shall claim that any tax, tax certificate or assessment is improper or illegal, and seek to contest the same, then such person at the time of filing an answer resisting the foreclosure of any tax lien, tax certificate or assessment lien shall tender into the registry of the court such amount as he claims was properly assessable or for which the property of such person was properly assessable.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.08 Judgment for complainant; amounts included; attorney's fee.—In all cases where the cause may be decided for complainant, the judgment for delinquent taxes, tax certificates and special assessments against any parcel of land shall include the principal of, and interest and penalties on such taxes, tax certificates and special assessments, the costs of the suit and a reasonable attorney's fee; such costs and attorney's fee to be apportioned among and charged against the various parcels of land involved in proportion to the amount of taxes, tax certificates and special assessments adjudged against such respective parcels of land.

In fixing the fees of complainant's attorney the court shall take into consideration the use which the complainant has made of the privilege hereby given of including in one suit divers taxes, tax certificates and assessment liens, and if the court be of the opinion that there has been an unnecessary separation of causes of action on the same or different parcels of land which might have been joined in the same action, it shall not allow an attorney's fee greater than would have been allowed if the action had been combined.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.09 Judgment for complainant; special master's sale; complainant may purchase and later sell.—Any such decree shall direct the special master thereby appointed to sell the several parcels of land separately to the highest and best bidder for cash (or, at the option of complainant, to the extent of special assessments included in such judgment, for bonds or interest coupons issued by complainant), at public outcry at the court house door of the county in which such suit is pending, or at such point or place in the complainant municipality as the court in such final decree may direct, after having advertised such sale (which advertisement may include all lands so ordered sold) once each week for two consecutive weeks in some newspaper published in the city or town in which is the complainant or if no such newspaper, in a newspaper published in the county in which the suit is pending, and if all the lands so advertised for sale be not sold on the day specified in such advertisement, such sale shall be continued from day to day until the sale of all such land is completed.

Such sales shall be subject to confirmation by the court, and said special master shall, upon confirmation of the sale or sales, deliver to the purchaser or purchasers at said sale a deed of conveyance of the property so sold; provided, however, that in any case where any lands are offered for sale by the special master and the sum of the tax, tax certificates and special assessments, interest, penalty, costs and attorney's fee is not bid for the same, the complainant may bid the whole amount due and the special master shall thereupon convey such parcel or parcels of land to the complainant.

The property so bid in by complainant shall become its property in fee simple and may be disposed of by it in the manner provided by law, except that in the sale or disposition of any such lands the city or town may, in its discretion, accept in payment or part payment therefor any bonds or interest coupons constituting liabilities of said city or town.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.10 Judgment for complainant; court may order payment of other taxes, etc., or sale subject to taxes; special master's conveyances.—In the judgment or decree the court may, in its discretion, direct the payment of all unpaid state and county taxes and also all unpaid city or town taxes and special assessments or installments thereof, imposed or falling due since the institution of the suit, with the penalties and costs, out of the proceeds of such foreclosure sale, or it may order and direct such sale or sales to be made subject to such state and county and city or town taxes and special assessments.

Any and all conveyances by the special master shall vest in the purchaser the fee simple title to the property so sold, subject only to such liens for state and county taxes or taxing districts whose liens are of equal dignity, and liens for municipal taxes and special assessments, or installments thereof, as are not directed by the decree of sale to be paid out of the proceeds of said sale.

History.—§5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.11 Distribution of proceeds of sale.—The proceeds of any foreclosure sale authorized by this chapter shall be distributed by the special master conducting the sale according to the final decree and if any surplus remains after the payment of the full amount of the decree, costs and attorney's fees and any subsequent tax liens which may be directed by such decree to be paid from the proceeds of sale, such surplus shall be deposited with the clerk of the court and disbursed under order of the court.

History.—§6, ch. 15038, 1931; CGL 1936 Supp. 3004(7).

173.12 Lands may be redeemed prior to sale.—Any person interested in any lands included in the suit may redeem such lands at any time prior to the sale thereof by the special master by paying into the registry of the court the amount due for delinquent taxes, interest and penalties thereon and such proportionate part of the expense, attorney's fees and costs of suit as may have been fixed by the court in its decree of sale, or by written stipulation of complainant, and thereupon such lands shall be dismissed from the cause.

History.—§7, ch. 15038, 1931; CGL 1936 Supp. 3004(8).

173.13 Procedure under this chapter optional.—The exercise of the power and provisions conferred in this chapter shall be optional with the municipalities and shall not be mandatory upon any municipality of the state. Any municipality desiring to proceed hereunder may elect to proceed hereunder by formal action of its governing authority and by proceeding as described herein.

History.—§8, ch. 15038, 1931; CGL 1936 Supp. 3004(9).

173.14 Chapter supplemental to other law.—This chapter shall not repeal any other statute relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of enforcement of tax liens and special assessments for the benefit of all incorporated cities or towns of the state of Florida, whether organized under special act or general laws, and shall be liberally construed to effectuate its purpose.

History.—§9, ch. 15038, 1931; CGL 1936 Supp. 3004-(10).

173.15 Parties and subject matter; tax liens, etc., of equal dignity.—

(1) In the foreclosure of municipal tax and special assessment liens by suit in the nature of proceedings in rem, as provided by chapter 173, for the purpose of adjudicating therein all tax liens against the lands being proceeded against, or any portion thereof, and receiving from the proceeds of any foreclosure sale in such proceedings a proper and proportionate share of such proceeds in satisfaction of tax liens so adjudicated, the owner, holder or assignee of any tax lien, however evidenced, of equal or inferior dignity with those of the complainant on or against the lands being proceeded against, or any portion thereof, may be included as and made a party defendant in such proceeding by the service of process on such party defendant in the manner provided by law for service of process on defendants in chancery.

(2) This section is intended to broaden the scope of the foreclosure proceedings authorized by chapter 173, so as to permit the adjudication of tax liens of equal dignity in said proceedings, and shall be liberally construed to effectuate such purpose.

History.—§§1, 2, ch. 22021, 1943.

CHAPTER 174

CIVIL SERVICE FOR POLICE AND FIREMEN IN CITIES AND TOWNS OF ONE HUNDRED TWENTY-FIVE THOUSAND POPULATION, OR LESS

174.01 Civil service employees.—The members of the police and fire departments of any city or town not having a population of more than one hundred twenty-five thousand, according to the last preceding state or federal census, whether incorporated by special act or incorporated under the general laws of the state relating to cities and towns, shall, after adoption of this chapter by referendum as hereinafter provided, be constituted civil service employees of said city or town, and shall be employed, retained, governed, directed and discharged as hereinafter provided.

History.—§1, ch. 17166, 1935; CGL 1936 Supp. 3092(26).
cf.—§1.01 (9) Census.

174.02 Definitions.—For the purposes of this chapter, "municipality" shall be construed to mean any city or town of the state, whether incorporated by a special act or incorporated under the general laws of the state relating to cities and towns. The "governing authority" shall be construed to mean the municipal officers of a city or town who are authorized to enact the laws and ordinances of said municipality, whether the said officers are known as aldermen, commissioners, councilmen, or by any other designation, and shall include only those officers who are authorized to vote on said ordinances or laws. "Chief of police" shall be construed to mean the officer in command of the police department, and commonly known and designated as chief of police. "Chief of fire department" shall be construed to mean the officer in command of the fire department, and commonly known and designated as chief of fire department. "Seniority" shall be construed to mean the length of service on the police department or fire department of said municipality.

History.—§2, ch. 17166, 1935; CGL 1936 Supp. 3092(27).

174.03 Employment included in provisions of this chapter.—All persons regularly employed by a municipality as police officers or fire officers, including the chief of police, chief of fire department, captains, other officers and policemen and firemen, and those persons who are members of the police and fire department engaged in clerical work solely for said police or fire department, shall be construed to come within the provisions of this chapter, but this chapter shall not include any officer or person employed for temporary duty only.

Employees of municipalities, coming within the provisions of this chapter, shall be employed and retained in employment and advanced to any higher grade on merit and fitness only, and the merit and fitness of any applicant for said departments, or for advancement therein, shall be determined by competitive examination, as hereinafter provided.

History.—§3, ch. 17166, 1935; CGL 1936 Supp. 3092(28).

174.04 Civil service board created.—A civil service board for said municipality is hereby created. Said board shall be composed of five members, three members of said board to be persons of different vocations, not employed by said municipality in any other capacity, official or otherwise, and shall be appointed by the governing authority of said municipality, and shall be so appointed in the first instance for terms of one, two and three years respectively, and thereafter in each instance the term shall be for four years. The fourth member

of said board shall be a member of the police department of said municipality, and the fifth member of said board shall be a member of the fire department of said municipality, who shall be elected to membership in said board by the vote of the regular employed members of the police and fire departments respectively. The term of said fourth and fifth members shall be for one year. The members of said board, other than said fourth and fifth members, shall appoint the judges and clerks for the election of said fourth and fifth members. The time for said election shall be set by the three members first appointed to said board, and thereafter said election shall be held on that date each year, or such other date as may be designated by the governing authority. The votes shall be consolidated on the following day after said election. The candidate receiving the greatest number of votes shall be declared elected. Immediately after appointments and election have been made and held as above provided, said board shall organize and elect one of its members chief examiner, who shall act as secretary to said board. The board may appoint such other assistants to the secretary as may be necessary. All three members of said civil service board first appointed shall serve without recompense, unless otherwise provided by the governing authority. The chief of police and chief of fire department shall be ex officio members of said board and shall have a voice in any proceedings, but not vote. The fourth member and the chief of police, and the fifth member and the chief of fire department shall serve on said board without compensation, other than their regular pay as officers. In the event any city or town shall have less than five members of the said departments coming within the provisions of this chapter, the fourth and fifth members of said civil service board shall not be elected to serve on said board, and in which event the chief of police and chief of fire department may vote as a member on said board only when there is a tie vote by the members of said board.

History.—§4, ch. 17166, 1935; CGL 1936 Supp. 3092(29).

174.05 Rules and regulations; investigations concerning enforcement; annual report.—The civil service board shall adopt, enact, and amend a code of rules and regulations. This code shall cover the regulations for the conduct and direction of the members of the police and fire departments and shall prescribe their duties, hours of work, discipline and control. Said code shall contain rules and regulations for the appointment, employment and discharge of persons in all positions in the police and fire departments of said municipality, based on merit, efficiency, character and industry. Said code shall have the force and effect of a law on employees of said police and fire departments. Said board shall make investigations concerning the enforcement and effect of this chapter and of its adopted code. It shall make an annual report to the governing authority.

History.—§5, ch. 17166, 1935; CGL 1936 Supp. 3092(30).

174.06 Examinations, eligible lists, grades, certification, vacancies and promotions.—The civil service board or its examiner, subject to its approval, shall provide examinations and maintain lists of eligibles to appointment in said police and fire departments. Said board shall divide said departments into grades and shall certify a list of the members of each grade. Said lists may be certified to the chiefs of said departments at such time as may be determined by said board, but not less than once a year, and shall be available for examination by any member of said department at any time. Appointments shall be made to fill vacancies only from this list of eligibles. Members of said department shall be moved from any grade to a higher grade only after passing an examination prescribed by the board as aforesaid, and a certificate as to their efficiency and fitness, with the necessary qualifications prescribed by the said board, and the entry of their names on the eligible list for said grade.

History.—§6, ch. 17166, 1935; CGL 1936 Supp. 3092(31).

174.07 Suspension of examination and requirements for filling vacancy when competition is impracticable.—In case of a vacancy in a position in said police and fire departments where peculiar and exceptional qualifications of a scientific, managerial, professional or educational character are required, and upon satisfactory evidence that for specified reasons, competition in such special case is impracticable, and that the position can best be filled by a selection of some designated person of high qualities, the civil service board, on a vote of a majority of its members, and the written assent of the chief of police and chief of fire department, may suspend the provisions of the statute requiring competition in such place, and all such cases of suspension of the examination shall be recorded by the board, with the reasons for said suspension and shall be open to the public. At the time of the appointment the rank of said appointee shall be fixed by the board. Such an appointee, being appointed to fill a vacancy, may not of necessity receive the same rank as the former incumbent.

History.—§7, ch. 17166, 1935; CGL 1936 Supp. 3092(32); am. §7, ch. 22858, 1945.

174.08 Command of police and fire departments.—The chief of police and fire departments of said city shall be in command of said police and fire departments, and at all times responsible directly to said board for the conduct and administration of said department. Whenever the governing authority of said city shall determine that an emergency exists, caused by riot, rebellion or public calamity, the mayor of said city may be directed to take charge of said police department and command the same during the existence of said emergency only.

History.—§8, ch. 17166, 1935; CGL 1936 Supp. 3092(33).

174.09 Governing authority fixes pay and controls number of employees in each grade;

seniority list.—The governing authority of said municipality shall fix the pay of all members of said police and fire department, provided that members of the same grade shall each receive the same pay, and members of a higher grade shall not be paid less than members of the next lower grade.

The governing authority of said municipality shall fix the number of members in each particular grade and may increase or reduce the number of any grade, or may abolish that grade, except that there shall be only one chief of police and only one chief of fire department, and these officers may not be abolished. In the event of a reduction in the number of members in any grade, the members shall be retained in that grade according to seniority, and those members thus being forced back to a lower grade or class, will thereafter receive the pay of said lower grade or class, and in the event the grade or class is again increased, shall be first to succeed to said old grade or class according to seniority, without further examination or probationary period, and in the event a reduction in said force or any grade thereof causes a member of the lowest grade of said force to go into inactive duty, said member or members on inactive duty shall not receive any pay, but said inactive member shall not lose his seniority, provided he remains inactive for a period not exceeding one year, and enters on said active duty within ten days after notice has been given him by the secretary of said civil service board that a position is open. After the formation of said board a seniority list shall be certified of all members and employees of the police and fire departments and each member and employee shall in writing assent or dissent to his seniority rating. In the event a member dissents, a hearing shall be held by said board and the seniority determined, and the finding of said board shall be final.

History.—§9, ch. 17166, 1935; CGL 1936 Supp. 3092(34).

174.10 Discharge of permanent employee.—The discharge of a permanent employee other than at the end of a probationary period shall not become effective until the chief of police or the chief of fire department, as the case may be, shall have first served upon such employee of the department a written notice of discharge which shall contain one or more reasons or grounds for discharge, together with such specifications of facts as will enable said employee to make an explanation and place him fairly upon his defense, giving such employee an opportunity to make an explanation, and file it with the civil service board together with a copy of such notice of discharge and explanation, if any, made by the employee.

History.—§10, ch. 17166, 1935; CGL 1936 Supp. 3092(35).

174.11 Hearing on appeal of discharged employee.—A discharged employee may appeal to the civil service board for a hearing within ten calendar days from the time he was served with notice of discharge as shown by such notice. The board shall hear the appeal within thirty days from the date that such appeal shall have been so filed with the board. Written notice shall be given to the person so removed and to the chief of the proper department of the time and place of hearing the appeal, which hearing shall be open to the public.

History.—§11, ch. 17166, 1935; CGL 1936 Supp. 3092(36).

174.12 Proceedings of hearing.—The board shall hear the evidence upon the charges and specifications as filed with it by the chief of police or the chief of fire department. No material amendment of, or addition to said charges or specifications will be considered by the board. The proceedings shall be as informal as is compatible with justice. The order of proof shall be as follows. The chief of police or chief of fire department shall present his evidence in support of the charges. The appellant shall then produce such evidence as he may wish to offer in his defense. The parties in interest may then offer rebuttal evidence. The board shall hear arguments. The admission of the evidence shall be governed by the rules applied by the court in civil cases. The board shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths. The chief of police and chief of fire department may be represented by other counsel. The appellant may also be represented by counsel, and the board shall, after due consideration, render its judgment affirming, disaffirming or modifying the action of the said departments.

History.—§12, ch. 17166, 1935; CGL 1936 Supp. 3092(37).

174.13 Perjury.—Any willful false swearing on the part of any witness or person giving evidence before the civil service board mentioned in §§174.01-174.12 as to any material fact in said proceedings shall be deemed perjury, and shall be punished in the manner prescribed by law for such offense.

History.—§13, ch. 17166, 1935; CGL 1936 Supp. 7476(2).

174.14 Failure to appear.—If the employee whose appeal is to be heard as set out in §174.11 shall fail to appear, for no good reason, at the time fixed for the hearing, the board shall hear the evidence and render judgment thereon. If the chief of the proper department shall fail to appear at the time fixed for the hearing, and if no evidence be offered in support of his charge or charges, the board may render judgment as by default or may hear evidence as offered by the removed employee and render judgment thereon, and the board shall forthwith notify the department chief and the removed employee of its judgment.

History.—§14, ch. 17166, 1935; CGL 1936 Supp. 3092(38); am. §7, ch. 22858, 1945.

174.15 Civil service board may initiate investigation and prefer charges.—The civil service board shall also have the initiative in any proceedings and may, by a majority vote, call before it any member of said police de-

partment for investigation, and, if it finds sufficient grounds so to do, may direct its secretary to prefer charges against said member, in which event the secretary may be substituted for the chief of police or chief of fire department in said charges and hearing, and in such event the secretary shall not vote in said proceedings.

History.—§15, ch. 17166, 1935; CGL 1936 Supp. 3092(39).

174.16 Suspension of permanent employee; right to appeal.—Any chief of police or chief of fire department may suspend a permanent employee without pay for a reasonable period not to exceed thirty days, for purposes of discipline, provided, however, that said employee shall not be required to work more than five days of any suspension without pay. Successive suspensions shall not be allowed. In all cases of suspension, demotion, or lay off, the chief of police and chief of fire department shall furnish such employee with a copy of a notice thereof specifying his reasons for the same and give such employee a reasonable time in which to make and file an explanation. Any employee suspended or laid off shall have the right of appeal to the civil service board in the manner set forth in §174.11 with reference to an appeal in case of dismissal. Whenever the dismissal or suspension of an employee is disapproved by the board and a reinstatement ordered, the employee involved may, as determined by the board, receive the pay he lost because of such suspension.

History.—§16, ch. 17166, 1935; CGL 1936 Supp. 3092(40).

174.17 Disqualified for further examinations.—Any permanent employee who is dismissed for misconduct or delinquency or who resigns while charges are pending shall be disqualified from taking any civil service examination thereafter.

History.—§17, ch. 17166, 1935; CGL 1936 Supp. 3092(41).

174.18 Rank, grade and seniority held at time of adoption of chapter retained.—Members of the police and fire department, respectively, shall retain the rank and grade and the seniority they hold at the time of the approval of the provisions of this chapter by the municipality. That is, it shall not be necessary for them to be reappointed to the grade they hold at that time, nor to go through any probationary period to hold that particular grade. In the event, however, that any member of the police department shall become eligible for a position of a higher grade, then this chapter shall apply in all its terms and provisions. Nothing in this section shall prevent the governing authority from reducing the number of men in any grade, as hereinbefore provided.

History.—§18, ch. 17166, 1935; CGL 1936 Supp. 3092(42).

174.19 Election may be called to approve or reject terms of this chapter for the municipality.—Whenever the governing authority of any municipality deems it for the best interest of its citizens, it may adopt a resolution by a majority vote of its members, calling an election on a day to be specified in said resolution not less than forty days and not more than ninety days thereafter, to approve or reject for said municipality the terms of this chapter. In the event said chapter is adopted by a municipality in accordance with the terms of this section and §§174.20 and 174.25, and the municipal governing authority then desires to amend the provisions of this chapter such amendment shall be valid only after approval by a majority of the electors participating in a referendum election called for the purpose of approving or disapproving the amendment.

History.—§19, ch. 17166, 1935; CGL 1936 Supp. 3092(43); §1, ch. 59-40.

174.20 Petition to governing authority to call election to approve or reject this chapter; procedure; publication of notice of election.—If the governing authority of said municipality shall not adopt a resolution calling an election for the purpose of approving or rejecting this chapter, an election may then be called for that purpose on petition to the governing authority of such municipality requesting the governing authority to call such election as aforesaid. Said petition shall be signed by at least ten per cent of the qualified voters of such city or town, and each signer thereof shall add to his signature his place of residence, giving the street and number, if any; and one of the signers of each separate paper containing the signatures of the qualified electors signing said petition shall make oath before an officer competent to administer oaths, that each signature to the paper appended is the genuine signature of the person whose name it purports to be. On the presentation to the governing authority of such municipality of such petition, whether on the same or different papers, it shall be immediately referred to the clerk or secretary of the governing authority and the registration officer or similar officer of such municipality shall, with such clerical assistance as may be necessary, compare the names on said petition with the registration books, and complete the work within ten days. If the number of names on said petition is not sufficient to call an election, as herein provided, said officers shall retain said petition and receive additional petitions of the same character and for the same purpose for a period of thirty days, unless the requisite number is obtained sooner, when they shall not have been called by the governing authority, then it shall canvass the same and shall certify the result thereof to the governing authority of such municipality. If the requisite number of signatures of qualified voters appear on said petition or petitions and on the certificate of canvass thereof, and said election shall not have been called by the governing authority, then it shall forthwith adopt a resolution designating a day for the holding of such election, which shall not be less than forty days nor more than ninety days after the adoption of such resolution; provided, however, the election may be held on the date of holding the next general election, at which one or more members of the governing author-

ity are elected, and with the same judges and clerks. In which event, the provisions in regard to calling the election within a specified time need not apply.

Notice of said election shall be given by the clerk or secretary of the governing authority by publishing the same in a newspaper published in such municipality once each week for four consecutive weeks next preceding said election, the first publication thereof to be not less than twenty-five days prior to such election; but if no newspaper is published in such municipality, then said notice shall be published as aforesaid in a newspaper published in the county in which said municipality is located, and three copies of said notice shall be posted at least twenty-five days before said election in said municipality, one of the said notices to be posted at the city or town hall and at two other conspicuous places in such municipality.

History.—§20, ch. 17166, 1935; CGL 1936 Supp. 3092(44).

174.21 Officers, manner of holding and expenses of election.—The officers whose duty it is to provide for the holding of elections in such municipality shall make all necessary arrangements for the holding of such election, and the same shall be held and the expenses thereof paid in the same manner as elections are therein held by qualified voters of said municipality voting for the election of members of the governing authority thereof.

History.—§21, ch. 17166, 1935; CGL 1936 Supp. 3092(45).

174.22 Qualified voters.—In determining the percentage of qualified voters required on the petitions hereinbefore prescribed calling such election, the registration list for the last general election voting for members or any member of the governing authority of said municipality shall be used.

History.—§22, ch. 17166, 1935; CGL 1936 Supp. 3092(46).

174.23 Form of ballot.—The approval or rejection of this chapter may be submitted to the qualified voters of the municipality at a general or special election at the time hereinbefore provided. The governing authority shall prescribe the form of ballot to be used at such election, which shall be, as nearly as is practicable, the same as is required in other elections; and said governing authority shall submit this chapter as a complete entity, and the caption of this chapter shall be a sufficient statement on said ballot of the purposes for which said ballot is cast.

History.—§23, ch. 17166, 1935; CGL 1936 Supp. 3092(47).

174.24 Registration books. — The registration books of said municipality shall be open for said election in such manner as the registration books are ordinarily opened for general elections in said municipality; provided, however, that if there is a conflict in dates for the holding of said election as herein provided with the general elections of said municipality, it shall be sufficient for said registration books to remain open for a period of ten days.

History.—§24, ch. 17166, 1935; CGL 1936 Supp. 3092(48).

174.25 Board of election commissioners; approval places chapter in immediate effect; rejection requires elapse of two years before another election.—The governing authority of said municipality shall act as a board of election commissioners for holding said election and canvassing the returns and certifying the results thereof, and said election shall be held as nearly as may be in the same manner as other city or town elections. If at said election a majority of the qualified voters voting therein shall approve this chapter, the same shall be of full force and effect in said municipality immediately.

In the event a majority of the qualified voters, voting in said election, disapprove this chapter, another election to approve or disapprove the same shall not be held for a period of two years after the date of said election.

History.—§25, ch. 17166, 1935; CGL 1936 Supp. 3092(49).

174.26 Charters and special acts in conflict repealed only insofar as they prevent the operation of this chapter.—This chapter shall not be construed as repealing any municipal charter or any special act of the legislature in regard to any municipality, except only those parts of charters or special acts so in conflict herewith as to prevent the operation of this chapter after its adoption by referendum election as aforesaid, but shall be construed to be an addition to said charters and special acts, except those parts of said charters and special acts not reconcilable herewith as aforesaid.

History.—§26, ch. 17166, 1935; CGL 1936 Supp. 3092(50).

CHAPTER 175

MUNICIPAL FIREMEN'S PENSION TRUST FUND

175.011 Short title of act.—This act shall be known and may be cited as the municipal firemen's pension trust fund act.

History.—§1, ch. 63-249.

175.021 Legislative declaration.—It is hereby found and declared by the legislature that firemen, as hereinafter defined, perform state and municipal functions. That it is their duty to extinguish fires and to protect life and property therefrom at their own risk and peril; that it is their duty to prevent conflagration and to continuously instruct school personnel, public officials and private citizens in the prevention of fires and fire safety; that they protect both life and property from local disasters and that their activities are vital to public safety and welfare. Therefore the legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firemen as hereinafter defined.

History.—§1, ch. 63-249.

175.032 Definitions.—The following words and phrases used in this act shall have the following meanings, unless a different meaning is plainly required by the context:

(1) Fireman means any duly employed uniformed fireman employed by any municipality or fire control district in Florida, whose duty it is to extinguish fires and to protect life and property therefrom as a member of a duly constituted fire department of each such municipality, or any volunteer fireman whose name is carried on the active membership rolls as a volunteer fireman of any duly constituted volunteer fire department or any combination thereof, of any municipality, and whose duty it is to extinguish fires and to protect life and property therefrom. Token or other pension or compensation for services rendered by such volunteer firemen shall not take them out of the volunteer firemen category. Any person, who volunteers assistance at a fire but whose name is not on the membership rolls as an active member of the volunteer fire department, or of the fire department whose responsibility it is to extinguish fires and to protect life and property therefrom, is not a volunteer fireman within the meaning of this act. A volunteer fireman may have other gainful employment and this in and of itself shall not take him out of the meaning of a volunteer fireman.

(2) (a) Average final compensation for full-time firemen means the average salary of the ten best contributing years of the last fifteen years prior to retirement, or the career average as full-time firemen since July 1, 1953, whichever is greater. A year shall be twelve running months.

(b) Average final compensation for volunteer firemen means the average salary of the ten best contributing years prior to change in

status to a permanent full-time fireman or retirement as a volunteer fireman or the career average of a volunteer fireman, since July 1, 1953, whichever is greater.

(3) Salary means the fixed monthly compensation paid firemen and where, as in the case of volunteer firemen, compensation is derived from actual services rendered, salary shall be the total cash compensation received yearly for such services, prorated on a monthly basis.

(4) Property insurance means property insurance as defined in §624.0403, and covers real and personal property within the corporate limits of any municipality within the state. Multiple peril means a combination or package policy which includes both property and casualty coverage for a single premium.

(5) Aggregate number of years of service with the municipality shall mean the total number of years, and fractional parts of years of service of any fireman, omitting intervening years and fractional parts of years, when such fireman may not be employed by the municipality. Provided, however, that no fireman will receive credit for years of fractional parts of years of service for which he has withdrawn his contributions to the fund for those years or fractional parts of years of service, unless the said fireman repays into said fund the contributions he has withdrawn, with interest, within ninety days after his re-employment. Further, providing that a fireman may voluntarily leave his contributions in the fund for a period of five years after leaving the employ of the fire department, pending the possibility of his being rehired by the same department and remaining employed for a period of not less than three years, without losing credit for the time he has participated actively as a fireman. Should he not remain employed for a period of at least three years as a fireman, with the same department upon re-employment, within five years, his contributions shall be returned to him without interest.

In determining the aggregate number of years of service of any firemen, the time spent in the military service of the armed forces of the United States, or the United States merchant marine, while on official leave of absence in the event of a national emergency, shall be added to the years of actual service; provided, however, that to receive credit for such services, the fireman must return to his employment as a fireman of the municipality within one year from the date of his release from such active service, provided further, however, that credit for such military service shall not exceed five years; provided further, however, that in order for any fireman to receive said military service credit, the said fireman must contribute into said fund the same sum which said fireman would have contributed should he have remained a fireman; provided further, however, that a request for such military service is made by the said fireman within ninety days after re-entering the service of the fire department from such leave of absence granted, or such military service credit shall be forfeited forever.

History.—§1, ch. 63-249.

175.041 Municipal firemen's pension trust fund.—There is hereby created a special fund to be known as the municipal firemen's pension trust fund, exclusively for the purpose of this act, in each municipality of this state, heretofore or hereafter created which now has or which may hereafter have a duly organized fire department or a duly authorized volunteer fire department, or any combination thereof, and which now owns and uses, or which may hereafter own and use equipment and apparatus approved by the southeastern underwriters association or the national board of fire underwriters. This equipment shall be in serviceable condition, of a value exceeding ten thousand dollars, and available for use for the fighting of fires for the protection of life and property therefrom, and which municipality does not presently have established by law, special law, or local ordinance, a similar fund.

History.—§1, ch. 63-249.

175.051 Actuarial deficits not state obligation.—Actuarial deficits, if any, arising under this act, shall not be the obligation of the state.

History.—§1, ch. 63-249.

175.061 Board of trustees; members, terms of office.—In each municipality there is hereby created a board of trustees of the municipal firemen's pension trust fund. The board of trustees shall consist of the mayor, or corresponding officer, when the municipality does not have a mayor; the chief of the fire department; two firemen of the municipality, to be elected by a majority of the firemen whose names appear on the rolls as members of the fire department of the municipality; and one legal resident of the municipality, to be appointed by the legislative body of the municipality. The mayor, or corresponding officer of the municipality, and the chief of the fire department, shall serve as long as they shall continue to hold office as mayor or chief, respectively, and upon a vacancy in the office of mayor or chief, their respective successors shall automatically succeed to the position of trustee, and each of the firemen shall be trustee, appointed for a period of two years, unless he sooner leaves the employment of the municipality, whereupon a successor shall be elected by a majority of the firemen in the municipality where such vacancy exists; the resident member shall be a trustee for a term of two years and he may succeed himself in office. The resident member shall hold office at the pleasure of the legislative body of the municipality that he represents. The mayor shall be the chairman of the board. The board of trustees shall elect one of its members as secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

History.—§1, ch. 63-249.

175.071 Powers of board of trustees.—The board of trustees may:

(1) Invest and reinvest the assets of the municipal firemen's pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal firemen's pension trust fund shall be entitled under the provisions of this act, and pay the initial and subsequent premiums thereon.

(2) Invest and reinvest the assets of the municipal firemen's pension trust fund in:

(a) Time or savings accounts of a national bank, a state bank insured by the federal deposit insurance corporation, or a savings, building and loan association insured by the federal savings and loan insurance corporation.

(b) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

(c) County bonds containing a pledge of the full faith and credit of the county involved, bonds of the Florida development commission, or of any other state agency, which have been approved as to legal and fiscal sufficiency by the state board of administration.

(d) Obligations of any municipal authority issued pursuant to the laws of this state; provided, however, that for each of the five years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than one and one half times its average annual fixed-charges requirement over the life of its obligations.

(3) Issue drafts upon the municipal firemen's pension trust fund pursuant to this act and rules and regulations prescribed by the board of trustees; all such drafts shall be consecutively numbered and be signed by the chairman and secretary and shall state upon their face the purpose for which the drafts are drawn. The treasurer or depository of each municipality shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(4) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual fireman participating in the fund.

(5) The board's action on all claims for retirement under this act shall be final, provided, however, that the rules and regulations of the board have been complied with.

(6) Convert into cash any securities of the fund.

(7) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(8) The general administration of, and the responsibilities for, the proper operation of the municipal firemen's pension trust fund and for making effective the provisions of this act are vested in the board of trustees. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the municipal firemen's pension trust fund and for checking the actual experience of the fund.

History.—§1, ch. 63-249.

175.081 Use of annuity or insurance policies.—When the board of trustees purchases annuity or life insurance contracts to provide all or any part of the benefits as provided for by this act, the following principles shall be observed:

(1) Only those firemen who have been members of the municipal firemen's pension trust fund for one year or more may participate in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the municipal firemen's pension trust fund as owner of the policy.

(4) Policies shall be written on an annual premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating firemen shall be at least equivalent to the return of the firemen's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the firemen's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating fireman does not receive cash value and other benefits under the policies assigned to him which exceed the present value of his vested interest under the municipal firemen's pension trust fund, inclusive of his contribution to the plan; the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The fireman shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefits or proceeds, and the method of settlement of the death benefit or proceeds, or requesting a change in the beneficiary designation or method of settlement previously made, subject to the terms of the policy or policies on his life.

Upon receipt of such written instructions, the board of trustees shall take necessary steps to effectuate the designation or change of beneficiary or settlement option.

History.—§1, ch. 63-249.

175.091 Creation and maintenance of fund.—The municipal firemen's pension trust fund in each municipality shall be created and maintained in the following manner:

(1) By payment to the fund of the net proceeds of the one per cent excise or license or other similar tax, which may be imposed by the respective municipalities upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies, which policies cover real or personal property within the corporate limits of such municipalities, as is hereinafter expressly authorized.

(2) By the payment to the fund of five per cent of the salary of each uniformed firemen who is a member or duly enrolled in the fire department of any municipality, which five per cent shall be deducted by the municipality from the compensation due to the fireman and paid over to the board of trustees of the municipal firemen's pension trust fund wherein such fireman is employed. A fireman participating in the old age survivors insurance of the federal social security law may limit his contribution to the municipal firemen's pension trust fund to three per cent of his annual compensation and receive reduced benefits as set forth in §175.211 and §175.191(5). No fireman shall have any right to said money so paid into said fund except as provided in this act.

(3) By all fines and forfeitures imposed and collected from any fireman because of the violation of any rule and regulation promulgated by the board of trustees.

(4) By mandatory payment by municipalities of a sum equal to the normal cost and the amount required to fund over a period of forty years or on a forty year basis, any actuarial deficiency shown by a quinquennial actuarial valuation. The first such actuarial valuation shall be conducted for the calendar year ending December 31, 1967.

(5) By all gifts, bequests and devises when donated to the fund.

(6) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.

(7) By all other sources or income now or hereafter authorized by law for the augmentation of such municipal firemen's pension trust fund.

History.—§1, ch. 63-249.

175.101 One per cent excise tax on property insurance premiums authorized; procedure.—Each municipality in this state described and classified in §175.041, having a lawfully established municipal firemen's pension trust fund or municipal fund providing pension benefits to firemen by whatever name known, may assess and impose on every insurance company, corporation or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of property insurance as shown by the records of the state treasurer, in his capacity as state insurance commissioner, an excise or license tax in addition to any lawful license or excise tax now levied by each of the said municipalities, respectively, amounting to one per cent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities, respectively. In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, seventy per cent of such premium shall be used as the basis for the one per cent tax above. Said excise or license tax shall be payable annually on March 1 of each year after the passing of an ordinance assessing and imposing the tax herein authorized. Every insurance company, corporation or other insurer paying such tax shall receive credit for the amount thereof, when paid on the amount payable by such insurer to the state for the similar state excise tax now imposed by other provisions of law; provided, however, that this act shall not be construed to require the payment of any excise tax by an insurance company that does not now pay such tax.

History.—§1, ch. 63-249.

175.111 Certified copy of ordinance filed; insurance companies' annual report of premiums; duplicate files; book of accounts.—Whenever any municipality shall pass an ordinance assessing and imposing the taxes authorized in §175.101, a certified copy of such ordinance shall be deposited with both the comptroller and the treasurer of the state, and thereafter every insurance company, association, corporation or other insurer carrying on the business of property insurance on real or personal property, on or before the succeeding March 1 after date of the passage of said ordinance shall report fully in writing and under oath to the comptroller and to the treasurer, as insurance commissioner, a just and true account of all premiums by such insurer received for property insurance policies covering or insuring any real or personal property located within the corporate limits of each such municipality during the period of time elapsing between the date of the passage of said ordinance and the succeeding March 1. The aforesaid insurer shall annually thereafter, on March 1, file with the same officers, a similar report covering the preceding year's premium receipts, and every such insurer at the same time of making such reports shall pay to the state treasurer the amount of the tax hereinbefore mentioned. Every insurer engaged in carrying on such insurance business in the state shall keep accurate books of accounts of all such business done by it within the corporate limits of each such municipality, and in such manner as to be able to comply with the provisions of this section. The treasurer shall furnish to any municipality requesting the same a copy of any of the reports filed by insurers under this section.

History.—§1, ch. 63-249.

175.121 Moneys received by state treasurer paid into special fund; comptroller to pay municipalities annually.—The treasurer of the state shall keep a separate account of all moneys collected for each municipality, under the provisions of this act and any and all moneys so collected, after deducting the necessary expenses incurred by the treasurer (not to exceed $30,000.00 per annum) as insurance commissioner of the state, in carrying out the provisions of this act, shall be paid into the state treasury in a special fund known as the municipal firemen's pension trust fund, which said fund is hereby created for receiving same. The comptroller shall on or before June 1 of each year, and at such other times as the state treasurer may elect, draw his warrant on the state treasurer for the full net amount of money then on deposit with the state treasurer in the municipal firemen's pension trust fund, specifying the municipality to which said moneys shall be paid and the net amount collected for and to be paid to each said municipality, which said sums payable to said municipality are hereby appropriated annually out of the municipal firemen's pension trust fund. The warrants of the comptroller shall be countersigned by the governor and shall be payable to the municipality entitled to receive the same, and shall be remitted annually by the comptroller to each municipality.

History.—§1, ch. 63-249.

175.131 Funds received by municipalities; deposit in municipal firemen's pension trust fund.—All funds received by any municipality under the provisions of this chapter, shall be by such municipality paid immediately into the municipal firemen's pension trust fund of said municipality, as described in §175.041, or §175.351(13).

History.—§1, ch. 63-249.

175.141 Tax imposed by municipalities under this act not additional to state excise tax; credit given on state tax.—The tax herein authorized to be imposed by each municipality shall in nowise be in addition to any similar state excise or license tax imposed by law, but the payer of the tax hereby authorized shall receive credit therefor on his said state excise or license tax and the balance of said state excise or license tax shall be paid to the state treasurer as is now provided by law.

History.—§1, ch. 63-249.

175.151 Penalty for failure of insurers to comply with this act.—Should any insurance company, corporation or other insurer fail to comply with the provisions of this act, on or before March 1 of each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be cancelled and revoked by the state treasurer, and it is unlawful for any such insurance company, corporation, or other insurer to transact business thereafter in this state unless such insurance company, corporation, or other insurer shall be granted a new certificate of authority to transact any business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued.

History.—§1, ch. 63-249.

175.162 Requirements for retirement.—Any fireman who has attained the age of sixty years, or more, and who at such time has completed at least ten years of continuous service within the contemplation of this act, as a fireman and who for such minimum period has been a member of the municipal firemen's pension trust fund, is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the municipality, on or after the normal retirement date. In such event, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each fireman will be the first day of the month coincident with or next following the date on which he has attained the age of sixty years and has completed ten years, in the aggregate within the contemplation of this act, of service.

(2) (a) The amount of monthly retirement income payable to a full-time fireman who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by one and sixty-seven hundredths per cent of his average final compensation as a full-time fireman. If the fireman has been contributing only three per cent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by one per cent of his average final compensation.

(b) The amount of monthly retirement income payable to a volunteer fireman who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by one and sixty-seven hundredths per cent of his average final compensation as a volunteer fireman. If the fireman has been contributing only three per cent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by one per cent of his average final compensation.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the fireman's normal retirement date, or on the first day of the month coincident with or next following his actual retirement, if later, and the last payment will be the payment due next preceding the fireman's death; except that, in the event the fireman dies after his retirement but before he has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries), as designated by the fireman for the balance of such ten year period. If a fireman continues in the service of the municipality beyond his normal retirement date and dies prior to his date of actual retirement, without an option made pursuant to §175.171 being in effect, monthly retirement income payments will be made for a period of ten years to a beneficiary (or beneficiaries) desig-

nated by the fireman as if the fireman had retired on the date on which his death occurred.

(4) Early retirement under the plan is retirement from the service of the municipality, with the consent of the said municipality, as of the first day of any calendar month which is prior to the fireman's normal retirement date but subsequent to the date as of which he has both attained the age of fifty years and has been a member of this fund for ten continuous years. The monthly amount of retirement income payable to a fireman who retires prior to his normal retirement date shall be in the amount computed as described in subsection (2), such amount of retirement income to be actuarially reduced to take into account the fireman's younger age and the earlier commencement of retirement income benefits. The amount of monthly income payable in the event of early retirement will be paid in the same manner as in subsection (3).

History.—§1, ch. 63-249.

175.171 Optional forms of retirement income.—

(1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in §175.162, a fireman, upon written request to the board of trustees, and submission of evidence of good health (except that such evidence will not be required if such request is made at least three years prior to the date of commencement of retirement income or if such request is made within six months following the effective date of the plan, if later), and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(a) A retirement income of larger monthly amount, payable to the fireman for his lifetime only.

(b) A retirement income of a modified monthly amount, payable to the fireman during the joint lifetime of the fireman and a dependent joint pensioner designated by the fireman, and following the death of either of them, one hundred per cent, sixty-six and two thirds per cent or fifty per cent of such monthly amounts payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefits as, in the opinion of the board of trustees will best meet the circumstances of the retiring fireman.

The fireman upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his death, and will have the power to change such designation from time to time, but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a fireman has elected an option with a joint pensioner or beneficiary and his retirement income benefits have commenced, he may thereafter change his designated joint pensioner or beneficiary, but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him is alive when he files with the board of trustees his request for such change. The consent of a fireman's joint pensioner or beneficiary to any such change shall not be required. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the fireman upon designation of a new joint pensioner shall be actuarially redetermined taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the fireman. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the fireman, such benefits as are payable in the event of the death of the fireman subsequent to his retirement, shall be paid as provided in §175.181.

(2) Retirement income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:

(a) If a fireman dies prior to his normal retirement date, or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under §175.201.

(b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the fireman's retirement under the plan, the option elected will be cancelled automatically and a retirement income of the normal form and amount will be payable to the fireman upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section, or a new beneficiary is designated by the fireman prior to his retirement and within ninety days after the death of the beneficiary.

(c) If both the retired fireman, and the beneficiary (or beneficiaries) designated by him die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1) (c) of this section; the board of trustees may, in its discretion, direct that the committed value of the remaining payments be paid in a lump sum, and in accordance with §175.181.

(d) If a fireman continues beyond his normal retirement date pursuant to the provisions of §175.162 (1), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the fireman in the amount or amounts computed as if the fireman had retired under the option on the date on which his death occurred.

History.—§1, ch. 63-249.

175.181 Beneficiaries.—

(1) Each fireman may, on a form provided for that purpose, sign and file with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death, and each designation may be revoked by such fireman by signing and filing with the board of trustees a new designation of beneficiary form.

(2) If a deceased fireman fails to name a beneficiary in the manner above prescribed, or if the beneficiary (or beneficiaries) named by a deceased fireman predecease the fireman, the death benefit, if any, which may be payable under the plan with respect to such deceased fireman may be paid, in the discretion of the board of trustees, either to:

(a) The wife or dependent children of said fireman, or:

(b) Dependent living parents of said fireman.

History.—§1, ch. 63-249.

175.191 Disability retirement.—

(1) A fireman having ten or more continuous years of credited service and having contributed to the municipal firemen's pension trust fund for ten years or more may retire from the service of the municipality under the plan if, prior to his normal retirement date, he becomes totally and permanently disabled as defined in subsection (2), by reason of any cause other than a cause set out in subsection (3), on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A fireman will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a fireman; and a fireman will be considered permanently disabled if, in the opinion of the board of trustees, such fireman is likely to remain so disabled continuously and permanently from a cause other than is specified in subsection (3).

(3) A fireman will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the fireman of drugs, intoxicants or narcotics;

(b) Injury or disease sustained by the fireman while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;

(c) Injury or disease sustained by the fireman while serving in any armed forces;

(d) Injury or disease sustained by the fireman after his employment has terminated.

(4) No fireman shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any fireman retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) The benefits payable to a fireman who retires from the service of a municipality, due to total and permanent disability as a direct result of a disability commencing prior to his normal retirement date is the monthly income payable for ten years certain and life which can be provided by the single-sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to his date of disability (where the amount of such accrued deferred monthly retirement income is computed by multiplying his number of years of actual credited service as of his date of disability by one and sixty-seven hundredths per cent of his average final compensation). If the fireman has been contributing only three per cent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by one per cent of his average final compensation.

(6) The monthly retirement income to which a fireman is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the month following the latter to occur of (a) the date on which the disability has existed for three months and (b) the date the board of trustees approved the payment of such retirement income. The last payment will be (a) if the fireman recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or (b) if the fireman dies without recovering from his disability, the payment due next preceding his death or the one hundred twentieth monthly payment, whichever is later. Any monthly retirement income payments due after the death of a disabled fireman shall be paid to the fireman's designated beneficiary (or beneficiaries) as provided in §§175.181 and 175.201.

(7) If the board of trustees finds that a fireman who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the fireman to render useful and efficient service as a fireman.

(8) If the fireman recovers from disability and re-enters the service as a fireman, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service, will not be considered as credited service for the purpose of this plan.

History.—§1, ch. 63-249.

175.201 Death prior to retirement; refunds or death benefits.—Should any fireman die before being eligible to retire under the provisions of this act, the heirs, legatees, beneficiaries, or personal representatives of such deceased fireman shall be entitled to a refund of one hundred per cent without interest, of the

contributions made to the municipal firemen's pension trust fund by such deceased fireman; or in the event an annuity or life insurance contract has been purchased by the board of trustees on such fireman, then to the death benefits available under such life insurance or annuity contract subject to the limitations on such death benefits set forth in §175.081, whichever amount is greater. In the event that the death benefit paid by a life insurance company exceeds the limit set forth in §175.081, the excess of the death benefit over the limit shall be paid to the municipal firemen's pension trust fund.

History.—§1, ch. 63-249.

175.211 Separation from service; refunds.—Should any fireman leave the service of the municipality before accumulating aggregate time of ten years toward retirement and before being eligible to retire under the provisions of this act, such fireman shall be entitled to a refund of all of his contributions made to the municipal firemen's pension trust fund after July 1, 1963, without interest, less any disability benefits paid to him after July 1, 1963. Should any fireman who has been in the service of the municipality for at least ten years and has contributed to the municipal firemen's pension trust fund for at least ten years elect to leave his accrued contributions in the municipal firemen's pension trust fund, such fireman upon attaining the age of fifty years may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him.

History.—§1, ch. 63-249.

175.221 Lump sum payment of small retirement income.—Notwithstanding any provisions of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than thirty dollars, or if the single-sum value of the accrued retirement income is less than seven hundred fifty dollars, as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

History.—§1, ch. 63-249.

175.231 Diseases of firemen suffered in line of duty; presumption.—Any condition or impairment of health of a fireman caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence, provided, however, that such fireman shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all firemen employed in Florida only with reference to pension and retirement benefits under this chapter.

History.—§1, ch. 63-249.

175.241 Exemption from execution.—The pensions, annuities, or other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and the cash securities in the funds created under this chapter are hereby exempted from any state, county, or municipal tax and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable.

History.—§1, ch. 63-249.

175.251 Employment records required to be kept by secretary of board of trustees.—The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this act, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. In this record the secretary shall keep a list of all firemen employed by the municipality, and the record shall be kept in such manner as to show the name, address and time of employment of such firemen, and when such firemen cease to be employed by the municipality.

History.—§1, ch. 63-249.

175.261 Report to state treasurer.—

(1) Each year, by February 1, the chairman or secretary of the board of trustees of each municipal firemen's pension trust fund shall file a report with the state treasurer, as insurance commissioner, containing the following:

(a) Whether in fact the municipality is within the provisions of §175.041.

(b) A certified statement of accounting for the most recent fiscal year of the municipality, showing a detailed listing of assets (and methods used to value them) and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning of and end of the year.

(c) A statistical exhibit showing the total number of firemen on the force, the number included in the retirement plan and the number ineligible, classified according to the reason for their being ineligible, and the number of disabled firemen and retired firemen and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

(d) A statement of the amount the municipality, or other income source, has contributed to the retirement fund for the most recent fiscal year and the amount the municipality will contribute to the retirement fund during its current fiscal year.

(e) If any benefits are insured with a commercial insurance company, the report should include a statement of the relationship of the insured benefits to the benefits provided by this act as well as the name of the insurer and information about the basis of premium rates, mortality table, interest rates and method used in valuing retirement benefits.

(2) By February 1 of each quinquennial year, beginning with February 1, 1968, the chairman of each municipal firemen's pension

trust fund shall report to the state treasurer, as insurance commissioner, such data that the state treasurer needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the state treasurer. The expense of this actuarial valuation shall be borne by the municipal firemen's pension trust fund established by §175.041.

History.—§1, ch. 63-249.

175.271 Advisory committee.—The state treasurer shall appoint annually an advisory committee to serve for one year, consisting of seven members, one of whom shall be from the state treasurer's office, as chairman, to receive such reports as may be brought to its attention and to advise and assist in matters relating to the municipal firemen's pension trust fund.

History.—§1, ch. 63-249.

175.281 Report to legislature.—The state treasurer shall make to each regular session of the legislature a written report on the operation of the municipal firemen's pension trust fund.

History.—§1, ch. 63-249.

175.291 Attorney for municipality to represent board of trustees upon request; failure to do so; board may employ independent counsel.—The attorney or corporation counsel of each municipality shall give advice to said board of trustees in all matters pertaining to its duties in the administration of said municipal firemen's pension trust fund whenever thereunto requested; and he shall represent and defend said board as its attorney in all suits and actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by said board; provided, however, that if said attorney shall fail or refuse to comply with the request of the board of trustees in this relation, the said board of trustees in its discretion may employ independent legal counsel for such purpose.

History.—§1, ch. 63-249.

175.301 Deposit of funds and securities with municipal treasurer.—The funds and securities of the municipal firemen's pension trust fund shall be deposited with the treasurer or depository of the municipality, who shall keep the same in a separate fund, and shall be liable for the safekeeping of same, under the bond given by him to the municipality, and he shall be liable in the same manner and to the same extent as he is liable for the safekeeping of the funds of the municipality.

History.—§1, ch. 63-249.

175.311 Each municipality independent of any other municipality in the operation of this act.—In the enforcement and in the interpretation of the provisions of this act, each municipality shall be independent of any other municipality and the board of trustees of the municipal firemen's pension trust fund of each municipality shall function for the municipality which it is to serve as trustee.

History.—§1, ch. 63-249.

175.321 Application of act.—Sections 175.101-175.151 shall be applicable in relation to all municipalities of the state, which now have or hereafter establish a municipal firemen's pension trust fund or a pension fund for firemen, regardless of whether said municipality shall fall within the classification of §175.041 and have its municipal firemen's pension trust fund established under the provisions thereof, or whether said city's or town's said pension fund shall exist under other general, special laws of the state, or a local ordinance. The remaining sections of this act, which apply specifically to the creation of a board of trustees, define its powers and establish a municipal firemen's pension trust fund in each municipality, as well as such sections as define the person who shall be entitled to a pension out of such fund the amount thereof, and govern the conditions upon which such pensions shall be allowed, and the duties of the officers of those municipalities in relation to such fund, shall not apply to any municipality which now has a municipal firemen's pension trust fund or municipal pension fund for firemen and policemen.

History.—§1, ch. 63-249.

175.331 Rights of firemen under former law.—The rights of firemen established by any former provisions of this act shall not be impaired nor shall their benefits be reduced by virtue of any provisions of this act; provided, however, that no member may receive the benefits under the former act and also be entitled to receive the benefits under this act. Unless an election is made in writing before January 1, 1964, to the board of trustees, to remain under the provisions of the former act, it shall be conclusively presumed that the provisions of this act as amended, will apply to all firemen. Members who have retired under the former act prior to the enactment of this act, shall continue to receive their benefits under the former act.

History.—§1, ch. 63-249.

175.341 State treasurer to establish rules and regulations.—The state treasurer, as insurance commissioner, shall establish rules and regulations pertaining to the operation of this fund.

History.—§1, ch. 63-249.

175.351 Municipalities having their own pension plans for firemen.—In order for municipalities with their own pension plans for firemen or for firemen and other employees, to participate in the distribution of the tax fund established in §§175.101 through 175.151, their pension funds must meet each of the following standards:

(1) The plan must be for the purpose of providing retirement and disability income for firemen or their beneficiaries.

(2) The normal retirement age, if any, shall not be more than age sixty-five.

(3) If the plan provides for a stated period of service as a requirement to receive a retirement income, that period must not be more than thirty-five years.

(4) The benefit formula to determine the amount of monthly pension should be equal to at least one twelfth of one per cent of the fireman's total earnings during his period of credited service.

(5) If a ceiling on the monthly payment is stated in the plan, it should be no lower than one hundred dollars.

(6) Death or survivor benefits and disability benefits may be incorporated into the plan as the municipalities wish but in no event should the single-sum value of such benefits as of the date of termination of service because of death or disability exceed:

(a) One hundred times the estimated normal retirement income, based on assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest; provided, however, that nothing in this paragraph shall require any reduction in death or disability benefits provided by a retirement plan in effect prior to July 1, 1963.

(7) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both; and benefits must be determined by a nondiscriminatory formula based upon:

(a) Length of service and compensation, or

(b) Length of service.

(8) If the retirement plan requires participants to contribute towards the cost of the plan, it must set forth the termination rights, if any, of an employee before retirement.

(9) An actuarial valuation of the retirement plan must be made at least once in every five years commencing with December 31, 1968, subject to the following:

(a) The assets shall be valued at cost, or market, or on such other basis as may be approved by the state treasurer, as insurance commissioner.

(b) Minimum actuarial assumptions and methods to be used in valuing the liabilities will be provided by the state treasurer, and revised from time to time by him as needed. The valuation must be on basis and methods not less conservative than those set forth by the insurance commissioner.

(c) Cost of the actuarial valuation must be paid by each individual fireman's retirement fund or by the municipality.

(d) A report of the valuation, including actuarial assumptions and type and basis of funding shall be made to the state treasurer within three months after the date of valuation. If any benefits are insured with a commercial insurance company, the report should include a statement of the relationship of the retirement plan benefits to the insured benefits, and in addition, the name of the insurer, basis of premium rates, mortality table, interest rate and method used in valuing the retirement benefits.

(e) Provided, however, that if an actuarial valuation has been made subsequent to December 31, 1963, the five-year period will commence on the date of that valuation.

(10) The municipality shall contribute to the plan annually an amount which together with the contributions from the firemen and the amount derived from the premium tax provided in §175.101 and other income sources as authorized by law will be sufficient to meet the normal cost of the plan and to fund the actuarial deficiency over a period not more than forty years. The advisory committee shall have authority to grant a maximum of five extensions of one year each for this mandatory payment.

(11) No retirement plan or amendment to a retirement plan shall be proposed without the proposed plan or amendment containing an actuarial estimate of the costs involved.

(12) Each year, on or before March 15, the trustees of the retirement plan shall submit the following information to the state treasurer in order for the retirement plan of such municipality to receive a share of the state funds for the then current calendar year; when any of these items would be identical with the corresponding item submitted for a previous year it will not be necessary to submit duplicate information, but to make reference to the item in such previous year's report:

(a) A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust agreement, copies of all insurance contracts and formal announcement material.

(b) A certified statement of accounting for the most recent fiscal year of the municipality showing:

1. A detailed listing of assets and

2, A statement of all income and disbursements during the year.

Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

(c) A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

(d) A statistical exhibit showing the total number of firemen, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible.

(e) A certified statement describing the methods, factors and actuarial assumption used in determining the cost.

(f) A certified statement by an actuary who is a member of the society of actuaries, casualty actuarial society, conference of actuaries in public practice, or fraternal actuarial association, showing the results of the latest quinquennial valuation of the plan and a copy of the detailed worksheets showing the computations used in arriving at the results.

(g) A statement of the amount the municipality, or other income source has contributed toward the plan for the most recent fiscal year and will contribute toward the plan for the current fiscal year.

(13) When a municipality has a firemen's retirement fund, which in the opinion of the

state treasurer, meets the standards set forth in subsections (1) through (12), the board of trustees of the pension fund, as approved by a majority of firemen of the municipality affected, or the official pension committee; as approved by a majority of firemen of the municipality affected, may place the income from the premium tax in §175.101 in its existing pension fund for firemen, where it shall become an integral part of said fund, or may use such income to pay extra benefits to the firemen included in the fund.

(14) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

History.—§1, ch. 63-249.

175.361 Termination of plan and distribution of fund.—Upon termination of the plan for any reason, or upon written notice to the board of trustees that contributions thereunder are being permanently discontinued, the fund shall be apportioned and distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, the maintenance of another or substituted trust fund, by the purchase of insured annuities or otherwise, for each fireman entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall apportion the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.

(a) Apportionment shall first be made in respect of each retired fireman receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) fireman, and each fireman who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(b) If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each fireman in the service of the city on such date who has completed at least ten years of credited service and who has contributed to the municipal firemen's pension trust fund for at least ten years and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the fireman's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of §175.211, who has not, by such date, reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under §175.211, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(c) If there be any asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each fireman in the service of the city on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the fireman's credited service and earnings to such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(d) In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b) and (c), such excess shall be returned to the city, less return of state's contributions to the state.

(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts apportioned under subsection (3).

History.—§1, ch. 63-249.

CHAPTER 176

MUNICIPAL ZONING

176.01 Definitions. — Wherever the term "municipality" is used in this chapter, it shall mean all cities and towns in the state. Wherever the term "governing body" is used in this chapter, it shall mean the city or town commission, council, board of aldermen, or other governing bodies of any form whatsoever by whatsoever name known.

History.—§1, ch. 19539, 1939; CGL 1940 Supp. 2949(1).

176.02 Municipalities may regulate building, density of population, and the location and use of buildings, structures and land and water.— For the purpose of promoting health, safety, morals, or the general welfare of the communities and municipalities of the state, said municipalities may regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land and water for trade, industry, residence or other purposes.

Wherever the governing body of any municipality shall elect to exercise any of the powers granted to it under this chapter, said powers shall be exercised in the manner hereinafter prescribed and in accordance with the charter of such municipality.

History.—§§2, 3, ch. 19539, 1939; CGL 1940 Supp. 2949(2), 2949(3).

176.03 Division of municipality into districts for purposes of regulation.—For any and all said purposes the governing body may divide the corporate area of the said municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

History.—§4, ch. 19539, 1939; CGL 1940 Supp. 2949(4).

176.04 Purposes in view in making regulations.—Regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said municipalities.

History.—§5, ch. 19539, 1939; CGL 1940 Supp. 2949(5).

176.05 Municipality to provide procedure; regulation, restriction or boundary not effective until after public hearing thereon; publication of notice of hearing required.—The governing body of the said municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in said municipality and if there be no newspaper published within the

municipality then three notices shall be published in at least three conspicuous places within the municipality including the city or town hall as the case may be.

History.—§6, ch. 19539, 1939; CGL 1940 Supp. 2949(6).

176.06 Regulation, restriction and boundary subject to change or repeal; protest of change; vote required to effect change over protest; publication of notice of change required.— Regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending five hundred feet therefrom, or of those directly opposite thereto extending five hundred feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of three-fourths of the governing body of said municipality. The provisions of §176.05 relative to public hearings and official notice shall apply equally to all changes or amendments.

History.—§7, ch. 19539, 1939; CGL 1940 Supp. 2949(7); §7, ch. 22858, 1945.

176.07 Zoning commission. — In order to avail itself of the powers conferred by this chapter, the governing body of said municipality shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the governing body of the said municipality shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission as a governing body of said municipality already exists it may be appointed as the zoning commission.

History.—§8, ch. 19539, 1939; CGL 1940 Supp. 2949(8).

176.08 Board of adjustment.—The governing body of the said municipality may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(9).

176.09 Members of board of adjustment.— The board of adjustment shall consist of five members each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(9).

176.10 Proceedings of board of adjustment. —The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(10).

176.11 Appeals.—Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, or bureau of the governing body of said municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(11).

176.12 Stay of proceedings.—An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(11).

176.13 Hearing of appeal; notice required. —The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(11).

176.14 Powers of board of adjustment.— The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is

alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so justice done.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(12).

176.15 Decision of board.—In exercising the above mentioned powers, such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(12).

176.16 Review, circuit court.—Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the governing body of said municipality, may present to a circuit court a petition for issuance of a writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality in the manner and within the time provided by the Florida appellate rules.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13); §44, ch. 63-512.

176.17 Writ of certiorari.—Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13).

176.18 Return of writ.—The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13).

176.19 Decision of the court; it may take evidence or appoint a referee.—If, upon the hearing, it shall appear to the court that the testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13).

176.20 Costs.—Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13).

176.21 Preference of proceedings.—All issues in any proceeding under §§176.14-176.20, shall have preference over all other civil actions and proceedings.

History.—§9, ch. 19539, 1939; CGL 1940 Supp. 2949(13).

176.22 Enforcement of ordinance or regulations under this chapter; penalties for violation.—The governing body of said municipality may provide by ordinance for the enforcement of this chapter and of any ordinance or regulation made thereunder. A violation of this chapter or of such ordinance or regulation is declared to be a misdemeanor, and the governing body of said municipality may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

History.—§10, ch. 19539, 1939; CGL 1940 Supp. 2949(14).

176.23 Legal proceedings may be instituted in addition to other remedies provided for violation of chapter.—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, land, or water is used in violation of this chapter or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the governing body of said municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, land, or water, or to prevent any

illegal act, conduct, business, or use in or about such premises.

History.—§10, ch. 19539, 1939; CGL 1940 Supp. 2949(15).

176.24 Powers granted in this chapter supplemental and cumulative.—This chapter shall not be construed to have the effect of repealing, impairing, or modifying any general or special law granting any like or similar powers to any municipality in the state, but the powers herein granted shall be supplemental and cumulative.

History.—§11, ch. 19539, 1939; CGL 1940 Supp. 2949(16); §7, ch. 22858, 1945.

CHAPTER 177

MAPS AND PLATS

177.01 Examination of maps or plats required before recording.—Whenever maps or plats of any land within this state are brought to a county clerk or other public recording officer to be placed on public record, the county clerk or other public recording officer, before filing, shall examine said map or plat and see that it complies in form with all the requirements of this chapter. If this chapter has been complied with, he shall so certify, with date of filing for record, on the map or plat and also on the copy thereof required by §177.11; otherwise he shall return the map or plat to the owner for correction.

History.—§1, ch. 10275, 1925; CGL 3101.
cf.—§192.56 Land shall not be subdivided; no plat filed until taxes paid.

177.02 Survey and plat by civil engineer or competent surveyor required.—Whenever any city, town or addition thereto, shall be laid out or altered as hereinafter provided, or whenever any land shall be platted into lots and blocks, within this state, the proprietor or proprietors thereof, shall cause a survey and true map or plat thereof to be made by a civil engineer or competent surveyor.

History.—§2, ch. 10275, 1925; CGL 3102.

177.03 Map or plat requirements.—The map or plat shall in every case be made with India ink, or some other equally substantial and distinct method, and be made on a scale sufficiently large to show plainly all details, on tracing cloth of such size as each county may require. In case of a large plat it may require two or more sheets, in which case the sheets are to be numbered, and the number of the sheets to be indicated on the first sheet below the title.

History.—§3, ch. 10275, 1925; CGL 3103.

177.04 Title or name of plat.—The plat shall have a title or name. If the plat be a town, city or village, the full name of such town, city or village must appear as the title or name of the plat; if the land platted be an addition to or a subdivision of a town, city or village already platted, then the title of the plat shall include, with the name of such addition or subdivision, the name of the town, city or village, as the case may be, of which such platted land is a subdivision, or to which it is an addition. The name of the county and state in which the land platted is situated should appear under the title.

History.—§4, ch. 10275, 1925; CGL 3104.

177.05 Description written on map or plat.—There shall be written or printed upon the tracing cloth on which map or plat shall be made a full and detailed description of the land embraced in said map or plat showing the township and range in which such lands are situated and the section and parts of sections platted. If the premises are in a Spanish grant or are not included in the subdivision of the government surveys, then the boundaries are to be defined by metes and bounds and courses. The initial point in the description shall be tied to the nearest government corner, forty-acre corner, or other recorded and well established corner. The description must be so complete that from it without reference to the plat, the starting point can be determined and the outlines run. If a subdivision of a part of a previous recorded plat is made the previous lots and blocks shall be given. If the plat be a re-subdivision of the whole of a previous recorded plat the fact shall be so stated.

History.—§5, ch. 10275, 1925; CGL 3105.

177.06 Dedication.—In connection with the description there shall be a dedication of the plat by the owner or owners, and his or their wives, whose signatures must be witnessed, and their execution of the dedication must be acknowledged in the same manner as deeds conveying lands are required to be witnessed and acknowledged; and in all cases the title, caption and dedication must agree. In case the dedication is to be made by a corporation then it shall be signed by the president or a vice-president, and by the secretary or an assistant secretary, respectively, of the corporation, by and with the authority of its board of directors.

History.—§6, ch. 10275, 1925; CGL 3106; §1, ch. 61-193.

177.07 Permanent reference monuments.—In making the survey a sufficient number of permanent monuments, in no case less than two and in no case more than two thousand feet apart, shall be placed either within the tract or on the exterior boundaries thereof, or both, so as to provide definite reference points from which may be located any points, lines or lots set forth on the said plat. The monuments so placed shall be of metal not less than three inches in diameter and twenty-four inches long, driven in the ground, or if smaller, to be increased in a solid block of concrete, said monuments having the reference point marked thereon. They shall have their position in reference to each other indicated by distances and angles and not less than one of said monuments shall have its location indicated on the plat in reference to the nearest government corner or other corner referred to in §177.05. The position of said monuments shall be indicated on the plat by a small circle and shall be marked "PERMANENT REFERENCE MONUMENT" or the initials "P. R. M." to designate the same.

History.—§7, ch. 10275, 1925; CGL 3107.

177.08 Drawing specifications for map or plat.—In drawing the map or plat, three inches shall be left blank on the left edge of the tracing cloth for binding in the record book. A plain designation of the cardinal points, the date of survey, and the correct scale of the drawing, shall be given. The drawing shall be made in a workmanlike manner and must agree with the description. All section lines and quarter-section lines occurring in the map or plat shall be indicated by lines drawn upon such map or plat, with appropriate words and figures. If the description is by metes and bounds, the point of beginning shall be indicated together with all bearings and distances of the boundary lines.

All lots shall be numbered either by progressive numbers, or if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name shall be numbered consecutively throughout the several additions. Excepted parcels must be marked "Not included in this plat." The dimensions of all lots and the width of all streets and alleys shall be given on the plat. Where all lots in any block are of the same dimensions it shall be sufficient to mark the precise length and width of one tier thereof; but all gores, triangles or other lots which are not squares or parallelograms, shall have the length of their sides and angles plainly defined by figures. The streets must be named or numbered and the alleys or public grounds properly designated. All land within the boundaries of the plat must be accounted for either by blocks, lots, out lots, parks, streets, alleys or excepted parcels. But no strip or parcel of land shall be reserved by the owner when recording a subdivision, unless the same is sufficient in size and area to be of some practical use or service.

History.—§8, ch. 10275, 1925; CGL 3108.

177.09 Certification of map or plat.—The engineer or surveyor making the survey or plat shall certify on the plat that it is a correct representation of the land platted and that permanent reference monuments have been placed as called for under §177.07.

History.—§9, ch. 10275, 1925; CGL 3109; §7, ch. 22858, 1945.

177.10 Certificate of approval to be placed on map or plat.—Before said map or plat shall be presented to the county clerk for record, the owner or owners shall cause to be placed thereon a certificate of approval by the county commissioners, town board, or council, or the board of commissioners (in municipalities having a commission form of government) or their accredited representatives, having jurisdiction over the land described in the said map or plat; however, such approval shall not bind the county commissioners, town board, city council or board of commissioners to open up and keep in repair any parcels dedicated to the public in any map or plat so offered, but they may exercise such right at any time.

History.—§10, ch. 10275, 1925; CGL 3110.

177.11 Map or plat drawn on tracing cloth and print or photographic copy presented to county clerk for recording.—For purposes of record the owner or owners, shall present to the county clerk in and for the county in which the land platted is a part, a map or plat of the land platted drawn on tracing cloth together with a print or photographic copy of the tracing made on cloth.

History.—§11, ch. 10275, 1925; CGL 3111.

177.12 Instructions for filing of map or plat by county clerk.—The map or plat on tracing cloth is to be filed by the county clerk in his office in a book of the proper size for such papers so that it shall not be folded, and kept in the vault. The print or photographic copy on cloth shall be filed in a similar book and kept in his office for the use of the public.

History.—§12, ch. 10275, 1925; CGL 3112.

177.13 Misdemeanor to molest monument or deface or destroy map or plat.—It is a misdemeanor for any person or persons to molest any monuments established according to this chapter, or to deface or destroy any map or plat placed on public record.

History.—§13, ch. 10275, 1925; CGL 7433.
cf.—§775.07 Punishment for misdemeanor.

177.14 Vacation and annulment of plats subdividing land.—Whenever and wherever it is made to appear that after the filing in the office of the clerk of the circuit court of any county of a plat subdividing a parcel of land located in such county, the owner of the lands therein and thereby subdivided did cause such lands embraced in said plat to be again and subsequently otherwise and differently subdivided under and by virtue of another plat of the same and iden-

tical lands, which said second plat was also filed in the office of the clerk of the circuit court of such county at a later date, and no conveyances of lots by reference to the first plat appear of record in such county and one or more conveyances of lots by reference to the last plat so filed appears of record in such county, the board of county commissioners of such county is authorized and directed to and shall, by resolution, vacate and annul the said first plat of such lands appearing of record, as aforesaid, upon the application of the owner and subdivider of such lands under the said first plat, or upon application of the owners of all the lots shown and designated upon the said second and subsequent plat of such lands, and the clerk of the circuit court of such county shall thereupon make proper notation of the annulment of such plat upon the face of such annulled plat.

History.—§1, ch. 24303, 1947.

177.15 Certain streets and alleys vacated.—All streets and alleys shown, designated and delineated upon any recorded plat of any tract or tracts of land in this state now occupied and used for race track purposes or for automobile parking purposes in connection with such race track operation, by any holder of a ratified racing permit, are hereby closed and vacated and declared nonexistent, and all such lands title to which is vested in such permit holder, including such vacated streets and alleys, shall hereafter be designated for all purposes upon all county, municipal and other public records as a consolidated parcel or consolidated parcels of land, and not as subdivided lots, streets and alleys.

History.—§1, ch. 25267, 1949.

cf.—§192.29 Subdivision plats; vacation.
§192.30 Notice of application to vacate plat.

177.16 Recordation of state road department official right of way maps.—The clerk of the circuit court shall record in the public land records of the county any map or plat prepared and adopted by the state road department as its official right-of-way map, after the same has been certified by the state highway engineer and the chairman of the state road department. The clerk shall use the special plat book heretofore provided by the state road department for such maps, which shall be known as the "road plat book" and shall be kept with other plat books. Sections 177.01 to 177.13 shall not be applicable to this section. Upon request of the clerk, the state road department shall furnish without charge additional copies of said right-of-way maps to replace worn copies.

History.—§1, ch. 28259, 1953.

177.17 Recordation of flood control district's right of way maps.—The clerk of the circuit court shall record in the public records of the county any map or plat prepared and adopted by any duly created flood control district, operating under and governed by chapter 378, as its official right-of-way map, after the same has been certified by the engineer of the district and the chairman of its governing board. The clerk shall use a special plat book to be furnished by the district for such maps which shall be known as the "flood control district plat book" and shall be kept with other plat books. Sections 177.01-177.13 shall not be applicable to this section. Upon request of the clerk, the district shall furnish without charge additional copies of recorded right-of-way maps to replace worn copies.

History.—§1, ch. 61-153.

CHAPTER 178

MUNICIPAL TAX ADJUSTMENT BOARDS

178.01 Municipal tax adjustment board may be formed; members, officers and records.—The city commission, city council or other governing body of any and all municipalities, incorporated cities, towns or villages in the state, whether incorporated under general law or special law or otherwise, and whether now incorporated or hereafter incorporated may by appropriate resolution duly passed, resolve itself into a municipal delinquent tax adjustment board, hereinafter called the "board," and in such event shall have the powers, duties, and authority hereinafter provided. The mayor, chairman of the city council, chairman of the city commission, or other corresponding executive officer of the governing body of the municipality, city, town or village shall be chairman of the delinquent tax adjustment board; the city clerk or other corresponding officer shall be secretary of the said board, and shall keep proper and accurate minutes and records of the meetings of the said board.

History.—§1, ch. 17405, 1935; CGL 1936 Supp. 3004(11).

178.02 Notice that board has been created, time, place and purpose of meeting.—The board shall upon the adoption of a proper resolution advertise either in a newspaper or by posting in some public place, that a municipal tax adjustment board has been created and the times and places that meetings will be held for the purpose of considering applications for the adjustment of taxes and assessments.

History.—§2, ch. 17405, 1935; CGL 1936 Supp. 3004(12).

178.03 Regular board meetings, time, place and notice thereof; quorum.—The board shall thereafter meet at least twice each month for a period of twelve months for the purpose of receiving and considering applications as herein provided. The board may adjourn the meetings from week to week or day to day or from time to time as its business may require. A majority of the board shall constitute a quorum to hold meetings and pass on applications, and the board shall fix its times and places of meetings and give notice thereof as provided in §178.02, not inconsistent herewith.

History.—§3, ch. 17405, 1935; CGL 1936 Supp. 3004(13).

178.04 Scope of authority granted board.—The board is authorized in its sound discretion to compromise and adjust the amount required to be paid for the redemption, settlement and liquidation of any municipal tax sale certificate, or of any delinquent city taxes held. owned or controlled by the city or any attorney or agent thereof for the year 1933 or prior years upon any property within the city, including the omitted subsequent taxes upon such property upon principles of fairness to the city and to the owners of such property.

And the board may within its sound discretion, adjust, compromise and settle any special assessments against any property in the city upon which there are delinquent installments due for the year 1933 or prior years including omitted and unpaid subsequent installments, as well as future accruing installments, upon principles of fairness to the city, the property owner and with due consideration for previously paid special assessments for the same improvements and the same type.

History.—§4, ch. 17405, 1935; CGL 1936 Supp. 3004(14).

178.05 Application form.—Applications for adjustments must be made in writing by the fee owner of the property in such form as may be prescribed by the board and the board shall require the city clerk or other corresponding officer to furnish such forms as may by the board be required to any and all applicants.

History.—§5, ch. 17405, 1935; CGL 1936 Supp. 3004(15).

178.06 Acceptance or rejection of application; reconsideration.—Within thirty days after the filing of such application the board shall either grant or reject the application or may grant a part of the relief prayed, by the entry of any order by a majority vote of the board. The clerk of the board shall notify the applicant of the order entered by the board within three days thereafter, and the applicant shall comply with the order within thirty days thereafter or the order shall become null and void and the taxes or special assessments shall be of the same status as if the order had never been entered or made; however, the board may, within its discretion and by a majority vote, reconsider any application, provided, the application for reconsideration be made before the expiration of six months from the date of the adoption of the resolution as provided in §178.01.

History.—§5, ch. 17405, 1935; CGL 3004(15).

178.07 Termination of board's powers.—The board's power to adjust, settle and compromise delinquent taxes and special assessments shall terminate and expire twelve months from the date of holding of its first meeting and no applications shall be considered thereafter, provided that applicants upon whose applications

orders have been entered during the last thirty days of the board's existence shall be entitled to thirty days from the time of notice of said order within which to comply with same as hereinbefore provided.

History.—§7, ch. 17405, 1935; CGL 1936 Supp. 3004(17).

178.08 **Cumulative law.**—This chapter shall be taken as cumulative of other methods now provided by law for adjusting, settling and compromising taxes and special assessments in municipalities in the state.

History.—§8, ch. 17405, 1935; CGL 1936 Supp. 3004(18).

CHAPTER 180

MUNICIPAL PUBLIC WORKS

180.01 Definition of term municipality.— The term "municipality," as used in this chapter, shall mean any city, town, or village duly incorporated under the laws of the state.

History.—§1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.02 Powers of municipalities.—

(1) For the accomplishment of the purposes of this chapter, any municipality may execute its corporate powers within its corporate limits.

(2) Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality.

(3) In the event any municipality desires to avail itself of the provisions or benefits of this chapter, it is lawful for such municipality to create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any sewerage system constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than five miles from the corporate limits of said municipality.

History.—§1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—When it is proposed to exercise the powers granted by this chapter, a resolution or ordinance shall be passed by the city council, or the legislative body of the municipality, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary.

Any objections to any of the provisions of said resolution or ordinance shall be in writing and filed with the governing body of the municipality, and hearing thereupon shall be held within thirty days after the passage of the resolution by the legislative body of said municipality.

History.—§1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.04 Ordinance or resolution authorizing construction or extension of utility; election.— If after the passage of said resolution the said city council or other legislative body, by whatever name known, shall determine to proceed toward the construction of said utility, but not earlier than forty days after the passage of said ordinance or resolution, the said city council, or other legislative body, by whatever name known, shall pass an ordinance or resolution authorizing the construction of the utility, or any extension thereof, reciting the purpose, the territory to be included, correcting any errors, remedying any sustained objections, authorizing the issuance of mortgage revenue certificates or debentures to pay for the construction and all other costs of the said utility, and containing all other necessary provisions. All other legislative and administrative functions and proceedings shall be the same as provided for the government of the munici-

pality. The city council, or other legislative body, by whatever name known, of the municipality, may adopt and provide for the enforcement of all resolutions and ordinances that may be required for the accomplishment of the purposes of this chapter and its decision shall be final in determining to construct the utility, or any extension thereof as and where proposed, to promote the public health, safety and welfare by the accomplishment of the purposes of this chapter; provided, that where any mortgage revenue certificate, debentures, or other evidences of indebtedness shall come within the purview of §6, Art. IX of the constitution of the state, the same shall be issued only after having been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such municipality, shall participate, pursuant to the provisions of §§100.201-100.351.

History.—§1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.05 Definition of term private company.—A private company shall mean any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection and garbage disposal plants.

History.—§2, ch. 17118, 1935; CGL 1936 Supp. 3100(7).

180.06 Activities authorized by municipalities and private companies.—Any municipality or private company organized for the purposes contained in this chapter, is authorized (1) to clean and improve street channels or other bodies of water for sanitary purposes; (2) to provide means for the regulation of the flow of streams for sanitary purposes; (3) to provide a water supply for domestic, municipal or industrial uses; (4) to provide for the collection and disposal of sewage and other liquid wastes; (5) to provide for the collection and disposal of garbage; (6) and incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipe lines, distribution systems, purification works, collection systems, treatment and disposal works; (7) to construct airports, hospitals, jails and golf courses, to maintain, operate and repair the same, and to construct and operate in addition thereto all machinery and equipment; (8) and to construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; (9) and to construct such other buildings and facilities as may be required to properly and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter; provided, however, that a private company or municipality shall not construct any system, work, project or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto, unless such municipality or private company consents to such construction.

History.—§3, ch. 17118, 1935; §1, ch. 17119, 1935; CGL 1936 Supp. 3100(8).

180.07 Public utilities; combination of plants or systems; pledge of revenues.—

(1) All such reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, intakes, pipe lines, distribution systems, purification works, collecting systems, treatment and disposal works, airports, hospitals, jails and golf courses, and gas plants and distribution systems, whether heretofore or hereafter constructed or operated, are considered a public utility within the meaning of any constitutional or statutory provision for the purpose of acquiring, purchasing, owning, operating, constructing, equipping and maintaining such works.

(2) Whenever any municipality shall decide to avail itself of the provisions of this chapter for the extension or improvement of any existing utility plant or system, any then existing plant or system may be included as a part of a whole plant or system and any two or more utilities may be included in one project hereunder. The revenues of all or any part of any existing plants or systems or any plants or systems constructed hereunder may be pledged to secure moneys advanced for the construction or improvement of any utility plant or system or any part thereof or any combination thereof.

History.—§4, ch. 17118, 1935; §2, ch. 17119, 1935; CGL 1936 Supp. 3109(9).

180.08 Revenue certificates; terms; price and interest; three-fifths vote of governing body required.—Any municipality which acquires, constructs or extends any of the public utilities authorized by this chapter and desires to raise money for such purpose, may issue mortgage revenue certificates or debentures therefor without regard to the limitations of municipal indebtedness as prescribed by any statute now in effect or hereafter enacted; provided, however, that such mortgage revenue certificates or debentures shall not impose any tax liability upon any real or personal property in such municipality nor constitute a debt against the municipality issuing the same, but shall be a lien only against or upon the property and revenues of such utility, including a franchise setting forth the terms upon which, in the event of foreclosure, the purchaser may operate the same, which said franchise shall in no event extend for a period longer than thirty years from the date of the sale of such utility and franchise under foreclosure proceedings.

Such mortgage revenue certificates or debentures shall be sold for at least ninety-five per cent of par value and shall bear interest not to exceed six per cent per annum.

No mortgage revenue certificates or deben-

tures shall be issued except upon a three-fifths affirmative vote of the city council, or other legislative body of the municipalities by whatever name known; such mortgage revenue certificates or debentures shall provide that out of the revenues and income derived and obtained from the operation of the utility so constructed, such portion thereof as may be deemed sufficient after all operating costs have been paid, shall be set aside annually in a sinking fund for the payment of interest on said certificates or debentures and the principal thereof at the maturity of the same.

History.—§5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.09 Notice of resolution or ordinance authorizing issuance of certificates.—Upon the adoption of resolution or ordinance by the city council, or other legislative body, by whatever name known, authorizing the issuance of mortgage revenue certificates or debentures, a notice thereof shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the municipality is located, or by posting a notice in at least three conspicuous places within the limits of the municipality, one of which shall be posted at the door of the city hall or city offices; provided, that if any of the mortgage revenue certificates or debentures are to be purchased by the United States of America, or any instrumentality or subdivision thereof, it shall not be necessary to advertise or offer the same for sale by competitive bidding.

History.—§5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.10 When election necessary.—Where any mortgage revenue certificates, debentures, or other evidences of indebtedness shall come within the purview of §6 of Art. IX of the constitution of the state, the same shall be issued only after having been approved by the majority of the votes cast in an election in which a majority of the freeholders, who are qualified electors residing in such municipality, shall participate, pursuant to the provisions of §§100.201-100.351.

History.—§7, ch. 22858, 1945.

180.11 Referendum and procedure therefor.—A referendum may be held upon the issuance of such mortgage revenue certificates or debentures in the following manner: a petition shall be filed with the clerk within thirty days after the date of the first publication of the notice of the issuance of the proposed mortgage revenue certificates or debentures or after the posting of the notice, as hereinbefore provided. The petition shall contain the nature of the objection to the proposed utility or the issuance of said mortgage revenue certificates or debentures and shall be signed by twenty per cent of the registered and qualified electors of said municipality. Such referendum shall be held not later than sixty days after the date of the first publication of said notice as aforesaid or the posting of such notice.

The aforesaid petition shall be filed with the city clerk, or the officer performing the corresponding duties, and the said clerk or officer shall ascertain immediately if the requisite number of registered and qualified electors have signed the said petition; whereupon he shall immediately report in writing to the mayor, or the executive officer of said municipality, and to the city council or other legislative body of the municipality, by whatever name known; whereupon a resolution or ordinance shall forthwith be enacted determining if the requisite number of registered and qualified electors have signed the petition, a resolution or ordinance shall forthwith be enacted setting forth the date upon which the referendum shall be held, appropriating sufficient funds to pay the expenses of said election, designating the places of voting and providing for the form of ballot to be used; provided, however, that in determining the number of registered and qualified electors for the purposes of determining the sufficiency of the petition for referendum, the city clerk, or such other officer, shall use the number of registered and qualified electors at the last municipal election held by the said municipality; provided further, that all rules, regulations, ordinances or resolutions pertaining to municipal elections shall apply under the referendum herein set forth, except where the same are inconsistent with the proceedings herein authorized.

History.—§5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.12 Examinations, surveys, etc.—Any municipality, to carry out the purpose of this chapter, may, through its officers, committees, agents, servants or employees, enter into and upon private property where it is proposed to construct said utility, or extensions thereof to make necessary examinations and surveys, and for such other purposes as may be required in the accomplishment of the purposes of this chapter; provided, however, the municipality, before constructing any of said works upon private property, shall first acquire the right to take and use the property by agreement or purchase or by proceedings or by the exercise of the right of eminent domain in a court of the state having jurisdiction of the same in the manner prescribed by law.

History.—§6, ch. 17118, 1935; CGL 1936 Supp. 3100(11).
cf.—Ch. 73 Eminent Domain.

180.13 Administration of utility; rate fixing, and collection of charges.—

(1) The city council, or other legislative body of the municipality, by whatever name known, may create a separate board or may designate certain officers of said municipality to have the supervision and control of the operation of the works constructed under the authority of this chapter, which said board or designated officers may make all necessary rules or regulations governing the use, control and operation of said works; subject, however, to the approval of the city council, or other legislative body, by whatever name known.

(2) The city council, or other legislative body of the municipality, by whatever name

known, may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid, including charge covering any reasonable expense for reconnecting such service after such delinquencies are paid, or any other lawful method of enforcement of the payment of such delinquencies.

History.—§7, ch. 17118, 1935; CGL 1936 Supp. 3100(12).

180.14 Franchise for private companies; rate fixing.—A private company or corporation organized under the laws of the state for any of the purposes recited in this chapter, may construct, operate and maintain such works provided for in this chapter, within or without the corporate limits of any municipality, upon application by such company or corporation to the city council, or other legislative body of the municipality, by whatever name known, and the said municipality may grant to said private company or corporation the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of said municipality for the accomplishment of the purposes set forth in this chapter; said franchise, however, to be for a period of not longer than thirty years; provided further, that the rates or charges to be made by the private company or corporation to the individual users of the utility constructed or operated under authority of this chapter shall be fixed by the city council, or other legislative body of the municipality, by whatever name known, upon proper hearing had for that purpose.

History.—§8, ch. 17118, 1935; CGL 1936 Supp. 3100(13).

180.15 Liability of private companies.—Any private company or corporation constructing or operating any of the works provided for in this chapter, within or without the corporate limits of any municipality, shall be liable for all damages occasioned by the acts, negligence or injury to the rights of other persons, firms or corporations in the same manner and with the same limitations as any other private corporation chartered under the laws of the state.

History.—§9, ch. 17118, 1935; CGL 1936 Supp. 3100(14).

180.16 Acquisition by municipality of property of private company.—When a municipality has granted to a private company or corporation a privilege or franchise, as set forth in §180.14, if at the expiration of the term of the privilege or franchise and after petition of the private company or corporation, the municipality fails or refuses to renew the privilege or franchise, then upon further petition of the private company or corporation, its property, consisting of all the works constructed and used in the operation and use of the utility, together with the appurtenances, materials, fixtures, machinery and real estate appertaining thereto, which is on hand at the time of the expiration of said privilege or franchise, shall be purchased by the said municipality at a price to be mutually agreed upon; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the city council or other legislative body, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided further, that in the event said board cannot agree as to the price to be paid by the said municipality, then the municipality shall file appropriate condemnation proceedings under chapter 73, within six months after the date of filing the original petition.

History.—§10, ch. 17118, 1935; CGL 1936 Supp. 3100(15).

180.17 Contracts with private companies.—Any municipality may contract by and through its duly authorized officers with any private company or corporation which is organized for any purpose related to the provisions of this chapter, and may contract with said private company or corporation for the construction or use of such works authorized by this chapter.

History.—§11, ch. 17118, 1935; CGL 1936 Supp. 3100(16).

180.18 Use by municipality of privately owned utility.—Whenever a private company or corporation shall construct or operate any of the works authorized by this chapter, the municipality wherein the same shall be constructed or operated shall not use the said works in any manner except by and with the consent of the private company or corporation in the manner and upon the terms and conditions which are mutually agreeable to the private company or corporation and the municipality, except as hereinbefore provided.

History.—§12, ch. 17118, 1935; CGL 1936 Supp. 3100(17).

180.19 Use by other municipalities and by individuals outside corporate limits.—

(1) A municipality which constructs any works as are authorized by this chapter, may permit any other municipality and the owners or association of owners of lots or lands outside of its corporate limits or within the limits of any other municipality, to connect with or use the utilities mentioned in this chapter upon such terms and conditions as may be agreed between such municipalities, and the owners or association of owners of such outside lots or lands.

(2) Any private company or corporation organized to accomplish the purposes set forth in this chapter, which has been granted a privilege or franchise by a municipality, may permit the owners or association of owners of lots or lands outside of the boundaries of said municipality granting said privilege or franchise, or other municipality, to connect with

and use the utility operated by the said private company or corporation upon such terms as may be agreed between the said private company or corporation and the owners or association of owners of said lots or lands or the said municipality.

History.—§13, ch. 17119, 1935; CGL 1936 Supp. 8100(18).

180.20 Regulations by private companies; rates; contracts.—Whenever any private company or corporation organized for the accomplishment of the purposes of this chapter is granted a privilege or franchise by a municipality, it may prescribe the terms upon which owners and occupants of houses, buildings or lots may obtain the use of the utility constructed and operated by the said private company or corporation, and the rate charged for such use, and also the rate and terms upon which the municipality may use such utility for public purposes; such rates, however, shall be subject to the approval of the city council, or other legislative body of the municipality, by whatever name known; provided, however, that the municipality may contract with the said private company or corporation to pay the said company or corporation a flat or fixed rate for such service and use of the utility and may pay out of the general revenue or any special revenue such rate as agreed.

History.—§14, ch. 17118, 1935; CGL 1936 Supp. 8100(19).

180.21 Powers granted deemed additional.—The authority and powers granted by this chapter to municipalities shall be in addition to but not in limitation of any of the powers heretofore or hereafter granted to municipalities now existing or hereafter created.

History.—§15, ch. 17118, 1935; CGL 1936 Supp. 8100(20).

180.22 Power of eminent domain.—Any municipality or private company or corporation authorized to carry into effect any or all of the purposes defined in this chapter, may exercise the power of eminent domain over railroads, traction and street car lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, and any other public or private lands or property whatsoever necessary to enable the accomplishment of the purposes of this chapter.

History.—§16, ch. 17118, 1935; CGL 1936 Supp. 8100(21).
cf.—Ch. 73 Eminent Domain.

180.23 Contracts with engineers, attorneys and others; boards.—Any municipality desiring to construct, maintain or operate any of the utilities described in this chapter, may contract with engineers and attorneys for professional services required for the accomplishment of any or all of the purposes of this chapter; provided, however, that such employment is to be evidenced by written agreement setting forth the terms and conditions of the employment; provided further, that such municipality may also create such other offices and boards as may be necessary and expedient for carrying out the purposes of this chapter and shall provide suitable and fit compensation for the same.

History.—§17, ch. 17118, 1935; CGL 1936 Supp. 8100(22).

180.24 Contracts for construction; bond; publication of notice; bids.—

(1) Any municipality desiring the accomplishment of any or all of the purposes of this chapter, may make contracts for the construction of any of the utilities mentioned in this chapter, or any extension or extensions to any previously constructed utility, which said contracts shall be in writing, and the contractor shall be required to give bond, which said bond shall be executed by a surety company authorized to do business in the state; provided, however, construction contracts in excess of one thousand dollars shall be advertised by the publication of a notice in a newspaper of general circulation for two consecutive weeks in the county in which said municipality is located, or by posting three notices in three conspicuous places in said municipality, one of which shall be on the door of the city hall; and that at least ten days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents.

(2) All contracts for the purchase, lease or renting of materials or equipment to be used in the accomplishment of any or all of the purposes of this chapter by the municipality, shall be in writing; provided, however, that where said contract for the purchase, lease or renting of such materials or equipment is in excess of one thousand dollars, notice or advertisement for bids on the same shall be published in accordance with the provisions of the preceding paragraph.

History.—§18, ch. 17118, 1935; CGL 1936 Supp. 8100(23).

180.25 Contents of notice of issuance of certificates.—The form of the notice for advertising the proposed issuance of mortgage revenue certificates or debentures shall contain the amount of the certificates to be sold and the rate of interest thereon; a description in general terms of the utility to be constructed; the time, place and date where bids for the sale of the same are to be received; and such other pertinent information as may be deemed necessary.

History.—§19, ch. 17118, 1935; CGL 1936 Supp. 8100(24).

180.26 Form of certificates.—The certificate of indebtedness to be issued under the terms and conditions of this chapter shall contain a description of the utility, the revenue of which is pledged, together with the terms of payment of the same, as is established by the ordinances or resolutions of the municipality, in accordance with the conditions heretofore established in this chapter, and may or may not have attached thereto interest coupons, and shall contain such other and further conditions as shall be determined by the governing body of the municipality, in accordance with the terms and conditions of this chapter.

History.—§20, ch. 17118, 1935; CGL 1936 Supp. 8100(25).

CHAPTER 181

MUNICIPAL REVENUE BOND REFINANCING LAW

181.01 Short title.—This chapter may be cited as "The revenue bond refinancing law."

History.—§1, ch. 17751, 1937; CGL 1940 Supp. 1365(48).

181.02 Definitions.—The following terms wherever used or referred to in this chapter shall have the following meaning, unless a different meaning appears from the context:

(1) "Municipality" shall mean the state, or any agency, public body or political subdivision thereof, including, without being limited to, any city or any town, whether incorporated by special act of the legislature or under the general laws of the state, and any county;

(2) "Governing body" shall mean the board or other local legislative body having power to borrow money on behalf of a municipality;

(3) "Law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(4) "Enterprise" shall mean any work, undertaking, or project which the municipality is or may hereafter be authorized to construct and from which the municipality has heretofore derived or may hereafter derive revenues, for the refinancing, or the refinancing and improving of which enterprise, refunding bonds are issued under this chapter, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto; provided, however, that nothing herein shall constitute authority for a municipality to construct, operate and maintain a new enterprise and such authority to construct, operate and maintain a new enterprise must be vested in municipalities by appropriate statutory authority heretofore or hereafter given to such municipalities;

(5) "Federal agency" shall include the United States, the President of the United States, the Federal Emergency Administrator of Public Works, Reconstruction Finance Corporation, or any agency, instrumentality or corporation of the United States, which has heretofore been or may hereafter be designated or created by or pursuant to any act or joint resolution of the congress of the United States, or which may be owned or controlled, directly or indirectly, by the United States;

(6) "Improving" shall mean reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing or improving or any one or more or all of the foregoing;

(7) "Bonds" or "refunding bonds" shall mean notes, bonds, certificates or other obligations of a municipality issued pursuant to this law or pursuant to any other law, as supplemented by, or in conjunction with this chapter;

(8) "Refinancing" shall mean funding, refunding, paying or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations heretofore or hereafter issued to finance or to aid in financing the acquisition, construction or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates;

(9) "Revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise;

(10) "Holder of bonds" or "bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer.

History.—§2, ch. 17751, 1937; CGL 1940 Supp. 1365(49).

181.03 Grant of power.—Any municipality may refinance, or refinance and improve, any enterprise, and for such purpose borrow money and issue refunding bonds from time to time.

History.—§3, ch. 17751, 1937; CGL 1940 Supp. 1365(50).

181.04 Procedure for authorization.—The refunding bonds shall be authorized by resolution of the governing body of the municipality. Such resolution may be adopted at a regular or special meeting and at the same meeting at which it is introduced by a majority of all the members of the governing body then in office. Unless otherwise provided, such resolution shall take effect immediately and need not be laid over or published or posted. It is determined and declared as a matter of legislative intent that no election to authorize the issuance of refunding bonds

shall be necessary except in cases where an election may be required by the constitution of the state. In all cases where it is not necessary under the constitution to hold an election on the issuance of such refunding bonds, such resolution shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of such bonds by the municipality. In all other cases, an election shall be held in the manner hereinafter provided.

History.—§4, ch. 17751, 1937; CGL 1940 Supp. 1365(51).

181.05 Procedure where election to be held.—Whenever an election is necessary to approve the issuance of bonds, such election shall be governed by the provisions of chapter 130, except that: (1) notice of such election shall not be required to be published more than once a week for two consecutive weeks, (2) the time of holding such election may be any date subsequent to fourteen days following the date of the first publication or posting of the notice of such election, and (3) in the event any such election shall not result in the approval of the bonds because (a) a majority of the freeholders who were qualified electors residing in the municipality did not participate in the election, regardless of whether a majority of those participating voted for or against the bonds, or (b) an equal number of votes were cast for and against the bonds in an election in which a majority of the freeholders who were qualified electors residing in the municipality shall have participated, a second election for the approval of bonds for the same purpose may be ordered by the governing body at any time.

History.—§5, ch. 17751, 1937; CGL 1940 Supp. 1365(52).

181.06 Terms of refunding bonds.—The refunding bonds may be issued in one or more series, may bear such date, may mature at such time not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, not in any event exceeding forty years from their respective dates, may bear interest at such rate not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

History.—§6, ch. 17751, 1937; CGL 1940; Supp. 1365(53); §7. ch. 22858, 1945.

181.07 Validity of refunding bonds.—Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof. The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued, or by contracts made in connection with the improving of any such enterprise. Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this chapter, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this chapter. The authority of a municipality to issue obligations under this chapter may be determined and obligations to be issued under this chapter may be validated as provided in chapter 75.

History.—§7, ch. 17751, 1937; CGL 1940 Supp. 1365(54).

181.08 Sale or exchange of refunding bonds.—(1) The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates or other obligations to be refinanced thereby.

(2) If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds or other obligations of the municipality issued to finance or to aid in financing the acquisition, the construction, the improving, the refinancing, or the improving and refinancing, of an enterprise. The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund in-

terest in arrears or about to become due. The holder of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

(3) If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par at public or private sale in such manner and upon such terms as the governing body shall deem best for the interests of the municipality.

History.—§8, ch. 17751, 1937; CGL 1940 Supp. 1365(55); §7, ch. 22858, 1945.

181.09 Security of the refunding bonds.—(1) The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution of the governing body authorizing the issuance of the refunding bonds, having due regard to the cost of operation and maintenance of the enterprise and the amount or proportion, if any, of the revenues of the enterprise previously pledged. Any municipality may, by resolution of its governing body, pledge for the security of the refunding bonds a fixed amount without regard to any fixed proportion of the gross revenues of the enterprise.

(2) As additional security for any issue of refunding bonds hereunder, or any part thereof, any municipality may, by resolution of its governing body, confer upon the holders of the refunding bonds all rights, powers and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds or other obligations for the refinancing of which such refunding bonds shall have been issued including, but not limited to, the preservation of the lien of such notes, bonds or other obligations without extinguishment, impairment or diminution thereof. In the event any municipality exercises the power conferred by this paragraph, (a) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this paragraph and (b) each note, bond, certificate or other obligation of the municipality to be refinanced by any such refunding bonds, shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and the interest thereon, have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate or other obligation has been refunded pursuant to the revenue bond refinancing law.

(3) All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date of bonds, of sale, of execution or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution authorizing the issuance of such refunding bonds.

(4) Nothing in this law shall be deemed in any way to alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality or to authorize the municipality to alter the terms of any such agreements, or to impair, or to authorize the municipality to impair, the rights and remedies of any creditors of the municipality.

(5) Nothing in this law shall be deemed in any way to authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or a debt, except in the manner authorized by and subject to the provisions of the constitution.

History.—§9, ch. 17751, 1937; CGL 1940 Supp. 1365(56).

181.10 Refunding bonds not debts.—(1) No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

(2) The refunding bonds, and interest thereon, shall not be a debt of the municipality, nor a charge, lien or encumbrance, legal or equitable, upon any property of the municipality, or upon any income, receipts, or revenues of the municipality other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof and that the municipality is under no obligation to pay the same, except from said revenue.

History.—§10, ch. 17751, 1937; CGL 1940 Supp. 1365(57).

181.11 Fiscal agent.—Any municipality shall have power in connection with the issuance of refunding bonds, to appoint a fiscal agent, to provide for the powers, duties and functions and compensations of such fiscal agent, to limit the liabilities of such fiscal agent, to prescribe a method for the resignation, removal, merger or consolidation of such fiscal agent, and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History.—§11, ch. 17751, 1937; CGL 1940 Supp. 1365(58).

181.12 Duties of municipality and officers.—In order that the payment of the refunding bonds, and interest thereon, shall be adequately secured, any municipality issuing refunding bonds pursuant to this chapter and the proper officers, agents and employees thereof, are directed, and it shall be the mandatory duty of such municipality and such officers, agents and employees, and it shall further be

of the essence of the contract of such municipality with the bondholders, at all times:

(1) To pay or cause to be paid punctually the principal of every refunding bond, and the interest thereon, on the date and at the place and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(2) To operate the enterprise in an efficient and economical manner and to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges in connection therewith as may be necessary or proper, which said fees, tolls, rates, rentals and other charges shall be at least sufficient after making due and reasonable allowances for contingencies and for a margin of error in the estimates, (a) to pay all current expenses of operation, and maintenance of such enterprise, (b) to pay the interest on and principal of the refunding bonds as the same shall become due and payable, (c) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds, and (d) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise:

(3) To operate, maintain, preserve and keep, or cause to be operated, maintained, preserved and kept, the enterprise and every part and parcel thereof, in good repair, working order and condition;

(4) To preserve and protect the security of the refunding bonds and the rights of the holders thereof, and to warrant and defend such rights against all claims and demands of all persons, whomsoever;

(5) To pay and discharge, or cause to be paid or discharged any and all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof, prior or superior to the lien of the refunding bonds, or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(6) To hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or, if such resolution shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution as modified;

(7) To keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof, and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holders of not less than ten per cent of the refunding bonds then outstanding or their representatives duly authorized in writing.

None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History.—§12, ch. 17751, 1937; CGL 1940 Supp. 1365(59).

181.13 Additional powers and duties.— The governing body of any municipality may, in addition to the other powers conferred, insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(1) Limitations on the purpose to which the proceeds of sale of any issue of refunding bonds, or any notes, bonds or other obligations then or thereafter to be issued to finance the improving of the enterprise, may be applied;

(2) Limitations on the issuance and on the lien of additional refunding bonds, or additional notes, bonds or other obligations to finance the improving of the enterprise which are secured by or payable from the revenues of such enterprise;

(3) Limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(4) The amount and kind of insurance to be maintained on the enterprise, and the use and disposition of insurance moneys;

(5) Pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(6) Covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(7) Events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(8) The rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations;

(9) The vesting in a trustee the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this chapter or duties imposed hereby;

(10) A procedure by which the terms of any resolutions authorizing refunding bonds, or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding

bonds the holders of which must consent thereto and the manner in which such consent may be given;

(11) The execution of all instruments necessary or convenient in the exercise of the powers granted by this chapter or in the performance of the duties of the municipality and the officers, agents and employees thereof;

(12) Refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted, or at any time hereafter in force, which may affect the duties or covenants of the municipality in relation to the refunding bonds, or the performance thereof, or the lien of such refunding bonds;

(13) The purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds or obligations, including but not limited to refunding bonds, and the price at which and the manner in which such purchases may be made;

(14) Any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds, or as may tend to make the refunding bonds more marketable;

(15) The manner of collecting the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise, and the combining in one bill of the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise with the fees, tolls, rates, rentals or charges for other services, facilities or commodities afforded by the municipality; and

(16) The discontinuance of the services, facilities or commodities of the enterprise as well as any other services, facilities or commodities afforded by the municipality, in the event that the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise are not paid.

Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act or to do anything which shall require the expenditure in any manner or for any purposes by the municipality of any funds other than revenues received or receivable from the enterprise.

History.—§13, ch. 17751, 1937; CGL 1940 Supp. 1365(60).

181.14 Right to receivership upon default.—(1) In the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the municipality or the governing body or officers, agents or employees thereof shall fail or refuse to comply with the provisions of this chapter or shall default in any agreement made with the holders of the refunding bonds, any holder of refunding bonds, or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to the circuit court in chancery, or any court of competent jurisdiction, for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such refunding bonds. Upon such application the circuit court in chancery may appoint, and if the application is made by the holders of twenty-five per cent in principal amount of such refunding bonds then outstanding, or any trustee for holders of such refunding bonds in such principal amount, shall appoint a receiver of the enterprise.

(2) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the enterprise, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in separate account and apply such revenues so collected and received in such manner as the court shall direct.

(3) Whenever all that is due upon the refunding bonds, and interest thereon, and upon any other notes, bonds or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality, the same right of the holders of the refunding bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(4) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such

court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

(5) Notwithstanding anything in this section to the contrary, said receiver shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the municipality and useful for the enterprise, but the authority of any such receiver shall be limited to the operation and maintenance of the enterprise and no court shall have jurisdiction to enter any order or decree requiring or permitting said receiver to sell, mortgage, or otherwise dispose of any such assets.

History.—§14, ch. 17751, 1937; CGL 1940 Supp. 1365(61).

181.15 Remedies of refunding bondholders.—(1) Subject to any contractual limitations binding upon the holders of any issue of refunding bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion percentage of such holders, any holder of refunding bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel such municipality or such governing body or any such officers, agents or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders;

(b) By action or suit in equity to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) Bring suit upon the refunding bonds.

(2) No remedy conferred by this chapter upon any holder of refunding bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiesence therein. Every substantive right and every remedy, conferred upon the holders of refunding bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the refunding bonds, or any trustee therefor, then and in every such case the municipality and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

History.—§15, ch. 17751, 1937; CGL 1940 Supp. 1365(62).

181.16 Construction of chapter.—This chapter constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any municipality, or any board, officer, commission, department, agency, or instrumentality of the state or any municipality, other than those required by this chapter, shall be required to issue any refunding bonds or to do any act or perform any thing under this law except as may be prescribed herein. The powers conferred by this chapter shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this chapter shall not affect, the powers conferred by any other law. This chapter is remedial in nature and shall be liberally construed.

History.—§16, ch. 17751, 1937; CGL 1940 Supp. 1365(63).

CHAPTER 183

MUNICIPAL PARKING FACILITIES

183.01 Declaration of public necessity.—It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the municipalities in the state is necessary to the health, safety and general welfare of the public, whether residing in such municipalities or traveling to, through or from such municipalities in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of such municipalities; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through and from such municipalities, impedes the rapid and effective fighting of fires and disposition of police forces, threatens irreparable loss in values of urban property which can no longer be readily reached by vehicular traffic, and endangers the health, safety and welfare of the general public; that the regulation of traffic on the streets by the installation of parking meters and the imposition of charges in connection with such on-street parking facilities has not relieved this congestion except to a limited extent; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been provided and parking spaces now existing must be forthwith supplemented by off-street parking facilities provided by public undertaking; and that the enactment of the provisions of this chapter is hereby declared to be a public necessity.

History.—§1, ch. 26918, 1951.

183.02 Definitions.—As used in this chapter the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "municipality" shall mean any city, town or village in the state, whether incorporated by special act of the legislature or under the general laws of the state, which may desire to finance parking facilities under the provisions of this chapter.

(2) The word "council" shall mean the city, town or village council or commission or other board or body in which the general legislative powers of the municipality shall be vested.

(3) The words "parking facilities" shall mean and shall include lots, parking terminals or other structures (either single or multi-level and either at, above or below the surface) for the off-street parking of motor vehicles, open to public use for a fee, including, but without limiting the generality of the foregoing, facilities for trucks and busses, waiting rooms, lockers, and, if deemed necessary by the council for the financing of any parking facilities consisting of or including a terminal or other structure, space to be leased for such uses as the council may deem advisable for the greatest utilization of the structure; and all facilities appurtenant thereto, including on-street parking meters if so provided by the council, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof.

(4) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interests acquired by the municipality for such construction or reconstruction or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction and, if deemed advisable by the council, for one year after completion of construction, cost of engineering and legal services, plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such construction or reconstruction, the financing thereof and the placing of the parking facilities in operation.

History.—§2, ch. 26918, 1951.

183.03 General grant of powers.—The council of any municipality in the state is hereby authorized and empowered:

(1) to construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and

operate parking facilities within the corporate limits of such municipality;

(2) to issue revenue bonds of the municipality as hereinafter provided to pay the cost of such construction, reconstruction, equipment, improvement, extension or enlargement;

(3) to establish and revise from time to time and to collect rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of such parking facilities or part thereof;

(4) to accept from any authorized agency of the federal government loans or grants for the planning, construction or acquisition of any parking facilities and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants or contributions may be made;

(5) subject to any provisions or restrictions which may be set forth in the ordinance authorizing bonds, to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities; provided, however, nothing contained in this paragraph shall authorize the acquisition by eminent domain of any lands or rights owned or held by public utility or transportation companies;

(6) to lease all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this chapter;

(7) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, and to employ such engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other employees and agents as it may deem necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this chapter; and

(8) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

History.—§3, ch. 26918, 1951.

183.04 Issuance of revenue bonds. — The council of any municipality in the state is hereby authorized to provide by ordinance, at one time or from time to time, for the issuance of revenue bonds of the municipality for the purpose of paying the cost of any one or more parking facilities. The bonds of each issue shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and shall bear interest at such rate or rates not exceeding five per centum per annum, as may be determined by the council, and may be made redeemable before maturity, at the option of the municipality, at such price or prices and under such terms and conditions as may be fixed by the council prior to the issuance of the bonds. The council shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or registered form or both, as the council may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The council may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the municipality, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

History.—§4, ch. 26918, 1951.

183.05 Issuance of revenue bonds; use of proceeds; issuance of additional bonds.—

(1) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the parking facilities for the construction or reconstruction of which such bonds shall have to be authorized, and shall be disbursed in such manner and under such restrictions, if any, as the council may provide in the

authorizing ordinance. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing ordinance shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

(2) The authorizing ordinance may also contain such limitations upon the issuance of additional revenue bonds as the council may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such ordinance.

(3) Prior to the preparation of definitive bonds, the council may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The council may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

(4) Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the state or of the municipality, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter. Bonds may be issued under the provisions of this chapter beyond the general limits of indebtedness prescribed by law and shall not be included in the amount of bonds which the municipality may be authorized to issue under any other law.

(5) Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the municipality or a pledge of the faith and credit of the municipality, but such bonds shall be payable solely from the funds herein provided therefor, and a statement to that effect shall be recited on the face of the bonds.

History.—§4, ch. 26918, 1951.

183.06 Rates, rentals, etc., initial schedule; use of revenue.—

(1) The council shall, in the ordinance providing for the issuance of revenue bonds under the provisions of this chapter, fix the initial schedule of rates, rentals, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, the parking facilities. After any parking facilities shall have been in operation the council may revise such schedule of rates, rentals, fees and charges from time to time. Such rates, rentals, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the state, and the municipality shall charge and collect the rates, rentals, fees and charges so fixed and revised. Such rates, rentals, fees and charges shall be so fixed and revised as to provide funds sufficient at all times (a) to pay the cost of maintaining, repairing and operating the parking facilities, including reserves for such purpose and for replacements and depreciation, and (b) to pay the principal of and the interest on the revenue bonds as the same become due and reserves therefor.

(2) All revenues derived from any parking facilities for which a single issue of revenue bonds shall have been issued, except such part thereof as may be required to pay the cost of maintenance, repair and operation and to provide reserves therefor as may be provided in the authorizing ordinance, shall be set aside at such regular intervals as may be provided in such ordinance and deposited to the credit of a sinking fund which is hereby pledged to, and charged with, the payment of the interest on such bonds as such interest shall fall due, the principal of such bonds as the same shall fall due, the necessary charges of paying agents for paying principal and interest, and the redemption price or the purchase price of bonds retired by call or purchase. The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be prescribed in the authorizing ordinance and, except as may otherwise be provided in such ordinance, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

History.—§5, ch. 26918, 1951.

183.07 Parking meters; combining for financing purposes.—The council of any municipality in the state is hereby authorized to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any parking meters heretofore or hereafter installed as it may deem advisable. The council is further authorized:

(1) To combine into a single project for financing purposes any two or more of the following:

(a) Any parking facilities financed by revenue bonds issued under the provisions of this chapter,

(b) Any existing parking facilities then owned or operated by the municipality, and

(c) Such parking meters or any portion thereof; and

(2) Subject to the provisions of §183.06(2), to pledge to the payment of such revenue bonds:

(a) The revenues of the parking facilities financed by such bonds,

(b) The revenues of all or any part of such existing parking facilities, and

(c) All or any part of the revenues derived from such parking meters.

History.—§6, ch. 26918, 1951; §1, ch. 59-160.

183.08 Pledge of revenues.—

(1) The ordinance authorizing the issuance of revenue bonds under the provisions of this chapter shall pledge the revenues to be received from the parking facilities financed by such bonds, but shall not convey or mortgage any parking facilities or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipality and of the council in relation to the construction, reconstruction, improvement, maintenance, repair, operation and insurance of the parking facilities, any provisions for the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such construction, reconstruction or operation. Such ordinance may set forth the rights and remedies of the bondholders, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. Such ordinance may contain such other provisions in addition to the foregoing as the council may deem reasonable and proper for the security of bondholders. Except as in this chapter otherwise provided, the council may provide for the payment of the proceeds of the sale of the bonds and the revenues of the parking facilities to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such ordinance may be treated as a part of the cost of operation.

(2) All pledges of revenues under the provisions of this chapter, whether derived from parking facilities or parking meters, shall be valid and binding from the time when such pledge is made; all such revenues so pledged and thereafter received by the municipality shall immediately be subject to the lien of such pledges without any physical delivery thereof or further act, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality, irrespective of whether such parties have notice thereof.

History.—§7, ch. 26918, 1951.

183.09 Trust funds.—All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The ordinance authorizing the issuance of bonds shall provide that any officer to whom, or bank, trust company or other fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such ordinance may provide.

History.—§8, ch. 26918, 1951.

183.10 Remedies.—Any holder of bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the authorizing ordinance, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance, and may enforce and compel the performance of all duties required by this chapter or by such ordinance to be performed by the municipality, the council, or any officer of the municipality, including the fixing, charging and collecting of rates, rentals, fees and charges for the services and facilities furnished by the parking facilities.

History.—§9, ch. 26918, 1951.

183.11 Authority to regulate use and operation; reports of operation.—

(1) The ordinance authorizing the issuance of bonds under the provisions of this chapter may contain such regulations with respect to the use and operation of any parking facilities as may be deemed reasonable and proper and such provisions regulating one-way traffic and limiting or prohibiting the parking of motor vehicles on the streets of the municipality as may be deemed for the best interests of the municipality, and such regulations and provisions shall be deemed to constitute a part of the contract between the municipality and the holders of bonds issued under the provisions of this chapter and, except as may be otherwise provided in such ordinance, shall be irrepealable while any of such bonds shall be outstanding and unpaid.

(2) The municipality shall cause to be made at least once each year a report of the operations of the parking facilities, including all matters relating to rates, revenues, expenses of maintenance, repair and operation and all renewals and replacements, principal and interest payments and the status of all funds. Copies of such annual reports shall be filed with the clerk of the municipality and shall be open to the inspection of all interested persons.

History.—§10, ch. 26918, 1951.

183.12 Revenue refunding bonds. — The council is hereby authorized to provide by ordinance for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under the provi-

sions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the council, for the additional purpose of constructing improvements, extensions or enlargements of the parking facilities in connection with which the bonds to be refunded shall have been issued. The council is further authorized to provide by ordinance for the issuance of revenue bonds of the municipality for the combined purpose of (a) refunding any revenue bonds or revenue refunding bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and (b) paying the cost of any additional parking facilities. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the municipality and the council with respect to the same, shall be governed by the foregoing provisions of this chapter in so far as the same may be applicable.

History.—§11, ch. 26918, 1951.

183.13 Authorizing ordinance. — Notwithstanding the provisions of any other law, either general, special or local, or the provisions of any charter or charter amendment theretofore adopted by such municipality, or the provisions of any ordinance, resolution, by-law, rule or regulation of such municipality, it shall not be necessary to publish any ordinance adopted under the provisions of this chapter either before or after its final passage. The council shall, however, cause to be published once in a newspaper published in the municipality a notice reciting that such ordinance, setting forth its title, has been adopted by the council and that any action or proceeding to contest the validity of such ordinance or any of its provisions must be commenced within thirty days after the publication of such notice. Any action or proceeding in any court to set aside such ordinance or any of its provisions or to obtain any other relief upon the ground that such ordinance is invalid must be commenced within thirty days after the publication of such notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such ordinance or any of its provisions shall be asserted, nor shall the validity of such ordinance or any of its provisions be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

History.—§12, ch. 26918, 1951.

183.14 Exemption of property from taxation.—As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this chapter to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this chapter constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state.

History.—§13, ch. 26918, 1951.

183.15 Alternative method. — This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds.

History.—§14, ch. 26918, 1951.

183.16 Liberal construction. — The provisions of this chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof.

History.—§15, ch. 26918, 1951.

CHAPTER 184

MUNICIPAL SEWER FINANCING

184.01 Short title.—This chapter shall be known and may be cited as the "Sanitary Sewer Financing Act of 1951."

History.—§1, ch. 26919, 1951.

184.02 Definitions.—As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

(1) The word "municipality" shall mean any city, town or village in the state, whether incorporated by special act of the legislature or under the general laws of the state, which may desire to finance a sewage disposal system or systems or sanitary sewers under the provisions of this chapter.

(2) The word "council" shall mean the city, town or village council or commission or other board or body in which the general legislative powers of the municipality shall be vested.

(3) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources, or any integral part thereof, and, without limiting the generality of the foregoing definition, shall embrace treatment plants, pumping stations, intercepting sewers, pressure lines, mains and all necessary appurtenances and equipment, and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation therof.

(4) The term "sanitary sewers" or "sewer improvements" shall include all sanitary sewers within the corporate limits of the municipality other than such mains and lines as constitute a part of a sewage disposal system, and shall embrace sewer mains and laterals for the reception of sewage from premises connected therewith and for carrying such sewage to some part of a sewage disposal system.

(5) The word "cost" as applied to a sewage disposal system or to extensions or additions thereto or to sanitary sewers shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the municipality in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the municipality out of the proceeds of bonds issued under the provisions of this chapter.

(6) The term "sewer revenue bonds" shall mean special obligations of the municipality which are payable solely from sewer service charges, or from such sewer service charges and additionally secured by a pledge of special assessments or any of the other special funds provided for in this chapter.

(7) The term "general obligation bonds" shall mean general obligations of the municipality which are payable from unlimited ad valorem taxes or from such taxes and additionally secured by a pledge of sewer service charges, special assessments or any of the other special funds provided for in this chapter.

(8) The word "bonds" shall include both sewer revenue bonds and general obligation bonds.

(9) The term "utilities services taxes" shall mean taxes levied and collected on the purchase or sale of utilities services pursuant to §§167.431, et seq., or any other law.

(10) The term "cigarette taxes" shall mean taxes levied and collected on the purchase or sale of cigarettes under the provisions of chapter 210, or any other law.

(11) The term "franchise taxes" shall mean payments to a municipality pursuant to the provisions of a franchise granted to a person, firm or corporation for the furnishing of utilities or other services or facilities in such municipality.

History.—§2, ch. 26919, 1951; (6) and (7) §1, (9)-(11) n. §2, ch. 59-361.

184.03 General grant of powers.—The council of any municipality in the state is hereby authorized and empowered:

(1) to construct, and to improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a sewage disposal system or systems, either within or without or partly within and partly without the corporate limits of the municipality, and to construct or reconstruct sanitary sewers within the corporate limits of the municipality.

(2) to issue either sewer revenue bonds or general obligation bonds of the municipality to pay all or a part of the cost of such construction or reconstruction;

(3) to fix and collect rates, fees and other charges for the services and facilities furnished by any such sewage disposal system or sanitary sewers, and to fix and collect charges for making connections with the sewer system of the municipality;

(4) to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any sewage disposal system or sanitary sewers, and to hold and dispose of all real and personal property under its control;

(5) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, and to employ such consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may, in the judgment of the council, be deemed necessary, and to fix their compensations; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this chapter.

(6) to exercise jurisdiction, control and supervision over any sewage disposal system or systems and sanitary sewers owned, operated or maintained by the municipality and to make and enforce such rules and regulations for the maintenance and operation of any such sewage disposal system or systems or sewers as may, in the judgment of the council, be necessary or desirable for the efficient operation of any such system or sewers and for accomplishing the purposes of this chapter;

(7) to enter on any lands, water or premises located within or without the municipality to make surveys, borings, soundings or examinations for the purposes of this chapter;

(8) to construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipelines in, along or under any streets, alleys, highways or other public places within the state;

(9) subject to such provisions and restrictions as may be set forth in the ordinance or resolution hereinafter mentioned authorizing or securing any bonds issued under the provisions of this chapter, to enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any other municipality, sanitary district, private corporation, co-partnership, association or individual providing for or relating to the treatment and disposal of sewage; and

(10) to receive and accept from any federal agency grants for or in aid of the planning, construction, reconstruction or financing of any sewage disposal system or sanitary sewers, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

History.—§3, ch. 26919, 1951.

184.04 Construction of sewage disposal systems and sanitary sewers.—

(1) Whenever the council deems it expedient so to do, it may cause to be made a comprehensive report setting forth the type of sewage treatment and estimate of cost and of revenues of each sewage disposal plant or system the construction of which shall be deemed to be desirable and feasible, together with the approximate location thereof, and also setting forth the sanitary sewers, if any, the construction or reconstruction of which is deemed necessary to protect the health of the inhabitants of the municipality, together with the approximate location thereof or of the area to be served thereby, and an estimate of the cost of their construction or reconstruction.

(2) The council may order the construction of such sewage disposal system or systems as it may deem feasible and practicable, and it may also proceed with the construction or reconstruction of such sanitary sewers as it may deem necessary.

(3) All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor, out of funds provided by this chapter.

(4) The state hereby consents to the use of all state lands lying under water which are necessary for the accomplishment of the purposes of this chapter.

History.—§4, ch. 26919, 1951.

184.05 Sanitary sewers; special assessments.—

(1) Any municipality may provide for the construction or reconstruction of sanitary sewers or sewer improvements and for the levying of special assessments upon benefited prop-

erty under the provisions of this section. The initial proceeding hereunder shall be the passage at any lawful meeting of the council of a resolution ordering the construction or reconstruction of such sewer improvements under and subject to the provisions of this section, indicating the location by terminal points and route and either giving a description of the improvements by its material, nature, character and size or giving two or more such descriptions with the direction that the material, nature, character and size shall be subsequently determined in conformity with one of such descriptions. Sewer improvements need not be continuous and may be in more than one locality or street. The resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby, and the property against which assessments are to be made for the cost of such improvement shall be designated as a district, followed by a letter or number or name to distinguish it from other districts, after which it shall be sufficient to refer to such improvement and property by such designation in all proceedings and assessments, except in the notices provided by subsections (3) and (4) of this section.

(2) As soon as may be after the passage of such resolution the engineer for the municipality shall prepare in duplicate plans and specifications of each improvement ordered thereby and an estimate of the cost thereof. Such cost may include, in addition to the items of cost set forth in subsection (5) of §184.02, the cost of re-laying streets and sidewalks necessarily torn up or damaged and shall include the following items of incidental expense:

(a) printing and publishing of notices and proceedings, cost of abstracts of title, and

(b) any other expense necessary or proper in conducting the proceedings and work provided for in this section.

If the resolution shall provide alternative descriptions of material, nature, character and size, such estimate shall include an estimate of the cost of the improvement of each such description.

The engineer shall also prepare in duplicate a tentative apportionment of the estimated cost as between the municipality and each lot or parcel of land subject to special assessment under the resolution, such apportionment to be made in accordance with the provisions of the resolution and the provisions of subsection (7) of this section in relation to apportionment of cost in the preliminary assessment roll. Such tentative apportionment of estimated cost shall not be held to limit or restrict the duties of the engineer in the preparation of such preliminary assessment roll. One of the duplicates of such plans, specifications and estimate and such tentative apportionment shall be filed with the clerk of the municipality and the other duplicate shall be retained by the engineer in his files, all thereof to remain open to public inspection.

(3) The clerk of the municipality upon the filing with him of such plans, specifications, estimate and tentative apportionment of cost shall publish once in a newspaper published in the municipality a notice stating that at a regular meeting of the council on a certain day and hour, not earlier than ten days from such publication, the council will hear objections of all interested persons to the confirmation of such resolution, which notice shall state in brief and general terms a description of the proposed improvement with the location thereof, and shall also state that plans, specifications, estimate and tentative apportionment of cost thereof are on file in the office of such clerk. The clerk shall keep a record in which shall be inscribed, at the request of any person, firm or corporation having or claiming to have an interest in any lot or parcel of land, the name and post office address of such person, firm or corporation, together with a brief description or designation of such lot or parcel, and it shall be the duty of the clerk to mail a copy of such notice to such person, firm or corporation at such address, at least ten days before the time for the hearing as stated in such notice, but the failure of the clerk to keep such record or so to inscribe any name or address or to mail any such notice shall not constitute a valid objection to holding the hearing as provided in this section or to any other action taken under the authority of this section.

(4) At the time named in such notice, or to which an adjournment may be taken by the council, the council shall receive any objections of interested persons and may then or thereafter repeal or confirm such resolution with such amendments, if any, as may be desired by the council and which do not cause any additional property to be specially assessed.

(5) All objections to any such resolution on the ground that it contains items which cannot be properly assessed against property, or that it is, for any default or defect in the passage or character of the resolution or the plans or specifications or estimate, void or voidable in whole or in part, or that it exceeds the power of the council, shall be made in writing, in person or by attorney, and filed with the clerk at or before the time or adjourned time of such hearing. Any objections against the making of a sewer improvement not so made shall be considered as waived, and if an objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issues presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within ten days.

(6) As soon as practicable after the authorization of bonds under the provisions of this chapter or the appropriation of moneys

for such purposes, the clerk shall publish once, in a newspaper published in the municipality, and, if the estimated cost exceeds ten thousand dollars, in a newspaper of general circulation in the state, a notice calling for sealed bids to be received by the council on a date not earlier than fifteen days from the first publication, for the construction of the work, unless in the initial resolution the council shall have declared its intention to have the work done by municipal forces without contract. The notice shall refer in general terms to the extent and nature of the sewer improvement or improvements and may identify the same by the short designation indicated in the initial resolution and by reference to the plans and specifications on file. If the initial resolution shall have given two or more alternative descriptions of the improvement as to its material, nature, character and size, and if the council shall not have theretofore determined upon a definite description, the notice shall call for bids upon each of such descriptions. Bids may be requested for the work as a whole or for any part thereof separately and bids may be asked for any one or more improvements authorized by the same or different resolutions, but any bid covering work upon more than one improvement shall be in such form as to permit a separation of cost as to each improvement. The notice shall require bidders to file with their bids either a certified check upon an incorporated bank or trust company for two and one-half per cent of the amount of their respective bids or a bid bond in like amount with corporate surety satisfactory to the attorney for the municipality to insure the execution of a contract to carry out the work in accordance with such plans and specifications and to insure the filing, at the making of such contract, of a bond in the amount of the contract price with corporate sureties satisfactory to such attorney conditioned for the performance of the work in accordance with such contract. The council shall have the right to reject any or all bids, and if all bids are rejected the council may readvertise or may determine to do the work by municipal forces without contract.

(7) Promptly after the completion of the work, the engineer for the municipality shall prepare a preliminary assessment roll and file same with the clerk, which roll shall contain the following:

(a) A description of the lots and parcels of land within the district, which shall include all lots and parcels which abut upon the sides of that part of any street in which a sanitary sewer, except a curb sewer, is to be constructed or reconstructed, all lots and parcels which abut upon the side or sides of any street in or along which side or sides a sanitary curb sewer shall have been constructed or reconstructed, and all lots and parcels which are served or are to be served by such sanitary sewer. Such lots and parcels shall include all property, whether publicly or privately owned. There may also be given, in the discretion of the engineer, the name of the owner of record of each lot or parcel, where practicable, and in all cases there shall be given a statement of the number of feet of property so abutting, which number of feet shall be known as frontage.

(b) The total cost of the improvement, and the amount of incidental expense.

(c) An apportionment as between the municipality and property of the cost of each improvement, including incidental expense, to be computed as follows:

1. To each lot or parcel of land, to the property or curb line of which a sanitary sewer lateral shall have been laid, shall be apportioned the cost of that lateral,

2. To abutting property shall be apportioned according to frontage two-thirds or such larger proportion as may be fixed by the resolution ordering the improvement of either (a) the cost of the sewer improvement or (b) the cost of an eight inch sanitary sewer as estimated by the engineer (whichever be the lesser), not including therein the cost of laterals, pumping station or outlet, and

3. To the municipality shall be apportioned the remaining cost of the sewer improvement; provided, however, that in the case of lots or parcels which abut on more than one street or which have irregular shapes or unusual depths or which are served or are to be served by such sewer improvement although not abutting upon either side of the street in which such sewer improvement is constructed, the apportionment shall be made under such rules and regulations as the council shall deem to be fair and equitable.

(8) The preliminary roll shall be advisory only and shall be subject to the action of the council as hereinafter provided. Upon the filing with the clerk of the preliminary assessment roll, the clerk shall publish once in a newspaper published in the municipality a notice stating that at a meeting of the council to be held on a certain day and hour, not less than twelve days from the date of such publication, which meeting may be a regular, adjourned or special meeting, all interested persons may appear and file written objections to the confirmation of such roll. Such notice shall state the class of the improvement and the location thereof by terminal points and route. Such meeting of the council shall be the first regular meeting following the completion of the notice hereinabove required, unless the council shall have provided for a special meeting for such purpose.

(9) At the time and place stated in such notice the council shall meet and receive the objections in writing of all interested persons as stated in such notice. The council may adjourn the hearing from time to time. After the completion thereof the council shall either

annul or sustain or modify in whole or in part the prima facie assessment as indicated on such roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which the council decides each such lot or parcel has received or will receive on account of such improvement. If any property which may be chargeable under this Section shall have been omitted from the preliminary roll or if the prima facie assessment shall not have been made against it, the council may place on such roll an apportionment to such property. The council shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation such assessment roll shall be delivered to the treasurer of the municipality. The assessments so made shall be final and conclusive as to each lot or parcel assessed unless proper steps be taken within ten days in a court of competent jurisdiction to secure relief. If the assessment against any property shall be sustained or reduced or abated by the court, the treasurer of the municipality shall note that fact on the assessment roll opposite the description of the property affected thereby. The amount of the special assessment against any lot or parcel which may be abated by the court, unless the assessment upon the entire district is abated, or the amount by which such assessment is so reduced, may by resolution of the council be made chargeable against the municipality at large; or, in the discretion of the council, a new assessment roll may be prepared and confirmed in the manner hereinabove provided for the preparation and confirmation of the original assessment roll.

(10) Any assessment may be paid at the office of the treasurer of the municipality within thirty days after the confirmation thereof, without interest. Thereafter all assessments shall be payable in equal annual installments, with interest at six per cent per annum from the expiration of said thirty days in each of the succeeding twenty calendar years at the time or times in each year at which general municipal taxes are payable; provided, however, that the council may by resolution fix a shorter period of payment for any assessment; and provided further, that any assessment may be paid at any time before due, together with interest accrued thereon to the date of payment.

(11) All assessments shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general municipal taxes falling due in the same year or years in which such assessment or installments thereof fall due, and any assessment or installment not paid when due shall be collectible in the same manner and at the same time as such general taxes are or may be collectible, with the same attorney's fee, interest and penalties and under the same provisions as to forfeiture and the right of the municipality to purchase the property assessed as are or may be provided by law in the case of municipal taxes; provided, however, that no such sale of any property for general municipal taxes or for an installment or installments of any such assessment and no perfecting of title under any such sale shall divest the lien of any installment of such assessment not due at the time of the sale. Collection of such assessments, with such interest and with a reasonable attorney's fee and costs, but without penalties, may also be made by the municipality by proceedings in a court of equity to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state; or by an action in rem in the manner provided by law for the foreclosure and collection of ad valorem taxes; provided that any such proceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings, immediately become and be due and payable. Nevertheless if, prior to any sale of the property under decree of foreclosure in such proceedings, payment be made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (10) of this section, with interest as required by said subsection (10) and by this subsection (11) and all costs including attorney's fee, such payment shall have the effect of restoring the remaining installments to their original maturities as provided by the resolution passed pursuant to said subsection (10), and the proceedings shall be dismissed. It shall be the duty of the municipality to enforce the prompt collection of assessments by one or the other of the means herein provided, and such duty may be enforced at the suit of any holder of bonds issued under this chapter in a court of competent jurisdiction by mandamus or other appropriate proceedings or action. Not later than thirty days after the annual sale of property for delinquent taxes of the municipality, or if such property or taxes are not sold by the municipality, then within sixty days after such taxes become delinquent, it shall be the duty of the council to direct the attorney or attorneys whom the council shall then designate, to institute actions within three months after such direction to enforce the collection of all special assessments for local improvements made under this section and remaining due and unpaid at the time of such direction (unless theretofore sold at tax sale). Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state. It shall be lawful to join in one action the collection

of assessments against any or all property assessed by virtue of the same assessment roll unless the court shall deem such joinder prejudicial to the interests of any defendant. The court shall allow a reasonable attorney's fee for the attorney or attorneys of the municipality, and the same shall be collectible as a part of or in addition to the costs of the action. At any sale pursuant to decree in any such action, the municipality may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by a municipality, including the certificate of sale thereof, may be sold or otherwise disposed of, for cash or upon terms, the proceeds of such disposition to be placed in the fund provided by subsection (12) of this section; provided, however, that no sale or other disposition thereof shall be made unless notice calling for bids therefor to be received at a stated time and place shall have been published in a newspaper published in the municipality one time at least one week prior to such disposition.

(12) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any sewer improvement or improvements for which bonds shall have been issued under the provisions of this chapter, are hereby pledged to the payment of the principal of and the interest on such bonds and shall when collected be placed in a separate fund, properly designated, which fund shall be used for no other purpose than the payment of such principal and interest.

(13) The county in which the municipality is located and each school district and other political subdivision wholly or partly within the municipality and each public agency or instrumentality owning property within the municipality shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of such county, district, political subdivision, or public agency or instrumentality which private owners of real estate possess or are subject to hereunder, and such real estate shall be subject to liens for said assessments in all cases where the same property would be subject had it at the time the lien attached been owned by a private owner.

History.—§5, ch. 26919, 1951.

184.06 Issuance of bonds.—(1) The council is hereby authorized to provide by ordinance or resolution, at one time or from time to time, for the issuance of either sewer revenue bonds or general obligation bonds, or both, of the municipality for the purpose of paying all or a part of the cost of any one or more of the following: (a) a sewage disposal system or systems, (b) extensions and additions thereto, and (c) sewer improvements. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per cent per annum, shall mature at such time or times, not exceeding forty years from their date or dates, as may be determined by the council, and may be made redeemable before maturity, at the option of the municipality, at such price or prices and under such terms and conditions as may be fixed by the council prior to the issuance of the bonds. The council shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of the state. The bonds may be issued in coupon or in registered form, or both, as the council may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and the council may sell such bonds in such manner and for such price, as it may determine to be for the best interest of the municipality, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per cent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the municipality may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The council may also provide for the replacement of any bonds which shall be mutilated or be destroyed or lost.

(2) Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or the happening of any other condition or thing than those proceedings, condi-

tions or things which are specifically required by this chapter. Bonds may be issued under the provisions of this chapter beyond the general limits of indebtedness prescribed by law and shall not be included in the amount of bonds which the municipality may be authorized to issue under any other law.

(3) The proceeds of such bonds shall be used solely for the payment of the cost of the sewage disposal system or systems or the sewer improvements for the construction or reconstruction of which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the council may provide in the authorizing ordinance or resolution. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing ordinance or resolution, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be paid into the fund provided under the provisions of this chapter for the payment of the principal of and the interest on such bonds.

History.—§6, ch. 26919, 1951; (1) §3, ch. 59-361.

184.07 General obligation bonds.—

(1) No general obligation bonds shall be issued by any municipality unless the issuance of such bonds shall have been approved at an election as required by the constitution of the state. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner required by law for the issuance of bonds of the municipality.

(2) For the payment of the principal of and the interest on any general obligation bonds of the municipality issued under the provisions of this chapter, the council is hereby authorized and required to levy annually a special tax upon all taxable property within the municipality over and above all other taxes authorized or limited by law sufficient to pay such principal and interest as the same respectively become due and payable, and the proceeds of all such taxes shall when collected be paid into a special fund and used for no other purpose than the payment of such principal and interest; provided, however, that there may be pledged to the payment of such principal and interest the proceeds of sewer service charges or special assessments, or any of the other special funds provided herein, or any combination thereof, and in the event of such pledge the amount of the annual tax levy herein required may be reduced in any year by the amount of such proceeds actually received from the preceding year and applied to or then held for the payment of such principal and interest.

History.—§7, ch. 26919, 1951; (2) §4, ch. 59-361.

184.08 Sewer revenue bonds.—

(1) Sewer revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a pledge of the faith and credit of the municipality, but such bonds shall be payable solely from the funds provided therefor under the provisions of this chapter. All such bonds shall contain a statement on their face substantially to the effect that the municipality is not obligated to pay such bonds or the interest thereon except from such funds and that the faith and credit of the municipality are not pledged to the payment of the principal of or the interest on such bonds. The issuance of sewer revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the municipality to levy any ad valorem taxes whatever therefor or to make any appropriations for their payment except from the funds pledged under the provisions of this chapter.

(2) The ordinance or resolution authorizing the issuance of sewer revenue bonds under the provisions of this chapter shall pledge the revenues to be received, but shall not convey or mortgage any sewage disposal system or sewer improvements or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipality and of the council in relation to the construction, reconstruction, improvement, maintenance, operation, repair and insurance of the sewage disposal system or systems, and the sewer improvements, if any, and provisions for the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such construction, reconstruction or operation. Such ordinance or resolution may set forth the rights and remedies of the bondholders, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition to the foregoing, such ordinance or resolution may contain such other provisions as the council may deem reasonable and proper for the security of bondholders. Except as in this chapter otherwise provided, the council may provide for the payment of the proceeds of the sale of the bonds and the revenues of the sewage disposal system or systems and of any sewer improvements to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and

restrictions as it may determine. All expenses incurred in carrying out the provisions of such ordinance or resolution may be treated as a part of the cost of operation.

(3) If so provided in the ordinance or resolution authorizing the issuance of any sewer revenue bonds under the provisions of this chapter, the annual installment of any unpaid special assessment levied under the provisions of §184.05 and the interest thereon may be included in the first bill which may be rendered by the municipality after such installment shall become due and payable for water supplied to the premises for which such special assessment shall have been levied, and if the amount so included shall not be paid within thirty days from the rendition of such bill, the municipality shall, if so provided in such ordinance or resolution, discontinue supplying water to such premises and disconnect the same from the waterworks system of the municipality. In case any of the proceeds of sewer revenue bonds issued under the provisions of this chapter shall be applied to the payment of all or a part of the cost of constructing or reconstructing any such sewer improvements, such special assessments and the proceeds of the collection thereof shall be pledged to the payment of the principal of and the interest on such sewer revenue bonds or any sewer revenue refunding bonds which may be issued to refund such bonds.

(4) The ordinance or resolution providing for the issuance of sewer revenue bonds may also contain such limitations upon the issuance of additional sewer revenue bonds as the council may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such ordinance or resolution.

(5) No sewer revenue bonds shall be issued under the authority of this chapter unless the council shall have theretofore found and determined (a) the estimated cost of the sewage disposal system or systems and of the sewer improvements, if any, on account of which such bonds are to be issued, (b) the estimated annual revenues of such sewage disposal system or systems, and of such sewer improvements and other special funds, if any, pledged for the payment of the principal of and interest on such sewer revenue bonds, and (c) the estimated annual cost of maintaining, repairing and operating such system or systems, nor unless it shall appear from such estimates that the annual revenues, together with the other special funds to be pledged for the payment of the principal of and interest on said bonds, will be sufficient to pay such cost of maintenance, repair and operation and the interest on such bonds and the principal thereof as such interest and principal shall become due.

(6) If the approval of the issuance of sewer revenue bonds at an election shall be required by the constitution of the state, such election shall be called, noticed and conducted, and the result thereof determined and declared in the manner required by law for the issuance of bonds of the municipality; but if an election be not required by the constitution and nevertheless be held, it may be called, noticed and conducted, and the result thereof determined and declared, in such manner as the council may provide by resolution.

History.—§8, ch. 26919, 1951; (1), (5) §5, ch. 59-361.

184.09 Sewer service charges; revenues.—(1) (a) The council shall, in the ordinance or resolution providing for the issuance of sewer revenue bonds, fix the initial schedule of rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, the sewage disposal system or systems, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or use any such sewage disposal system or systems by or through any part of the sewer system of the municipality. After the system or systems shall have been in operation the council may revise such schedule of rates, fees and charges from time to time. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (a) to pay the cost of maintaining, repairing and operating the system or systems, including reserves for such purpose and for replacements and depreciation and necessary extensions, (b) to pay the principal of and the interest on the sewer revenue bonds as the same shall become due and reserves therefor, and (c) to provide a margin of safety for making such payments. The municipality shall charge and collect the rates, fees and charges so fixed or revised, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the state or of any sanitary district or other political subdivision of the state.

(b) Such rates, fees and charges shall be just and equitable, and may be based or computed either upon the quantity of water supplied or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

(c) Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than the water system of the municipality may be determined by gauging or metering or in any other manner approved by the council.

(d) In cases where the character of the

sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewage disposal system, an additional charge may be made therefor, or the council may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the council before discharging such sewage into any sewer lines owned or maintained by the municipality.

(2) In lieu of or in addition to levying special assessments upon benefited property on account of the construction or reconstruction of sewer improvements under the provisions of §184.05, the municipality may charge and collect such rates, fees and charges for the services and facilities furnished or to be furnished by such sewer improvements to premises connected therewith as may be just and equitable, taking into account the total amount of bonds authorized for such sewer improvements and the amount of such special assessments, if any.

(3) No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all of the users of the sewage disposal system or systems and owners, tenants or occupants of property served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the council of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of such public hearing, setting forth the proposed schedule or schedules of rates, fees and charges, shall be given by one publication in a newspaper published in the municipality at least ten days before the date fixed in such notice for the hearing, which may be adjourned from time to time. After such hearing such preliminary schedule or schedules, either as originally adopted or as modified or amended, shall be adopted and put into effect, and thereupon the ordinance or resolution providing for the issuance of sewer revenue bonds may be finally adopted. A copy of the schedule or schedules of such rates, fees and charges finally fixed in such ordinance or resolution shall be kept on file in the office of the clerk of the municipality and shall be open to inspection by all parties interested. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional properties thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or revision of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided, but if such change or revision be made substantially pro rata as to all classes of service no hearing or notice shall be required.

History.—§9, ch. 26919, 1951.

184.10 Collection of charges.—

(1) Upon the construction of a sewage disposal system and the financing of such construction by the issuance of sewer revenue bonds under the provisions of this chapter the owner, tenant or occupant of each lot or parcel of land within the municipality which abuts upon a street or other public way containing a sanitary sewer served or which may be served by such sewage disposal system and upon which lot or parcel a building shall have been constructed for residential, commercial or industrial use, shall, if so required by the rules and regulations of the council or by ordinance, connect such building with such sanitary sewer, and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the council, which rules and regulations may provide for a charge for making any such connection in such reasonable amount as the council may fix and establish.

(2) The council may provide in the ordinance or resolution authorizing the issuance of sewer revenue bonds under the provisions of this chapter that the charges for the services and facilities furnished by any sewage disposal system or sewer improvements constructed or reconstructed by the municipality under the provisions of this chapter shall be included in bills rendered for water supplied to the premises, and that if the amount of such charges so included shall not be paid within thirty days from the rendition of any such bill, the municipality shall discontinue supplying water to such premises and shall disconnect the same from the waterworks system of the municipality. Any such ordinance or resolution may include any or all of the following provisions, and may require the council to adopt such ordinances or resolutions or take such other lawful action as shall be necessary to effectuate such provisions, and the council is hereby authorized to adopt such ordinances or resolutions and to take such other action:

(a) That the municipality may require the owner, tenant or occupant of each lot or parcel of land within the municipality who is obligated to pay the rates, fees or charges for the services and facilities furnished by any sewage disposal system or sewer improvements constructed or reconstructed by the municipality under the provisions of this chapter to make a reasonable deposit with the municipality in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent.

(b) That if any rates, fees or charges for the services and facilities furnished by any sewage disposal system or sewer improvements constructed or reconstructed by the municipality under the provisions of this chapter or any installment of special assessments levied

on account of the construction or reconstruction of any sewer improvements hereunder, shall not be paid within thirty days after the same shall become due and payable, the municipality may at the expiration of such thirty day period disconnect the premises from the sewer system, and the municipality may proceed to recover the amount of any such delinquent rates, fees or charges or installments of special assessments, with interest, in the action of assumpsit.

(c) That if any installment of special assessments levied on account of the construction or reconstruction of any sewer improvements under the provisions of this chapter shall not be paid within thirty days after the same shall become due and payable, and such sewer improvements provide sewer facilities for premises served by the waterworks system of the municipality, the municipality at the expiration of such thirty day period shall discontinue supplying water to such premises and shall disconnect the same from the waterworks system of the municipality.

(d) That if any rates, fees or charges for the use and services of any sewage disposal system or sewer improvements by or in connection with any premises not served by the waterworks system of the municipality, or any installment of special assessments levied on account of the construction or reconstruction of any such sewer improvements, shall not be paid within thirty days after the same shall become due and payable, the owner, tenant or occupant of such premises shall cease to dispose of sewage or industrial wastes originating from or on such premises by discharge thereof directly or indirectly into the sewer system of the municipality until such rates, fees or charges or installment of special assessments, with interest, shall be paid; that if such owner, tenant or occupant shall not cease such disposal at the expiration of such thirty day period it shall be the duty of any public or private corporation, board, body or person supplying water to or selling water for use on such premises within five days after the receipt of notice of such delinquency from the municipality; and that if such public or private corporation, board, body or person shall not, at the expiration of such five day period, cease supplying water to or selling water for use on such premises, then the municipality may, unless it has theretofore contracted to the contrary, shut off the supply of water to such premises.

(e) That the municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or facilities of the municipality for the shutting off and discontinuing of the supply of water to such premises as long as any charges for the sewer service or facilities of the municipality are unpaid, under such terms and conditions as shall be mutually agreed upon, including provisions for the billing and collecting of the sewer charges of the municipality by the owners of the water facilities at the same time water charges are billed and collected by such owners of the water facilities.

History.—§10, ch. 26919, 1951; (2) (e) n. §6, ch. 59-361.

184.11 Application of revenues. — (1) All revenues derived from any sewage disposal system or systems or sewer improvements for which a single issue of sewer revenue bonds shall be issued, except such part thereof as may be required to pay the cost of maintaining, repairing and operating such system or systems and to provide reserves therefor as may be provided in the ordinance or resolution authorizing the issuance of such sewer revenue bonds, and the proceeds of all special assessments pledged to the payment of the principal of and the interest on such sewer revenue bonds, shall be set aside at such regular intervals as may be provided in such ordinance or resolution and deposited for the credit of the following separate funds for the following purposes:

(a) a sinking fund for the payment of the interest on and the principal of such sewer revenue bonds as the same shall become due, and any premium upon bonds retired by call or purchase before their maturity or respective maturities, including the accumulation of a reserve for such purpose; and

(b) a fund for anticipated renewals and replacements and extraordinary repairs.

(2) The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be provided in the ordinance or resolution authorizing the issuance of the sewer revenue bonds and, except as may otherwise be provided in such ordinance or resolution, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

(3) The council shall cause to be made at least once each year a comprehensive report of the operations of the sewage disposal system or systems and sanitary sewers, if any, including all matters relating to rates, revenues, proceeds of any special assessments, expenses of maintenance, repair and operation and of renewals and replacements, principal and interest requirements and the status of all funds. Copies of such annual report shall be filed with the treasurer of the municipality, and shall be open to the inspection of all interested persons.

History.—§11, ch. 26919, 1951.

184.12 Trust funds. — All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The ordinance or resolution authorizing the issuance of bonds shall provide that any officer to whom, or any bank, trust company or

other fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such ordinance or resolution may provide.

History.—§12, ch. 26919, 1951.

184.13 **Remedies.**—Any holder of bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the ordinance or resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance or resolution, and may enforce and compel the performance of all duties required by this chapter or by such ordinance or resolution to be performed by the municipality or by the council or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the services and facilities furnished by the sewage disposal system or systems and any sewer improvements and the levying and collecting of any special assessments.

History.—§13, ch. 26919, 1951.

184.14 **Pledge of surplus water revenues.**—The council is hereby authorized and empowered to pledge all or any part of the revenues of the waterworks system of the municipality, subject to all prior pledges of such revenues, to the payment of the costs of maintaining, repairing and operating any sewage disposal system or systems for the construction of which sewer revenue bonds shall have been issued under the provisions of this chapter, or to the payment of the principal of and the interest on such sewer revenue bonds.

History.—§14, ch. 26919, 1951.

184.15 **Sewer revenue refunding bonds.**—The council is hereby authorized to provide by ordinance or resolution for the issuance of sewer revenue refunding bonds of the municipality for the purpose of refunding any sewer revenue bonds then outstanding and issued under the provisions of this chapter. The council is further authorized to provide by ordinance or resolution for the issuance of sewer revenue bonds of the municipality for the combined purpose of (a) paying the cost of any extension, addition or reconstruction of a sewage disposal system or systems or sanitary sewers or the cost of a new sewage disposal system or systems or sanitary sewers, and (b) refunding sewer revenue bonds of the municipality which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the municipality and of the council with respect to the same, shall be governed by the foregoing provisions of this chapter in so far as the same may be applicable.

History.—§15, ch. 26919, 1951.

184.16 **Combination of water and sewer systems.**—The council is hereby authorized and empowered to combine the waterworks and sewer systems of the municipality for financing purposes, and to issue water and sewer revenue bonds of the municipality, at one time or from time to time, for the combined purposes of (a) refunding any water revenue bonds or certificates of the municipality which shall then be outstanding and for the payment of which any part of the revenues of the waterworks system shall be pledged or for such purpose and for constructing any extensions, additions, renewals or replacements of such system, and (b) any one or more of the purposes specified in §184.06. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the municipality and of the council with respect thereto, shall be governed by the foregoing provisions of this chapter in so far as the same may be applicable; provided, however, that it shall not be necessary to hold any public hearing upon the rates charged for water furnished by the waterworks system of the municipality, and the rates charged for water shall be so fixed and revised as to provide funds sufficient at all times to pay the cost of maintaining, repairing and operating the waterworks system, including reserves for such purpose and for replacements and depreciation, and to pay the principal of and the interest on that amount of such bonds as shall be issued on account of such waterworks system.

History.—§16, ch. 26919, 1951.

184.17 **Exemption of property from taxation.**—As proper facilities for the collection, treatment, purification and disposal of sewage are essential for the health of the inhabitants of the municipality and for its industrial and commercial development, and as the exercise of the powers conferred by this chapter to effect such purposes constitutes the performance of essential municipal functions, and as the sewer system of the municipality, including any sewage disposal system or systems constructed under the provisions of this chapter, constitutes public property and is used for municipal purposes, the municipality shall not be required to pay any taxes or assessments upon any such sewage disposal system or any part thereof, whether located within or without the territorial boundaries of the municipality.

History.—§17, ch. 26919, 1951.

184.18 Alternative method. — This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. This chapter being necessary for the welfare of the inhabitants of the municipalities in the state, shall be liberally construed to effect the purposes thereof.

History.—§18, ch. 26919, 1951.

184.191 Chapter applicable to all counties.— This chapter shall apply to all municipalities in all counties in the state.

History.—§7, ch. 59-361.

184.20 Publication of notice.—If no newspaper is published in a municipality acting under the terms and provisions of this chapter, the requirements herein contained for the publication of any and all notice or notices shall be complied with if said publication is made for the required time or times in a newspaper published in the county in which said municipality is located, and if no newspaper is published in either said municipality or said county, then said publication of said notice or notices shall be had by posting same at the city hall or at the regular meeting place of the governing body of said municipality if said municipality has no city hall.

History.—§21, ch. 26919, 1951.

184.21 Additional pledge of excise taxes.— Any municipality may pledge the proceeds of utilities services taxes, cigarette taxes, or franchise taxes, as defined herein, or any other excise taxes or other funds which such municipality is authorized to levy and collect or will have available, as additional security for the payment of the principal of and interest on any revenue bonds or general obligation bonds issued hereunder, or for reserves for such debt service. In the event of the pledge of such utilities services taxes, cigarette taxes, franchise taxes, or other excise taxes as provided herein, such pledge shall be and constitute a valid and legally binding contract between the municipality and the holders of such revenue bonds or general obligation bonds, as the case may be, and the municipality shall be obligated to continue the levy and collection of such utilities services taxes, cigarette taxes, franchise taxes, or other excise taxes in accordance with the proceedings which authorize the issuance of the revenue bonds or general obligation bonds for which such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes are so pledged as additional security as long as any of said revenue bonds or general obligation bonds are outstanding and unpaid. It shall be the mandatory duty of the municipality, when it has so pledged any utilities services taxes, cigarette taxes, franchise taxes or other excise taxes as additional security for such revenue bonds or general obligation bonds, to continue the levy and collection of such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes in the manner provided in the proceedings authorizing the issuance of the bonds for which the same are pledged, and to raise the rates of such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes to the maximum rates permitted by the statutes or franchises in effect at the time of the authorization of such bonds to the full extent necessary to comply with such proceedings authorizing the issuance of such bonds. The state does hereby covenant with the holders of such bonds that it will not repeal or impair, or amend in any manner which will materially and adversely affect the rights of such holders, the duty and obligation and power of the municipality to levy and collect such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes in accordance with the proceedings authorizing the issuance of such bonds.

History.—§8, ch. 59-361.

CHAPTER 185

MUNICIPAL POLICE OFFICERS RETIREMENT TRUST FUND; POLICEMEN GENERALLY

185.01 Legislative declaration.—It is hereby found and declared by the legislature that police officers as hereinafter defined perform both state and municipal functions; that they make arrests for violations of state traffic laws on public highways; that they keep the public peace; that they conserve both life and property and that their activities are vital to public welfare of this state. Therefore the legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers as hereinafter defined.

History.—§1, ch. 28230, 1953.

185.02 Definitions.— The following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Police officer" means full-time police officers who receive compensation from municipal funds of any incorporated municipality of the state for services rendered.

(2) "Average final compensation" means the average cash compensation of a police officer during his last ten years of contributing service.

(3) "Salary" means the total cash remuneration paid to a police officer for services rendered.

(4) "Casualty insurance" means automobile public liability and property damage insurance to be applied at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at the place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; plate glass insurance.

(5) In determining the aggregate number of years of service of any police officer, the time spent in the military service of the United States or United States merchant marine by the police officer on leave of absence for such reason shall be added to the years of service, provided, however, that to receive credit for such service the police officer must have reentered the municipality's police service within one year of date of release from service.

(6) Otherwise aggregate number of years of service with the municipality means the total number of years, and fractional parts of years, of service of any police officer, omitting intervening years and fractional parts of years, when such police officer may not be employed by the municipality. Provided, however, that no police officer will receive credit for years or fractional parts of years of service for which he has withdrawn his contributions to the fund for those years or fractional parts of years of service; and provided further that no credit will be given for service after the normal retirement date. Further providing that a police officer may voluntarily leave his contributions in the fund for a period of five years after leaving the employ of the police department, pending the possibility of his being rehired by the same department, without losing credit for the time he has participated actively as a police officer. Should he not be re-employed as a police officer, with the same department, within five

years, his contributions shall be returned to him without interest.

History.—§11, ch. 28230, 1953; (4) n. §1, ch. 29825, 1955; (5) and (6) n. §1, ch. 59-320; (2) and (6) §1, ch. 61-85.

185.03 Municipal police officers' retirement trust fund created.—There may be hereby created a special fund to be known as the municipal police officers' retirement trust fund, exclusively for the purposes provided in this chapter, in each incorporated city or town of this state, heretofore or hereafter created, which now has or which may hereafter have a regularly organized police department, and which now owns and uses or which may hereafter own and use equipment and apparatus of a value exceeding five hundred dollars in serviceable condition, for the prevention of crime and for the preservation of life and property, and which city or town does not presently have established by law a similar fund.

History.—§1, ch. 28230, 1953; §2, ch. 29825, 1955; §2, ch. 61-119.

185.04 Actuarial deficits not state obligations.—Actuarial deficits, if any, arising under this chapter shall not be the obligation of the state.

History.—§1b, ch. 28230, 1953.

185.05 Board of trustees; members, terms of office.— In each municipality described in §185.03, there is hereby created a board of trustees of the municipal police officers' retirement trust fund. The board of trustees shall consist of the mayor, or corresponding officer when the municipality does not have a mayor, the chief of the police department, and two regularly employed policemen of the municipality to be chosen by the legislative body of the municipality upon recommendation of a majority of the regularly employed policemen of the municipality, and one resident of the municipality to be appointed by the legislative body of the municipality. The mayor, or corresponding officer, and the chief of the police department shall serve as long as they shall continue to hold office as mayor or chief respectively, and upon a vacancy in the office of mayor or chief, their respective successors shall succeed to the position of trustees; and each of the policemen shall be trustee for a period of two years, unless he sooner leaves the employment of the municipality as a policeman, whereupon the legislative body of the municipality upon recommendation of a majority of the regularly employed policemen thereof, shall choose his successors; the resident member shall be a trustee for a term of two years and may succeed himself in office. The mayor shall be the chairman of the board. The board of trustees shall elect one of its members as secretary of the board. The secretary of the board shall keep a complete minute book of the proceedings of the board. The trustees shall not receive any compensation as such.

History.—§2, ch. 28230, 1953; §2, ch. 59-320; §2, ch. 61-119.

185.06 Powers of board of trustees. — The board of trustees may:

(1) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund shall be entitled under the provisions of this chapter, and pay the initial and subsequent premiums thereon.

(2) Invest and reinvest the assets of the retirement trust fund in:

(a) Time or savings accounts of a national bank, a state bank insured by the federal deposit insurance corporation, or a savings and loan association insured by the federal savings and loan insurance corporation.

(b) Obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(c) County bonds containing a pledge of the full faith and credit of the county or district involved, provided that such bonds are approved by the state board of administration as to legal and fiscal sufficiency, bonds of the Florida development commission, or any other state agency, which have been approved as to legal and fiscal sufficiency by the state board of administration.

(d) Obligations of any municipal authority issued pursuant to the laws of this state, provided, however, that for each of the five years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than one and one-half times its average annual fixed-charges requirement over the life of its obligations.

(3) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, and be signed by the chairman and secretary and shall state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund.

(4) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

(5) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(6) Convert into cash any securities of the fund.

(7) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(8) The general administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees. The board of trustees shall

keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.

History.—§3, ch. 28230, 1953; §1, ch. 57-118; (1), (2) and (4), (8) n. §3, ch. 59-320; (1), (2), (3), (8) §2, ch. 61-119.

185.061 Use of annuity or insurance policies.—When the board of trustees purchases annuity or life insurance contracts to provide all or part of the benefits promised by this chapter, the following principles shall be observed:

(1) Only those officers who have been members of the retirement trust fund for one year or longer may be included in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the pension fund as owner of the policy.

(4) Policies shall be written on an annual-premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal monthly retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating officer shall be at least equivalent to the return of the officer's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the employee's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating officer does not receive cash values and other benefits under the policies assigned to him which exceed the present value of his vested interest under the retirement plan, inclusive of his contribution to the plan, the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The police officer shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefit or proceeds and the method of the settlement of the death benefit or proceeds, or requesting a change in the beneficiary, designation or method of settlement previously made, subject to the terms of the policy or policies on his life. Upon receipt of such written instructions, the board of trustees shall take the necessary steps to effectuate the designation or change of beneficiary or settlement option.

History.—§4, ch. 59-320; (1) §2, ch. 61-119.

185.07 Creation and maintenance of fund.—The municipal police officers' retirement trust fund in each municipality described in §185.03 shall be created and maintained in the following manner:

(1) By the net proceeds of the one per cent excise or license tax which may be imposed by the respective cities and towns upon certain casualty insurance companies on their gross receipts of premiums from holders of policies which policies cover property within the corporate limits of such municipalities as is hereinafter expressly authorized.

(2) By five per cent of the salary of each full time policeman duly appointed and enrolled as a member of such police department, which shall be deducted by the municipality and paid over to the board of trustees of the retirement trust fund wherein such policeman is employed, provided that no deductions shall be made after an officer has passed his normal retirement date. A full time police officer participating in the old age and survivors insurance of the federal social security law, and/or municipal police officers' retirement trust fund, may limit his contributions to the municipal police officers' retirement trust fund to three per cent of salary and receive reduced benefits as set forth in §§185.16(2) and 185.18(5). No police officer shall have any right to said money so paid into said fund except as provided in this chapter.

(3) By all fines and forfeitures imposed and collected from any policeman because of the violation of any rule and regulation promulgated by the board of trustees.

(4) By payment by municipality or other sources of a sum equal to the normal cost and the amount required to fund over a forty year basis any actuarial deficiency shown by a quinquennial actuarial valuation. The first such actuarial valuation shall be conducted for the calendar year ending December 31, 1963.

(5) By all gifts, bequests and devises when donated for the fund.

(6) By all accretions to the fund by way of interest on bank deposits or otherwise.

(7) By all other sources of income now or hereafter authorized by law for the augmentation of such municipal police officers' retirement trust fund.

History.—§4, ch. 28230, 1953; (4) §3, ch. 29825, 1955; (2) and (4) §5, ch. 59-320; (2), (7) §2, ch. 61-119.

185.08 One per cent excise tax on casualty insurance premiums authorized; procedure.—

(1) Each incorporated city or town in this state described and classified in §185.03, as well as each other city or town of this state which on July 31, 1953, has a lawfully established municipal police officers' retirement trust fund or city fund providing pension or relief benefits to policemen by whatever name

known, may assess and impose on every insurance company, corporation or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of casualty insurance as shown by the records of the state treasurer in his capacity as state insurance commissioner, an excise or license tax in addition to any lawful license or excise tax now levied by each of the said towns respectively, amounting to one per cent of the gross amount of receipts of premiums from policy holders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(2) In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, thirty per cent of such premium shall be used as the basis for the one per cent tax above.

(3) Said excise or license tax shall be payable annually March 1 of each year after the passing of an ordinance assessing and imposing the tax herein authorized. Every insurance company, corporation or other insurer paying such tax shall receive credit for the amount thereof, when paid, on the amount payable by such insurer to the state for the similar state excise tax now imposed by other provisions of law; provided, however, that this chapter shall not be construed to require the payment of an excise tax by an insurance company that does not now pay such tax.

History.—§5, ch. 28230, 1953; §2, ch. 61-119; §1, ch. 63-196.

185.09 Report of premiums paid; date tax payable.—Whenever any city or town shall pass an ordinance assessing and imposing the tax authorized in §185.08, a certified copy of such ordinance shall be deposited with both the comptroller and the treasurer of the state and thereafter every insurance company, corporation or other insurer carrying on the business of casualty insuring on or before the succeeding March 1 after date of the passage of said ordinance shall report fully in writing to the comptroller and to the treasurer, as insurance commissioner, a just and true account of all premiums received by such insurer for casualty insurance policies covering or insuring any property located within the corporate limits of such municipality during the period of time elapsing between the date of the passage of said ordinance and the succeeding March 1. The aforesaid insurer shall annually thereafter, on March 1, file with the same officers, a similar report covering the preceding year's premium receipts. Every such insurer shall, at the time of making such report, pay to the state treasurer the amount of the tax heretofore mentioned. Every insurer engaged in carrying on a general casualty insurance business in the state, as shown by the records of the state treasurer as insurance commissioner, shall keep accurate books of account of all such business done by it within the limits of such incorporated municipality in such a manner as to be able to comply with the provisions of this chapter. The treasurer shall furnish to any municipality requesting the same a copy of any of the reports filed by insurers under this section.

History.—§6, ch. 28230, 1953; §2, ch. 61-85.

185.10 Treasurer to keep accounts of deposits; disbursements.—The treasurer of the state shall keep a separate account of all moneys collected for each city and town under the provisions of this chapter and any and all moneys so collected, after deducting the necessary expense incurred by the treasurer as insurance commissioner of the state, in carrying out the provisions of this chapter, shall be paid into the state treasury in a special fund known as the "municipal police officers' retirement trust fund" which said special fund is hereby created for the reception of the same. The comptroller shall on or before June 1 of each year, and at such other times as the state treasurer may elect, draw his warrant on the state treasurer for the full net amount of money then within the state treasury in the municipal police officers' retirement trust fund specifying the cities or towns to which said moneys shall be paid and the net amount collected for and to be paid to each city or town, respectively, which said sums payable to said cities or towns are hereby appropriated annually out of the municipal police officers' retirement trust fund. Said warrants of said comptroller shall be countersigned by the governor and shall be payable to the cities or towns, respectively, entitled to receive the same, and shall be remitted annually by the comptroller to such cities and towns.

History.—§7, ch. 28230, 1953; §2, ch. 29734, 1955; §2, ch. 61-119.

185.11 Funds received by municipalities, deposit in retirement trust fund.—All funds received by any city or town under the provisions of this chapter, shall be by said town paid immediately into its municipal police officers' retirement trust fund or into its pension fund for policemen, where such latter fund exists.

History.—§8, ch. 28230, 1953; §2, ch. 61-119.

185.12 Payment of municipal tax credit on state tax.—The tax herein authorized shall in no wise be additional to the similar state excise or license tax imposed by part IV, chapter 624, but the payer of the tax hereby authorized shall receive credit therefor on his said state excise or license tax and the balance of said state excise or license tax shall be paid to the state treasurer as is now provided by law.

History.—§9, ch. 28230, 1953; §3, ch. 61-85.

185.13 Failure of insurer to comply with chapter; penalty.—Should any insurance company, corporation or other insurer fail to comply with the provisions of this chapter, on or before the first day of March in each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be cancelled and revoked by the state treasurer, and it is unlawful for any such insurance company, corporation or other insurer to transact any business thereafter in this state

unless such insurance company, corporation or other insurer shall be granted a new certificate of authority to transact business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued.

History.—§10, ch. 28230, 1953.

185.14 Contributions.—Except as provided in §§185.07(2) and 185.15, the municipal officer or board paying salaries to police officers entitled to the benefit of this chapter shall deduct five per cent from each installment of salary of each police officer so long as such police officer shall hold office, or be employed. Said amount so deducted shall be deposited in a special fund hereby established in the municipal treasury, to be known as the municipal police officers' retirement trust fund.

History.—§12, ch. 28230, 1953; §6, ch. 59-320; §4, ch. 61-85; §2, ch. 61-119.

185.15 Contributions; new employees.—Any person who enters the employment of any incorporated municipality of the state as a police officer after July 31, 1953 and who does not desire to accept the provisions of this chapter shall, within twelve months after employment, notify the officer or board paying the salary of such police officer, in writing, to that effect. Thereupon, it shall be the duty of the board of trustees to refund from the municipal police officers' retirement trust fund the full amount, without interest, withheld from such police officer's salary and deposited in such fund. Thenceforward no withholding shall be made from such salary and all police officers who have given such notice shall be barred from participating in the retirement system.

History.—§13, ch. 28230, 1953; §2, ch. 57-118; §6, ch. 59-320; §2, ch. 61-119.

185.16 Requirements for retirement.—Any police officer who has attained the age of sixty years, or more, and who at such time has completed at least ten years of service as a police officer and for such period has been a member of the retirement fund, is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the city on or after the normal retirement date. In such event, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each police officer will be the first day of the month coincident with or next following the date on which he has attained the age of sixty years and has completed ten years service. A police officer who retires after his normal retirement date will upon actual retirement be entitled to receive the same amount of monthly retirement income that he would have received had he retired on his normal retirement date.

(2) The amount of the monthly retirement income payable to a police officer who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by one and sixty-seven hundredths per cent of his average final compensation. If the police officer has been contributing only three per cent of salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by one per cent of his average final compensation. The retirement income will be reduced for moneys received under the disability provisions of this chapter.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officer's normal retirement date, or on the first day of the month coincident with or next following his actual retirement, if later, and the last payment will be the payment due next preceding the police officer's death; except that, in the event the police officer dies after his retirement but before he has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the police officer for the balance of such ten year period, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law or estate of the police officer, as provided in §185.162. If a police officer continues in the service of the city beyond his normal retirement date and dies prior to his date of actual retirement, without an option made pursuant to §185.161 being in effect, monthly retirement income payments will be made for a period of ten years to a beneficiary (or beneficiaries) designated by the police officer as if the police officer had retired on the date on which his death occurred, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law or estate of the police officer, as provided in §185.162.

(4) Early retirement under the plan is retirement from the service of the city, with the consent of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which he has both attained the age of fifty years and completed ten years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

(a) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the city under the provisions of this section prior to his normal retirement date.

(b) The monthly amount of retirement income payable to a police officer who retires prior to his normal retirement date under the provisions of this section shall be an amount computed as described in subsection (2), taking into account his credited service to his date of actual retirement and his final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments.

(c) The retirement income payable in the

event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before he has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary designated by the police officer for the balance of such ten year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such ten year period shall be payable as provided in §185.162.

History.—§14, ch. 28230, 1953; (3)-(7) n. §4, ch. 29825, 1955; §6, ch. 59-320; (2) §5, ch. 61-85; (4) §2, ch. 63-196.

185.161 Optional forms of retirement income.—

(1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in §185.16, a police officer, upon written request to the board of trustees and submission of evidence of good health (except that such evidence will not be required if such request is made at least three years prior to the date of commencement of retirement income or if such request is made within six months following the effective date of the plan, if later), and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(a) A retirement income of larger monthly amount, payable to the police officer for his lifetime only;

(b) A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of either of them, one hundred per cent, sixty-six and two-thirds per cent, or fifty per cent of such monthly amount payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

The police officer upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his death, and will have the power to change such designation from time to time but any such change shall be deemed a new election and will be subject to approval by the pension committee. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint pensioner or beneficiary and his retirement income benefits have commenced, he may thereafter change his designated joint pensioner or beneficiary but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him is alive when he files with the board of trustees his request for such change. The consent of a police officer's joint pensioner or beneficiary to any such change shall not be required. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the police officer upon the designation of a new joint pensioner shall be actuarially redetermined taking into account the ages and sex of the former joint pensioner, the new join pensioner, and the police officer. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his retirement, shall be paid as provided in §185.162.

(2) Retirement income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:

(a) If a police officer dies prior to his normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under §185.21.

(b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer's retirement under the plan, the option elected will be cancelled automatically and a retirement income of the normal form and amount will be payable to the police officer upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the police officer prior to his retirement and within ninety days after the death of the beneficiary.

(c) If both the retired police officer and the beneficiary (or beneficiaries) designated by him die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1)(c), the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum, and in accordance with §185.162.

(d) If a police officer continues beyond his normal retirement date pursuant to the provisions of §185.16 (1), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which his death occurred.

History.—§7, ch. 59-320.

185.162 Beneficiaries.—

(1) Each police officer may, on a form, pro-

vided for that purpose, signed and filed with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation or beneficiary form.

(2) If a deceased police officer failed to name a beneficiary in the manner above prescribed, or if the beneficiary (or beneficiaries) named by a deceased police officer predeceases the police officer, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer may be paid, in the discretion of the board of trustees, either to:

(a) Any one or more of the persons comprising the group consisting of the police officer's spouse, the police officer's descendants, the police officer's parents, or the police officer's heirs at law, and the board of trustees may pay the entire benefit to any member of such group or apportion such benefit among any two or more of them in such shares as the board of trustees, in its sole discretion, shall determine, or

(b) The estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to the power and discretion conferred upon the board of trustees by the preceding sentence shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

History.—§7, ch. 59-320.

185.18 Disability retirement.—

(1) A police officer having ten or more years of credited service and having contributed to the municipal police officers' retirement trust fund for ten years or more may retire from the service of the city under the plan if, prior to his normal retirement date, he becomes totally and permanently disabled as defined in subsection (2), by reason of any cause other than a cause set out in subsection (3), on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (3).

(3) A police officer will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the police officer of drugs, intoxicants or narcotics;

(b) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

(c) Injury or disease sustained by the police officer while serving in any armed forces;

(d) Injury or disease sustained by the police officer after his employment has terminated;

(e) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such employment.

(4) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) The benefit payable to a police officer who retires from the service of the city upon total and permanent disability as a result of a disability commencing prior to his normal retirement date is the monthly income payable for ten years certain and life which can be provided by the single-sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to his date of disability (where the amount of such accrued deferred monthly retirement income is computed by multiplying his number of years of actual credited service as of his date of disability by one and sixty-seven hundredths per cent of his average final compensation). If the police officer has been contributing only three per cent of salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by one per cent of his average final compensation.

(6) The monthly retirement income to which a police officer is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the month following the later to occur of (a) the date on which the disability has existed for six months and (b) the date the board of trustees approves the payment of such retirement income. The last payment will be (a) if the police officer recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or, (b) if the police officer dies without recovering from his disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the one hundred twentieth monthly payment, whichever is later. Any monthly retirement income payments due after

the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in §§185.162 and 185.21.

(7) If the board of trustees finds that a police officer who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the police officer to render useful and efficient service as a police officer.

(8) If the police officer recovers from disability and reenters the service of the city as a police officer, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the plan.

History.—§16, ch. 28230, 1953; §6, ch. 59-320; (1) §6, ch. 61-85; (1) §2, ch. 61-119.

185.19 Separation from municipal service; refunds.—Should any police officer leave the service of the municipality before accumulating aggregate time of ten years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all of his contributions made to the municipal police officers' retirement trust fund without interest, less any benefits paid to him.

Should any police officer who has been in the service of the municipality for at least ten years and has contributed to the municipal police officers' retirement trust fund for at least ten years elect to leave his accrued contributions in the municipal police officers' retirement trust fund, such police officer upon attaining age fifty years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him.

History.—§17, ch. 28230, 1953; §6, ch. 59-320; §7, ch. 61-85; §2, ch. 61-119.

185.191 Lump sum payment of small retirement income.—Notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than thirty dollars or if the single-sum value of the accrued retirement income is less than seven hundred fifty dollars as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

History.—§7, ch. 59-320.

185.21 Death prior to retirement; refunds or death benefits.—Should any police officer die before being eligible to retire under the provisions of this chapter, the heirs, legatees, beneficiaries, or personal representative of such deceased police officer shall be entitled to a refund of one hundred per cent, without interest, of the contributions made to the municipal police officers' retirement trust fund by such deceased police officer; or in the event an annuity or life insurance contract has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefits set forth in §185.061 whichever amount is greater. In event the death benefit paid by a life insurance company exceeds the limit set forth in §185.061 (6) the excess of the death benefit over the limit shall be paid to the municipal police officers' retirement trust fund.

History.—§19, ch. 28230, 1953; §6, ch. 29825, 1955; §3, ch. 57-118; §6, ch. 59-320; §2, ch. 61-119.

185.221 Report to state treasurer.—

(1) Each year by February 1, the chairman or secretary of each municipal police officers' retirement trust fund shall file a report with the state treasurer as insurance commissioner containing the following:

(a) Whether in fact the municipality is within the provisions of §185.03.

(b) A certified statement of accounting for the most recent fiscal year of the municipality showing a detailed listing of assets, and methods used to value them) and a statement of all income and disbursements during the year, such income and disbursements shall be reconciled with the assets at the beginning and end of the year.

(c) A statistical exhibit showing the total number of police officers on the force of the municipality, the number included in the retirement plan and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

(d) A statement of the amount the municipality has contributed to the retirement plan for the year ending with the preceding December 31 and the amount the municipality will contribute to the retirement plan for the current calendar year.

(e) If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this chapter. This report shall also contain information about the insurer, basis of premium rates and mortality table, interest rate and method used in valuing retirement benefits.

(2) By February 1 of each quinquennial year beginning with February 1, 1964, the chairman of each municipal police officers' retirement trust fund shall report to the state treasurer as insurance commissioner such data that the state treasurer needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the state treasurer. The expense of the actuarial

valuation shall be borne by the municipal police officers' retirement trust fund established by §§185.10 and 185.24.

History.—§7, ch. 59-320; §2, ch. 61-119.

185.23 Rules and regulations. — The state treasurer shall make such rules and regulations as are necessary for the effective administration of this chapter.

History.—§20, ch. 28230, 1953.

185.231 Advisory committee.—The state treasurer may appoint annually an advisory committee, to serve for one year, or at his pleasure, consisting of seven members, one of whom shall be from the state treasurer's office, as chairman, to receive such reports as may be brought to its attention and to advise and assist on matters relating to the municipal police officers' retirement trust fund.

History.—§7, ch. 59-320; §2, ch. 61-119.

185.232 Report to legislature.—The state treasurer shall make to each regular session of the legislature a written report on the operation of the municipal police officers' retirement trust fund.

History.—§7, ch. 59-320; §2, ch. 61-119.

185.24 Annual appropriation. — There is hereby annually appropriated to the state treasurer from the moneys collected for each city and town under this chapter the amount necessary to administer efficiently the provisions of this chapter, not to exceed thirty thousand dollars per annum.

History.—§20, ch. 28230, 1953.

185.25 Exemption from execution.—The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

History.—§21, ch. 28230, 1953.

185.27 Roster of retirees.—The secretary of the board of trustees shall keep a record of all persons enjoying a pension under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. And in this book the secretary shall keep a record of all policemen employed by the municipality and a record shall be kept in such manner as to show the name, address and time of employment of such policemen and when such policemen cease to be employed by the municipality.

History.—§23, ch. 28230, 1953.

185.29 City attorney to represent board of trustees.—The city attorney or corporation counsel shall give advice to said board of trustees in all matters pertaining to their duties in the administration of said municipal police officers' retirement trust fund whenever thereunto requested; and he shall represent and defend said board as its attorney in all suits and actions at law or in equity that may be brought against it, and bring all suits and actions in its behalf that may be required or determined upon by said board; provided, however, that if the city attorney should fail or refuse to comply with the request of the board of trustees in this relation, the said board of trustees in their discretion may employ independent legal counsel for such purpose.

History.—§25, ch. 28230, 1953; §2, ch. 61-119.

185.30 Depository for retirement fund.—All funds and securities of the municipal police officers' retirement trust fund shall be deposited with the city treasurer or depository of the city, who shall keep the same in a separate fund, and he shall be liable for the safekeeping of the same, under the bond given by him to the city, and he shall be liable in the same manner and to the same extent as he is liable for the safekeeping of the funds of the city.

History.—§26, ch. 28230, 1953; §2, ch. 61-119.

185.31 Municipalities and boards independent of other municipalities and boards.—In the enforcement and in the interpretation of the provisions of this chapter, each municipality shall be independent of any other municipality and the board of trustees of the municipal police officers' retirement trust fund of each municipality shall function for the municipality which they are to serve as trustees.

History.—§27, ch. 28230, 1953; §2, ch. 61-119.

185.32 Exemptions from chapter.—This chapter shall not apply to any person who is or may become eligible to become a member of any other retirement system provided for by law, or of any retirement system provided for by any ordinance of any incorporated municipality of the state, nor shall this chapter, nor any provisions thereof, be construed as limiting, modifying or enlarging any ordinance of any incorporated municipality of the state; provided, however, that nothing in this chapter shall be construed to bar cities that have adopted the social security plan advanced by the federal government.

History.—§28, ch. 28230, 1953; §19, ch. 29615, 1955.

185.33 Statutes and laws not repealed.—This chapter shall not operate to repeal any section of chapter 175 or 132 or §§25.112, 38.14-38.19, 112.05, 238.01-238.16, nor any retirement laws enacted during the 1953 session of the legislature, nor to affect the rights of any person enjoying the benefits or entitled to enjoy the benefits of such sections or laws.

History.—§29, ch. 28230, 1953.

185.34 Disability in line of duty.—Any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease or hardening of the arteries, resulting in total or partial disability shall be presumed to have been suffered in line of duty unless the contrary be shown by competent evidence, provid-

ed, however, that such police officer shall have successfully passed a physical examination on entering into such service, which examination fails to reveal any evidence of such condition. Nothing herein shall be construed to extend or otherwise affect the provisions of chapter 440, pertaining to workmen's compensation. All laws, including local or special laws, in conflict herewith are repealed.

History.—§§1, 2, ch. 57-340.

185.35 Municipalities having their own pension plans for policemen.—

(1) In order for cities with their own pension plans for policemen or for policemen and other employees to participate in the distribution of the tax fund established in §§185.07, 185.08 and 185.09, their retirement funds must meet each of the following standards:

(a) The plan must be for the purpose of providing retirement and disability income for policemen.

(b) The normal retirement age, if any, shall not be higher than age sixty-five.

(c) If the plan provides for a stated period of service as a requirement to receive a retirement income, that period must not be higher than thirty-five years.

(d) The benefit formula to determine the amount of monthly pension should be equal to at least one-twelfth of one per cent of the officer's total earnings during his period of credited service;

(e) If a ceiling on the monthly payment is stated in the plan, it should be no lower than one hundred dollars.

(f) Death or survivor benefits and disability benefits may be incorporated into the plan as the municipality wishes but in no event should the single-sum value of such benefits as of the date of termination of service because of death or disability exceed

1. One hundred times the estimated normal monthly retirement income, based on assumption that the present rate of compensation continues without change to normal retirement date, or

2. Twice the annual rate of compensation as of the date of termination of service, or

3. The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest; provided, however, that nothing in this subparagraph shall require any reduction in death or disability benefits provided by a retirement plan in effect on July 1, 1959.

(g) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both, and benefits must be determined by a nondiscriminatory formula based upon

1. Length of service and compensation, or

2. Length of service.

(h) If the retirement plan requires participants to contribute toward the cost of the plan, it must set forth the termination rights, if any, of an employee in the event of the separation or withdrawal of an employee before retirement.

(i) An actuarial valuation of the retirement plan must be made at least once in every five years commencing with December 31, 1963, by an actuary who is a member of the society of actuaries, casualty actuarial society, conference of actuaries in public practice, or fraternal actuarial association, and who is selected by the individual municipal police officers' retirement trust fund.

1. Cost of the actuarial valuation must be paid by the individual retirement fund or by the municipality.

2. A report of the valuation, including actuarial assumptions and type and basis of funding shall be made to the state treasurer within three months after the date of valuation. If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the retirement plan benefits to the insured benefits and in addition the name of the insurer, basis of premium rates and the mortality table, interest rate and method used in valuing retirement benefits.

(j) Commencing on July 1, 1964, the municipality shall contribute to the plan annually an amount which together with the contributions from the police officers, the amount derived from the premium tax provided in §185.08 and other income sources will be sufficient to meet the normal cost of the plan and to fund the actuarial deficiency over a period not longer than forty years.

(k) No retirement plan or amendment to a retirement plan shall be proposed without the proposed plan or amendment containing an actuarial estimate of the costs involved.

(l) Each year on or before March 15, the trustees of the retirement plan must submit the following information to the state treasurer in order for the retirement plan of such city to receive a share of state funds for the then current calendar year; when any of these items would be identical with the corresponding item submitted for a previous year it will not be necessary to submit duplicate information but to make reference to the item in such previous year's report:

1. A certified copy of each and every instrument constituting or evidencing the plan.

2. A certified statement of accounting for the most recent fiscal year of the municipality showing (a) a detailed listing of assets and (b) a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

3. A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

4. A statistical exhibit showing the total number of policemen, the number included in the plan and the number ineligible classified according to the reasons for their being ineligible.

5. A statement of the amount the city and other income sources has contributed toward the plan or will contribute toward the plan for the current calendar year.

(2) When a municipality has a policemen's retirement plan which meets the standards set forth in subsection (1), the board of trustees of the pension plan or the official pension committee or agency, may place the income from the premium tax in §185.08 in its existing pension fund for the sole and exclusive use of their policemen (or for firemen and policemen where included), or may use said income to pay extra benefits to the policemen.

(3) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

History.—§7, ch. 59-320; (1)(i) §2, ch. 61-119; (1)(i) §3, ch. 63-196.

185.36 Rights of police officers under former law.—The rights of police officers established or declared by any former provisions of this chapter shall not be impaired nor shall their benefits be reduced by virtue of any provisions of this chapter, provided however that no member may receive the benefits under the former chapter and also be entitled to receive the benefits under this chapter as amended in 1959. Unless an election in writing is made before January 1, 1960, to the board of trustees to remain under the provisions of the former chapter, it shall be conclusively presumed that the provisions of this chapter, as amended, will apply as to all police officers. Members who have retired under the former chapter prior to the enactment of the 1959 law shall continue to receive their benefits under the former chapter. Nothing in this law shall be construed as affecting benefits, due or to become due any police officer under a statutory pension plan.

History.—§7, ch. 59-320.

185.37 Termination of plan and distribution of fund.—Upon termination of the plan for any reason, or upon written notice to the board of trustees that contributions thereunder are being permanently discontinued, the fund shall be apportioned and distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, the maintenance of another or substituted trust fund, by the purchase of insured annuities or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall apportion the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.

(a) Apportionment shall first be made in respect of each retired police officer receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) police officer, and each police officer who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(b) If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each police officer in the service of the city on such date who has completed at least ten years of credited service and who has contributed to the municipal police officers' retirement trust fund for at least ten years and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the police officer's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of §185.19, who has not, by such date, reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under §185.19, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(c) If there be an asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each police officer in the service of the city on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to his total contributions to the plan to date of termination, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amounts shall be proportionately re-

duced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(d) In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b) and (c), such excess shall be returned to the city, less return of state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan such excess shall be divided proportionately to the total contributions made by the city and the state.

(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts apportioned under subsection (3).

History.—§8, ch. 61-85; (3)(b) §2, ch. 61-119; (3)(c) and (d) §4, ch. 63-196.

CHAPTER 186

MODEL TRAFFIC ORDINANCE FOR MUNICIPALITIES

186.01 Short title.—This ordinance may be known and cited as the "Florida model traffic ordinance."

History.—§193, Ch. 57-333.

186.02 Authority to adopt the Florida model traffic ordinance by reference.—Any incorporated municipality may by ordinance adopt, by reference, any or all of the provisions of the Florida model traffic ordinance without setting forth such provisions in full. Nothing in this section shall be deemed to relieve the municipality from the requirement of publication, but such publication shall be fully and completely carried out by publishing only the enacting ordinance, and sections of the Florida model traffic ordinance incorporated in the enacting ordinance by reference need not be published in full.

History.—§1, Ch. 57-333.

186.03 Definitions.—The following words and phrases when used in this ordinance shall for the purpose of this ordinance have the following meanings, except where the context clearly indicates a different meaning.

(1) ALLEY.—Every street or way within a block set apart for public use, vehicular travel, and local convenience, except foot paths.

(2) AUTHORIZED EMERGENCY VEHICLE.—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations, or private ambulance companies, or such others as are designated or authorized by the council or other governing body, chief of police of this municipality, or by other governmental agency.

(3) BICYCLE.—Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is over 20 inches in diameter, (and including any device generally recognized as a bicycle though equipped with two front or two rear wheels).

(4) BUS.—Every public motor vehicle designed for carrying more than 7 passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(5) BUS STAND.—A fixed area in the roadway parallel and adjacent to the curb to be occupied exclusively by buses for layover in operating schedules or waiting for passengers.

(6) BUSINESS DISTRICT.—The territory contiguous to a street when 50% or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

(7) CENTER OR CENTER LINE.—A continuous or broken line marked upon the surface of a roadway by paint or otherwise to indicate each portion of the roadway allocated to traffic proceeding in the two opposite directions, and if the line is not so painted or otherwise marked, it is an imaginary line in the roadway equally distant from the edges or curbs of the roadway.

(8) COMMERCIAL VEHICLE.—Every vehicle designed, used or maintained primarily for the transportation of property.

(9) COMMON CARRIER.—The term "regular common carrier of passengers" shall mean

all common carriers of passengers operating between fixed termini, over regular routes and on fixed schedules.

(10) COUNCIL.—The governing body of cities of the first and second class.

(11) CROSSWALK.—That portion of a roadway ordinarily included with the prolonged or connection of the lateral lines of sidewalks at intersections, or a portion of a roadway distinctly indicated for pedestrian crossing by lines or other marking on the surface.

(12) CURB LOADING ZONE.—A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

(13) DOUBLE PARKING OR DOUBLE STANDING, OR DOUBLE STOPPING.—The parking, standing, or stopping of a vehicle upon the roadway side of another vehicle parking, standing, or stopping, but not legally within, or adjacent to an open parking space.

(14) DRIVER.—Every person who drives or is in actual physical control of a vehicle.

(15) FARM TRACTOR.—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(16) FREIGHT CURB LOADING ZONE.—A space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight.

(17) HOLIDAYS.—Where used in this ordinance or on official signs erected by authorized official agencies shall in addition to Sundays mean those entire days declared by law of the state to be legal holidays, to wit: New year's day, Robert E. Lee day, Washington's birthday, Confederate memorial day, Memorial day, Jefferson day, Independence day, Labor day, Columbus day, Good Friday, General election day, Armistice day, Thanksgiving day, and Christmas day.

(18) INTERSECTION.—

(a) The area embraced within the prolongation of the lateral curb lines, or, if none, then the lateral boundary lines of two or more roadways which join one another at an angle, whether or not one such roadway crosses the other.

(b) Where a street includes two roadways 30 feet or more apart then every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event such intersecting street also includes two roadways 30 feet or more apart, then every crossing of two roadways of such streets shall be regarded as a separate intersection.

(19) LANED ROADWAY.—A roadway the bed of which is divided into three or more clearly marked lanes for vehicular traffic.

(20) MOTORCYCLE.—Every motor vehicle designed to travel on not more than three wheels in contact with the ground except any vehicle as may be included within the term "tractor" as herein defined.

(21) MOTOR-DRIVEN CYCLE.—Every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower, and every bicycle with motor attached.

(22) MOTOR VEHICLE.—All vehicles propelled by power (other than muscular power), trailers, semi-trailers, trailer coaches and trolley coaches, excepting, however, road rollers, and vehicles which operate only upon rails or tracks in place on the ground, or that travel through the air or that derive their motive power from overhead electric lines, farm tractors, farm trailers, and other machines and tools used in the production, harvesting and care of farm products.

(23) MUNICIPALITY.—All cities of the first and second class, and all incorporated or unincorporated towns as defined by Florida Statutes.

(24) OFFICIAL TIME STANDARD.—Whenever certain hours are named herein they shall mean standard time or daylight saving time as may be in current use in this municipality.

(25) OFFICIAL TRAFFIC-CONTROL DEVICES.—All signs, signals, markings, and devices not inconsistent with this ordinance or prohibited by statute, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

(26) OFFICIAL TRAFFIC-CONTROL SIGNAL.—Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and proceed.

(27) OTHER GOVERNING BODY.—The governing body of incorporated towns.

(28) OWNER.—Any person, association of persons, firm or corporations in whose name the title to a motor vehicle is registered.

(29) PARK OR PARKING.—When prohibited means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(30) PARKING METER.—A mechanical timing device authorized by ordinance of this municipality to be used for the purpose of regulating parking, and which is actuated by the insertion of a coin and the operation of a lever or cranking device.

(31) PASSENGER CURB LOADING ZONE.—An area adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

(32) PEDESTRIAN.—Any person afoot.

(33) PERSON.—Natural persons, associations of persons, firms, partnerships, and corporations.

(34) POLICE OFFICER.—Every officer of the municipal police department or any such

officer authorized to direct or regulate traffic or to make arrests.

(35) PRIVATE ROAD OR DRIVEWAY.—Every road or driveway not open to the use of the public for the purposes of vehicular travel.

(36) RAILROAD.—A carrier of persons or property upon cars, other than street cars, operated upon stationary rails.

(37) RAILROAD SIGN OR SIGNAL.—Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(38) RAILROAD TRAINS.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

(39) RESIDENCE DISTRICT.—The territory contiguous to a street not comprising a business district when the frontage on such for a distance of 300 feet or more is mainly occupied by dwellings or by dwellings and buildings in use for residence.

(40) RESTRICTED ACCESS STREET.—Every street or roadway in respect to which owners or occupants of abutting property or lands and other persons have no legal right of access to or from the same, except at such points only and in such manner as may be determined by the public authority having jurisdiction over such streets or roadway.

(41) RIGHT-OF-WAY.—The privilege of the immediate use of the street.

(42) ROADWAY.—Those portions of a street or highway improved, designed, or ordinarily used for vehicular travel.

(43) SAFETY ZONE.—The area or space officially set aside within a street for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(44) SCHOOL BUS.—Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from any school, or privately owned and while being operated primarily for the transportation of children to or from any school.

(45) SEMI-TRAILER.—Every vehicle of the trailer type, so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

(46) SIDEWALK.—That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(47) SPEED LIMITS.—"Speed limits" shall mean prima facie speed limits as long as the state law provides that speeds in excess of those specified in §317.22, are prima facie evidence of reckless driving. "Speed limits" shall mean maximum speed limits at such time as the state law is amended to establish maximum speed limits.

(48) STOP.—When required means complete cessation of movement.

(49) STOP, STOPPING, OR STANDING.—When prohibited means any stopping or standing of a vehicle whether occupied or not, other than the temporary stopping of a passenger vehicle for the purpose of and while actually engaged in picking up and discharging passengers, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(50) STREET OR HIGHWAY.—Every way or place of whatever nature open to the use of the public, as a matter of right, for purposes of vehicular travel. The term "street" shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities, or institutions.

(51) TAXI—TAXICAB.—A licensed public motor vehicle for hire designated and constructed to seat not more than seven persons and operating as a common carrier on call or demand.

(52) TAXI—TAXICAB STAND.—A fixed area in the roadway parallel and adjacent to the curb set aside for taxicabs to stand or wait for passengers.

(53) THROUGH ROADWAY.—A roadway within a through street.

(54) THROUGH STREET.—Every street or portion thereof at the entrances to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing the same and where stop signs are erected as provided in this ordinance.

(55) TRAFFIC. — Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any street for the purpose of travel.

(56) TRAILER. — Every vehicle without motive power, designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(57) TRUCK.—Any motor vehicle which is used for the transportation or delivery of goods with a body built and designed for that purpose.

History.—Comp. §2, Ch. 57-333.

186.04 Duties of police department. — It shall be the duty of the chief of police with such aid as may be rendered by other members of the police department to enforce the provisions of this ordinance and the state vehicle laws applicable to traffic in this municipality, to make arrests for traffic violations, to assist in the prosecution of persons charged with such violations, to investigate accidents, to cooperate with the traffic engineer and other officials of the municipality in the administration of the traffic ordinance and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed by this ordinance and the traffic ordinances of this municipality.

History.—§3, Ch. 57-333.

186.05 Police department to submit annual traffic-safety report.—The police department

shall annually prepare a traffic report which shall be filed with the mayor or city manager. Such report shall contain information on traffic matters in this municipality as follows:

(1) The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;

(2) The number of traffic accidents investigated and other pertinent data on the safety activities of the police.

(3) Plans and recommendations for future traffic safety activities.

History.—§4, Ch. 57-333.

186.06 Records of traffic violations.—

(1) The chief of police or other officer of the police department as designated by the chief, or by the clerk of the traffic violations bureau, shall keep a record of all violations of the traffic ordinance of this municipality except standing or parking violations, and of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall so be maintained as to show the types of violations and the totals of each. Said record shall accumulate during at least a 3-year period and from that time on, the record shall be maintained complete for the most recent 3-year period.

(2) All forms for records of violations and notices of violations which shall include traffic "tickets" issued by police officers, shall be serially numbered. For each month and year a written record shall be kept available to the public showing the disposal of all such forms, and such records, notices, and reports shall be public records.

History.—§5, Ch. 57-333.

186.07 Traffic accident form. — Whenever the accidents at any particular location become numerous, the police department shall cooperate with the traffic engineer in conducting studies of such accidents and determining remedial measures.

History.—§6, Ch. 57-333.

186.08 Traffic accident reports.—

(1) The police department shall maintain a suitable system of filing traffic accident reports. Accident reports, or cards referring to them, shall be filed alphabetically by location. Such reports shall be available for the use and information of the traffic engineer.

(2) The police department shall receive and properly file all accident reports made to it under state law, or under any ordinances of this municipality, but all such accident reports made by drivers shall be solely for the confidential use of the police department, the traffic engineer, the motor vehicle division of the state department of public safety, and the state road department, and no such report shall be admissible in any civil or criminal proceeding other than upon request of the person making such report or upon request of the court having jurisdiction to prove a compliance with the laws requiring the making of any such report.

History.—§7, Ch. 57-333.

186.09 Drivers files to be maintained.—

(1) The police department shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions, and complaints reported for each driver except those concerning standing or parking, which shall be filed alphabetically under the name of the driver concerned.

(2) Such records shall accumulate during at least a 3-year period and from that time on, such records shall be maintained complete for at least the most recent 3-year period.

History.—§8, Ch. 57-333.

186.10 Traffic engineer.—

(1) The office of traffic engineer is hereby established. The traffic engineer shall be appointed by the city manager, the council or the legislative body of the municipality and shall exercise the powers and duties provided in this ordinance. In the absence of such appointment, or at such times as the traffic engineer may be absent from the municipality or incapable of performing his duties, the duties and powers of the traffic engineer shall be vested in a duly appointed assistant traffic engineer, or if none, or if such assistant be absent from the municipality, or incapable of performing his duties, the said duties shall be vested in the chief of police, or other municipal official as determined and authorized by the city manager, the council or the legislative body.

(2) It is the general duty of the traffic engineer, or chief of police, if no traffic engineer appointed, to plan and determine the installation and proper timing and maintenance of traffic-control devices; to plan and direct the operation of traffic on the streets of this municipality; including parking areas; to conduct investigations of traffic conditions; to cooperate with other municipal and state officials and make recommendations for the improvement of traffic movement and conditions, including improvements in streets, and to carry out the additional powers and duties imposed by ordinances of this municipality or as directed by the city manager or the governing body.

History.—§9, Ch. 57-333.

186.11 Authority to designate through streets.—The traffic engineer or such duly appointed representative as is authorized in §186.10 (1), is hereby authorized to designate streets, or parts of said streets, as through streets.

History.—§10, Ch. 57-333.

186.12 Through streets other than state highways and under the jurisdiction of this municipality, designated.—Those streets and parts of streets described in schedule III attached hereto and made a part hereof are here-

by declared to be through streets for the purpose of this ordinance.

History.—§11, Ch. 57-333.

186.13 Authority to erect stop signs at through streets.—Whenever any ordinance of this municipality designates and describes a through street or when any street is designated as a through street by the traffic engineer, it shall be the duty of the traffic engineer to place and maintain a stop sign on each and every street intersecting such through street or intersecting that part thereof described and designated as such by any ordinance of this municipality, except at those intersections which are controlled by automatic signals or other traffic-control devices.

History.—§12, Ch. 57-333.

186.14 Authority to erect stop signs at other than through streets. —

(1) The traffic engineer is hereby authorized to determine and designate intersections where a particular hazard exists upon other than through streets and to determine whether vehicles shall stop at one or more entrances to any such intersection, and shall erect a stop sign at every place where he shall find a stop required, except at those intersections which are controlled by automatic signals or other traffic-control devices.

(2) Every said stop sign erected pursuant to this ordinance shall be a standard sign adopted by the state road department.

History.—§13, Ch. 57-333.

186.15 Authority to place and obedience to turning markers.—The traffic engineer is authorized to place markers, buttons, or signs within, or adjacent to intersections and thereby require and direct that a different course from that specified in this ordinance be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

History.—§14, Ch. 57-333.

186.16 Authority to place restricted turn signs.—The traffic engineer is hereby authorized to determine those streets or intersections of such streets from which drivers of vehciles shall not make a right, left or U-turn, and shall place proper signs upon such streets and at such intersections. The making of such turns may be prohibited between the hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are unrestricted.

History.—§15, Ch. 57-333.

186.17 Traffic engineer to designate crosswalks, establish safety zones, and mark traffic lanes.—The traffic engineer is hereby authorized:

(1) To designate and maintain by appropriate devices, marks, or lines upon the surface of the roadway, within the jurisdiction of this municipality, crosswalks at those places where he shall find that there is particular danger to pedestrians crossing the roadway, and when he shall further find that the existence of a crosswalk will reduce that danger.

(2) To establish safety zones of such kind and character and at such places where he shall find that there is particular danger to pedestrians, and which are consistent with state law, and where he shall find that the existence of a safety zone will reduce that danger.

History.—§16, Ch. 57-333.

186.18 Authority to sign one-way streets, roadways, and alleys.—Whenever any ordinance of this city designates any one-way street, roadway, or alley the traffic engineer shall place and maintain signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

History.—§17, Ch. 57-333.

186.19 Authority to mark lanes.—

(1) The traffic engineer is authorized to mark lanes upon the roadway of any street where he shall find that a regular alignment of traffic is necessary in the interests of safety and efficiency, or at such places as he may find to be advisable, consistent with the traffic ordinances of this municipality and state law.

(2) Where such traffic lanes have been marked, it shall be a violation of this ordinance for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

History.—§18, Ch. 57-333.

186.20 Authority to prohibit all-night parking.—The traffic engineer is authorized to prohibit all-night parking, and to erect signs giving notice thereof, upon any street or portion thereof, whenever in his opinion such prohibition is necessary or advisable in the interest of public safety.

History.—§19, Ch. 57-333.

186.21 Authority to establish play streets.—The traffic engineer is hereby authorized to declare and to establish, whenever he shall find that the public safety and convenience are best served thereby, any street or part thereof a play street, and to place appropriate signs and barricades enclosing the roadway indicating and helping to protect the same.

History.—§20, Ch. 57-333.

186.22 Play streets.—Whenever authorized signs and barricades are erected enclosing any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof.

History.—§21, Ch. 57-333.

186.23 Authority to establish traffic-control devices; manual and specifications.—

(1) The traffic engineer shall place and maintain, or remove, traffic-control signs, signals, lane markings, and other devices and shall determine the hours and days during which any traffic-control device shall be in operation or be in effect, when and as required under the traffic ordinances of this municipality to indicate and to carry out the provisions of said ordinances, and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic ordinances of this municipality and under state law, to regulate, warn, or guide traffic, provided no stop sign or traffic-control signal shall be erected or maintained at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road department.

(2) In all respects all traffic-control signs, signals, and devices shall conform to the manual and specifications as approved by the state road department. All signs and signals required hereunder for a particular purpose shall be uniform as to type and location throughout the municipality. All traffic-control devices so erected and not inconsistent with the provisions of state law or this ordinance shall be official traffic-control devices.

History.—§22, Ch. 57-333.

186.24 Emergency and experimental regulations.—

(1) The chief of police, in collaboration with the traffic engineer, is hereby empowered to make all regulations necessary to make effective the provisions of the traffic ordinances of this municipality and to make and enforce temporary or experimental regulations, consistent with this ordinance, to cover emergencies or special conditions. No such regulation shall be effective and in force until and unless adequate signs, signals, or other notices are erected clearly indicating said regulation. No such temporary or experimental regulation shall remain in effect for more than 90 days.

(2) The traffic engineer may test traffic-control devices under actual conditions of traffic.

History.—§23, Ch. 57-333.

186.25 Authority to determine streets and highways where angle parking permitted.— The traffic engineer shall determine the location of angle parking zones, and shall erect and maintain appropriate signs indicating the same and giving notice thereof.

History.—§24, Ch. 57-333.

186.26 Permit for loading and unloading at an angle to the curb.—The traffic engineer or chief of police is authorized to issue permits to permit the back-loading of merchandise or material subject to the terms and conditions of such permit.

History.—§25, Ch. 57-333.

186.27 Authority to prohibit or restrict stopping, standing, or parking of vehicles.— The traffic engineer is hereby authorized to prohibit or restrict the stopping, standing, or parking of vehicles on any street of this municipality, and to erect signs giving notice thereof, in his opinion, such stopping, standing or parking of vehicles interferes with the movement of traffic thereon. Such signs shall be official signs, and no person shall stop, stand, or park any vehicle in violation of the signs.

History.—§26, Ch. 57-333.

186.28 Authority to prohibit parking adjacent to schools.—The traffic engineer is hereby authorized to prohibit parking upon either or both sides of any street adjacent to any school property, and to erect signs giving notice thereof, when such parking, in his opinion would interfere with traffic or create a hazardous situation.

History.—§27, Ch. 57-333.

186.29 Authority to prohibit parking on narrow streets.—The traffic engineer is hereby authorized to prohibit parking upon any street when the width of the roadway does not exceed 20 feet, or upon one side of a street when the width of the roadway does not exceed 30 feet, and to erect signs giving notice thereof.

History.—§28, Ch. 57-333.

186.30 Authority to prohibit standing or parking on one-way streets.—The traffic engineer is authorized to prohibit the standing or parking of vehicles upon the left-hand side of any one-way street and to erect signs giving notice thereof.

History.—§29, Ch. 57-333.

186.31 Authority to permit parking on one-way streets.—The traffic engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of streets which include two or more separate roadways and to erect signs giving notice thereof.

History.—§30, Ch. 57-333.

186.32 Authority to restrict stopping, standing, or parking near hazardous or congested places.—The traffic engineer is hereby authorized to designate by proper signs, places not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

History.—§31, Ch. 57-333.

186.33 Traffic engineer to designate curb loading zones.—The traffic engineer is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs indicating the same and stating the hours during which the provisions of section are applicable.

History.—§32, Ch. 57-333.

186.34 Traffic engineer to designate truck routes.—The traffic engineer is hereby au-

thorized to designate certain streets as truck routes to be used for the expeditious and convenient movement of farm tractors, trailers, semi-trailers, trucks and other commercial vehicular traffic, and shall give notice thereof by means of appropriate signs placed along such streets.

History.—§33, Ch. 57-333.

186.35 Traffic engineer to designate public carrier stands.—The traffic engineer is hereby authorized to establish bus stops, bus stands, taxicab stands, and stands for other passenger common-carrier motor vehicles on such public streets, in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public. Every such bus stop, bus stand, taxicab stand, or other stand shall be designated by appropriate signs.

History.—§34, Ch. 57-333.

186.36 Parking prohibited at all times on certain streets.—The traffic engineer is hereby authorized to designate certain streets where parking shall be prohibited at all times.

History.—§35, Ch. 57-333.

186.37 Parking prohibited at all times at certain places.—The traffic engineer shall designate certain places where parking shall be prohibited at all times and shall erect signs giving notice thereof.

History.—§36 Ch. 57-333.

186.38 Authority to limit parking time on certain streets.—The traffic engineer shall erect signs in each block limiting the parking time on certain streets and giving notice thereof.

History.—§37, Ch. 57-333.

186.39 Authority to determine metered parking zones.—The traffic engineer is hereby authorized to determine and designate metered parking zones, and to install and maintain upon any of the streets or parts of streets described in schedule VII attached to and made a part of this ordinance as many parking meters as necessary in said metered parking zones, where it is determined that the installation of parking meters shall be necessary to aid in the regulation, control, and inspection of the parking vehicles. The parking meters may be of whatever type as determined by the council or other governing body.

History.—§38, Ch. 57-333.

186.40 Traffic engineer to impose restrictions upon use of streets.—The traffic engineer is hereby authorized to prohibit the use of the roadway by farm tractors, trailers, semi-trailers, and by trucks or other commercial vehicles, and to impose limitations as to the weight thereof on designated streets where in his opinion the public safety is concerned, but said prohibitions and limitations shall not become effective until notice thereof is given by means of appropriate signs placed on such streets.

History.—§39, Ch. 57-333.

186.41 Authority to prohibit bicycle riding on specified streets.—The traffic engineer is authorized to erect signs on any sidewalk or street prohibiting the riding of bicycles thereon by any person, and when such signs are in place no person shall disobey the same.

History.—§40, Ch. 57-333.

186.42 Traffic violations bureau created.—(1) The police magistrate may establish a traffic violations bureau to assist the court with the clerical work of traffic cases. The bureau shall be in charge of such person or persons and shall be open on such days excluding Sundays and full legal holidays and at such hours as the police magistrate may designate.

(2) The police magistrate or magistrates who hear traffic cases shall designate the traffic ordinances of this municipality for violation of which payments of fines may be accepted by the traffic violations bureau, and shall specify by suitable schedules the amount of such fines for first, second, or subsequent offenses, provided such fines are within the limits provided by law, and shall further specify what number of such offenses shall require an appearance before the magistrate.

(3) The police magistrate or magistrates are hereby authorized to suspend the payment of any costs, or fine, or penalty, and to remit any costs or fine or penalty assessed for any violation of any provision of this ordinance, and to suspend any jail sentence imposed for a violation of any provision of this ordinance.

History.—§41, Ch. 57-333.

186.43 When person charged may elect to appear at bureau or before judge.—(1) Any person charged with an offense for which payment of a fine may be made to the traffic violations bureau shall have the option of paying such fine within the time specified in the traffic citation or notice of arrest at the traffic violations bureau, upon entering a plea of guilty and upon waiving appearance in court; or depositing any required lawful bail, and upon a plea of not guilty shall be entitled to a trial as authorized by law.

(2) The payment of a fine to said bureau shall be deemed an acknowledgment of violation of the designated ordinance and the bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof.

History.—§42, Ch. 57-333.

186.44 Duties of traffic violations bureau.—The following duties are hereby imposed upon the traffic violations bureau in reference to traffic offenses:

(1) It shall accept designated fines, issue receipts, and represent in court such violators as are permitted and desire to plead guilty, waive court appearance, and give power of attorney.

(2) It shall receive and issue receipts for bail from the persons who must, or wish to

be heard in court, enter the time of their appearance on the court docket, and notify the arresting officer and witnesses, if any, to be present.

(3) It shall keep an easily accessible record of all violations of which each person has been guilty during the preceding 12 months, whether such guilt was established in court or in the traffic violations bureau.

History.—§43, Ch. 57-333.

186.45 Traffic violations bureau to keep records.—The traffic violations bureau shall keep records and submit summarized monthly reports to the police department of all notices and citations issued and arrests made for violations of the traffic laws and ordinances in this municipality, and of all fines collected by the traffic violations bureau, and of the final disposition or present status of every case of violation of the provisions of said ordinances. Such records shall be so maintained as to show all types of violations and the totals of each. Said records shall be public records.

History.—§44, Ch. 57-333.

186.46 Additional duties of traffic violations bureau.—The traffic violations bureau shall follow such procedures as may be prescribed by the traffic ordinances of this municipality, or as may be required by any laws of the state of Florida.

History.—§45, Ch. 57-333.

186.47 Parties.—Every person who commits, attempts to commit, conspires to commit, or aids or abets in the committing of, any act declared herein to be in violation of the ordinance of this municipality, whether individually, or in connection with one or more other persons, or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this ordinance is likewise guilty of such offense.

History.—§46, Ch. 57-333.

186.48 Offenses by persons owning or controlling vehicles.—Neither the owner, or any person, employing or otherwise directing the driver of any vehicle, shall require or knowingly permit the operation of such vehicle upon a street of this municipality in any manner contrary to law.

History.—§47, Ch. 57-333.

186.49 Penalties.—Unless another penalty is expressly provided herein, every person found guilty of a violation of any provision of this ordinance, may be punished by imprisonment and/or fined not in excess of the punishment provided for in the city charter.

History.—§48, Ch. 57-333.

186.50 Forms and notices of citations, arrest or appearance.—The municipality shall provide in triplicate, suitable serially numbered forms for notifying alleged violators to appear and answer to charges of violating traffic ordinances. Such forms shall be issued to and receipted for by the chief of police or other person acting for him. The municipal clerk shall each month report to the police magistrate the disposition made by the police of all triplicate forms issued to them. For this purpose the municipal clerk or his representative, shall have access to the necessary records of the police department, of this municipality, and the traffic violations bureau. These reports shall be public records.

History.—§49, Ch. 57-333.

186.51 Procedure upon arrest.—

(1) In every case of arrest under §186.0177, persons under influence of intoxicating liquor or of drugs, and §186.0178, reckless driving, or where it appears doubtful whether the violator will appear pursuant to a written citation or notice, the violator shall be kept in custody, and in every other case of arrest, where the violation is willful, wanton, and deliberate, the violator may be kept in custody, by the police department, unless lawfully released on bond, until trial, or until he shall have complied with the penalty imposed by the court, as the case may be.

(2) Except when directed by this ordinance to keep in custody a person arrested for a violation of any of the traffic ordinances, or where any lawful bail is required, any police officer, upon making an arrest for violation of the traffic ordinances of this municipality, shall take the name, address, and operator's license number of the alleged violator and the registration number of the motor vehicle involved, and shall issue to him in writing on the form provided by the municipal clerk, a citation or notice to answer to the charge against him at a place and at a time at least 48 hours after such arrest unless the person arrested shall demand an earlier hearing, to be specified in the notice. The officer, upon receiving the written promise of the alleged violator to answer as specified in the citation or notice, shall release such person from custody.

(3) The place specified in said notice to appear must be before a magistrate within the municipality in which the offense charged is alleged to have been committed, and before a magistrate who has jurisdiction of such offenses.

(4) The person arrested, in order to secure release as provided in this section, must give his written promise to appear in court or plead guilty as provided, by signing in triplicate the written citation or notice prepared by the arresting officer.

(5) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office.

History.—§50, Ch. 57-333.

186.52 Failure to obey notice or summons.—

(1) The violation of a written promise to

appear, given to an officer upon arrest or issuance of a traffic citation for any traffic violation, shall constitute a violation of this ordinance regardless of the disposition of the original charge.

(2) A written promise to appear in court may be complied with by an appearance by counsel.

(3) The foregoing provisions of this ordinance shall govern all police officers in making arrests without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

History.—§51, Ch. 57-333.

186.53 Notice on illegally parked vehicle.—Whenever any motor vehicle without driver is found parked, stopped, or standing, in violation of any of the restrictions imposed by ordinance of this municipality, the officer finding such vehicle shall take its registration number, and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such a vehicle a traffic citation or notice in writing, on a form provided by the municipal clerk, for the driver to answer the charge against him within 48 hours, during the hours and at a place specified in the notice.

History.—§52, Ch. 57-333.

186.54 Failure to comply with notice attached to parked vehicle.—If a violator of the restrictions on stopping, standing, or parking under these ordinances does not appear in response to a notice or citation affixed to such motor vehicle within a period of 48 hours the municipal clerk or the traffic violations bureau shall send the owner of the motor vehicle to which the notice or citation was affixed, a letter informing him of the violation, and warning him that in the event such letter is disregarded for a period of 5 days a warrant of arrest will be issued.

History.—§53, Ch. 57-333.

186.55 Presumption in reference to illegal parking, operating, stopping, etc.—

(1) In any prosecution charging a violation of any ordinance governing the stopping, standing, parking, or operating of a vehicle, proof that the particular vehicle described in the complaint was parked or operated in violation of any such ordinance or regulation, together with proof that the defendant named in the complaint was at the time of such parking or operating the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who stopped, stood, parked, or operated such vehicle at the point where, and for the time during which, such violation occurred.

(2) The foregoing stated presumption shall apply only when the procedure as prescribed in §§186.53 and 186.54 has been followed.

History.—§54, Ch. 57-333.

186.56 When warrant is to be issued.—In the event any person fails to comply with a notice given to such person or attached to a vehicle or fails to make appearance pursuant to a summons directing an appearance in the police magistrate's court or the traffic violations bureau, or if any person fails or refuses to deposit bail as required and within the time permitted by ordinance, the municipal clerk or a clerk of the traffic violations bureau shall forthwith secure and issue and have served a warrant for his arrest.

History.—§55, Ch. 57-333.

186.57 Disposition of traffic fines and forfeitures.—

(1) All fines or forfeitures collected upon a finding of violation of ordinance, or upon the forfeitures of bail of any person charged with violation of any of the provisions of this ordinance, shall be paid into the municipal treasury and deposited in the general fund.

(2) The police magistrate or magistrates are hereby authorized to suspend the payment of any costs, or fine, or penalty, and to remit any costs or fine or penalty assessed for any violation of any provision of this ordinance, and to suspend any jail sentence imposed for a violation of any provision of this ordinance.

History.—§56, Ch. 57-333.

186.58 Official misconduct. — Failure, refusal, or neglect on the part of any judicial or other officer or employee receiving or having custody of any such fine or forfeiture, either before or after a deposit in said fund, to comply with the provisions of §186.57 shall constitute misconduct in office and shall be grounds for removal therefrom.

History.—§57. Ch. 57-333.

186.59 Authority to impound vehicles.—Members of a police department are hereby authorized to remove a vehicle from a street to the nearest garage or other place of safety, or to a garage designated or maintained by the police department, or by this municipality, under the circumstances hereinafter enumerated:

(1) When any vehicle is left unattended upon any bridge, causeway, or viaduct, or in any subway, where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a street is so disabled as to constitute an obstruction to traffic, or the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody and removal.

(3) When a vehicle is found being operated upon the streets and is not in proper condition.

(4) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(5) When any vehicle is left unattended upon a street continuously for more than 24 hours and may be presumed to be abandoned.

(6) When the driver of such vehicle is taken into custody by the police department and such vehicle would thereby be left unattended upon a street.

(7) When removal is necessary in the interest of public safety because of fire, flood, storm, or other emergency reason.

(8) Any violator taken into custody pursuant to §186.51 may at the discretion of the police magistrate be released without posting bond, if the violator agrees to the impounding in a garage authorized by this ordinance of the vehicle owned and driven by the violator or to surrender his or her driver's license to insure the violator's appearance in the municipal court to answer the charges against same, and pay such fine as may be assessed against the violator.

(9) No vehicle impounded in an authorized garage as herein provided shall be released therefrom until the charges for towing such vehicle into the garage, and storage charges have been paid. The charge for towing or removal of any such vehicle and storage charges shall be fixed by the police magistrate, such charges to be based upon a computation of all actual expenses entering into the current cost of such services. Such charge or charges shall be posted by public inspection in the office of the municipal clerk or the traffic violations bureau, and in any authorized garage.

History.—§58, Ch. 57-333.

186.60 Notice of impounding.—

(1) Whenever an officer removes a vehicle from a street as authorized in this section, and the officer knows or is able to ascertain the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal, and the reasons therefor, and of the place to which such vehicle has been removed. In the event any such vehicle is stored in an authorized garage, a copy of such notice shall be given to the proprietor of such garage.

(2) Whenever an officer removes a vehicle from a street under this section, and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of 3 days, then and in that event the officer shall immediately send or cause to be sent written report of such removal by mail to the motor vehicle commission, and shall file copy of such notice with the proprietor of any authorized garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reasons for such removal, and the name of the garage or place where the vehicle is stored.

History.—§59, Ch. 57-333.

186.61 Obedience to official traffic-control devices.—No driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of the ordinances of this municipality, unless at the time otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this ordinance.

History.—§60, Ch. 57-333.

186.62 When traffic devices required for enforcement purposes.—No provision of this ordinance for which signs or marking are required shall be enforced against an alleged violator, if at the time and place of the alleged violation an official sign or marking is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

History.—§61, Ch. 57-333.

186.63 Traffic-control signal legend.—Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk, unless such movement is governed by a pedestrian control signal.

(2) Yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall stop and yield the right-of-way to all vehicles, provided, however, that any pedestrian lawfully within the intersection at the time such signal is exhibited shall retain the right-of-way as to vehicles.

(3) Red alone or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone.

(b) No pedestrian facing such signal shall

enter the roadway or otherwise interfere with any vehicular traffic, unless directed so to proceed by a pedestrian control signal.

(4) Red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk, and to other traffic lawfully using the intersection.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(5) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History.—§62, Ch. 57-333.

186.64 Pedestrian walk-and-wait signals.—Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait," or "Don't Walk," are in place, such signals shall indicate as follows:

(1) "WALK."—Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles except emergency vehicles.

(2) "WAIT" OR "DON'T WALK".—No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal may proceed to a sidewalk or safety zone while the "Wait" or "Don't Walk" signal is showing.

History.—§63, Ch. 57-333.

186.65 Flashing signals.—Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

(1) FLASHING RED (STOP SIGNALS).—When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk, at an intersection or at a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) FLASHING YELLOW (CAUTION SIGNAL).—When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution, and in no event at a speed greater than 15 miles per hour.

History.—§64, Ch. 57-333.

186.66 Display of unauthorized signs, signals, or markings.—

(1) No person shall place, maintain, or display upon or in view of any street, any unauthorized sign, signal, marking, or device which purports to be, or is an imitation of, or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any street and traffic sign or signal or parking meter bearing thereon any commercial advertising.

(3) This shall not be deemed to prohibit the erection upon private property adjacent to streets or signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the traffic engineer is hereby empowered to remove the same or cause it to be removed without notice.

History.—§65, Ch. 57-333.

186.67 Interference with official traffic-control devices or railroad signs or signals.—No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal, or any inscription, shield, or insignia thereon, or any part thereof.

History.—§66, Ch. 57-333.

186.68 Vehicles approaching or entering intersection.—

(1) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different street or highway.

(2) When two vehicles enter an intersection from different roadways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The foregoing rules are modified at through streets and highways and as otherwise hereinafter stated.

History.—§67, Ch. 57-333.

186.69 Vehicle turning left at intersection.—The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard.

History.—§68, Ch. 57-333.

186.70 Vehicles entering through street intersection.—The driver of a vehicle shall stop as required by this ordinance at the entrance to a through street and shall yield the right-of-way to other vehicles which have entered the intersection from said through street, or which are approaching so closely on said

through street as to constitute an immediate hazard.

History.—§69, Ch. 57-333.

186.71 Vehicles entering stop intersection or approaching railroad crossing.—When signs are erected giving notice thereof, the driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection or a railroad crossing where a stop sign is erected at one or more entrances thereto, although not a part of a through street, and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed, except when otherwise directed by a police officer or traffic-control signal.

History.—§70, Ch. 57-333.

186.72 Vehicle entering street from private road or driveway.—The driver of a vehicle about to enter or cross a street from a private road or driveway shall yield the right-of-way to all vehicles approaching on said street.

History.—§71, Ch. 57-333.

186.73 Stop before entering or emerging from alley or private driveway.—

(1) The driver of a vehicle entering or emerging from an alleyway, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into a sidewalk area extending across any alleyway, or private driveway, yielding the right-of-way to all traffic, vehicle or pedestrian, approaching in said alleyway, driveway, or sidewalk, or upon said street.

(2) The driver of a vehicle entering or emerging from an alley, driveway, or building in a business district shall except when entering or emerging from a one-way street only turn such vehicle to the right.

History.—§72, Ch. 57-333.

186.74 Stop when traffic obstructed.—No operator of a vehicle shall enter an intersection or a marked crosswalk unless there is sufficient space beyond such intersection or crosswalk in the direction on which said vehicle is proceeding to accommodate the vehicle without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

History.—§73, Ch. 57-333.

186.75 Obedience to signal indicating approach of railroad train or bridge opening.—

(1) Whenever any person driving a vehicle approaches a railroad crossing or bridge over waterway and a clearly visible electric or mechanical signal device gives warning of the immediate approach of a train, the driver of such vehicle shall stop within 50 feet but not nearer than 10 feet from the nearest track of such railroad or barriers or stop signals on approaches to said bridges, and shall not proceed until he can do so safely.

(2) The driver of a vehicle shall stop said vehicle and not traverse such a grade crossing or bridge when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach of a railroad train or the intended opening of such bridge to permit watercraft to pass thereunder.

(3) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

(4) The above stopping requirements shall apply also when a railroad train approaching the street crossing emits an audible signal and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard, or when an approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

History.—§74, Ch. 57-333.

186.76 Certain vehicles must stop at all railroad grade crossings.—

(1) The driver of any common carrier carrying passengers, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not nearer than 10 feet from the nearest rail of such railroads and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely.

(2) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(3) When stopping as required at such railroad crossing the driver shall keep as far to the right of the roadway as possible and shall not form two lanes of traffic unless the street or roadway is marked for 4 or more lanes of traffic.

History.—§75, Ch. 57-333.

186.77 State speed laws applicable.—The state traffic laws regulating the speed of vehicles shall be applicable upon all streets within this municipality, except as this ordinance, as authorized by state law, hereby declares and determines upon the basis of engineering and traffic investigation that certain speed regulations shall be applicable upon specified streets or in certain areas, in which event it shall be unlawful for any person to drive a vehicle at a speed in excess of any speed so declared in this ordinance when signs are in place giving notice thereof; provided, however, if the state laws prescribe prima facie speed limits, it shall be prima facie unlawful for any person to exceed any speed limit established under this ordinance when signs are erected giving notice thereof. (See speed schedules at end of ordinance.)

History.—§76, Ch. 57-333.

186.78 Special hazards.—The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazards exist or may exist with respect to pedestrians, or other traffic or by reason of weather or other roadway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care.

History.—§77, Ch. 57-333.

186.79 Minimum speed regulation.—

(1) No person shall drive a motor vehicle on any street at such a slow speed as to impede or block the normal and reasonable forward movement of traffic, except when a reduced speed shall be necessary for safe operation of such vehicle or in compliance with law.

(2) If any person shall drive a motor vehicle at a speed so slow as to impede the forward movement of traffic proceeding immediately behind such vehicle, on any street whereon a higher speed shall be lawful, then said person shall, when the width of the roadway permits, drive to the extreme right side of the street until such impeded traffic shall have passed by.

History.—§78, Ch. 57-333.

186.80 Emergency vehicles not subject to speed limits.—The speed limitations set forth in this chapter shall not apply to authorized emergency vehicles when responding to emergency calls and the drivers thereof sound audible signal by bell, siren, or exhaust whistle. This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard to the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard for the safety of others.

History.—§79, Ch. 57-333.

186.81 Notice charging violation shall designate speed.—In every charge of violation of §§186.77-186.80, the complaint, also the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, also the speed limit applicable within the district or at the location.

History.—§80, Ch. 57-333.

186.82 When signal required.—

(1) No person shall turn a vehicle from a direct course upon a roadway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by such movement.

(2) A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet travelled by the vehicle before turning regardless of the weather.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear.

History.—§81, Ch. 57-333.

186.83 Required position and method of turning at intersections.—The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Where both intersecting roadways are two-way, the approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered, and in all cases except where otherwise directed by signs or markings simultaneous left turns by opposing traffic should be made in front of each other.

(3) Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and the turn shall be made by turning from the right of such center line where it enters the intersection as close as practicable to the left-hand curb of the one-way roadway.

(4) A left turn from a one-way street into a two-way street shall be made by passing to the right of the center line of the roadway being entered upon leaving the intersection, and the approach for such turn shall be made as close as practicable to the left-hand curb of the one-way street.

(5) Where both intersecting roadways are one-way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

History.—§82, Ch. 57-333.

186.84 Obedience to no-turn signs.—Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such signs.

History.—§83, Ch. 57-333.

186.85 Limitations on U-turns.—No driver of any vehicle shall turn such vehicle so as to proceed in the opposite direction upon any street in a business district, or at any intersection controlled by traffic signal, and shall not make said U-turn upon any other street except at an intersection, and then only from the right-hand side of the street when such

movement can be made in safety and without interfering with other traffic.

History.—§84, Ch. 57-333.

186.86 Moving parked vehicle.—No person except when stopping, standing or parking where angle parking is permitted, shall start a vehicle which is stopped, standing, or parked on a street without first giving the visible signal as provided in §186.90(4) of his intention so to do, and in any case unless and until such movement can be made with safety.

History.—§85, Ch. 57-333.

186.87 Limitations on backing.—The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic, and shall not back into a street intersection, or on or over a crosswalk, or around a street corner and in no event shall the distance of the backing movement exceed 50 feet, and shall in every case yield the right-of-way to moving traffic and pedestrians.

History.—§86, Ch. 57-333.

186.88 Opening door of and entering and emerging from vehicle.—No person shall open the door of, or enter or emerge from any vehicle in the path of any approaching vehicle.

History.—§87, Ch. 57-333.

186.89 Signals by hand and arm or signal device.—The signals herein required shall be given either by means of the hand and arm or by a signal lamp or signal device of a type approved by the state department of public safety, but when a vehicle is so constructed or loaded that a hand and arm signal would not be visible both to the front and rear of such vehicle then said signals must be given by such a lamp or device.

History.—§88, Ch. 57-333.

186.90 Method of giving hand and arm signals.—All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn—hand and arm extended horizontally;

(2) Right turn—hand and arm extended upward;

(3) Stop or decrease of speed—hand and arm extended downward;

(4) Re-entering lane of traffic from parked position—hand and arm extended horizontally.

History.—§89, Ch. 57-333.

186.91 Drive on right side of roadway; exceptions.—Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When the right half of a roadway is closed to traffic while under construction or repair;

(3) Upon a roadway divided into three lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and sign-posted for one-way traffic.

History.—§90, Ch. 57-333.

186.92 Passing vehicles proceeding in opposite directions.—Drivers of vehicles proceeding in opposite directions shall pass each other keeping to the right, and upon the roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

History.—§91, Ch. 57-333.

186.93 Overtaking a vehicle on the left.—(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History.—§92, Ch. 57-333.

186.94 When overtaking on the right is permitted.—

(1) A driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

(2) The driver of a vehicle may overtake and pass upon the right of another vehicle upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles, but only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History.—§93, Ch. 57-333.

186.95 Limitations on overtaking on the left.—No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the righthand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.

History.—§94, Ch. 57-333.

186.96 One-way streets, alleys and rotary traffic island.—

(1) Upon a street or alley designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(2) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History.—§95, Ch. 57-333.

186.97 Driving on roadways laned for traffic.—Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation. Under no condition shall an attempt be made to pass upon the shoulder or any portion of the roadway remaining to the right of the indicated right-hand traffic lane.

History.—§96, Ch. 57-333.

186.98 Driving on divided streets.—Whenever any street has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by the traffic engineer.

History.—§97, Ch. 57-333.

186.99 Restricted access.—When signs are erected giving notice thereof, no person shall drive a vehicle onto or from any controlled-access roadway except at those entrances and exits which are indicated by said signs.

History.—§98, Ch. 57-333.

186.0100 Standing or parking close to curb.—Except where angle parking or parking on one-way streets is permitted by this ordinance, every vehicle stopped or parked upon a street where there is an adjacent curb shall be so stopped or parked with the right-hand wheels of such vehicle parallel with and within 12 inches of the right-hand curb.

History.—§99, Ch. 57-333.

186.0101 Obedience to angle-parking signs or markings.—Upon those streets which have been signed or marked by the traffic engineer for angle parking, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

History.—§100, Ch. 57-333.

186.0102 Permit for loading and unloading at an angle to the curb.—No persons shall stop, stand, or park any vehicle at right angles to the curb for the purpose of loading or unloading of merchandise without a permit issued by the traffic engineer or his authorized representative.

History.—§101, Ch. 57-333.

186.0103 Lights on parked vehicles.—

(1) Whenever a vehicle equipped with all reflectors required by law is lawfully parked at night-time upon any street within this municipality, no lights need be displayed upon such parked vehicle.

(2) Any lighted headlamps upon a parked vehicle shall be depressed or dimmed, in event cowl or parking lamps are not used.

History.—§102, Ch. 57-333.

186.0104 Stopping, standing, or parking prohibited in specified places.—

(1) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

(a) On a sidewalk;

(b) In front of a public or private driveway;

(c) Within an intersection;

(d) Within 15 feet of a fire hydrant;

(e) On a crosswalk;

(f) Within 20 feet of a crosswalk at an intersection;

(g) Within 30 feet of any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic engineer indicates a different length by signs or markings;

(i) Within 50 feet of the nearest rail of a railroad or bridge;

(j) Within 20 feet of the driveway entrance to any fire station and, on the side of a roadway opposite the entrance to any fire station, within 75 feet of said entrance when properly signposted;

(k) Alongside or opposite any street or highway excavation or obstruction when such stopping, standing, or parking would obstruct traffic;

(l) On the roadway side of any vehicle stopped, or parked at the edge or curb of a street;

(m) Upon any bridge or other elevated

structure upon a street or within a street tunnel;

(n) At any place where official signs prohibit stopping, standing, or parking.

(2) No person shall move a vehicle not owned by or in charge of such person, into any such prohibited area or away from a curb such distance as is unlawful.

History.—§103, Ch. 57-333.

186.0105 Unattended motor vehicle. — No person driving or in charge of any motor vehicle except a licensed delivery truck or other delivery vehicle, shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key. No vehicle shall be permitted to stand unattended upon any perceptible grade, without stopping the engine and effectively setting the brake thereon, and turning the front wheels to the curb or side of the street.

History.—§104, Ch. 57-333.

186.0106 Parking not to obstruct traffic.—

(1) No person shall park any vehicle upon a street, in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for free movement of vehicular traffic.

(2) Where streets are not completely paved or curbs provided, the parking of a car shall not usurp more than 12 inches of the paved portion of the street.

History.—§105, Ch. 57-333.

186.0107 Stopping, standing, or parking in alleys.—

(1) No person shall stop, stand, or park a vehicle within an alley in a business district except for the expeditious loading or unloading of materials, and in no event for a period of more than 20 minutes, and no person shall stop, stand, or park a vehicle in any other alley in such a manner, or under such conditions as to leave available less than 10 feet of the width of the roadway for the free movement of vehicular traffic.

(2) No person shall stop, stand, or park a vehicle within an alley in such position as to block the driveway or entrance to any abutting property.

History.—§106, Ch. 57-333.

186.0108 Authority to remove and impound vehicles.—

(1) Whenever any police officer finds a vehicle standing upon a street or alley in violation of any of the foregoing provisions of this article, such standing upon a street or alley in violation of any of the foregoing provisions of this article, such officer is hereby authorized to move such vehicle, or require the driver or person in charge of the vehicle to move the same to a position off the paved or improved or main traveled part of such street or alley.

(2) Whenever any police officer finds a vehicle unattended upon any street, bridge, or causeway, or in any tunnel within this municipality where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle in accordance with the provisions of §§186.59 and 186.60.

History.—§107, Ch. 57-333.

186.0109 All-night parking prohibited.—No person, except physicians or other persons on emergency calls, shall park a vehicle on any street marked to prohibit all-night parking and giving notice thereof, for a period of time longer than 30 minutes between the hours of 2 a.m. and 5 a.m. of any day.

History.—§108, Ch. 57-333.

186.0110 Parking for certain purposes prohibited.—No person shall park a vehicle upon any street for the principal purpose of:

(1) Displaying such vehicle for sale.

(2) Washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency.

(3) Displaying advertising.

(4) Selling merchandise from such vehicle except in a duly established market place, or when so authorized or licensed under the ordinances of this municipality.

(5) Storage, or as junkage or dead storage for more than 24 hours.

History.—§109, Ch. 57-333.

186.0111 Parking adjacent to schools.—When signs are erected giving notice thereof, no person shall park upon either or both sides of any street adjacent to any school.

History.—§110, Ch. 57-333.

186.0112 Parking prohibited on narrow streets.—When official signs are erected prohibiting parking upon narrow streets, no person shall park a vehicle upon any such street in violation of any such sign.

History.—§111, Ch. 57-333.

186.0113 Standing or parking on one-way streets.—When appropriate signs are erected giving notice thereof, no person shall stand or park a vehicle upon the left-hand side of any one-way street in violation of any such sign.

History.—§112, Ch. 57-333.

186.0114 Standing or parking on one-way roadways.—In the event a street includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking.

History.—§113, Ch. 57-333.

186.0115 Stopping, standing, or parking near hazardous or congested places.—When official signs are erected at hazardous or congested places, no person shall stop, stand, or

park a vehicle in any such designated place.
History.—§114, Ch. 57-333.

186.0116 Standing in passenger curb loading zone.—No person shall stop, stand, or park a vehicle for any purpose or period of time except for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such passenger curb loading zone are effective, and then only for a period not to exceed 5 minutes.
History.—§115, Ch. 57-333.

186.0117 Standing in freight curb loading zone.—

(1) No person shall stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed 30 minutes.

(2) The driver of a vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter such zone.
History.—§116, Ch. 57-333.

186.0118 Standing in restricted parking zone.—No person shall stop, stand, or park a vehicle for any purpose or length of time in any restricted parking zone other than for the purpose to which parking in such zone is restricted, except that a driver of a passenger vehicle may stop temporarily in such zone for the purpose of and while actually engaged in loading or unloading of passengers when such stopping does not interfere with any vehicle which is waiting to enter or about to enter the zone for the purpose of parking in accordance with the purpose to which parking is restricted.
History.—§117, Ch. 57-333.

186.0119 Stopping, standing, or parking of buses and taxicabs regulated.—The operator of a bus or taxicab shall not stop, stand, or park upon any street in any business district at any place other than at a bus stop, or taxicab stand, respectively, except that this provision shall not prevent the operator of any such vehicle from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while engaged in the expeditious unloading or loading of passengers.
History.—§118, Ch. 57-333.

186.0120 Restricted use of bus and taxicab stands.—No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in expeditious loading or unloading of passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.
History.—§119, Ch. 57-333.

186.0121 Application of §§186.0121-186.0127.—The following provisions prohibiting the stopping, standing, or parking of a vehicle shall apply at all times or at those herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.
History.—§120, Ch. 57-333.

186.0122 Regulations not exclusive. — The provisions of §§186.0123, 186.0125, 186.0126 and 186.0127, imposing a time limit on parking, shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times.
History.—§121, Ch. 57-333.

186.0123 Parking prohibited at all times on certain streets.—When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets described in schedule IV attached to, and made a part of this ordinance.
History.—§122, Ch. 57-133.

186.0124 Parking prohibited at all times at certain places.—No person shall park a vehicle at any time on any of the following parts of streets, sidewalks, or sidewalk areas, where signs are erected giving notice thereof:

(1) In front of a theater entrance.

(2) In front of the entrance or exit of a hotel.

(3) In front of the entrance to any building where in the opinion of the traffic engineer parking should be prohibited for public safety.
History.—§123, Ch. 57-333.

186.0125 Stopping, standing, or parking prohibited during certain hours on certain streets.—When signs are erected in each block giving notice thereof, no person shall stop, stand, or park a vehicle between the hours hereinafter specified in schedule V of any day except Sundays and full legal holidays, within the district, or upon any of the streets described in said schedule V attached to, and made a part of this ordinance.
History.—§124. Ch. 57-333.

186.0126 Parking time limited on certain streets.—When signs are erected giving notice thereof, no person shall stop, stand or park a vehicle for longer than the time designated by

said signs at any time between those hours so stated by said signs on any day except Sundays and full legal holidays, within the district or upon any of the streets described in schedule VI attached to, and made a part of this ordinance.

History.—§125, Ch. 57-333.

186.0127 Metered parking zones.—

(1) When parking meters are erected giving notice thereof, no person shall stop, stand, or park a vehicle in any metered parking zone for a period of time longer than designated by said parking meters upon the deposit of a coin of United States currency of the designated denomination on any day except Sundays and full legal holidays, unless otherwise posted, upon any of the streets described in schedule VII attached to, and made a part of this ordinance.

(2) Every vehicle shall be parked wholly within the metered parking space for which the meter shows parking privilege has been granted, and with the front end of such vehicle immediately opposite the parking meter for such space.

(3) It is a violation of this ordinance for any person to deposit or attempt to deposit in any parking meter any thing other than a lawful coin of the United States, or any coin that is bent, cut, torn, battered, or otherwise misshapen. It is a violation of this ordinance for any unauthorized person to remove, deface, tamper with, open, willfully break, destroy, or damage any parking meter, and no person shall willfully manipulate any parking meter in such a manner that the indicator will fail to show the correct amount of unexpired time before a violation.

History.—§126, Ch. 57-333.

186.0128 Obstruction to driver's view or driving mechanism.—

(1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

(3) No person in a bus, trolley coach, or other transit vehicle shall stand beyond the safety line which shall be inlaid, constructed in the floor, or painted upon the floor, so as to interfere with, or obstruct the driver's view to the front or sides, or to obstruct the view of signal he may give to drivers of other vehicles.

(4) No vehicle shall be operated upon any street unless the driver's vision through any required equipment is normal and unless such vehicle complies with the provisions of subsection (6) of this section.

(5) No person shall drive any motor vehicle with any sign, poster, or other non-transparent material upon the front windshield, sidewings, side or rear windows of such vehicle so as to obstruct the driver's view, other than a certificate or other paper required to be so displayed by law.

(6) The windshield on every motor vehicle shall be equipped with a device in operating condition for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of a vehicle.

(7) No person shall drive any motor vehicle equipped with any television viewer, screen or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.

(8) No owner shall display upon any part of his vehicle any official designation, sign, or insignia, of any public or quasi-public corporation, municipal, state, or national department or government subdivision without authority of such agency.

History.—§127, Ch. 57-333.

186.0129 Mufflers' prevention of noise.—

(1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall operate a motor vehicle on the streets equipped with a muffler cut out, bypass, or similar device.

(2) A "muffler" as used herein is defined as a device consisting of a series of chambers or other mechanical devices designed for receiving the exhaust gases from an internal combustion engine for the purpose of breaking up the sound waves and the diffusion of smoke emitting from such engine.

(3) No person shall introduce any foreign material or obstruction into the muffler or exhaust pipe which causes or is capable of causing exhaust gases to ignite, burn, or flash in any manner or form.

History.—§128, Ch. 57-333.

186.0130 Following fire apparatus prohibited.—No driver of any vehicle other than an authorized emergency vehicle on official business shall follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History.—§129, Ch. 57-333.

186.0131 Crossing fire hose.—No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway for use at any fire or

alarm of fire or practice runs, without the consent of the fire department official in command.

History.—§130, Ch. 57-333.

186.0132 Following too closely.—The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles, and the traffic upon and the condition of the streets and shall maintain proper control of the vehicle at all times.

History.—§131, Ch. 57-333.

186.0133 Overtaking and passing school bus; school bus to bear sign; where school bus to stop.—

(1) Any person using, operating, or driving a motor vehicle upon or over the roads or streets of this municipality, upon approaching any school bus used in transporting school pupils to or from school, while such bus is stopped upon the roads or streets of this municipality, is required to bring such motor vehicle to a full stop before passing such school bus; provided, that said bus is properly identified by being painted a uniform color as approved by the state board of education, with the words "school bus" on the front and back in black letters at least four inches high. If a stop signal which meets standard requirements prescribed by the state board or by state law is displayed from the bus, said signal shall be due warning to the driver of any approaching vehicle that children may be on the highway and such vehicle shall not pass the school bus until the signal is no longer actuated or until the driver signals traffic to proceed.

(2) Every school bus shall stop as far to the right of the street as possible before discharging or loading passengers and, when possible, shall not stop where the visibility is obscured for a distance of 200 feet either way from the bus.

History.—§132, Ch. 57-333.

186.0134 Driving through funeral or other procession.—No operator of a vehicle shall drive between the vehicles, persons, or animals comprising a funeral or other authorized procession when such funeral or procession vehicles are properly identified by pennants or other authorized insignia and while such funeral or procession is in motion except when otherwise directed by a police officer. This provision shall not apply to authorized emergency vehicles as defined in this ordinance.

History.—§133, Ch. 57-333.

186.0135 Drivers and participants in procession.—All vehicles, persons, or animals comprising a funeral or other procession shall proceed as near to the right-hand edge of the roadway as practicable and shall follow the preceding vehicles, persons, or animals in such procession as closely as is practicable and safe.

History.—§134, Ch. 57-333.

186.0136 When permits required for parades, processions, and sound trucks.—

(1) No procession, or parade, excepting the forces of the United States armed services, the military forces of this state, and the forces of the police and fire departments, shall occupy, march, or proceed along any street or roadway except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply. No sound truck or other vehicle equipped with amplifier or loudspeaker shall be driven upon any street for the purpose of selling, offering for sale, or advertising in any fashion except in accordance with a permit issued by the chief of police.

(2) No oversized or overweight vehicle or equipment may be driven, occupy or proceed upon any street or roadway except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

History.—§135, Ch. 57-333.

186.0137 Vehicles shall not be driven on sidewalk.—The driver of a vehicle shall not drive upon or within any sidewalk area except at a permanent or temporary driveway.

History.—§136, Ch. 57-333.

186.0138 Driving through safety zones prohibited.—No vehicle shall at any time be driven through or within a safety zone.

History.—§137, Ch. 57-333.

186.0139 Riding on motorcycles and motor-driven cycles.—A person operating a motorcycle or motor-driven cycle upon the roads or streets of this municipality shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle or motor-driven cycle unless such vehicle is equipped to carry more than one person, in which event a passenger may ride upon the permanent and regular seat, if equipped for two persons, or upon another seat firmly attached to the rear or side of the operator.

History.—§138, Ch. 57-333.

186.0140 Clinging to vehicles.—Any person riding upon any bicycle, motorcycle, motor-driven cycle, coaster, sled, roller skates or any toy vehicle shall not attach the same or himself to any vehicle upon any street.

History.—§139, Ch. 57-333.

186.0141 Boarding or alighting from vehicle.—No person shall board or alight from any vehicle while such vehicle is in motion.

History.—§140, Ch. 57-333.

186.0142 Unlawful riding.—No person shall ride on any vehicle upon any portion thereof

not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to a person or persons riding within truck bodies in space intended for merchandise.

History.—§141, Ch. 57-333.

186.0143 Lights and brakes and other parts and equipment.—No person shall drive, move, stop or park, and no person shall cause or knowingly permit to be driven, moved, stopped or parked on any street any private or commercial vehicle 1. which is in such unsafe condition as to endanger any person or property, or, 2. which is not equipped with those lamps, reflectors, brakes, horn, and other warning and signalling devices, windows, windshield, mirrors, safety glass, mufflers, fenders and tires, and such other parts and equipment of a vehicle on the highways, in the position, condition and adjustment meeting the requirements of the laws of the state of Florida as to such parts and equipment of a vehicle on the highways of the state at the time, under the conditions, and for the purposes then existing, or 3. with respect to any vehicle being driven, moved, stopped or parked on any street within this municipality, to do any act forbidden, or fail to perform any act required by the laws of Florida relating to the lamps, brakes, fenders, and other parts and equipment, size, weight, and load as to such a vehicle on the highways of the state; provided, however, an authorized emergency vehicle may be equipped with and may display flashing lights which do not indicate a right or left turn.

History.—§142, Ch. 57-333.

186.0144 Inspection of vehicles.—It is unlawful for any person to drive, stop or park, or for the owner to cause or knowingly permit to be driven, stopped, or parked on any street within this municipality any vehicle which is required under the laws of Florida to be inspected, unless such vehicle has been inspected and has attached thereto, in proper position, a valid and unexpired certificate of inspection as required by the laws of Florida or by this municipality.

History.—§143, Ch. 57-333.

186.0145 Height, length, and weight of vehicle.—

(1) No person shall drive, move, stop or park, and no owner shall cause or knowingly permit to be driven, moved, stopped or parked on any street of this municipality any vehicle or vehicles of a size or weight or gross loaded weight exceeding the maximum limitations specified in the laws of Florida as to such size, weight, and gross loaded weight unless such person or owner is authorized to drive, stop, or park such vehicle of a size or weight exceeding the maximum by special permit of the state road department as provided by the laws of Florida.

(2) The provisions of this section shall not apply to fire apparatus, road machinery, snow plows, or to implements of husbandry temporarily moved upon a street.

History.—§144, Ch. 57-333.

186.0146 Restrictions on farm tractors, trailers, trucks and commercial vehicles upon use of streets.—

(1) When signs are erected giving notice thereof, no person shall operate or stop, stand, or park any farm tractor, trailer, semi-trailer, truck or commercial vehicle with a gross weight in excess of the amounts specified in schedule VIII at any time upon any of the streets or parts of streets described in said schedule VIII, attached to and made a part of this ordinance.

(2) It shall be unlawful to operate, park, stand or use upon any public street any commercial vehicle unless said vehicle is designated by lettering of three inches minimum size on either side indicating the name of the firm or the name of the corporation or person operating the same for a commercial use.

History.—§145, Ch. 57-333.

186.0147 Licensing of vehicles.—Every vehicle, at all times while driven, stopped or parked upon any streets of this municipality shall be licensed in the name of the owner thereof in accordance with the laws of Florida, unless such vehicle is not required by the laws of Florida to be licensed in this state, and shall unless otherwise provided by statute display the license plate or both of the license plates assigned to it by the state, one on the rear and if two, the other on the front of said vehicle, each to be securely fastened to the vehicle outside the main body of the vehicle, in such manner as to prevent said plates from swinging, with all letters, numerals, printing, writing, and other identification marks upon said plates clear and distinct and free from defacement, mutilation, grease and other obscuring matter, so that they shall be plainly visible and legible at all times 100 feet from the rear or front. No license plates other than those furnished by the state shall be used; provided, however, if such vehicle is not required to be licensed in this state, the license plates on such vehicle issued by another state, or by a territory, possession or district of the United States, or a foreign country, substantially complying with the provisions hereof, shall be considered as complying with this ordinance.

History.—§146, Ch. 57-333.

186.0148 Pedestrians subject to traffic-control signals.—Pedestrians shall be subject to traffic-control signals at intersections as hereinafter declared in §186.0149 of this ordinance, and at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated herein.

History.—§147, Ch. 57-333.

186.0149 Pedestrians' right of way at crosswalks.—

(1) Where traffic-control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided herein.

(2) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall neither overtake nor pass such vehicle.

(3) Whenever special pedestrian-control signals exhibiting the words "walk" or "wait" are in place such signals shall indicate as follows:

(a) "Walk."—Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles except emergency vehicles.

(b) "Wait."—No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "walk" signal may proceed to a sidewalk or safety island while the "wait" signal is showing.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross the roadway except in a marked crosswalk.

(4) No pedestrian shall cross a roadway other than in a crosswalk upon any through street.

(5) A pedestrian shall yield the right-of-way to an emergency vehicle as provided in §186.0174(2).

History.—§148, Ch. 57-333.

186.0150 Pedestrians to use right half of crosswalk.—Pedestrians shall move, whenever practicable, upon the right half of crosswalk.

History.—§149, Ch. 57-333.

186.0151 Crossing at right angles.—No pedestrian shall, except in a marked crosswalk, cross a roadway at any other place than by a route at right angles to the curb or by the shortest route to the opposite curb.

History.—§150, Ch. 57-333

186.0152 Crossing at other than crosswalks.—Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

History.—§151, Ch. 57-333.

186.0153 Pedestrians to walk on left side of roadway where sidewalks not provided; not to solicit rides.—

(1) Pedestrians walking along a street or roadway where sidewalks are not provided shall walk on the left side of the street or roadway facing approaching traffic.

(2) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

(3) Subsection (1) of this section, applying to pedestrians, shall also be applicable to riders of animals.

History.—§152, Ch. 57-333.

186.0154 Drivers to exercise due care.—Notwithstanding the provisions of §§186.0148-186.0153, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History.—§153, Ch. 57-333.

186.0155 Effect of regulations.—

(1) It is a violation of this ordinance for any person to do any act forbidden or fail to perform any act required which relates to the regulation of bicycles.

(2) No parent of any minor child and no guardian of any minor ward shall authorize or knowingly permit any such minor child or ward to violate any of the provisions of §§186.0155-186.0165.

(3) Sections 186.0155-186.0165 shall apply whenever a bicycle is operated upon any street, or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.

History.—§154, Ch. 57-333.

186.0156 Traffic laws apply to persons riding bicycles.—Every person riding a bicycle upon the street shall be subject to all of the duties applicable to the driver of a vehicle by the ordinance of this municipality, except as to special sections relating exclusively to bicycles and except as to those provisions of this ordinance which by their nature have no application.

History.—§155, Ch. 57-133.

186.0157 Obedience to traffic-control devices.—

(1) All persons operating a bicycle shall obey the instructions of official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(2) Whenever authorized signs are erected indicating that no right, or left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such signs except where such persons dismount from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

History.—§156, Ch. 57-333.

186.0158 Riding on bicycles.—

(1) No person propelling a bicycle shall ride other than astride a permanent and regular seat attached thereto.

(2) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

History.—§157, Ch. 57-333.

186.0159 Riding on roadways and bicycle paths.—

(1) Every person operating a bicycle upon a street shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(2) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or roadways, or parts of roadways, set aside for the exclusive use of bicycles.

(3) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

History.—§158, Ch. 57-333.

186.0160 Speed.—No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

History.—§159, Ch. 57-333.

186.0161 Entering or emerging from alley, driveway, or building.—The operator of a bicycle entering or emerging from an alley, driveway, or building, shall, upon approaching a sidewalk, or the sidewalk area extending across any alleyway or driveway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway, shall yield the right-of-way to all vehicles approaching on said roadway.

History.—§160, Ch. 57-333.

186.0162 Carrying articles. — No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one hand firmly upon the handle bars, and in full control of such bicycle.

History.—§161, Ch. 57-333.

186.0163 Parking.—No person shall stand or park a bicycle upon a street other than upon the roadway against the curb, or upon the sidewalk, in a rack to support the bicycle, or against a building, or at the curb, in such a manner as to afford the least obstruction to pedestrian traffic.

History.—§162, Ch. 57-333.

186.0164 Riding on sidewalks.—

(1) No person shall ride a bicycle upon a sidewalk within a business district.

(2) When signs are erected on any sidewalk or street which prohibit the riding of bicycles thereon by any person, no person shall disobey such signs.

(3) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

History.—§163, Ch. 57-333.

186.0165 Lamps on bicycles.—

(1) Every bicycle shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear; except that a red reflector meeting the requirements of this section may be used in lieu of the red light. All such lamps and reflectors shall be in place and in operation whenever such bicycle is operated after sundown.

(2) No person shall operate a bicycle unless it is equipped with a bell or device capable of giving signal audible for a distance of at least 100 feet, but no bicycle shall be equipped with, nor shall any person use upon a bicycle, any siren or whistle.

(3) Every bicycle shall be equipped with a brake which will enable the operator to make a braked wheelskid on dry, level, clean pavement.

History.—§164, Ch. 57-333.

186.0166 Penalties.—Every person not a juvenile, as such is defined by the laws of this state, found guilty of a violation of any provisions found in §§186.0155-186.0165 shall be punished by a fine of not more than 25 dollars or by impounding of such person's bicycle for a period not to exceed 90 days. Upon the recommendation of a judge of a juvenile court or a competent court having jurisdiction over the person of a minor, the chief of police may impound such minor's bicycle for such period as said court may determine.

History.—§165, Ch. 57-333.

186.0167 Authority of police and fire department officials.—

(1) It is the duty of the officers of the police department or such officers as are assigned by the chief of police, to enforce all traffic ordinances of this municipality and of the state vehicle laws applicable to street and highway traffic in this municipality.

(2) Officers of the police department, or such special officers as are assigned by the chief of police, are hereby authorized to direct all traffic by voice, hand, or signal in conformance with traffic ordinances, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic ordinance.

(3) Members of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

History.—§166, Ch. 57-333.

186.0168 Required obedience to traffic ordinance.—It is a violation of this ordinance for any person to do any act forbidden, or fail to perform any act required in this ordinance.

History.—§167, Ch. 57-333.

186.0169 Obedience to police and fire department officials.—No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, or member of the fire department at the scene of a fire, who is invested by law or ordinance with authority to direct, control, or regulate traffic.

History.—§168, Ch. 57-333.

186.0170 Traffic laws apply to persons riding on bicycles, or on animals or driving animal-drawn vehicles.—

(1) Every person riding a bicycle or driving any animal drawing a vehicle upon a street shall be subject to the provisions of this ordinance applicable to the driver of a vehicle, except those provisions of this ordinance which by their nature can have no application.

(2) Persons riding or leading animals on or along any street shall ride or lead such animals on the left side of said street facing approaching traffic. This shall not apply to persons driving herds of animals along streets.

History.—§169, Ch. 57-333.

186.0171 Use of coasters, roller skates, and similar devices restricted.—No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk, and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized by ordinance of this municipality.

History.—§170, Ch. 57-333.

186.0172 Public employees to obey traffic regulations.—

(1) The provisions of this ordinance applicable to the drivers of vehicles upon the streets shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state subject to such specific exceptions as are set forth in this ordinance with references to authorized emergency vehicles.

(2) The provisions of this ordinance shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of the street, but shall apply to such persons, teams, vehicles and equipment when traveling to or from such work. These provisions shall not relieve the driver of any such team, vehicle or equipment from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History.—§171, Ch. 57-333.

186.0173 Authorized emergency vehicles.—

(1) The driver of any authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle, except when otherwise directed by a police officer, may:

(a) Park or stand notwithstanding the provisions of this ordinance;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the speed limits, so long as he does not endanger life or property;

(d) Disregard regulations governing direction of movement or turning in specified directions, so long as he does not endanger life or property.

(3) Those exemptions hereinbefore granted in reference to the movement of an authorized emergency vehicle shall apply only when the driver of said vehicle sounds a siren, bell, or exhaust whistle and the vehicle displays a lighted red lamp visible from the front, as a warning to others.

(4) No driver of any authorized emergency vehicle shall assume any special privilege under this ordinance except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

History.—§172, Ch. 57-333.

186.0174 Operation of vehicles and actions of pedestrians on approach of authorized emergency vehicle.—

(1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to the right-hand edge of curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed except when otherwise directed by a police officer.

(2) Every pedestrian shall yield the right-of-way and shall immediately leave the roadway, and remain out of the roadway, until the authorized emergency vehicle has passed ex-

cept when otherwise directed by a police officer.

History.—§173, Ch. 57-333.

186.0175 Incompetent drivers; drivers' licenses.—

(1) No person under the age of sixteen years, without a special permit as provided by the laws of the state of Florida, and no person physically or mentally disabled or incapacitated in any particular, temporarily or permanently, shall drive a motor vehicle upon the streets of this municipality, provided such disability or incapacity is such as to interfere with the ready and safe operation of such vehicle.

(2) No person shall drive a motor vehicle upon the streets of this municipality unless such person has a valid operator's license issued by this state, or such operator's license as is required of such person under the laws of the state, or chauffeur's license if a chauffeur's license is required.

History.—§174, Ch. 57-333.

186.0176 Permitting incompetents to drive. —No owner, and no person having charge or control of any motor vehicle, shall permit any prohibited person as described in §186.0175 to drive the same.

History.—§175, Ch. 57-333.

186.0177 Driving while under the influence of liquor or drugs.—

(1) It is a violation of this ordinance for any person while under the influence of intoxicating liquor or narcotic drugs, or any other drugs when affected to the extent that his or her normal faculties are impaired or who is an habitual user of narcotic drugs or other drugs, to drive any vehicle upon any street within this municipality.

(2) Every person who is found guilty of a violation of this section shall be punished as provided for by law.

(3) Every finding of guilty under this section shall be reported to the department of public safety of Florida, or such other agency as may by statute be designated for the purpose of supervising the licensing of drivers and chauffeurs.

History.—§176, Ch. 57-333.

186.0178 Reckless driving.—

(1) Any person who drives any vehicle within this municipality in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(2) Every person found guilty of reckless driving shall be punished as provided for by law.

History.—§177, Ch. 57-333.

186.0179 Careless driving. —

(1) Every person operating a vehicle upon the streets within this municipality shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and use of these streets and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this ordinance.

(2) Every person found guilty of careless driving shall be punished as provided for by law.

History.—§178, Ch. 57-333.

186.0180 Accidents involving death or personal injuries or damage to vehicles.—

(1) The driver of any vehicle directly involved in an accident resulting in injury to or death to any person, or resulting in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall then forthwith return to and in every event remain at the scene of the accident until he has fulfilled the requirements of §186.0181.

(2) Any person failing to stop or comply with said requirements under such circumstances shall be guilty of violations of this ordinance, and shall upon being found guilty be punished as provided for by law.

History.—§179, Ch. 57-333.

186.0181 Duty to give information and render aid.—The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request exhibit his operator's or chauffeur's license to the person struck or the driver, or occupant of or person attending any vehicle collided with and where practical shall render to any person injured in such accident reasonable assistance, including the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if necessary, or if such carrying is requested by the injured person.

History.—§180, Ch. 57-333.

186.0182 Duty to report accidents immediately.—

(1) The driver of a vehicle involved in an accident resulting in injury or death to any person, or any property damage shall by the quickest means of communication, give notice of such accident to the police department. No vehicle involved in such accident shall be moved except when so ordered by a police officer.

(2) The police department may require any driver of a vehicle involved in an accident to file written reports and supplemental reports concerning said accident, whenever the original information is insufficient in the opinion of the police department, and may

require witnesses of such accidents to render reports to the police department.

(3) Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall within 24 hours after completing such investigation forward a written report of such accident to the police department. It shall be the duty of all police officers and other peace officers to report to the department of public safety of Florida, or such other agency as may by statute be designated therefor, on the form provided, all accidents within 24 hours of the time they receive such information.

History.—§181, Ch. 57-333.

186.0183 When driver unable to report.—Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report such occupant shall make or cause to be made said report.

History.—§182, Ch. 57-333.

186.0184 Accident report forms.—

(1) The police department shall secure from the department of public safety of this state, or such other agency as may by statute be authorized to supply the same, forms for accident reports required hereunder, and thereon shall report sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on a form approved by said department of public safety, or said other agency where such form is available.

History.—§183, Ch. 57-333.

186.0185 Duty upon striking unattended vehicle.—The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop, and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, or shall leave securely attached in a conspicuous place in the vehicle struck, a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof, and shall report such accident as provided in §186.0182 hereof.

History.—§184, Ch. 57-333.

186.0186 Duty upon striking fixtures on street or roadway.—The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact, and of his name and address and of the registration number of the vehicle he is driving, and shall upon request exhibit his operator's or chauffeur's license and shall make such report of such accident when and as required in §186.0182.

History.—§185, Ch. 57-333.

186.0187 Garages to report.—The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident, or struck by any bullet, shall report to the police department within 24 hours after such vehicle is received and before any repairs are made to such vehicle, giving the engine number, registration number, and if known, the name and address of the owner and operator of such vehicle, together with any other discernible information.

History.—§186, Ch. 57-333.

186.0188 Accident reports confidential.—All accident reports and supplemental reports required of drivers of vehicles by §186.0182 (1) and (2) shall be without prejudice to the individual reporting, and shall be for the confidential use of the police department and of the state department of public safety, except that the police department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the police department shall furnish upon demand of any court, a certificate showing that a specified accident report has or has not been made to the police department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department.

History.—§187, Ch. 57-333.

186.0189 Application of ordinance.—This ordinance applies to every street, alley, sidewalk, driveway, park area, and every other way, either within or outside the corporate limits of this municipality, the use of which the municipality has jurisdiction and authority to regulate.

History.—§188, Ch. 57-333.

186.0190 Effect of ordinance.—If any part or parts of this ordinance are for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The (city council) (city commission) hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid or unconstitutional.

History.—§189, Ch. 57-333.

186.0191 Uniformity of interpretation between this ordinance and the laws of the state.—It is the dominating purpose of this ordinance that its provisions should adopt and make applicable to municipalities the presently existing laws of the state of Florida relating to the subjects for which provision is made herein, in order that uniformity of application and interpretation may be attained. No application or interpretation of this ordinance, regardless of the wording of any section of this ordinance, shall deviate from that uniformity of application and interpretation between comparable provisions of this ordinance and the laws of Florida, except where such deviation is required by the differing governmental or administrative requirements.

History.—§190, Ch. 57-333.

186.0192 Repeal.—All other former traffic ordinances of this municipality are hereby repealed, and all ordinances or parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

History.—§191, Ch. 57-333.

186.0193 Publication of ordinance.—The city clerk shall certify to the passage of this ordinance and cause the same to be certified for adoption by reference as provided by law.

History.—§192, Ch. 57-333.

186.0194 Schedules of designated streets, districts, and zones referred to in ordinance.—

SCHEDULE I.

(1) INCREASED SPEED LIMITS.—In accordance with §186.77, and when signs are erected giving notice thereof, the speed limit shall be as set forth in this schedule upon those streets or portions thereof and at the times specified herein.

Name of street (or portions affected)	Speed Limit	At all times (or during daytime)

(2) DECREASE OF STATE SPEED LIMIT AT CERTAIN INTERSECTIONS.—It is hereby determined upon the basis of an engineering and traffic investigation that the speed permitted by state law at the following street intersections is greater than is reasonable or safe under the condition found to exist at such intersections, and it is hereby declared that the speed limit within 100 feet upon every designated approach to and within these intersections herein designated shall be as herein stated, which speeds so declared shall be effective at the times specified herein, when signs are erected upon every approach to every such intersection giving notice of the speed limit so declared thereat.

Name of street	Speed Limit	At all times (or during daytime)

(3) INCREASING STATE SPEED LIMIT IN CERTAIN ZONES.—It is hereby determined upon the basis of an engineering and traffic investigation that the speed permitted by state law upon the following streets is less than is necessary for reasonable or safe operation of vehicles thereon by reason of the designation and signposting of said streets as through streets and (or) by reason of widely spaced intersections; therefore, it is hereby declared that the speed limit shall be as hereinafter set forth on those streets or parts of streets herein designated, at the times specified when standard signs are erected giving notice of the authorized speed, which in no event shall be in excess of the greatest speed prescribed by state law for driving during the daytime in locations other than business or residence districts.

Name of street	Speed Limit	At all times (or during daytime)

(4) DECREASE OF STATE LAW MAXIMUM SPEED.—It is hereby determined upon the basis of an engineering and traffic investigation that the speed permitted by state law outside of business and residential districts as applicable upon the following streets is greater than is reasonable or safe under the conditions found to exist upon such streets, and it is hereby declared that the speed limits shall be as herein set forth on those streets or parts of streets herein designated, at the times herein specified when signs are erected giving notice thereof.

Name of street	Speed Limit	At all times (or during daytime)

SCHEDULE II.

(1) ONE-WAY STREETS AND ALLEYS.—In accordance with §186.96 and when properly signposted, traffic shall move only in the direction indicated upon the following streets or alleys:

Name of street or designation of alley	Direction of traffic movement

SCHEDULE III.

(1) THROUGH STREETS.—In accordance with the provisions of §186.12 and when signs are erected giving notice thereof, drivers of vehicles shall stop at every intersection before entering any of the following streets or parts of streets:

Name of street	Portions affected

SCHEDULE IV.

(1) PARKING PROHIBITED AT ALL TIMES ON CERTAIN STREETS.—In accordance with §186.36 and when signs are erected giving notice thereof, no person shall at any time park a vehicle upon any of the following described streets or parts of streets:

Name of street	Portions affected

SCHEDULE V.

(1) PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS.—In accordance with §186.27 and when signs are erected giving notice thereof, no person shall park a vehicle between the hours specified herein of any day except Sundays and public holidays within the district or upon any of the streets or parts of streets as follows:

Name of streets or district	Hours parking prohibited

SCHEDULE VI.

(1) PARKING TIME LIMITED ON CERTAIN STREETS.—In accordance with §186.38 and when signs or parking meters are erected giving notice thereof, no person shall park a vehicle for a period of time longer than ( ) (hours) between the hours of ( ) a.m. and ( ) p.m. of any day except Sundays and public holidays within the district or upon any of the streets or parts of streets as follows:

Name of street or district	Hours stopping, standing or parking limited

SCHEDULE VII.

(1) PARKING TIME LIMITED IN METERED PARKING ZONES.—In accordance with §186.39 and when parking meters are erected giving notice thereof, no person shall stop, stand, or park a vehicle for longer than the period of time designated by said parking meters upon any of the streets or parts of streets as follows:

Name of street or zone	Metered parking time permitted

SCHEDULE VIII.

(1) OPERATION OF FARM TRACTORS, TRAILERS, SEMI-TRAILERS, AND TRUCKS AND COMMERCIAL VEHICLES LIMITED ON CERTAIN STREETS.—In accordance with §186.40 and when signs are erected giving notice thereof, no person shall operate, or stop, stand, or park a farm tractor, trailer, semitrailer, or a truck or other commercial vehicle with a gross weight exceeding the following ton limits upon any of the streets described as follows:

Name of street	Gross tonnage permitted

(2) OPERATION OF FARM TRACTORS, TRAILERS, SEMITRAILERS, AND TRUCKS AND COMMERCIAL VEHICLES PROHIBITED ON CERTAIN STREETS AT SPECIFIED TIMES.—In accordance with §186.40 and when signs are erected giving notice thereof, no person shall operate, or stop, stand or park farm tractors, trailers, semitrailers, or trucks or other commercial vehicles at the specified times upon any of the streets described as follows:

Name of street	Hours operating, stopping, standing or parking prohibited

History.—§194, Ch. 57-333.

TITLE XIII

TAXATION AND FINANCE

CHAPTER 192

TAXATION, GENERAL PROVISIONS

192.01 Property subject to taxation.—Unless expressly exempted from taxation, all real and personal property in this state, and all personal property belonging to persons residing in this state, shall be subject to taxation in the manner provided by law.

History.—§1, ch. 4322, 1895; GS 428; §1, ch. 5596, 1907; RGS 694; CGL 893.

192.02 Real property defined.—For the purpose of taxation "real property" shall be construed to include lands and all buildings, fixtures and other improvements thereon. When used in connection with taxation the terms "land" and "real estate" shall be construed as having the same meaning as real property above defined.

History.—§2, ch. 4322, 1895; GS 429; §2, ch. 5596, 1907; RGS 695; CGL 895.

192.03 Personal property defined.—For the purpose of taxation "personal property" shall be construed to include all goods and chattels, money and effects, debts due or to become due from solvent debtors whether on account, contract, note or otherwise, and all public stocks or shares in incorporated or unincorporated companies.

History.—§3, ch. 4322, 1895; GS 430; §3, ch. 5596, 1907; RGS 696; CGL 896; §1, ch. 18297, 1937; §5, ch. 63-550.

192.04 Property taxable as of January first; lien.—All real and personal property shall be subject to taxation on the first day of January of each year, and shall be a lien upon such property for the purposes thereof superior to all others, which lien in addition to the provisions for the collection of taxes on personal property may be enforced by suit in equity.

History.—§3, ch. 4322, 1895; RGS 696; CGL 896; §3, ch. 5596, 1907; §1, ch. 18297, 1937.

192.05 Assessment of stock in trade; failure to file return and pay the tax when due.—

(1) All personal property considered as goods, wares and merchandise commonly known as stock in trade, shall be assessed for the purpose of taxation by the counties, cities, villages, towns and taxing districts at twenty-five per cent of a valuation to be based upon the invoice cost value of the goods. Said valuation shall be the inventory data reported on the taxpayer's federal income tax return and such other sworn data as shall be necessary to assure an accurate report of the average inventory of the taxpayer held or owned over a period of twelve months, next preceding January 1 of the year for which the assessment is made.

(2) Any person who fails to make a tax return as required by this section shall pay a penalty in addition to and as part of the tax, a sum equal to twenty-five per cent of the tax found to be due. A taxpayer making a return and who fails to include therein all stock in trade subject to taxation as required by this chapter shall pay as a penalty in addition to, and as part of the tax, a sum equal to twenty-five per cent of the tax found to be due on that part of his stock in trade which he fails to include in his return. All taxes together with any penalties shall draw interest at the rate of one per cent per month from the date the said taxes become delinquent until same have been paid. In making a back assessment of omitted property there shall be added as a penalty the sum of twenty-five per cent of the tax per annum from the date such tax should have been paid.

History.—§3, ch. 4322, 1895; GS 430; §3, ch. 5596, 1907; RGS 696; CGL 896; §1, ch. 18297, 1937; §1, ch. 61-295.

192.051 Statutory exemptions; governing provision.—It is hereby declared to be the intent of the legislature of the state that §1 of Art. IX of the constitution is the exclusive governing provision concerning statutory exemptions of property of nonprofit corporations.

History.—§2, ch. 61-266.

192.06 Property exempt from taxation.—The following property shall be exempt from taxation:

(1) All property, real and personal, of the United States and of this state, except such property of the United States as shall be subject to taxation by this state or any political subdivision or municipality thereof under any law of the United States.

(2) All public property of the several counties, cities, villages, towns and school districts in this state, used or intended for public purposes, including both real and personal property of all fire, hose and hook and ladder companies, except lands sold for taxes for the use of any counties, cities, villages, towns or school district; and including all property of municipally owned and operated public utilities held and used exclusively for municipal purposes.

(3) Such property of educational, literary, benevolent, fraternal, charitable and scientific institutions within this state, as shall actually be occupied and used by them for the purpose for which they have been or may be organized, provided, not more than seventy-five per cent of floor space of said building or property is rented, and the rents, issues, and profits of said property are used for the educational, literary, benevolent, fraternal, charitable or

scientific purposes of said institutions; provided, further, that the above stated limitation against the rental of more than seventy-five per cent of the floor space of any such building or property shall not apply to rooms or beds rented, or available for rent, to patients in any hospital, licensed by the state board of health, operated by a Florida corporation, not for profit, which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, if all of such income, remaining after payment of the usual and necessary expenses of operating such hospital, including the payment of liens and encumbrances upon the property of such corporation, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of the facilities of such hospital; provided further, that nothing in this subsection shall be construed as applying to special assessment by municipalities for sidewalks, curbing, street paving or other local improvements. Provided further, that educational institutions as used in this chapter shall mean state tax supported, parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for eligibility to, certification by, accreditation to or membership in the southern association of colleges and secondary schools, state department of education or the Florida council of independent schools this act shall not apply to property owned by testamentary charitable trusts in counties having a population of not less than one hundred twelve thousand nor more than one hundred seventy thousand according to the latest official decennial census.

(4) All houses of public worship and lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property.

(5) All public libraries and real and personal property belonging to and connected with the same, consisting of the library itself and all real and personal property held for the actual use and occupation of such library only, and not for rent, profit or speculation.

(6) All property, real and personal, held by and belonging to any agricultural society in this state, and used exclusively for the meetings or exhibits of such society, which now is or may hereafter be lawfully organized in pursuance of law.

(7) Property to the value of five hundred dollars to every widow, and to every person who is a bona fide resident of the state, and has lost a limb or been disabled, in war or by misfortune.

(8) All property in this state now owned and exclusively used by the regularly constituted women's club of Florida, or American Legion, or the duly constituted chapters, inns, or other associations duly chartered by national college fraternities or national college sororities, located and existing at colleges and universities in the state, at state institutions or duly chartered as such colleges or universities by the state, used solely as their clubhouse or home, is hereby defined to mean such property as is contemplated by §1 of Art. IX of the constitution of Florida and is hereby declared to be exempt from all taxation; provided, that nothing in this subsection shall be construed as applying to special assessments by municipalities for sidewalks, curbing, street paving or other local improvements as to which special assessments against abutting property owners are made and collected.

(9) All homes, clubhouses, hospitals and other property owned and operated by the organizations of exservice men, not for profit, and in carrying out the purposes of such organizations and to preserve the associations and lessons of the world wars and Spanish American war, are hereby made and declared to be exempt from the assessment and levy of all ad valorem taxes in the state.

(10) Real property owned and used by labor organizations with charters from national or international organizations which is used exclusively by them as their meeting halls, training halls or educational purposes is hereby defined as being property within the purview of §1, Art. IX of the state constitution and entitled to tax exemption thereunder; provided, however, that this exemption shall only extend to the portion of a building used for such purposes and where any property owned by any such labor organization is used for commercial purposes, which purposes include, but which are not limited to, rentals, it shall be subject to taxation. The portion of such buildings used for commercial purposes or other purposes, may be valued and placed upon the tax rolls separately from the portions entitled to exemption as aforesaid.

(11) (a) Real property owned and used by medical societies chartered under the laws of this state, which is used exclusively by them for the headquarters for such societies, the preservation of medical or scientific libraries, the situs for medical research programs and discussions or other educational or scientific purposes, identified or allied with organized medicine is hereby defined as being property within the purview of §1, Art. IX of the state constitution and entitled to tax exemptions thereunder. Provided however, that this exemption shall only extend to the portion of a building used for such purposes and where any such property owned by any such medical societies is used for commercial purposes which includes, but is not limited to, rentals, it shall be subject to taxation. The portion of such buildings used for commercial purposes or other purposes, may be valued and placed upon the tax rolls separately from the portions entitled to exemption as aforesaid.

(b) All bridges and approaches, the property upon which said bridges and approaches are constructed and all appurtenances thereto owned by neighboring states or jointly by this state and neighboring states when said bridges and their approaches and appurtenances are open to travel by the general public.

(c) Nothing in this subsection shall be construed as amending or otherwise affecting any of the provisions of subsections (1) through (10), inclusive, of this section.

(12) Real property held and used for the production of income, and for no other purpose, by a testamentary trust for a term of not less than ninety-nine years duration, established by will, probated and administered under the laws of Florida, for the purpose of constructing and operating a charitable, nonprofit hospital or hospitals, within the state, provided such income is applied exclusively to the nonprofit charitable hospital purposes specified in said will, and provided, however, that such exempted property shall not exceed five thousand acres in any one county.

*(13) All property, real and personal, of any hospital, licensed by the state board of health, owned and operated by a Florida corporation not for profit, which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, and used by such hospital for hospital purposes, including but not limited to housing for nurses, interns and other hospital personnel, laboratories, laundries, parking lots, auditoriums, lecture halls, animal houses, pharmacies and other hospital uses; provided that all income of such hospital, remaining after payment of the usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of its facilities.

History.—§1, ch. 4322, 1895, §1, ch. 5263, 1903; GS 431; §4, ch. 5596, 1907; §10, ch. 7838, 1919; RGS 697; §1, ch. 9176, 1923; §1, ch. 9179, 1923; §1, ch. 10286, 1925; CGL 897-899; §1, ch. 18312, 1937; §1, ch. 19376, 1939; §1, ch. 21742, 1943; §1, ch. 23082, 1945; §1, ch. 26337, 1949; (11) (a)-(c) n. §1, ch. 29979 and §§1, 2, ch. 29982, 1955; (2) §1, ch. 57-788; (12) n. §1, ch. 57-816; (3) §3, ch. 61-266 and §1, ch. 61-417; (10), (11)(a) §§5, 4, ch. 61-266, (13) n. §1, ch. 63-541.

*Note—Subsection (13) effective December 31, 1963.

192.061 Certain leased property exempt from taxation.—

(1) Any hospital, medical research, scientific or educational corporation organized and existing by virtue of the statutes of the state relating to corporations not for profit, that was on January 1, 1952 and shall be thereafter, in possession of and devoting exclusively to its nonprofit purposes, real property that was, is or shall be possessed by virtue of an assignment of a written lease for a term of seventy or more years and where such lease shall have been in full force and effect with all rent fully paid for more than five years immediately preceding assignment to any such nonprofit corporation, and where the lessee was, is or shall be obligated by the terms of such lease and assignment thereof to pay all taxes levied and assessed against such real property; shall be relieved of any and all taxes levied or assessed against such property by the state, by any county, by any municipality or by any flood control, drainage or school district or by any political subdivision or agency of any of the foregoing, for the year 1952 and subsequent years, and all such taxes shall be and the same are hereby cancelled in view of the exclusive use of any such real property by such a corporation for the purposes thereof; and the proper officers of the state, any county, any municipality or any flood control, drainage or school district, or any political subdivision or agency of any of the foregoing, that have collected taxes for the year 1952 with respect to any such property, are authorized and directed to refund same, without interest thereon, to any such corporation.

(2) All of such property described in subsection (1) be and the same is hereby exempted from all taxes whatsoever, whether state, county, municipal, drainage district, flood control district or school district, or any political subdivision or agency of all thereof, so long as such property is possessed and used by such a corporation exclusively for its scientific and nonprofit purposes.

History.—§§ 1, 2, ch. 28307, 1953.

***192.062 Annual application required for exemption.**—Every person or organization who has the legal title to real or personal property which is entitled by law to exemption from taxation as a result of its ownership and use, except property owned and used exclusively for governmental purposes or religious purposes, shall before April 1 of each year file an application for exemption with the county tax assessor listing and describing the property for which exemption is claimed and certifying its ownership and use. The comptroller shall prescribe the forms upon which the application is made.

History.—§1, ch. 63-342.
*Note.—Effective January 1, 1964.

192.063 Annual growing agricultural crops; non-bearing fruit trees, nursery stock; taxability.—That growing annual agricultural crops, non-bearing fruit trees and nursery stock, regardless of the growing methods, shall be considered as having no ascertainable value and shall not be taxable until they have reached maturity or a stage of marketability and have passed from the hands of the producer and/or offered for sale. This act shall be construed liberally in favor of the taxpayer.

History.—§§1, 2, ch. 63-432.

192.07 Exemption of institutions for orphans and dependent children.—Real estate of every religious or charitable institution in the state engaged in the support, maintenance and care of orphan and dependent children shall be exempt in aggregate valuation from ad valorem taxes in a sum equal to five hundred dollars for each child cared for in said institution; said exemption to be apportioned to each

of the counties in which such real estate may be owned according to the number of children being supported, maintained and cared for by such institution, upon an estimate based upon the average number of children cared for by said institution during the previous fiscal year. This section shall extend to any property owned in any county of the state by such institution, whether improved or unimproved, not used for rental purposes; provided that nothing in this section shall be construed to modify or repeal the provisions of law now exempting all property of such institutions within this state from taxation when actually occupied and used by them solely for the purposes for which they have been or may be organized.

The superintendent or other officer of such institution shall file with the tax collector of each county in which such property shall be each year a list of the real estate owned by the institution in the state, together with an accurate list of the number of children cared for by said institution during the previous twelve months.

History.—§ § 1-3, ch. 18302, 1937; CGL 1940 Supp. 897(13)-897(15).

192.08 Exemption of state property.— No taxes or special assessments shall be levied by any taxing district, special taxing district, or other governmental unit or agency created for purposes of taxation, against lands or other property of the state, except for the purpose of improving the actual physical condition of such lands or other property, and for such purpose, only upon the approval of such levy by that state agency or department in which title to such lands or other property is vested, or having jurisdiction over such lands or other property.

The taxes or special assessments lawfully imposed upon lands or other property owned by the said state or by its agency shall be an obligation only upon the lands or other property against which such taxes or special assessments are lawfully imposed.

The provisions of this section shall not apply to state lands or property now subject to taxes or assessments in any taxing district or special taxing district created prior to June 26, 1931.

History.—§ § 1-3, ch. 15639, 1935; CGL 1936 Supp. 893(1).

cf—§235.34 Expenditures authorized for certain improvements to school plants.

§153.05 Water system improvements and sanitary sewers; special assessments.

§298.36 Assessing land for reclamation; apportionment of tax; lands belonging to state assessed; drainage tax record.

192.09 Certain property of Y. M. C. A. exempt.—All property of Young men's christian associations within this state, which shall be actually occupied and used by them for the purposes only for which they have been or may be organized, shall be exempted from taxation.

History.—§1, ch. 5724, 1907; RGS 701; CGL 903.

192.10 Commissioners of state institutions to list certain state prison farm lands for taxation in Bradford county.—The board of commissioners of state institutions annually before the first day of March shall list all lands owned or used as the state prison farm in Bradford County, excepting from such list five hundred acres in a contiguous body, on which the buildings belonging to the state prison farm are now or may hereafter be located and place the valuation on all the lands as above described, excepting the five hundred acres upon which said buildings are located, upon the same basis that similar lands are valued upon the tax books of said county and forward such list and valuation of lands to the tax assessor of said county. The said list shall not include any personal property owned or used by the said state prison farm.

The tax assessor of said county shall enter upon the tax rolls the description and valuations as made by the said board, and the county commissioners of said county shall not change or alter such description or valuations.

The tax collector of said county, on or before the first day of April of each year, shall forward to the board of commissioners of state institutions a statement of the amount that would be due upon said land as county taxes the same as if they were owned by and assessed as the lands of individuals or other taxpayers of the county. Upon receipt of such statement, said board shall make their requisition upon the comptroller for the amount contained in the statement of said tax collector, and the comptroller shall draw his warrant for the said amount upon the state treasurer, and forward said warrant to the tax collector of said county, which warrant shall be paid by the state treasurer out of any moneys in his hands the same as other general expenses of the state are paid.

History.—§ §1-3, ch. 7402, 1917; RGS 698, 699, 700; CGL 900, 901, 902.

192.11 Evidence of disability of ex-service men; exemption. — Any ex-service man, a bona fide resident of the state, who has been disabled in war, or by misfortune, shall be entitled to the exemption from taxation provided for in §9, Art. IX, of the constitution of Florida, and the production by him of a certificate of disability from the United States Government before the tax assessor of the county wherein his property lies, shall be prima facie evidence of the fact that he is entitled to such exemption.

History.—§1, ch. 16298, 1933; CGL 1936 Supp. 897(1).

192.111 Exemption for disabled veterans known as paraplegics.—

(1) Any real estate used and owned as a homestead by an ex-serviceman, honorably discharged with service connected disability and who has a certificate from the government or United States veterans' administration, or its successors, certifying that the ex-serviceman is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and classed as a paraplegic, shall be exempt from taxation.

(2) The production by an ex-serviceman of a certificate of disability from the United States

government or United States veterans' administration before the tax assessor of the county wherein his property lies, shall be prima facie evidence of the fact that he is entitled to such exemptions.

History.—§1, ch. 57-778.

192.112 Exemption for disabled veterans confined to wheel chairs.—

(1) Any real estate used and owned as a homestead by an ex-serviceman, honorably discharged with service connected total disability and who has a certificate from the government or United States veterans' administration, or its successors, certifying that the ex-serviceman is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheel chair for his transportation, shall be exempt from taxation.

(2) The production by an ex-serviceman of a certificate of disability from the United States government or United States veterans' administration before the tax assessor of the county wherein his property lies, shall be prima facie evidence of the fact that he is entitled to such exemptions.

History.—§1, ch. 57-761.

192.113 Exemption for quadriplegics.—

(1) Any real estate used and owned as a homestead by any quadriplegic shall be exempt from taxation.

(2) The production by any quadriplegic of a certificate of such disability from two licensed doctors of this state to the tax assessor of the county wherein the property lies, shall be prima facie evidence of the fact that he is entitled to such exemption.

History.—§1, ch. 59-134.

192.12 Exemption of homesteads. — Every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of five thousand dollars on the said home and contiguous real property, as defined in §1, Art. X, of the constitution. Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon, as their respective interests shall appear, but no such exemption of more than five thousand dollars shall be allowed to any one person or any one dwelling house, nor shall the amount of the exemption allowed any person exceed the proportionate assessed valuation based on the interest owned by such person.

History.—§1, ch. 17060, 1935; CGL 1936 Supp. 897(2).
cf.—§1, Art. X, state const. homestead exemption.

192.13 Extent of homestead exemptions.— Vendees in possession of real estate under bona fide contracts to purchase when such instruments, under which they claim title, are recorded in the office of the clerk of the circuit court where said properties lie, and who reside thereon in good faith and make the same their permanent homes, and widows residing on real estate by virtue of dower or other estates therein limited in time by deed, will, jointure, or settlement, shall be deemed to have legal or beneficial title to said property.

History.—§2, ch. 17060, 1935; CGL 1936 Supp. 897(3).

192.14 Homestead exemptions; definitions. —The words "resident," "residence," "permanent residence," "permanent home" and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside.

History.—§3, ch. 17060, 1935; CGL 1936 Supp. 897(4).

192.141 Rental of homestead to constitute abandonment.—The rental of an entire dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of said dwelling as a homestead and said abandonment shall continue until such dwelling is physically occupied by the owner thereof; provided however, that such abandonment of such homestead after January 1, of any year shall not affect the homestead exemption for tax purposes for that particular year; provided, however, the provisions of this section shall not apply to a member of the armed forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal selective service act; provided, however, that this section shall have no effect on the status of any property involved in litigation pending on June 12, 1959.

History.—§1, ch. 59-270.

192.15 Homestead exemptions; forms.—The comptroller shall furnish to the assessor of each county a sufficient number of printed forms to be filed by taxpayers claiming to be entitled to said exemption. Said forms shall be substantially as follows:

Tax Assessor of_____ County, Florida:

I hereby make application for an exemption from all taxation up to the valuation of $5,000 on the following described property:_____

_____

_____

The title to said property is in_____

_____

(Name all owners and their proportionate interest)

and my interest or title in this property is as follows: _____

_____

(If title is not in applicant or is held jointly with others, give relationship of the owner or joint owner, to applicant)_____

_____

_____

I reside on the above property and in good faith make the same my permanent home and do hereby declare that I am a bona fide citizen of the State of Florida.

The statements contained and agreed to herein are true and made in good faith.

_____
Applicant

Subscribed and sworn to before me this _____ day of_____ 19_____

_____

All other taxing units shall provide forms making only such changes as are necessary to conform to the laws governing them.

History.—§4, ch. 17060, 1935; CGL 1936 Supp. 897(5).
cf.—§192.57, Oath requirement abolished.

192.16 Homestead exemptions; claims.—

(1) LARGE COUNTIES. — (a) Each taxpayer who claims said exemption shall file one of said forms, properly filled out and executed, with the assessor on or before April 1st of each year; and the failure to do so shall constitute a waiver of said exemption for such year; provided, however, that for the year 1935 such claim may be filed on or before July 1, 1935. At the time each taxpayer files claim for homestead exemption, the tax assessor shall deliver to him a receipt over his signature, or that of a duly authorized deputy, which shall appropriately identify the property covered in the application, shall bear date as of the day such application is received by the assessor, and any serial number or other identifying data desired by said assessor. The possession of such receipt shall constitute conclusive proof of the timely filing of such application.

(b) Provided, however, this subsection (1) shall not apply to counties of the state having a population of not more than 27,500 according to the official census of 1940.

(2) SMALL COUNTIES. — Each taxpayer who claims said exemption shall file one of said forms, properly filled out and executed, with the assessor on or before April 1st of each year; and the failure to do so shall constitute a waiver of said exemption for such year.

(3) Any person who shall knowingly give false information for the purpose of claiming homestead exemption as provided for in this chapter, specific reference being hereto made, to the information requested in the form provided for in §192.15, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or shall be imprisoned in the county jail for not more than six months or both such fine and imprisonment.

History.—§5, ch. 17060, 1935; CGL 1936 Supp. 897(6); §1, ch. 21876, 1943; (3) n. §1, ch. 28105, 1953.
cf.—§167.72 Homestead exemption municipal; method of filing.

192.161 Homestead exemption; claims by members of armed forces. — Every person who is entitled to homestead exemption in this state and who is serving in any branch of the armed forces of the United States, shall file a claim for such exemption as required by law, either in person, or, if by reason of such service he is unable to file such claim in person he may file such claim through his or her next of kin or through any other person he may duly authorize in writing to file such claim.

History.—§1, ch. 28199, 1953.

192.17 Homestead exemptions; duty of assessors.—The assessor shall examine each claim for exemption filed with him or referred to him and shall allow the same if found to be in accordance with law, by marking the same approved and by making the proper deductions on the tax books. In every case the property shall be assessed whether of the value more or less than five thousand dollars and an appropriate deduction shall be made as the case may be.

History.—§6, ch. 17060, 1935; CGL 1936 Supp. 897(7).

192.18 Homestead exemptions; city officials.—City tax assessors, or other officials performing such duties, shall be governed by the provisions of these homestead exemption laws.

History.—§7, ch. 17060, 1935; CGL 1936 Supp. 897(8).

192.19 Homestead exemptions; approval, refusal, hearings.—The tax assessors of the several counties of the state shall, as soon as practicable after the first day of April of each current year and prior to the first Monday in May of said year, carefully consider all applications for tax exemptions that shall have been filed in their respective offices on or before the first day of April of that year and if upon such investigation the tax assessor finds the applicant entitled to the tax exemption applied for under the law he shall mark the application approved and exemption granted and file same in the permanent records of his office and shall make such entries upon the tax rolls of his county as will be necessary to allow such exemption to the applicant. If, after due consideration, the tax assessor should find the applicant not to be entitled under the law to the exemption asked for, such tax assessor shall immediately make out in triplicate form a notice of such disapproval, giving his reasons therefor, a copy of which notice shall be served upon the applicant by the tax assessor either by personal delivery or by registered mail to the post office address given by the applicant and shall make return of the manner in which such notice was served upon said applicant upon the original notice thereof and immediately file same with the clerk of the board of county commissioners of said county. The third copy of said notice shall likewise have entered upon it the return of the tax assessor as to service had and filed among the permanent records of his office. The original notice of disapproval of application for exemption, with entry of service upon the applicant, when filed with the clerk of the board of county commissioners shall constitute an appeal of the applicant from the decision of the tax assessor, refusing to allow the exemption for which application was made, to the board of county commissioners, when sitting as a board of equalization, and said board of county commissioners, when sit-

ting as a board of equalization, shall review the application and evidence presented to the tax assessor upon which the applicant based his claim for exemption and shall hear the applicant in person or by agent in behalf of his right to such exemption, and the board of county commissioners shall reverse the decision of the tax assessor in said cause and grant exemption to the applicant if in its judgment the applicant is entitled thereto, or affirm the decision of the tax assessor, and such action of the board of county commissioners shall be final in said cause unless the applicant shall within fifteen days from the date of refusal of said application of said board of county commissioners, sitting as a board of equalization, file in the circuit court of the county in which the homestead is situated a proceeding against the assessor for a declaratory decree as is provided by chapter 87 or by other appropriate proceedings, and provided, that the failure of the taxpayer to appear before the assessor or board of county commissioners or to file any paper other than the application above provided, shall not constitute any bar or defense to said proceedings.

History.—§8, ch. 17060, 1935; CGL 1936 Supp. 897(9).
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

192.20 Homestead exemptions; administration of oaths.—For the purpose of administering the provisions of this law or any other duties pertaining to the proper administration of the duties of the office of tax assessor, the making and filing of tax returns and applications for tax exemption as provided under the laws of the state, the duly elected or appointed tax assessors of the several counties of the state or their lawful deputies, may administer oaths and attest same in the same manner as notaries public and justices of the peace of the state and when so administered by the said tax assessors such oath will have the same effect and be as binding as if administered by a justice of the peace or notary public of the state.

History.—§9, ch. 17060, 1935; CGL 1936 Supp. 897(10).

192.201 Exemption of household goods and personal effects.—

(1) There shall be exempt from taxation to every person residing and making his or her permanent home in this state household goods and personal effects to the assessed value of one thousand dollars. Title to such household goods and personal effects may be held individually, by the entireties, jointly or in common with others.

(2) This section shall take effect on January 1, 1956, and shall be applicable to the tax year beginning on this date.

History.—§§1, 3, ch. 29743, 1955.

192.21 Lien of taxes. — All taxes imposed pursuant to the constitution and the laws of this state shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment, and no act of omission or commission on the part of any tax assessor, or any assistant tax assessor, or any tax collector, or any board of county commissioners, or any clerk of the circuit court or any officer of this state, or any newspaper in which any advertisement of sale may be published, shall operate to defeat the payment of said taxes; but any such acts of omission or commission may be corrected at any time by the officer or party responsible for the same in like manner as is now or may hereafter be provided by law for performing such acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process by law for the enforcement of the collection of any such tax. All owners of property shall be held to know that taxes are due and payable thereon annually, and are hereby charged with the duty of ascertaining the amount of such tax and paying the same before the first day of April of the year following the year in which such taxes were assessed; all provisions of law now existing or which may be hereafter enacted relating to the assessment and collection of revenue (unless otherwise specifically so declared) shall be deemed and held to be directory only, designed for the orderly arrangement of records and procedure of officers in enforcing the revenue laws of the state; and no assessment shall be held invalid unless suit be instituted within sixty days from the time the assessment shall become final, and no sale or conveyance of real or personal property for nonpayment of taxes shall be held invalid except upon proof that the property was not subject to taxation, or that the taxes had been paid prior to the sale, or that the property had been redeemed prior to the execution and delivery of deed based upon certificate issued for nonpayment of taxes. Nothing contained in this law shall be construed as in any way affecting any suit pending on June 7, 1941, in any court of this state, or any federal court, involving any tax lien, tax certificate or deed, nor as affecting any suit to foreclose delinquent taxes filed by any county or municipality and pending in court on or prior to the first day of June, 1943.

History.—§1, ch. 10040, 1925; CGL 894; §1, ch. 14572, 1929; §§2, 2½, ch. 17442, 1935; §1, ch. 20722, 1941; §1, ch. 22079, 1943.

192.22 Validation of acceptance of bonds, etc., for taxes.—The action of public officers of this state, including the officers and governing boards and commissions of special taxing districts, prior to May 16th, 1933, in accepting bonds or matured interest coupons and other obligations in payment of taxes and in the redemption of tax sale certificates and tax liens, is hereby validated, ratified and confirmed.

History.—§1, ch. 16258, 1933; CGL 1936 Supp. 999(79).

192.23 Not to impair validity of prior assessments.—Nothing in these statutes shall be construed as to impair the validity of any assessment of taxes assessed prior to the first day of January, 1908, nor of any tax collector's warrant that has been or may be annexed to any assessment roll prior to said first day of

January, 1908, nor of any proceedings had or done or that may hereafter be had or done by any tax collector for the collection of any taxes assessed before that time, nor shall this law relieve any person from any penalty incurred by reason of violation of the law now in force.

History.—§68, ch. 4322, 1895; GS 596; §65, ch. 5596, 1907; RGS 802; CGL 1037.

192.24 Disposition of unclaimed redemption funds.—Wherever there shall have been held by any clerk of the circuit court or other public officer for a period of three months or more any moneys paid in for the redemption of tax certificates, which moneys are by the course of law provided to be paid over to the holder of a tax certificate redeemed, but as to which such clerk of court or other officer has not made payment over to the holder during the period aforesaid, either because of the failure of the person entitled to claim the same to do so within said three months' period, or for other cause, such clerk of the circuit court, or other officer shall forthwith remit the unclaimed redemption moneys, less his fees, to the state treasurer who shall hold the same as part of the public funds of the state available for general state purposes, subject always, however, to the right of the true owner thereof, to have a reimbursement of such funds made to him upon proof of his right thereto according to the procedure provided for the reclamation of escheated property by the heir or legal representative.

History.—§1, ch. 18313, 1937; CGL 1940 Supp. 999(149).

cf.—§731.33 Escheat.

§194.23 Disposal of land owners funds.

192.25 Distribution of interest on redeemed tax certificates. — The comptroller of the state shall distribute back to the several counties of the state the interest received on state tax certificates and subsequent omitted taxes on state tax certificates redeemed or purchased except such part of said interest as may have accrued on certificates or taxes levied by the state; same to be distributed at the same time and in the same manner as moneys received from the sale and redemption of state tax certificates as reported by the clerks of the circuit court from such counties to the state comptroller.

History.—§1, ch. 15050, 1931; CGL 1936 Supp. 999(1).

cf.—§2, Art. IX, state const. state ad valorem taxes abolished.

192.26 Modification of state tax levy.—The governor of the state may reduce or modify any state tax levy, now or hereafter authorized or provided for by the laws of Florida, when in his judgment the amount of the authorized levy is in excess of the just requirements of the purpose for which the particular tax was authorized, or will produce an excess or unnecessary amount of revenue for such purpose, and the order of the governor made in accordance with this section shall be filed in the office of the comptroller who shall transmit the same to all tax assessors of the state, who are required to obey and observe the same.

History.—§1, ch. 12295, 1927; CGL 1041.

192.27 Taxes against state properties; notice.—Whenever lands or other property of the state or of any agency thereof are situated within any district, sub-district or governmental unit for the purpose of taxation, which said lands or any of them or other property, are or shall be subject to special assessments or taxes, the tax collector or other tax collecting agency having authority to collect such taxes or special assessments, shall upon such taxes or special assessments becoming legally due and payable, mail to the state agency or department holding such land or other property, or if held by the state, then to the trustees of the internal improvement fund at Tallahassee, a notice and make notation under the same date of such notice on the tax roll, which said notice shall contain a description of the lands or other property owned by the state or its agency upon which taxes or special assessments have been levied and are collectible, and the amount of such special assessments or taxes, and unless such notation of notice on the tax roll shall have been made, any nonpayment by the said state or its agency of taxes or special assessments shall not constitute a delinquency or be the basis on which the said lands or other property may be sold for the nonpayment of such taxes or special assessments.

History.—§1, ch. 15640, 1931; CGL 1936 Supp. 953(1).

cf.—§235.34 Expenditures authorized for certain improvements to school plants.

§153.05 Water system improvements and sanitary sewers; special assessment.

§298.36 Assessing land for reclamation; apportionment of tax; lands belonging to state assessed; drainage tax record.

192.28 Judicial sale; payment of taxes.—All sheriffs, commissioners, masters in chancery, or other officers, whose duty it shall be to make sale of any property under the process or order of any court, shall pay from the proceeds of such sale, after the payment of the costs of the proceedings wherein the said sale is made, and the counsel fees if any allowed by the court, all taxes, state, county and municipal, which may be assessed, due and unpaid against the said property, including any and all sums which may be required to be paid to redeem the same from the lien of all back taxes to tax certificates outstanding against the same.

History.—§1, ch. 10285, 1925; CGL 954.

192.29 Subdivision plats; vacation. — The boards of county commissioners of the several counties of the state may adopt resolutions vacating plats in whole or in part of subdivisions in said counties returning the property covered by such plats either in whole or in part into acreage for the purpose of taxation. Before such resolution of vacating any plat either in whole or in part shall be entered by the boards of county commissioners it must be shown conclusively that the person making application for said vacation owns the fee simple title to the whole or that part of the tract covered by said subdivision sought to be vacated and must be further shown that the vacation by the boards of county commissioners of parts of plats will not affect the ownership

of persons owning other parts of said subdivision.

History.—§ § 1, 2, ch. 14822, 1931; CGL 1936 Supp. 921(3), 921(4); §1, ch. 22999, 1945.
cf.—§177.15 Certain streets and alleys vacated.

192.30 Notice of application to vacate plat.—(1) Persons making applications for vacation of plats either in whole or in part shall give notice of their intention to apply to the board of county commissioners to vacate said plat either in whole or in part by legal notice published in the newspaper nearest the tract or parcel of land in said county in not less than two weekly issues of said paper and must attach to the petition for vacation the proof of such publication, together with certificates showing that all state and county taxes, including the current year, have been paid; provided, that if such tract or parcel of land is within the corporate limits of any incorporated city or town the board of county commissioners shall be furnished with certified copy of resolution of the town council or city commission, as the case may be, showing that they have already by suitable resolution vacated such plat or subdivision or such part thereof sought to be vacated.

(2) Every such resolution by the board of county commissioners shall have the effect of vacating all streets and alleys which have not become highways necessary for use by the traveling public; and provided, that such vacation shall not become effective until certified copy of such resolution has been filed in the offices of the clerk of the circuit court and duly recorded in the public records of said county.

History.—§§3, 4, ch. 14822, 1931; CGL 1936 Supp. 921(5), 921(6); §2, ch. 22999, 1945.
cf.—§177.15 Certain streets and alleys vacated.

192.31 Powers and duties of comptroller and state budget commission as to uniformity.—*(1) The comptroller shall, under the supervision of the state budget commission, prescribe and furnish all forms to be used by county assessors, tax collectors, clerks of the circuit courts and boards of county commissioners in the assessing and collecting of taxes. The county assessors, tax collectors, clerks of the circuit courts and boards of county commissioners shall use the forms and pursue the instructions which may from time to time be transmitted to them by the comptroller. All forms furnished by the comptroller for use in each county shall be paid for by the comptroller upon approval by the state budget commission as provided by law. The comptroller shall have general supervision of the assessment and valuation of property, under the supervision of the state budget commission, so that all property will be placed on the tax rolls and the valuation thereof will be uniform and equal, as required by the constitution, and he shall also have supervision over the collection of such taxes. The comptroller shall, upon approval thereof by the state budget commission, establish and promulgate standard measures of values not inconsistent with those standards provided by law to be used by tax assessors in all counties, including taxing districts, in arriving at assessments of all property, which standard measures of values shall be deemed and held prima facie to be the standard measures of just valuation contemplated by the constitution of this state in matters of taxation, and tax assessors and county boards of equalization shall follow and apply such standard measures of values in arriving at assessments of all property, and the burden shall be upon any assessor or county board of equalization refusing to follow such standard to overcome the presumption by a preponderance of the evidence.

(2) The comptroller shall prepare a tentative manual of instructions for tax assessors, tax collectors and county boards of equalization and other tax officials, which tentative manual shall include the rules and regulations and the standard measures of values prescribed by the comptroller and such other information as the comptroller may deem to be useful in carrying out the provisions of this law. Copies of such tentative manual shall be furnished to the several tax assessors, tax collectors and county boards of equalization for examination, criticism and suggestions concerning the contents thereof, the same to be transmitted to the state budget commission within sixty days after receipt of such tentative manual, and thereupon the state budget commission shall consider any criticisms or suggestions which may be filed and adopt a final manual of instructions for use as herein provided, such manual not to become effective until so approved and adopted. Such final manual shall provide that platted lands unsold as lots shall be valued for tax assessment purposes on the same basis as any unplatted acreage of similar character, until sixty per cent of such lands included in one plat shall have been sold as individual lots. Within the discretion of the state budget commission prior to the approval and adoption of such manual, public hearings with local taxing officials may be held.

(3) On or before April 1, 1945, and on or before the same day of each year thereafter, the several tax assessors, tax collectors and county boards of equalization may submit to the state budget commission suggestions for amendments, changes or supplements to said manual of instructions and such suggestions, amendments, changes or supplements shall be considered by said state budget commission and said manual of instructions may be revised in such form as may be determined by said state budget commission.

(4) No expense shall be incurred in the preparation and distribution of such manual or handbook unless the same is first approved by the state budget commission.

(5) The several branches of the executive department of the state are authorized and directed to render such necessary aid and assistance to the comptroller as the facilities and professional personnel of such departments permit, to secure the due performance by the comptroller of his duties under this law.

(6) The comptroller shall conduct constant research and keep accurate tabulation of conditions existing as to ad valorem taxation, and make such recommendations by and with the approval of the state budget commission for the benefit of the legislature in regard thereto as he may deem for the best interest of the state.

(7) The comptroller shall, under the supervision of the state budget commission, prescribe reasonable rules and regulations for assessing and collecting taxes and such rules and regulations shall be followed by the county officers referred to in this law.

(8) It is hereby declared to be the purpose and intent of this law to secure a just valuation and provide for a uniform and equal assessment as between property within each county or taxing district and as between property in each county and property in every other county or taxing district in this state.

History.—§37, ch. 4322, 1895; GS 537; §35, ch. 5596, 1907; RGS 736; CGL 944; §46, ch. 20722, 1941; §22, ch. 22079, 1943; (1) §7, ch. 63-250.
*Subsection (1) effective January 1, 1964.

192.32 Assessments validated.—Every assessment of taxes heretofore made in the state of real estate, where such assessment has been actually made in the name of the true owner, is hereby validated in so far as the description of ownership is concerned, and no tax assessment or tax levy made upon any real estate in this state shall be held invalid by reason of or because of the fact that such real estate was actually assessed in the name of the true owner although such owner had made no return of the real estate to the tax assessor.

History.—§1, ch. 10023, 1925; CGL 927.

192.33 Survival of restrictions and covenants after tax deed.—Whenever a deed in the chain of title shall contain restrictions and covenants running with the land, as hereinafter defined and limited, said restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a voluntary grantee, immediate, mediate, or remote, of the owner of the title immediately prior to the delivery of the tax deed or master's deed.

This section shall apply to the usual restrictions and covenants limiting the use of property, the type, character and location of building, the character, race or nationality of owners, covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon and about the property, and other similar restrictions and covenants; but this section shall not protect covenants creating any debt or lien against or upon the property, or that will require the grantee to expend money for any purpose, except such as may require said grantee to keep the premises in a sanitary or sightly condition, or to abate nuisances or undesirable conditions.

Any right that the former owner had to enforce like restrictions and covenants against the immediate, mediate, or remote grantor and other parties owning other property held or sold under the same plat or plan, or in the same or adjacent subdivisions of land, or otherwise, except forfeitures, right of re-entry, or reverter, shall likewise survive to the grantee in said tax deed or master's deed and to his or its heirs, successors and assigns; it being among other things the specific intention of the legislature that all forfeitures, rights of re-entry, and reverter rights shall be destroyed and shall not survive to the grantee in such tax deed or master's deed or to his or its heirs, successors and assigns.

History.—§§1-3, ch. 17402, 1935; CGL 1936 Supp. 5663(1)-5663(3); §1, ch. 29959, 1955.

192.34 Mandamus to levy tax; limitations, etc.—In any suit brought in any court of this state seeking to compel the levy of any tax for the payment of any bonds, coupons or other evidences of indebtedness, or to establish a sinking fund for their ultimate redemption at maturity, the peremptory writ, if issued by the court, shall in no case require a levy in excess of the ability of the taxing unit involved to pay the taxes commanded to be levied; and if such taxing unit be one having other functions of civil government to perform, the court shall also take into consideration in commanding such levy, the necessity of such unit to make a reasonably ample levy of taxes for the purpose of raising revenue with which to pay for the operation of the ordinary functions of civil government which such unit performs; provided, this section shall not apply to bonds, coupons or other evidences of indebtedness issued subsequent to the passage of this law. The ability of the taxing unit involved to pay the taxes commanded to be levied shall be determined by the court within its sound discretion by the application of equitable considerations in view of all the conditions of the taxing unit bearing upon such ability to pay; and such ability to pay shall be first found and determined before the issuance of any such peremptory writ.

History.—§1, ch. 18301, 1937; CGL 1940 Supp. 2321(3).

192.35 Certificates purchased under Murphy act.—Holders of tax sale certificates together with subsequent omitted taxes, purchased by persons not the owners of the lands described in such certificates, under the provisions of chapter 18296, acts 1937, shall, at the expiration of two years from the date of the sale of such certificates, except certificates encumbering homesteads, have the right to apply for tax deeds, in the manner provided by law, to the lands described in such certificates; provided, that for two years from the date of the sale of any certificate, the person holding title to the lands described in said certificate, on the date it became two years old, his grantee or legal representative or anyone holding a lien upon such land, shall have the right to redeem the same from said certificate so sold, by the payment of the amount bid therefor plus three per cent per annum from the date of said certificate, together with all costs paid by the pur-

chaser in connection with the purchase of said certificate.

History.—§6, ch. 18296, 1937; CGL 1940 Supp. 992(17).

192.351 Murphy act; tax certificates barred.—The right to apply for a tax deed or to institute other action for recovery on or enforcement of tax sale certificates, and subsequent and omitted taxes in connection therewith, which were sold and assigned under the provisions of chapter 18296, acts of 1937, commonly known as the Murphy act, and which certificates are held by private holders, natural or corporate, partnership, trustee, estate of deceased person, or other person or persons under disability, or otherwise, shall be deemed and held to be barred by this section from and after midnight June 30, 1956.

History.—§1, ch. 29794, 1955.

192.352 Murphy act; cancellation of tax sale certificates by clerks of circuit court.—The several clerks of the circuit court of the state are authorized, empowered and directed to, immediately after June 30, 1956, note the cancellation of all tax sale certificates which were sold under the provisions of chapter 18296, acts of 1937, commonly known as the Murphy act, and which were then still outstanding, upon any and all records thereof in the office of such clerk.

The several clerks of the circuit court shall indicate such cancellation by entering opposite the record of such tax sale certificates, a notation in substantially the following form: "Cancelled by acts of 1955, Florida legislature."

For making each cancellation and otherwise complying with law in relation thereto the clerk shall receive such fees as provided by genera. law from the general revenue fund of the county for cancelling tax certificates by marginal notations.

History.—§2, ch. 29794, 1955.

192.353 Exception; certificates held by state.—§§192.351, 192.352 shall not apply to tax sale certificates held by the clerks of the circuit courts on behalf of the state, by virtue of which title to the land covered thereby vested in the state under §192.38, the Murphy act.

History.—§3, ch. 29794, 1955.

192.36 Homesteads; certificates purchased under Murphy act.—In the event any tax certificate, together with subsequent or omitted taxes, encumbering a homestead was purchased under chapter 18296, acts 1937, by any person, not the owner of the land described in such certificate, then at the expiration of ten years from the date of such sale of such certificate such purchaser shall have the right to apply for tax deed, as provided by law, for land described in such certificate; provided, that for ten years from date of sale of such certificate the person who held title to said land on date said certificate became two years old, his grantee or legal representative or any one holding a lien on such land shall have the right to redeem such land from such certificate by the payment of the amount bid therefor plus three per cent per annum from the date of sale of such certificate together with all costs paid in connection with sale of said certificate.

History.—§11, ch. 18296, 1937; CGL 1940 Supp. 992(22).

192.37 Cancellation of certificates purchased under Murphy act.—The holder of any tax sale certificate, by purchase, assignment or otherwise, purchased under the provisions of chapter 18296, acts of 1937, shall have the right, at any time, to deliver such certificate to the clerk of the circuit court of the county in which the lands are situated, for cancellation and said clerk shall cancel the certificates of record upon the payment of a fee of ten cents for each certificate so canceled.

History.—§7, ch. 18296, 1937; CGL 1940 Supp. 992(18).

192.38 Title to certain tax certificate lands vested in state.—

(1) At the expiration of two years from the date chapter 18296, acts of 1937, became a law, the fee simple title to all lands in this state, against which there remained outstanding tax sale certificates which, on the date said act became a law, were more than two years old, became absolutely vested in the state and every right, title or interest of every nature or kind whatsoever of the former owner of said property, or anyone claiming by, through or under him, or anyone holding a lien thereon, ceased, terminated and ended and the state through the trustees of the internal improvement fund may:

(a) Sell said lands to the highest and best bidder for cash at such time and after giving such notice and according to such rules and regulations as have or may be fixed and adopted from time to time by said trustees of the internal improvement fund;

(b) Sell or lease said lands to the United States, its agencies or instrumentalities, and to municipalities, drainage districts and other taxing districts in this state without notice and public sale, on terms and conditions to be determined by the trustees of the internal improvement fund;

(c) Convey to any agency of the state, or county in the state, without giving notice, on terms and conditions as may be fixed by the trustees of the internal improvement fund:

1. Easements for right-of-way.

2. Any tract or parcel.

Conveyances made under (a), (b) and (e) to be subject to any interests granted or withheld under (c) herein.

(d) Withdraw tracts or parcels from public sale considered by the trustees of the internal improvement fund to be valuable for public purposes, and dedicate such tracts or parcels to such public use considered necessary and proper by the said trustees;

(e) Exchange lands for other lands where such exchange is considered by the trustees of the internal improvement fund to be beneficial to the state;

(f) Convey easements to railroad companies, light and power companies and other public service corporations without notice and on such terms and conditions as to the trustees of the internal improvement fund may be just, and conveyances under (a), (b) and (e) herein shall be subject thereto.

(2) The trustees of the internal improvement fund are hereby vested and charged with the administration, management, control, supervision, conservation and protection of lands and products on, under or growing out of or connected with lands mentioned in this section, and for such purposes, laws relating to lands of the trustees of the internal improvement fund shall be applicable.

History.—§9, ch. 18296, 1937; CGL 1940 Supp. 992(20); §1, ch. 21684, 1943.
cf.—§196.17 Murphy act lands; municipal foreclosures against.

192.381 Sale of Murphy Act lands to former owner; application; conveyance; distribution of proceeds.—

(1) Lands acquired by the state, through delinquent ad valorem tax liens and the Murphy act (ch. 18296, laws of Florida, acts of 1937), which have not been previously sold, conveyed, dedicated or otherwise disposed of by the state, may, at the discretion of the trustees of the internal improvement fund, be sold and conveyed, by the state by and through its said trustees, to the record fee simple owner of said lands, as of June 9, 1939, the date said lands became absolutely vested in the state, or those claiming by, through or under him by virtue of a conveyance, mortgage, lien or agreement, upon such terms and conditions and for such consideration as to said trustees shall seem equitable and proper. No publication of a notice of sale or sale at auction to the highest and best bidder shall be necessary hereunder.

(2) Sale and conveyance of such lands hereunder shall be pursuant to application by the said former owner or those claiming by, through or under such owner, which should contain:

(a) A description of the lands sought to be purchased hereunder;

(b) The name, and address if known, of the said former owner, and the name and address of the applicant if other than the former owner, showing the chain of title from the said owner to the applicant;

(c) The mortgage and lien holders, if any, claiming under the former owner or his successors in title.

(d) The price offered for the lands; which amount shall accompany the application in cash or certified or cashier's checks.

(e) Any equities, or elements of hardship, why the lands should be sold to the applicant under this statute instead of under §192.38; and

(f) Such other information as the trustees of the internal improvement fund may desire.

(g) Evidence satisfactory to the trustees of the payment of all taxes and assessments levied and assessed on said lands prior to the vesting of said title in the state together with the payment of an amount which would equal the sum of taxes and assessments which would have been due had said lands not vested in the state.

(3) Any original application pending for the purchase of said lands under §192.38, shall stand suspended, upon the filing of the above application hereunder, until the final disposition of the said application hereunder and the pending of such an application shall not bar sale and conveyance hereunder unless and until a deed under said §192.38 shall have been delivered to the purchaser.

(4) The form for deeds of conveyances hereunder shall be adopted by the trustees of the internal improvement fund.

(5) The proceeds of sales hereunder shall be distributed and disposed of as are the proceeds from sales under §192.38.

History.—§§1-5, ch. 28317, 1953.

192.39 Validation of certain Murphy act sales.—All sales of tax certificates authorized by chapter 18296, acts 1937, advertised in weekly newspapers dated May 26, June 2, and June 9, 1939, and notices advertised in such weekly newspapers on the above dates, shall be construed as fulfilling the purpose and intent of the first paragraph of §3 of said chapter 18296, acts 1937.

History.—§1, ch. 19149, 1939; CGL 1940 Supp. 992(14a).

192.40 Redemption of delinquent taxes with bonds, etc.—The governing boards and officials charged with the collection of delinquent taxes of the several counties, districts and municipalities of this state shall receive and accept, when offered, all bonds, delinquent interest coupons or other delinquent obligations of said counties, districts or municipalities which were levied for the payment of interest or for a sinking fund on said bonds or other obligations offered, and in payment of all current taxes levied for the payment of interest or for a sinking fund on said bonds or other obligations; provided, however, that any taxpayer or owner of lands when offering to redeem lands by the payment in bonds, delinquent interest coupons or other delinquent obligations, from delinquent taxes levied for the payment of interest or a sinking fund on said bonds or other obligations, he shall redeem and pay as provided by law all other parts and portions of that particular tax levy levied against said lands. A levy of a tax for interest and sinking fund on one issue of bonds or other obligations shall not be payable in bonds or past due coupons or obligations other than the bonds, past due interest coupons or obligations for which said levy was made to pay, unless otherwise provided by law. All such bonds or past due interest coupons or other past due obligations of the county, district or municipality so received and accepted, shall be accepted and taken at par value; provided, however, that when the bonds involved are bonds having a serial ma-

turity rather than term bonds contemplated to be paid by a sinking fund, such serial bonds may be accepted only under such limitations as to maturity dates of the bonds as the governing authority of the county, city, town or other taxing district may impose. Such limitation shall be authorized by resolution adopted by the said governing authority affected.

When any such obligation is received in payment of delinquent taxes by a county official it shall be delivered to and deposited with the clerk of the circuit court of said county as ex-officio treasurer of said county and shall receive credit for said bonds, interest coupons or other obligations at par on account of the particular transaction or item for which said bonds, interest coupons or other obligations were received, but no other, as though it were an actual and equal amount of cash so delivered. When any such obligation is received in payment of delinquent taxes by a municipality or district it shall be delivered to and deposited with the treasurer of said municipality or district and credit therefor allowed to the tax collector of said municipality or district on account of the particular transaction or item for which said bond, interest coupon or other obligation was received, but no other, as though the amount of said bond, interest coupon or other obligation was delivered or paid in cash.

History.—§§1, 2, ch. 17401, 1935; CGL 1936 Supp. 999(96)-999(97).

192.41 Payment in bonds same as cash.—When delinquent taxes on lands are redeemed in bonds, past due interest coupons or other past due obligations for the amount of the taxes levied for the payment of interest or sinking fund on said bonds or other obligations the accrued interest on said delinquent taxes and all other penalties shall be likewise payable in said bonds, coupons or other obligations and in all cases of redemption of delinquent taxes or payment of current taxes with bonds, coupons or other obligations, tax receipts and tax redemption receipts shall issue therefor as though the same were paid in cash, and in all cases of redemption from delinquent taxes with bonds, interest coupons or other obligations as herein stated all costs of the clerk or redemption officer provided by law shall be paid in cash. All bonds, interest coupons or other obligations received in payment or in redemption of taxes shall thereafter stand canceled, null and void, to the same extent as though said bonds, interest coupons or other obligations had been paid in cash.

History.—§3, ch. 17401, 1935; CGL 1936 Supp. 999(98).

192.42 When taxes may be redeemed with bonds, etc.—It is the purpose and intent of this law to provide for the payment of taxes levied for the payment of the interest or for a sinking fund of any particular issue of bonds or other obligations to be payable in said bonds, or in the past due interest coupons of said bonds, or both, and if the taxes are delinquent or if tax sale certificate has been issued to and is held and owned by the state, county, district or municipality, the same may be redeemed with such bonds or delinquent interest coupons; and where taxes have been levied for the payment of other obligations they shall likewise be payable or redeemable in such other obligations; provided, in all events, that the person offering to pay the same shall pay the total taxes levied, including all subsequent omitted taxes and all costs in case of redemption, in the same manner and to the same extent as he would be required to pay were he offering to pay in cash the total taxes levied or delinquent.

History.—§4, ch. 17401, 1935; CGL 1936 Supp. 999(99).

192.43 Abolished municipalities; payment of taxes with bonds. — The clerks of the circuit courts shall accept at par any and all bonds, certificates of indebtedness and past due interest on the same of any legally abolished municipality, lying wholly or in part within such county or counties in payment, cancellation and satisfaction of any tax sale certificates or delinquent taxes held by the state or county against lands in such county or counties. Any and all such bonds, certificates of indebtedness or past due interest thereon or evidence of debt of any such legally abolished municipality when received by any such clerk shall be canceled. No bonds, certificates of indebtedness, past due interest or other evidence of debt shall be accepted by any clerk as herein provided unless and until that portion of any such delinquent tax or tax sale certificate going to the state shall have been paid in cash by the person or persons presenting such bonds, certificates of indebtedness, past due interest or other evidences of debt as herein provided.

History.—§4a, ch. 17401, 1935; CGL 1936 Supp. 999(100).

192.44 Definitions. — When used in these laws relating to payment of delinquent taxes with bonds and other obligations, the word "district" shall be understood to apply to any tax district or taxing district of whatever character in any county or counties wherein a tax is levied for the payment of debts of such district outstanding, regardless of its nature or how constituted. The terms "bonds," "interest coupons" or other "obligations" herein mentioned mean and are to be construed to mean all bonds heretofore issued or which may be hereafter issued, with the interest coupons, if any, thereto attached as a part thereof, by any county, board of county commissioners or by the board of public instruction of such county or by any district or districts in any county or counties or by any municipality or municipalities, or any past due warrant or written or recorded obligation to pay money in any form heretofore issued or entered or which may hereafter be issued or entered by or against such counties, districts or municipalities. Any receipts from the holder and owner of a judgment or other like record obligation for credit on such judgment or other record obligation shall be sufficient evidence

of delivery of such obligation to the amount of said receipt.

History.—§5, ch. 17401, 1935; CGL 1936 Supp. 999(101).

192.45 Sale of Murphy act lands to municipalities.—

(1) The state through the trustees of the internal improvement trust fund shall be, and they are hereby authorized, empowered and directed to sell any land owned by a municipality of the state, prior to the time it became vested in the state by the operation of the Murphy act, also known as chapter 18296, acts of 1937, to the municipality owning said land prior to the time of its divestment of title, for the sum of one dollar for each and every parcel of land so sold, and all advertisement, notice and procedure is hereby dispensed with.

(2) A municipality in requesting a conveyance by the state, through trustees of the internal improvement trust fund, shall furnish prima facie proof, in the nature of a certificate from the clerk of the circuit court of the county in which said municipality is located, that at the time of the operation of the Murphy act, also known as chapter 18296, acts of 1937, at which time the municipality was divested of its title, that the said municipality was the owner of the record title to said property.

History.—§§1, 2, ch. 20424, 1941; §2, ch. 61-119.

192.46 Distribution of Murphy act funds.—

(1) The proceeds derived from sales of lands by the state, through the trustees of the internal improvement trust fund pursuant to section 9 of the Murphy act, being chapter 18296, acts of 1937, amounting to $709,794.14 as of April 5, 1941, together with such further proceeds from such sales, shall, after all costs of such sales are defrayed, be immediately transferred from the fund in which the same are now or may hereafter be deposited in the state treasury to the general revenue fund of the state to be used in meeting the general expenses of the state.

(2) All officials of the state having charge of the proceeds of such sales are hereby required to make such funds available to the general revenue funds as hereinbefore provided.

History.—§§1, 2, ch. 20368, 1941; (1) §2, ch. 61-119.

192.47 Murphy act lands; suits by former owners; limitations.—The former owner, and others having or claiming by, through or under him, of land vested in the state by virtue of chapter 18296, laws of Florida, 1937, shall have and are hereby allowed a period of six months from the time this section becomes a law to bring suit to recover said land or to enforce any right of the former owner or claim by, through or under the said former owner, or to set aside a sale by the trustees of the internal improvement trust fund, and on failure to assert such right within such time set out in this section, shall be and are hereby forever barred and foreclosed of claims aforesaid in and to said lands and no court of the state, either federal or state, shall thereafter entertain any suit brought by any former owner or anyone claiming by, through or under him for the purpose of questioning, litigating or contesting the title of the state or its grantee to said land.

History.—§1, ch. 21685, 1943; §2, ch. 61-119.

192.48 Murphy act lands and other lands held under tax proceedings; suits by former owners; limitations.—

(1) The former owner, and others having or claiming by, through or under him, of land, title to which is or was claimed by the state under and by virtue of chapter 18296, laws of Florida, 1937, shall have and are hereby allowed a period of one year from the time a deed of any such lands by the trustees of the internal improvement trust fund is recorded in the office of the clerk of the circuit court in the county where the land is situate, to bring suit to recover said land or to enforce any right of the former owner, or claim by, through or under the said former owner, or to set aside sale by the said trustees and on failure to assert such right within such time set out in this section shall be and are hereby forever barred and foreclosed of claims as aforesaid in and to said lands and no court of this state, either federal or state, shall thereafter entertain any suit brought by any former owner or anyone claiming by, through or under him for the purpose of questioning, litigating or contesting the title of the state or its grantee to said land except upon the grounds that the taxes for which any deed was issued was not assessed, was not due or had been paid.

(2) The provisions of this section shall apply to any deed hereafter executed pursuant to any tax foreclosure or tax forfeiture to satisfy a tax lien and to any deed executed by the state, county, municipality, drainage district, or other taxing unit conveying or purporting to convey any real estate, title to which is claimed pursuant to any tax foreclosure, tax forfeiture, or any other proceeding to satisfy a tax lien. in the same manner and to the same extent as this section applies to a deed executed by the trustees of the internal improvement trust fund as referred to in subsection (1) hereof.

(3) The former owner of, and any persons having or claiming any interest in, any land, the title to which has heretofore passed or purportly passed to another by virtue of any deed heretofore executed, within the past five years pursuant to any tax foreclosure or procedure or tax forfeiture to satisfy a tax lien, and executed by the state, or any county, municipality, drainage district, or other taxing unit within the state, shall have and are hereby allowed one year from the time this section becomes law within which to bring suit to recover said land or to enforce any right of the former owner or any claim or interest of any person therein, and upon failure to assert such right, claim or interest within such time as is set out in this subsection, such owner and such other persons shall be and are hereby forever barred and foreclosed of rights, claims or interests as aforesaid in and to said lands, and no court of this state, either federal or state,

shall thereafter entertain any suit brought by any former owner or person having or claiming an interest as aforesaid for the purpose of questioning, litigating or contesting such title.

(4) That when the land conveyed by any such deed is in the actual and open possession of any one other than the grantee named in said deed the grantee in said deed or any one claiming by, through or under him shall within three years from the date of said deed bring appropriate action for the possession of the land described in said deed and upon the payment of all subsequent taxes levied against said lands.

(5) This section shall not apply to any lands upon which the taxes, which were the basis for the issuance of a tax deed, had been paid or the land in question was tax exempt or was not subject to any portion of said tax.

History.—§2, ch. 21685, 1943; §1, ch. 23827, 1947; (1), (2) §2, ch. 61-119.

192.49 Murphy act lands; conveyances, leases, etc., confirmed.—Subject to the time limit set forth in §§192.47 and 192.48 above, all deeds heretofore executed by the trustees of the internal improvement trust fund on behalf of the state under the provisions of said chapter 18296, laws of Florida, 1937, and §192.38, shall be valid in all respects, and likewise shall all leases and easements granted by said trustees be valid for the purpose for which granted.

History.—§3, ch. 21685, 1943; §2, ch. 61-119.

192.50 Conveyance of Murphy act lands to municipalities, counties, etc.—

(1) The state, through the trustees of the internal improvement trust fund, shall be, and they are hereby authorized, empowered and directed to convey to the county of the state wherein such lands are situated, or the board of county commissioners thereof, or the county board of public instruction or municipality, as the case may be, without consideration and without sale, for public purposes, any land the title to which vested in the state pursuant to chapter 18296, laws of Florida, 1937 legislature.

(2) Request for such conveyance shall be made by resolution of the board of county commissioners, or of the county board of public instruction or municipality, as the case may be, duly adopted and spread upon its minutes, showing and setting forth the present or proposed public use or purpose to which said lands are or shall be devoted. A certified copy of such resolution shall be transmitted to the said trustees and by the latter preserved among its records; provided, however, that prior to execution and delivery of conveyance by said trustees, notice shall first be given to the owner or person last paying taxes on said lands, as the same may be required by rules of said trustees in the case of private sales, in effect at the time such resolution is received, and such persons shall have all the rights accorded to former owners by such rules of said trustees in the cases of private sales.

(3) Conveyances of said lands by said trustees shall be deemed and considered as dedications thereof to public use, and the same shall be under the jurisdiction and control, and administered by the official board, or agency charged with the duty of administering the particular public use or purpose set forth in such resolution.

History.—§§1-3, ch. 21929, 1943; (1) §2, ch. 61-119.

192.51 State budget commission; consent required to certain assessments.—When, under any law of this state heretofore or hereafter enacted, providing for the imposition of any tax, provision is made for the payment of any portion of the revenue derived from such tax by any state officer, officers, or board, to defray expenses incident to the enforcement and collection thereof, no such state officer, officers, or board may pay or agree to pay any of such funds without the express authorization and approval of the budget commission of this state.

History.—§1, ch. 21919, 1943.

192.52 Tax exemption, municipal public utilities.—The real and personal property of municipally owned and operated public utilities held and used exclusively for municipal purposes shall not be subject to ad valorem or personal property taxes.

History.—§1, ch. 21985, 1943; §2, ch. 57-788.

192.53 Disposition of bonds, etc., deposited with state treasurer under chapter 15054.—

(1) All bonds, delinquent interest coupons, or other delinquent obligations of counties and districts of this state now held by the state treasurer, as custodian thereof under chapter 15054, acts of 1931, be, and the same are hereby canceled and rendered void and of no effect. The state treasurer shall, within sixty days from April 21, 1943, indicate by appropriate perforation, sign or symbol, on each of such bonds, delinquent interest coupons, or other delinquent obligations as are in this section above described, the fact of such cancellation, and return the same to the appropriate board of county commissioners, to be by the latter destroyed.

(2) All bonds, delinquent interest coupons, or other delinquent obligations of the municipalities of this state, now held by the state treasurer, as custodian thereof under chapter 15054, shall, within sixty days from April 21, 1943, be by the state treasurer, by appropriate perforation, sign or symbol, on each of such bonds, delinquent interest coupons, or other delinquent obligations, canceled and thus rendered void and of no effect, and returned to the source from which received to be destroyed.

History.—§§1, 2, ch. 21644, 1943.

192.54 Banks and trust companies; exemption from taxation, etc.—All banks, trust companies and Morris plan banks, now or hereafter chartered under the laws of the state, shall have the same immunity from state and local taxation that national banking associations have from time to time under the statutes of the United States.

History.—§1, ch. 21842, 1943; §10, ch. 26484, 1951.

192.56 Land shall not be subdivided; no plat filed until taxes paid.—No land shall be divided or subdivided and no drawing or plat of the division or subdivision of any such land shall be filed or recorded in the public records of any county in this state until all taxes shall have been paid on said land.

History.—§2½, ch. 22079, 1943.
cf.—Chapter 177, Maps and plats.

192.57 Oath; when not required.—

(1) No tax return or application for tax exemption, license or permit of any kind or nature that may be required by law, need be made under oath.

(2) Whosoever makes or subscribes a tax return or application for tax exemption, license or permit, knowing or having reason to know that same is false as to any material matter therein, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by law.

History.—§§1, 2, ch. 21950, 1943.

192.58 Easements survive tax sales and deeds.—When any lands in this state shall be sold for the nonpayment of taxes, or any tax certificate shall be issued thereon, by the state or by any county, municipality, special taxing district or other political subdivision of the state, or pursuant to any tax lien foreclosure proceeding, the title to such lands shall continue to be subject to any easement for telephone, telegraph, pipe line, power transmission or other public service purpose, and such easement and the rights of the owner thereof, shall survive and be enforceable after the execution, delivering and recording of a tax deed conveying title to such land, or of a master's deed pursuant to foreclosure of a tax deed, tax certificate or tax lien, whether the grantee in such deed be the state, or a county, municipality, special taxing district, or other political subdivision of the state, or a private corporation or individual, to the same extent as though said land had been conveyed by voluntary deed, and the rights of the owner of such easement shall not be abrogated or affected thereby; provided, that such easement is evidenced by written instrument recorded, prior to the recording of such tax deed or master's deed, in the office of the clerk of the circuit court in the county where such land is located, or if not recorded that such easement is evidenced by wires, poles or other visible occupation; and provided, further, that nothing herein contained shall be construed to exempt or relieve from taxation, the poles, wires, pipes, equipment or other personal property of the owner of such easement, whether located on the land subject to the easement or elsewhere, or affect in any way the enforcement of taxes upon such personal property.

History.—§1, ch. 21805, 1943.
cf.—State v. Gray, 153 Fla. 462, 14 So. 2d 721.
§193.27 County commissioners may raise or lower value fixed by assessor.

192.59 Taxation; cancellation of delinquent taxes upon lands used for road purposes, etc.—

(1) The board of county commissioners of each county of the state be and it is hereby given full power and authority to cancel and discharge any and all liens for taxes, delinquent or current, held or owned by the county or the state, upon lands, heretofore or hereafter, conveyed to, or acquired by any agency, governmental subdivision or municipality of the state, or the United States, for road purposes, defense purposes, recreation, reforestation or other public use; and said lands shall be exempt from county taxation so long as the same are used for such public purpose.

(2) Such cancellation shall be by resolution of the board of county commissioners, duly adopted and entered upon its minutes, properly describing such lands, and setting forth the public use to which the same are, or will be, devoted. Upon receipt of a certified copy of such resolution, the proper officials of the county, and of the state, are hereby authorized, empowered and directed to make proper entries upon the records to accomplish such cancellation and to do all things necessary to carry out the provisions of this section, and to make the same effective, this section being their authority so to do.

History.—§§1, 2, ch. 22845, 1945.

192.60 Cancellation of certain taxes on real property acquired by counties.—Whenever any county of this state has heretofore acquired, or shall hereafter acquire, title to any real property, the taxes of all political subdivisions, as defined in §1.01, upon such property for the year in which title to such property was acquired, or shall hereafter be acquired, shall be that portion of the taxes levied or accrued against such property for such year which the portion of such year which has expired at the date of such acquisition bears to the entire year, and the remainder of such taxes for such year shall stand cancelled.

History.—§1, ch. 26974, 1951.

192.61 Assessment of riparian rights.—Riparian rights shall not be assessed or extended upon the tax roll for purposes of taxation but the value of such rights to the abutting land may be included in determining the assessed value of the land.

History.—§3, ch. 28262, 1953; (1)-(4), tr. §271.09.
cf.—§194.63 Cancellation of certificates on riparian rights separate from land.
§271.09 Riparian rights defined; certain submerged bottoms subject to private ownership, etc.

192.62 Taxation of exempt and immune property; exceptions.—

(1) Any real or personal property which for any reason is exempt or immune from taxation but is being used, occupied, owned, controlled or possessed, directly or indirectly by a person, firm, corporation, partnership or other organization in connection with a profit making venture, whether such use, occupation, ownership, control or possession is by lease, loan, contract of sale, option to purchase or in any wise made available to or used by such person, firm, corporation, partnership or organization, shall be

assessed and taxed to the same extent and in the same manner as other real or personal property.

(2) This section shall not apply to property described in subsection (1) when:

(a) The property is used exclusively for religious, scientific, municipal, educational, literary or charitable purposes;

(b) The property is owned by the federal government and used by a defense contractor in the fulfillment of a federal government contract;

(c) The property is owned or used by the state, any county, municipality, or public entity or authority created by statute and is leased or otherwise made available to such person, firm, corporation, partnership or organization by such public body for a consideration in the performance by the public body of a public function or public purpose authorized by law, or which property prior to the effective date of this act was leased for valuable consideration for purposes not otherwise exempt hereunder;

(d) The property is used for maritime construction and repair of vessels engaged in interstate or foreign commerce;

(e) The property is developed for and devoted to the sole use of federal aviation agency installations;

(f) The property is used by a corporation performing services of a public nature for the operation of its public utilities facilities thereon;

(g) The property is owned by any housing authority heretofore or hereafter organized under chapter 421, and used for purposes authorized under said chapter;

(h) The property is owned by any quadricentennial commission created by or under the laws of Florida and used by such commission for authorized public purposes; or

(i) The property is located on Santa Rosa island and is owned by Escambia county, Santa Rosa county, or Okaloosa county, or is controlled by any agency thereof created by statute, and is used for public purposes authorized by law.

(3) The classification of such interest as property for the purposes of taxation under this section shall not be affected by any provision of the contract or agreement under which the same is used, occupied, owned, controlled or possessed.

(4) Such taxes shall not become a lien against the property used, occupied, owned, controlled or possessed for such purposes but shall constitute a debt due and shall be recoverable by legal action or by the issuance of tax executions which shall become liens upon any property of the taxpayer who owes said tax in any county where recorded in the lien record.

History.—§1, ch. 61-266.

CHAPTER 193

TAX ASSESSMENTS AND TAX SALES

193.01 Certain terms and words defined.—The term "money" or "moneys," whenever used in this law, shall be held to mean gold and silver coin, United States treasury and bank notes, legal tender and all other forms of currency and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw in money on demand. The term "credits" when used in this law shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due. The term "parcel of real property" and "parcel of land," whenever used in this law, shall each be held to mean the quantity of land in the possession of, owned by or recorded as the property of the same claimants, persons or company.

History.—§5, ch. 4322, 1895; GS 432; §5, ch. 5596, 1907; RGS 702; CGL 904.

193.02 County assessors and county tax collectors to submit budgets to comptroller; removal of officers.—On or before July first of each year the county assessor and county tax collector shall submit to the comptroller their budgets for the operation of their office for the ensuing year. The comptroller shall examine the budgets and if they are found adequate to carry on the work of the assessor and tax collector, the comptroller shall approve the budgets and certify them back to the assessor and tax collector. If the comptroller finds that the budgets are inadequate or are exorbitant, he shall return such budgets to the assessor or collector, as the case may be, together with his ruling theron.

The assessor and tax collector shall revise the budgets as required by the ruling of the comptroller and re-submit them to the comptroller for approval or further action by him. After the final approval of the budgets by the comptroller they shall not be reduced by the assessor, tax collector, the board of county commissioners, the county budget commission or any other governing body or officer.

The comptroller shall investigate the conduct and performance of duties by tax assessors, tax collectors, clerks of the circuit court, sheriffs and members of the board of county commissioners when acting as a board of equalization and recommend to the governor the removal of any such official for his willful failure to properly perform the duties imposed upon him by the constitution, these tax laws and the rules and regulations prescribed pursuant to these tax laws, and furnish the evidence to the governor upon which such removal may be warranted.

History.—§56, ch. 20722, 1941.

***193.021 Method of assessment of property.**—The county assessor of taxes of the several counties shall assess all the real and personal property in said counties in such a manner as to secure a just valuation as required by §1, Art. IX of the state constitution. In arriving at a just valuation, the county assessor of taxes of the several counties shall take into consideration the following factors:

(1) The present cash value of the property;
(2) The highest and best use to which the property can be expected to be put in the immediate future; and the present use of the property;
(3) The location of said property;
(4) The quantity or size of said property;
(5) The cost of said property and the present replacement value of any improvements thereon;
(6) The condition of said property;
(7) The income from said property.

History.—§1, ch. 63-250.
*Effective January 1, 1964.

***193.03 Method of fixing millage.**—

(1) After the assessment rolls have been prepared on the basis required by law, the board of county commissioners and the board of public instruction and all other governing boards or governing authorities of all other taxing districts, within the counties including municipalities, whose taxes are assessed on the tax roll prepared by the county assessor, shall for the fiscal years 1963-1964 through 1972-1973, inclusive, reduce the millage to be levied by each such governing authority from what it was in the preceding year proportionate to the increase of the general level of assessed value over the preceding year. Provided, however, if in preparing its proposed budget for 1963-1964 and 1964-1965, such budget-making authority determines that the millage required for operating funds should be increased no more than ten per cent more than the millage determined in subsection (6) of this section it shall proceed as follows:

(a) The budget-making authority shall cause to be published, at least one time in a

newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, the fact that said increase of not exceeding ten per cent is being proposed. Said advertisement shall state that the budget-making authority will meet on a day fixed in the advertisement, not earlier than one week and not later than two weeks from the date of the advertisement for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal. Said meeting may coincide with the required public hearing on the tentative budget as required by law.

(b) Each budget-making authority shall submit its proposed budget and millage increase to the comptroller who shall verify said budget and millage to determine that the proposed increase does not exceed ten per cent as set forth above.

(2) Provided, further, that in all counties of the state having a population of seventy-five thousand or more, according to the latest official decennial census, and in which there is now established or may hereafter be established a budget commission, the budget-making authority of such counties shall submit their proposed budgets and millage increase to such budget commission in lieu of submitting the same to the comptroller and such budget commission shall verify said budget and millage increase to determine that the proposed increase does not exceed ten per cent as compared to the millage required to meet the budget in the preceding year.

(3) In the event any budget-making authority shall determine that due to impending emergencies said authority will require funds in excess of those anticipated, and that unless additional funds are made available the operation of said authority in meeting its legal duties and obligations will be seriously impaired and provided that such budget-making authority has requested and obtained a ten per cent increase as set forth in subsections (1) or (2) herein, the said budget-making authority may apply for an additional increase in the millage required to meet the budget for operating funds in the following manner:

(a) It shall adopt a resolution calling a public meeting for the purpose of explaining and discussing such proposed increase in the millage required to meet the budget and fix the time and place for such meeting, and it shall thereupon publish a notice of such meeting for two successive weeks in a newspaper of general circulation published in the county in which the meeting shall be held, which meeting shall be held not less than five nor more than ten days from the date of the last publication of the notice. At the meeting the proposed increase in the millage shall be explained and discussed by the budget-making authority and opportunity afforded the taxpayers present to discuss and object to the same. Such notice shall briefly state the amount of increase sought and reasons for such increase.

(b) Such budget-making authority shall then prepare and record in the minutes of its meeting, either general or special, a certificate of compliance with the above set forth proceeding; and

(c) Each budget-making authority shall submit its proposed budget and millage increase together with the reasons for requesting the additional increase and a certified copy of compliance as above required to one of the following commissions: the county budget commission in all counties in the state having a population of seventy-five thousand or more, according to the latest official decennial census, and in which there is now established or may hereafter be established a county budget commission; or, the county review commission which shall be created by separate resolution of the board of county commissioners and the board of public instruction and shall be composed of three members of the board of county commissioners, one of whom shall be the chairman of said board, and three members of the board of public instruction, one of whom shall be the chairman of said board, and the affirmative vote of a majority of the membership of said commission shall be required to approve any additional increase.

(d) The commissions as provided in paragraph (c) shall have and exercise final authority as to whether the proposed additional increase shall be allowed and in what amount. In exercising this authority the commissions may require additional information and data be furnished by the budget-making authority requesting such additional increase. Provided always that the budget-making authority shall have the burden of clearly showing the extreme need for such increase and the existence of the conditions precedent for such increase as set forth in this subsection.

(4) The board of county commissioners and board of public instruction and all other governing boards or governing authorities referred to herein, shall decrease or increase the millage to be levied for the years 1963-1964 through 1972-1973, inclusive, in compliance with this section; provided, however, nothing in this section shall be construed to authorize an increase in millage in excess of the maximum millage permitted by law nor to prevent the reduction of millage lower than required by this section.

(5) All references to millage and reduction of millage contained in this section shall apply to all millages levied on the basis of county tax assessors' rolls whether such millage is levied pursuant to local, special or general law.

(6) The provisions of this section shall apply when there has been an increase in the general level of assessed value. The ratio by which all millages assessed in the preceding year shall be divided in order to secure the reduction proportionate to the increase in the general level of assessed value shall be the ratio of the total of assessed valuation in the current year to the total of assessed valuation

in the preceding year. Such totals of assessed valuation shall exclude the value of all property and improvements not assessed in both years. The tax assessor shall maintain a separate list of all properties and improvements which are added to the tax rolls each year and a separate list of properties and improvements which are withdrawn from the rolls. The assessor shall certify to each budget-making authority the ratio by which all millages must be reduced in order to comply with this section. If any budget-making authority is dissatisfied with the tax assessor's determination of such ratio such authority may request the comptroller to review the tax rolls and to determine the proportion by which the millages must be reduced to comply with this section. Such authority may then fix the millage based on the comptroller's determination.

History.—§54, ch. 20722, 1941; §24, ch. 22079, 1943; §8, ch. 63-250.
*Effective January 1, 1964.

193.04 Futch act taxes cancelled.—All state and county tax certificates and liens for delinquent taxes held by the state on real estate, which said tax certificates and liens were outstanding at the time of the enactment of, and the enforcement and assignment of which have been deferred pursuant to, chapter 16,252, laws of 1933, as amended by chapter 17,400, laws of 1935, commonly known as the Futch act, are hereby cancelled and the lien thereof discharged, providing all taxes assessed against said real estate required to be heretofore paid by said act, as amended, have been duly paid.

History.—§1, ch. 20981, 1941.

193.05 Duty of clerks and comptroller.—The comptroller of the state and the clerks of the circuit courts are hereby authorized and directed to cancel and satisfy of record all such outstanding tax certificates and liens cancelled and discharged by §193.04.

History.—§2, ch. 20981, 1941.

***193.06 Land; where and how assessed.**—All the lands shall be assessed in the county, city or town in which the same shall be, and the real estate of incorporated companies liable to taxation shall be assessed in the county, city or town in which same shall be in the same manner as real estate of individuals and may be returned and sold in the same manner as property owned by individuals and shall be assessed on the basis provided in §193.021.

History.—§6, ch. 4322, 1895; GS 433; §6, ch. 5596, 1907; RGS 703; CGL 905; §2, ch. 63-250.
*Effective January 1, 1964.

193.07 Assessment of property of religious societies.—All property held by any religious society shall be assessed, and taxed, in the county where the property is situated, unless exempt by law.

History.—§7, ch. 4322, 1895; GS 434; §7, ch. 5596, 1907; RGS 704; CGL 906.

193.08 Taxation of stock; shares in banks.—The owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock; provided, that such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. All shares of banking associations organized within this state, pursuant to the provisions of congress to procure a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the town or city where such banking association is located and not elsewhere, whether the holder resides there or not; but not at a greater rate than is assessed on other moneyed capital in the hands of individuals; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall pay the same as the agent of each of its shareholders, and the said association may retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon its shares.

History.—§8, ch. 4322, 1895; GS 435; §8, ch. 5596, 1907; RGS 705; CGL 907.

193.09 Banking, loan and trust companies; returns.—Any banking, loan or trust company or corporation or any person acting as the agent of another, and, having in his possession or under his control, or management, any money, notes, credits or personal property belonging to such other person, with a view to investing or loaning or in any other manner using the same for pecuniary profits, shall be required to return the same for assessment at the real value, and such company, corporation or person shall be liable for the tax on the same; and if such company, corporation or person refuse to list such property on a return for assessment or to swear to the same, the amount of such money, notes, mortgages or credits shall be listed and valued according to the best knowledge of the assessor.

History.—§8, ch. 4322, 1895; §1, ch. 5106, 1903; GS 437; §9, ch. 5596, 1907; RGS 706; CGL 908.
cf.—§192.57 Oath, when not required.

193.10 Owners of boats to list for taxation. All persons owning steamboats, dredge boats, sailing vessels, wharf boats, barges and other craft shall be required to list the same for assessment and taxation in the county in which the same may belong or be enrolled, registered or licensed; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars.

History.—§17, ch. 4322, 1895; §10, ch. 5596, 1907; RGS 707, 5320; CGL 909, 7448.
cf.—§200.44 Yachts, boats, etc.; tax exemption.

193.11 Assessment of real and personal property; assessors to visit precincts.—

*(1) Between January 1 and July 1 in each year, the county assessor of taxes in each county, with the aid of such assistant asses-

sors of taxes as may be appointed by the county assessor of taxes, shall ascertain by diligent inquiry the names of all taxable persons in his county, and also all of their taxable personal property, and all taxable real estate therein, as of January 1 of such year, and shall make out an assessment roll of all such taxable property. And the county assessor of taxes or his assistants may make at least one visit to each precinct for the purpose of receiving tax returns after having given ten days notice by publication in a newspaper of such visit, if there be a newspaper published in the county, between January 1 and March 1. Tax returns by owners or agents must be made between January 1 and April 1. The county assessor of taxes shall assess all property on the basis provided in §193.021. The assessment of tangible personal property shall be made separate from the assessment of real estate.

*(2) All railroads, telegraph, express, sleeping cars, freight line and equipment companies shall be assessed in accordance with chapter 195, in the manner and by the officers now provided by law.

(3) All lands being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of said lands are embraced in a plat of a subdivision or other real estate development. Provided, agricultural purposes shall include only lands being used in bona fide farming, pasture, grove or forestry operations by the lessee or owner, or some person in their employ. Lands which have not been used for agricultural purposes prior to the effective date of this law shall be prima facie subject to assessment on the same basis as assessed for the previous year, and any demand for a reassessment of such lands for agricultural purposes shall be subject to the severest scrutiny of the county tax assessor to the end that the lands shall be classified properly. Provided, this subsection shall not be construed, interpreted, or applied so as to permit lands being used for agricultural purposes to be assessed other than as agricultural lands and upon an acreage basis.

(4) All taxable lands upon which active construction of improvements is in progress and upon which such improvements are not substantially completed on January 1 of any year shall be assessed for such year, as unimproved lands. Provided, however, the provisions hereof shall not apply in cases of alteration or improvement of existing structures.

History.—§15, ch. 4322, 1895; GS 510; §12, ch. 5596, 1907; RGS 711; CGL 913; §1, ch. 16266, 1933; §2, ch. 20722, 1941; §2, ch. 22079, 1943; (3) n. §1, ch. 57-195; (4) n. §1, ch. 61-240; (1) and (2) §3, ch. 63-250; (3) §1, ch. 63-245.

*(1) and (2) effective January 1, 1964.

cf.—§7, art. VIII, Florida Constitution.

§193.201 Lands zoned for agricultural purposes; assessment and AGO 057-305.

193.111 Appraisal of all property in counties.—

(1) The boards of county commissioners of each of the several counties of the state, be, and they are hereby authorized and empowered to cause to be made by a company or board of appraisers to be selected by the board of county commissioners, an appraisement of all property in such county.

(2) Expenditure of county funds for the purpose of causing such appraisement to be made is hereby declared to be a county purpose and the board of county commissioners may expend funds for such appraisement from any funds of said county and may levy taxes for the purpose of securing funds to secure such appraisement.

(3) The original of said appraisement shall be deposited with the tax assessor of such county and a duplicate thereof shall be deposited in the office of the board of county commissioners.

(4) Any board of county commissioners in this state is authorized to budget and pay from the county general fund the necessary expenses incurred by the tax assessor for the purpose of reappraisal and revising maps of real estate in such county.

History.—§§1-3, ch. 26771, 1951; (4) n. §1, ch. 59-162.

***193.12 Returning property for taxation; failure to make return.**—Every person owning or having the control, management, custody, direction, supervision or agency of property of whatsoever character that is subject to taxation under the laws of this state, shall return under oath the same for taxation to the county assessor of taxes in the proper county, or to other proper officer, on or before April 1 of each and every year, giving the character and the value of the same, as required by law; upon failure to do so the assessment and valuation made by the assessing officer or officers shall be deemed and held to be binding upon such owner or other person or corporation interested in such property, unless complaint is made of such assessment and valuation on the day set for hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the county assessor of taxes.

History.—§16, ch. 5596, 1907; RGS 715; CGL 917; §4, ch. 63-250.

*Effective January 1, 1964.

***193.13 Oath as to personal property; increase of valuation; complaint.**—Every county assessor of taxes shall require any person giving in the amount or list of his personal property to make oath before him that the same is full and correct, and any person refusing to take such oath shall not be permitted afterwards to reduce the valuation made by such county assessor of his personal property for that year. The valuation of any item of property, real or personal, by the taxpayer, shall in no case prevent the county assessor of taxes from determining the value on the basis provided in §193.021, and if he shall ascertain or have reason to believe that the valuation of any item of property is too small, he shall increase the same to its just value. When the tax assessor shall raise the value on any property or item of property given in by any owner or taxpayer under oath, the tax assessor shall at once give notice in writing by registered mail

to such owner or taxpayer, such notice to give the amount of the raise or increase; provided, however, that a failure of the tax assessor to mail any such notice shall not in any manner affect the legality of any assessment or valuation of any property by the tax assessor, and the legality of any such assessment or valuation shall not be questioned in any of the courts of this state.

History.—§19, ch. 4322, 1895; GS 515; §17, ch. 5596, 1907; RGS 716; §1, ch. 12413, 1927; CGL 918; §5, ch. 63-250.
*Effective January 1, 1964.
cf.—§192.57, Oath; when not required.
§1.01(13) defines registered mail to include certified mail with return receipt requested

193.14 When assessor to value personal property.—All personal estate liable to taxation, the value of which shall not have been specified under oath as aforesaid, shall be estimated by the county assessor of taxes at its true cash value, according to his best judgment and information, and his failure by neglect or refusal to make such estimate shall be a cause for suspension by the governor.

History.—§20, ch. 4322, 1895; GS 516; §18, ch. 5596, 1907; RGS 717; CGL 919.
cf.—§192.57, Oath; when not required.

193.15 Comptroller to furnish blank assessment rolls; certifying to assessors, state land sold and land patented during previous year.—The comptroller shall prepare blank assessment rolls, which shall be forwarded to the several county assessors of taxes previous to the first day of January, for each and every year. He shall on or before the first day of May of each year obtain from the United States land office in this state, and from the several railroad land grant companies in the state, or from other land grant companies or corporations, lists of land for which patents were issued, or which was sold or contracted to be sold during the previous year, and certify them for taxation, together with the various classes of state lands sold during the same year, to the county assessor of taxes in which such lands may be situated.

History.—§18, ch. 4322, 1895; GS 514; §15, ch. 5596, 1907; RGS 714; CGL 916.

193.16 Assessment of lands against which there are tax sale certificates; redemption; distribution of proceeds.—All lands against which the state holds any tax sale certificate or other lien for delinquent taxes assessed for the year 1940 or prior years, shall be assessed for the year 1941 and subsequent years in like manner and to the same effect as if no taxes against such lands were delinquent. Should the taxes on such lands not be paid as required by law, such lands shall be sold or the title thereto shall become vested in the county, in like manner and to the same effect as other lands, upon which taxes are delinquent, are sold or the title to which becomes vested in the county under this law. Such lands upon which tax certificates have been issued to the state, when sold by the county for delinquent taxes, may be redeemed in the manner prescribed by this law; provided, that all tax certificates held by the state on such lands shall also be redeemed at the same time, and the clerk of the circuit court shall disburse the money as provided by law. After the title to any of such lands against which the state holds tax certificates becomes vested in the county as provided by this law, the county may sell such lands in the same manner as provided in §194.55, and the clerk of the circuit court shall distribute the proceeds from the sale of such lands by the board of county commissioners in proportion to the interest of the state, the several taxing units, and funds of such units, as may be calculated by the clerk.

History.—§16, ch. 4322, 1895; GS 512; §13, ch. 5596, 1907; RGS 712; CGL 914; §4, ch. 20722, 1941; §3½, ch. 22079, 1943.

193.17 Maps to be furnished the assessor; mode of assessing lands in cities and towns, etc.—The county commissioners of each county in this state shall purchase and have mounted on cloth and then bound in volume or volumes, two complete sets of photolithographed township maps in their respective counties of each township therein, one to be kept in the office of the clerk of the circuit court and the other in the county assessor of taxes' office in their several counties, and failure to do so shall be cause for suspension of such county commissioners by the governor upon complaint of the county assessor of taxes, or other citizen of the county, and all these maps and information which may come into the hands of the several county assessors of taxes which may be used in preparing the assessment roll shall remain in the county assessor of taxes' office at the courthouse and be delivered to his successor in office; provided, that any maps now owned by the county assessor of taxes may be purchased at their discretion by the county commissioners at a reasonable price, and should any county assessor of taxes so fail to deliver said maps above provided, his bond shall be responsible to the value of said property, as required for the faithful discharge of his duty, and he shall not again be eligible to any office of trust or profit in the county.

He shall make the assessments of real estate in cities and town plats and blocks in regular order throughout the original plan of the city or town, and all additions thereto, all the lots of a block to be listed in their regular order under the letter, number or other designation of the block as filed and recorded in the office of the clerk of the circuit court, blocks also to follow in their regular order (and all lots or subdivisions of a block, when belonging to one owner and being numbered consecutively and lying contiguously, may be assessed together and the taxes extended on one line), each of the smallest subdivisions of such book to be entered and the taxes thereon to be extended separately; provided, that county assessors of taxes, in making up the assessment rolls, are directed to give sufficient space for the tax collector to make necessary entries; and the clerks of the circuit court in recording the report of the tax sales are directed to give necessary space for the entries of redemption; provided, that no person shall be required to pay

taxes on entire land assessed in order to get receipts for taxes on land upon which such person desires to pay taxes.

History.—§21, ch. 4322, 1895; GS 519; §19, ch. 5596, 1907; RGS 719; CGL 921.

193.18 Counties may be divided into taxation districts; appointment, oath, bond and duty of assistant assessors, etc.—The county commissioners of the several counties, when it is deemed necessary for assessment purposes, may, before the first day of January of each year, divide their respective counties into taxation districts, and the county assessor of taxes may employ for each district an assistant assessor of taxes, resident of the district, who shall take the oath of office required by law for the faithful discharge of the duties of the office of county assessor of taxes and shall give good and sufficient bond for the faithful performance of his duty, as assistant assessor of taxes, which bond shall be approved by the county commissioners of said county, who shall assess the property, real and personal, in his district, as provided by law, making out a complete list of all the lands subject to taxation and giving the value thereof, and giving the names of the owners or persons making the tax returns. The assistant assessor of taxes shall begin the assessment on the first day of January and shall complete the same as early as possible, and he shall return his list of assessments, as made out to the county assessor of taxes, immediately upon the completion thereof, and not later than the first day of May, and the two shall then revise such list at stated times, before the first day of June, as the county assessor of taxes may designate, and make such changes as may be agreed upon between them as to description and value of property, and in case of disagreement the matter shall be referred to and decided by the board of county commissioners when they meet to revise and equalize the assessment of the county. The county assessor of taxes may remove any assistant assessor of taxes who fails to discharge his duty properly or to complete his work within the prescribed time, and he may fill vacancies in that office at any time when he may deem it necessary. The assistant assessor of taxes shall receive as compensation for his services such fees as may be agreed upon by the county assessor of taxes, which compensation shall be paid out of the fees or compensation allowed the county assessor of taxes for such services.

History.—§23, ch. 4322, 1895; GS 523; §21, ch. 5596, 1907; RGS 721; CGL 923.

193.19 Assessment as trustee, guardian, executor, etc.—When a person is assessed as a trustee, guardian, executor, or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered upon a separate line from the individual assessment.

History.—§17, ch. 4322, 1895; GS 513; §14, ch. 5596, 1907; RGS 713; CGL 915.

193.20 Mode of assessing lands not within limits of cities or towns.—The lands in each county in this state, subject to taxation and not included in the limits of incorporated towns and cities and laid off in lots and blocks, shall be assessed by townships, and for purposes of taxation all non-bearing fruit trees shall not be considered as adding any value to said land; and in making the assessment the county assessor of taxes shall begin with the lowest numbered section in each township and shall assess each lot, tract or parcel of land therein, in accordance with the description as returned for taxation by the owner or agent; provided, the county assessor of taxes may correct any errors in the description so returned, and if the owner or agent fails to make such returns, the county assessor of taxes shall assess all lands not returned, according to the government survey, and shall assess in one assessment all the lands in a section belonging to the same owner, or assessed as "unknown," and when a return of any piece or parcel of property is returned by more than one person the county assessor of taxes shall write the names of all claimants opposite said description of land, and the county assessor of taxes shall continue in his assessment roll the description and assessment of the remaining sections in townships in the order of their numbers, and in the same manner he shall then assess all the other townships in his county in like manner. He shall also list all land not subject to taxation belonging to the state, the common school fund, the seminary fund, the internal improvement fund, and the United States, but he shall place no value on any such land or make any extension of taxes, and shall receive no compensation for listing such lands; provided, that when private surveys of land or descriptions by metes and bounds have taken the place of government surveys, and the land is known, designated and described only by such private surveys or metes and bounds, the description in the assessment shall be made in accordance with such surveys or descriptions as recorded in the office of the clerk of the circuit court, or by reference to deed of record, giving the book and page as appears in the office of the clerk of the circuit court; and when Spanish grants or donations exist in any county in this state, which have not been surveyed and platted, or which plats are not recorded in the office of the clerk of the circuit court, the county assessor of taxes for such county shall assess the several tracts of land owned in such grants not platted as above, describing the same by reference to deed of record, giving the book and page of record as appears in the office of the clerk of the circuit court, and if the deed conveying such tracts is not recorded upon its production to the county assessor of taxes, he may describe the lands as being that tract, lot, piece or parcel described in a deed executed by the grantor (naming him) to the grantee (naming him), bearing date (giving date shown by deed), and such description shall be valid and sufficient for all purposes of the assessment.

History.—§21, ch. 4322, 1895; GS 518; §19, ch. 5596, 1907; RGS 718; CGL 920.

193.201 Lands zoned for agricultural purposes; assessment.—

(1) The board of county commissioners of any county in the state is hereby authorized and empowered in its discretion to zone areas in the county exclusively used for agricultural purposes as agricultural lands; provided said lands have been used exclusively for agricultural purposes for five years prior to such zoning.

(2) In the event that the board of county commissioners zone said lands as provided in subsection (1) then the board shall notify the tax assessor on or before November 1 and the tax assessor shall immediately after January 1 of the succeeding year and on January 1 of each succeeding year prepare and certify to the board of county commissioners a list of lands in the county so zoned as agricultural lands.

(3) The board of county commissioners shall examine said list and classification of such lands submitted by the tax assessor and shall make such reclassification as shall be appropriate or justified, and as reclassified shall zone such lands in the county for tax purposes only as agricultural.

(4) For the purpose of this section, "agricultural lands" shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee and all forms of farm products and farm production.

(5) The county tax assessor in assessing such lands so zoned and exclusively used for agricultural purposes as described and listed shall consider no factors other than those relative to such use. The tax assessor in assessing land within this class shall take into consideration the following use factors only: The cost of the property as agricultural land, the present replacement value of improvements thereon, quantity and size of the property, the condition of said property, the present cash value of said property as agricultural land, the location of said property, the character of the area or place in which said property is located and such other agricultural factors as may from time to time become applicable.

(6) The board shall keep a record of such lands so zoned for tax purposes only and restricted for agricultural lands and shall remove such zoning restrictions whenever lands so zoned are used for any other purpose.

History.—§1, ch. 59-226.
cf.—§193.11(3) and AGO 057-305, 147 So. 2d 375.

193.21 Name in which real estate assessed where no return made.—The county tax assessor shall in all cases where land has not been returned for assessment on or before the first day of April of each year, as required by law, assess such land not returned for taxation in the name of the last known owner; provided, that an erroneous statement of the name of the owner of such land or entry on the assessment roll shall not invalidate the assessment; and provided, further, however, that from and after the effective date of this law, the county tax assessor shall neither charge nor receive any fee or compensation for the assessment of any parcel of land, or lands, the owner of which is designated upon the tax roll as "unknown."

History.—§1, ch. 10038, 1925; CGL 928; §3, ch. 20722, 1941; §3, ch. 22079, 1943.

***193.22 Assessment of land, timber and turpentine rights.**—The tax assessor shall ascertain by personal inspection, where not already sufficiently acquainted therewith, the value of the lands including the timber thereon when the improvements or timber belong to the owner of the land, and assess the same as lands at their value based on the provisions of §193.-021, in the name of the owner, occupant or as unknown and set down in the assessment roll following and opposite the description of the lands the name of the owner, occupant or unknown, and when the land has not been returned for assessment on or before April 1 of each year, by the owner or legal representative of the owner, if the owner or agent be unknown, the assessor shall enter the word unknown in the column of the assessment roll provided for the name of the owners, or his or her legal representative. An index of all taxpayers shall be prepared by the tax assessor to accompany the tax roll; said index may be in the form of a cardex index file, an independent index, or an index attached to the tax roll; such index shall be required to index, if it can be ascertained, each person's name as it appears on the assessment roll, and shall show thereon such name as indexed, the page or control number upon which any tax or taxes may be found to be assessed.

In case any lands shall be timbered, and the timber or the right to turpentine the timber shall belong to a person other than the owner of the land, and the owner of the land shall disclose to the assessor the owner or owners of such timber or turpentine rights, the assessor shall assess the value of the land independent and distinct from the value of the timber and the turpentine rights or privileges, and shall assess the value of such timber and such turpentine rights or privileges separate and distinct from the said land and from each other, assessing the value of the land and of the timber and of the turpentine rights or privileges to the owners respectively thereof. If the assessor cannot ascertain the name of the owner of such rights he may assess them as unknown. And in order that this provision shall be effective it is further provided that the owner or owners of the land, and also the lessees, owner or owners of the turpentine or timber rights, shall annually furnish the assessor with a description of the lands on which such turpentine or timber rights exist, and the value of the same, and of the timber or turpentine rights, and the lease of said turpentine or timber rights shall be assessed as personal property.

When the timber or turpentine rights are sold for nonpayment of taxes due thereon, the title of the owner of the timber or turpentine rights shall pass to the purchaser at the tax sale,

subject to redemption by the owner within six months by paying the amount of the taxes and costs, with interest, at the rate of twenty-five cents per annum.

History.—§22, ch. 4322, 1895; §1, ch. 5380, 1905; §20, ch. 5596, 1907; §1, ch. 5725, 1907; RGS 720; CGL 922; §1, ch. 61-325; §6, ch. 63-250.
*Effective January 1, 1964.

193.221 Assessment of oil, mineral and other subsurface rights.—

(1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas and other subsurface rights, when separated from the fee, or other interest in the fee, shall be subject to separate taxation, when returned for taxation by the owner of the fee, or other interest in the fee, or the owner or claimant of such subsurface rights or interests, or any person, firm or corporation claiming by, through or under the subsurface owner or claimant. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights.

(2) Such subsurface rights, when returned for taxation, as aforesaid, shall be assessed on the basis of a just valuation, as required by §1, Art. IX, of the state constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

(3) Statutes and regulations, not in conflict with the provisions herein, relating to the assessment and collection of ad valorem taxes on real property, shall apply to the separate assessment and taxation of such subsurface rights, in so far as they may be applied.

(4) The owner of the fee title, or any person, firm or corporation claiming by, through or under him, may purchase tax certificates assessed against subsurface rights, as aforesaid, or tax certificates and liens encumbering the same.

(5) Tax certificates and tax liens encumbering subsurface rights, as aforesaid, may be acquired, purchased, transferred, and enforced as are tax certificates and tax liens encumbering real property generally, including the foreclosure of the same.

History.—§§1-4, ch. 57-150; §1, ch. 63-355.
cf.—Cassidy v Consolidated Naval Stores Unconstitutional 119 So. 2d 35.

193.23 Assessment of property for back taxes.—When it shall appear that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of three years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year, and shall assess the same separately for such property as may have escaped taxation at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected thereon in like manner and together with taxes for the current year in which the assessment is made. But no property shall be assessed for more than three years' arrears of taxation, and all property so escaping taxation shall be subject to such taxation to be assessed in whomsoever's hands or possession the same may be found; provided, that the county assessor of taxes shall not assess any lot or parcel of land certified or sold to the state for any previous years unless such lot or parcel of lands so certified or sold shall be included in the list furnished by the comptroller to the county assessor of taxes as provided by law; provided, if real or personal property be assessed for taxes, and because of litigation delay ensues and the assessment be held invalid the taxing authorities, may re-assess such property within the time herein provided after the termination of such litigation; provided further, that personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same.

The provisions of this section shall apply to property of every class and kind upon which ad valorem tax is assessable by any state or county authority under the laws of the state.

History.—§24, ch. 4322, 1895; §1, ch. 4663, 1899; GS 524; §22, ch. 5596, 1907; RGS 722; §§1, 2, ch. 9180, 1923; CGL 924, 925, 926.

193.24 Assessment of toll bridges.—All privately owned toll bridges whose tolls or maximum rates are now, or may hereafter be fixed or subject to regulation by the Florida railroad commission or other state or federal agency, and used for the purpose of furnishing public transportation, shall be valued for tax assessment purposes upon a mileage basis, and the valuation of any such bridge each year for state, county and municipal tax assessment purposes shall not exceed per mile of bridge the average assessed value per mile of double track main line of common carrier railroads in the state as fixed for tax assessment purposes for such year, provided these provisions shall not apply to any toll bridges built or to be built by counties or municipalities in this state.

History.—§1, ch. 15059, 1931; CGL 1936 Supp. 922(1).

193.25 When assessment roll to be completed; equalizing the assessment; meeting to hear complaint, etc.—The county assessor of taxes shall complete the assessment rolls of their respective counties on or before the first Monday in July in every year, on which day such assessors shall meet with the board of county commissioners at the clerk's office of their respective counties for the purpose of hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the county assessor of taxes, of perfecting, reviewing and equalizing the assessment, and may continue in session for that purpose from dav to day for one week, or as long as shall be necessary. Due notice of such meeting shall be given by publication in a newspaper published in such county, or by posting a notice at the courthouse door, if there be no newspaper published in the county, at least fifteen days before the board will be in session for the purpose of hearing complaints and receiving testimony as to the value of any property as fixed and assessed by the county assessor of taxes; provided, that the county commissioners of any county may, if they deem it necessary, extend the time for the completion of such assessment roll and for the purpose of revising and equalizing the assessment, a similar extension, not exceeding thirty days, giving due notice and an opportunity to be heard as to assessment and values as hereinbefore provided. Should the board increase the value fixed by the county assessor of taxes of any real estate or personal property, due notice thereof shall be given to the owner or agent of such property by publication in a newspaper published in such county, or by posting a notice at the courthouse door, if there be no newspaper published in the county, at least fifteen days before the board will be in session, to hear any reason that such persons may desire to give why the valuation fixed by the board shall be changed. The board of county commissioners shall meet on the first Monday in August or September of each year for the purpose of hearing complaints from owners or agents of any real estate or personal property the value of which shall have been fixed by the assessor, or changed by them, and for that purpose the board shall sit as long as it may be necessary. The county assessor of taxes and the board of county commissioners of each and every county in this state shall comply with the requirements of this section.

History.—§25, ch. 4322, 1895; GS 525; §1, ch. 5605, 1907; §§23, 66, ch. 5596, 1907; RGS 723, 724; CGL 929, 930.
cf.—§28, ch. 4010, 1891, Assessment.

193.26 No compensation for illegal assessments.—The county assessors of taxes in this state shall receive no compensation for assessing lands which are not subject to taxation.

History.—§27, ch. 4322, 1895; GS 527; §25, ch. 5596, 1907; RGS 726; CGL 932.

193.27 County commissioners may raise or lower value fixed by assessor; penalty.—The board of county commissioners may equalize the assessment of the real estate or personal property in their respective counties, and for that purpose may raise or lower the value fixed by the county assessor of taxes on any particular piece of real estate, or item or items of personal property. It is unlawful for the county commissioners to lower the assessment of any personal property given in by the owner or assessed by the assessor, which shall not have been specified under oath. The county commissioners failing to obey this provision shall be subject to a fine of fifty dollars each, and suspension.

History.—§26, ch. 4322, 1895; GS 526; §2, ch. 5605, 1907; §24, ch. 5596, 1907; RGS 725; CGL 931.
cf.—§29, ch. 4010, 1891, Assessment.
§192.57, Oath, when not required.

193.28 When clerk of circuit court to act for assessor; procedure.—If from sickness any county assessor of taxes cannot attend at the time and place prescribed above, he shall transmit his assessment roll to the clerk, and the county commissioners may review and equalize the assessment. In case the county assessor of taxes in any county shall neglect to assess the property of the county previous to the first Monday in August of any year, the county commissioners may direct the clerk of the circuit court to make or complete the assessment. In case the clerk of the circuit court shall make or complete the assessment he shall perform all the duties which the county assessor of taxes would otherwise have performed. All assessments shall be legal which shall be assessed to the same owner as for the previous year; provided, that the owner does not return it for taxation. And the county commissioners may appoint a day for the purpose of equalizing the assessments so made, and shall proceed in the same manner as provided in §193.25, allowing at least fifteen days between the time of meeting at which the assessed value of any real estate or personal property may be changed by them and the time for hearing complaints from the person aggrieved.

History.—§28, ch. 4322, 1895; GS 528; §26, ch. 5596, 1907; RGS 727; CGL 933.

193.29 Completion of assessment roll; comptroller to approve recapitulatory tables; examination by county commissioners, etc.—The county assessors of taxes shall complete the assessment rolls of their respective counties on or before the first day of July in every year. In counties having county budget commissions, the assessment roll shall thereupon be submitted to such budget commission for approval before the same is submitted to the comptroller, or equalized. The county tax assessors shall not be required to transmit the assessment roll to the state capitol for submission to the comptroller, but they shall prepare additional copies of the recapitulatory tables in the form adopted and used for the 1942 tax roll, and submit one true copy thereof, in person or by United States mail, to the comptroller. Upon approving such recapitulatory tables, the comptroller shall execute the certificate of approval in the form adopted and used for the 1942 tax roll, and deliver the same in person, or by United States mail to the respective asses-

sors. At the time such recapitulatory tables are so submitted, the comptroller shall have the privilege of inspecting any such assessment roll in full at the office of the tax assessor of the particular county, and upon request of the comptroller for such inspection, the county tax assessor shall make the assessment roll available in the office of such assessor for inspection there by the comptroller. The county assessor of taxes in each county shall, immediately after the assessment of the county has been reviewed and equalized by the county commissioners, and the amount to be raised for the county and special tax school districts, or other special tax purposes determined, calculate and carry out the total amount of county taxes, and the total amount of school district or other special taxes, setting opposite to the aggregate sum set down as the valuation of real and personal estate, the respective sums assessed as taxes thereon in dollars and cents, rejecting the fraction of a cent, if less than one-half, and count as one cent fractions of one-half and over; he shall also add up the column of assessment and taxes contained in the assessment rolls and make therein such recapitulatory tables in the form prescribed by the comptroller. And the said county assessor of taxes shall make out two fair copies of the assessment roll when thus completed, and shall annex to the original and each copy the affidavit in §193.34, which copies with the original, he shall turn over to the board of county commissioners at a meeting to be held on the first Monday in October of each and every year for that purpose, at which meeting the county commissioners shall examine and compare such original and two copies and cause the county assessor of taxes, who shall attend such meeting from day to day, to correct all mistakes and inaccuracies in description and other character, and after such books shall have been examined and corrected, the board of county commissioners shall endorse on them a certificate that they have so examined them and that they are correct, which certificate shall be executed by at least three members of the board, and the county assessor of taxes shall then issue and annex to one of said books, the warrant as provided by law and a copy of said warrant shall be recorded in the minutes of the board of county commissioners, and the county commissioners shall not have power to change any assessment after endorsement of the said assessment roll as aforesaid.

History.—§1, ch. 4885, 1901; GS 529; §27, ch. 5596, 1907; RGS 728; CGL 934; §5, ch. 20722, 1941; §4, ch. 22079, 1943; §1, ch. 25403, 1949.

193.30 Disposition of assessment roll.—The county assessor of taxes shall immediately after endorsement of the assessment roll by the county commissioners, transmit the original of said assessment roll to the tax collector and a copy thereof to the comptroller, and shall retain one copy for his own use. After the tax collector has completed collection of taxes and the sale of lands for nonpayment of taxes and balanced out said assessment roll, he shall file the same with the clerk of the circuit court. The tax assessor is authorized, at any time after the original of said assessment roll has been filed with the clerk of the circuit court by the tax collector, to destroy the copy of the assessment roll retained by him. Clerks of circuit courts are hereby authorized to destroy duplicate copies of assessment rolls for prior years now on file in their offices, retaining however assessment rolls used in prior years by tax collectors in collection of taxes.

History.—§2, ch. 4515, 1897; GS 531; §29, ch. 5596, 1907; RGS 730; CGL 936; §2, ch. 25403, 1949.

193.31 Duty of county commissioners as to rate of taxation; apportionment; certificate of clerk, etc.—The county commissioners shall determine the amount to be raised for all county purposes and shall enter upon their minutes the rates to be levied for each fund respectively and shall ascertain the aggregate rate necessary to cover all such taxes and certify the same to the county assessor of taxes, who shall carry out the full amount of taxes for all county purposes under one heading in the assessment roll to be provided for that purpose, and the county commissioners shall notify the clerk and auditor of the county, also the county tax collector, of the amount to be apportioned to the different accounts out of the total taxes levied for all purposes, and the county depository in issuing receipts to the tax collector, shall state in each of his receipts, which shall be in duplicate, the amount deposited to each fund, out of the deposits made with it by the tax collector, and where any such receipts shall be given to the tax collector by the county depository, he shall immediately file one of the same with the clerk and auditor of the county, who shall credit the same to the tax collector with the amount thereof, and shall make out and deliver to the tax collector a certificate setting forth the payment in detail, as shown by the county depository's receipt; provided, that the county commissioners shall file a written statement with the county assessor of taxes setting forth the boundary of each special school district, and the boundary of the district or territory in which other special taxes are to be assessed, and the county assessor of taxes shall, upon receipt of such statement, and an order from the board of county commissioners, setting forth the rate of taxation to be levied on the real and personal property therein, proceed to assess such property and enter the taxes thereon, in the assessment rolls to be provided for that purpose.

History.—§2, ch. 4885, 1901; GS 532; §30, ch. 5596, 1907; RGS 731; CGL 937; §6, ch. 20722, 1941.

193.32 Annual tax levies; limitations.—The board of county commissioners of the several counties of the state are authorized to levy taxes upon all of the real and personal property assessed for taxes, annually, in the amount and for the purposes set forth, as follows:

(1) For the general fund, not more than eight mills on the dollar;

(2) For the fine and forfeiture fund, not more than three mills on the dollar;

(3) For the general road and bridge fund, not more than ten mills on the dollar;

(4) For the general county school fund, not more than ten mills on the dollar;

(5) For agriculture and live stock fund, not more than one-half mill on the dollar;

(6) For outstanding indebtedness fund, or funds, not more than is necessary to provide for the payment of the indebtedness and interest thereon; but no levy shall be made under this provision for the current expenses or for building, equipment or other purposes unless the same shall be funded pursuant to the constitution and laws of the state.

Provided, that nothing herein shall be construed to prohibit the levy of reasonable taxes for such other county purposes as are specifically authorized by law.

History.—§1, ch. 20874, 1941.
cf.—§150.08 County tax for libraries.

193.34 Affidavit to roll.—When the county assessor of taxes shall have completed his assessment and made copies thereof, he shall attach to each an affidavit to be taken before some person authorized by law to administer oaths, which shall be in the following form:

State of Florida _____ county of _____

Personally appeared before me _____ county assessor of taxes for _____ county, who, being duly sworn, says the above assessment roll contains a true statement and description of all persons and property in the above county of _____ subject to taxation or liable to be assessed therein, and the valuation thereof, so far as they were made by him, are just and correct, so far as he has been able to ascertain.

Sworn to and subscribed to before me this _____ day of _____ A. D. 19____

History.—§33, ch. 4322, 1895; GS 533; §31, ch. 5596, 1907; RGS 732; CGL 940.

193.35 Assessor's warrant to assessment roll.—To each of the assessment rolls a warrant under the hand of the assessor of taxes shall be annexed in the following form, to-wit:

"State of Florida to _____ tax collector of the county of _____.

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed roll, the taxes set down in each roll opposite each name, corporation or parcel of land therein described, and in case taxes so imposed are not paid at the time prescribed by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed, or of the person or corporation so taxed; and all sums collected for the state taxes you are to pay to the state treasurer at such time as may be required by law, and at the same time you are to pay to the county depository all sums collected for county taxes, district school taxes and other special taxes; and you are further required to make all collections on or before the first Monday in April; and on or before the first Monday in July you will make a final report to and settlement with the comptroller and county commissioners.

Given under my hand and seal this, the _____ day of _____ in the year A. D. 19____.

_____
Assessor of Taxes, _____ County."

Such warrant shall remain in full force until all the taxes as assessed in said roll shall be collected.

All warrants heretofore issued or to be issued shall be of full force and effect in the hands of any successor, immediate or remote, of the tax collector to whom it may have been or may be so issued.

History.—§36, ch. 4322, 1895; §3, ch. 4885, 1901; GS 535; §§33, 34, ch. 5596, 1907; RGS 734, 735; CGL 942, 943.

193.36 Clerk to make and publish statement of taxes charged to collector; other statements.—As soon as the assessment roll shall be delivered to the tax collector, the clerk of the circuit court shall make out and publish a statement showing the amount of taxes charged to the tax collector to be collected for the current year and the apportionment of the same in separate columns to the several funds for which such taxes have been levied; and at each monthly meeting of the county commissioners thereafter, and until the tax books are closed, he shall publish a statement giving each fund credit with the amount collected thereon as shown by the reports of the tax collector in his office, and when the tax books are closed he shall publish a like statement showing the amounts specifically allowed the tax collector on account of errors and insolvencies and the amount of each fund uncollected. The aforesaid statement shall be posted by the clerk of the circuit court at the courthouse door, and published in a newspaper, when one is published in the county, and the costs of publishing the same shall be paid by the county commissioners.

History.—§34, ch. 4322, 1895; GS 534; §32, ch. 5596, 1907; RGS 733; CGL 941.

193.37 Collector may correct error of assessor.—If any tax collector has reason to believe or is informed that any person, firm or corporation has given to the county assessor of taxes or to the assistant assessor of taxes, an erroneous statement of his or its personal property, or that he or it has not returned the full amount of all property, either real or personal, to be listed in his county or any assessment district thereof, or has omitted or made an erroneous return of any property which is by law subject to taxation, the tax collector shall at once notify the county assessor of taxes of the facts in the case, and if such information as to personal property is given the county assessor of taxes before the first day of April of any year, he shall proceed at once to make an additional assessment in triplicate, and after attaching the affidavit and warrant required by law to be annexed to the assessment roll, he shall dispose of such additional assessment roll in the same manner as is provided for in the disposition of the regular assessment roll and all personal property about which the county assessor of taxes shall be notified after the first day of April, and all real estate about which he shall be notified either before or after the first day of April, or which shall be omitted from the assess-

ment roll, shall be assessed on the regular assessment roll then in course of preparation.

History.—§38, ch. 4322, 1895; §5, ch. 4515, 1897; GS 538; §37, ch. 5596, 1907; RGS 737; CGL 945; §8, ch. 20722, 1941.

193.38 Double assessment.—When any tax collector discovers that any land has been assessed more than once for the same year's taxes, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment and shall be credited therefor by the county commissioners and comptroller, and he shall notify the different parties to whom the property is assessed. He shall also report to the county commissioners the errors, double assessments and insolvencies for which he is to be credited under different heads, giving in every case the names of the parties on whose account the credit is to be allowed.

History.—§46, ch. 4322, 1895; GS 548; §45, ch. 5596, 1907; RGS 746; CGL 959.

193.39 Comptroller to furnish collector with receipt book; duties of collector; monthly statements by collectors, etc.—The comptroller shall prescribe the form of and furnish the tax collectors with a receipt book. The tax collector shall, on the payment to him of any taxes, fill out the receipt as prescribed by the comptroller, and shall note on his tax roll the payment thereof; and if any tax collector shall return to the comptroller and county commissioners as unpaid any tax which has been paid to him, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be punished by imprisonment in the county jail not exceeding twelve months, or by a fine not exceeding one thousand dollars; provided, that the tax collector shall be and is hereby prohibited from accepting taxes on any property not assessed on the regular assessment roll or additional assessment roll made under §193.37, and the tax collector is also prohibited from accepting the payment of taxes on property that has already been paid on, whether such payment was made by the owner or not, but any person may in such cases demand and receive a certificate from the tax collector that the taxes have been regularly paid and such certificate shall set forth the date of payment, amount paid, number of receipt and description of property, which said certificate shall have the same force and effect as the tax receipt upon which it is based.

Every tax collector shall on the first day of each and every month make a return under oath to the comptroller, the board of county commissioners and county judge of all sums collected during the previous month on account of county taxes, and for license taxes and other purposes. In his return he shall state the name of the person or persons from whom a license tax was collected and the amount thereof.

History.—§41, ch. 4322, 1895; §6, ch. 4515, 1897; GS 540; §40, ch. 5596, 1907; RGS 739; CGL 947; §9, ch. 20722, 1941.

193.391 Destruction of twenty year old tax receipts.—The tax collector in each county of the state is hereby authorized to destroy all duplicate tax receipts on file in his office now twenty years old and hereafter to destroy such duplicate tax receipts as they become twenty years old.

History.—§1, ch. 26891, 1951.

193.40 Comptroller to pass upon and order refunds.—The comptroller shall pass upon and order refunds where payment has been made voluntarily or involuntarily of taxes assessed on the county tax rolls by reason of either of the following circumstances: (1) Any over-payment; (2) Payment where no tax was due; and (3) Where a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer may pay the amount claimed by the tax collector to be due, and if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof. The board of county commissioners shall comply with the order of the comptroller in such matters by providing in the county budget for the ensuing year for the payment of such refunds and the board shall have authority to authorize such tax levies as may be necessary to provide the fund with which to make the refund so ordered.

History.—§1, ch. 10282, 1925; CGL 948; §47, ch. 20722, 1941.

193.41 When taxes due; discounts if paid before certain time.—All taxes shall be due and payable on the first day of November of each and every year, or as soon thereafter as the assessment roll may come into the hands of the tax collector, of which he shall give notice by publication, and the tax collector is hereby vested with the power, and it shall be his duty, to collect all taxes as shown on the tax roll, which taxes shall become delinquent on April first following the year in which such taxes are assessed. On all taxes assessed on the county tax rolls and collected by the county tax collector, discounts for early payment thereof shall be at the rate of four per cent in the month of November, three per cent in the month of December, two per cent in the following month of January, and one per cent in the following month of February, the taxes being payable in March without discount. It shall also be his duty, and he is hereby vested with the power, to collect by sale of the tax liens on said lands all taxes assessed thereon and which taxes are not paid prior to April first of the year following the year in which the taxes are assessed.

History.—§42, ch. 4322, 1895; §7, ch. 4515, 1897; GS 541; §41, ch. 5596, 1907; RGS 741; CGL 950; §2, ch. 14572, 1929; §10, ch. 20722, 1941; §6, ch. 22079, 1943.
cf.—§199.16 Discount allowed on intangible tax.

193.42 State and county warrants receivable for revenue.—Comptroller's warrants shall be receivable for state general revenue; provided that warrants issued prior to July 1st, 1871, must be first examined and approved by a commission consisting of the comptroller, treasurer and attorney general. Checks or warrants upon the county depository of any county shall be receivable by such county for county revenue, and orders issued by the county board of public instruction shall be receivable in the

counties where such orders are issued for county school purposes.

History.—§38, ch. 5596, 1907; §§1-9, ch. 6932, 1915; RGS 738; CGL 946.

193.44 Division of funds.—The comptroller and treasurer shall cause a proper division of the funds assessed in accordance with law under the head of state taxes, on the assessment roll, at the time such taxes are paid over to the state treasurer by the tax collector, and the treasurer shall credit the fund so received to general revenue, common school fund, one-mill tax and such other funds as may by law be required to be separately set apart.

History.—§30, ch. 4322, 1895; GS 530; §28, ch. 5596, 1907; RGS 729; CGL 935.

193.45 Notice of taxes by mail, etc.—The tax collector, within fifteen days after delivery to him of the tax book with the assessor's warrant, shall mail to each taxpayer appearing on the assessment roll, whose post office address may be known to him, notice that the tax book is open for payment of taxes, stating the amount of taxes due by such taxpayer, and advising the per cent of discount allowed by law upon payments made by the date fixed by law, stating the date. The expense of printing such notices and the postage therefor shall be paid out of the general funds of the county upon statement thereof by the tax collector. Upon request of any holder of a mortgage or other lien upon any property against which any taxes may be assessed, accompanied by a fee of one dollar the tax collector shall mail to such mortgage or lien holder a statement of taxes against such property, or a copy of the newspaper, if available, containing the list of lands advertised for sale for nonpayment of taxes, as may be requested. Nothing in this section shall affect the legality of any tax sale proceedings, whether the duty hereby imposed upon the tax collector be complied with or not.

History.—§§1-3, ch. 10039, 1925; CGL 951-953.

193.46 Collector may appoint deputies to levy on personalty; fees of such deputies.—Tax collectors may appoint a deputy or several deputies to levy upon and seize personal property for unpaid taxes, and a written appointment from the tax collector, with a statement from him of the person in whose name the property is assessed and the amount of taxes due shall be sufficient warrant and authority for such deputy to act, and it shall not be necessary for a deputy to take the tax roll or warrant annexed thereto with him; provided, that deputy collectors so appointed shall be liable to the same penalties prescribed by law as to tax collectors for neglect of duty, or otherwise; provided, the deputy tax collector shall be entitled to the following fees, which shall be collected from delinquent taxpayers at the time of the payment of their taxes: On amounts of less than five dollars taxes, his fee shall be fifty cents; on amounts of over five dollars and less than ten dollars taxes, his fee shall be seventy-five cents; and on amounts over ten dollars taxes, he shall receive a fee of one dollar.

History.—§42, ch. 4322, 1895; §7, ch. 4515, 1897; GS 542; §41, ch. 5596, 1907; RGS 742; CGL 955.

193.47 Sale of personal property, etc.—When personal property shall be levied upon for any taxes, the tax collector or his deputy shall give public notice of the time and place of sale and of the property to be sold at least fifteen days previous to the sale by advertisement, to be posted up in at least three public places in the county, one of which shall be at the courthouse door, one in the election district in which the owner resides, and one at the voting place of the district where the property is located and where such sale shall be made at public auction, and the property sold shall be present if practicable; but at any time previous to the sale the owner or claimant of such property may release the same by the payment of the taxes and charges for which the same was liable to be sold. In case any levy shall be made as aforesaid, the tax collector shall be entitled to the same fees and charges as are allowed sheriffs upon execution.

History.—§43, ch. 4322, 1895; GS 543; §42, ch. 5596, 1907; RGS 743; CGL 956.

193.48 When property sold for more than taxes, surplus returned.—If the property levied upon shall be sold for more than the amount of taxes, costs and collection fees, the surplus shall be returned to the person in whose possession the said property was when the levy was made, or to the owner of the property.

History.—§44, ch. 4322, 1895; GS 544; §43, ch. 5596, 1907; RGS 744; CGL 957.

193.49 Attachment of personalty in case of removal; assessment a lien on property; taxes assessed a judgment.—In case any personal property upon which the taxes shall have been assessed is removed from the county in which said property was assessed, it is lawful for the tax collector of the county, by his warrant, to authorize the sheriff of the county within this state to which such person shall have removed or in which he shall reside, and such sheriff may proceed thereon as upon execution from the circuit court. Any assessment of taxes shall be a lien upon the property assessed from the 1st day of January for which year the property is liable to assessment. The tax collectors of the several counties may attach for taxes thereon any personal property which has been assessed at any time before payment, if he has reason to believe that such property is being or has been removed or disposed of so as to prevent or endanger the payment of taxes thereon in the same manner and under the same rules of law governing attachments or debts, dues or demands in other cases; and all taxes assessed upon either real or personal property, from the date of such assessment, shall have all the force and effect of a judgment and execution at law against the owner of such property.

History.—§45, ch. 4322, 1895; GS 545; §44, ch. 5596, 1907; RGS 745; CGL 958.

193.50 When collections to be made; time of

final settlement; proviso.—Tax collectors are required to make all collections before the first day of April, following the year in which such taxes were assessed; and on or before the first Monday in July, following the year in which such taxes were assessed, they are required to make a final report and settlement with the county commissioners; provided, however, that all warrants now outstanding shall be of full force and effect until all the taxes remaining unpaid shall have been collected and final report and settlement made by the tax collector with the county authorities, and all warrants heretofore issued or to be issued shall be of full force and effect in the hands of any successor, immediate or remote, of the tax collector to whom it may have been or may be so issued.

History.—§36, ch. 4322, 1895; §34, ch. 5595, 1907; RGS 735; CGL 943; §7, ch. 20722, 1941; §5, ch. 22079, 1943.

193.51 Date taxes delinquent; advertising and selling lands for unpaid taxes; redemption before sale.—All unpaid taxes upon real estate shall become delinquent on April 1 of the year following the year in which such taxes were assessed, and shall bear interest from such date at the rate of eighteen per cent per annum for the first year and eight per cent per annum for the time after the first year and the tax collector shall, on or before June 1 of each year, advertise and sell in the manner following: He shall make out a statement of all such real estate, specifying the amount due on each parcel, including interest from April 1 to date of sale at the rate of eighteen per cent per annum, together with the cost of advertising and expense of sale in the same order in which the lands were assessed and such list shall be published once each week for four consecutive weeks in some newspaper published in the county, said newspaper to be selected by the board of county commissioners at its first regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the county for a period of not less than one year prior to its selection; provided that should there be no such newspaper, a newspaper published for a less period of time may be selected, and if there be no such newspaper published in the county, then by posting in three public places in the county, one of which shall be at the courthouse, and the newspaper charges for advertising shall be thirty cents per line for the four insertions, per single column, and if there be no newspaper published in the county the tax collector shall receive the same for posting at three public places, but in neither case shall there be any charge for the head notice.

Charges at the rates specified herein shall be computed and paid for on the basis of 6-point type on 6-point body, and shall be charged without discount, rebate, commission or refund.

The clerk of the circuit court for the county shall audit said publisher's charges or the tax collector's charges for posting, as the case may be, and the board of county commissioners shall pay the same out of county funds, if the taxes are county taxes but if the taxes are special district taxes then such costs shall be paid from such district's funds.

Lands upon which taxes have become delinquent may be redeemed at any time between April 1 and the date of sale of the tax sale certificate upon payment of all costs and delinquent taxes and interest on such amount at the rate of eighteen per cent per annum, but not less than three per cent of the delinquent taxes and costs.

History.—§50, ch. 4322, 1895; §10, ch. 4515, 1897; GS 558; §50, ch. 5596, 1907; RGS 756; §1, ch. 8570, 1921; CGL 969; §3, ch. 14572, 1929; §11, ch. 20722, 1941; §1, ch. 28286, 1953; §1, ch. 63-167.

193.52 Copy of advertisement to be filed with clerk; collector's fees; time of sale; form of notice.—A copy of the newspaper containing the advertisement shall be filed in the office of the clerk of the circuit court within ten days after said sale. When tax certificates are advertised for sale under this law the tax collector shall be entitled to fifteen cents for certification of sale and shall be entitled to five per cent commission on the amount of each delinquent tax when actual sale is made, but said tax collector shall not be entitled to any commission for the sale of such property made to the county until said commission is paid upon the redemption or sale of the tax certificate or certificates issued thereon to the county, or where a tax deed is issued to the county then the tax collector shall not receive his five per cent commission for such certificate or certificates until after such property is sold and conveyed by the county.

All such sales shall commence on the regular sale day prescribed by law, and may be continued from day to day. Such advertisements shall be in the following form, to-wit:

NOTICE OF TAX SALE

Notice is hereby given that on the _____ day of _____, 19___, at _____ _____, county of _____, State of Florida, tax sale certificates will be sold on the following described land to pay the amount due for taxes herein set opposite the same, together with all costs of such sale and all advertising.

Description of Land	Sec.	Twp.	Rge.	Acr.	Owner	Amount of Taxes and Costs

Tax Collector_____

_____

County.

History.—§50, ch. 4322, 1895; §10, ch. 4515, 1897; GS 559; §51, ch. 5596, 1907; RGS 757; CGL 970; §4, ch. 14572, 1929; §1, ch. 15798, 1931; §12, 20722, 1941; §1, ch. 59-424.

193.53 Publisher to furnish copy of advertisement to collector, clerk and comptroller; proof of publication.—The publisher, proprietor or foreman of any newspaper publishing such notice shall forward a copy of each number of his paper containing such notice to the tax collector and the clerk of the circuit court and the comptroller by mail, and when the publica-

tion of the tax sale notice is completed, as provided by law, the publisher shall make affidavit thereto in the form prescribed by the comptroller and annexed to the tax collector's report of the tax sale or list of lands sold as provided by §193.58.

History.—§50, ch. 4322, 1895; §10, ch. 4515, 1897; GS 560; §52, ch. 5596, 1907; RGS 758; CGL 971; §13, ch. 20722, 1941.

193.54 Sale of lands for unpaid taxes.—On the day designated in the notice of sale, at twelve o'clock, noon, the tax collector shall commence the sale of those lands on which taxes have not been paid as aforesaid, and shall continue same from day to day until each parcel thereof shall be sold to pay the taxes, interest, costs and charges thereon, and in case there are no bidders each parcel shall be bid off by the tax collector for the county, and the tax collector must offer all such lands as assessed.

History.—§51, ch. 4322, 1895; GS 561; §53, ch. 5596, 1907; RGS 759; CGL 972; §5, ch. 14572, 1929; §14, ch. 20722, 1941.

193.55 Collector not to sell land on which taxes have been paid; penalty.—Should any tax collector sell any lands upon which the taxes have been paid, he shall be liable to the owners of said lands for twice the amount of the tax, and in addition pay all legitimate expenses the owner may be put to in clearing his titles, including a reasonable attorney's fee to be fixed by the court, and refund to the state all amounts for which he may be credited on account of such illegal sale, including cost of advertising. The tax collector shall be responsible to the publisher for costs of advertising lands on which the taxes have been paid, and the tax assessor shall be responsible to the publisher for costs of advertising lands doubly assessed.

History.—§51, ch. 4322, 1895; GS 562; §54, ch. 5596, 1907; RGS 760; CGL 973.

193.56 To whom land struck off.—The land shall be struck off to the person who will pay the tax, interest, costs and charges and will demand the lowest rate of interest for the first year, not in excess of the maximum rate allowed by law.

History.—§52, ch. 4322, 1895; GS 563; §55, ch. 5596, 1907; RGS 761; CGL 974; §6, ch. 14572, 1929; §15, ch. 20722, 1941.

193.57 Immediate payment required.—The tax collector shall require immediate payment by any person to whom any parcel of such land may be struck off, and in all cases where the payment is not made in twenty-four hours he may declare the bid canceled and sell the land again on the following day; and any person so neglecting or refusing to pay any bid made by him shall not be entitled after such neglect or refusal to have any bid made by him received by the tax collector during such sale; provided, however, that the purchaser shall not be required to pay for the certificates until the tax collector shall deliver the certificates to the purchaser, but the tax collector shall require a reasonable deposit as a guaranty that the purchaser will pay for the certificates when delivered.

History.—§53, ch. 4322, 1895; GS 564; §56, ch. 5596, 1907; RGS 762; CGL 975; §7, ch. 14572, 1929.

193.58 Triplicate lists of land sold to be made and filed; clerk's fees; form of book "land sold for taxes."—Immediately after any tax sale, the tax collector shall make out a list in triplicate of all the lands sold for taxes, showing the date of the sales, the number of each certificate, the name of the owner as returned, a description of the land sold, the name of the purchaser, and the amount for which sale was made, and the tax collector shall append to each of said lists a certificate setting forth the fact that such sale was made in accordance with law. One of such lists shall be forwarded to the comptroller, and one shall be retained by the tax collector, and the third list filed in the office of the clerk of the circuit court, who shall enter the same in a book to be provided by the county commissioners for that purpose, and he shall be entitled to receive the same fees for such record as is paid for other recording, every five figures to be counted as one word, such fees to be paid by the county, which book shall be in the following form, viz:

TAXATION.

Lands sold for taxes in the county of_____ on _____ day of _____ A. D. 19____

No. Certificate	Description of Land	Returned for Assessment by	Name of Purchaser	Amount of Sale
1.	N ½ S 1, T 4 S R 3, 200 Acres	.....	Geo. Brown	$16,000
2.	Lot 6, Blk. 4	.....	J. Black	9.0
When Redeemed	**By Whom Redeemed**	**Amount Paid**	**To Whom Deeded**	**Date of Deed**
Oct. 1____	W. Gray	$24.00	J Black	19____

History.—§55, ch. 4322, 1895; GS 565; §58, ch. 5596, 1907; RGS 763; CGL 796; §17, ch. 20722, 1941.

193.59 Form of certificate of sale.—

(1) At the sale aforesaid the tax collector shall give to the purchaser a certificate of such sale describing the lands purchased and the amount paid therefor, which amount shall bear interest from the date of the certificate until April 1st of the following year at the rate of eighteen per cent per annum (or at such lower rate of interest as may be bid by any purchaser other than the county) and at the rate of eight per cent per annum thereafter. The certificate shall be substantially in the following form:

State of Florida
County of _____
Office of Tax Collector
_____, A. D. 19____
No._____

I,_____, Tax Collector for the County of_____, in the State of Florida, do hereby certify that I did, at public auction pursuant

to notice given by law as required, on this the _____day of_____, A. D. 19____, sell to _____the lands hereinafter described for the sum of_____dollars and_____ cents, said sum being the amount due and unpaid for taxes, interests, costs and charges, of the described lands for the year of our Lord one thousand nine hundred and_____; that _____or assigns, will therefore be entitled to a deed of conveyance of such lands in accordance with the law unless the same shall be redeemed within such periods of time as are provided by law, by payment of such amount and interest thereon from the date of this certificate until April 1st following at the rate of eighteen per cent per annum (or at such lower rate of interest as may be bid by any purchaser other than the county) and at the rate of eight per cent per annum thereafter.

Said lands are described as follows, to wit:

_____

_____

in the county of_____, and State of Florida.

The above described lands do, do not, (strike out inapplicable words) appear on the tax rolls as a homestead.

Witness my hand at_____, this_____day of _____, A. D. 19____.

_____

Tax Collector

_____, County, Florida

(2) If application be made to the board of county commissioners for issuance of a duplicate tax sale certificate in lieu of a certificate alleged by affidavit to be the property of affiant and to have been lost or destroyed, the board may, upon such reasonable terms, conditions and assurances as it may require, authorize the clerk of the circuit court to issue a duplicate certificate, plainly marked or stamped "duplicate" to the affiant and the clerk shall thereupon issue the same upon payment of a fee of fifty cents and enter the fact of such duplicate in the tax sale record opposite the entry of the sale, for which the lost or destroyed certificate was issued. He shall enter in the same place a notation of the alleged loss or destruction whether the duplicate be issued or not. If the clerk of the circuit court shall certify to the board of county commissioners that a tax sale certificate belonging to the county has been lost or misplaced, the board shall thereupon enter an order in its minute book directing the clerk to issue and file in his office a duplicate certificate, and the clerk shall forthwith issue and file such duplicate certificate and he shall at the same time make an entry on the tax sale record showing the issuance of the duplicate certificate.

History.—§1, ch. 4888, 1901; GS 567; §57, ch. 5596, 1907; RGS 766; CGL 981; §8, ch. 14572, 1929; §16, ch. 20722, 1941; §7, ch. 22079, 1943.

193.60 Tax sale certificate transferable by endorsement.—All tax certificates heretofore or hereafter issued, whether to the state, county or individuals, shall be transferable by endorsement at any time before they are redeemed, or a tax deed is executed therefor.

History.—§2, ch. 4888, 1901; GS 568; RGS 767; CGL 982; §18, ch. 20722, 1941.

193.61 Procedure by incorporated cities and towns.—The tax collector of any city or incorporated town shall, unless otherwise provided in this chapter, proceed substantially in the same manner in the collection of taxes and sale of lands and personal property for nonpayment of taxes due by any railroad or any telegraph company; they may levy upon and sell any property within the corporate limits of said city or town belonging to such company, other than railroad tracks or telegraph lines.

Nothing in this chapter shall be so construed as in any way abridging or limiting powers to assess, levy or collect taxes, licenses or assessments which have been or may be granted to any municipal corporation by special act or charter act, or as limiting such municipal corporation in the method of assessing, levying or collecting the same, to the methods established by this chapter.

History.—§56, ch. 4322, 1895; GS 566; §59, ch. 5596, 1907; RGS 764; CGL 979.

***193.62 Municipalities; sale and redemption of tax certificates.**—

(1) Incorporated cities and towns, notwithstanding any provision to the contrary in their charter or any special act, shall not charge any interest rate in excess of twelve per cent per annum on tax certificates. It is the legislative intent to effectuate a general revision of all provisions relating to interest rates charged by incorporated cities and towns on tax certificates in order to establish a uniform maximum interest rate on such certificates. It is further intended that the provisions of this subsection shall be exclusive, notwithstanding any provision to the contrary contained in any charter or special act, and shall supersede and control over all such provisions. All provisions of any municipal charter or special act allowing an interest rate on tax certificates in excess of twelve per cent per annum are declared inoperative, as of January 1, 1964.

(2) Incorporated cities and towns, unless their special charters provide otherwise, shall conform to the state law in force with reference to the care, custody, sale and redemption of tax certificates insofar as they may be applicable, and shall record a list of such certificates with the clerk of the circuit court of their respective counties; provided, however, that such special charter provision is consistent with subsection (1).

(3) Tax certificates sold prior to January 1, 1964, are not affected hereby.

History.—§60, ch. 5596, 1907; RGS 765; CGL 980; §1, ch. 63-95.
*Effective January 1, 1964.

193.63 Lands upon which taxes are sold placed on assessment rolls; taxes not extended; excluded from millage calculations.—The tax assessors in making up their assessment rolls, shall place thereon the lands upon which taxes have been sold to the county, and shall enter their valuation of the same on the roll, and mark

against such lands on the said rolls, the words, "county tax certificate," but the tax assessors shall not extend the taxes upon such lands. Neither the boards of county commissioners nor the county boards of public instruction shall be required to include nor give consideration to valuations upon such lands in calculating millage required to be levied.

History.—§1, ch. 6158, 1911; RGS 769; CGL 984; §23, ch. 20722, 1941; §10, ch. 22079, 1943.

193.64 Land bid off for the state.—Where land is bid off by the tax collector for the state, the tax certificate shall be issued by the tax collector to the state, in the name of the treasurer, and if the land is not redeemed or the certificate sold by the state, the title to the land shall, at the expiration of the time for redemption vest in the state without the issuing of any deed, as provided for in other cases, and the certificate shall be evidence of the title of the state, and none of the provisions of this chapter providing for the issuing of a deed shall apply in such cases, and in all cases in which land or real estate has heretofore been sold or purchased by the state and the certificate has not been sold, or land or real estate not been redeemed, and the time for redemption is passed, it shall not be necessary for the state to procure a deed, but the title shall be held to be in the state, and the certificate shall be evidence of the title of the state.

History.—§65, ch. 4322, 1895; GS 593; §62, ch. 5596, 1907; RGS 796; CGL 1027.

193.65 Commissions of assessors and collectors.—The assessors of taxes of the several counties of the state shall be entitled to receive upon the amount of all real and tangible personal property taxes assessed, excluding errors, the following commissions, to wit:

(1) On the county general tax ten per cent on the first five thousand dollars in amount of taxes levied, five per cent on the next five thousand dollars in amount in taxes levied, three per cent on the balance of taxes levied up to the amount levied on an assessed valuation of fifty million dollars and two per cent on the balance; on each taxing district three per cent on the amount of taxes levied up to the amount levied on an assessed valuation of fifty million dollars and two per cent on the balance.

(2) The tax collectors of the several counties of the state shall be entitled to receive upon the amount of all real and tangible personal property taxes, and licenses, collected and remitted, the following commissions:

On state licenses, ten per cent on the first five thousand dollars, five per cent on the next five thousand dollars, and three per cent on the balance; on the county tax, including licenses, ten per cent on the first five thousand dollars, five per cent on the next five thousand dollars, three per cent on the balance up to the amount of taxes levied on an assessed valuation of fifty million dollars and two per cent on the balance; on each taxing district three per cent on the amount of taxes levied on an assessed valuation of fifty million dollars, and two per cent on the balance.

(3) In computing the amount of taxes levied on an assessed valuation of fifty million dollars for the purposes of this section the valuation of nonexempt property and the taxes levied thereon shall be taken first.

(4) The commissions for assessing the state taxes and for collecting taxes assessed for or levied by the state shall be audited and allowed by the state comptroller and shall be paid by the state treasurer as other comptroller's warrants are paid; and commissions for assessing and for collecting the county taxes shall be audited and paid by the boards of county commissioners of the several counties of this state. The commissions for assessing and for collecting all special school district taxes shall be audited by the board of public instruction of each respective county and taken out of the funds of the respective special school districts under its control and allowed and paid to the said tax assessors for assessing such taxes and to the tax collectors for collecting such taxes; and the commissions for assessing and for collecting all other district taxes whether special or not shall be audited and paid by the governing board or commission having charge of the financial obligations of such district. All commissions for assessing and for collecting special tax district taxes shall be paid at the time and in the manner now or as may hereafter be provided for the payment of the commissions for the assessment and for the collection of county taxes. All amounts paid as compensation to any tax assessor or to any tax collector under the provisions of this or any other law shall be a part of the general income or compensation of such officer for the year in which received and nothing in this section contained shall be held or construed to affect or increase the maximum salary as now provided by law for any such officer.

(5) Provided, that the provisions of this section shall not apply to commissions on intangible property taxes or drainage district or drainage subdistrict taxes; and

(6) Provided, further, that where any assessor of taxes or tax collector in the state is receiving compensation for expenses in conducting his office or by way of salary pursuant to any act of the legislature other than the general law fixing compensation of assessors, such assessor of taxes or tax collector may file a declaration in writing with the board of county commissioners of his county electing to come under the provisions of this section, and thereupon such assessor or collector shall be paid compensation in accordance with the provisions hereof, and shall not be entitled to the benefit of the said special or local act. If such assessor of taxes or collector does not so elect, he shall continue to be paid such compensation as may now be provided by law for such assessor or collector.

(7) The provisions of this section shall apply to taxes assessed for the year 1943 and subsequent years, and commissions on taxes levied

for prior years shall be paid at the rate in effect at the time of the passage of this section.

History.—§67, ch. 4322, 1895; §§11, 12, ch. 4515, 1897; §5, ch. 4885, 1901; GS 594, 595; §§63, 64, ch. 5596, 1907; RGS 797, 801; CGL 1028, 1033; §1, ch. 17876, 1937; CGL 1940 Supp. 1036 (14); §§1, 1A, ch. 20936, 1941; §§1, 2, ch. 21918, 1943.

193.66 Commissions; payment upon redemptions.—When any lot or parcel of land certified or sold to the state for the nonpayment of taxes for any previous years shall be redeemed or certificates purchased by payment to or through the clerk of the circuit court of the respective counties of the state, as provided now or as may hereafter be provided by law, the clerk of said court shall, before making the final remittance of the balance on hand derived through such redemption or purchase, pay to the tax assessor of the county in which the land redeemed or purchased lies, two per cent of the amount of the principal of the taxes for the years 1937 and subsequent which are covered by said certificate or certificates or subsequent or omitted taxes redeemed or purchased, excepting any fees or commissions that may have been allowed and paid for the first year's taxes included in said certificate, the said amount to be deducted by the said clerk from his remittance made to the various districts participating in the certificate. The amounts so paid, as above provided, shall be a part of the general income or compensation of the said tax assessor for the year in which received and shall not increase the maximum salary provided by law to any tax assessor.

History.—§2, ch. 17876, 1937; CGL 1940 Supp. 1036(14).

193.67 County commissioners to pay assessor monthly.—The boards of county commissioners of the several counties of Florida shall pay, or cause to be paid, to the county assessors of taxes of each such county, respectively, in the state, monthly, on the first day of each and every month, on demand of such county assessor of taxes, respectively, an amount or sum equal to one-twelfth of four-fifths of the total amount of commissions received by such county assessor of taxes, or his predecessor in office, from such county, during and for the preceding year, and the balance of the commissions earned by such county assessor of taxes, respectively, during each year, over and above the amount of such installment payments herein provided for, shall be payable when a report of errors and double assessments is approved by the county commissioners of the several counties respectively, and a copy thereof filed with the comptroller of the state.

History.—§2, ch. 7267, 1917; RGS 799; CGL 1031.

193.671 County commissioners to pay tax collector monthly.—The board of county commissioners of each county of the state shall advance and pay to the county tax collector of each such county, at the first meeting of such board each month from January through October of each year, on demand of the county tax collector, an amount equal to one-twelfth of the commissions on the county taxes levied on the county tax roll for the preceding year, and one-twelfth of the commissions on county occupational and beverage licenses paid to the tax collector in the preceding calendar year. To demand the first advance under this section, each tax collector shall submit to the board of county commissioners a statement, showing the calculation of the commissions on which the amount of each advance is to be based.

On or before November 1 of each year, each tax collector who has received advances under the provisions of this section shall make an accounting to the board of county commissioners, and any adjustments necessary shall be made so that the total advances and commissions paid by the board of county commissioners shall be the amount of commissions earned. Provided; that at no time within the year shall there be paid by the board of county commissioners more than the total advances due to that date, or the commissions earned to that date, whichever is the greater; provided further, nothing contained herein shall be construed to abrogate any law providing a salary for the tax collector or require the tax collector to accept the benefits of this section. This section shall apply to payments of advances and commissions for the calendar year 1959 and subsequent years.

History.—§§1, 2, ch. 59-62.

193.68 Comptroller to issue to assessors quarter-annual payments.—The comptroller of the state shall issue to each of the county assessors of taxes, severally, in the state, quarter-annually, on the first Monday of January, April, July and October, on demand of such county assessors of taxes, respectively, his warrant, which shall be paid by the treasurer of the state, for an amount or sum equal to one-fourth of four-fifths of the total amount of commissions received by such county assessors of taxes, or his predecessor in office, from the state during and for the preceding year, and the balance of the commissions earned by such county assessor of taxes, respectively, during each year, over and above the amount of such installment payments herein provided for, shall be payable when a report of errors and double assessments is approved by the county commissioners, and a copy thereof filed with the comptroller.

History.—§1, ch. 7267, 1917; RGS 798; CGL 1030.

193.69 Fees of assessors as affected by change of county boundary.—If and when the boundaries of any county in the state are changed, whereby such county, after such change of boundary, includes more or less assessable property than was included in such county prior to such change, in such event, after such change of boundary, the amount or sum to be paid to the county assessor of taxes of such county, in installments as provided in §§193.67 and 193.68, shall be increased or diminished in proportion as the assessed value for the preceding year of the property added to or subtracted from such county, bears to the total assessed value of all

property in such county for the year last preceding such change of boundary.

History.—§3, ch. 7267, 1917; RGS 800; CGL 1032.

193.70 Delinquent tax lands; certification; assessment.—All land, against which the state holds any tax sale certificate or other lien for delinquent taxes assessed for the year 1932, or subsequent years, shall, on April 1 of each year, be certified by the state comptroller to the several tax assessors as having been sold to the state for taxes. The tax assessor of each county shall place such lands on the assessment roll as state tax delinquent certificate lands and shall enter his valuation of the same thereon, but he shall not extend the amount of taxes except as otherwise provided herein.

History.—§2, ch. 17403, 1935; CGL 1936 Supp. 1014(2).

193.71 Delinquent tax lands; errors and insolvencies.—On April 1st of each year the comptroller shall certify to the several tax collectors a list of lands showing by years the number of the certificate or certificates and a description of the lands upon which the state holds a tax sale certificate issued during or since the year 1933 for delinquent taxes assessed for the year 1932 or subsequent years. The tax collector shall not sell any lands appearing upon the list furnished him by the comptroller, and if taxes have been levied and assessed on any such lands the tax collector shall take credit for the amount of such taxes on his list of errors and insolvencies. The clerk of the circuit court shall collect and account for the subsequent taxes when application is made to redeem or purchase any tax sale certificate owned by the state issued in any year subsequent to 1932.

History.—§3, ch. 17403, 1935; CGL 1936 Supp. 1014(3).

193.72 Sale of lands for delinquent taxes where no outstanding state owned certificate.—If the taxes upon any land, which do not on April 1st of any year have outstanding and in the hands of the state a tax sale certificate issued for taxes assessed for the year 1932 or subsequent years, shall not be paid before the first day of April of any year, the tax collector shall advertise and sell the said lands in the manner now provided by law for the sale of lands because of the nonpayment of taxes.

History.—§4, ch. 17403, 1935; CGL 1936 Supp. 1014(4).

193.73 Failure of tax assessor to assess taxes or perform duties.—If the county assessor of taxes shall fail from any cause other than sickness to do the duties and assess the taxes in the manner prescribed by law, he shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars nor more than twenty-five hundred dollars, or imprisonment in the county jail not more than two years.

History.—§38, ch. 4322, 1895; GS 3458; §36, ch. 5596, 1907; RGS 5325; CGL 7458.
cf.—§775.07 punishment for misdemeanor.

193.74 False return to comptroller or commissioners by tax collector.—If any tax collector shall return to the comptroller and county commissioners as unpaid any tax which has been paid to him, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be punished by imprisonment in the county jail not exceeding twelve months, or by a fine not exceeding one thousand dollars.

History.—§40, ch. 5596, 1907; RGS 5331; CGL 7464.
cf.—§775.06 alternative punishment.

193.75 Poll taxes abolished. — From and after June 14, 1941, all poll taxes shall be and the same are hereby abolished in the state.

History.—§1, ch. 20986, 1941.

193.76 Trustees of internal improvement trust fund to furnish county tax assessor name of grantee or contracted purchaser.—

(1) The trustees of the internal improvement trust fund of the state be and they are hereby required to furnish to the county tax assessors of the respective counties in the state the name and address of the grantee in any deed from the said trustees to any property in the state, together with the amount of the total consideration for said deed, same to be furnished to the county tax assessors of the respective counties where the land deeded lies within ten days after the delivery of the deed to the grantee by the trustees of the internal improvement trust fund.

(2) The trustees of the internal improvement trust fund of the state be and they are hereby required to furnish to the county tax assessors of the respective counties in the state the name and address of any person to whom said trustees have contracted to sell any lands in the state where such lands are subject to taxation. Said information shall be furnished to the county tax assessor in the county where the land lies together with the amount of the total consideration for such contract, within ten days after the delivery of the contract by the trustees of the internal improvement trust fund.

History.—§§1, 2, ch. 24305, 1947; §2, ch. 61-119.

CHAPTER 194

TAX SALES CERTIFICATES AND TAX DEEDS

194.01 Tax sale certificates belonging to county held by clerk; redemption made through clerk.—All tax sale certificates hereafter issued to the county shall be held by the clerk of the circuit court of the several counties wherein are situated the lands covered by such certificates for redemption or sale, as hereinafter provided, and all redemptions of lands hereafter certified or sold to the county, or sold to individuals, shall be made through the clerk of the circuit court of the respective counties wherein such lands are situated. It shall be the duty of every owner of real property to ascertain from the clerk of the circuit court the fact of the existence and status of delinquent taxes thereon, if any, and inquiry by such owner of the tax collector, or any other tax official, shall not relieve such owner of such duty.

History.—§3, ch. 4888, 1901; GS 569; RGS 768; CGL 983; §22, ch. 20722, 1941; §9, ch. 22079, 1943.

194.02 Lands sold to purchaser other than county may be redeemed.—

(1) Any person, or agent of any person, owning or claiming such lands sold for taxes, or any part or parcel thereof, or any interest therein, or the creditor of any such owner or claimant may redeem the same at any time after such sale and before a tax deed is issued therefor, by paying to the clerk of the circuit court of the county wherein such land is situated the face of the certificate of sale, or such portion thereof as the part or interest redeemed shall bear to the whole, and interest thereon from the date of the certificate, together with the fee of fifty cents for the clerk for each certificate or part of certificate so redeemed. Such interest on lands hereafter sold shall be at the rate per annum bid by the purchaser for the period of time from the date of the certificate, not in excess of twelve per cent per annum and eight per annum for the time after the first year, but not less than five per cent of the face of the certificate.

(2) When any land shall have been so redeemed the clerk shall refund to the holder of the tax certificate the whole amount received by him for redemption, less his fee of fifty cents, and such certificate shall be surrendered to the clerk and canceled, if the whole be redeemed, or if only a portion thereof shall be redeemed, such portion and description of land with date of redemption, shall be endorsed on such certificate by the clerk and the certificate retained by the owner subject to such endorsement, and such redemption shall be forthwith entered by the clerk on the record of tax sales on file in his office. Nothing herein contained shall be deemed to deny the right to redeem any tax sale certificate now outstanding in accordance with the law in force when the same was issued; provided, however, that the provisions of §192.33, relating to survival of restrictions and covenants after tax deed, shall not be repealed by this chapter, and shall apply with the same force and effect to lands covered by such chancery decrees as the same apply to tax deeds and masters' deeds as provided in said section.

History.—§5, ch. 4888, 1901; GS 570; RGS 770; CGL 985; §9, ch. 14572, 1929; §19, ch. 20722, 1941; §8, ch. 22079, 1943; §1, ch. 28254, 1953.

194.03 Redemption receipt and certificate for lands sold to purchaser other than the county.—Whenever any land covered by certificates in the hands of individuals shall be redeemed as provided for in §194.02, the clerk shall give to the person making such redemption a receipt and certificate showing the amount paid for such redemption, a description of the land redeemed, and the date, number and amount of the certificate, certificates, or part of certificate, from which the same is redeemed, which shall be substantially in the form following:

History.—§6, ch. 4888, 1901; GS 571; RGS 771; CGL 986; §20, ch. 20722, 1941.

194.04 Form of redemption receipt for lands sold to purchaser other than the county.—Received of_____, _____ dollars, which is accepted (in full or in part), the amount now due upon certificate No._____ for $_____, dated _____ day of _____, A. D. 19____, for the redemption of the following land in _____ county, Florida, described as_____ containing_____acres, more or less, which was assessed and sold as the property of _____for taxes of the year A. D. 19____; and said described land is hereby redeemed from the said taxes and certificates.

Witness my official signature and seal this, the _____day of_____A. D. 19____.

_____
Clerk Circuit Court,
_____County, Florida.

History.—§6, ch. 4888, 1901; RGS 772; CGL 987; §21, ch. 20722, 1941.

194.05 Redemption or purchase of state-owned certificates of 1917 and prior years.—The clerks of the circuit courts of the several counties of the state shall allow the redemption or purchase, in whole or in part, where the part to be redeemed or purchased can be ascertained by legal and usual subdivision, of any and all tax certificates held by the state issued in the year 1917 and prior thereto upon the payment of the amount of such certificate or certificates, or such portion thereof as the part to be redeemed or purchased shall bear to the whole, and the subse-

quent omitted taxes, or taxes that have not been paid including taxes for the year in which redemption or purchase is made, if made after the first day of April, with interest on such certificates and on unpaid taxes for the year 1916 and prior thereto at the rate of eight per cent per annum from the first day of April, 1918.

History.—§1, ch. 7806, 1919; CGL 993.

194.06 Redemption or purchase of state-owned certificates of 1918 and subsequent years.—The clerks of the circuit courts of the several counties of the state shall allow the redemption or purchase, in whole or in part, where the part to be redeemed or purchased can be ascertained by legal and usual subdivision, of any and all tax certificates held by the state, that shall have been issued in the year 1918 and subsequent years, or that shall hereafter be issued, upon the payment of the amount of such tax certificate or certificates, or such portion thereof as the part to be redeemed or purchased shall bear to the whole with interest thereon and the payment of any and all subsequent unpaid or omitted taxes due on the land to be redeemed or purchased, with interest thereon. Such interest on lands sold prior to the year 1929 shall be at the rate of twenty-five per cent per annum for the first year and eight per cent per annum for the time after the first year from the date of sale. Such interest on lands sold in the year 1929 and thereafter shall be at the rate of eighteen per cent per annum for the first year and ten per cent per annum for the second year and eight per cent per annum thereafter, but not less than five per cent of the face of the certificates; interest on all unpaid or omitted taxes to be calculated beginning with the first day of April next after the year for which such taxes are due.

History.—§§1, 2, ch. 7806, 1919; CGL 993, 994; §11, ch. 14572, 1929.

194.07 Redemptions prior to November first.—When application is made prior to November first of any year for the redemption of lands heretofore or hereafter sold for taxes under the laws of the state, the person or persons applying for such redemption shall not be required to pay the taxes for the year in which such redemption is made. In the event of such redemption, without paying the taxes for the year in which such redemption is made, the taxes for such year shall continue to be a lien against such lands, and if not paid before tax sale is held in the county in which such lands are located, the same shall be included by the tax collector in his sale as are other lands. Such taxes shall be extended by the tax assessor if the property is redeemed before the completion of the rolls and by the tax collector if the property is redeemed after the completion of the rolls. The clerk of the circuit court shall immediately notify the tax collector and tax assessor upon the redemption of any lands. In the event the party redeeming, however, shall pay the taxes for the year of redemption during the time when discounts are allowed for payment of taxes, the same discounts shall be allowed such party as are allowed in other cases of the payment of taxes.

History.—§1, ch. 15055, 1931; CGL 1936 Supp. 984(1).

194.08 Redemption in certain cases.—Where there are more than one tax certificate held by the state against the same land, the certificates (except the last certificate) may be redeemed, in whole or in part, where the part to be redeemed can be ascertained by legal and usual subdivision, in the order of their issue, by paying to the clerk of the circuit court of the county wherein the land described in said certificates is located the amount of the certificate to be redeemed, or such portion thereof as the part to be redeemed shall bear to the whole, and any and all subsequent omitted or unpaid taxes due on said land to be redeemed prior to the year for which the next certificate was issued, with interest on certificate issued in the year 1917 and prior thereto and unpaid or omitted taxes for the year 1916 and prior thereto at the rate of eight per cent, per annum from the first day of April, 1918, and interest on subsequent certificates and unpaid taxes as provided in §194.06.

History.—§3, ch. 7806, 1919; CGL 995.

194.081 Redemption by owner where state has interest; 1935 and subsequent years.—

(1) All tax sale certificates issued for unpaid taxes on lands in the state, for the years 1935 and subsequent years in which the state has an interest, may be redeemed by the owner of lands covered by said certificates under the following conditions:

(a) Any owner of lands in the state against which tax sale certificates have been issued for unpaid taxes for the year 1935 and subsequent years in which the state has an interest, may redeem said lands from the lien of said tax sale certificates upon payment to the clerk of the circuit court of the county in which said land lies of the amount of the state taxes embraced in said certificate or certificates, together with six per cent interest on the amount of said state taxes from date of certificate until date of payment, provided that this section shall have no effect upon lands, title to which vested in the state under §192.38, the Murphy act.

(b) Upon payment of said amount, it shall be the duty of the clerk of such circuit court and of the comptroller of the state, to cancel said certificates so redeemed as to state taxes embraced therein.

(c) Said certificates so cancelled as to state taxes embraced therein shall thereupon be delivered to the board of county commissioners of the county in which said land lies.

(d) Such certificates so cancelled as to state taxes by the clerk of the circuit court and the comptroller, may be redeemed by the owner of lands embraced in said certificates from all other taxes embraced in said certificates upon

such terms and conditions as shall be fixed by the board of county commissioners of the county in which said land lies and upon being so redeemed by said owner said certificates shall be cancelled and delivered to the owner of said lands and shall no longer be or constitute a lien on said land.

(2) All sums of money derived from redemption of said tax sale certificates shall be prorated to the several taxing units having interest in said tax sale certificates as the interest of said unit shall appear in said certificates.

History.—§§1, 2, ch. 28316, 1953.

194.09 When tax may be paid in lieu of subsequent certificate.—When the face of any tax certificate held by the state, issued subsequent to the oldest tax certificate held by the state covering any land to be redeemed or purchased, is greater than would be the unpaid or omitted taxes for the year for which such subsequent tax certificate was issued, when based on the last assessed valuation against the land, then the unpaid taxes for that year based on the last assessed valuation may be collected in lieu of the amount due on such subsequent certificate shall then be canceled as to such land.

History.—§4, ch. 7806, 1919; CGL 996.

194.10 Redemption of omitted taxes.—Unpaid or omitted taxes shall be collected upon the basis of the regular valuation placed by the assessor upon the land for the year for which taxes remain unpaid, and where no valuation was so placed then the last assessed valuation prior thereto shall be considered the regular valuation; but where the last assessed valuation against any land to be redeemed or purchased is less than the regular valuation then the last valuation shall be used.

History.—§5, ch. 7806, 1919; CGL 997.

194.11 Transfer of certificates.—The endorsement of a tax certificate officially by the clerk of the circuit court, with the date and the amount received, shall be sufficient evidence of the assignment and transfer thereof. Any portion of land or interest therein contained in a tax certificate held by the state, which can be ascertained by legal and usual subdivision, may be redeemed or sold by a certificate of such transfer, or redemption, under the hand and official seal of the clerk of the circuit court, and a deed may issue thereupon in compliance with the terms of this law.

Endorsement of the clerk shall be made upon the tax certificate of the portion of the certificate redeemed or sold, giving the description of the land and the date of the transfer, with the amount received therefor. Should it appear that the land covered by the oldest certificate to be transferred or canceled has not been assessed, or is assessed to the state, for any subsequent year, the party purchasing or redeeming the oldest certificate shall pay to the clerk the taxes for each of such subsequent omitted years, based upon the last assessed valuation, with interest thereon, at the rate which would be required for the redemption of the certificate.

The clerk shall receive a fee of fifty cents for the endorsement of each certificate.

History.—§7, ch. 4888, 1901; §1, ch. 5112, 1903; GS 573; RGS 775; CGL 992; §10, ch. 14572, 1929.

194.12 Record of tax redemptions.—The clerk of the circuit court shall keep a record of all moneys received by him for redemption from sales of real estate for taxes or special assessments, which record shall show the names of the persons who purchased the property at said sales, or the assignees of such purchaser, if known, and the amount due the lawful holder of the tax certificate for each such redeemed sale.

The clerk of the circuit court at the expiration of his term of office shall account for and pay over to his successor in office all moneys in his hands received for redemptions from sale for taxes or special assessments on real estate.

History.—§§1, 2, ch. 8569, 1921; CGL 990, 991.

194.13 Redemption of portion of tax certificate.—Any portion of land, or interest therein contained, in a tax sale certificate or certificates held by the state may be redeemed by a certificate of such transfer or redemption, under the hand and official seal of the clerk of the circuit court, upon such clerk being furnished by the county assessor of taxes with a certificate apportioning the value to the part or parts sought to be redeemed, and to the remaining land or lands under said certificate or certificates, according to their respective part or parts, said apportionment to be made upon the basis of valuation. Upon such redemption being made, the person shall pay all taxes, interest, costs and charges as provided by law upon the part or parts of the land so redeemed or purchased; provided the present method of redemption on basis of area shall in no way be impaired.

Any portion of land, or interest therein contained, in a tax sale certificate or certificates held by any person other than the state, may be redeemed by the person entitled to redeem the same by a certificate of such redemption under the hand and official seal of the clerk of the circuit court, upon such clerk being furnished by the county assessor of taxes with a certificate apportioning the value to the part or parts sought to be redeemed and to the remaining land under said certificate or certificates, according to their respective part or parts, said apportionment to be made upon the basis of valuation. Upon such redemption or purchase being made, the person shall pay all taxes, interest, costs and charges as provided by law upon the part or parts of the land so redeemed.

The county assessor of taxes, upon the request of the clerk of the circuit court, shall furnish to such clerk a certificate containing the information necessary for the clerk to perform the duties imposed upon him by this section.

History.—§§1-3, ch. 17404, 1935; CGL 1936 Supp. 999(109)-999(111).

194.14 Notice to mortgagee.—Each year within sixty days after the list of lands sold for taxes shall have come into the hands of the clerk of the circuit court, the clerk shall, whenever the records of his office show that any lot or tract of land so sold for taxes is encumbered by an unsatisfied mortgage, mail to said holder or holders of such unsatisfied mortgages, a list of all such mortgaged land as had been returned by the tax collector as sold for taxes, showing the number of each certificate and a description of the land sold; provided, that before any mortgage holder or holders shall be entitled to said notice a written request shall have been filed, on or before the first day of May of each year, with the clerk, showing the name and post office address of such mortgage holder or holders, together with a description of the land or lands embraced in said mortgage, the date of the said mortgage, and the book and page where same is recorded, such request to be accompanied by the fee required.

The clerk, as a fee for preparing and mailing such notice, shall be entitled to receive the sum of fifty cents for each mortgage under which the notice aforesaid shall be given, such fee to be added to and become a part of and to bear interest at the same rate as the tax certificate or certificates so specified and to be paid in redemption or purchase of the first of said certificates (if more than one) redeemed or purchased subsequent to such notice. The clerk may stamp each certificate so subject to this fee with a stamp indicating and identifying this charge.

History.—§§1, 2, ch. 8472, 1921; CGL 977, 978.

194.15 Application for obtaining tax deed by holder, other than the county, of tax sale certificate; fees.—On and after April 1, 1943, tax deeds on real estate sold for nonpayment of the taxes thereon may be obtained by the holder of a tax certificate, other than the county, in the following manner: The holder of any tax certificate may at any time after two years have elapsed since April first of the year the tax became delinquent (except that on certificates issued pursuant to the 1940 assessment the period shall be two years from the date of the certificate) file such certificate with the clerk of the circuit court of the county in which the lands described in such certificate are located, notifying the clerk that he desires the lands described therein, or any part thereof capable of being readily separated from the whole, advertised for sale; provided, further, this section shall not apply to tax certificates issued prior to 1941.

The certificate holder shall pay to the clerk the proper amount fixed by law for the redemption or purchase of all other outstanding tax certificates covering said lands, a fee of fifty cents for each certificate then redeemed or purchased, and for searches ascertaining the outstanding certificates a fee of fifty cents for the oldest tax sale and a fee of fifteen cents for each subsequent year, and a fee of two dollars for conducting the sale herein provided for and the issuing of a tax deed. Where the tax deed contains more than one described parcel of land, an additional fee of ten cents for each additional description of property shall be paid.

History.—§1, ch. 17457, 1935; CGL 1936 Supp. 999(136); §24, ch. 20722, 1941.

194.16 Notice, form of publication for obtaining tax deed by holder, other than county.—Upon the receipt of the application as provided by §194.15 and after the proper fees have been paid, the clerk shall cause a notice in substantially the following form to be published once each week for four successive weeks (four publications each one week apart) in some newspaper of general circulation published in the county where the lands are located; or if there be no newspaper published in such county, then such notice may be posted the same length of time at the courthouse door and in two other public places in the county. As many tax certificates may be included in the notice as the applicant desires:

FORM OF NOTICE

NOTICE OF APPLICATION FOR TAX DEED

Notice is hereby given that_____, the holder of the following certificates has filed said certificates for a tax deed to be issued thereon. The certificate numbers and years of issuance, the description of the property, and the names in which it was assessed are as follows:

Certificate No._____ Year of Issuance_____

Description of Property_____

Name in which assessed_____

(If more than one certificate, follow above order for each additional certificate.)

All of said property being in the County of _____, State of Florida.

Unless such certificate or certificates shall be redeemed according to law the property described in such certificate or certificates will be sold to the highest bidder at the court house door on the first Monday in month of_____, 19____, which is the_____ day of_____, 19____.

Dated this_____ day of_____, 19____.

_____

Clerk of Circuit Court of

_____ County, Florida.

History.—§2, ch. 17457, 1935; CGL 1936 Supp. 999(137); §25, ch. 20722, 1941.

194.17 Proof of publication of notice for tax deed holder, other than county.—Proof of the publication or posting of the notice provided for in §194.20 shall be filed by the clerk of the circuit court in his office on or before the date fixed for the making of the sale. Where there is no newspaper the clerk shall execute and file in his office a certificate as to the posting of such notices, stating where and on what dates the notices were posted.

History.—§3, ch. 17457, 1935; CGL 1936 Supp. 999(138); §27, ch. 20722, 1941.

194.18 Mailing notice to owner where application is made by holder other than county.—(1) In addition to the publication of the notice provided for by §194.16 the clerk of the circuit court shall mail a copy of such notice to the owner of the property and to each mortgagee, if any, if the name and address of such persons

appear on the tax roll for the year in which taxes were last extended on such property or if the name and address of such persons do not appear thereon then the notice shall be mailed to the person last paying taxes upon such lands as shown by the tax collector's receipt book and in the event no address be shown thereon no notice shall be required; and the clerk shall mail a copy of the notice of sale by registered mail to the municipality, and other taxing districts, in which the property therein described is situate; and the clerk shall enclose with every copy mailed a statement as follows: "Warning, property in which you are interested is listed in the copy of the enclosed notice"; and the clerk shall make out and attach to the affidavit of the publisher attesting to the publication of such notice, a certificate that he, the clerk, did on the .....day of....., 19...., mail a copy of the notice addressed to.....at ....., which certificate shall be signed by the clerk and his official seal affixed thereto; and such certificate shall be prima facie evidence of the fact that such notice was mailed. In the event the addresses of the owners and mortgagees, if any, do not appear on the tax roll as aforesaid, and the address of the person last paying taxes upon such lands is not shown by the tax collector's receipt book, the clerk shall execute and attach to the proof of publication a certificate sealed with his official seal to such effect. The failure of the owner, mortgagee, or municipality or other taxing district, to receive such notice shall not affect the validity of the tax deed issued pursuant to such notice.

(2) The notice referred to in this section may be sent any time not later than twenty days prior to the date of sale and a printed copy of the notice as published in the newspaper shall be sufficient.

History.—§4, ch. 17457, 1935; CGL 1936 Supp. 999(139); §28, ch. 20722, 1941; §11, ch. 22079, 1943.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

194.19 Fees for mailing additional notices, where application is made by holder, other than county. — Where the certificate holder shall make written request for him to do so, and shall furnish him with the names and addresses, the clerk shall send a copy of the notice referred to in §194.18 to any one to whom the certificate holder may request him to send such notice, and for every notice sent out the clerk shall make a certificate as to the mailing similar to that mentioned in the preceding section; but the clerk may demand from such certificate holder the sum of twenty-five cents to reimburse him for the postage and expense incurred for each copy of notice sent, except the copy to the owner of the land; and where such fees are paid they will be added by the clerk to the amount required to redeem the land from sale.

History.—§5, ch. 17457, 1935; CGL 1936 Supp. 999(140); §29, ch. 20722, 1941.

194.20 Time of making application for tax deed by certificate holder, other than county.— It shall not be necessary that application for deed be made by a certificate holder at any particular time of the month, or that notice provided in §194.16 be published at any particular time with reference to the day of making the deed so long as the day of making the deed shall be fixed not more than thirty days after the last publication of such notice.

History.—§6, ch. 17457, 1935; CGL 1936 Supp. 999(141); §26, ch. 20722, 1941.

194.21 Sale at public auction. — All lands advertised for sale to the highest bidder shall be sold at public auction by the clerk of the circuit court of the county wherein such lands are located, and such sale shall be held only on the first Monday in each month, and during the legal hours of sale, and such sales shall be held at the courthouse door. At such time and place the clerk shall read the notice of sale, and shall offer the lands described in such notice for sale to the highest bidder for cash, at public outcry. The amount required to redeem the tax certificate or certificates, plus the amounts paid by the holder thereof to the clerk of the circuit court in fees, costs of sale, redemption of other tax certificates on the same lands, in short, all costs which the applicant for tax deed has been put to, plus interest thereon at the rate of eight per centum per annum for one month, shall be considered the bid of the certificate holder for the property; provided, that if the certificate holder be the county, the amount required to redeem the certificate or certificates, plus amounts due the clerk of the circuit court in fees, costs of sale, redemption of other tax certificates on the same lands, together with all costs in connection therewith, plus interest thereon at the rate of eight per centum per annum for one month, shall be considered the bid of the county; and if there be no higher bids, the land shall be struck off and sold to such certificate holder, which term, certificate holder, shall include the county. If there be other bids, the certificate holder, other than the county, shall have the right to bid as others present may bid, and the property shall be struck off and sold to the highest bidder.

History.—§7, ch. 17457, 1935; CGL 1936 Supp. 999(142); §30, ch. 20722, 1941.

194.22 Disbursement of proceeds of sale.— If the property shall be purchased by any person other than the certificate holder, the clerk shall forthwith pay back to the certificate holder all of the sums he has paid, including the amount required for the redemption of the certificate or certificates together with any and all subsequent unpaid taxes plus the costs and expenses of the application for deed with interest on the total of such sums for one month at the rate of eight per cent per annum; provided that if the certificate holder be the county the fees of the clerk shall be the same as provided in §194.15 and shall be retained by him out of the purchase price, and he shall distribute the amount required to redeem the certificate or certificates and the amount required for the redemption of other tax certificates on the same land together with omitted taxes and together with all costs, plus interest

thereon at the rate of eight per cent per annum for one month, in the same manner as he distributes money received for the redemption of tax certificates owned by the county.

If the property shall be purchased for an amount in excess of the statutory bid of the certificate holder as provided in §194.21, such excess shall be forthwith paid over and disbursed by the clerk to the municipality and other taxing districts, if any, holding liens for general taxes of equal dignity with county taxes upon said property, for the payment of such liens in full, if such excess be sufficient for such purpose; provided, however, that in the event such excess be not sufficient to pay such liens in full, such municipality and each other taxing district shall be paid such excess on a proportionate basis in the same ratio to such excess as the amount of its said liens bears to the total amount of the said liens of the municipality and such taxing districts, and the municipality and other taxing districts shall retain liens upon said property for the remaining unpaid amount; and if there remains any excess after the payment of all liens for general taxes upon said property and there be unpaid liens for special assessments held by any municipality or other taxing district, the clerk shall pay such excess to such municipality and taxing district for the payment of such special assessment liens in full, if such be sufficient for such purpose; provided, however, that in the event such excess be not sufficient to pay all of such special assessment liens in full, such municipality and each other taxing district shall be paid such excess on the same basis as hereinbefore provided for the partial payment of general tax liens, except that no liens securing said special assessments shall be retained upon said property. After all liens for general taxes and special assessments of the municipality and other taxing districts upon said property are paid in full, the balance of the purchase price shall be retained by the clerk and notice mailed to the owner of such lands, if his address be known to the clerk, that this sum will be paid to him upon demand. The entire balance shall be paid to the owner, less the sum of twenty-five cents on each hundred dollars or fraction thereof, which the clerk may retain to reimburse himself for postage, notices, and keeping account of such funds.

History.—§8, ch. 17457, 1935; CGL 1936 Supp. 999(143); §31, ch. 20722, 1941.

194.23 Disposal of landowner's funds.—The clerk of the circuit court, if on the first day of January of each year he shall have on hand any funds belonging to owners of land that has been sold for taxes and which funds have remained unclaimed for longer than three months, shall publish a notice in some newspaper in the county, or if there be no newspaper, then such notice may be posted at the courthouse door and in two other places in the county, to the effect that he has on hand such funds and that unless the owner shall apply for same on or before the first day of the month succeeding the month in which the notice is published, such funds will be paid into the general funds of the county. Such notice shall be published in one issue of such newspaper, or posted for one week where there is no newspaper. After the funds have been paid into the general funds of the county, the owner may at any time in five years from the date of sale make application to the board of county commissioners for such funds, and such board may, if satisfied that the applicant is entitled to the funds, order a warrant to be drawn for the amount due to the applicant, less the sum of one dollar on each hundred dollars or fraction thereof which shall be retained by the county to cover the expenses the county has been put to by reason of the applicant's negligence. If no application for payment of such funds be made within five years from the date of issuance of tax deed, all claims to such funds are hereby declared to be forever barred and such funds shall become the property of the county.

History.—§9, ch. 17457, 1935; CGL 1936 Supp. 999(144); §32, ch. 20722, 1941.
cf.—§192.24 Disposition of unclaimed redemption funds.

194.24 Form of tax deed for purchaser other than the county.—All tax deeds issued to purchaser other than the county shall be issued by the clerk of the circuit court of the county wherein the lands are located; and the clerk shall cause such deeds to be issued to the highest bidder at the sale provided by this law, and such tax deeds shall be in substantially the following form:

State of Florida
County of _____

TAX DEED

Know all men by these presents: That whereas, the following Tax Certificates, to-wit:

Certificate Number	Date Issued
_____	_____
_____	_____
_____	_____
_____	_____

was, were duly filed in the office of the Clerk of the Circuit Court of this county and application made for the issuance of a tax deed based thereon; and the applicant having paid or redeemed all other taxes on the lands hereinafter described required by law to be paid or redeemed, and the costs and expenses of this sale; and due notice of sale having been published as required by law, and no person entitled so to do having appeared to redeem said lands; such lands were on the _____ day of _____, 19____, offered for sale at the courthouse door for cash to the highest bidder, and were then and there struck off and sold to _____, he being the highest bidder for the same and having paid the sum of his bid.

NOW, THEREFORE, the County of _____, State of Florida, in consideration of the premises, and in consideration of the sum of _____ dollars, being the amount paid upon the said tax certificate or certificates and for costs and charges, and in pursuance of the statutes in such cases made and provided, has given, granted, bargained and sold, and does hereby give, grant, bargain and sell, and convey to the said _____, and to his heirs and assigns forever, to their own proper use, benefit and behoof

the following lands situated in the county and State aforesaid and described as follows:

_____ _____
_____ _____
_____ _____
_____ _____

containing _____ acres, more or less, provided, however, that said lands shall continue subject and liable for any unpaid general taxes of equal dignity with county taxes represented by the certificate or certificates above described.

IN TESTIMONY WHEREOF, by virtue of authority in me vested by law, and for and on behalf of the County of _____, State of Florida, I, the undersigned, as Clerk of the Circuit Court for the county and State aforesaid, have executed this deed and have thereunto set my official signature and seal, at _____ in the County of _____, and State of Florida, this the _____ day of _____, A. D. 19_____.

Signed, sealed and delivered in the presence of:

_____

_____

(OFFICIAL SEAL)

_____ (SEAL)

Clerk of Circuit Court of

_____ County, Florida.

All such deeds shall be prima facie evidence of the regularity of all proceedings from the valuation of the lands by the assessor to the issuance of such deed, inclusive.

History.—§10, ch. 17457, 1935; CGL 1936 Supp. 999(145); §33, ch. 20722, 1941.

194.25 Duty of clerk as to redemption of land.—

(1) In consideration of the fee of fifty cents allowed the clerk of the circuit court for each tax certificate redeemed or sold, and for searches ascertaining the outstanding certificates a fee of fifty cents for the oldest tax sale and a fee of fifteen cents for each subsequent tax sale, or omitted tax year, and the fee of two dollars for every tax deed issued containing the description in one certificate and ten cents for each additional description when a deed is applied for, it shall be the duty of the clerk of the circuit court to enter on the record of tax sales the redemption or sale of every tax certificate made through him, and shall also keep, in a substantial book to be furnished him by the comptroller, as a permanent record of the office, a complete and full record of all sales and redemptions, giving the number of the tax certificate, the date of the tax certificate, the amount or proportionate amount of the face value of the certificate, the interest paid, the date of sale or redemption, the name of the holder or owner of the certificate, and the purchaser or redeemer of the certificate, and the disposition of the proceeds, with the date thereof. The clerk shall remit to the proper officers the amounts due the county and subdistricts respectively, taking duplicate receipts from the county and district officers to whom remittance is made, and shall file with the board of county commissioners a report showing the amount of money collected and disposition thereof in detail. Any clerk of the circuit court who fails or refuses to perform any and all of the duties herein prescribed shall be subject to suspension by the governor for neglect of duty in office.

(2) Provided, however, in those cases where acreage outside the corporate limits of any municipality has been sub-divided into lots, blocks or tracts as evidenced by a plat or plats duly filed among or recorded in the public records of any county, then for those lots, blocks or tracts, for which no returns for taxation have been made as sub-divided for more than three years last past, the clerk of the circuit court shall receive the same amount of fees and commissions, for the sale or redemption of all certificates covering the unreturned tracts, that he would have received had the property been assessed as forty acre tracts, or as one parcel if less than forty acres, on the tax roll for the year represented by the certificate. This subsection shall apply to all sales or redemptions hereafter made or consummated, notwithstanding that the application for such sale or redemption and full or partial deposit of funds on account thereof, may have been heretofore made.

History.—§11, ch. 4888, 1901; §2, ch. 5113, 1903; GS 578; RGS 780; CGL 1004; §1, ch. 15918, 1933; §§1-2, ch. 19004, 1939; CGL 1940 Supp. 1003(127); §48, ch. 20722, 1941.

194.26 When taxes not due at time of sale.— Whenever it shall appear to the comptroller that the taxes on any land heretofore sold, or that may hereafter be sold to the county for taxes, were not due at the time of such sale upon the lands or any part thereof embraced in any certificate of sale, or that the sale was otherwise illegal or improper, the comptroller shall have the power to cause to be cancelled, in whole or in part, or cause to be surrendered such certificate in such manner and upon such terms as may in his judgment be best to protect the interest of the state and county and do justice to the owners, and the clerk shall make such cancellation or surrender on the order of the comptroller.

History.—§12, ch. 4888, 1901; GS 579; RGS 781; CGL 1005; §49, ch. 20722, 1941.

194.27 Illegal, void or imperfect certificates to be cancelled.—The clerk of the circuit court is hereby required to select from among the tax sale certificates now or hereafter held by the county, all such certificates as appear on their face to be illegal, void or imperfect because of erroneous descriptions or otherwise, and to transmit such imperfect or illegal certificates to the comptroller, who shall examine the same and such of said certificates as he shall determine to be for any cause illegal, void or imperfect shall by him be cancelled and destroyed and a list of the same shall by him be certified to the clerk to be noted on his records. Proper credits of such certificates shall be made to the clerk and proper entries of cancellation shall be made on the comptroller's records.

All certificates sent to the comptroller by the clerks and not cancelled by him shall be returned

to the clerk and charged to him for sale or redemption.

History.—§1, ch. 5151, 1903; GS 580; RGS 782; CGL 1006; §50, ch. 20722, 1941.

194.28 Procedure where land sold for taxes, the taxes having been paid, land not subject to taxation, or for any other cause.—Whenever it shall be proved to the clerk of the circuit court of any county in this state that lands in his county have been sold for unpaid taxes when the taxes on such lands have been paid, or the lands were not subject to taxation at the time of the assessment on which they were sold, or because the description was void, or because of some error or omission which invalidates the sale, or for any other reason, he shall forward a certificate of such fact to the comptroller, and enter upon the list of land sold for taxes, kept in his office, a memorandum of such fact.

The comptroller upon receipt of such certificate, if satisfied of the correctness thereof, when the certificate of sale is held by the state, shall notify the clerk, who shall cancel the same, and when the certificate is held by an individual, the comptroller shall at once notify the original purchaser, or the holder, if known to him, that upon voluntary surrender of the certificate or deed of release of his rights under any tax deed that may have been issued to him upon such certificate, within ninety days of such notification, but not afterward, he will refund to the holder of such certificate, the amount received by the state by the purchase of said certificate and the sum of one dollar for such deed of release as may be necessary; and the county commissioners shall refund from the general county tax fund the amount received by the county on such account, and the comptroller shall draw his warrant on the state treasurer for such sum or sums as he may be shown to be due on such account, to be paid out of the general revenue fund: provided, that this section shall not be so construed as to apply to any tax certificate issued by a tax collector prior to January 1, 1913.

History.—§13, ch. 4888, 1901; GS 581; §1, ch. 6816, 1915; RGS 783; CGL 1009.

194.29 Certain tax sale certificates surrendered.—All tax certificates covering land sold to the state after the fourth day of August, A. D. 1891, for taxes assessed for the year of 1890, and now held by the state, shall be surrendered upon the payment of the amount of taxes and costs stated in the certificate without any additional interest, expense or cost.

History.—§1, ch. 4888, 1901; GS 584; RGS 786; CGL 1012.

194.30 Certain tax sale certificates canceled.—All tax sale certificates or tax deeds issued to the state or county for unpaid taxes assessed on real estate for any year prior to the year 1877, which now are held by the state or any county, are canceled and shall have no effect upon the titles of such real estate, but such titles shall stand as though such tax sales had never been made.

History.—§1, ch. 4890, 1901; GS 585; RGS 787; CGL 1013.

194.31 Tax sale certificates issued to state prior to 1893 canceled.—All tax sale certificates issued to the state for unpaid taxes assessed on real estate for any year prior to the year 1893 are hereby canceled, and shall have no effect upon the titles of such real estate, but such titles shall stand as though such tax sales have never been made, and the clerks of the circuit courts of the various counties in Florida shall surrender such certificates now on hand in their offices, respectively, and so enter the cancellation thereof upon the records of tax sales certificates in their offices, respectively, and shall surrender and deliver the tax certificates upon application therefor by the owner or person interested in the lands described therein.

History.—§1, ch. 6859, 1915; RGS 788; CGL 1014.

194.32 Cancellation tax certificates on homes of Confederate veterans.—Whenever any soldier or sailor who was in the service of the state or Confederate States, during the war between the states, and was honorably discharged therefrom, or the widow of such soldier or sailor, shall make oath before the clerks of the circuit courts of this state, that his home has been sold for nonpayment of taxes, and that he is unable, by reason of poverty, to redeem the same, the said clerks shall cancel the certificate of such sale, and mark thereon the reason for such cancellation. The clerks of circuit courts shall require proof of such service and inability to pay.

History.—§§1, 2, ch. 5111, 1903; GS 586-588, 1837; RGS 789, 790, 791, 3082; CGL 1015, 1016, 1017, 4865.

194.33 Cancellation tax liens on property of United States.—Whenever it shall be made to appear to the board of county commissioners of any county that the United States, or any duly constituted agency thereof, has acquired by purchase or contract to purchase any lands in this state, for reforestation, game preserve or military aviation purposes against which there is any outstanding state and county tax lien held by the state, representing state and county taxes for the year 1935 or any prior year or years, such board of county commissioners shall, by resolution which shall describe the lands so acquired for such purposes and the nature of the lien thereon request the state comptroller to cancel the same or the part thereof which constitutes a lien against the lands acquired for the purposes aforesaid, a certified copy of which resolution shall be forthwith furnished the comptroller. The resolution adopted as aforesaid shall constitute and be sufficient authority for the comptroller to cancel the said tax lien or the part thereof against the lands described in the resolution. When the comptroller is presented with the copy of such resolution he shall forthwith cancel such tax lien by the entry of an appropriate order,

a certified copy of which order shall be forthwith transmitted to the clerk of the circuit court of the county in which the land affected is located, and such clerk shall immediately upon receipt thereof note on the proper records of his office the action taken by the board of county commissioners and the state comptroller and cancel of record all such state and county tax liens, evidenced by tax sale certificates, or otherwise, held by the state or county. The United States or any of its agencies shall not be required to pay to any public official of this state any costs or expenses to secure the cancellation of any tax lien affected by the provisions of this law.

History.—§§1, 2, ch. 17424, 1935; CGL 1936 Supp. 992(2), 992(3).

194.34 Cancellation tax liens on property acquired for certain public uses.—Whenever it shall be made to appear to the board of county commissioners of any county that the duly constituted authorities of this state have acquired any lands for public road or aeronautical purposes against which there is any outstanding state and county tax lien held by the state, such board of county commissioners shall by resolution, which shall describe the lands so acquired for such purposes and the nature of the lien thereon, request the state comptroller to cancel the same or the part thereof which constitutes a lien against the lands acquired for the purposes aforesaid, a certified copy of which resolution shall be forthwith furnished the said comptroller. The resolution adopted as aforesaid shall constitute and be sufficient authority for the comptroller to cancel the said tax lien or the part thereof against the lands described in the resolution. When the said comptroller is presented with the copy of such resolution he shall forthwith cancel such tax lien by the entry of an appropriate order, a certified copy of which order shall be forthwith transmitted to the clerk of the circuit court of the county in which the lands affected are located, and such clerk shall, immediately upon receipt thereof, note on the proper records of his office the action taken by the board of county commissioners and the state comptroller, and attach to all evidences of tax liens affected by the comptroller's order a description of the lands acquired for the purposes aforesaid. From and after such entries the lands affected by the order shall be discharged from the lien of all such taxes and said lien shall be considered canceled so long as such lands are used for the aforesaid purposes.

History.—§§1-3, ch. 17426, 1935; §§1-3, ch. 17459, 1935; CGL 1936 Supp. 992(5)-992(12).

194.35 Cancellation of void tax certificates and return of consideration.—When a tax sale certificate is void because the land covered thereby is not subject to taxation, or because the taxes embraced therein have been paid, or because the description of the property in the tax sale certificate is void, or because of some error or omission which invalidates the sale, or whenever a tax sale certificate is void for any reason, the holder of such tax sale certificate shall be entitled to the return of the amount received therefor; and if the holder of a tax sale certificate pays, redeems or causes to be canceled and surrendered any other tax sale certificates, or pays any subsequent and omitted taxes, in connection with obtaining a tax deed or in connection with the foreclosure of a tax sale certificate or tax deed, and when such other tax sale certificates or such subsequent and omitted taxes are void for any reason, the person paying, redeeming or causing to be canceled and surrendered such other tax sale certificates or paying such other subsequent and omitted taxes, shall be entitled to obtain the return of the amount received therefor.

History.—§1, ch. 18314, 1937; CGL 1940 Supp. 1009(1).

194.36 Cancellation of void tax certificates; procedure.—Whenever it shall be proved to the clerk of the circuit court of any county in the state that lands in his county have been sold for unpaid taxes, when the tax sale certificate evidencing said sale is void because the taxes on such lands have been paid, or because the lands were not subject to taxation at the time of the assessment on which they were sold, or because the description of the property in said tax sale certificate is void, or because of some error or omission which invalidates the sale, or if the tax sale certificate is void for any other reason, he shall forward a certificate of such fact to the comptroller, and enter upon the list of land sold for taxes, kept in his office, a memorandum of such fact. The comptroller, upon receipt of such certificate, if satisfied of the correctness thereof, when the certificate of sale is held by the state, shall notify the clerk, who shall cancel the same, and when the certificate is held by an individual, the comptroller shall at once notify the original purchaser of said certificate, or the subsequent holder thereof, if known to him, that upon the voluntary surrender of the certificate or deed of release of his rights under any tax deed that may have been issued to him upon said certificate, he will refund to the holder of such certificate the amount received by the state for the purchase of said certificates and the sum of one dollar for such deed of release as may be necessary, and the comptroller shall draw his warrant on the state treasurer for such sum or sums as the state has received on such certificate, to be paid out of the general revenue fund, and the county commissioners shall refund from the general tax fund the amount received by the county for such certificate, and likewise any school board, school district or other district, commission, or governmental subdivision or agency which shall have received any sums from said tax sale, shall refund to the holder of said certificate the amount received by it.

History.—§2, ch. 18314, 1937; CGL 1940 Supp. 1009(2).

194.37 Cancellation of void omitted taxes or subsequent certificates.—If the holder of any

tax sale certificate should pay, redeem or cause to be cancelled and surrendered any other tax sale certificate, or should pay or redeem any subsequent and omitted taxes, in connection with an application for tax deed or in connection with any tax foreclosure proceedings, and if it should develop that said other tax sale certificate or any of said subsequent and omitted taxes are void for any reason, the clerk shall forward a certificate of such fact to the comptroller and enter upon the records in his office a memorandum of such fact, as provided for in §194.36, and the comptroller, upon receipt of such certificate, if satisfied of the correctness thereof, shall refund to the person so paying or redeeming such other tax sale certificate, or to the person so paying such subsequent and omitted taxes, in connection with an application for tax deed or in connection with a tax foreclosure, the amount received by the state, and thereupon the county commissioners, and any school district school board, drainage district or other district, commission, or governmental subdivision or agency, shall likewise refund the amount received by it in accordance with the provisions of §194.36.

History.—§3, ch. 18314, 1937; CGL 1940 Supp. 1009(3).

194.38 Cancellation of tax certificates; suit by holder.—The holder of any void tax sale certificate, whether such tax sale certificate be void because the land sold was not subject to taxation, or whether such tax sale certificate is void because the taxes embraced therein were paid previous to sale, or whether such tax sale certificate is void, because the description of the property contained therein is void or whether such tax sale certificate is void because of any error or omission which invalidates the sale, or whether such tax sale certificate is void for any other reason, shall have the right to bring a suit in equity to have such tax sale certificate canceled and to obtain the return of the money received for such tax sale certificate. If such tax sale certificate embraces state and county taxes, the only necessary parties defendant to said suit shall be the clerk of the circuit court of the county in which said land is situated, and the comptroller of the state. If such tax sale certificate is issued for nonpayment of city or municipal taxes, the only necessary party defendant shall be the city or municipality in which the property lies. If such tax sale certificate is issued by a district, board, commission, or other governmental subdivision or agency, the only necessary parties defendant to such suit shall be said district, board, commission, or other governmental subdivision or agency. The bill of complaint in such suit shall briefly describe said tax sale certificate, shall state that it is void, and shall state briefly the reason the same is void, and the bill of complaint shall pray that said tax sale certificate be declared null and void, and that the court should order and decree that the holder thereof shall receive the return of the amount received therefor by the state, county, city, district, commission, board or other governmental subdivision or agency. The plaintiff, in such suit, may include as many void certificates as he sees fit, whether they cover the same land or different parcels of land, and whether they were issued by the same governmental agency or by different governmental agencies. If the chancellor, upon the trial of the issues in such suit, should find for the plaintiff, and should find that said tax sale certificate is void, he shall enter a final decree declaring said tax sale certificate to be null and void, canceling the same of record, and ordering the state, county, city, board, district, commission or other governmental subdivision or agency receiving any sums for said tax sale certificate, to return the amounts received by them to the holder of said tax sale certificate; and thereupon there shall be returned to the holder of said tax sale certificate the amount received for said certificate by the state, county, city, municipality, school board, school district, or other district, commission, or governmental subdivision or agency. In such cases the comptroller is directed to draw his warrant on the state treasurer for such sum or sums as the state has received on such void certificate, to be paid out of the general revenue fund, and the county commissioners shall make all refunds on void tax sale certificates from the general tax fund. In such a suit process shall be issued and the same procedure taken as in any other suit in chancery. If the holder of any tax sale certificate should pay, redeem or cause to be canceled and surrendered any other tax sale certificate, or should pay or redeem any other subsequent or omitted taxes, in connection with an application for tax deed or in connection with tax foreclosure proceedings, and if said other tax sale certificate or other subsequent and omitted taxes should be void for any reason, the person so paying, redeeming or causing to be canceled such void tax sale certificate, or paying or redeeming such void subsequent and omitted taxes, shall have the right to bring a bill in equity to obtain the return of the moneys received for such void tax sale certificate or for such void subsequent and omitted taxes, in accordance with the provisions of this section. The provisions of this section shall not be exclusive, but a refund of moneys may be obtained under §§194.35, 194.36 or 194.37.

History.—§4, ch. 18314, 1937; CGL 1940 Supp. 1009(4).

194.39 Cancellation of tax certificates; application of law.—The provisions of §§194.35-194.38 shall apply to all tax sale certificates of every kind, whether issued by the state, or any county thereof, or any municipality in the state, or any district, board or other government subdivision or agency or tax collector or tax official in the state; provided that if a tax sale certificate has been issued by any city or municipality, the duties set forth to be performed by the clerk of the circuit court shall be performed by the city clerk, and if there

is no city clerk, then by the city tax collector, and if there is no city tax collector, then by the city tax assessor, and if there is no city tax assessor, then by the director of finance, and if there are no such officers, then by the officer whose duty most nearly corresponds to that of said clerk, and in such cases, the duties set forth to be performed by the comptroller shall be performed by the mayor, and if there is no mayor, by the city manager, and if there is no city manager, by the president or chairman of the city commission, city council or board of aldermen, and if there are no such officers, then by the officer whose office most nearly corresponds to that of the mayor. If the tax sale certificate shall be issued by a board, district or commission, or other governmental subdivision or agency other than the state, county or municipality, then the duties set forth to be performed by the clerk of the circuit court shall be performed by the secretary thereof, or if no secretary, by the clerk thereof, or if no secretary or clerk, by the person whose duties most nearly correspond to those of secretary or clerk, and the duties set forth to be performed by the comptroller shall be performed by the chairman, and if no chairman, by the president or presiding officer, and if no president or presiding officer, by the superintendent, and if there are no such officers, then by the officer whose duty most nearly corresponds to that of chairman. The provisions of said sections shall apply to all tax sale certificates and subsequent and omitted taxes whether now outstanding or hereafter issued; provided, however, they shall not apply to any tax sale certificates issued prior to January 1st, 1913, or to any tax becoming delinquent prior to said January 1st, 1913.

History.—§§5, 6, ch. 18314, 1937; CGL 1940 Supp. 1009(5), 1009(6).

194.40 Registration of landowners' names with clerk.—Any owner of land in any county, and any person claiming any interest in any such land by lien or otherwise, whether a resident of the county or state, or a non-resident, may cause his name and address and a description of any land within the county in which he is interested as owner or otherwise, to be registered in a book to be provided by the clerk of the circuit court for that purpose at the expense of the county, and in a form to be prescribed or approved by the state comptroller.

Any such applicant for registration shall pay to the clerk a fee of twenty-five cents for each property description desired to be set forth in such registry; provided, however, that any individual, firm or corporation who shall register at one time as to one hundred or more separate parcels of lands shall pay at the rate of ten cents per parcel for such registration.

History.—§20, ch. 14572, 1929; CGL 1936 Supp. 1003(8).

194.41 Clerk circuit court to receipt for tax certificates and receipt filed with comptroller.—The tax collector of any county in this state shall deliver to the clerk of the circuit court of the county in which any sales are made by him all certificates of sale to the state for unpaid taxes, take a receipt therefor from said clerk, and shall file such receipt of the clerk, with his report of tax sales as now required by law, with the comptroller of state. Such receipt from the clerk of the circuit court shall be the comptroller's authority to charge such clerk with the amount of such certificates.

History.—§15, ch. 4888, 1901; GS 583; RGS 785; CGL 1011.

194.42 Auditor to examine accounts and tax certificates of clerk of circuit court.—The governor shall require the state auditor to examine into the records, accounts and tax certificates of the clerks of the circuit courts at least once in each year, and report his findings.

History.—§14, ch. 4888, 1901; GS 582; RGS 784; CGL 1010.

194.43 Clerk of circuit court to make deeds to land sold by cities or towns for taxes.—The clerk of the circuit court shall make the deed for all lands sold for nonpayment of taxes by any city or town, and not redeemed, substantially in the same form as provided in the sale of lands for county or state taxes.

History.—§62, ch. 4322, 1895; GS 589; RGS 792; CGL 1018.

194.44 Tax deeds to be issued in the name of the state or town.—All tax deeds shall be issued in the name of the state, or city or incorporated town as the case may be, shall be signed by the clerk of the circuit court, shall be witnessed by two witnesses, and the seal of the circuit court attached thereto, and shall be acknowledged or proven as other deeds. The clerk of the circuit court shall be entitled to receive one dollar for each deed issued containing the description in one certificate, and ten cents for each additional description embraced in the deed.

History.—§63, ch. 4322, 1895; GS 590; RGS 798; CGL 1019.

194.45 Redemption or purchase of certificates held by county.—The clerks of the circuit courts of the several counties of the state are hereby authorized and directed to allow the redemption or purchase, in whole or in part, where the part to be redeemed or purchased can be ascertained by legal and usual subdivision, of any and all tax certificates held by the respective counties, that shall be issued in the year 1941 and subsequent years at any time prior to the vesting of the title in the county, upon the payment of the amount of such tax certificate or certificates, or such portion thereof as the part to be redeemed or purchased shall bear to the whole with interest thereon and the payment of any and all subsequent unpaid or omitted taxes due on the land to be redeemed or purchased with interest thereon at the rate of eighteen per cent per annum for the period of time from the date of the certificate until April 1st of the year following the date of

said certificate, and eight per cent per annum for the time thereafter but not less than five per cent of the face of the certificate. The clerk shall receive the same fees as provided for like services in §194.15.

History.—§34, ch. 20722, 1941; am. §12, ch. 22079, 1943.

194.46 Clerk shall notify tax assessor and tax collector of the purchase or redemption of county owned tax certificates and the issuance of tax deeds and county deeds.—Immediately after any tax certificate held by the county is redeemed or purchased, or upon the issuance of any tax deed, or upon the issuance of any deed made by the board of county commissioners, the clerk shall notify the tax assessor and tax collector, advising each of them the name of the assignee or grantee, description of the property and the year for which taxes were last collected.

History.—§35, ch. 20722, 1941.

194.47 When lands become vested in county; proceedings.—

(1) TITLE VESTS IN COUNTY.—On and after two years have elapsed from the date of the certificate issued at the tax collector's sale of delinquent taxes on all such lands as are bid off by him for the county and which taxes have not been redeemed or purchased, and within ninety days following the expiration of such period of two years, the clerk of circuit court shall prepare a complete schedule or list in triplicate of all such lands, and he shall retain one such list or schedule in the files of his office, and he shall deliver one such schedule or list to the board of county commissioners, duly certified by him, the receipt of which schedule or list shall be recited in its minutes. Within ninety days after such receipt, such board shall cause the filing of a bill of complaint in the circuit court of the county, in the name of the county, and against any and all of the lands described in such schedule as defendant, which bill of complaint shall briefly describe the levies and nonpayment of taxes which are delinquent for the period aforesaid; and there shall be attached to such bill of complaint, a true copy of such schedule or list of lands furnished and duly certified by the clerk. It shall not be necessary to name as defendant in such bill of complaint, or proceeding, any person or persons owning or having any interest in or lien upon such lands. At the time such suit is directed to be filed, such board of county commissioners is empowered to employ counsel and agree upon his or their compensation for conducting such suit or suits, and to pay such compensation from the general fund, and may include such item in its budget. No attorneys' fees shall be fixed as costs or allowed by the court in such suits. At the time of the filing of such bill of complaint, the clerk shall mail the notice provided in §194.51, which notice shall contain a brief description of the land, and shall warn that on and after the return date therein named a decree will be sought.

(2) CERTIFICATE OF CLERK; NOTICE; PUBLICATION.—A certificate of the clerk shall be attached to the bill of complaint to the effect that such written notice has been given by him, and it shall not be necessary in such certificate to set forth the names of the parties to whom each notice was given; and such certificate shall be prima facie evidence thereof. Jurisdiction of all of said lands and of all parties interested therein or having any lien thereon at the date of filing of such suit shall be obtained by publication of notice, to be issued as of course on request of the plaintiff by the clerk of circuit court in which such bill is filed, directed in general terms to all persons, firms or corporations having any interest in or lien upon any of the lands described in said notice, and said bill of complaint. It shall not be necessary in said notice to set forth the names of such parties. Said notice shall describe the lands involved, and require all such parties to appear and show cause before said circuit court on or before a day certain specified in said notice, which day shall be not less than fifteen days, nor more than thirty days, after the date of publication of such notice. Such notice shall be published one time in a newspaper of general circulation published in the county in which the lands are situated. such publication to be made not later than thirty days after the filing of said bill of complaint. The newspaper charges for publishing such notice shall be at the rate and in the size type prescribed by general law regulating legal advertisements, and if there be no newspaper published in the county the clerk shall post such notice at three public places, one of which shall be the courthouse door, of which fact he shall make his certificate and file the same in the cause.

(3) RIGHT OF REDEMPTION.—On or before the return day of said notice any person, firm or corporation shall have the privilege of purchasing from the clerk of the circuit court all tax liens, tax sale certificates and subsequent and omitted county taxes upon said lands, for the amount due at such time of purchase, including all interest, penalties and charges allowed by law. In the exercise of such privilege, any person so purchasing said taxes and tax liens shall likewise be required to purchase or pay any municipal tax liens thereon outstanding and unpaid at such time, and at the time such county tax liens are purchased from the clerk of the circuit court, such purchaser shall file with such clerk an official receipt of the municipality showing purchase or payment of such municipal taxes, which shall be a prerequisite before the privilege of purchase of county tax liens may be exercised.

(4) CERTIFICATE OF CLERK; DEFENSE; HEARING, DECREE, ETC.—On the day following the return day of the notice, the clerk of the circuit court shall file in said cause a certificate under his hand and official seal, separately describing each and every parcel of such lands the taxes and tax liens upon which have been so purchased, which lands shall by final decree be decreed excluded from said suit and from the operation of such final decree. Upon the return date of said notice each and every person or persons formerly interested in or hav-

ing any lien upon any of said lands described in the bill of complaint, shall be charged with the duty of appearing and showing cause before the circuit court why the fee simple title to said lands should not be by said court decreed to be vested in said county free and clear of all liens and claims of every kind, except as herein otherwise provided; and such fee simple title in the county thereby forever quieted and confirmed and set at rest against any and all claims on the part of each and every such defendant. Decree pro confesso shall be entered by the court on or as of the day following the return day of such notice as in other chancery causes. If no sufficient cause is shown on said return day, and the only such cause which may be shown by any defendant is that limited and described in §192.21, to wit, that the property was not subject to taxation, or that the taxes had been paid previous to sale, or that the property had been redeemed prior to the expiration of said two-year period the circuit judge shall thereupon enter a final decree, which shall recite briefly the filing of the bill of complaint, the publication of the notice herein provided, and the due compliance with this law, and shall decree the fee simple title in and to the lands described in said bill of complaint and decree to be absolutely vested in said county, and such title in such county shall be by such decree forever quieted and confirmed against all claims and interests formerly held by any of said defendants. The provision for such decree shall not be construed to confer upon any person, firm or corporation which might have held an interest in said lands prior to the expiration of such two-year period, any right whatsoever of redemption after the return date of such notice, except the right to purchase taxes as herein granted. Such decree shall be recorded as all other decrees in the chancery order book of the court. Said decree shall likewise be recorded in the book marked "county lands acquired for delinquent taxes," provided by this law, for which the clerk shall receive the fees allowed by law, to be paid from the proceeds received from the sale of said lands by the board of county commissioners.

(5) ERROR OF CLERK, EFFECT.—The inadvertence, omission, or error of the clerk in failing to include in said list, lands upon which taxes are delinquent for the period herein provided, and which lands should have been therein included, shall not operate to defeat or impair the right and duty of the board of county commissioners to follow the proceedings herein prescribed, but the clerk at any time may compile supplementary or additional lists of such omitted lands in the same manner and proceedings shall be taken as to the same as herein provided for the original schedule.

(6) LIMITATIONS.—After the expiration of the two-year period above prescribed, the right of individual holders of county tax sale certificates upon such land, shall be restricted and confined solely to the right to participate in the proceeds received from said lands upon the sale thereof by the board of county commissioners as herein provided, pro rata, in the same proportion which the amount of the tax lien represented by such individual tax sale certificates bears to the amount of tax liens of equal dignity held by the county, or other taxing units, at the time of expiration of such two-year period; provided, however, that in no event shall such individual tax sale certificate participate in such proceeds and receive a larger amount than would have been required to be paid to redeem such certificate on the date the said two-year period expired.

(7) PROPERTY HELD BY MUNICIPALITIES UNDER FORECLOSURE.—All lands foreclosed by municipalities for delinquent taxes, or special improvement liens, or to which such municipalities acquired title prior to the first day of May, 1943, shall not be subject to the judicial proceedings by the county as herein provided, and shall not be included in the list required to be prepared by the clerk, nor included in the proceedings herein provided. From and after such date of expiration of such two-year period, neither the municipality nor the county shall assess such lands, to which title is held by municipalities, for taxes, nor extend valuations thereon upon their respective tax rolls; nor shall budget making authorities of either county or municipality consider the valuation of such lands in calculating millages required to be levied. It shall be the duty of each municipality holding title to such lands, on or before the first day of September, 1943, to furnish to the clerk of the circuit court, a verified and accurate description of all such lands. Upon the sale of said lands, hereafter, by said municipality, the county shall share in the proceeds thereof as and in full satisfaction and discharge of any lien it holds on said lands for general taxes in the same proportion that the amount of the county's lien for general taxes, due at the time such two-year period expires, bears to the amount of such municipality's lien for general taxes, due at the time said municipality acquired title to such lands, increased by the amount of general taxes which would have been due said municipality had said lands been assessed as those of an individual on the basis of its last assessed valuation upon the municipal tax roll at the annual millage rate thereafter levied until the date on which said lands are no longer subject to assessment under the provisions hereof. Provided, however, that if such proceeds are sufficient to allow payment in full of the amount of such municipality's lien for general taxes as above calculated with lawful interest thereon, and the amount which the county would have received had its taxes been redeemed on the date the two-year period expired, any excess thereafter remaining shall be first applied to payment of any special improvement lien held by the city at the time it acquired title; and, thereafter, any remainder shall be divided between the municipality and county, pro rata, in the proportion that the liens of each for general taxes bore to each other at the time such two-year period expired; provided, further,

that all certificates for 1940 taxes which were sold to the state and are unredeemed shall be included in the chancery proceeding herein authorized in the year 1943, to the same effect as if the same were owned solely by the county, and the interest of the state in such taxes shall be distributed to it by the clerk when proceeds thereof are available for distribution and payment as herein provided.

History.—§36, ch. 20722, 1941; am. §13, ch. 22079; 1943; §7, ch. 24337, 1947.

194.471 County delinquent tax lands; method and procedure for sale by county. —

(1) Lands acquired prior to January 1st, 1946, by any county of the state for delinquent taxes under the provisions of chapter 22079, acts 1943 (See §194.47), and described and recorded in book designated "county lands acquired for delinquent taxes," on file in the office of the clerk of the circuit court, and which have not been previously sold or dedicated by the board of county commissioners of the county in the manner prescribed by law, may, in the discretion of the board of county commissioners, be conveyed by said board to the record fee simple owner of such lands as of the date of the final decree whereby the title to such lands became quieted in the county. Provided, however, before any such conveyance shall be made, such former owner of such lands shall file with the board of county commissioners a verified written petition, or statement, which shall show: (a) Description of the lands for which a conveyance is sought; (b) name and address of such former owner; (c) the date of the final decree under which the title to said lands was quieted in the county; (d) the price of the lands as previously fixed by resolution of the board of county commissioners if this has been done; (e) the use to which the lands were enjoyed by such former owner at the time of entry of said final decree; (f) a brief statement of the facts and circumstances upon which such former owner bases the request for restitution of the described property; (g) an offer to pay an amount equal to all taxes, including municipal taxes and liens, if any, which had become delinquent, together with interest and costs provided by law. And, in the event the described lands have not been assessed for taxes for the current year in which the petition is filed, then, and in that event, and in addition to the amounts above provided for, such offer shall also include an amount which would pay the taxes for current and omitted years, such latter amount to be determined by applicable millage for such omitted years and based on the last assessment of said described lands.

(2) Certificates of the clerk of the circuit court and of the proper municipal official having charge of the collection of municipal taxes in case the lands lie within a municipality, showing the amount of all delinquencies existing at the time the title to the lands became vested in the county and estimates of the amount of taxes which would have accrued against said lands, had title not reverted to the county, shall be attached and made a part of the petition or statement. The offer, provided for herein, shall be accompanied by cash or certified check in the amount specified in the petition.

(3) Any original application, pending in the clerk's office for the purchase of the land described in the petition, shall, upon the filing of the petition, be suspended by the clerk; and, provided the board of county commissioners accepts the offer of such former owner, any moneys deposited with the clerk by virtue of any original application to purchase, shall be refunded.

History.—§1, ch. 22870, 1945.

194.472 Duty of county commissioners.— Upon the filing of the petition or statement provided for in §194.471, the board of county commissioners shall consider the same and should it appear to the satisfaction of the said board that the property constituted the homestead of the petitioner, or that the petitioner was engaged in the armed services of the United States at the time the described lands reverted to the county, or should it appear that a failure to approve said petition would work a severe hardship upon the petitioner, the said board of county commissioners in its discretion may approve or disapprove the same. The action taken by the said board shall be expressed by an appropriate resolution. In the event said petition be approved, the county, acting by and through its board of county commissioners, upon the payment of the amount named in the resolution of said board accepting the offer, is authorized and empowered to convey to the former owner named in the petition, the lands described in the petition, and to execute a proper conveyance thereof.

History.—§2, ch. 22870, 1945.

194.473 Distribution of proceeds.—Proceeds derived from the conveyance of any lands, pursuant to the provisions of this law, shall be distributed by the clerk of the circuit court to the several taxing units for which taxes were calculated and collected.

History.—§3, ch. 22870, 1945.

194.474 Prior sales confirmed.—All acts and proceedings heretofore had or taken by any court or board of county commissioners for the purpose of removing and excluding lands from county suits brought under the provisions of chapter 22079, acts of 1943, are hereby ratified, validated and confirmed.

History.—§4, ch. 22870, 1945.

194.51 Mailing notice to owners of property where county holds tax certificate.—

(1) At the time the bill of complaint is filed as provided in §194.47, the clerk of the circuit court shall mail a copy of the portion of the newspaper containing the notice, to the owner of the property therein described who claimed title thereto on the date such two-year period expired, if the name of such owner and his address appear on the tax roll for the year in which taxes were last extended upon such property, or if the name and address do not appear thereon then the notice shall be mailed to the person last paying taxes upon such lands as shown by the tax col-

lector's receipt book. The clerk shall also mail a copy of such notice to the municipality and other taxing districts, in which the property or any portion thereof may be situated; and the clerk shall enclose with every copy mailed a statement as follows: "Warning, property in which you are interested is listed in the enclosed advertisement," and the clerk shall prepare and file in the cause a certificate that he, the clerk, did on.....day of....., 19....., mail a copy of the notice addressed to the several owners whose names were on such tax roll or ascertained as aforesaid, which certificate shall be signed by the clerk and his official seal affixed thereto; and such certificate shall be prima facie evidence of the fact that such notices were mailed; provided, however, that it shall not be necessary to set forth in such certificate the names of the several parties to whom each notice was mailed.

(2) The failure of the former mortgagee, owner, municipality or other taxing district to receive such notice shall not affect the sufficiency or validity of this requirement. Copy of notice referred to in this section may be sent at any time not later than fifteen days prior to the date fixed in the order to show cause provided by law.

History.—§40, ch. 20722, 1941; §17, ch. 22079, 1943.

194.53 All rights terminated upon entry of chancery decree; title from county new and original title.—Upon the entry of the decree provided in §194.47 all rights, titles, interests in or liens upon said property, including municipal taxes and liens and accrued annual assessments and liens imposed by drainage districts, with all interest, penalties, costs and charges thereon, shall be cut off and extinguished and forever declared null and void and the title to such lands when conveyed by the county shall be construed in all respects as a new, original title; and any taxes, tax liens and drainage assessments are relegated to participation in the proceeds of sale of such lands as provided in this law.

History.—§42, ch. 20722, 1941; §19, ch. 22079, 1948; §1, ch. 24206, 1947.

194.54 Grantee of tax deed entitled to immediate possession.—Any person, firm, corporation or county who may be the grantee of any tax deed under this law, or any county acquiring lands for delinquent taxes as herein provided, or the county's grantee of such lands upon sale as herein authorized, shall be entitled to the immediate possession of the lands described in such deed or decree, and after making demand for possession, if the same is refused, may file a petition in the circuit court for such county, and thereon obtain an order to show cause from the circuit judge, returnable in five days, directed to the person or persons so refusing to deliver possession, requiring them to show cause why writ of possession should not issue. Upon the filing of the answer to the rule to show cause, the matter shall proceed as in chancery cases. If, upon such hearing, no cause is shown, an order may issue from the circuit judge to the sheriff of the county, directing him to put the grantee in possession of such lands. The fee of the clerk for filing the petition and other pleadings aforesaid shall be two dollars and fifty cents, and the fee of the sheriff for serving the order to show cause shall be one dollar and for serving the writ of possession, one dollar, plus mileage allowances as now provided by law.

History.—§43, ch. 20722, 1941; §20, ch. 22079, 1943.
cf.—§28.241 Circuit court clerk filing fees.

194.55 Fixing valuation on land acquired by county; county may sell lands acquired for nonpayment of taxes; method of sale; provisions for municipality and drainage district to participate in fixing valuations; distribution of proceeds so land may be sold free of city, county, and drainage district taxes and liens.—

(1) The board of county commissioners shall, within ninety days after the entry of decree provided in §194.47, determine the price of each parcel of such land, which price shall not be less than fifty per cent of the amount of the last assessed valuation appearing upon the county tax roll; and in performance of this duty said board of county commissioners are empowered to incur necessary expense in obtaining expert appraisals and information to assist them in determining such price, and are further authorized to include such items in their budget. Where such lands, or any part of them, are situated within the corporate limits of a municipality, the mayor or chief executive officer, the head of the legislative body and the tax assessor of such municipality, provided other officials may be designated by ordinance of the municipality to perform such duties, shall meet with the board of county commissioners and jointly agree with such board and join in the determination of the price of such lands situate within the municipality. Where such lands or any part thereof are situated within the limits of any drainage district, the governing body or such members thereof as it may designate, shall meet with the board of county commissioners and jointly agree with such board and join in the determination of the price of such lands situate within such drainage district. The fact of such meeting and the presence of such officials, shall be recorded in the minutes of the board of county commissioners. Should such municipal officers and/or such drainage district officials fail to meet with the county commissioners after due notice or if the officials and officers at such meeting fail to agree upon the price of any such lands, the price of such property shall be fixed at the minimum of fifty per cent of the last assessed valuation appearing upon the county tax roll as herein provided. Upon fixing of the price of all such lands as herein provided, the same shall be evidenced by resolution adopted by the board of county commissioners, describing separately each parcel of land, and the price fixed thereon; upon the adoption of such resolution and a certified copy thereof shall be recorded by the clerk of the circuit court in the book designated "county lands acquired for delinquent taxes," for which the clerk shall receive the recording fees pro-

vided by law, to be paid from the proceeds received from the sale of said lands.

(2) The board of county commissioners shall sell and convey such lands at public sale in the following manner: Any person desiring to purchase any parcel of said land shall deposit with the clerk of the circuit court the amount of his initial bid, which shall be not less than the price as determined by the board of county commissioners and recorded in the book marked "county lands acquired for delinquent taxes," plus the estimated cost of advertising the same for public sale, and all fees of the clerk incident thereto provided by law, and upon receipt of such deposit, the clerk of the circuit court shall immediately publish a notice in a newspaper of general circulation published in the county where the land is situated, which notice shall be published once each week for two successive weeks, two publications being sufficient, which shall notify all concerned that such land will be offered at public sale to the highest bidder for cash at the court house door in the county where the land is situated, on the day to be specified therein, which day shall be not less than fifteen days nor more than thirty days from the date of the first publication of the notice. Said sale may be held on any day of the week except Sunday, and at any time specified in the notice between the hours of 11 a.m. and 2 p.m. of said day of sale. If such lands are within the corporate limits of a municipality other than the county seat, such sale must be advertised to be held and held at the city or town hall door of such municipality if the board of county commissioners by resolution specifically so designates such place of sale. On the day and at the time and place specified in the notice the clerk of the circuit court shall offer said land at public outcry free and clear of liens held by the county and by the municipality if the lands are situated within a municipality, and free and clear of accrued annual drainage assessments, maintenance taxes and liens of any drainage district, if the lands are situated within such district, and the clerk shall sell the same to the highest bidder for cash. The amount deposited with the clerk by the person desiring to purchase the land shall be taken and considered as the first bid, and if no other bids are made, the land shall be sold to him and the amount deposited by him shall be applied on his bid. If other bids are made the land shall be sold to the highest bidder, and the successful bidder forthwith must pay the amount of his bid in cash or by cashier's check or certified check following the sale; in failure or default thereof the clerk shall re-offer the lands in the manner herein provided. The person making a deposit in order to have a parcel of land advertised for sale shall not be permitted to withdraw his bid or his deposit from the clerk unless he is not the highest bidder at the sale, in which event his deposit shall be refunded to him by the clerk. After any of the foregoing lands so acquired by the county have been available for sale for at least two years and no application to purchase same has been made, the board of county commissioners may sell and dispose of the same in any method provided by law. The clerk of the circuit court shall receive such fees for his services as are allowed by law.

(3) Upon completion of such sale the clerk of the circuit court shall prepare a deed of conveyance to the purchaser in substantially the form authorized by law, which deed shall be signed by the chairman or vice-chairman of the board of county commissioners, and attested by the clerk or deputy clerk of the circuit court under the seal of said board affixed thereto. No acknowledgement or witnesses shall be required in order to entitle said deed to record. Upon the delivery of deed to the purchaser the clerk shall make notation of the date and fact of such sale opposite the description of such lands in the resolution fixing price recorded in the book designated "county lands acquired for delinquent taxes."

(4) All conveyances shall be free and clear of all liens held by the county, and by the municipality, if the lands are situated therein, and free and clear of all accrued annual drainage assessments, maintenance taxes and liens of any drainage district if the lands are situated within a drainage district.

(5) The clerk of the circuit court shall calculate from the county tax rolls the amount of taxes due on the property at the time the title was acquired by the county, and the officials of the municipality shall calculate from the municipal tax rolls the amount of taxes due to such municipality at the time title was acquired by the county, and the officials of any drainage district, if the land lies within such a district, shall calculate the amounts due thereon for accrued annual drainage assessments, maintenance taxes and liens in accordance with the law on the date of entry of final decree quieting title in the county, and deliver official notice thereof to such clerk of the circuit court. Thereupon, the clerk of the circuit court shall first pay the expenses and costs of sale, and the fees of the county tax assessor, the county tax collector, and the clerk of the circuit court, and shall distribute the balance of the proceeds from the sale of the lands to the municipality and the county and the drainage districts, if any, ratably, in proportion to the amount of taxes, or accrued annual drainage assessments or liens so calculated to be due each, and he shall distribute the county's share in proportion to the interests of the several taxing units of the county and the funds of such units, according to millage rates in existance and use for the year in which such proceeds of sale are received and distributed, and individually held state, county or municipal tax sale certificates or individually held drainage assessment certificates, not barred by law, shall participate pro rata in such distribution in the proportion that the same bear to the total of all unpaid liens for general taxes and accrued annual drainage assessments, taxes and liens; provided, however, that in no event shall such individually held tax or drainage assessment certificate holder receive an amount in excess of that required to redeem the individual certifi-

cate on the date the county acquired title to such land. After the distribution should there remain any excess, the same shall be applied in payment of special improvement liens of the city or county, or both, ratably, and any remainder shall be distributed to the county and the municipality, if any, in the proportion that the tax lien of each as of the date of the final decree quieting title in the county bears to the total of the two.

(6) After the county acquires title to such lands as provided herein, neither the county tax assessor nor the municipal tax assessor, if such lands are situated within a municipality, shall assess the same for taxes nor extend taxes upon the rolls, during the period of time such lands are owned by the county; nor shall any drainage district, if said lands are situated within the same, impose or levy annual assessments, maintenance taxes or liens thereon during the period said lands are so owned by the county; nor shall the budget making authorities of the county or city give consideration to the valuations upon such lands in calculating millages to be levied; provided, however, such lands shall be assessed as of January 1st, of the year following such sale in the same manner as all other lands subject to taxes and/or drainage assessments are assessed as provided by law.

(7) The board of county commissioners shall have the power in their discretion to dedicate to public use and purposes any lands to which the county acquires title as aforesaid, and upon resolution of dedication being duly adopted by the board of county commissioners, such lands shall not thereafter be assessed for taxes so long as the same remain devoted to public use. The board of county commissioners shall likewise have the power to dedicate such lands to public use upon request by proper resolution from the county board of public instruction, county welfare board, or other similar public board of the county. No such lands situate within the corporate limits of any municipality or within a drainage district shall be so dedicated unless the governing body of such municipality or of the drainage district, as the case may be, shall concur in such dedication. The board of county commissioners shall have authority and power to convey any such lands to any of the foregoing public boards or political subdivisions of the county for public purpose, without consideration or public sale, upon request of such board or political subdivision evidenced by proper resolution. Any individually held tax sale certificates or drainage assessment certificates, not barred by law, outstanding at the time of such dedication or conveyance for public purposes shall be paid in full or settled and cancelled before such dedication or conveyance shall become effective.

(8) This section and §194.53 shall apply to all lands to which the several counties of Florida have acquired or hereafter may acquire title, under the provisions of §194.47, as amended.

(9) Nothing in these taxing laws as amended by chapter 22079, acts of 1943, shall be construed to affect the assessment, collection, lien or enforcement of taxes or assessments of Everglades drainage district heretofore or hereafter imposed, or to repeal any law relating thereto.

History.—§44, ch. 20722, 1941; §21, ch. 22079, 1943; §1, ch. 22772, 1945; §§2, 3, 4, ch. 24206, 1947; §11, ch. 25035, 1949.
cf.—§125.39 Nonapplicability to county lands acquired for delinquent taxes.
§§591.18, 591.19 Community forests; purchase or establishment, and tax delinquent lands.

194.551 Certain valuations, conveyances validated.—

(1) All actions of the several boards of county commissioners and the city officials of the several counties and cities of the state in fixing the values of real estate which has reverted to the several counties under the provisions of chapter 20722, laws of Florida, 1941, as amended, shall be and they are hereby confirmed, ratified and validated. It is intended hereby to validate the fixing of such values against the failure to do an act required by said laws or the doing of an act at variance with the provisions of said laws.

(2) As against all former rights of the county, municipalities, individual tax certificate holders and all other persons, all conveyances of real estate which have heretofore reverted to the several counties under chapter 20722, laws of Florida, 1941, as amended, and which conveyances have heretofore been made by the several boards of county commissioners are hereby validated, confirmed and ratified as of June 13, 1949; provided, however, that this section shall not validate, ratify or confirm any such conveyances the validity of which is in litigation on June 13, 1949 or which shall be attacked in any judicial proceeding at any time within six months from June 13, 1949.

History.—§§1, 2, ch. 25437, 1949; (2) §10, ch. 26484, 1951.

194.56 Form of county deed.—County deeds of conveyance to lands the title to which is in the county by virtue of a tax deed may be in substantially the following form, viz:

This deed, made this ____ day of _____, A. D. 19____, by the County of _____, State of Florida, party of the first part and _____, party of the second part.

WITNESSETH: That the said party of the first part for and in consideration of the sum of _____ dollars to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, his heirs, and assigns forever, the following described land, to-wit:

_____

_____

_____

_____

IN TESTIMONY WHEREOF, and by virtue of authority vested by law in the Board of County Commissioners, and for and on behalf of the County of _____, State of Florida, we, the undersigned, as members of the Board of County Commissioners for the County and State aforesaid have executed this deed and have there-

unto set our official signatures and seals, attested by the Clerk of the Circuit Court for said County, this the ____ day of _____, A. D. 19____.

Signed, sealed and delivered in the presence of

_____

_____

_____ (SEAL)

Member Board County Commissioners

_____ (SEAL)

Member Board County Commissioners

_____ (SEAL)

Member Board County Commissioners

(Official Seal)

ATTEST:

_____ (SEAL)

Clerk Circuit Court

_____ County.

History.—§45, ch. 20722, 1941.

194.57 Clerk circuit court to receipt for tax certificates and receipt filed with board of county commissioners.—It shall be the duty of the tax collector to deliver to the clerk of the circuit court of the county, all certificates of sale to the county for unpaid taxes, take a receipt therefor from said clerk, and shall file such receipt of the clerk, with his report of tax sales with the board of county commissioners. Such receipt from the clerk of the circuit court shall be the board of county commissioners' authority to charge such clerk with the amount of such certificates.

History.—§53, ch. 20722, 1941.

194.58 Cancellation of tax sale certificates over twenty years old.—

(1) After the expiration of twenty years from the date of issuance of any tax sale certificate issued against any lands in the state, whether issued for state taxes, state and county taxes, county taxes, or issued by a municipality for municipal taxes, and held by any private holder, natural or corporate, partnership, trustee, estate of deceased person, or other person or persons under disability, or otherwise, and no application for tax deed thereon, or other administrative or legal proceeding is pending involving said tax sale certificate, the several clerks of the circuit court of the state are authorized, empowered and directed to note the cancellation by this section of such twenty year old tax sale certificate upon any and all records thereof in the office of such clerk.

(2) The several clerks of the circuit court shall accomplish such cancellation by entering opposite the record of such twenty year old tax sale certificate, a notation in substantially the following form: "Cancelled by Act 1947 Florida Legislature."

(3) Immediately upon this section taking effect, the several clerks of the circuit court shall comply with the provisions hereof as to any and all tax sale certificates which are then twenty years old or older, and thereafter shall note the cancellation of any and all other such tax sale certificates from time to time as the same come within the terms of this section.

(4) For making each cancellation and otherwise complying with law in relation thereto the clerk shall receive ten cents to be paid from the general revenue fund of the county or municipality as the case may be.

(5) This section shall take effect at 12:01 o'clock A. M., the first day of January, A. D. 1948.

History.—§§1-3a, 5, ch. 23828, 1947.

194.59 Cancellation of certain tax sale certificates.—

(1) The clerks of the circuit court of the several counties of the state are hereby authorized, empowered, and directed to note the cancellation by this section of any and all tax sale certificates issued prior to the year 1940, whether issued for state taxes, state and county taxes, or municipal taxes, and held by any private holder, natural or corporate, partnership, trustee estate of deceased person, or other person or persons under disability or otherwise, where the land covered by such tax sale certificate heretofore reverted to the state for nonpayment of delinquent taxes under the provisions of §192.38 et seq.

(2) The said several clerks of the circuit court shall accomplish such cancellation by entering opposite the record of each such tax sale certificate so cancelled, a notation in substantially the following form: "Cancelled by Acts 1947 Florida Legislature."

History.—§§1-2, ch. 23832, 1947.

194.60 Sale by county of land, title to which vested in the county under tax deed.—

(1) When the title to any lands has become vested in any one of the counties of the state in pursuance of chapter 20722, acts of 1941, as amended by chapter 22079, acts of 1943, and of other acts amendatory thereof, and has remained vested in such county for a period of two years after the court's decree provided for by §13 of said chapter 22079 (which amended §36 of said chapter 20722, laws of Florida, acts of 1941, being §194.47), then the board of county commissioners of the county having title to said lands may, at its option, as exercised by the affirmative action of a majority of said board, order the sale of said lands, or any part or parcel thereof, at public outcry, to the highest cash bidder therefor.

(2) Such boards of county commissioners shall designate the parcel or parcels of land to be sold hereunder, which designation may be by reference to all remaining parcels described in a decree of the court, as above referred to, or by reference to individual and particular parcels designated by said board.

(3) After the board of county commisioners shall have ordered a sale or sales, as herein permitted, it shall be the duty of the clerk of the circuit court of such county to advertise such lands for sale prior to the sale thereof. In the event said lands shall be within the limits of a municipality, the clerk shall advertise such sales once each week for four consecutive weeks in a newspaper published in said municipality and having a general circulation in such municipali-

ty. In the event such lands are not within the boundaries of a municipality, it shall be the duty of the clerk to advertise said sales once each week for four consecutive weeks in a newspaper of general circulation of the territory in which the land to be sold is situated. Said lands so advertised shall be sold to the highest cash bidder at such sale, and the purchaser thereof shall be entitled to receive a deed of conveyance to said lands; provided, however, that such bid shall be in conformity with the minimum bid determined to be required by the board of county commissioners of the county having title to said lands.

(4) The said clerk of said court shall report to the board of county commissioners and obtain deeds of conveyance to the highest bidder or bidders for the several parcels of land offered for sale and sold, and the said clerk shall receive for his services in connection with the holding of any such sale or sales the same fee which he would have received had said sale been held and conducted in pursuance of an offer or bid made under the provisions of said chapter 22079.

(5) All moneys received from the sale of such lands shall be distributed and disbursed by the clerk as heretofore provided in existing law, or hereafter required by amendment, for the distribution of proceeds of sale of such lands when made under the provisions of §194.55. The clerk shall prepare the deeds to be executed by the board of county commissioners and shall in general perform the same duties and follow the same routine with reference to such sales as that heretofore provided in said chapter 22079, but the sale shall be without reference to any sale price or bid price theretofore fixed by the board of county commissioners (and municipal officers) as provided in said chapter.

(6) The board of county commissioners shall have the power and authority, in ordering such sales to be held, to fix minimum bids for which said lands (as to individual parcels) shall be sold hereunder, and in case there be no bidder for an amount equal to or in excess of said minimum, then the sale shall not be consummated and the title to said land or lands shall remain vested in the county.

(7) No sale shall be ordered of any lands which shall have been dedicated to public use and purposes, except and unless there shall be prior resolutions by all governing authorities having an interest in or jurisdiction over such dedicated lands, rescinding the dedication and returning said lands to the county for the purpose of county ownership and sale.

(8) This section shall be taken and deemed as remedial in purpose and cumulative in character and all laws and parts of laws in conflict herewith are hereby repealed.

History.—§§1-8, ch. 23830, 1947; §11, ch. 25035, 1949.

194.601 Corrective county deeds without consideration or further notice.—As to all lands acquired by any county of the state for delinquent taxes under the provisions of §194.47, and thereafter described and recorded in the book designated "county lands acquired for delinquent taxes" on file in the office of the clerk of the circuit court and which lands have been through the process and procedure of public notice and public sale to the highest and best bidder and a deed of conveyance issued by any county and the proceeds of said sale received by said county and where such deed of conveyance is invalid because the purchaser or one of the purchasers at said public sale and in said deed from said county was the clerk of the circuit court of said county, then in each and every such event the board of county commissioners is authorized and empowered and may in the discretion of said board convey the title to said lands to the record fee simple owners or the record grantees or successor grantees of said purchaser or purchasers from the county and execute a proper conveyance therefor without further public notice or without further consideration. This section is supplemental and in addition to all laws.

History.—§§1, 2, ch. 57-827.

194.61 Return to churches of land acquired through tax foreclosure suits.—Whenever any land comprises a part of county lands acquired for delinquent taxes, the title of which land became vested in any county pursuant to the provisions of chapter 22079, acts of 1943, or any acts amendatory thereof, and such land, at the time of acquisition of title thereto by the county, was owned by an established church or by any corporation or individuals acting as trustee or trustees for such church, and also at such time was being used for church purposes, the board of county commissioners of such county may convey such land to such church or to its trustee or trustees, at private sale without the necessity of advertising, and upon such terms and conditions and for such amounts as such board may determine, without regard to the actual value of such land.

History.—§1, ch. 24334, 1947; §11, ch. 25035, 1949; §1, ch. 25432, 1949.

194.62 Tax sale certificates; transfers or assignments to be recorded.—

(1) No transfer or assignment of any state and county or county tax sale certificate shall be valid and binding against the state, county, clerk of the circuit court or board of county commissioners unless and until such transfer or assignment shall be recorded in the office of the clerk of the circuit court of the county in which the land described in such tax sale certificate is situate.

(2) Persons or corporations claiming as assignees of such tax sale certificates prior to June 13, 1949, shall have sixty days after June 13, 1949, within which to record their assignments.

History.—§§1, 2, ch. 25276, 1949.

194.63 Cancellation of certificates on riparian rights separate from land.—

(1) All tax sale certificates describing riparian rights, as defined by §192.61, only and

separately from the land in the hands of any governmental taxing agency are hereby declared invalid and are hereby cancelled. Any title presumed to have vested in the state under chapter 18296, acts of 1937, known as the Murphy act, by virtue of such certificates is hereby declared invalid, and the riparian rights affected thereby are hereby restored to their original status and become appurtenant to the adjoining upland.

(2) The clerk of the circuit court of each county and the proper tax officer of any governmental taxing agency are hereby authorized and directed to withhold all such tax sale certificates in their hands from redemption or sale and to enter such cancellation upon the face of any such tax sale certificate and upon the tax sale record of the county or other taxing agency.

History.—§3, ch. 28262, 1953.

cf.—§192.61 Assessment of riparian rights.
§271.09 Riparian rights defined, certain submerged bottoms subject to ownership, etc.

CHAPTER 195

TAXES ON RAILROADS AND PULLMAN AND EXPRESS COMPANIES

195.001 Railroad assessment board.—

(1) CREATION; MEMBERSHIP; ETC.—There is hereby created the railroad assessment board, which shall consist of the comptroller, who shall be chairman; the attorney general; and the state treasurer; any two of whom shall constitute a quorum. The board shall have its office in Tallahassee in rooms to be provided by the state for that purpose and all of its records shall be kept there. It shall hold meetings upon such days as may be determined by the board, and may hold special meetings upon the call of the chairman or any two members. It shall keep a complete record of all its meetings, of its acts, and of the business it transacts, and may prepare all necessary regulations and blank forms for the conduct of its business.

(2) EMPLOYMENT OF ADDITIONAL HELP BY BOARD; EXPENSES.—The board may employ from time to time such skilled assistants, clerks and employees as are necessary for the administration of this law. The board or any person employed by the board shall be reimbursed for traveling expenses as provided in §112.061 while performing duties required or performed by direction of the board.

History.—§1, ch. 57-295.
cf.—§112.061 Travel expenses of public officers, employees, and authorized persons.

195.01 Railroad assessment board; annual return and assessment of railroad properties; value study.—

(1) ANNUAL RETURN BY RAILROAD COMPANIES.—The president and secretary, or superintendent or manager of the railroad company or street railroad company or sleeping or parlor car company, or the tax commissioner or the receiver thereof, whose car, track or roadbed, or any part thereof is in this state, shall annually, on or before the first Monday in April, return to the railroad assessment board of the state, under their oath, the total length of such railroad, the total length and value of such main track, branch, switch and spur track, and side tracks, lots or parts of lots not leased or rented and terminal facilities, in this state, and the total length and value thereof in each county, city or incorporated town in this state as of the first day of January.

They shall also make return of the number and value of all locomotives, engines, passenger, sleeping, freight, parlor, platform, construction and other cars and appurtenances (including shop equipment and tools), stock in warehouse and other personal property used or to be used in connection with the construction, operation or maintenance of the property of the company.

(2) ASSESSMENT BY RAILROAD ASSESSMENT BOARD.—Should any such company or its officers fail to make the returns required by this law on or before the first Monday in April, when return is due, or should such return not be made, or should the railroad assessment board have reason to believe that any return so made does not give a complete and correct value of such railroad property, the railroad assessment board, after having given not less than five days notice to the person or persons making the return of the time and place of hearing, shall assess the same from the best information the board can obtain.

(3) DISTRIBUTION OF VALUE.—The railroad assessment board shall specify the value of such railroad in each county, and the value of the locomotives, engines, passenger, sleeping, parlor, freight, platform, construction and other cars and appurtenances shall be apportioned by the board, pro rata to each mile of main track, branch, switch, spur track and side track.

(4) NOTIFICATION OF VALUE TO COUNTY ASSESSOR.—The board shall notify the county assessor of taxes of each county through which such railroad runs of the num-

ber of miles of track and the value thereof, and the proportionate value of the personal property taxable in their respective counties, special school districts, special road districts, and other special districts that may exist.

(5) NOTIFICATION OF INCORPORATED CITIES AND TOWNS.—The board shall notify each incorporated city and town into which said railroad runs, of the mileage, apportionment of rolling stock, and other property of said railroad within such city or town, and the value thereof shall be assessed by such city or town as provided by law, and upon the value thus ascertained and apportioned, taxes shall be assessed the same as upon the property of individuals.

(6) BOARD TO MAKE STUDIES.—The railroad assessment board is hereby authorized and empowered to make, or cause to be made, such studies and research of the value of railroads operating in Florida, and of railroad operating property located in Florida, and of the values and assessments of other properties locally assessed by the several counties of the state, and the board shall use such information and data to the extent necessary and requisite for the proper and equitable administration of this law. All such studies, research, data and information compiled or acquired by the board pursuant to this law, shall be kept by the board in permanent form and shall be available for inspection to all interested persons, at reasonable times at the offices of the board. The board may, in its discretion, make copies of any such studies, data or information so obtained and distribute the same to interested parties. Such studies, research or other investigations made by the board pursuant hereto, may be continued, renewed or supplemented from time to time, as the board may direct or determine, in order to secure to the board current and accurate information upon which to discharge its duties under this law.

History.—§47, ch. 4322, 1895; §8, ch. 4515, 1897; GS 549; §46, ch. 5596, 1907; RGS 747; §1, ch. 9178, 1923; §1, ch. 10284, 1925; CGL 960; §2, ch. 57-295.

195.02 Assessment of railway line across bay, bayou, lake, or river of length over four miles.—The assessment for taxation per mile of any part of any railroad or railway line within the state of any common carrier which may be constructed and maintained along, over or across any bay, bayou, lake or river of a length of four miles or more, including the approaches thereto, whether constructed and maintained in connection with a toll bridge or other bridge for the passage of pedestrians and vehicles or without, shall not exceed the average per mile assessment for taxation of such railroad or railway line located on land, nor shall the assessment per mile of the entire railroad or railway line of any such common carrier within the state be increased by reason of the construction and maintenance of any part thereof upon or with or by means of any such railway trestle or bridge along, over or across any such bay, bayou, lake or river, notwithstanding the extra or disproportionate expense of the construction thereof, above and beyond the expense of construction of such railway line upon land.

History.—§1, ch. 7318, 1917; RGS 748; CGL 961.

195.03 Assessment of telegraph lines.—Every telegraph line in this state shall be returned and assessed in the manner as is provided by this chapter for the assessment of railroads, and in case of failure to pay the taxes assessed, the entire line of telegraphs of this state and all of its properties, rights and franchises, or any property belonging to the same company, person or persons, may be sold in the same manner as is provided for the sale of the railroads or any of its property upon which any tax shall be due and not paid.

History.—§47, ch. 4322, 1895; §8, ch. 4515, 1897; GS 550; §46, ch. 5596, 1907; RGS 749; CGL 962.

195.04 Comptroller to make return of side tracks and spurs.—The comptroller of this state on or before the first Monday in April of each year shall forward to the tax assessor of each county in this state a full description of all side tracks and spurs returned for taxation by the different railroad companies in the respective counties; and respective tax assessors shall examine the report of the comptroller of the state so sent to him, and if there be any railroad spurs or side tracks in his county which are not embraced in the returns made to the comptroller of the state, then the said tax assessor shall proceed to assess the same to the rightful owner, if known, or if not known, as "unknown," and enter the said assessment on his assessment book as personal property.

History.—§1, ch. 4665, 1899; GS 551; RGS 750; CGL 963.

195.05 Tax collectors to collect tax on railroad spurs and side tracks.—The tax collectors of the various counties in this state shall collect the taxes so assessed on railroad spurs and side tracks by the county tax assessor as other personal tax is collected; provided, however, no assessment shall be made by the county tax assessor, or tax collected by the county tax collectors, on railroad side tracks or spurs which have been assessed and taxes collected on by the comptroller.

History.—§2, ch. 4665, 1899; GS 552; RGS 751; CGL 964.

195.06 Certifying unpaid taxes on railroads to comptroller.—If any taxes on any railroad or any part thereof in this state shall not be paid on or before April first of any year, the tax collector of any county wherein such taxes may be due shall send a certificate of the amount thereof to the comptroller, including in said certificate the amount of state taxes, county taxes, and special school district taxes and all other special taxes of every kind and nature appearing on the tax roll, together with all costs. The certificate shall bear the date of the first of April of the year in which it is issued. Taxes on any railroad or any part thereof in this state, if not paid, shall become delinquent on the first of April following the year in which said taxes are levied and assessed. All

such unpaid taxes on real estate which shall become delinquent hereafter shall bear interest from the date they become delinquent at the rate of eighteen per centum per annum for the first year and eight per centum per annum thereafter, and all such delinquent taxes on personal property which shall become delinquent hereafter, shall bear interest at the rate of one per centum per month from the date said taxes become due until the same shall be paid.

History.—§48, ch. 4322, 1895; §9, ch. 4515, 1897; §4, ch. 4885, 1901; GS 554; §48, ch. 5596, 1907; RGS 752; CGL 965; §1, ch. 20725, 1941.

195.07 Collection of taxes from defaulting railroads.—

(1) The comptroller shall have the power upon the receipt of the certificate or certificates from the tax collectors as aforesaid to issue a warrant directed to the sheriff of any county where such defaulting railroad or any part thereof may be located, commanding him to collect by levy and sale, in the same manner as is now provided by law for the sale of property under execution from the clerk of the circuit court, of the shops, fixtures, rolling stock or any part thereof as may be located in this state, the full amount of taxes and interest due thereon, or of the entire road or such part thereof, including the costs and expenses of the sale, and the proceeds of such sale, after deducting the fees and costs as provided by law, shall be forwarded by such sheriff to the comptroller, who shall pay the county taxes and district school taxes and other special taxes and interest thereon to the county depository of each county in which such taxes were assessed, according to the assessment, and the board of county commissioners and the county school board of such county shall thereupon pay the county tax collector the fee or commission allowed him by law for payment of other delinquent taxes, and the surplus after such payments are made, if any, shall be paid over to the authorities of such defaulting railroad.

(2) Nothing in §195.06 and this section shall be construed to apply to railroad taxes already assessed and which are the subject of pending litigation.

History.—§48, ch. 4322, 1895; §9, ch. 4515, 1897; §4, ch. 4885, 1901; GS 555; §48, ch. 5596, 1907; RGS 753; CGL 966; §§2, 3, ch. 20725, 1941. §1, ch. 26956, 1951.

195.08 Fees of sheriff in collecting taxes from defaulting railroads; cost added to taxes; sale of properties for taxes.—The fees of the sheriff in the execution of the warrant provided for in §195.07 shall be the same as provided by law in the case of executions from the clerk of the circuit court, which fees, together with the costs, shall be included with the taxes in the amount to be collected from the defaulting railroad; provided, further, that whenever any person shall become the purchaser of any car, engine or other rolling stock of any such company or corporation at any such sale, such purchaser may require of any such company or corporation the transportation of any car, engine or other rolling stock to any point along the line of such railroad at a cost of not to exceed eight cents per mile, and that the sheriff shall take corporal possession of the property levied on under this section, and on selling the same, or any part thereof, shall deliver it into the actual possession of the purchaser upon his paying the amount bid therefor at such sale, and in case no person shall bid the amount of taxes due, including the costs and expenses of sale, the property shall be bid off for the comptroller of the state, and shall be delivered to the comptroller, and the governor and comptroller shall dispose of, sell and convey the same in such manner as in their judgment may be to the interest of the State. The provisions of this section, in so far as they relate to the sale of railroads for unpaid taxes, shall apply to all taxes assessed heretofore or that may be hereafter assessed.

History.—§48, ch. 4322, 1895; §9, ch. 4515, 1897; §4, ch. 4885, 1901; GS 556; §48, ch. 5596, 1907; RGS 754; CGL 967.

195.09 Return of lands owned by railroad companies; failure to make return.—The president, secretary, superintendent, manager or agent of any railroad company, or receiver of any railroad, owning land or any other real estate in any county in this state, shall make out and deliver to the county assessor of taxes on or before the first Monday in March in each year, of each county where the property is situated, a full and complete list of all lands or lots owned or held by them, the same as the property of individuals, and should any railroad company fail to return their real property as required by this chapter the county assessor of taxes shall ascertain and assess the same as in cases of individual property.

History.—§49, ch. 4322, 1895; GS 557; §49, ch. 5596, 1907; RGS 755; CGL 968; §7, ch. 22858, 1945.

195.10 License taxes against railroads; distribution.—Any railroad company doing business in this state shall pay annually on the first day of October, to the comptroller of the state, a sum equal to ten dollars per mile for each and every mile of its railroad tracks in this state, including branches, switches, spurs and side tracks, as shown by the last assessment of the said railroad company for property taxation, as a license tax, one-half of which amount shall be paid into the state treasury and one-half of which amount shall be distributed by the comptroller to the various counties in which such railroad may be located, in proportion to the amount of railroad trackage in each county, which license tax shall be in lieu of all other state and county license taxes on said railroad companies.

History.—§43, ch. 6421, 1913; RGS 966; CGL 1238.

195.11 License taxes against railroads in municipalities.—Any city or town hereinafter described may impose upon any railroad company whose tracks extend into or through its corporate limits, a license tax not exceeding the sum as follows:

In municipalities of twenty thousand inhabitants or more, a license tax of two hundred and fifty dollars.

In municipalities of less than twenty thousand and more than fifteen thousand inhabitants, a license tax of one hundred and fifty dollars.

In municipalities of fifteen thousand and more than ten thousand inhabitants, a license tax of one hundred dollars.

In municipalities of ten thousand and more than five thousand inhabitants, a license tax of seventy-five dollars.

In municipalities of five thousand and more than three thousand inhabitants, a license tax of fifty dollars.

In municipalities of three thousand and more than one thousand inhabitants, a license tax of twenty-five dollars.

In municipalities of one thousand and more than five hundred inhabitants, a license tax of fifteen dollars.

In municipalities of five hundred inhabitants or less, a license tax of ten dollars.

History.—§43, ch. 6421, 1913; RGS 966; CGL 1238.

195.12 License taxes against street railways, etc.—Street railways in cities of twenty thousand population or more, shall pay an annual license tax of fifteen dollars per mile, and in cities and towns having a population of less than twenty thousand, shall pay a license tax of seven dollars and fifty cents per mile, and suburban and interurban railways propelled by electricity or gas, shall pay an annual license tax of five dollars per mile.

History.—§43, ch. 6421, 1913; RGS 966; CGL 1238.

195.13 Gross receipts taxes against express companies; reports; penalties; distribution.—Every express company doing business in this state shall annually, on the first day of October, make a report under oath to the comptroller of the state of the total amount of gross receipts derived from business done between points in this state during the year ending June 30th, next preceding the first day of October and shall at the same time pay to the comptroller a sum equal to two per cent upon the total amount of such gross receipts, and if any such company shall fail to make such report and payment to the comptroller as herein provided, on or before the first day of November of any year, the comptroller shall, after having given at least five days' notice to an official or representative of the company located in this state, estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as delinquent railroad taxes are collected; provided, that no penalty shall be added if a return is made and the amount due paid to the comptroller before the expiration of the time stated in the notice required to be given by this section.

Of the sum paid to the comptroller, as provided by this section, one-half shall be distributed by the said comptroller among the various counties of this state in proportion to the assessed valuation thereof as shown by the assessment of the previous year, and the remaining one-half shall immediately be turned over to the treasury of the state as license money.

History.—§22, ch. 6421, 1913; RGS 889; §1, ch. 8556, 1921; CGL 1145.

195.14 License taxes against express companies in municipalities.—Any city or town in the state may impose upon any express company doing business in this state, having an office in such city or town, a license tax not to exceed the sum hereinafter mentioned, namely:

In cities of twenty thousand inhabitants or more, two hundred dollars.

In cities of less than twenty thousand and more than fifteen thousand inhabitants, one hundred dollars.

In cities of fifteen thousand and more than ten thousand inhabitants, seventy-five dollars.

In cities and towns of ten thousand and more than five thousand inhabitants, fifty dollars.

In cities and towns of five thousand and more than three thousand inhabitants, thirty-seven dollars and fifty cents.

In cities and towns of three thousand and more than one thousand inhabitants, twenty-five dollars.

In towns and villages of one thousand and more than five hundred inhabitants, twelve dollars and fifty cents.

In towns and villages of five hundred and more than two hundred and fifty inhabitants, six dollars.

History.—§22, ch. 6421, 1913; RGS 889; §1, ch. 8556, 1921; CGL 1145.

195.15 License taxes against sleeping and parlor car companies; no municipal tax.—Sleeping and parlor car companies operating any such cars on or over any railroads or any part of said railroads in this state, shall on the first day of October of each year, pay to the comptroller a license tax of five thousand five hundred dollars, which shall be paid into the state treasury by the comptroller to the credit of the general revenue fund; provided, that no other county or municipal license taxes shall be required of any such company under this section.

History.—§44, ch. 6421, 1913; RGS 967; CGL 1239.

195.16 Gross receipts taxes against sleeping and parlor car companies; penalties.—All sleeping and parlor car companies operating their cars in this state shall annually on or before the first day of January, report to the comptroller of the state, under oath of the secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this state, and at the same time shall pay into the state treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts, and if any such company shall fail to make such report to the comptroller and pay the tax thereon as herein provided, the comptroller shall, after having given at least five days' notice to an official or repre-

sentative of the company located in this state, estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected; provided, that no penalty shall be added if a return is made and the amount due paid to the state treasurer before the expiration of the time stated in the notice required to be given by this section.

History.—§45, ch. 6421, 1913; RGS 968; CGL 1240.

195.17 Failure of express company to pay gross receipts and license tax.—The superintendent of any express company violating the provisions of §§195.13 and 195.14, and any person who acts as agent for any express company before it has paid the tax as provided in §§195.13 and 195.14 payable by said company shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished, respectively, by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months.

History.—§22, ch. 6421, 1913; RGS 5313; CGL 7441.
cf.—§775.06 Alternative punishment.

195.18 Failure of sleeping and parlor car companies to pay license tax.—The superintendent of any sleeping or parlor car company violating the provisions of §§195.15 and 195.16, and any person who acts as agent for any such company before it has paid the license tax as provided by §§195.15 and 195.16 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished, respectively, by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months.

History.—§44, ch. 6421, 1913; RGS 5314; CGL 7442.
cf.—§775.06 Alternative punishment.

CHAPTER 196

COURT PROCEEDINGS RELATING TO TAXATION

196.01 Chancery jurisdiction in tax matters.—Courts of chancery in this state shall have jurisdiction in all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the constitution and laws of Florida, and shall render decrees setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law, provided that the complainant shall in every case tender into court and file with the complaint the full amount of any such tax, assessment or toll which he shall admit to be legal and due by him, or file with the complaint a receipt showing payment of the same prior to the institution of the suit.

History.—§1, ch. 8586, 1921; CGL 1038; §2, ch. 29737, 1955.

196.02 Injunction against tax sales.—In any such cases, the court may issue injunctions to restrain the sale of real or personal property for any tax, assessment or toll which shall appear to be contrary to law or equity, and in no case shall any complaint be dismissed because the tax assessment or toll complained of, or the injunction asked for, involves personal property only.

History.—§2, ch. 8586, 1921; CGL 1039.

196.03 Injunction proceedings; parties.—The only necessary party defendant to any such suit shall be the person whose duty it shall be to collect or enforce the collection of the tax, assessment or toll complained of, and service upon such person shall be deemed binding upon the county, state or municipality for whose benefit the tax, assessment or toll was levied, but any officer or other person interested may intervene and defend the same upon application to the court.

History.—§3, ch. 8586, 1921; CGL 1040.

196.04 Injunction proceedings; comptroller a party.—No suit or proceeding shall be maintained in any court of this state for the purpose of canceling or contesting the validity of any tax certificate held by the state unless the comptroller of the state be made a party to such proceeding.

History.—§1, ch. 7932, 1919; CGL 1007.

196.05 Cancellation; condition precedent.—No decree shall be made by any court in a suit brought by or on behalf of any land owner to enjoin any tax sale or to set aside or cancel any tax certificate in the state until such owner shall have paid to the tax collector of the county where the property is assessable the full amount of the taxes which could have been lawfully assessed against the property involved for the period covered by the assessment complained of, whether such real estate shall have been returned for assessment by the owner thereof or not. In all such cases the court shall ascertain and determine and by decree fix the amount of such tax to be paid by the owner.

History.—§2, ch. 10023, 1925; CGL 1008.

196.06 Limitations upon recovery of land in possession of tax deed holder.—When the holder of a tax deed goes into actual possession, occupancy and use of the land embraced in such tax deed, and so continues for a period of four years, no suit for the recovery of the possession thereof shall be brought by a former owner or other adverse claimant, unless such suit be commenced within, or prior to, the said period of four years after the holder under such tax deed has entered into the actual possession, occupancy and use of the land embraced in said tax deed; and the holder of such tax deed, where the said real estate is in adverse actual possession, occupancy and use of any person, shall not be entitled to recover possession of such real estate under such tax deed, unless suit for such recovery shall be brought within four years from the date of such tax deed; provided, however, that infants, persons of unsound mind or under guardianship or imprisonment may commence suit or proceedings under this sec-

tion within three years after the recovery or discontinuance of such disability.

History.—§64, ch. 4322, 1895; GS 591; §61, ch. 5596, 1907; RGS 794; §2, ch. 12409, 1927; CGL 1020.

196.07 Party recovering land must refund taxes paid and interest, and for expenses and improvements.—

(1) If in any suit at law or in equity involving the validity of any tax deed it shall be held by the court that said tax deed was invalid at the time of its issuance and that title to the land therein described did not vest in the tax deed holder, then, if the taxes for which said land was sold and upon which said tax deed was issued had not been paid prior to issuance of such deed, the party in whose favor the judgment or decree in such suit shall be entered shall pay to the party against whom such judgment or decree shall be entered the amount paid for such tax deed and all taxes paid upon said land, together with eight per cent interest thereon per annum from the date of the issuance of said tax deed and all legal expenses in obtaining said tax deed, including publication of notice and clerk's fees for issuing and recording such tax deed, also the fair cash value of all permanent improvements made upon said land by the holders under the tax deed. The amount of such expenses and the fair cash value of improvements, as aforesaid, shall be ascertained and found upon the trial of the suit, and such tax deed holder or anyone holding thereunder shall have a prior lien upon said land for the payment of said sums of money in full.

(2) After January 1, 1948, the provisions of this section shall apply to any deed heretofore or hereafter executed pursuant to any tax foreclosure or tax forfeiture to satisfy a tax lien and to any deed executed by the state, county, municipality or other subordinate taxing unit conveying or purporting to convey any real estate, title to which is claimed pursuant to any tax foreclosure, tax forfeiture, or any other proceeding to satisfy a tax lien, in the same manner and to the same extent as this section applies to a tax deed.

(3) The provisions herein are declared to be supplemental and in addition to any other laws now existing.

History.—§64, ch. 4322, 1895; GS 592; §61, ch. 5596, 1907; RGS 795; §3, ch. 12409, 1927; CGL 1026; §§1, 2, ch. 23637, 1947.

196.08 State as party to municipal tax foreclosure.—In any suit in equity brought by any county, city, village or town of this state for the purpose of consummating the enforcement in tax lien foreclosure proceedings of its tax or assessment liens, whether such liens be evidenced by taxes or assessments duly levied and assessed upon the tax assessment roll or by tax certificates or tax deeds owned and held by it, against property located therein, the state may be made a party defendant in such proceedings for the purpose of adjudicating therein its tax liens against said property and receiving from the proceeds of any foreclosure sale in such proceedings its proper and proportionate share of such proceeds in satisfaction of its said tax liens so adjudicated; and the state does hereby give its consent to be sued and made a party defendant in such suits for such purpose. In any such suit in equity, brought by a city, village or town, the county and any taxing district, having tax or assessment liens against the property involved, may likewise be made a party defendant for the purpose of adjudicating and satisfying such liens therein.

All suits to which the state is made a party defendant under the provisions of this section shall be cognizable only in the courts of the state. Such suits shall be brought in the county where the property involved in such foreclosure proceedings is located. Process against the state in such suits shall be served upon the comptroller of the state; and process against the county and taxing districts shall be served as now or hereafter provided by law for service of process on the county and taxing districts.

In such suits the attorney of record for the county shall represent the interest of the state and county; and the city, village or town and the county, whether party plaintiff or defendant, shall be entitled to recover reasonable fees for the services of their respective attorneys therein, as allowed and apportioned by the court, which shall be a lien against the property involved, and payable from the proceeds of the sale thereof.

History.—§§1-3, ch. 18315, 1937; CGL 1940 Supp. 894(2)-894(4).

196.09 Limitations where grantee of tax deed has paid taxes for twenty years.—Whereever a tax deed has been issued by the state, conveying or attempting to convey the title to any real estate in the state, by reason of the nonpayment of the taxes thereon, no action shall be brought by the former owner thereof, or by any person claiming by, through or under him, against the grantee in said tax deed, his heirs, devisees or assigns, where the grantee or his heirs, devisees or assigns have paid the taxes assessed against the lands described in the said tax deed for a period of twenty successive years, at any time after the issuance of said tax deed, but the grantee in said tax deed, his heirs, devisees or assigns, may, at his option, file a suit in equity to quiet the title to the lands described in said tax deed, and no defense to said suit, nor attack upon said tax deed shall be made, except to show that the taxes assessed against the premises described in said tax deed, and for the nonpayment of which, said tax deed was issued, had been paid before the execution and issuance thereof, by the former owner.

History.—§1, ch. 12407, 1927; CGL 1021; am. §7, ch. 22858, 1945; §2, ch. 29737, 1955.

196.10 Limitations where patent not issued prior to assessment, etc.—Where a tax deed has heretofore been or may hereafter be issued by the state, conveying or attempting to convey real estate for the nonpayment of taxes thereon before a patent has been issued thereon by the United States government,

or before a deed of conveyance has been issued thereon by the state, conveying said premises to any person whomsoever, and thereafter a patent by the United States government or a deed of conveyance by the state has been issued thereon to the party to whom the land was assessed, or to his heirs, devisees or assigns, and the grantee in the tax deed, his heirs, devisees or assigns have continued to pay the taxes thereof for twenty successive years at any time after the issuance of a patent by the United States government, or a conveyance by the state, then it shall be presumed that the patentee, or those claiming by or through him, or the grantee in a conveyance from the state, or those claiming through him, have abandoned the land and all their right, title, interest and claim thereto, and that the grantee in the tax deed, his heirs, devisees or assigns are the legal owners of the land conveyed or attempted to be conveyed by the said tax deed, and he, or they or any of them, may, at their option, file a suit in equity to quiet the title thereto, and no defense shall be made thereto, by reason of the assessment of the land, or the issuance of the tax deed before the United States government or the state have parted title therewith; and no attack shall be made on said tax deed; save only that the taxes, by reason whereof the tax deed was issued, had been paid by the party or his successors or assigns, to whom the United States patent or the conveyance from the state was issued before the issuance of the said tax deed.

History.—§2, ch. 12407, 1927; CGL 1022; §2, ch. 29737, 1955.

196.11 Application of §§196.09 and 196.10.—The provisions of §§196.09 and 196.10 shall apply whether there has or has not been any actual possession of said premises described in the tax deed by the grantee in the tax deed, his heirs, devisees or assigns, except that if a tax deed has been issued, conveying or attempting to convey real estate in the actual possession of a legal owner thereof, and the legal owner, his heirs, devisees or assigns, continue in the possession thereof for a period of one year after the issuance of the tax deed, before any action at law or proceeding in equity is commenced to dispossess the party or parties in possession, then the provisions of said sections shall not apply. Said sections shall be construed to be prospective, retroactive and cumulative of the rights and benefits of grantees under tax deed and of those claiming under them; provided, said sections shall not apply to infants, persons non compos mentis, or under other disability to maintain suit until one year after the removal of such disability.

History.—§§3-5, ch. 12407, 1927; CGL 1023-1025.

196.12 Limitation upon lien of tax certificates.—A period of twenty years is declared to be the life of any tax certificate issued against any lands in the state, whether issued for state and county taxes or issued by a municipality for municipal taxes, and held by any private holder, natural or corporate, partnership, trustee, estate of deceased person, or other person or persons under disability, or otherwise, such period of twenty years to be reckoned from the date of the issuance of such tax certificate; and when such certificate becomes twenty years old, reckoned from the date of its issuance, the same shall be deemed and held to be barred by this statute of limitation, and no action on such certificate shall be maintained by any such private holder in any court of this state, and no tax deed shall issue thereof. This section shall not be construed so as to make it unlawful for the state or any municipality to sell, to third persons or private purchasers, tax certificates which become twenty years old after the effective date of chapter 19515, acts 1939, but as to all such tax certificates which are so sold and which become twenty years old after said act became a law, and as to all tax certificates, now held by the state or any municipality, which are already twenty years old, and which may be sold, the purchaser or purchasers shall be limited to five years from the date of purchase of such certificate or certificates in which to apply for a tax deed or institute other action for recovery on or enforcement of such certificate or certificates.

The provisions and the limitations herein prescribed for tax certificates shall not apply to tax certificates which were sold under the provisions of chapter 18296, acts 1937, commonly known as the Murphy act.

History.—§§1-3, ch. 19515, 1939; CGL 1940 Supp. 1003(128).

196.13 Parties in suits relating to distribution, etc., of funds to counties, etc.—No court shall hereafter enter any interlocutory or final order, decree or judgment in any case involving the validity or constitutionality of any law relating to the distribution, apportionment or allocation of any state excise or other taxes equally to the several counties in this state under such law, until it shall be made to appear of record in the case that the party to the cause seeking such order, decree or judgment has duly served upon the chairman of the board of county commissioners or the chairman of the board of public instruction of each of the counties of this state or upon both such chairman or said boards, depending upon whether one or both of said boards has an interest in the subject matter, written notice of the pendency of the case and thereafter of all hearings of all applications or motions for such orders, decrees of judgments in such cases, at least five days before all hearings, and such notice shall state the time, place and date of each such hearing and adjournments thereof, and shall be accompanied by copy of the complaint and petition, motion or application for any such order, decree, or judgment and the exhibits thereto attached, if any; and upon such service such boards of such counties having an interest in the subject matter of the case shall forthwith be and become parties to the cause, and shall be by order of

the court properly aligned as parties plaintiff or defendant.

History.—§1, ch. 19029, 1939; CGL 1940 Supp. 1279(110-f); §2, ch. 29737, 1955.

196.14 Comptroller party to suit to cancel tax assessment and tax certificate.—No suit or proceeding shall be maintained in any court of this state for the purpose of canceling or contesting the validity of any tax assessment or tax certificate unless the comptroller of the state be made a party to such proceedings. All such suits shall be brought in the county where the land is situated and the attorney for the board of county commissioners of such county shall represent the comptroller in any such suit or proceeding, for which he shall receive no additional compensation other than as paid him by the county.

History.—§51, ch. 20722, 1941; §23, ch. 22079, 1943.

196.15 Payment of back taxes as condition precedent to cancellation of tax certificates held by county.—No decree shall be made by any court in a suit brought by or on behalf of any land owner to enjoin any tax sale or to set aside or cancel any tax certificate held by any county in the state until such owner shall have paid to the tax collector of the county where the property is assessable the full amount of the taxes which could have been lawfully assessed against the property involved for the period covered by the assessment complained of, whether such real estate shall have been returned for assessment by the owner thereof or not. In all such cases the court shall ascertain and determine and by decree fix the amount of such tax to be paid by the owner.

History.—§52, ch. 20722, 1941; §7, ch. 22858, 1945.

196.16 Authority to bring and maintain suits.—The comptroller shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation or decision of the comptroller lawfully made under the authority of these tax laws.

History.—§55, ch. 20722, 1941.

196.17 Murphy act lands; municipal foreclosures against.—Suits in equity, by proceedings in personam or in the nature of proceedings in rem, may be brought by any city, village or town of this state as plaintiff, for the purpose of consummating the enforcement and satisfaction of its tax or assessment liens, whether such liens be evidenced by taxes or assessments duly levied and assessed upon the tax assessment roll or by tax certificates owned and held by it, against property located therein, the fee simple title to which vested in and is held by the state under the provisions of chapter 18296, acts of 1937 (§192.38) and the state may be made a party defendant in such proceedings, and the state does hereby give its consent to be sued and made a party defendant in any such suit. The former owner, or owners, of said property, anyone claiming by, through or under him or them, anyone claiming a lien thereon, or any taxing district, having tax or assessment liens against the property involved, may also be made a party defendant in any such suit.

History.—§1, ch. 21896, 1943.

196.18 Murphy act lands; pleadings.—In all such suits, if it shall affirmatively appear to the court that the title to the property involved therein is vested in the state, and that the plaintiff has delinquent tax or assessment liens thereon, the court shall order and decree that said property be sold at public sale to the highest and best bidder for cash, on a legal sales day within the legal hours of sale, at the court house door of the county, or the city hall door of any city, village or town, in which said property is situated, by a special master named by the court, after notice of such sale, designating the place of said sale, shall have been published once at least seven days prior thereto in a newspaper qualified to publish legal advertisements in said county. The court shall confirm said special master's sale of said property and order him to convey it to the purchaser in the event the sale price is equal to not less than thirty per centum of the valuation of said property as assessed on the 1932 state and county tax assessment roll, which valuation shall be reported to the court by the special master in his report of sale; provided, however, that the court may confirm said sale and order said property conveyed to the purchaser for a sale price less than the foregoing should the special master report to the court that he believes that said sale price is the highest and best bid for cash that it is possible to obtain for said property at public sale. If any sale is rejected by the court, then, upon application of the plaintiff at any time, the court shall order a resale of the property upon such terms and conditions as to the court may seem meet and proper.

History.—§2, ch. 21896, 1943; §1, ch. 24343, 1947.

196.19 Murphy act lands; distribution of proceeds.—The order confirming a sale of property in any such suit shall provide for the distribution of the proceeds of sale as follows: First, the costs, exclusive of attorney's fees, shall be paid, and the fees of the clerk of the circuit court shall be limited to suit fees; second, the plaintiff shall be allowed and paid twenty per cent of the balance as fees for the services of its attorney in said suit; and third, of the balance then remaining, forty per cent shall be distributed and paid to the state and sixty per cent shall be distributed and paid to the plaintiff, except that whenever any taxing district is made a party defendant in said suit and is adjudged therein to have tax or assessment liens against the property involved, thirty-five per cent shall be distributed and paid to the state, fifty-five per cent shall be distributed and paid to the plaintiff, and ten per cent shall be distributed and paid to said taxing district, and if more than one of such taxing districts are defendants then said ten per cent

shall be distributed and paid to them in equal parts. Such sale and the confirmation thereof shall satisfy, discharge and extinguish all claims, rights and interests of the state and all liens of the city, village or town, or taxing districts in said proceedings, in, to or upon the property involved therein, and the special master's deed in said proceedings shall vest the purchaser with a fee simple title thereto, free and clear of all claims, rights, interests and liens of the state, the city, village or town, and the taxing districts in said proceedings. The proceeds received by the state in such proceedings shall be disposed of in the manner then provided by law for the disposition of the proceeds derived from the sales by the state of lands the fee simple title to which vested in the state under the provisions of chapter 18296, acts of 1937 (§192.38).

History.—§3, ch. 21896, 1943.

196.20 Murphy act lands; rights foreclosed.—Whenever, in any such suit, the owner or owners, prior to the state, of the property involved therein, or anyone claiming by, through or under said previous owner or owners, or anyone claiming a lien thereon, are parties defendant, the court may adjudicate and decree that they, or any of them, have no right, title, interest, claim or demand in or to said property, and that they, or any of them, are forever barred from making any such assertion.

History.—§4, ch. 21896, 1943.

196.21 Murphy act lands; courts having jurisdiction.—All suits to which the state is made a party defendant under the provisions of this law shall be cognizable only in the courts of the state. Such suits shall be brought in the county where the property involved in such proceedings is located. Process against the state in such suits shall be served upon the comptroller of the state; and process against the taxing districts shall be served as now or hereafter provided by law for service of process on taxing districts. In such suits it shall be the duty of the attorney general of the state to represent the state.

History.—§5, ch. 21896, 1943.

CHAPTER 197

TAX COLLECTION AGENCIES

197.01 Definitions.—A "tax collection agency" is any person who shall collect, pay or offer to collect or pay the taxes or special assessments of another, levied by the state or any of its subdivisions or municipalities, for or in expectation of a commission, compensation or valuable consideration; provided, however, this definition shall not include any person regularly employed by the taxpayers for that and other purposes or an attorney at law in the exercise of his duties as such or any official or person employed by the state or any of its subdivisions or municipalities for the purpose of enforcing the tax law.

History.—§2, ch. 12414, 1927; CGL. 1337.

197.02 Unlawful to conduct agency without complying with this chapter.—No person may act as or conduct a tax collection agency without first complying with the provisions of this chapter.

History.—§1, ch. 12414, 1927; CGL 1336.

197.03 Licenses.—Every tax collection agency shall annually apply for and receive, a license from the county judge of every county wherein such tax collection agency shall propose to pay taxes for others, and pay therefor a state tax of fifty dollars and a county tax of twenty-five dollars, which license may be denied for cause or revoked by said judge by proceedings in the nature of scire facias, for a violation of this chapter. Such license shall expire on the 30th day of September next after its issuance.

History.—§3, ch. 12414, 1927; CGL 1338.

197.04 Stationery to show "Licensed tax collection agency."—Every tax collection agency which shall send or deliver any notice, letter, or receipt, to any taxpayer within or without the state, regarding the collection or payment of taxes, shall cause to be distinctly written or printed thereon the words, "licensed tax collection agency," together with the business address of such tax collection agency.

History.—§4, ch. 12414, 1927; CGL 1339.

197.05 Notices.—Every tax collection agency which shall send or deliver any notice of taxes due or any receipt for taxes, to any taxpayer, shall note thereon the amount of tax and penalty due or paid to each of the several taxing authorities separately, the legal description of the property covered by the tax items, and shall indicate in a separate item the charge made by such agency for services. Should there be any town, city or drainage taxes, or special assessments due, but unpaid, the fact shall be noted on such notice or receipt.

History.—§5, ch. 12414, 1927; CGL 1340.

197.06 Bond of agency.—Before granting any license, or renewal thereof, under this chapter, the county judge shall require such tax collection agency to give bond, with sufficient sureties approved by said judge, in the sum of ten thousand dollars, payable to the state, for the use of any person damaged by reason of the unlawful act, fraud, neglect or embezzlement of such tax collection agency, its members, officers or agents, said bond to be conditioned that said tax collection agency shall comply with the provisions of this chapter, faithfully account for all moneys coming into its hands, and use ordinary care in correctly informing persons with whom it deals of and concerning taxes levied against them. Any person who shall be damaged by reason of the unlawful acts, fraud, neglect or embezzlement of said tax collection agency may bring an action on said bond in its name against the principal and sureties therein.

History.—§6, ch. 12414, 1927; CGL 1341.

197.07 Payment of taxes within five days.—Whenever any tax collection agency shall receive and accept from any taxpayer any moneys for the purpose of paying taxes, said tax collection agency shall pay over said moneys to the proper tax collection authorities of the state, its subdivisions and municipalities, within five days after its receipt, and upon a failure to do so, said tax collection agency and its sureties on the bond herein prescribed shall be liable to said taxpayer, in a civil action, for the principal sum and interest so paid and received, together with all tax penalties thereafter accruing, and interest thereon, costs and damages.

History.—§7, ch. 12414, 1927; CGL 1342.

197.08 Penalties.—Any person who shall violate any of the provisions of §§197.01-197.07 shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense.

History.—§9, ch. 12414, 1927; CGL 7881.

197.09 Embezzlement by tax collection agency.—Any person who, whether as an individual, or as an officer, agent, or manager of tax collection agency, shall receive or collect any money from any taxpayer, upon the representation, promise, or for the purpose of the payment of any taxes, and for which a commission, compensation or valuable consideration is collected or expected, and who shall

convert or embezzle said money to his own use, or to the use of some person other than the taxpayer, or the proper tax officials, or who shall fail to pay over said money to the proper tax official or to the taxpayer, upon demand, with an intent to deprive the taxpayer of said money, or the benefit thereof, shall be guilty of embezzlement, and shall, upon conviction, be punished as if he had been convicted of larceny; provided, that for the purposes of this chapter, said person shall be deemed to have received and collected said money when any check, draft, exchange or other commonly recognized medium of payment shall be cashed, negotiated or deposited in a bank by said person, unless said check, draft or exchange shall be later dishonored by the person or bank upon which it is drawn.

History.—§8, ch. 12414, 1927; CGL 7257.

CHAPTER 198

ESTATE TAXES

198.01 Definitions.—When used in this chapter the term, phrase or word:

(1) "Commissioner" means the comptroller of the state, as commissioner of revenue.

(2) "Executor" means the executor, administrator or curator of the decedent, or, if there is no executor, administrator or curator appointed, qualified and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;

(3) "Person" means persons, corporations, associations, joint stock companies and business trusts;

(4) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described;

(5) "Decedent" shall include the testator, intestate, grantor, bargainor, vendor, or donor;

(6) "Resident" means a natural person domiciled in the state;

(7) "Nonresident" means a natural person domiciled without the state;

(8) "Gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act;

(9) "Net estate" means the net estate as determined under the provisions of the applicable federal revenue act;

(10) "Tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.

(11) "United States" when used in a geographical sense includes only the states, the territories of Alaska and Hawaii, and the District of Columbia.

History.—§2, ch. 16015, 1933; CGL 1936 Supp. 1342(81).

198.02 Tax upon estates of resident decedents.—A tax is imposed upon the transfer of the estate of every person who, at the time of death, was a resident of this state, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states shall exceed the aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than this state)

in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.

History.—§3, ch. 16015, 1933; CGL 1936 Supp. 1342(83).
cf.—§11, art. IX Florida constitution inheritance taxes.

198.03 Tax upon estates of nonresident decedents.—A tax is imposed upon the transfer of real property situate in this state, upon tangible personal property having an actual situs in this state, upon intangible personal property having a business situs in this state and upon stocks, bonds, debentures, notes and other securities or obligations of corporations organized under the laws of this state, of every person who at the time of death was not a resident of this state but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the entire gross estate wherever situate.

History.—§4, ch. 16015, 1933; CGL 1936 Supp. 1342(84); §1, ch. 28031, 1953.

198.04 Tax upon estates of alien decedents.—A tax is imposed upon the transfer of real property situate and tangible personal property having an actual situs in this state and upon intangible personal property physically present within this state of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable federal revenue act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the estate taxable by the United States wherever situate. For the purpose of this section, stock in a corporation organized under the laws of this state shall be deemed physically present within this state. The amount receivable as insurance upon the life of a decedent who at the time of his death was not a resident of the United States, and any moneys deposited with any person carrying on the banking business by or for such decedent who was not engaged in business in the United States at the time of his death, shall not for the purpose of this section, be deemed to be physically present in this state.

History.—§5, ch. 16015, 1933; CGL 1936 Supp. 1342(85).

198.05 Administration of law by comptroller as commissioner of revenue.—The comptroller of the state shall be the commissioner of revenue of the state and as such commissioner shall, except as otherwise provided, have jurisdiction and be charged with the administration and enforcement of the provisions of this chapter.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.06 Examination of books, papers, records, etc., by the commissioner.—The commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, may examine any books, papers, records or memoranda, bearing upon the matter required to be included in the return; may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises, at any convenient place in the county in which such person resides, and may take his testimony with reference to the matter required by law to be included in such return, and may administer oaths to such persons.

If any person summoned to appear under this chapter to testify, or to produce books, papers, or other data, shall refuse to do so, the circuit court for the county in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.07 Appointment of agents by commissioner; bonds of agents; may administer oaths; credentials.—The commissioner may appoint and remove such deputy commissioners, examiners, appraisers, attorneys and employees as he may deem necessary, such persons to have such duties and powers as the commissioner may from time to time prescribe. The salaries of all deputy commissioners, examiners, appraisers, attorneys and employees employed by the commissioner shall be such as he may prescribe, and the commissioner and such deputy commissioners, examiners, appraisers, attorneys and employees shall be reimbursed for traveling expenses as provided in §112.061.

The commissioner may require such of the deputy commissioners, examiners, appraisers, attorneys and employees as he may designate to give bond payable to the state for the faithful performance of their duties in such form and with such sureties as he may determine, and all premiums on such bonds shall be paid by the state.

All officers, empowered by law to administer oaths and the commissioner, and the deputy commissioners, examiners, appraisers and attorneys appointed by him may administer an oath to all persons giving any testimony before them or to take the acknowledgment of any person in respect to any return or report required under this chapter.

All deputy commissioners, examiners, appraisers and attorneys appointed by the commissioner shall have for identification purpose, proper credentials signed by the commissioner and exhibit the same upon demand.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); §19, ch. 63-400.
cf.—§112.061 Traveling expenses.
§113.07 Bonds of officials.

198.08 Rules and regulations.—The commissioner may from time to time make such rules and regulations not inconsistent with this chapter as he may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with

respect to the estate tax provisions of the revenue act of the United States in so far as they shall be applicable hereto. The commissioner may from time to time prescribe such forms as he shall deem proper for the administration of this chapter.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.09 Information confidential.—Except in accordance with proper judicial order, or as otherwise provided by law, it is unlawful for the commissioner, or any deputy commissioner, examiner, appraiser, attorney or other employee, to divulge or make known in any manner the value of any estate or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof; provided, however, that the commissioner may permit the commissioner of internal revenue, or any collector of internal revenue, or internal revenue agent of the United States or the proper officer of any state imposing an estate tax or inheritance tax, or the authorized representative of such officer, to inspect the estate tax returns of any individual, or may furnish to such officer or his authorized representatives an abstract of the return of any executor or furnish information concerning any item contained in any return or disclosed by the report of any investigation of the return of any executor.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.10 Suits by or against commissioner; special counsel.—The commissioner may sue and be sued in his name as such commissioner, but shall not be required to give supersedeas or other bond in any cause or court of this state.

Said commissioner may employ special counsel to advise him and to conduct any litigation or proceeding that may be brought by or against him, and such special counsel shall be paid such compensation as said commissioner shall deem proper.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.11 Appointment of special appraisers.—The commissioner may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the commissioner to be, subject to the tax imposed by this chapter, and such special appraisers shall be paid such compensation as said commissioner shall deem proper.

History.—§6, ch. 16015, 1933; CGL 1936 Supp. 1342(86).

198.12 Notice of death to commissioner; tax return.—The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the commissioner on the form prepared and published by the commissioner known as the preliminary notice and report. If a federal estate tax return is required by the applicable federal revenue act then a copy of the preliminary notice filed with the federal government may be filed with the commissioner in lieu of such preliminary notice and report.

History.—§7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); §1, ch. 29718, 1955.

198.13 Tax return to be made in certain cases.—The executor of every estate required by the laws of the United States to file a federal estate tax return shall file with the commissioner within fifteen months from the date of death a return consisting of an executed copy of the federal estate tax return, and shall file with such return all supplemental data, if any, as may be necessary to determine and establish the correct tax under this chapter. Such return shall be made in the case of every decedent who at the time of his death was not a resident of the United States and whose gross estate shall include any real property situate and tangible personal property having an actual situs in the state and intangible personal property physically present within the state.

History.—§7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); §2, ch. 28031, 1953; §2, ch. 29718, 1955.

198.14 Failure to make return; extension of time for filing.—If the federal taxing authorities grant an extension of time for filing a return the commissioner shall allow a like extension of time for filing upon the filing by the executor of a copy of such federal extension with the commissioner. An extension of time for filing a return shall not operate to extend the time for payment of the tax. If any person fails to file a return at the time prescribed by law or files, willfully or otherwise, a false or fraudulent return, the commissioner shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any such return so made by the commissioner shall be prima facie good and sufficient for all legal purposes.

History.—§7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); §3, ch. 29718, 1955.

198.15 When tax due; extension; interest.—The tax imposed by this chapter shall be due and payable fifteen months after the decedent's death, and shall be paid by the executor to the commissioner. Where the commissioner finds that the payment on the due date of the tax or any part thereof would impose undue hardship upon the estate, the commissioner may extend the time for payment of any such part, but no extension shall be for more than one year and the aggregate of extensions with respect to any estate shall not exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless a further extension be granted. If the time for the payment is thus extended there shall be collected, as part of such amount, interest thereon at the rate of six per cent per annum from the due date of the tax to the date the same shall be paid.

History.—§8, ch. 16015, 1933; CGL 1936 Supp. 1342(88); §3, ch. 28031, 1953.

198.16 Notice of determination of deficiency in federal estate tax to be filed with commissioner.—It shall be the duty of the executor to file with the commissioner within sixty days after a final determination of any deficiency in federal estate tax has been made, written notice thereof. If, based upon such deficiency and the ground therefor, it shall appear that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest, at the rate of one-half of one per cent per month from the due date of the tax, shall be paid upon notice and demand by the commissioner. In the event the executor shall fail to give the notice required by this section, any additional tax which shall be owing may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time prior to the filing of such notice or within thirty days after the delinquent filing of such notice, notwithstanding the provisions of §198.28.

History.—§9, ch. 16015, 1933; CGL 1936 Supp. 1342(89); §4, ch. 28031, 1953; §4, ch. 29718, 1955.

198.17 Deficiency; hearing by commissioner; procedure on appeal.—If upon examination of any return a tax or a deficiency in tax is disclosed, the executor shall be notified of such tax or deficiency by the commissioner by registered mail, and given a period of not less than thirty nor more than sixty days from such notice in which to show cause why such tax or deficiency should not be paid. The commissioner shall proceed to hear and determine all questions involving such tax or deficiency upon not less than ten days' notice to the executor of the date of such hearing, and a final determination thereon shall be made as quickly as practicable, and a copy of such determination, together with notice and demand, shall be sent by registered mail to the executor. Such tax or deficiency in tax shall be assessed and paid together with the penalty and interest, if any, applicable thereto, within sixty days after such notice and demand by the commissioner. Such determination of tax or deficiency in tax by the commissioner shall be final unless the executor, or other party interested, shall within fifty days from the date of the receipt of a copy of such determination, bring a suit in equity against the commissioner and such other parties as are interested. It shall not be necessary to join as parties to such suit any heir-at-law, next of kin, distributee, legatee or devisee of said decedent. The complaint shall contain a concise statement of the facts and shall have annexed thereto a copy of the return and of the findings and determination of the commissioner and shall pray for an abatement of the tax, in such amount and to such extent, in part or in whole, and for such other relief as the executor shall desire. Such suits shall proceed as other suits in equity. Either the commissioner, the executor or any other party may appeal to the appropriate district court of appeal in the manner and within the time prescribed by the Florida appellate rules, or, if authorized by Art. V of the state constitution, to the supreme court.

History.—§10, ch. 16015, 1933; CGL 1936 Supp. 1342(90); §5, ch. 29718, 1955; §19, ch. 63-559.

cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

198.18 Failure to pay tax; civil penalties.—If any part of a deficiency in tax due under the provisions of this chapter is due to negligence or intentional disregard of the provisions of this chapter, of the rules and regulations issued pursuant hereto, with knowledge thereof but without intent to defraud, there shall be added as a penalty five per cent of the total amount of the deficiency in tax, and if any part of such deficiency is wilfully made with intent to defraud, there shall be added as a penalty fifty per cent of the total amount of such deficiency; which penalty shall become due and payable upon notice and demand by the commissioner and such executor shall be liable to the state personally and on his official bond, if any, for any loss to the state accruing under the provisions of this section through his negligence or wilful neglect. No interest shall be collected upon the amount of any penalty. The commissioner may compromise or remit any penalty imposed pursuant to this section.

History.—§11, ch. 16015, 1933; CGL 1936 Supp. 1342(91); §6, ch. 29718, 1955.

198.19 Receipts for taxes.—The commissioner shall issue to the executor upon payment of the tax imposed by this chapter, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. If the executor files a complete return and makes written application to the commissioner for determination of the amount of the tax and discharge from personal liability therefor, the commissioner as soon as possible, and in any event within one year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the commissioner a receipt in writing showing such discharge; provided, however, that such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due, while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof; but after such discharge is given, no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

History.—§12, ch. 16015, 1933; CGL 1936 Supp. 1342(92).

198.20 Failure to pay tax when due, commissioner's warrant, etc.—If any tax imposed by this chapter or any portion of such tax be unpaid within ninety days after the same be-

comes due, and the time for payment be not extended, the commissioner shall issue a warrant directed to the sheriff of any county of the state in which the estate or any part thereof may be situated, commanding him to levy upon and sell the real and personal property of such estate found within his county, for the payment of the amount thereof, with such interest and penalties, if any, as may have accrued thereon or been assessed against the same, together with the cost of executing the warrant, and to return such warrant, to the commissioner and pay to him the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant as are now allowed by law for like services to be collected in the same manner as now provided by law. Alias and pluries warrants may issue from time to time as said commissioner may deem proper until the entire amount of the tax, deficiency, interest, penalties and costs have been recovered.

History.—§13, ch. 16015, 1933; CGL 1936 Supp. 1342(93).

198.21 Tax due payable from entire estate; third persons.—If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the commissioner shall not be charged with enforcing contribution from any person.

History.—§14, ch. 16015, 1933; CGL 1936 Supp. 1342(94).

198.22 Lien for unpaid taxes.—Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien, and except that such part of the gross estate of a resident decedent as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of such lien and such lien shall then attach to the consideration received for such property from such purchaser, mortgagee, or pledgee. If the commissioner is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for, he may issue a waiver releasing any or all property of such estate from the lien herein imposed. There shall be paid to the commissioner a fee of one dollar for each waiver so issued.

History.—§15, ch. 16015, 1933; CGL 1936 Supp. 1342(95); §1, ch. 57-108; §13, ch. 59-1.

198.23 Personal liability of executor, etc.—If any executor shall make distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due the state under this chapter, or obtained the release of such property from the lien of such tax he shall become personally liable for the tax so due the state, or so much thereof as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into his hands, custody or control.

History.—§16, ch. 16015, 1933; CGL 1936 Supp. 1342(96).

198.24 Sale of real estate by executor to pay tax.—Every executor shall have the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this chapter as he may have for the payment of the debts of the decedent.

History.—§17, ch. 16015, 1933; CGL 1936 Supp. 1342(97).

198.25 Actions to enforce payment of tax.—Actions may be brought within the time or times herein specified by the commissioner to recover the amount of any taxes, penalties and interest due under this chapter. Every such action shall be brought in the county where the estate is being or has been administered, or if no administration be had in this state, then in any county where any of the property of the estate shall be situate.

History.—§18, ch. 16015, 1933; CGL 1936 Supp. 1342(98).

198.26 No discharge of executor until tax is paid.—No final account of an executor of the estate of a nonresident, nor of the estate of a resident where the value of the gross estate wherever situate exceeds sixty thousand dollars shall be allowed by any court unless and until such account shows, and the judge of said court finds, that the tax imposed by the provisions of this chapter upon said executor, which has become payable, has been paid. The certificate of the commissioner of nonliability for tax or his receipt for the amount of tax therein certified shall be conclusive in such proceedings as to the liability or the payment of the tax to the extent of said certificate.

History.—§19, ch. 16015, 1933; CGL 1936 Supp. 1342(99); §7, ch. 29718, 1955.

198.27 Agreements as to amount of tax due.—For the purpose of facilitating the settlement and distribution of estates held by executors, the commissioner may, on behalf of the state, agree upon the amount of taxes at any

time due or to become due from such executor under the provisions of this statute, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

History.—§20, ch. 16015, 1933; CGL 1936 Supp. 1342(100).

198.28 **Time for assessment of tax.**—The amount of estate tax due under this chapter shall be determined and assessed within four years from the date the return was filed, or within a period expiring ninety days after the last day on which the assessment of a deficiency in federal estate tax may lawfully be made under applicable provisions of the internal revenue laws of the United States, whichever date last occurs, and no suit or other proceedings for the collection of any tax due under this chapter shall be begun after such date; provided, however, that in the case of a false or fraudulent return or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

History.—§21, ch. 16015, 1933; CGL 1936 Supp. 1342(101); §5, ch. 28031, 1953; §8, ch. 29718, 1955.

198.29 **Refunds of excess tax paid.**—Wherever it appears upon the examination of any return made under this chapter or upon proof submitted to the commissioner by the executor, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, then the amount of such overpayment, together with any overpayment of interest thereon shall be refunded to the executor and paid upon the warrant of the commissioner drawn upon the state treasurer who shall honor and pay the same; and such refund shall be made by the commissioner as a matter of course regardless of whether or not the executor has filed a written claim therefor, except that upon request of the commissioner, the executor shall file with the commissioner a conformed copy of any written claim for refund of federal estate tax which has theretofore been filed with the United States. Notwithstanding the foregoing provisions, no refund of estate tax shall be made nor shall any executor be entitled to bring any action for refund of estate tax after the expiration of four years from the date of payment of the tax to be refunded unless there shall have been filed with the commissioner written notice of any administrative or judicial determination of the federal estate tax liability of the estate, whichever shall last occur, and such notice shall have been so filed not later than sixty days after such determination shall have become final. For the purpose of this section, an administrative determination shall be deemed to have become final on the date of receipt by the executor or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the executor or any other interested party shall receive notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of said estate. A final judicial determination shall be deemed to have occurred on the date on which any judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final. Nothing herein contained shall be construed to prevent an executor from bringing or maintaining an action in any court of competent jurisdiction within any period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item or items of property.

History.—§22, ch. 16015, 1933; CGL 1936 Supp. 1342(102); §8-A, ch. 29718, 1955.

198.30 **County judge to furnish commissioner with names of decedents, etc.**—The county judges of this state shall, on or before the tenth day of every month, notify the commissioner of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month, and such report shall contain any other information which the county judge may have concerning the estate of such decedents; and said county judge shall also furnish forthwith such further information, from the records and files of his office in regard to such estates, as the commissioner may from time to time require.

History.—§23, ch. 16015, 1933; CGL 1936 Supp. 1342(103); §9, ch. 29718, 1955.

198.31 **Duties and powers of corporate executors of nonresident decedents.**—If the executor of the estate of a nonresident be a corporation duly authorized, qualified and acting as such executor in the jurisdiction of the domicile of such decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as may be authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that such corporation may be prohibited from exercising, in this state, any powers as executor, but nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as executor, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent herein expressly provided.

History.—§24, ch. 16015, 1933; CGL 1936 Supp. 1342(104).

198.32 **Prima facie liability for tax.**—The estate of each decedent whose property shall

be subject to the laws of the state shall be deemed prima facie liable for estate taxes under this chapter, and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this chapter. Such presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this chapter, such settlement to be shown by receipts for all taxes due to be issued by the commissioner as provided for in this chapter. Whenever it shall be made to appear to the commissioner that an estate is not subject to any tax under this chapter such commissioner shall issue to the executor, administrator, curator or other personal representative, or to the heirs. devisees, or legatees of the decedent, a certificate in writing to that effect, showing such nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment. Such certificate of nonliability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes. There shall be paid to the commissioner a fee of one dollar for each certificate so issued.

History.—§25, ch. 16015, 1933; CGL 1936 Supp. 1342(105).

198.33 Discharge of estate, notice of lien, limitation on lien, etc.—Where no receipt for the payment of taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate and inheritance taxes under this chapter after a lapse of ten years from the date of the filing with the commissioner of notice of the decedent's death, or after a lapse of ten years from the date of the filing with the commissioner of an estate tax return, whichever date shall be earlier, unless the commissioner shall make out and file and have recorded in the public records of the county wherein any part of the estate of the decedent may be situated in this state, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the state under this chapter, which notice of lien shall continue said lien in force for an additional period of five years or until payment is made. Such notice of lien shall be filed and recorded in the book of deeds in the office of the clerk of the circuit court; provided, where no receipt for the payment of taxes, or no certificate of nonliability for taxes, has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state, if said decedent was a resident of this state at the time of his death, shall be deemed fully acquitted and discharged of all liability for tax under this chapter after a lapse of ten years from the date of the death of the decedent, unless the commissioner shall make out and file and have recorded notice of lien as herein provided, which notice shall continue said lien in force against such property of the estate as is situate in the county wherein said notice of lien was recorded for an additional period of five years or until payment is made.

Notwithstanding anything to the contrary in this section or this chapter, no lien for estate and inheritance taxes under this chapter shall continue for more than twenty years from the date of death of the decedent. whether the decedent be a resident or nonresident of this state.

History.—§26, ch. 16015, 1933; CGL 1936 Supp. 1342(106); §6, ch. 28031, 1953; §10, ch. 29718, 1955; §2, ch. 57-108.
cf.—§28.24 Fees of clerk of circuit court.

198.331 Retroactive effect of §§198.22 and 198.33.—The provisions of §§198.22 and 198.33 as amended by ch. 57-108 shall apply to estates of decedents dying after 12:01 a.m., eastern standard time, October 1, 1933; provided, however, that the commissioner shall have one year from the date this act becomes law in which to enforce any lien for unpaid estate taxes that could be so enforced by the commissioner except for the provisions of this act.

History.—§3, ch. 57-108.

198.34 Disposition of proceeds from taxes.—All taxes and fees levied and collected under this chapter shall be paid into the treasury of the state to the credit of the general revenue fund.

History.—§28, ch. 16015, 1933; CGL 1936 Supp. 1342(108); §10, ch. 26869, 1951.
cf.—§550.30(1) Race track funds guaranteed from general revenue fund.

198.35 Interpretation and construction.—When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States shall apply to and be followed in the interpretation of this chapter.

History.—§32, ch. 16015, 1933; CGL 1936 Supp. 1342(111).

198.36 Failure to produce records; penalty.—Whoever fails to comply with any duty imposed upon him by this law, or having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the commissioner or any deputy commissioner, examiner, appraiser, or attorney appointed pursuant to this chapter, who desires to examine the same in the performance of his duties under this chapter, shall be liable to a penalty of not exceeding five hundred dollars to be recovered, with costs of suit, in a civil action in the name of the state.

History.—§27, ch. 16015, 1933; CGL 1936 Supp. 1342(107).

198.37 Failure to make return; penalty.—Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any infor-

mation, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, be fined not more than ten thousand dollars, or imprisoned for not more than one year, together with the costs of prosecution.

History.—§27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a).
cf.—§775.06 Alternative punishment.

198.38 **False return; penalty.**—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under this chapter, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony and, upon conviction thereof, be fined not more than ten thousand dollars or imprisoned for not more than five years, together with the costs of prosecution.

History.—§27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a).
cf.—§775.06 Alternative punishment.

198.39 **False statement in return; penalty.**—Whoever knowingly makes any false statement in any notice or return required to be filed under this chapter shall be liable to a penalty of not exceeding five thousand dollars or imprisonment not exceeding one year.

History.—§27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a).
cf.—§775.06 Alternative punishment.

198.40 **Failure to pay tax, evasion of tax, etc.; penalty.**—Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than ten thousand dollars or imprisoned for not more than five years, together with the costs of prosecution.

History.—§27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a).
cf.—§775.06 Alternative punishment.

198.41 **Effectiveness of this chapter, etc.**—This chapter shall remain in force and effect so long as the government of the United States retains in full force and effect as a part of the revenue laws of the United States a federal estate tax, and this chapter shall cease to be operative as and when the government of the United States ceases to impose any estate tax of the United States.

History.—§29, ch. 16015, 1933; CGL 1936 Supp. 1342(109).

198.42 **Short title.**—This chapter may be cited as the estate tax law of Florida.

History.—§1, ch. 16015, 1933; CGL 1936 Supp. 1342(80).

198.43 **Effective date of this chapter.**—The provisions of this chapter shall apply to estates of decedents dying after 12:01 o'clock A. M., eastern standard time, October 1st, A. D. 1933, and estates of decedents dying prior thereto shall be taxed in accordance with the statutes and laws of Florida in force prior to said date, which statutes and laws shall remain in force after the adoption of these statutes for such purpose.

History.—§33, ch. 16015, 1933; CGL 1936 Supp. 1342(82).
cf.—Tax upon estates of persons dying between: November 4, 1930 and May 16, 1931, chapter 14738, acts 1931.
May 16, 1931 and October 1, 1933, chapter 14739, acts 1931.
Prior to November 4, 1930, chapter 15746, acts 1931.

198.44 **Certain exemptions from inheritance and estate taxes.**—The tax imposed under the inheritance and estate tax laws of this state in respect to personal property (except tangible property having an actual situs in this state) shall not be payable, (a) if the transferer at the time of his death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of his death did not impose a death tax of any character in respect to property of residents of this state (except tangible personal property having an actual situs in such state, territory or district), or (b) if the laws of the state, territory or district of the residence of the transferer at the time of his death contained a reciprocal exemption provision under which non-residents were exempted from said death taxes of every character in respect to personal property (except tangible personal property having an actual situs therein), and provided that the state, territory or district of the residence of such non-resident decedent allowed a similar exemption to residents of the state, territory or district of residence of such decedent.

History.—§1, ch. 15747, 1931; CGL 1936 Supp. 1342(70).

CHAPTER 199

INTANGIBLE PERSONAL PROPERTY TAXATION

199.01 Definitions. — "Intangible personal property" is hereby defined as all personal property which is not in itself intrinsically valuable but which derives its chief value from that which it represents. "Taxpayers" shall mean a person, firm or corporation who or which shall be liable for taxes under this chapter for intangible personal property.

History.—§§2, 4, ch. 15789, 1931; CGL 1936 Supp. 1041(2); §§2, 4, ch. 20724, 1941.

199.02 Classes of intangible personal property.—For the purpose of taxation intangible personal property is hereby divided into four classes to be known as class A, B, C and D, intangible personal property.

(1) Class A intangible personal property is hereby defined as all moneys, United States legal tender notes, bank deposits of all kinds, certificates of deposits, cashiers' and certified checks, bills of exchange, drafts, and money placed with savings, building and loan associations.

(2) Class B intangible personal property is hereby defined as being all stocks, or shares of incorporated or unincorporated companies (except partnerships) all bonds, except bonds of the several municipalities, counties and other taxing districts of the state, and except bonds of the United States government and its agencies; all notes, bonds, and other obligations bearing date prior to January 1, 1942, for payment of money which are secured by mortgage, deed of trust or other liens upon real or personal estates situated in Florida; provided, that only that part of the value of the mortgage deed of trust, or other lien, the property of which is located within the state shall bear to the whole value of the property described in said obligation shall be included; and the beneficial interest of residents of Florida in trust estates of all kinds when the trustee resides outside of the state, or if the trustee is a corporation and has its principal place of business outside of the state; provided, that if the trustee returns to the tax assessor such beneficial interest and pays the tax thereon to the tax collector in Florida, then the owner of such beneficial interests shall not be required to return the same for taxation; provided, further, that when the trustee is a resident of Florida and returns the corpus of the trust for taxation as provided by law there shall be no tax upon the beneficial interest in such trust.

All such class B intangible personal property shall be taxed at its true taxable value hereinafter set forth, as of January 1 of each year, or as hereinafter provided.

(a) *Valuation of stock, shares or interest.*—

1. Shares of stock of corporations regularly listed on any stock exchange or regularly traded over the counter shall be taxed at the value per share published as the closing value of the previous year.

2. Shares of stock not listed on any stock exchange or not regularly traded over the counter, which are closely-held and for which no open market exists, shall be taxed at full

book-value arrived at by addition of

a. Capital stock,

b. Paid-in or capital surplus,

c. Earned surplus and undivided profits. Such value shall be deemed the true taxable value, such book value shall be determined as of the close of the corporation's fiscal year prior to January 1 of each year.

3. Every company or corporation, domestic or foreign, shall on or before April 1, of each year, forward to the comptroller of the state, a list of all registered holders of its securities, of record as of the end of the preceding year, taxable under this section, whose mailing address on the records of the company or corporation or its agents is within the state. Such list shall contain the names, addresses, number of class of shares of stock and the face amount and class of bonds, held by each such registered holder.

Any company or corporation may file an intangible tax return on all the securities issued by the said company or corporation and thereby be relieved of furnishing such list as provided for herein.

All security brokers and dealers, registered under the laws of Florida, shall furnish to the comptroller of the state, on or before April 1 of each year the names, addresses, number and class of shares of stock and the face amount and class of bonds, held by each customer, as of December 31 of the preceding year, whose mailing address is in the state; provided however, such brokers and dealers shall be relieved of such on those securities which are held in the name of such broker or dealer and where such broker or dealer files an intangible tax return including those securities on said return.

The report or lists so furnished hereunder shall be solely for the purpose of assessing said intangible tax and shall be confidential and shall not be made public.

4. The blockage rule or discount theory shall have no effect on valuation of shares of stocks as defined in 1. and 2.

(3) Class C intangible personal property is hereby defined as being all notes, bonds and other obligations bearing date subsequent to December 31, 1941, for payment of money which are secured by mortgage, deed of trust or other liens upon real property situated in Florida; provided, that only that part of the value of the mortgage, deed of trust, or other lien, the real property of which is located within the state shall bear to the whole value of the real property described in said obligation shall be included.

(4) Class D intangible personal property shall include all other intangible personal property not embraced in classes A, B or C.

(5) Intangible personal property belonging to the state, or any political subdivision thereof, and intangible personal property belonging to any religious, charitable, benevolent or educational association shall be exempt from taxation.

(6) Nothing herein contained shall apply to franchises.

(7) Nothing herein contained shall apply to the interest in the firm or partnership of a member of an unincorporated firm, or of a partner in a general or limited partnership, nor shall it apply to the interest of any such person in the surplus or net worth of the firm or partnership.

It is declared to be the legislative intent that this subsection is an interpretation of the prior law, and that the provisions of chapter 199 were never intended to tax any interest of a member of an unincorporated firm, or the interest of any partner, in the firm or partnership.

(8) Nothing herein contained shall apply to the assets of a corporation registered under the investment company act of 1940 of the United States, 15 U. S. Code, section 80a-1 - 80a-52, as amended or a federally licensed small business investment company.

History.—§3, ch. 15789, 1931; CGL 1936 Supp. 1041(3); §3, ch. 20724, 1941; §§1, 4, ch. 21943, 1943; §1, ch. 22867, 1945; (7) n. §§1, 2, ch. 59-36; (2) §2, ch. 61-159; (8) n. §1, ch. 61-285. cf.—§665.21 Regulation of loans to stockholders.

199.021 Business situs.—All class D intangible personal property as defined in §199.02(4) wheresoever situate arising out of or issued in connection with the sale, leasing or servicing of personal property in this state are subject to taxation under this chapter, it being the legislative intent to provide that such intangibles shall be assessable by this state regardless of where they are kept, approved as to their creation, or paid; provided however that all bills, notes or accounts receivable, obligations or credits arising from the sale of personal property manufactured in this state where such sale is made by a nonresident to a nonresident debtor shall not be taken to have arisen from business done in this state. This provision shall apply with equal force to any person, firm or corporation representing business interests in this state that may claim a domicile elsewhere, the intent being further that no nonresident, either by himself or through an agent, shall transact business in this state without paying to the state a corresponding tax with that exacted of its own citizens; provided further that the provisions of this section shall in no way be construed to alter the tax situs of class D intangibles not connected with the sale, leasing or servicing of personal property in this state.

History.—§1, ch. 63-331.

199.03 Comptroller to make rules and prescribe forms.—It shall be the duty of the comptroller and he shall have the power to make such rules and regulations as may be necessary to carry out and execute the intent of this chapter.

History.—§5, ch. 15789, 1931; CGL 1936 Supp. 1041(4); §5, ch. 20724, 1941.

199.04 Assessment of intangible personal property.—Intangible personal property shall be assessed by the tax assessor of each and every county in the state on a separate tax roll, which shall be designated the intangible personal property tax roll, the form of which shall be prescribed by the comptroller. Such tax

roll shall distinctly show the name and address of the taxpayer and the amount of the valuation for tax purposes of intangible personal property, assessed against such taxpayers on said tax roll; provided, however, that no tax shall be extended on said intangible personal property tax roll in an amount less than twenty-five cents.

History.—§6, ch. 15789, 1931; CGL 1936 Supp. 1041(5); §6, ch. 20724, 1941; §2, ch. 22867, 1945.

199.05 Basis of assessment.—The tax assessor shall assess all intangible personal property at its full cash value.

History.—§7, ch. 15789, 1931; CGL 1936 Supp. 1041(6); §7, ch. 20724, 1941.

199.06 Assessor's and collector's commissions.—The county assessor shall be entitled to receive the following commissions, upon the amount of intangible personal property taxes assessed, excluding errors, and the county tax collector shall be entitled to the following commissions upon the aggregate amount of intangible personal property taxes collected by him and paid to the comptroller, to-wit: On the first five thousand dollars, ten per cent; on the next five thousand dollars, five per cent; and on the balance two per cent. The commissions for assessing and collecting such taxes shall be audited and allowed by the comptroller and paid by the treasurer upon warrants therefor. The commissions allowed the county assessor and county tax collector under this chapter are independent and exclusive of any commissions that may be due them for assessing and collecting other taxes.

History.—§8, ch. 27024, 1941.

199.07 Returns of intangible personal property for taxation.—It is hereby made the duty of every person, firm or corporation in this state owning or having control, management, or custody of intangible personal property which is subject to taxation under the laws of Florida, including trustees, executors, administrators, receivers and all other fiduciaries, to file a sworn return of the same with the county assessor of taxes in the proper county on or before the first day of April of each and every year, giving the character, description, location and full cash value of same according to the best of the knowledge and belief of the person making the return. It is provided that intangible personal property of a taxable class owned by or under the control, management or custody of every person who becomes a legal resident of this state subsequent to January 1st and prior to the following April 1st of any year shall be subject to taxation on the date upon which such person becomes a legal resident of this state and such person shall file a return and be liable for intangible personal property taxes for said year; provided, however, that the tax assessor in his discretion may grant such taxpayer a reasonable extension of time in which to file a return; and provided, further, that credit shall be allowed against such taxes for any amount of intangible or income taxes such taxpayer is required to pay to another state for all or any part of said year on said intangible personal property or the income therefrom. Intangible personal property tax returns shall not be open to inspection except by the officers of the state and county whose duties require their examination thereof or under an order of a court of competent jurisdiction requiring the same as relevant evidence. No officer examining such returns shall divulge their contents, other than the total value and tax thereon, or make or permit to be made any copy or list therefrom. When any intangible personal property tax or assessment shall have been paid, it shall be the duty of the tax assessor to return and deliver to the taxpayer at his request, the original intangible personal property tax return or returns of the taxpayer upon or in connection with which such intangible personal property taxes shall have been assessed and levied. If a taxpayer shall not request the surrender of his intangible personal property tax return after having paid his intangible personal property tax, it shall be the duty of the tax assessor to destroy all intangible personal property tax returns filed with him within three years after the same shall have been paid.

History.—§8, ch. 15789, 1931; CGL 1936 Supp. 1041(7); §9, ch. 20724, 1941; am. §3, ch. 22867, 1945.

199.08 Where tax returns shall be filed.—Intangible personal property shall be assessed in the county where the taxpayer resides or has his usual domicile. In case of corporations such intangible personal property tax returns shall be assessed and levied in the county in which the corporation has its principal office, or place of business.

History.—§9, ch. 15789, 1931; CGL 1936 Supp. 1041(8); §10, ch. 20724, 1941.

199.09 Assessor may fix valuations; notice in case of increase; appeals.—In the event any person, firm or corporation shall make or file a return as required by this chapter, the true and just value of the intangible personal property owned by him shall be presumptively considered to be that shown in the tax returns, unless the tax assessor shall, upon his knowledge or after investigation, find that the taxpayer has intangible property subject to taxation which is not described in such return or that the valuation of that which is described in such return is greater than the valuation shown by such return, in which event the tax assessor shall give notice by mail to the person filing the return. The taxpayer shall have the right to appeal from the decision of any tax assessor made under this section to the board of county commissioners sitting as a board of equalization, whose decision after a hearing shall be deemed and held to be final.

History.—§10, ch. 15789, 1931; CGL 1936 Supp. 1041(9); §11, ch. 20724, 1941.

199.10 Effect of return.—Regardless of any return which may be filed by any taxpayer, the valuation of any item or items of property shown in the return shall in no case prevent the county assessor of taxes from determining and assessing the true taxable value, according to his information and best judgment, or from determining and entering upon the return of the tax-

payer any item or items of intangible personal property which the county assessor may find has been omitted therefrom, subject to the restrictions and limitations mentioned in this chapter.

History.—§11, ch. 15789, 1931; CGL 1936 Supp. 1041(10); §12, ch. 20724, 1941.

199.11 Annual levy.—On and after January 1, 1942, there is hereby annually levied and assessed on all intangible personal property, to be assessed and collected as other taxes are assessed and collected and to be paid into the intangible tax fund of the state and apportioned therefrom as hereinafter set forth, the following tax:

(1) On all class A intangible personal property one-tenth of one mill on the dollar of the taxable value of such class A intangible personal property.

(2) On all class B intangible personal property, for two years beginning January 1, 1962, one and one half mills on the dollar of the taxable value of such class B intangible personal property; thereafter, beginning January 1, 1964, one mill on the dollar of the taxable value of such class B intangible personal property.

(3) On all class C intangible personal property two mills on the dollar of the taxable value of such class C intangible personal property, which taxable value shall be the principal amount of the indebtedness, evidenced by such obligation, which tax shall be due and payable when mortgage, deed of trust or other lien is executed and shall be paid to the county tax collector before the mortgage, deed of trust or other lien securing such indebtedness is presented for recordation. Every person who shall take, receive or record any mortgage, deed of trust or other written specific lien in the nature of a mortgage upon real property situated in Florida shall pay the tax prescribed by this subsection in respect to the debt or obligation secured thereby, and in evidence thereof the tax collector, upon receiving payment thereof, shall place on such mortgage, deed of trust or the instrument evidencing such specific lien a notation showing the amount of tax levied by this subsection and received by him. Any person taking such mortgage, deed of trust or other lien who shall fail or refuse to pay such tax shall be guilty of a misdemeanor, and upon conviction shall be fined accordingly. No mortgage, deed of trust or written evidence of a specific lien in the nature of a mortgage on real property shall be admissible to record or be recorded in any public record of this state or be enforceable in any court of this state unless and until the tax levied by this subsection shall have been paid and until the notation of the tax collector shall have been placed thereon showing the payment of the tax, except where such tax is collected and notation made by the clerk of the circuit court as hereinafter provided. The class C intangible tax may be paid to the clerk of the circuit court at the time the mortgage, deed of trust or lien securing such indebtedness is presented for recordation. The clerk shall receive such payment in behalf of the county tax collector and shall on the last day of the month transmit the monies to the tax collector together with a list of all instruments upon which the tax was paid. The clerk shall upon receiving payment of the tax, place on such mortgage, deed of trust or the instrument evidencing such specific lien a notation showing the amount of tax levied by this subsection and received by him. The tax collector shall, on the first of each month, report to the county tax assessor the receipts from this source for the previous month and the tax assessor shall thereupon enter the notes, bonds or other obligations represented thereby upon the assessment roll for the current year; provided however, that if the assessment roll for the current year has been delivered to the tax collector, the tax assessor shall file an amendment to the assessment roll and certify the same to the tax collector who shall state thereon that the tax has been paid. The tax imposed by this subsection shall be the only intangible tax levied on such notes, bonds and other obligations under this chapter.

(4) On all class D intangible personal property one mill on the dollar of the taxable value of such class D intangible personal property.

(5) (a) On all class C intangible personal property where the real estate described in the mortgage, deed of trust or other lien is located in two or more counties, that part of the tax shall be assessed and collected in each county in proportion to the value of the lands located in each county shall bear to the whole.

(b) Any mortgage, deed of trust or other lien given to replace a defective mortgage, deed of trust or other lien, covering the identical real property as the original, and securing the identical original note or obligation, shall be recorded without payment of additional tax upon proof of payment of the tax upon the original recording. The tax collector or clerk shall place a notation on the new mortgage, deed of trust, or other lien, showing that the tax has been paid on the original recording.

(c) If the mortgage, deed of trust or other lien subject to the tax levied by this subsection secures future advances as provided in §697.04 the tax shall be paid at the time of execution on the initial debt or obligation secured excluding future advances; at the time, and so often as, any future advance is made the tax shall be paid on all sums then advanced. The trustee under any such deed of trust or the owner of any such mortgage or other instrument evidencing such lien making any such advance shall pay the tax prescribed in this subsection in respect to the amount of the advance and the tax collector or clerk shall place a notation on the record of the mortgage, deed of trust or other instrument evidencing such lien, or upon any supplemental instrument evidencing such advance and offered for recording, showing the amount of tax received by

him. Failure to pay the tax shall not affect the lien for any such future advance given by §697.04, but any person who shall fail or refuse to pay such tax due by him shall be guilty of a misdemeanor, and upon conviction shall be fined accordingly. The mortgage, deed of trust, or other instrument shall not be enforceable in any court of this state as to any such advance unless and until the tax due thereon upon each advance that may have been made thereunder has been paid.

History.—§12, ch. 15789, 1931; CGL 1936 Supp. 1041(11); §13, ch. 20724, 1941; §§2, 4, ch. 21943, 1943; §1, ch. 26769, 1951; (3) §1, ch. 28272, 1953; (5) n. §1, ch. 29920, 1955; (1) (2) §1, ch. 57-399; (2) §1, ch. 61-159.

199.12 Powers and duties of board of equalization.—At the meeting of the board of county commissioners as a board of equalization, for the purpose of hearing complaints and receiving testimony and for reviewing, revising and equalizing the intangible personal property tax roll, the board may make such changes in valuations and assessments of intangible personal property, as shown on the intangible personal tax roll submitted by the tax assessor, and may make such additions of taxable intangible personal property thereto which have been omitted therefrom. If, however, the board shall increase the assessment appearing on such intangible personal property tax assessment roll, it shall publish or post in the manner prescribed by law, notice that the board has increased the assessments of certain persons (whose names need not be stated) and will sit as a board of equalization on the date to be stated in such notice for the purpose of hearing complaints and testimony, if any, in respect to such increased or added assessments. On the date specified in such notice, the board shall sit as a board of equalization and then and there equalize and determine the true and just amount of such assessments in the same manner as provided for the equalization of personal property.

History.—§13, ch. 15789, 1931; CGL 1936 Supp. 1041(12); §14, ch. 20724, 1941.

199.13 Effect of assessment after equalization.—Where no complaint shall have been made as to any assessment or valuation as shown on the intangible personal property assessment roll, the assessment and the valuation thereof, shall be deemed and held to be fair, just and equal and validly made according to the laws of the state.

History.—§14, ch. 15789, 1931; CGL 1936 Supp. 1041(13); §15, ch. 20724, 1941.

199.14 Form of intangible personal property tax receipts.—All tax collectors of the state shall be required when issuing receipts for taxes collected by them to show separately on the tax receipts the assessments and valuation of intangible personal property as made under this chapter.

History.—§15, ch. 15789, 1931; CGL 1936 Supp. 1041(14); §16, ch. 20724, 1941.

199.15 When intangible personal property taxes due and payable.—All taxes on intangible personal property shall be due and payable on the first of November of each year, or as soon thereafter as the personal property assessment roll shall come into the hands of the tax collector.

History.—§16, ch. 15789, 1931; CGL 1936 Supp. 1041(15); §17, ch. 20724, 1941.

199.16 Discounts.—Taxpayers paying intangible personal property taxes, shall be entitled to the same discounts as may be allowed by law for the payment of taxes on real or personal property.

History.—§17, ch. 15789, 1931; CGL 1936 Supp. 1041(16); §18, ch. 20724, 1941.
cf.—§193.41 Discount allowed.

199.17 Duty of comptroller. — The comptroller shall make independent investigations concerning the intangible personal property assessment rolls and he shall ascertain by diligent search and inquiry whether all persons, firms or corporations have made proper returns and whether all intangible personal property subject to taxation has been assessed, and advise the tax assessors of his findings. The comptroller may employ such persons as may be necessary to enable him to perform his duties under this chapter. The tax assessors shall utilize the information furnished by the comptroller and enter upon the assessment rolls all intangible personal property certified by the comptroller to be intangible personal property subject to taxation in their respective counties; provided, however, that after the assessment roll has been delivered by the tax assessor to the tax collector, the tax assessor shall, on request, permit a person who should have filed a return or who desires to file an amended return, to file an intangible personal property tax return, or amended return and the tax assessor shall receive such return and immediately assess the taxes due on the intangible personal property of the taxpayer and the tax assessor shall thereupon immediately file an amendment to the assessment roll and certify the same to the tax collector, who shall, on request of the taxpayer, permit him thereupon to pay the tax.

History.—§19, ch. 20724, 1941.

199.18 When tax deemed delinquent; tax executions.—

(1) Taxes on intangible personal property shall be deemed delinquent on April 1 of the year following that for which the assessment was made. On or before April 25 the tax collector shall advertise one time, in a newspaper selected by the board of county commissioners at their regular meeting in February of each year, said newspaper to be qualified to publish legal advertising as provided by chapter 49, a notice setting forth the names of delinquent intangible personal property taxpayers and the amount of tax due by each and advising them that such taxes are now drawing interest at the rate of one per cent per month and that unless such taxes are paid before May 1 tax executions will issue thereon; which advertisement shall be paid for by the county at the rate provided by law for legal advertisements and the proportionate cost of such advertisement shall be

added to the delinquent taxes and paid by the taxpayer as and when the taxes are paid. The form of the notice and the form of the tax execution provided for herein shall be prescribed by the comptroller.

(2) Beginning on the first day of May the tax collector shall issue tax executions for enforcing the collections of all intangible personal property taxes remaining unpaid on that date. Such tax executions shall show the name of the taxpayer and the amount of taxes assessed against him as shown by the intangible personal property tax roll, plus delinquent charges and interest. It shall be the duty of the tax collector of the county, in person or by deputy, forthwith to proceed to make the necessary levies and collections of taxes, penalties and costs pursuant to such tax executions. A tax execution shall have the force and effect of a personal judgment and execution at law against the taxpayer and may be levied upon and satisfied out of any property, real, personal or mixed, belonging to the taxpayer in like manner by the tax collector as executions on judgments of the circuit court in law cases are satisfied by the sheriff.

(3) When it shall become necessary for the tax collector to advertise property for sale under execution or executions, he shall include in one notice of sale the names of the owners, general descriptions of all properties to be sold on said sales day, the amount of the execution against each owner, and the date, place and time of sale. Said sale shall be made at the door of the county courthouse. The tax collector or his deputy shall offer for sale and sell separately the property belonging to each owner. No property of the taxpayer shall be exempt from levy under such tax execution. The tax collector shall be entitled to the following fees for executing and collecting tax executions without sale; on amounts of less than five dollars taxes, his fee shall be one dollar; on amounts of over five dollars but less than ten dollars taxes, his fee shall be one dollar and fifty cents; and on amounts over ten dollars taxes, he shall receive a fee of two dollars; provided, however, that if the tax execution is collected by levy and sale, the tax collector shall receive the same fees as are allowed by law to the sheriff; and provided, further, that all said fees shall be added to the amount of the total tax stated in such tax executions and shall be collected by the tax collector or his deputy from the taxpayer, and not from the county or state.

History.—§18, ch. 15789, 1931; CGL 1936 Supp. 1041(17); §20, ch. 20724, 1941; §4, ch. 22867, 1945; (1) §1, ch. 63-429.

199.20 Alias executions.—Whenever it becomes necessary in the judgment of the tax collector, or when required by the comptroller, he may issue an alias tax execution or tax executions, which, however, shall be so designated on the face of the tax execution. Any such alias tax execution shall have the same force and effect as the original.

History.—§22, ch. 20724, 1941.

199.21 Tax executions may operate as writ of garnishment.—Tax executions shall have the same force and effect as a writ of garnishment when levied upon any person, firm or corporation who shall have any goods, moneys, chattels or effects of the delinquent taxpayer in his hands, possession or control or who shall be indebted to such delinquent taxpayer. When any tax execution is so levied upon any debtor or person holding property of the taxpayer, such debtor or person shall pay the debt or deliver the property of the tax delinquent to the tax collector or his deputy levying such writ, and the receipt of the tax collector or his deputy therefor shall be complete discharge to that extent of the debtor or person holding such property. In the event of such levy the tax collector or his deputy shall make note thereof upon the tax execution.

History.—§23, ch. 20724, 1941; §6, ch. 22867, 1945.

199.22 Time and circumstances under which intangible personal property taxes are a lien.—All intangible personal property taxes shall be a lien on all the real and personal property of the taxpayer in the county in which they are assessed from the time they become due. All such intangible personal property taxes shall be a lien upon any and all real estate of the taxpayer in every other county from the time that the tax execution is recorded in such other county where the real estate is situated. Where no tax execution is, or has been, issued or recorded on a delinquent intangible personal property tax, said intangible personal property tax shall cease to be a lien on the real and personal property of the taxpayer, wherever situated, seven years from the date said intangible personal property tax becomes, or became, due; and any interested party may thereafter request that the tax collector cancel same of record, and it shall be the duty of the tax collector to so do. The lien of intangible personal property taxes and tax executions shall be superior to all other liens, except liens for other taxes, state, county and municipal, and prior recorded liens on real estate.

History.—§19, ch. 15789, 1931; CGL 1936 Supp. 1041(18); §24, ch. 20724, 1941; §1, ch. 57-106.

199.23 Lien and enforcement of recorded tax executions.—Every tax execution when recorded in the office of the clerk of the circuit court shall have the force and effect of a recorded judgment at law against the delinquent taxpayer, for the period of seven years after the date the taxes represented by such execution become or became due. At the request of the comptroller or of the tax collector who issued the tax execution, it shall be the duty of the sheriff of any county in which such tax execution shall be recorded other than that in which it is issued to levy such tax execution upon any lands and tenements, goods, chattels and effects of the delinquent taxpayer which shall be found in the county in which the tax execution shall have been so recorded, and to enforce the collection of such execution by the sale of such property in the same manner as is provided by law for the enforcement and sale

under writs of execution upon judgments at common law. In case of such sales, the taxpayer shall pay all costs and expenses, and if he fails to do so, they shall be deducted from the purchase price. The proceeds of the sale shall be remitted by the sheriff making the sale to the tax collector issuing such tax execution. The lien of such tax execution, wherever recorded, shall continue for seven years from the date the taxes represented by such execution become or became due. It is hereby declared the intention of the legislature that the provisions of this section as amended by chapter 59-355 shall apply to tax executions recorded before or after June 17, 1959.

History.—§25, ch. 20724, 1941; §§1, 2, ch. 59-355.

199.24 Duty of tax collector to record and endeavor to collect tax executions.—It shall be the duty of the tax collector to file with the clerk of the circuit court, and of said clerk to record, without charge, in the book containing the record of liens, all such tax executions when returned uncollected, or as soon as possible thereafter. The tax collector or the comptroller may, however, record any such tax execution before levy, if they have, or either of them has reason to believe it to be advisable to take such action promptly. The original tax execution shall be returned by the clerk, when recorded, to the tax collector. The tax collector shall record in like manner an alias tax execution in every county in which the delinquent taxpayer has, or in which the tax collector has reason to believe that he has, real estate. Upon request of the comptroller, the tax collector shall issue alias tax executions which shall be delivered to the comptroller who shall record them in every county in which the delinquent taxpayer has, or in which the comptroller has reason to believe that he has, real estate. All such tax executions shall run throughout the state and shall be executed by any tax collector or deputy tax collector in any other county at the instance of the tax collector by whom it was issued or of the comptroller.

History.—§26, ch. 20724, 1941; §7, ch. 22867, 1945.

199.25 Tax collector to keep record of tax executions; satisfaction of liens.—The tax collector shall keep a record of all tax executions and note thereon the date of the issue and of the return of the same, the date of payment thereof, the county or counties in which it is recorded, and the date thereof and the amount of money, if any, received by the tax collector on such tax executions and the disposition thereof made by him and the respective dates thereof. Such record shall be known as the tax executions register, and the form thereof shall be prescribed by the comptroller. When any such tax execution shall have been recorded and shall thereafter be paid, it shall be the duty of the tax collector to endorse such payment on the margin of the record of the tax execution in the lien book of the county where it was issued, and of the clerk or his deputy to attest such endorsement. If the tax execution shall have been recorded in another county, and thereafter paid, it shall be the duty of the tax collector to execute and deliver to the clerk of the court of such county a written satisfaction of such tax execution, which satisfaction need not be witnessed or acknowledged, and it shall be the duty of the clerk of every county to record the same in the book of satisfaction of liens. Whenever a tax execution is paid, the clerk of the court in every county in which such execution is recorded shall be entitled to a fee of one dollar for the recording of a satisfaction of such execution. Such fee shall be paid by the party filing the satisfaction or record.

History.—§27, ch. 20724, 1941; §8, ch. 22867, 1945.

199.26 Continuing duty of the tax collector to collect tax executions under comptroller's directions.—It shall be the duty of the tax collector issuing a tax execution to continue from time to time his efforts to collect the same for a period of seven years from the date of the issuance of such tax execution, but at the expiration of said period, said execution shall be void. The comptroller may, in his discretion, direct the tax collector from time to time as to the manner of conducting the proceedings to enforce such tax execution.

History.—§28, ch. 20724, 1941.

199.27 Tax collectors accountable until complete performance of duty hereunder.—No tax collector shall be relieved of accountability for collection of any taxes assessed on intangible personal property until he shall have completely performed every duty devolving upon him as required by this chapter.

History.—§29, ch. 20724, 1941.

199.28 Intangible personal property exempt from all other taxation.—The intangible personal property taxes authorized and to be assessed and levied under this chapter shall exclude and be in lieu of all other state, county, district and municipal taxes.

History.—§30, ch. 20724, 1941.

199.29 Assessment of intangible personal property previously omitted.—If any tax assessor when making his assessment shall discover that any intangible personal property has for any reason escaped taxation for any or all of the three previous years, he shall, in addition to the assessment of such intangible personal property for that year, assess the same separately for such year or years that it may have escaped taxation at the full cash value thereof in such year, noting distinctly the year when such intangible personal property escaped taxation, and such assessment shall have the same force and effect as it would have had if made in the year that the same escaped taxation, and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made. Provided, that intangible personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same.

History.—§31, ch. 20724, 1941.

199.30 Failure to file return and pay the tax when due.—If any intangible personal property is not returned for taxation by the persons required to return it, within the time and in the manner required by this chapter; or if any intangible personal property is returned at less than its true taxable value as defined in this chapter; there shall be added as a part of the tax a mandatory penalty in the amount of ten per cent of the tax found to be due, and a mandatory interest one per cent per month from the date the tax should have been paid.

History.—§32, ch. 20724, 1941; §9, ch. 22867, 1945; §3, ch. 61-159.

199.31 Disposition of intangible personal property taxes; appropriations for expenses of assessment and collection and for retirement systems.—

(1) All intangible personal property taxes levied, assessed and collected under and pursuant to this chapter shall be promptly remitted by the tax collector to the comptroller of the state to be placed in a special fund designated as the "intangible tax trust fund."

(2) There is hereby appropriated annually out of the intangible tax trust fund the amount necessary for the effective and efficient enforcement of the provisions of this chapter and for the fees of the county assessors and tax collectors allowed them by the law for the assessment and collection of intangible personal property taxes. It shall be the duty of the comptroller to pay from the intangible tax trust fund these costs and fees.

(3) When money has been paid into the intangible tax trust fund in payment of any intangible personal property taxes, whether payment was made voluntarily or involuntarily, the comptroller is authorized and directed to refund to the person who paid same, or to his heirs, personal representatives or assigns:

(a) Any overpayment;

(b) Payment where no tax was due; and

(c) Where a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due; the taxpayer may pay the amount claimed by the tax collector to be due and if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of taxes, or any part thereof, the comptroller shall make such refund as the court may direct. Except when made pursuant to an order of a court of competent jurisdiction, no refund of taxes shall be made by the comptroller unless the assessor of the county in which said assessment was made shall have approved such refund in writing and filed a copy of such approval with the comptroller. Each refund shall be charged against the taxes collected from the county of the residence of the taxpayer to whom the refund is made and shall be considered in arriving at the amount of money to be received by the county. There is hereby appropriated annually, out of funds coming into the comptroller's hands under the provisions of this chapter, an amount necessary to make such refunds.

(4) The comptroller shall pay from the intangible tax trust fund the entire cost of all forms, books and records required by law to be furnished each county or county officer by the comptroller in connection with the assessment and collection of ad valorem taxes, and a sum sufficient to pay therefor is hereby annually appropriated out of the intangible tax trust fund.

(5) There is hereby annually appropriated from the intangible tax trust fund:

(a) A sufficient amount to meet the appropriation in §122.13.

(b) From the balance, after all the above amounts have been paid, a sufficient amount to meet the matching requirements of the state officers and employees retirement system and the county officers and employees retirement system as provided by §122.17.

(c) Any balance shall be placed in the general revenue fund of the state.

History.—§20, ch. 15789, 1931; CGL 1936 Supp. 1041(19); §33, ch. 20724, 1941; §3, ch. 21943, §7, ch. 22000, 1943; §10, ch. 22867, 1945; (5) §1, ch. 29929, 1955; §2, ch. 61-119.
cf.—§200.03 Comptroller regulates tangible property tax forms.

199.32 Removal of officers.—The comptroller shall investigate the conduct and performance of duties by tax assessors, tax collectors, clerks of the circuit court, sheriffs and members of the board of county commissioners when acting as a board of equalization, and recommend to the governor the removal of any such official, for his willful failure to properly perform the duties imposed upon him by the constitution, this chapter and the rules and regulations prescribed pursuant to this chapter, and furnish the evidence to the governor upon which such removal may be warranted.

History.—§34, ch. 20724, 1941; am. §7, ch. 22858, 1945.

199.33 Imposition of taxes for the year 1941.—Intangible personal property taxes for the year 1941 shall be imposed pursuant to chapter 15789, acts of 1931.

History.—§35, ch. 20724, 1941.

199.34 State tax commissioner to perform duties of the comptroller.—Wherever the comptroller is required by law to perform any duties relating to the assessment and collection of ad valorem taxes, such duties shall, after the creation of the office of state tax commissioner, be performed by the state tax commissioner.

History.—§36, ch. 20724, 1941.

199.35 Punishment for violation of this chapter.—Any taxpayer, public officer or other person willfully failing or refusing to comply with this chapter, or violating any of the provisions hereof, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars or be confined in the county jail for not more than six months, or both, in the discretion of the court.

History.—§21, ch. 15789, 1931; CGL 1936 Supp. 7473(8); §37, ch. 20724, 1941.

199.36 Short title.—This chapter may be cited or referred to as "intangible personal property taxation law of 1941."

History.—§1, ch. 20724, 1941.

CHAPTER 200

TANGIBLE PERSONAL PROPERTY TAXATION

200.01 Definition of tangible personal property.—Tangible personal property shall include all goods, chattels, vehicles (except motor vehicles), animals and other articles of value capable of manual possession and whose chief value shall consist of the thing itself and not what it represents. The words personal property as used in this chapter shall be synonymous with tangible personal property.

History.—§1, ch. 20723, 1941; §6, ch. 63-550.

200.02 Time and circumstances under which tangible personal property taxes are a lien.—All tangible personal property taxes shall be a lien on all of the personal property of the taxpayer in the county in which they are assessed from January 1 for which year the property is liable to assessment. The lien of tangible personal property taxes shall be superior to all other liens, except liens for other taxes, state, county and municipal. No act of omission or commission on the part of any tax assessor or any assistant tax assessor, or any tax collector, or any board of county commissioners, or any clerk of the circuit court or any officer of this state, or any newspaper in which any advertisement of sale may be published, shall operate to defeat the payment of said taxes; but any such acts of omission or commission may be corrected at any time by the officer or party responsible for the same in like manner as is now or may here-

after be provided by law for performing such acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process by law for the enforcement of the collection of any such tax. All owners of personal property shall be held to know that taxes are due and payable thereon annually, and are hereby charged with the duty of ascertaining the amount of such tax and paying the same before April 1 of each year; all provisions of law now existing or which may be hereafter enacted relating to the assessment and collection of revenue (unless otherwise specifically so declared) shall be deemed and held to be directory only, designed for the orderly arrangement of records and procedure of officers in enforcing the revenue laws of the state; and no assessment shall be held invalid unless suit be instituted within sixty days from the time and assessment shall become final, and no sale of personal property for nonpayment of taxes shall be held invalid except upon proof that the personal property was not subject to taxation, or that the taxes had been paid previous to sale.

History.—§2, ch. 20723, 1941; §1, ch. 22758, 1945; §14, ch. 63-572.

200.021 Property located in state between January 1 and March 31 taxable.—

(1) All taxable tangible personal property, as defined by §200.01, located in the state between January 1 and March 31 of each year (both dates inclusive) shall be taxable for said year in the county and by the tax assessor of the county in which the same is located; provided, that tangible personal property brought into the state after January 1st and before April 1st of any year shall be taxable for that year only if such property is brought into the state for resale or if the assessor has reason to believe that such property will be removed from the state prior to January 1st of the next succeeding year.

(2) All taxable tangible personal property which is removed from one county in this state to another county after January 1st of any year shall be subject to taxation for said year in the county where it was located on January 1st.

History.—§§1, 2, ch. 28302, 1953.

200.03 Comptroller to prescribe and furnish forms, and to prescribe rules and regulations. —The comptroller shall prescribe and furnish all forms to be used by the county assessors, tax collectors, clerks of the circuit courts and boards of county commissioners in the assessing and collecting of taxes. The county assessors, tax collectors, clerks of the circuit courts and boards of county commissioners shall use the forms and pursue the instructions which may from time to time be transmitted to them by the comptroller. All forms furnished by the comptroller for use in each county shall be charged to such county and payment therefor shall be deducted from that part of the intangible taxes collected within the county and allocated by law to the county. The comptroller shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and the valuation thereof will be uniform and equal, as required by the constitution, and he shall also have supervision over the collection of such taxes. The comptroller shall prescribe reasonable rules and regulations for assessing and collecting taxes and such rules and regulations shall be followed by the county officers referred to in this chapter.

History.—§3, ch. 20723, 1941.
cf.—§199.31 Disposition of intangible personal property taxes.

200.04 Assessment of tangible personal property.—Tangible personal property shall be assessed by the tax assessor of each and every county in the state on a separate tax roll, which shall be designated the tangible personal property tax roll. Such tax roll shall distinctly show the name and address of the taxpayer and the amount of valuation for tax purposes of any tangible personal property assessed against such taxpayer on said tax roll. It shall not be necessary to enter on said tax roll the particular items constituting the tangible personal property which is assessed thereon, but tangible personal property may be entered and assessed on such tax roll in general terms. The total valuation of the tangible personal property of each taxpayer shall be separately stated on such personal property tax roll.

History.—§4, ch. 20723, 1941.

200.05 Schedule of assessments.—If no tax return is filed by the taxpayer, then the tax assessor shall prepare and file in his office a schedule showing the tangible personal property of the taxpayer which is assessed upon the tax roll, which schedule shall be given a number and shall show the date of filing. The number and date of the tangible personal property tax return filed by the taxpayer with the tax assessor and the number and date of the schedule prepared by the tax assessor, where no return has been made, shall be shown on the tax roll in connection with the assessment in an appropriate column in the tangible personal property tax roll for that purpose. Any such assessment for tangible personal property taxes appearing on the tax roll in general terms as tangible personal property shall be construed to refer to and embrace the property described in a return, when a return shall have been filed, and where no return has been filed then such assessment shall be construed to refer to and embrace the property described in the schedule filed by the assessor. All steam, and electric railroads and telegraph, express, sleeping cars, freight line and equipment companies shall be assessed at their full cash value, provided, however, that such assessments shall be made in the manner and by the officers now provided by law.

History.—§4, ch. 20723, 1941.

200.06 Basis of assessment.—The tax assessor shall assess all tangible personal property at its full cash value.

History.—§5, ch. 20723, 1941.

200.07 Assessments against husband and

wife, trustee, guardian, executor, administrator, etc.—Where the relation of husband and wife exists all tangible personal property shall be assessed in the name of the husband, unless a special return is filed showing the amount of tangible personal property to be assessed against the husband and wife separately, or unless in the discretion of the tax assessor the assessments should be separate. When a person is assessed as trustee, guardian, executor, administrator, or in any other representative capacity, his representative character shall be added to his name and such assessment shall be entered on separate line or lines from the individual assessment of the same person. Where a family relation exists all tangible personal property shall be assessed to the head of the family unless returns of separate ownership are filed, or unless in the discretion of the tax assessor the assessments should be separate.

History.—§6, ch. 20723, 1941.

200.08 Returns of tangible personal property for taxation.—Tangible personal property shall be returned upon the basis and in the manner following:

(1) *It shall be the duty of every person, firm or corporation, including trustees, executors, administrators, receivers, and all other fiduciaries, owning or having the control, management or custody of tangible personal property of every character subject to taxation under the laws of this state, to return the same for taxation to the county assessor of taxes in the proper county on or before April 1 of each and every year. Except as provided by subsections (2) and (4) of this section such return shall give the character, description, location and full cash value of said property according to the best of the knowledge and belief of the person making the return. Any return not made out in the form required or prescribed shall be corrected upon the demand of the tax assessor, and the taxpayer shall be required upon such demand to supply such information as may have been improperly omitted therefrom; and refusal of the person making such return to correct the same shall be cause for the tax assessor to reject or refuse to receive or file such return. Except as provided in subsections (2) and (4) of this section dealing with classes of tangible property therein specified, the tax returns shall be verified by the signature and oath of the person making the same that such return is true to the best of the knowledge and belief of the person making the return, and that the valuations shown thereon are to the best of the knowledge and belief of such person the full cash value of the property described in the return.

(2) It is recognized and declared that household furnishings, wearing apparel, and effects of the person, actually employed in the use for which designed, constitute a class of personal property serving the creature comforts of the owner, that such property is not held for commercial purposes, that the true cash value thereof is both uncertain and speculative, that sentimental value is attached to a great quantity of such property, that it is in the general public welfare to encourage the improvement of the homes of the people, and that taxpayers are generally unable to determine with any reasonable accuracy the full cash value of such property and that such is not a proper basis for valuation thereof for purposes of taxation. Therefore, tangible property consisting of household furnishings, wearing apparel and effects of the person, actually employed in the use for which designed and not used for commercial purposes, are recognized and declared to be property of a special class and character; that the assessed valuation of such property, for purposes of taxation, shall be arrived at and determined upon the basis of the comparable value of articles in like state of repair and capable of comparable use as that of the articles subject to be taxed, irrespective of variance in values between articles designed for similar use; that the person making the return of such property may return the same in bulk, without describing the several articles, and giving the aggregate value thereof upon the stated basis in a lump sum, and the return, as respects said class of property, shall not require verification.

(3) Statutes and laws of this state providing for or requiring the filing of tax returns of household goods and personal effects for ad valorem taxation are hereby declared to be directory only and not mandatory and the failure of any person to file a tax return of such property shall in no way affect his right to object to a tax assessment, within the time permitted by statute, to seek a review of a tax assessment made before either an administrative agency or the courts, or otherwise, and the filing of such a tax return may not be made a condition precedent to the right to homestead tax exemption or any other right.

(4) It is recognized and declared that goods, wares and merchandise, commonly known as stock in trade constitute a class of personal property serving the practical necessity of business operation; that such property is not purchased or held for the use of the owner but for resale; that such property varies from liquids to solids and iron to cloth, that such property includes fast moving items and very slow turnover items, that obsolescence often affects in varying degree the value of such property, that such property includes both low and high mark up items, that such property includes both seasonal and nonseasonal items as well as items with great and no style change factors, that the true cash value thereof is often both uncertain and speculative, that it is in the general welfare to encourage successful business operation to be adequately stocked with varying stock in trade, that such stock in trade is property between capital and profit or just money in transit, and that taxpayers are generally unable to determine with any reasonable accuracy the full cash value of such property and that such is not a proper basis for valuation thereof for purposes of taxation. Therefore

tangible property consisting of goods, wares, and merchandise commonly called stock in trade is recognized and declared to be property of a special class and character; that the assessed valuation of such property for purposes of taxation shall be arrived at and determined upon the basis of the comparable value of articles in a like state of salability and capable of comparable use as that of the articles subject to be taxed, irrespective of variance in values between articles designed for similar use; that the person making the return of such property may return the same in bulk, without describing the several articles, and giving the aggregate value thereof upon the stated basis in a lump sum.

History.—§7, ch. 20723, 1941; §1, ch. 22097, 1943; (3) n. §1, ch. 29991, 1955; (1) §1, (4)n. §2, ch. 63-397.
*Subsections (1) and (4) effective January 1, 1964.

200.09 Where tax returns shall be filed.—Where a taxpayer has tangible personal property in more than one county, he shall make and file a separate tax return for each and every county, and in such return he shall show the tangible personal property he has for taxation in the county where the return is made.

History.—§8, ch. 20723, 1941.

200.10 Assessor may fix valuations; notice in case of increase; appeals.—In the event any person, firm or corporation shall make or file a return as required by this chapter, the full cash value of the tangible personal property owned by him shall be presumptively considered to be that shown in the tax return, unless the tax assessor shall, upon his knowledge or after investigation find that the taxpayer has property subject to taxation which is not described in such return or that the valuation of that which is described in such return is greater than the valuation shown by such return, in which event the tax assessor shall give notice by mail to the person filing the return of such opinion by him. Such notice need not be given unless the taxpayer shall state his post office address on his return and thereon expressly request such notice, but the failure to give or receive such notice shall not invalidate the assessment. The tax assessor thereafter, upon request of such person, shall give him a full and fair hearing as to the tangible personal property which he may have subject to taxation and as to the full cash value of the same. After such full and fair hearing the tax assessor shall finally decide and determine and make his assessment accordingly. The tax assessor may assess the tangible personal property of the taxpayer at an amount less than the valuation shown in such return if he finds that the value thereof as returned is in excess of the full cash value thereof. The taxpayer shall have the right to appeal from any decision of any tax assessor made under this section to the board of county commissioners sitting as a board of equalization, and if the taxpayer is dissatisfied with the decision of the board he may have the decision reviewed by the circuit court of the county in which the property is assessed for taxes by filing a petition for issuance of a writ of certiorari in the manner and within the time prescribed by the Florida appellate rules.

History.—§9, ch. 20723, 1941; §42, ch. 63-512.

200.11 Evidence on hearing and equalizations by assessor and county commissioners.—In the hearings provided for in the preceding section, the county assessors of taxes and the county commissioners shall require every person complaining to give in a complete list of his tangible personal property under oath with the full cash value of the same, and to make oath that the valuations fixed to each item thereof are the full cash valuation of the same, and that the list submitted by the taxpayer is full and complete. If any person shall refuse to make such oath he shall not be permitted afterwards to have reduced the valuation made by the county assessor of his personal property for that year.

History.—§10, ch. 20723, 1941.

200.12 Effect of return.—Regardless of any return which may be filed by any taxpayer, the valuation of any item or items of property shown in the return shall in no case prevent the county assessor of taxes from determining and assessing the full cash value according to his information and best judgment, or from determining and entering upon the return of the taxpayer any item or items of tangible personal property which the county assessor may find has been omitted therefrom, subject to the restrictions and limitations mentioned in this chapter.

History.—§11, ch. 20723, 1941.

200.13 When tangible personal property tax rolls shall be begun; all tangible personal property to be assessed. — No tax return shall be received by the tax assessor after April first of any year for that tax year. Beginning on April first of each year the tax assessor shall begin preparation of his tax roll of tangible personal property, and shall cause the same to be completely assessed at its true and just taxable value according to his best information and judgment, and shall complete the same on or before June first of that year. The tax assessor shall enter upon and include in said tax roll the name of each and every person, firm and corporation who or which between January first and March first of that year was an inhabitant and/or was doing business in such county, and shall enter upon said tax roll, according to his best knowledge and information, the name of each person, firm or corporation not an inhabitant of the county or not doing business therein who or which between said dates of that year had located in the county tangible personal property, and shall also enter upon said roll all taxable tangible personal property usually kept and located in the county, the ownership of which is unknown to him, provided in the last mentioned case the tax assessor shall give the location of said property if same is known to him.

History.—§12, ch. 20723, 1941.

200.14 Form and contents of tangible personal property tax assessment roll, and submission thereof to the comptroller.—After having

entered all the names of the owners of tangible personal property on the tax roll, as hereinbefore provided, the tax assessor shall proceed to assess the tangible personal property in the county upon such information as he may have before him after making diligent effort to obtain true descriptions, ownerships and valuations of the same, including such information as shown by the tax returns which shall have been filed with him for that year. He shall place on the tax roll opposite the name of the person, firm or corporation listed thereon as a taxpayer the true total taxable valuation, as found and determined by the tax assessor, of tangible personal property for which said taxpayer is to be assessed for that year. The county assessors of taxes shall complete the assessment rolls of their respective counties on or before the first day in June in every year, on which day the assessors shall submit their rolls to the comptroller for approval. Upon approving the tax roll the comptroller shall endorse his approval thereon. No assessment roll shall be submitted to the county board of equalization until such roll has the approval of the comptroller endorsed thereon.

History.—§13, ch. 20723, 1941.

200.15 Tax returns to show all exemptions and claims.—In making tangible personal property tax returns under this chapter it shall be the duty of the taxpayer to completely disclose and claim any and all lawful or constitutional exemptions from taxation to which he may be entitled or which he may desire to claim in respect to taxable tangible personal property. The failure to disclose and include such exemptions, if any, in a tangible personal property tax return made under this chapter shall be deemed a waiver of the same on the part of the taxpayer and no such exemption or claim thereof shall thereafter be allowed for that tax year.

History.—§14, ch. 20723, 1941.

200.16 Assessment of tangible personal property previously omitted.—If any tax assessor when making his assessment shall discover that any tangible personal property has for any reason escaped taxation for any or all of the three previous years, he shall, in addition to the assessment of such tangible personal property for that year, assess the same separately for such year or years that it may have escaped taxation at the full cash value thereof, in such year, noting distinctly the year when such tangible personal property escaped taxation, and such assessment shall have the same force and effect as it would have had if made in the year that the same escaped taxation, and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made. Provided, that tangible personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same.

History.—§15, ch. 20723, 1941.

200.17 Duty of receivers and other judicial officers to return tangible personal property for taxation.—Every receiver or custodian of tangible personal property who shall be appointed by any court in this state and every clerk of any court in this state who shall hold or have the custody of any such tangible personal property in the registry of the court between January first and April first of each year shall return the same for taxation to the tax assessor in the proper county on or before the first day of April of each year. The officers required to make such reports shall make the same upon the forms provided by the comptroller. If the tangible personal property so reported by the officers named in this section shall not be otherwise taxed, the tax assessor shall enter the same upon the tangible personal property tax roll and assess the tax thereon to the proper party. The taxes thereon shall be paid by the receiver, clerk or other officer named in this section to the tax collector, and the amount so paid shall be charged against such tangible personal property and allowed as a credit to the officer paying or delivering the same, which may be established by the receipt of the tax collector. The officers paying such tax shall not be required to inquire into the validity of such assessment or tax, but the receipt of the tax collector shall afford him complete protection for such payment.

History.—§16, ch. 20723, 1941.

200.18 Duty of judge of the county judge's court to file list of tangible personal property belonging to estates of deceased persons.—It shall be the duty of the judge of the county judge's court to furnish to the county assessor of taxes, on or before April first of each year, a complete list of all tangible personal property belonging to the estate of any deceased person, as shown by the records in the office of the judge of the county judge's court. The county assessor of taxes shall check said list against the return filed by the administrator or executor of said estate, and shall make his assessment against said administrator or executor as other assessments are made. In the event that the administrator or executor has not filed a report, then the county assessor of taxes shall make his assessment against said administrator or executor as in other cases where no return is filed. The failure on the part of the judge of the county judge's court to furnish said list as required herein shall be grounds for removal of said judge by the governor of this state.

History.—§17, ch. 20723, 1941.

200.19 Time for completion of assessment roll; hearings and equalization by county commissioners.—The assessor shall complete the personal property assessment roll on or before June first of each year. The failure or neglect of the assessor to complete such tax roll by such date shall not invalidate the assessment. As soon after July first as convenient on the day to be fixed by the board of county commissioners the tax assessor shall meet with the board of county commissioners at the usual meeting place of the board in such county for the purpose of hearing complaints and receiving testimony as to the valuation to be used in making tangible personal

property assessments, and for the purpose of perfecting, reviewing, and equalizing the assessments and valuations thereof as shown by the personal property tax assessment roll, and to determine whether all taxable tangible personal property has been assessed on the roll for that year. Such equalization meeting may be held on the same day and at the same time that the board of county commissioners sits as a board of equalization in respect to assessments of real estate. The board of county commissioners may continue in session for the purpose stated in this section from day to day and from time to time as long as it shall be necessary. Due notice of the original meeting of the county commissioners for the purpose stated in this section shall be given by publication once each week for two successive weeks in a newspaper published in the county, said newspaper to be selected by the board of county commissioners at its regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the county for a period of one year prior to its selection, or, if there be no such newspaper, a newspaper published for a less period of time may be selected. If there be no such newspaper published in the county, then such notice shall be posted at the door of the county court house for the same period of time provided for such publication. The advertisement shall be paid for by the county at the rate provided by law for official or legal advertisements, and if there is no newspaper published in the county then the clerk shall receive as a fee for posting the notice a sum equal to what the cost would have been if the notice had been published.

History.—§18, ch. 20723, 1941.
cf.—§49.06 Legal rate for advertisement.

200.20 Powers and duties of board of equalization.—At the meeting of the board of county commissioners as a board of equalization, for the purpose of hearing complaints and receiving testimony and for reviewing, revising, and equalizing the tangible personal property tax roll, the board may make such changes in valuation and assessments of tangible personal property, shown on the tangible personal property tax roll submitted by the tax assessor, and may make such additions of taxable tangible personal property thereto which have been omitted therefrom, as may be necessary to equalize the assessment and make the same fair and just. If, however, the board shall increase the assessment appearing on such personal property tax assessment roll, it shall publish or post in the manner prescribed by §200.19, notice that the board has increased the assessment of certain persons (whose names need not be stated) and will sit as a board of equalization on a date to be stated in such notice for the purpose of hearing complaints and testimony, if any, in respect to such increased or added assessments. On the date specified in such notice, the board shall sit as a board of equalization and then and there equalize and determine the true and just amount of such assessments in the same manner provided in §200.19.

History.—§19, ch. 20723, 1941.

200.21 Acts of assessor and county commissioners presumptively valid.—It shall be the duty of the tax assessor and board of county commissioners of each county in this state to comply strictly with all the duties and requirements of this chapter; and their determinations for fact under this chapter shall be presumed to be correct and valid when made in the manner and pursuant to the authority hereby conferred.

History.—§20, ch. 20723, 1941.

200.22 Taxpayer to be heard under oath.—If any taxpayer shall make complaint to the county commissioners, sitting as a board of equalization, as to the valuation involved in any tangible personal property tax assessment he shall be fully heard under oath.

History.—§21, ch. 20723, 1941.

200.23 Effect of assessment after equalization.—Where no complaint shall have been made as to any assessment or any valuation as shown on the assessment roll, the assessment and the valuation thereof shall be deemed and held to be fair, just and equal and validly made according to the laws of the state.

History.—§22, ch. 20723, 1941.

200.24 Reduction of tangible personal property taxes forbidden after tax roll completed except to correct clerical errors.—All officers, state and county, charged by law with the execution or enforcement of this chapter are hereby prohibited from reducing or canceling any tangible personal property tax after such tangible personal property tax shall have been assessed and equalized in a manner prescribed by this chapter; except that no such officer is hereby prohibited from making corrections of obvious clerical errors and acting in pursuance of such corrections.

If any officer shall, in violation of this chapter, reduce or cancel any such tangible personal property tax, or accept any sum in payment thereof less than that so assessed and levied, he and the sureties on his official bond shall be liable to the state for the amount so reduced or rebated, together with a penalty of fifty per cent thereof, all of which may be recovered in a civil action instituted in the name of the state by the attorney general or by the state attorney upon the direction of the attorney general.

History.—§23, ch. 20723, 1941; §1, ch. 59-247.

200.25 When tangible personal property taxes due and payable.—All taxes on tangible personal property shall be due and payable on the first day of November of each year, or as soon thereafter as the tangible personal property assessment roll shall come into the hands of the tax collector. The tangible personal property tax assessment roll shall have attached thereto a tax assessor's warrant in substantially the same general form as provided by §193.35. The comptroller may prescribe the form of such warrant. The absence of such warrant or defects in its form shall not invalidate the tangible personal property tax roll if it is the authentic tax roll

made under and pursuant to this chapter; and the effect and purpose of such warrant is hereby declared to be merely evidence of the authenticity and official regularity of the tangible personal property tax assessment roll itself.

History.—§24, ch. 20723, 1941.

200.26 Discounts.—Taxpayers paying tangible personal property taxes shall be entitled to the same discounts as may be allowed by law for the payment of taxes on real property.

History.—§25, ch. 20723, 1941.
cf.—§193.41 Discount allowed.

200.27 When tax deemed delinquent; advertisements; warrants; fees of deputy tax collectors.—Taxes on tangible personal property shall be deemed delinquent on April 1 of the year following that for which the assessment was made, except that for the 1940 assessment the date shall be July 15. On or before April 25 (except that for the 1940 assessment the day shall be July 15), the tax collector shall advertise one time in some newspaper published in the county, said newspaper to be selected by the board of county commissioners at their regular meeting of February of each year, except that for the 1940 assessment the date shall be at their regular meeting in July, and the newspaper so selected shall have been continuously published in the county for a period of not less than one year prior to its selection, or if there be no such newspaper, a newspaper published for a less period of time may be selected, a notice setting forth the names of delinquent tangible personal property taxpayers and the amount of tax due by each and advising them that such delinquent tangible personal property taxes, are now drawing interest at the rate of one per cent per month and that unless such delinquent tangible personal property taxes are paid before May 1, except that for the 1940 assessment the day shall be before August 1, warrants will issue thereon directing levy upon and seizure of the tangible personal property of the taxpayer for unpaid taxes; which advertisement shall be paid for by the county at the rate provided by law for official or legal advertisement and the proportionate cost of such advertisement shall be added to the delinquent taxes as and when they are collected. Beginning on May 1 (except for the 1940 assessment the date shall be August 1) the tax collector in person or by deputy appointed by him for that purpose shall levy upon and seize tangible personal property of the delinquent taxpayer for unpaid taxes, and a written appointment from the tax collector with a statement from him of the person in whose name the property is assessed and the amount of taxes due shall be sufficient warrant and authority for the tax collector or said deputy to act, and it shall not be necessary for the tax collector or said deputy to take the tax roll or warrant annexed thereto with him. Deputy collector so appointed shall be liable to the same penalties prescribed by law as to tax collectors for neglect of duty or otherwise. The deputy tax collector shall be entitled to the following fees, which shall be collected from delinquent taxpayers at the same time of the payment of their taxes: on amounts of less than five dollars taxes, his fee shall be one dollar; on amounts of over five dollars but less than ten dollars taxes, his fee shall be one dollar and fifty cents; and on amounts over ten dollars taxes, he shall receive a fee of two dollars.

History.—§26, ch. 20723, 1941; §1, ch. 63-430.

200.28 Sale of tangible personal property after seizure.—When tangible personal property shall be levied upon for any delinquent taxes as provided for in the preceding section, the tax collector or his deputy shall give public notice of the time and place of sale and of the property to be sold at least fifteen days previous to the sale by advertisement, to be posted in at least three public places in the county, one of which shall be at the court house door, and the property shall be sold at public auction at the court house door and the property sold shall be present if practical; but at any time previous to the sale the owner or claimant of such property may release the same by the payment of the taxes plus delinquency charges and interests and costs for which the same was liable to be sold. In case any sale shall be made as aforesaid, the tax collector shall be entitled to the same fees and charges as are allowed sheriffs upon execution sales.

History.—§27, ch. 20723, 1941; §7, ch. 22858, 1945.

200.29 When property sold for more than taxes, surplus returned.—If the property levied upon shall be sold for more than the amount of taxes, the delinquent charges, interest, costs and collection fees, the surplus shall be returned to the person in whose possession the said property was when the levy was made or to the owner of the property.

History.—§28, ch. 20723, 1941.

200.30 Attachment of tangible personal property in case of removal; taxes assessed a judgment.—In case any tangible personal property upon which the taxes shall have been assessed is removed from the county in which said tangible personal property was assessed, it shall be lawful for the tax collector of the county, by his warrant, to authorize the sheriff of the county within this state to which such tangible personal property shall have been removed to collect such taxes and the sheriff may proceed thereon as upon execution from the circuit court. The tax collectors of the several counties shall have the power to attach for taxes thereon any tangible personal property which has been assessed at any time before payment, if he has reason to believe that such property is being or has been removed or disposed of so as to prevent or endanger the payment of taxes thereon in the same manner and under the same rules of law governing attachments or debts, dues or demands in other cases; and all taxes assessed upon tangible personal property, from the date such taxes become due, shall have all the force and effect of a judgment and execution at law against the owner of such property, except that the same shall

not constitute a lien on the real property of such owner.

History.—§29, ch. 20723, 1941.

200.31 Tax warrant may operate as writ of garnishment.—Tax warrant issued by the tax collector for the collection of tangible personal property taxes shall have the same force and effect as a writ of garnishment when levied by the tax collector or his deputy upon any person, firm or corporation who shall have any goods, moneys, chattels, or effects of the delinquent taxpayer in his hands, possession or control or who shall be indebted to such delinquent taxpayer. When any tax warrant is so levied upon any debtor or person holding property of the taxpayer, such debtor or person shall pay the debt or deliver the property of the tax delinquent to the tax collector or deputy tax collector levying such writ, and the receipt of the tax collector or his deputy therefor shall be complete discharge to that extent of the debtor or person holding such property. In the event of such levy the tax collector or his deputy shall make note thereof upon the tax warrant.

History.—§30, ch. 20723, 1941.

200.32 Tax collector to keep record of warrants and levies on tangible personal property.—The tax collector shall keep a record of all warrants and levies made under this chapter and shall note on such record the date of payment, the amount of money, if any, received, and the disposition thereof made by him. Such record shall be known as "the tangible personal property tax warrant register" and the form thereof shall be prescribed by the comptroller.

History.—§31, ch. 20723, 1941.

200.33 Continuing duty of the tax collector to collect delinquent tax warrants.—It shall be the duty of the tax collector issuing a tax warrant for the collection of delinquent tangible personal property taxes to continue from time to time his efforts to collect same for a period of seven years from the date of the issuance of such warrant.

History.—§32, ch. 20723, 1941.

200.34 Tax collectors accountable until complete performance of duty hereunder.—No tax collector shall be relieved of accountability for collection of any taxes assessed on tangible personal property until he shall have completely performed every duty devolving upon him as required by this law.

History.—§33, ch. 20723, 1941.

200.35 Failure to file return and pay tax when due.—Any person who fails to make a tax return as required by this chapter shall pay as a penalty, in addition to and as part of the tax a sum equal to ten per cent of the tax found to be due. A taxpayer making a return and who fails to include therein all of his tangible personal property subject to taxation, as required by this chapter shall pay as a penalty, in addition to and as part of the tax, a sum equal to ten per cent of the tax found to be due upon that part of his tangible personal property which he fails to include in his return. All taxes together with any penalties shall draw interest at the rate of one per cent per month from the date the said taxes become delinquent until the same shall be paid. This section shall apply to the tangible personal property roll for 1941, provided, however, that the penalties herein shall not apply until after the year 1941.

History.—§34, ch. 20723, 1941.

200.36 Comptroller to pass upon and order refunds.—The comptroller shall pass upon and order refunds where payment has been made voluntarily or involuntarily of tangible personal property taxes assessed on the county tax rolls by reason of either of the following circumstances: (1) Any over-payment; (2) Payment where no tax was due; and (3) Where a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer may pay the amount claimed by the tax collector to be due, and if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof. The board of county commissioners shall comply with the order of the comptroller in such matters by providing in the county budget for the ensuing year for the payment of such refunds and the board shall have authority to authorize such tax levies as may be necessary to provide the fund with which to make the refund so ordered.

History.—§35, ch. 20723, 1941.

200.37 Disposition of tangible personal property taxes.—All tangible personal property taxes collected by the tax collector shall be disposed of, applied and remitted by the tax collector promptly as and when collected in the manner prescribed by law in respect to the collection and disposition of taxes upon real estate.

History.—§36, ch. 20723, 1941.

200.38 Errors and insolvencies list.—On or before the first Monday in July of each and every year the tax collector shall make out a report to the county commissioners showing the discounts, errors, double assessments and insolvencies for which he is to be credited under the different heads, giving in every case, except discounts, the names of the parties on whose account the credit is to be allowed. In no case, however, shall the tax collector take credit on this list as insolvent items, any tangible personal property tax due by a solvent taxpayer. The county commissioners, upon receiving such report shall examine same, making such investigations as may be necessary, and if it is discovered that the tax collector has taken credit as an insolvent item any tangible personal property tax due by a solvent taxpayer, then the amount of taxes represented by such item shall be charged to the tax collector and the report shall not be approved until the tax collector shall strike from the report such item.

History.—§37, ch. 20723, 1941; §7, ch. 22858, 1945.

200.39 Authority to bring and maintain suits.—The comptroller shall have authority to bring and maintain such actions at law or in

equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation or decision of the comptroller lawfully made under the authority of this chapter.

History.—§38, ch. 20723, 1941.

200.40 Proceeding for cancelling or contesting tax.—No suit or proceeding shall be maintained in any court of this state for the purpose of cancelling or contesting the validity of any tax assessment upon tangible personal property, or to enjoin the county tax collector from selling the property of the taxpayer for the purpose of collecting the tax, unless the county tax collector and the comptroller shall be made parties to such proceedings. All such suits shall be brought and maintained in the county where the tangible personal property has been assessed for taxation and the attorney for the board of county commissioners of such county shall represent the county tax collector and the comptroller in any such suit or proceeding, for which he shall receive no additional compensation other than as paid him by the county.

History.—§38, ch. 20723, 1941.

200.41 County assessors to submit budget to comptroller.—On or before July first of each year the county assessor shall submit to the comptroller his budget for the operation of his office for the ensuing year. The comptroller shall examine the budget and if it is found adequate to carry on the work of the assessor, the comptroller shall approve the budget and certify it back to the assessor. If the comptroller finds that the budget is inadequate or is exorbitant, he shall return such budget to the assessor together with his ruling thereon. The assessor shall revise the budget as required by the ruling of the comptroller and resubmit it to the comptroller for approval or further action by him. After the final approval of the budget by the comptroller, it shall not be reduced by the assessor, the board of county commissioners, the county budget commission or any other governing body or officer.

History.—§39, ch. 20723, 1941.

200.42 Removal of officers.—The comptroller shall investigate the conduct and performance of duties by tax assessors, tax collectors, clerks of the circuit court, sheriffs and members of the board of county commissioners when acting as a board of equalization and recommend to the governor the removal of any such official for his willful failure to properly perform the duties imposed upon him by the constitution, this chapter and the rules and regulations prescribed pursuant to this chapter and furnish the evidence to the governor upon which such removal may be warranted.

History.—§40, ch. 20723, 1941.

200.43 Punishment for violation of this act.—Any public officer willfully failing or refusing to comply with this chapter, or violating any of the provisions hereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in the county jail for not more than six months, or both, in the discretion of the court.

History.—§41, ch. 20723, 1941.

200.44 Yachts, boats, etc.—

(1) All pleasure yachts and boats of non-resident ownership which are enrolled, registered or licensed at ports in states or countries other than the state, that would be liable for the payment of personal property taxes assessed in this state by virtue of remaining in Florida waters the year around, shall be and they are hereby exempted from the payment of any personal property taxes levied by the state upon yachts and boats.

(2) The non-resident owner of such pleasure yacht or boat so enrolled, registered, or licensed at ports in states or countries other than this state claiming the exemption in this section provided for, shall be required to exhibit upon demand to the tax assessor of the county where such yacht or boat is anchored, docked or stored, paid personal property tax receipt on said yacht or boat from state of residence, or otherwise show that taxes on said yacht or boat have been paid on the same in state or country of residence, or that the same is not subject to such tax therein.

History.—§1, ch. 20867, 1941; am. §7, ch. 22858, 1945.
cf.—§193.10 Boats, list for taxation.

200.45 Personal property tax; automobile trailers.—

(1) There is hereby levied and assessed upon each automobile trailer that does not have a current year's Florida license tag thereupon the same amount that is assessed upon all other personal property within the county where such trailer is found to be.

(2) The county tax assessor of the county wherein said trailer is found to be shall issue a certificate of valuation which shall be immediately conveyed to the tax collector of the county and the tax collector of such county shall collect the same within fifteen days from the date of such certificate of valuation and if same is not paid said automobile trailer is hereby made subject to levy and sale the same as any other delinquent personal property in the state, provided, however, that the owner of such trailer may purchase a Florida license tag for such trailer at any time prior to the issuance of such certificate of valuation, and the same shall operate to exempt such trailer from said ad valorem tax assessment.

(3) If such certificate is issued before November first the tax rate thereupon shall be based upon the same as the previous year's rate.

History.—§§1-3, ch. 24113, 1947; (2) a. by §1, ch. 61-460.

CHAPTER 201

EXCISE TAX ON DOCUMENTS

201.01 Documents taxable, generally.—There shall be levied, collected and paid the taxes specified in this chapter, for and in respect to the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things described in the following sections, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the state. Provided further that the documentary stamp taxes required under this chapter shall be affixed to and placed on all recordable instruments, requiring documentary stamps according to law, prior to recordation. On mortgages where the stamps are on the notes, a notation shall be made on the mortgage that the proper stamps and the amount of same have been placed on the notes.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); §1, ch. 61-278.

cf.—§665.21(1) Regulation of loans to stockholders.

201.02 Tax on deeds and other instruments relating to lands, etc.—On deeds, instruments, or writings, whereby any lands, tenements, or other realty, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser, or any other person by his direction, on each one hundred dollars of the consideration therefor the tax shall be thirty cents; provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of thirty cents for each one hundred dollars, or fractional part thereof, of the consideration therefor.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); §1, ch. 57-397; §1, ch. 63-533.

201.04 Tax on bills of sale, agreements, transfers, etc., of personal property and interests therein.—

(1) On all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest rights or not, on each one hundred dollars of face value or fraction thereof the tax shall be fifteen cents; and where such shares are without par or face value the tax shall be fifteen cents on each one hundred dollars of actual value or fraction thereof but not to exceed fifteen cents on each share; provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall

be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

(2) For the purposes of this section, the term stock includes corporate stock, shares however designated in a joint stock company, trust in the nature of a common law trust or Massachusetts trust, association or other trust in which the trustees are associated together in substantially the same manner as directors in a corporation for the purpose of carrying on a business enterprise. Such shares are declared to be personal property, and not interests in land, notwithstanding the nature of the property of which the trust shall consist, unless provided otherwise in the trust instrument.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111), 7473(4); §1, ch. 61-270; §2, ch. 63-533; (2) n. §1, ch. 63-488. cf.—§775.07 Punishment for misdemeanor.

201.05 Tax on stock certificates.—On each original issue, whether organization or reorganization, of certificates of stock or shares however designated issued in the state, or certificates of profits, or of interest in property or accumulations, by any corporation or by any joint stock company or other association as set forth in §201.04, on each one hundred dollars of face value, or fraction thereof, the tax shall be fifteen cents; provided, that where a certificate is issued without face value, the tax shall be fifteen cents on each one hundred dollars of actual value or fraction thereof. The stamps representing the tax imposed by this section shall be attached to the stock books, and not to the certificates issued.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); §1, ch. 61-270; §2, ch. 63-488; §3, ch. 63-533.

201.07 Tax on bonds, debentures and certificates of indebtedness.—On all bonds, debentures, or certificates of indebtedness issued in the state by any person, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each hundred dollars of the face value or fraction thereof, the tax shall be fifteen cents; provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, the property of which is located within the state shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); §4, ch. 63-533.

201.08 Tax on promissory notes, written obligations to pay money, assignments of wages, etc.—

(1) On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same on each one hundred dollars of the indebtedness or obligation evidenced thereby, the tax shall be fifteen cents on each one hundred dollars or fraction thereof. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

(2) On promissory notes, non-negotiable notes, written obligations to pay money, or other compensation, made, executed, delivered, sold, transferred, or assigned in the state, in connection with sales made under retail charge account services, incident to sales which are not conditional in character and which are not secured by mortgage or other pledge of purchaser, the tax shall be fifteen cents on each one hundred dollars or fraction thereof of the gross amount of the indebtedness evidenced by said instruments, payable quarterly on such forms and under such rules and regulations as may be promulgated by the comptroller. No documentary stamps shall be required to be attached to instruments under the provisions of this subsection.

History.—§1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); §1, ch. 28216, 1953; (1) §1, (2) §2, ch. 61-277; §5, ch. 63-533.

201.09 Renewal of existing promissory note; exemption. — When any promissory note is given in renewal of any existing promissory note, which said renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness evidenced thereby, not including any accumulated interest thereon and without enlargement in any way of said original contract and obligation, such renewal note shall not be subject to taxation under this chapter if such renewal note has attached to it the original promissory note with canceled stamps affixed thereon showing full payment of the tax due thereon.

History.—§1, ch. 19068, 1939; CGL 1940 Supp. 1279(118).

201.10 Certificates of deposit issued by banks exempt.—All certificates of deposit issued by any bank, banking association, or trust company are exempt from the requirement for an excise tax imposed by this chapter.

History.—§2, ch. 19068, 1939; CGL 1940 Supp. 1279(119).

201.11 Administration of law by comptroller.—The administration of this chapter shall be vested in the comptroller of the state, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this chapter. He may enter upon the premises of any taxpayer, and examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and secure other information directly or indirectly concerned in the enforcement of this chapter. Any person, subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this chapter by inspection, or any person, agent or officer, who shall, after demand by the comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books,

records, documents, or other instruments in any way relating to the liability of the tax payer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

History.—§2, ch. 15787, 1931; CGL 1936 Supp. 1279(112), 7473(5).

cf.—§775.07 Punishment for misdemeanor.

201.12 Duties of clerks of the circuit court.—Clerks of the circuit court shall report to the comptroller the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

History.—§2, ch. 15787, 1931; CGL 1936 Supp. 1279(113), 7473(6).

cf.—§775.07 Punishment for misdemeanor.

201.13 Comptroller to furnish stamps for tax.—The comptroller of the state shall cause to be prepared and distributed for the payment of the taxes prescribed in this chapter, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this chapter.

History.—§3, ch. 15787, 1931; CGL 1936 Supp. 1279(114).

201.131 Metering machines.—

(1) The taxes imposed by this chapter may also be paid through the use of excise tax on documents stamp insignia to be applied by the use of metering machines. The comptroller of the state shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such excise taxes on documents through the use thereof, requiring adequate surety bonds of the non-governmental users thereof to assure the proper use of such machines and the payment of all excise taxes on documents, and all other rules and regulations necessary and proper to govern the use of same.

(2) Users of such metering machines will have to supply such machines at their own expense.

(3) All provisions of this chapter governing the use of excise tax in documents stamps and pertaining to the payment of such excise taxes through the use of stamps shall likewise be applicable, where appropriate, to the payment of such taxes through the use of metering machines.

History.—§3, ch. 57-107.

201.14 Cancellation of stamps when used, etc.—Whenever an adhesive stamp is used for denoting any tax imposed by this chapter on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the comptroller may prescribe such other method for the cancellation of such stamps as he may deem expedient.

History.—§5, ch. 15787, 1931; CGL 1936 Supp. 1279(116).

201.15 Distribution of taxes collected.—All taxes collected under the provisions of this chapter shall be paid into the state treasury to the credit of the general revenue fund of the state, to be used and expended for the purposes for which said general revenue fund was created and exists by law.

History.—§6, ch. 15787, 1931; CGL 1936 Supp. 1279(117).

201.16 Other laws made applicable to chapter.—All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this chapter, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

History.—§3, ch. 15787, 1931; CGL 1936 Supp. 1279(115).

201.17 Penalties for failure to pay tax required.—Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without canceling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

History.—§4, ch. 15787, 1931; CGL 1936 Supp. 7473(7).

cf.—§775.07 Punishment for misdemeanor.

201.18 Penalties for illegal use of stamps, etc.—Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter, any adhesive stamp used in pursuance of this chapter, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has

already been used, or knowingly or willfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than five hundred dollars, or imprisonment of not less than twelve months.

History.—§4, ch. 15787, 1931; CGL 1936 Supp. 7473(7).
cf.—§775.06 Alternative punishment.

201.19 Forfeiture for illegally avoiding tax on notes.—Any person, either maker or payee, who shall attach to any original note any other note which is not in fact a renewal of the original note without paying the tax and affixing the stamps required by law on each and all of such notes, shall forfeit to the state a sum of money equal to twice the face value of all such notes as may be so attached, and the comptroller of the state shall direct the state attorney of the judicial circuit within which such parties or any of them reside, or where the act was committed, to bring suit in the name of the state to collect the amount due, and such state attorney shall institute and prosecute to judgment and collection the amount due, and the maker and the payee shall be jointly and severally liable for the payment thereof.

History.—§3, ch. 19068, 1939; CGL 1940 Supp. 1279(120).

201.20 Penalties for illegally avoiding tax on notes.—Any person using the provisions of §201.09 to avoid the payment of any tax justly due shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail of not more than six months.

History.—§4, ch. 19068, 1939; CGL 1940 Supp. 7473(7a).
cf.—§775.06 Alternative punishment.

201.21 Notes and other written obligations exempt under certain conditions.—There shall be exempt from all excise taxes imposed by chapter 201, all promissory notes, non-negotiable notes and other written obligations to pay money bearing date subsequent to July 1, 1955, hereinafter referred to as "principal obligations," when the maker thereof shall pledge or deposit with the payee or holder thereof pursuant to any agreement commonly known as a wholesale warehouse mortgage agreement, as collateral security for the payment thereof, any collateral obligation or obligations, as hereinafter defined, provided all excise taxes imposed by this chapter upon or in respect to such collateral obligation or obligations shall have been paid. If the indebtedness evidenced by any such principal obligation shall be in excess of the indebtedness evidenced by such collateral obligation or obligations, the exemption provided by this section shall not apply to the amount of such excess indebtedness, and in such event, the excise taxes imposed by this chapter shall apply and be paid only in respect to such excess of indebtedness of such principal obligation. The term "collateral obligation" as used in this section shall mean any note, bond or other written obligation to pay money secured by mortgage, deed of trust or other liens upon real or personal property.

History.—§1, ch. 29981, 1955.

CHAPTER 203

GROSS RECEIPTS TAXES, GENERALLY

203.01 Public service corporations, tax upon gross receipts.—Every person, including municipal corporations, receiving payment for electricity for light, heat or power, for natural or manufactured gas for light, heat or power, for use of telephones, and for the sending of telegrams and telegraph messages, shall annually, on or before the fifteenth day of March, report to the comptroller of the state, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding calendar year and, at the same time, shall pay into the state treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts. The term "gross receipts" as used herein shall not include gross receipts of any person derived from the sale of natural gas to a public or private utility, including municipal corporations and rural electric cooperative associations, either for resale or for use as fuel in the generation of electricity. If any person fails to make such report to the comptroller and pay the tax as herein provided, the comptroller shall, after having given at least five days' notice to such person or some official or representative thereof within this state, estimate the amount of such gross receipts from such information as he may be able to obtain and shall add ten per cent of the amount of such taxes as a penalty, for the failure of such person to make report, and shall proceed to collect such tax, together with all costs and the penalty, the same as other delinquent taxes are collected; provided, no penalty shall be added as aforesaid if a return is made and the amount due is paid to the state treasurer before the expiration of the time stated in the comptroller's notice aforesaid.

History.—§§1, 2, ch. 15658, 1931; CGL 1936 Supp. 1279(108), 1279(109); §7, ch. 22858, 1945; §1, ch. 57-819.

cf.—§1.01 (3) Definition of person.

203.011 Certain credits authorized.—Whenever a purchase is made of any utility service and a tax is paid thereon by a public utility that is regulated by the Florida railroad and public utilities commission, municipality or a rural electric cooperative association as provided in §203.01, and such public utility, municipality or rural electric cooperative association resells the same directly to consumers, such public utility, municipality or rural electric cooperative association shall be entitled and shall receive credit upon such taxes as may be due it under §203.01 to the extent of the tax paid or payable upon such utility service by the person, firm or corporation from whom such purchase was made.

History.—§1, ch. 28091, 1953; §1, ch. 57-820.

203.02 Powers of comptroller.—The comptroller may audit the reports provided for in §203.01 and each and every such person shall submit all records, books, papers and accounts as to business done to the comptroller or to a representative of the comptroller for examination or investigation upon demand.

History.—§3, ch. 15658, 1931; CGL 1936 Supp. 1279(110).

203.03 Penalties.—Any officer, agent or representative of any such person who receives any payment for the furnishing of the things or the services above mentioned without first complying with the provisions of this chapter as required, shall be guilty of a misdemeanor and for each violation shall be punished in the manner as is provided by law for the punishment of a misdemeanor.

History.—§4, ch. 15658, 1931; CGL 1936 Supp. 7455(8).

cf.—§775.07 Punishment for misdemeanor.

203.04 Repeal of laws granting exemptions or exceptions.—

(1) All provisions of presently existing general, special or local statutes or laws, or parts thereof, including municipal charters and laws relating to quasi-municipal corporations, of this state granting or providing exemptions or exceptions, either directly or indirectly, from the gross receipts taxes imposed by chapter 203 are hereby repealed. This section shall not repeal, modify or amend any of the provisions of §§203.01 or 203.011.

(2) No statute or law, general, special or local hereafter enacted which either directly or indirectly relates to exemptions or exceptions from taxation in this state shall be construed as including or extending to the gross receipts taxes imposed by chapter 203 unless its application to said chapter, either directly or indirectly, is clearly and specifically expressed and no repeals by implication shall be recognized in this connection. This is a rule of statutory construction to be applied to statutes and laws hereafter enacted.

(3) Subsection (1) shall be construed as applying to chapter 29334, 1953, as amended by chapter 31051, 1955; chapters 30415, 30576, 30845 and 31166, 1955; and chapters 57-1174 and 57-1348, all laws of Florida. This enumeration of chapters shall not be construed as being all inclusive.

History.—§§1, 2 and 3, ch. 63-535.

CHAPTER 204

RETAIL STORE LICENSE TAXES

204.01 Definitions.—The following words, terms and phrases when used in this chapter have the meaning ascribed to them in this section except where the context clearly indicates a different meaning.

(1) "Person" includes any individual, corporation, receiver, or association of persons acting together as a unit.

(2) "Association of persons" means and includes any firm, copartnership, joint adventure, joint stock company, association, estate, business trust, trust, syndicate, fiduciary, or any other group or combination of persons, whether natural or artificial, acting together or as a unit.

(3) "A retail sale" or "sale at retail" means any sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, provided that no sale shall be construed to be a "retail sale" where goods, wares, and merchandise are sold in wholesale quantities at wholesale prices by licensed wholesale dealers under standing orders or through outside salesmen as distinguished from sales of small packages at retail prices or is sold in wholesale quantities and at wholesale prices to any governmental institution, subdivision or agency.

Provided further that incidental sales not otherwise excepted in this paragraph, made by a licensed wholesaler to consumers at wholesale prices shall not be construed to be retail sales, unless such sales exceed five percent of such wholesaler's total sales.

(4) "Business" includes any activity engaged in, or carried on, by any person either directly or indirectly, or for whose benefit such activity is engaged in or carried on where the object of such activity is profit or gain to the person engaging in or carrying on the same, or for whose benefit the same is carried on.

(5) "Retailer" includes every person engaged in the business of making sales at retail.

(6) "Store" as used in this chapter shall mean and include any store or any mercantile establishment, whether same be stationary or movable by means of wheels or otherwise, which is owned, operated or maintained by a person, firm, copartnership, joint adventure, joint stock company, association, corporation, estate, business trust, trust, receiver, syndicate, fiduciary, or any other group, or combination of persons; in which goods, wares, or merchandise of any kind, are sold or are offered for sale at retail. Provided, however, the term store or mercantile establishment shall not include bulk plants or filling stations engaging principally in the sale of gasoline and other petroleum products, ice plants or ice dealers engaging principally in the sale of ice, bakeries and other manufacturing or processing plants selling only the products manufactured or processed therein, restaurants, cafes, cafeterias, hotels and liquor stores; provided, however, that where food or intoxicating liquors is (are) sold in connection with a principal business, but only incidental thereto, said principal business shall not be exempt from the license tax imposed herein.

(7) "Seasonal store" when used in this chapter shall mean a store regularly and customarily operated or to be operated only during a certain season of a year, or for a period of time less than a calendar year.

(8) "New store" when used in this chapter shall mean a newly opened store or mercantile establishment located at a street address anywhere in this state at which the owner or licensee has not theretofore operated a store or mercantile establishment and for which new store location the licensee has not, under the provisions of this chapter, transferred a license theretofore issued by the comptroller for a store of the licensee in another location of this state.

History.—§2, ch. 16848, 1935; CGL 1936 Supp. 4151(95b); §1, ch. 20977, 1941; §1, ch. 24269, 1947; §11, ch. 25035, 1949; (6) §1, ch. 28008, 1953; §7, ch. 29615, 1955; §24, ch. 57-1.

204.02 License taxes imposed.—For the privilege of conducting, engaging in and carrying on the business of a retailer as defined in this chapter, there is hereby levied and assessed upon every person, or association of persons as herein defined, for each store located and operated within this state by such person or association of persons, an annual license tax in the sum of ten dollars.

History.—§4, ch. 16848, 1935; CGL 1936 Supp. 4151(95d); §2, ch. 20977, 1941; §1, ch. 28028, 1953.

204.05 Time taxes due and payable.—The license taxes levied and imposed by §204.02 shall be due and payable on the first day of July of each year at the office of the state comptroller at Tallahassee, at which time the comptroller shall issue the license or licenses.

If any person, or association of persons, desires to operate a store, or mercantile establishment in Florida, such person, or association of persons, shall, before commencing the operation of such store, apply for and obtain the annual license, or licenses, herein provided for, applicable to such store, which license, or licenses, shall expire on June thirtieth fol-

lowing its or their issuance, regardless of the date of its or their issuance.

History.—§7, ch. 16848, 1935; CGL 1936 Supp. 4151(95g); §5, ch. 20977, 1941; §20, ch. 29615, 1955.

204.06 Collection of taxes; duty of comptroller.—The collection of the license taxes levied, imposed and required to be paid is hereby vested in the state comptroller, and the several county collectors of the state are hereby required to perform such duties and assist the comptroller in such respects as he may require in the administration and enforcement of this chapter; and the comptroller is hereby authorized and empowered to prescribe forms relative to the administration and enforcement of this chapter. The comptroller is hereby authorized and empowered to demand of any agency or department of the state government or of any officer of any political subdivision of the state all information by him deemed necessary to properly administer this chapter.

History.—§5, ch. 16848, 1935; CGL 1936 Supp. 4151(95e); §6, ch. 20977, 1941.

204.09 Penalties.—

(1) Any person, or association of persons, subject to the provisions of this chapter, failing or refusing to furnish any report as herein required to be made, or failing or refusing to furnish a supplemental report, or other data required by the comptroller, or who shall violate any provision of this chapter, or fail to pay the license tax or taxes due by such person, or association of persons, under the provisions of this chapter, or who shall secure any license as herein provided for upon a false or fraudulent application, or who shall operate any store in this state without first obtaining the license or licenses provided for herein, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment within the discretion of the court.

(2) Any person required to make, render, sign or verify any report as aforesaid, who makes any false or fraudulent report or return with the intent to evade the license taxes herein provided for, shall be guilty of a misdemeanor and shall, upon conviction, be fined not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment within the discretion of the court, and the comptroller shall in each such case collect in addition to the taxes due, a penalty equal to two per cent of the amount of such tax per month for the period of delinquency in excess of sixty days.

History.—§10, ch. 16848, 1935; CGL 1936 Supp. 8135(7a); §9, ch. 20977, 1941; §7, ch. 22858, 1945.

204.10 Lien for taxes, enforcement and penalties.—There is hereby created a lien in favor of the state upon all the property, both real and personal, of any person, or association of persons, who shall become liable for the payment of any license tax levied and imposed by this chapter for the amount of the license tax, or license taxes, due and payable under the provisions thereof, together with all costs of collecting same; and if the license tax imposed by this chapter, or any portion of such license tax, or license taxes be not paid within sixty days after the same becomes delinquent, the comptroller may thereafter, upon due application and order of a court of competent jurisdiction, issue a warrant under his official seal, directed to all and singular the sheriffs of the state, commanding them to levy upon and sell any real and personal property of the person, or association of persons, liable for such license tax, or license taxes, within their respective jurisdiction, for the payment of the amount thereof, with the added penalties and costs of executing the warrant and to return such warrant to the comptroller and to pay him the money collected by virtue thereof by a time to be therein specified, not more than sixty days from the date of the warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, and thereupon the clerk shall record the same, showing the name of the persons, or association of persons, mentioned in the warrant, and in proper columns the amount of the license tax, or taxes, and penalties, for which the warrant is issued, and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to any real or personal property of such person, or association of persons against whom such warrant is issued in the same manner as a judgment duly docketed and recorded in the office of such clerk of the circuit court with execution duly issued thereon and in the hands of the sheriff for levy. Such sheriff shall thereupon proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a circuit court and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

Any person or association of persons who fails to pay any license tax when due the comptroller shall in each such case collect in addition to the taxes due a penalty of two dollars fifty cents for the period of delinquency occurring any time in the first three months, and an additional two dollars fifty cents for each additional three months period, or fraction, of delinquency thereafter.

History.—§12, ch. 16848, 1935; CGL 1936 Supp. 4151(95k); §10, ch. 20977, 1941; §1, ch. 63-298.

204.11 Revocation or suspension of licenses.—No license under this chapter shall be issued by the comptroller until after the filing of the sworn report as herein provided for; and in the event the comptroller shall, within eighteen months, and not thereafter, determine, after the issuance of any permit, that there has been any false statement in the application therefor, or the sworn report provided for herein, or that the number of stores in the chain of the applicant is greater than those set forth in his application, or that the inventory is greater than that shown by his sworn report, it shall be the duty of the comptroller, within eighteen months after the

filing of such report, and not thereafter, to proceed to the revocation of all licenses issued to such person, or association of persons, in the manner hereinafter provided. Whenever the holder of a license issued under this chapter shall fail to comply with any of the provisions of this chapter, or whenever the comptroller shall determine that any license has been issued upon any false application or report, the comptroller, upon hearing, after giving ten days' notice to the license holder at his address, time and place of the hearing, to show cause, if any he can, why his license should not be revoked by reason of such violation or false statement or report, and upon such hearing, if the comptroller shall find that such violation has been committed, or such false report made, he shall thereupon revoke and suspend such person's or association of persons', license, or licenses, and before any new license shall be issued such persons, or association of persons, shall be required to make proper application as herein provided for, and to pay the proper license tax, or taxes, imposed by this chapter; and no action taken under the authority hereof shall be construed as in any manner operating as a bar to any other civil or criminal liability which any person, or association of persons, may be liable.

History.—§13, ch. 16848, 1935; CGL 1936 Supp. 4151(95l); §11, ch. 20977, 1941.

204.12 Transfer of licenses.—The licenses granted and issued under the provisions of this chapter upon payment of the taxes levied and imposed under the provisions of this chapter may be transferred by the licensee upon notice to the comptroller, from one store location to another store location under the same ownership, upon the closing and discontinuance of business at the store location for which such taxes were originally paid and such licenses were originally issued.

History.—§12, ch. 20977, 1941.

204.13 Enforcement.—The comptroller is authorized to employ such employees as he may from time to time deem necessary to carry out the terms and provisions of this chapter, and the attorney general is hereby directed and required to perform all legal services required by the comptroller without any additional expense.

History.—§14, ch. 16848, 1935; CGL 1936 Supp. 4151 (95m); §13, ch. 20977, 1941; §11, ch. 26869, 1951.

204.14 Disposition collections. — All funds collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

History.—§15, ch. 16848, 1935; CGL 1936 Supp. 4151(95n); §14, ch. 20977, 1941; §12, ch. 26869, 1951.

204.15 Licenses not exclusive.—The license taxes imposed by this chapter shall not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the state, unless expressly repealed hereby.

History.—§17, ch. 16848, 1935; CGL 1936 Supp. 4151(95o); §15, ch. 20977, 1941.

CHAPTER 205

LICENSE TAXES

205.01 Occupational license taxes; county judge's fee. — No person shall engage in or manage any business, profession or occupation, for which an occupational license tax is required by this chapter or other law of this state, unless a state license, or a state and county license, or county license, as the case may be, shall have been procured from the tax collector of the county where the place of business may be located, or where the profession or occupation may be engaged in, or from the comptroller or state treasurer, as is provided by this chapter or other law of this state, which license shall be issued to each person upon receipt of the amount hereinafter provided, or as may be otherwise provided by law, and in case the license is issued by the tax collector, he must collect in addition thereto the county judge's fee of twenty-five cents for each county license signed by him, and such license shall be signed by the tax collector and the county judge and shall have the county judge's seal thereon.

History.—§1, ch. 6421, 1913; RGS 803; CGL 1050; §1, ch. 14491, 1929; §1, ch. 18011, 1937; CGL 1940 Supp. 1279(1); §1, ch. 20956, 1941.

cf.—§1.01(3) Definition of person.

205.011 Definition; merchandise vending machine operator.—Every person who operates for profit fifteen or more merchandise vending machines which require the insertion of a coin, coins, tokens, or paper currency and dispenses merchandise of a value of five cents or more without the necessity of replenishing the device between each operation shall be known as merchandise vending machine operators.

History.—§1, ch. 63-421.

205.02 County and city license taxes, amounts.—In every case, not otherwise provided by law, a county license tax of fifty per cent of the state license tax be and the same is levied and imposed upon every business, profession, or occupation, and the tax collector of each county in this state shall collect such county license tax when the business, profession, or occupation is engaged in, conducted or carried on in any such county, and all of the penalties prescribed by law for the nonpayment of license taxes or for doing business without a license shall extend to and apply to county license taxes, whether imposed by this chapter or any other law of the state; provided, that incorporated cities and towns may impose such further license taxes of the same kind upon the same subjects as they may deem proper, except when otherwise provided by law, but the license taxes so imposed shall not exceed fifty per cent of the state license tax, except as otherwise authorized by law.

History.—§2, ch. 6421, 1913; RGS 804; CGL 1051; §2, ch. 14491, 1929; §2, ch. 18011, 1937; CGL 1940 Supp. 1279(2); §2, ch. 20956, 1941.

205.03 Term of license taxes; transfer.—No license shall be issued for more than one year, and all licenses shall expire on the first day of October of each year, except as otherwise provided by law. All business licenses may be transferred with the approval of the comptroller with the business for which they were taken out when there is a bona fide sale and transfer of the property used and employed in the business, but such transferred license shall not be held good for any longer time or any other place than that for which it was originally issued; provided, that the original license shall be surrendered to and filed with the county judge at the time application for transfer is made, and such transferred license after being approved shall be of the same force and effect as the original license.

History.—§3, ch. 6421, 1913; RGS 805; CGL 1052; §3, ch. 14491, 1929; §3, ch. 18011, 1937; CGL 1940 Supp. 1279(3); §3, ch. 20956, 1941.

205.04 When license tax payable; fractional licenses.—All licenses shall be payable on or before the first day of October, of each year, unless otherwise provided by law, and except as may be otherwise provided by law any person who was not liable for a license during the first half of the license year may be issued a license during the second half of the license year upon the payment of one half the amount fixed as the price of such license for one year.

History.—§4, ch. 6421, 1913; RGS 806; CGL 1053; §4, ch. 14491, 1929; §4, ch. 18011, 1937; CGL 1940 Supp. 1279(4); §4, ch. 20956, 1941.

205.05 Issuance of license; application.—No license shall be issued except upon written application of the person applying for the same, and the tax collector, before issuing a license based wholly or in part upon property valuation, capital stock, merchandise inventory capacity, production, number of persons employed, number of places of business, or any other contingency, shall require the person applying for such license to file, under oath, a statement giving full and complete information relative to the property valuation, capital stock, merchandise inventory, capacity, production, number of persons employed, number of places of business, or other contingency, as the case may be. The applications and statements required by this section shall be retained as a part of the records of the tax collector's office.

History.—§28, ch. 18011, 1937; CGL 1940 Supp. 1279(29); §28, ch. 20956, 1941.

205.051 Issuance of license to practice medicine.—

(1) From and after the passage of this act it shall be unlawful for the tax collectors of the several counties of the state to issue state and county occupational licenses to any persons applying for license to practice medicine in any of its branches unless and until proof of current qualification and competency, as established by certificate or license issued by state boards duly constituted and legally authorized to determine qualification and competency, be exhibited at the time of making such application.

(2) That nothing herein shall be construed to repeal any license tax now imposed by law and not specifically repealed hereby.

History.—§§1, 2, ch. 24352, 1947.

205.06 Method of determining license when value of goods or number of employees a factor.—Whenever the amount of a license tax shall be based wholly or in part on the number of persons employed, or the value of the stock of merchandise maintained, the number or value to be used in calculating the amount of the license tax shall be the average number of persons employed or the average value of merchandise maintained during the preceding license year or business operating period, or the average number of persons or average value of merchandise reasonably expected to be employed or maintained during the period for which the license is to be issued, whichever number or value shall be the greater. The average shall be obtained by adding the maximum and minimum number of persons or the maximum and minimum values of merchandise for the period for which the average is to be obtained and the division by two of the sum of the maximum and the minimum. The term "persons employed"

includes all persons actively working in the business whether owners thereof or not.

History.—§29, ch. 18011, 1937; CGL 1940 Supp. 1279(30); §29, ch. 20956, 1941.

205.07 Issuance of license; manner, forms, etc.—The comptroller of the state shall furnish such blanks as are required in book form to the county judge of each county, who shall give to the comptroller his receipt therefor, stating the number of blank licenses in each book received, and the county judge shall return such books for examination at any time when requested to do so by the comptroller. Every state or county license shall be furnished by the county judge, under his seal of office, to the tax collector, on the blanks published by the comptroller, after signing the same and taking his receipt therefor, and the tax collector shall fill out and sign each license before issuing the same to the person or persons, paying him the necessary amount therefor. The tax collector shall make a duplicate of each license issued in the book furnished by the county judge for that purpose, and shall file such duplicate license with the county judge, and the person or persons obtaining such license shall keep the same displayed conspicuously at their place of business and in such a manner as to be open to the view of the public and subject to the inspection of all duly authorized officers of the state and county, and upon failure to do so, shall be subject to the payment of another license tax for engaging in or managing the business or occupation for which such license was obtained. If the payment of a license is made to the state treasurer or comptroller, the license shall be issued by the officer to whom the payment must be made.

History.—§30, ch. 18011, 1937; CGL 1940 Supp. 1279(31); §30, ch. 20956, 1941.

205.08 Comptroller's instructions, county officers to obey.—The tax collector and county judge shall follow the instructions and use the forms and such system as may be prescribed by the comptroller, and the comptroller may by audit, examination, inspection and investigation, determine whether or not the reports made by the tax collectors and county judge are accurate, truthful and complete, and if he shall find that any tax collector or county judge has failed, neglected or refused to fully comply with the requirements of this law he shall report such failure, neglect, or refusal to the governor.

History.—§34, ch. 18011, 1937; CGL 1940 Supp. 1279(35); §34, ch. 20956, 1941.

205.09 Report of county judge. — Each county judge shall transmit to the comptroller, on or before the fifteenth day of each month following the month covered, a statement showing the total number of licenses issued, the amount of money collected for state and county licenses and shall render to the county commissioners a duplicate of said statement. Each monthly statement shall be signed by the county judge and the tax collector; the tax collector shall make monthly payments of the amount collected by him for state licenses to the state comptroller and at the same time pay to the county depository the amount collected by him for county licenses, retaining a copy of said statement and a copy of each license issued by him for his office records.

History.—§31, ch. 18011, 1937; CGL 1940 Supp. 1279(32); §31, ch. 20956, 1941; §1, ch. 57-271; §11, ch. 59-1.

205.10 Method of collection of delinquent license taxes, generally; liens.—Whenever any person who is subject to the payment of a license or privilege tax provided by this or any other law of the state, shall fail to pay the same when due, the tax collector, comptroller, state treasurer, or other official to whom the said tax is payable, may issue a warrant directed to all and singular the sheriffs of the state, commanding them and each of them to levy upon and sell any real or personal property of the person liable for said tax within his respective jurisdiction for the amount thereof and the cost of executing the warrant, and to return such warrant to the officer issuing same, and to pay to him the money collected by virtue thereof within sixty days from the date of the warrant. The sheriff to whom the said warrant may be delivered shall proceed in all respects and in the same manner prescribed by law in regard to executions issued against property upon judgments of a circuit court, and shall be entitled to the same fee for his services in executing the warrant, to be collected in the same manner. The officer issuing the warrant may file a copy of the warrant with the clerk of the circuit court of the county to the sheriff of which the original is delivered and the clerk shall record the same, whereupon the amount of the warrant and recording fee shall become a lien upon the title to and interest, whether legal or equitable, in any property, whether real, personal, or mixed, of the person against whom the warrant is issued, in the same manner and to the same extent as a judgment duly docketed in the office of such clerk of the circuit court with execution duly issued and in the hands of the sheriff. Any person subject to and who fails to pay a license or privilege tax required by this or any other law of the state, shall, on petition of the officer to whom the said tax is payable, be enjoined by the circuit court from engaging in the business for which he has failed to pay said license, until such time as he shall pay the same with all costs of such action.

History.—§32, ch. 18011, 1937; CGL 1940 Supp. 1279(33); §32, ch. 20956, 1941; §7, ch. 22858, 1945.
cf.—Similar to CGL 1273.
§601.15(9)(b) 4. Excise tax on citrus fruit to support enforcement provisions.

205.11 Delinquent license tax; penalty. — Whenever any license tax provided by this or any other law of the state, to be paid to the tax collector, shall remain unpaid after its due date for a period of ninety days, the tax shall be deemed delinquent and there

shall be added thereto, and become a part of the tax, a penalty of ten per cent of the original amount of such license tax, and the tax collector shall issue a warrant, in the manner provided by law, against the person or persons liable for the payment of the said license tax and penalty.

History.—§33, ch. 18011, 1937; CGL 1940 Supp. 1279(34); §33, ch. 20956, 1941; §1, ch. 24112, 1947.

205.12 Additional license taxes; collection after certain payments, etc. — Whenever any authorized state, county or municipal officer or agency, annually, for two or more consecutive years shall have received the taxes and fees tendered for, and delivered to the applicant license or licenses for the operation and conduct by the holder thereof of the place or places of business or stores therein designated, no such officer or agency shall thereafter prohibit the operation of such places of business or stores thereunder, nor issue or enforce any warrant against the holder of such licenses, or any other person or concern, or the property of such holder or any other person or concern, for any additional license taxes, penalties, interest or costs for such place or places of business or stores under the law under which such licenses were issued for the periods comprehended by such licenses; nor shall any right of action of any nature exist or proceedings of any nature be had or taken for any additional taxes for such places of business or stores for the license years for which such licenses were so issued.

History.—§1, ch. 19165, 1939; CGL 1940 Supp. 1279(54).

205.13 Other license taxes to be in addition to occupational license tax.—Fees or licenses paid to any board, commission or officer for permits, registration, examination, inspection or other regulatory purposes shall be in addition to and not in lieu of any occupational license tax required by this chapter or other law unless otherwise expressly provided by law.

History.—§35, ch. 18011, 1937; CGL 1940 Supp. 1279(36); §35, ch. 20956, 1941.

205.14 Lottery and gambling not authorized. —This law shall not be construed to authorize gambling or the operation of a lottery.

History.—§36, ch. 18011, 1937; CGL 1940 Supp. 1279(37); §36, ch. 20956, 1941.

205.15 Exemptions allowed cripples, invalids, aged, etc.—All confirmed cripples, or invalids physically incapable of manual labor, widows with minor dependents, and persons sixty-five years of age or older, with not more than one employee or helper, and who use their own capital only, not in excess of five hundred dollars, shall be allowed to engage in any business or occupation in counties in which they live without being required to pay for a license; except that this exemption shall not apply to any of the occupations specified in §205.41. The exemption provided by this section shall be allowed only upon certificate of the county physician, or other reputable physician, that the applicant claiming the exemption is a confirmed cripple or invalid, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over sixty-five years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a license which shall have plainly stamped or written across the face thereof the fact that it is issued under this section, and the reason for the exemption shall be written thereon. Disabled veterans of the world war and the Spanish War shall be allowed the same exemptions as are now allowed by law.

History.—§27, ch. 18011, 1937; CGL 1940 Supp. 1279(28); §27, ch. 20956, 1941; §1, ch. 28251, 1953.

205.16 Disabled veterans of Spanish-American, Korean and World War, exemption.—

(1) Any bona fide permanent resident elector of the state, who served as an officer or enlisted man in the United States army, navy or marine corps during the World War between April 6, 1917, and November 11, 1918, or in the Spanish-American War between April 21st, 1896, and July 4th, 1902, and who was honorably discharged from the service of the United States, and who at the time of his application for license as hereinafter mentioned shall be disabled from performing manual labor, shall, upon sufficient identification and proof of being a permanent resident elector in the state and production of an honorable discharge from the service of the United States during the World War or Spanish-American War between the dates aforesaid, respectively, be granted a license to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the licensee as a means of livelihood, and for which the state, county or municipal license does not exceed the sum of fifty dollars without payment of any license tax otherwise provided for by law; or shall be entitled to an exemption to the extent of fifty dollars on any license to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the licensee as a means of livelihood where either the state, county or municipal license for such business or occupation shall be more than fifty dollars. The exemption heretofore referred to shall extend to and include the right of licensee to operate an automobile for hire of not exceeding five-passenger capacity, including the driver, when it shall be made to appear that such automobile is bona fide owned, or contracted to be purchased by the licensee, and is being operated by him as a means of livelihood, and the proper license tag for the operation of such motor vehicle for private use has been applied for and attached to said motor vehicle, and the proper fees therefor paid by the licensee.

(2) When any such person shall apply for

a license to conduct any business or occupation for which either the state, county or municipal license tax as fixed by law shall exceed the sum of fifty dollars, the remainder of such license tax in excess of fifty dollars shall be paid by him in cash.

(3) Each and every tax collecting authority of this state, and of each county thereof, and of each municipality therein, shall issue to such persons as may be entitled hereunder a license in pursuance to the foregoing provision and subject to the conditions thereof; and such license when issued shall be marked across the face thereof "World War Veteran's License" or "Spanish-American War Veteran's License"—"Not transferable," as the case may be, provided that before issuing the same, proof shall be duly made in each case that the applicant is entitled under the conditions of this law to receive the exemption herein provided for, which proof may be made by exhibiting a certificate of government rated disability to an extent of ten per cent, or more, or the affidavit or testimony of a reputable physician who personally knows the applicant, and who makes oath that the applicant is disabled from performing manual labor as a means of livelihood, or by the certificate of any post of Spanish-American War veterans or World War veterans, duly executed under the hand and seal of the chief officer and secretary thereof attesting the fact that the applicant is disabled and entitled to receive a license within the meaning and intent of this section, or by the production of a pension certificate issued to him by the United States of America by reason of such disability, or by such other reasonable proof as may be required by the tax collecting authority to establish the fact that such applicant is so disabled, and in addition by establishing to the satisfaction of such tax collecting authority by means of certificate of honorable discharge or certified copy thereof that he is a veteran within the purview of this section. All licenses issued under this section shall be in the same general form, and shall expire at the same time, as other state, county and municipal licenses are fixed by law to expire.

(4) All licenses obtained under the provisions of this section by the commission of fraud upon any issuing authority shall be deemed null and void, and the person who has fraudulently obtained any such license, or who has fraudulently received any transfer of a license issued to another and has thereafter engaged in any business or occupation requiring a license under color thereof, shall be subject to prosecution as for engaging in a business or occupation without having the required license under the laws of the state; and such license shall not be issued in any county other than the county wherein said veteran is a bona fide resident citizen elector, unless such veteran applying therefor shall produce to the tax collecting authority in such county a certificate of the tax collector of his home county to the effect that no exemption from license has been granted to such veteran in his home county under the authority of this section.

(5) In no event under this or any other law shall any person, veteran or otherwise, be allowed any exemption whatsoever from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors, malt and vinous beverages; or for the operation of any slot machine, punch board or any other gaming or gambling device.

(6) Disabled veterans of World War II who became disabled in line of duty any time between December 7, 1941, and the close of the war shall be entitled to the same license tax exemption as is now provided by law for disabled veterans of the Spanish-American war and/or veterans of World War I.

(7) Disabled veterans of the Korean war who became disabled in line of duty any time between June 24, 1950 and July 27, 1953, shall be entitled to the same license tax exemption as now provided by law for disabled veterans of the Spanish-American war and/or veterans of World War I.

History.—§1, ch. 12110, 1927; CGL 1269; §1, ch. 13876, 1929; §1, ch. 16299, 1933; §1, ch. 17476, 1935; §1, ch. 21654, 1943; (7) n. §1, ch. 57-266.

205.161 License exemptions for World War II and Korean veterans.—

(1) Any bona fide, permanent resident elector of Florida, who served as an officer or enlisted man in the United States Army, National Guard, Navy, Naval Reserve, United States Coast Guard, United States Coast Guard Reserve, Marine Corps, Marine Corps Reserve, or any temporary members thereof, who have actually been or may hereafter be assigned by the army, navy or coast guard to active duty between December 7, 1941, and the close of World War II, or June 24, 1950 and July 27, 1953, known as the Korean War, and who was honorably discharged or disenrolled from the service of the United States, be and they are hereby granted and entitled to the same occupational license tax exemptions as are now granted and given to the veterans of World War I.

(2) The unremarried widow of the deceased disabled veteran of any war in which the United States armed forces participated in will be entitled to the same exemptions as the disabled veteran.

History.—§§1, 1a, ch. 22664, 1945; (1) §2, ch. 57-266.

205.17 Farm, grove, horticultural and floricultural products; certain exemptions.—

(1) All farm, horticultural, floricultural and grove products and products manufactured therefrom, except intoxicating liquors, wine or beer shall be exempt from all forms of license tax, state, county and municipal, when the same is being offered for sale or sold by the farmer or grower producing said products. The management of wholesale farmers produce markets shall have the right to pay a license of two hundred dollars that will entitle its stall tenants to deal in agricultural and horticultural products without obtaining individual licenses, but

individual licenses shall be required of such tenants unless such license is obtained for the market.

(2) Every person other than non-profit co-operative associations engaged in the business of packing, processing, or canning agricultural products not grown by him, shall for each place of business pay a license tax of five dollars, plus one dollar for each five persons employed thereat, provided said licenses shall not exceed fifty dollars.

History.—§§8, 25, ch. 18011, 1937; CGL 1940 Supp. 1279(8), (26); §§8, 25, ch. 20956, 1941; (1) §1, ch. 61-444.

205.18 Religious tenets exemption.—Nothing in this chapter shall be construed to require a license for practicing the religious tenets of any church.

History.—§26, ch. 18011, 1937; CGL 1940 Supp. 1279(27); §26, ch. 20956, 1941.

205.19 School activities, certain exemption.—College and high school students may, with the approval of the athletic association or authority of their school, sell the pennants, badges, insignia and novelties of their school without being required to pay a license.

History.—§26, ch. 18011, 1937; CGL 1940 Supp. 1279(27); §26, ch. 20956, 1941.

205.20 Advertising space renters.—Every person renting for profit advertising space in or on any boat, car, bus, truck or other vehicle, shall pay a license tax of one dollar for each such boat, car, bus, truck or other vehicle operated by him.

History.—§14, ch. 18011, 1937; CGL 1940 Supp. 1279(14); §14, ch. 20956, 1941.

205.21 Amusement devices.—Every person who operates for a profit any game, amusement or recreational device, contrivance, or facility not otherwise licensed by some other law of this state shall pay a license tax of five dollars on each such game, amusement or recreational device, contrivance or facility, but this section shall not be construed to authorize the use of any game or device for gambling, or as a game of chance.

History.—§20, ch. 18011, 1937; CGL 1940 Supp. 1279(21); §20, ch. 20956, 1941.

205.27 Banks and trust companies.—Every person engaged in the business of operating a bank or trust company shall pay a license tax of fifty cents for each thousand dollars of the capital of the bank.

History.—§12, ch. 18011, 1937; CGL 1940 Supp. 1279(12); §12, ch. 20956, 1941.

205.28 Bankrupt, insolvent, auction, etc., sales.—Before any person shall sell or be engaged in the business of selling goods, wares, merchandise, or other personal property, such sales being advertised as bankrupt, insolvent, insurance, assignee, trustee, testator, executor, administrator, receiver, auction, syndicate, railroad or other wreck, wholesale or manufacturer's or closing out sale, or as goods damaged by smoke, fire, water or otherwise, such person shall pay a license tax of two hundred and fifty dollars; provided, however, markets selling principally livestock, agriculture commodities and citrus products or any of them shall pay a license tax of only fifty dollars, but the provisions hereof shall not apply to bona fide sales of general assignees for the benefit of creditors or bona fide trustees selling under power of sale in any deed of trust or mortgage or lien, executors and administrators selling goods of their decedent, or to any officer selling the property under legal process, or to regularly licensed auctioneers, selling bona fide at public outcry in the usual course of their business, or bona fide licensed merchants in selling or disposing of stocks of merchandise of which they were the original owners. The license required by this section shall not be transferable. The use of any of the descriptive words or phrases referred to in this section as a part of a trade or firm name shall be construed to require the obtaining of the license herein provided for.

History.—§15, ch. 18011, 1937; CGL 1940 Supp. 1279(15); §15, ch. 20956, 1941; §7, ch. 22858, 1945; §1, ch. 57-207.
cf.—§310.24 Board to attend sales, auctioneers for exemption.

205.29 Boarding and lodging houses.—Every person engaged in the business of operating a boarding house, lodging house, tourist camp, cabin camp, auto court, or hotel having beds for ten or more persons shall pay a license tax for each place of business of fifty cents for each room therein.

History.—§21, ch. 18011, 1937; CGL 1940 Supp. 1279(22); §21, ch. 20956, 1941.

205.30 Cemeteries, mausoleums, etc.—Every person engaged in the business of operating for a profit a cemetery, mausoleum, or similar place or institution, shall for each place of business pay a license tax of fifty dollars.

History.—§18, ch. 18011, 1937; CGL 1940 Supp. 1279(18); §8, ch. 20956, 1941.

205.32 Circuses, traveling shows, tent shows, etc.; license taxes side shows.—Shows of all kinds, including circuses, vaudeville, minstrels, theatrical, or any exhibition giving performances under tents or temporary structures of any kind, whether such tents or temporary structures are covered or uncovered, shall pay a state license tax for each day as follows:

When the charge for admission, including the charge for reserved seats, shall be fifty cents or more, the state license tax for each day shall be paid according to the population of the city or town in or adjacent to which the tent or structure is placed or erected as follows:

Cities and towns of ten thousand inhabitants or more, one hundred dollars for each day.

Cities or towns of less than ten thousand and more than five thousand inhabitants, seventy-five dollars for each day.

Cities and towns of five thousand and more than three thousand inhabitants, fifty dollars for each day.

Cities and towns of three thousand and less, twenty-five dollars for each day.

When the charge for admission, including the charge for reserved seats, shall be twenty-five cents and less than fifty cents, the state

license tax for each day shall be paid according to the population of the city or town in or adjacent to which the tent or structure is placed, as follows:

Cities or towns of ten thousand inhabitants or more, seventy-five dollars for each day.

Cities or towns of less than ten thousand and more than five thousand inhabitants, fifty dollars for each day.

Cities and towns of five thousand and more than three thousand inhabitants, twenty-five dollars for each day.

Cities and towns of three thousand inhabitants or less, fifteen dollars for each day.

When the charge for admission, including the charge for reserved seats, shall be less than twenty-five cents, the state license tax for each day shall be paid according to the population of the city or town in or adjacent to which the tent or structure is placed, as follows:

Cities and towns of ten thousand inhabitants or more, fifty dollars for each day.

Cities and towns of less than ten thousand and more than five thousand inhabitants, thirty dollars for each day.

Cities and towns of five thousand inhabitants and more than three thousand inhabitants, twenty dollars for each day.

Cities and towns of three thousand inhabitants or less, ten dollars for each day.

Provided, that any of the shows mentioned in this section which have paid a license according to the charge for admission and population of the city or town in or adjacent to, as provided in this section, shall be allowed to operate a "side show" upon the payment of the following license tax:

If admission charge including reserved seats for the main show or structure, shall be fifty cents or more, the license for a "side show" shall be ten dollars for each day.

If admission charge, including the charge for reserved seats for the main show or exhibition or structure shall be twenty-five cents and less than fifty cents, the license for a "side show" shall be seven dollars and fifty cents for each day.

If admission charge, including the charge for reserved seats, for the main show, exhibition or attraction shall be less than twenty-five cents, the license tax for a "side show" shall be five dollars for each day.

Provided, that no license shall be issued for a "side show" unless a license has been paid for a main show, or exhibition or structure; and provided further, that both licenses shall be issued to the same party and for the same day.

The license taxes provided for by this section shall be collected for each and every tent and for each and every day to which admission is charged; provided, that annual licenses may be issued to any of the shows or exhibitions mentioned in this section when such show or exhibition is permanently located in one place, upon the payment of six times the full amount of the daily license tax, according to the charge for admission and population as defined and prescribed by this section, but a license so issued shall be good only for the place for which it was originally taken out, and the tax collector shall so state in writing on the face of each such license.

No fractional license shall be issued under this provision.

History.—§47, ch. 6421, 1913; RGS 972; §1, ch. 9322, 1923; CGL 1244.

205.321 Traveling medicine shows.—

(1) There is hereby levied a daily license fee of twenty-five dollars, in addition to all other licenses, on itinerant medicine shows where entertainment is given incidental to or as a part of an effort to sell any product by such licensee in the state.

(2) The additional license fee here imposed shall be collected and the license issued in the same manner as the licenses provided for in §205.32.

History.—§1, ch. 57-355.

205.322 Traveling amusement shows; permit required; exemptions, fees; enforcement, penalties.—

(1) It is unlawful for any person to engage in the business of traveling shows, exhibitions or amusement enterprises including (without in any manner limiting the general terms) circuses, carnivals, rodeos, riding devices, traveling animal shows, ice shows, vaudeville, minstrels, theatrical games or tests of skills, dramatic repertoires or other shows and amusements, operating within or without any tent, structure or enclosure permanent or temporary in nature, which shall operate in a city, town or county of the state for a period of less than thirty days, without having first obtained from the comptroller of the state a permit so to do for each location where appearing.

(2) Exempted from the provisions of this act are:

(a) Public fairs and expositions under chapter 616.

(b) Games, contests, recitals, plays by or between schools, universities, colleges, including bona fide church benefits and also games by organized baseball or football teams.

(c) Traveling shows, exhibitions or amusement enterprises as set forth in subsection (1), conducted or exhibited in a motion picture theatre, restaurant, hotel or night club, that pays the annual occupational license tax as provided by law.

(3) Such permit shall be issued by the comptroller upon a sworn written application by the applicant. The application shall state the nature of the show or exhibition and shall list thereon the number of attractions, concessions or units, including any gaming devices to be operated, at what place or places within the state, and for what period of time such applicant for the permit shall remain for the purpose of giving performances, exhibitions, or operating concessions. Provided, however, where any portion of the proceeds from

such performances, exhibitions, or concessions inures to a charitable, fraternal, educational, civic or veterans organization then the agreed percentage or contribution, if any, inuring to such beneficiary shall be set forth in the application together with such other information as the comptroller may deem necessary or require. Provided, further, that in the event a beneficiary organization receives any part of the gross proceeds, the person operating the exhibition, performance or concession must upon the completion of such exhibition or performance at each of the places set forth in the permit submit to the comptroller within forty-eight hours of the termination of such exhibition or performance and/or closing of such concession, a sworn statement showing the gross proceeds received therefrom, and further, that the percentage distribution to the beneficiary organization shown in the application has been made to such beneficiary organization. Attached to such sworn statement must be a receipt signed by an authorized official of the beneficiary organization showing that such sum or sums have been received. Failure by the person operating the exhibition, performance, or concession to make such a report within the time limit set forth in this act shall operate to cancel and revoke the permit as to all other places within the state until this act has been fully complied with and a new permit issued.

(4) In addition to any license now or hereafter provided by law such applicant shall at the time of making such application pay a fee of fifty dollars to the comptroller of the state for the issuance of the permit. In the case of any person, subject to the provisions of this act, who shall operate at any one location for less than twenty-four hours and from such operation shall have gross receipts of less than one thousand dollars, in which gross receipts a beneficiary organization, as described in subsection (3), participates, then such person shall be entitled to a refund of thirty-five dollars; provided, that application for such refund is received by the comptroller within fifteen days after such operation on forms prescribed by the comptroller and which form must require that it be sworn to by both such person and an executive officer of the beneficiary organization. Nothing contained in this act shall be construed to exempt any applicant from the payment of all licenses required by state law and existing city ordinances. The permit when issued shall be in quintuplicate, shall not be assignable and shall be valid only for the person in whose name it is issued.

(5) No county tax collector or other state or county officer or employee shall issue a license to any person whomsoever engaging in any business subject to the provisions of this act until such applicant named in the permit shall first display such permit duly granted by the comptroller of the state as herein provided. It shall be a violation of this act for any beneficiary organization as described herein to purchase any license for and on behalf of the exhibitionist, performer, or concessionaire holding a valid permit. Any county tax collector who shall issue or cause to be issued a license under the provisions of this act to any person not possessing such a permit issued in the name of the applicant for the license shall be deemed guilty of a misdemeanor and punished accordingly, and the failure of any county tax collector to collect the fee or the occupational license tax required by law shall cause such county tax collector to be liable on his bond.

(6) Upon the issuance of the required license by the county tax collector to any such applicant a copy of the permit and license showing the nature of the show or exhibitions, a list of attractions, concessions or units to be operated, at what place or places in the county, and for what period of time, shall be delivered to the sheriff of the county as information. The several sheriffs of the counties of the state and other law enforcement officers located within each county are hereby empowered and directed to assist the several county tax collectors in the strict enforcement of this act.

(7) Any person who shall carry on or conduct any temporary business or amusement, subject to the provisions of this act, for which a permit and license is required without first obtaining such permit and license and thereafter strictly complying with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than treble the amount required for such permit and license, or by imprisonment for not more than six months, or both.

(8) No restriction or enlargement of the exemptions granted under subsection (2) shall be made by any law hereafter enacted. Any restriction or enlargement of the exemptions granted by subsection (2) shall be affected only by an amendment of subsection (2).

History.—§§1-8, ch. 61-273.

205.33 Circuses, traveling shows, tent shows, etc.; construction where license based upon population.—Whenever, under the laws of Florida, any traveling show, exhibition, or amusement enterprise is required to pay a license tax graduated or scaled in accordance with the population of a municipality, such license tax shall be computed upon the basis of the population of the municipality having the largest population, any portion of which such municipality is within five miles of said show, exhibition or enterprise.

History.—§1, ch. 18012, 1937; CGL 1940 Supp. 1245(1).

205.34 Cafes, restaurants and other eating places.—Every person engaged in the business of operating a restaurant, cafe, or other public eating place (whether operated in conjunction with some other line of business or not, except dining rooms in hotels) shall pay a license tax based on the number of people for whom he has seats or accommodations for the service of food at any one time in accordance with the following schedule:

With seats or accommodations for less than fifteen persons a license tax of five dollars;

With seats or accommodations for fifteen persons and not more than fifty persons a license tax of ten dollars;

With seats or accommodations for over fifty persons and not more than one hundred fifty persons, a license tax of twenty-five dollars;

With seats or accommodations for over one hundred fifty persons a license tax of fifty dollars.

History.—§5A, ch. 20956, 1941.

205.35 Contracting.—Every person engaged in the business of contracting in any of its branches shall pay a license tax of three dollars, plus one dollar for each person employed thereat, provided said license shall not exceed two hundred fifty dollars. A person who does all the work himself with no employees, helpers, or partners shall not be required to obtain a license under this section.

History.—§11, ch. 18011, 1937; CGL 1940 Supp. 1279(11); §11, ch. 20956, 1941.

205.37 Dance halls, variety exhibitions, etc.—Every person who operates any place for profit where dancing is permitted, or entertainment, such as variety programs or exhibitions, is provided for a charge, shall pay a license tax of one hundred dollars. The license required by this section shall be in addition to any other license required by law and the operation of such a place as herein described shall not be construed to be incidental to some other business; provided, that a license may be issued for one night only, upon the payment of twenty-five dollars, but in such cases the tax collector must write across the license the words, "good for one night only"; provided, further, that this section shall not apply to entertainments given for charitable purposes, the proceeds of which are given to local charities; provided, further, that this section shall not apply to any place operated as a theater or moving picture show only; provided, further, that this section shall not apply to hotels paying an occupational tax as provided for in §205.29; provided, further, that this section shall not apply to any dance held by any group of private individuals, who hold square dances and square dance competitions for recreation rather than profit, for the enjoyment of its members and where the only charge made is to cover actual expenses incurred by said individuals in sponsoring said square dances or square dance competitions.

History.—§23, ch. 18011, 1937; CGL 1940 Supp. 1279(24); §23, ch. 20956, 1941; §1, ch. 61-505.

205.38 Electric power plants.—Each person engaged in the business of furnishing electric power and light, or either, shall pay the following license taxes, in cities and towns having the following populations according to the last preceding state or federal census, to-wit:

Fifty thousand inhabitants or more, three hundred dollars.

Less than fifty thousand, but not less than forty thousand, inhabitants, two hundred and fifty dollars.

Less than forty thousand, but not less than thirty thousand, inhabitants, two hundred dollars.

Less than thirty thousand, but not less than twenty thousand, inhabitants, one hundred dollars.

Less than twenty thousand, but not less than ten thousand inhabitants, fifty dollars.

Less than ten thousand, but not less than three thousand, inhabitants, forty dollars.

Three thousand inhabitants or less, ten dollars.

Any person furnishing light and power, or either, to his customers and making a charge by meter and who shall make a minimum charge without reference to the meter shall pay a license tax of fifty per cent more than above set out; provided, however, this provision shall not apply to persons furnishing meters without cost to places of business and residences.

Municipal corporations which own and operate their own electric light and power plants shall not be subject to the above license taxes.

History.—§21, ch. 6421, 1913; RGS 887; CGL 1143.

205.39 Emigrant or labor agents.—

(1) No person, firm or corporation shall carry on the business of an emigrant agent in this state without first obtaining a license therefor from the county tax collector of each county in which emigrants are to be solicited.

(2) The term "emigrant agent," as contemplated by this section, shall be construed to mean any person, firm or corporation engaged in hiring laborers, or soliciting emigrants in this state, to be employed beyond the limits of this state; provided, however, that the provisions of this section shall not apply to the United States employment service, the war manpower commission, the Florida state employment service, or any state or federal agency engaged in recruiting or referring laborers for employment beyond the limits of this state.

(3) Any person, firm or corporation shall be entitled to a license, which shall be good for one year, upon the payment to the county tax collector, for the use of the state of the sum of one thousand dollars and, for the use of the said county, the sum of five hundred dollars, which license shall be valid only in the county where purchased.

(4) The provisions of chapter 205 shall be applicable to the execution and enforcement of this section except to the extent the same shall be in conflict herewith.

(5) Any person doing the business of an emigrant agent in any county of this state without having first obtained a license as aforesaid shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the county jail for not less than four months or confinement in the state prison at hard labor not exceeding two years for each and every offense, within the discretion of the court.

History.—§§1-4, ch. 7273, 1917; RGS 888, 5317; CGL 1144, 7445; §§1-5, ch. 22068, 1943.

205.40 Fish peddlers; certain persons exempt.—Any natural person holding a fresh or salt water fish dealer's license, whether it be a license to sell at wholesale or at retail, shall be entitled thereunder to sell or dispose of fish direct to consumer only, caught or acquired by him, in the county where caught or acquired, by selling or disposing of same or offering same for sale from vehicles from place to place in the county where the fish disposed of were caught or acquired by the dealer, without being subject to a general peddler's license tax.

History.—§1, ch. 16072, 1933; CGL 1936 Supp. 1222(1).
cf.—§370.06(3), Licenses, purse-seines.
ch. 372 Licenses, fresh water fish and game.

205.41 Fortune tellers, clairvoyants, etc.—Every fortune teller, clairvoyant, palmist, astrologer, phrenologist, character reader, spirit medium, absent treatment healer, or mental healer, and every person engaged in any occupation of a similar nature shall pay a license tax of one hundred dollars; provided, that this section shall not be construed to require members of any recognized christian denomination who pray for the sick, to obtain a license.

History.—§22, ch. 18011, 1937; CGL 1940 Supp. 1279(23); §22, ch. 20956, 1941.

205.411 Same; county permit required; penalty.—

(1) No license to engage in the occupation of fortune-telling or any other pursuit for which a license is required by §205.41, shall be issued to any person unless such person holds a permit therefor given by the board of county commissioners of the county wherein such license is sought. No permit shall be issued until after the following conditions are fulfilled:

(a) The applicant shall have been a resident of Florida for at least two years and shall be a registered voter in the county where the permit and license are applied for.

(b) The applicant shall establish good moral character by not less than five reputable citizens of the county.

(c) The application shall be presented to the clerk of the board of county commissioners, who shall make investigation and examination of the applicant and report the results thereof to the board of county commissioners at its next regular or special meeting.

(d) The board of county commissioners shall consider the application and the report of the clerk and order the permit either issued or denied. The order of the board shall be made in triplicate, with the original given to the applicant, one copy to be retained by the clerk and one by the licensing official.

(2) Any official who shall issue a license provided by §205.41, upon an application not accompanied by the permit required by this act shall be guilty of malfeasance and subject to removal from office.

(3) All county law enforcement officers shall aid and assist the clerk of the board of county commissioners in conducting the examination of any applicant for the permit required for this section.

(4) Every licensee comprehended by this section shall at all times while engaging in the occupation for which licensed display at his place of business both his license and the permit herein required. Failure or refusal so to do shall be prima facie evidence of engaging in such occupation without a license.

(5) Anyone guilty of engaging in any occupation comprehended by §205.41 without a license and the permit required by this section or who shall obtain any such permit or license by fraud or deceit shall, for the first offense, be punished by a fine of not more than five hundred dollars or imprisonment for not more than sixty days. For a second or subsequent offense, he shall be imprisoned in the state prison for not less than six months nor more than two years and may, in addition, be fined not to exceed five thousand dollars.

(6) This section does not apply to christian churches who heal the sick by prayer or to regularly ordained ministers of churches who are members of Florida state spiritualist ministerial association whose charters are filed in the library of congress and on record in the state capitol in Tallahassee.

History.—§§1-6, ch. 28289, 1953.

205.42 Gas plants.—Every person engaged in the business of furnishing gas for profit shall pay the following license taxes, in cities and towns having the following populations according to the last preceding state or federal census, to-wit:

Fifty thousand inhabitants or more, three hundred dollars.

Less than fifty thousand, but not less than forty thousand, inhabitants, two hundred and fifty dollars.

Less than forty thousand, but not less than thirty thousand, inhabitants, two hundred dollars.

Less than thirty thousand, but not less than twenty thousand, inhabitants, one hundred dollars.

Less than twenty thousand, but not less than ten thousand, inhabitants, fifty dollars.

Ten thousand inhabitants or less, twenty-five dollars.

Any person furnishing gas to his customers and making a charge by meter and who shall make a minimum charge without reference to the meter shall pay a license tax of fifty per cent more than above set out; provided, however, this provision shall not apply to persons furnishing meters without cost to places of business and residences.

History.—§26, ch. 6421, 1913; RGS 900; CGL 1171.

205.46 Junk dealers, traveling.—Each person who shall travel from place to place purchasing junk, shall pay a license tax in each county of ten dollars, and he shall, before leaving any village or incorporated town or city,

submit to the chief of police or marshal a list of the junk he has purchased together with the name of the person from whom purchased, together with permanent address.

History.—§16, ch. 18011, 1937; CGL 1940 Supp. 1279(16); §16, ch. 20956, 1941.

205.47 Junk dealers with places of business; penalty.—Every person engaged in the business of dealing in junk, except traveling junk dealers, shall pay a license tax of fifty dollars and shall keep a full and complete record of each transaction of their business showing from whom and when each article of their stock was purchased or acquired and to whom sold and date of such sale, and such record shall at all times be subject to the inspection of all police or peace officers.

Any person violating the provisions of this section shall, upon conviction, be punished by imprisonment in the county jail for a period not exceeding six months.

History.—§30, ch. 6421, 1913; §1, ch. 6923, 1915; RGS 912, 5664; CGL 1183, 7867; §7, ch. 22858, 1945.

205.48 Manufacturing, processing, quarrying and mining.—Every person engaged in the business of manufacturing, processing, quarrying, or mining, shall for each place of business pay a license tax of five dollars, plus one dollar for each person employed thereat; provided, said license shall not exceed one hundred dollars.

No license shall be required under this section where the manufacturing, processing, quarrying, or mining is incidental to and a part of some other business classification for which a license is required by this chapter and is carried on at the place of business licensed under such classification.

History.—§7, ch. 18011, 1937; CGL 1940 Supp. 1279(7); §7, ch. 20956, 1941.

205.49 Miscellaneous businesses not otherwise provided.—Every person engaged in the operation of any business of such nature that no license can be properly required of it under any other provision of this chapter, or other law of the state, shall pay a license tax of one hundred dollars; provided, that no license shall be required for the growing or producing of agricultural and horticultural products.

History.—§24, ch. 18011, 1937; CGL 1940 Supp. 1279(25); §24, ch. 20956, 1941.

205.50 Nonprofit sponge cooperative associations.—No license shall be required for any nonprofit sponge cooperative association organized under the laws of the State of Florida.

History.—§19A, ch. 18011, 1937; CGL 1940 Supp. 1279(20); §19A, ch. 10956, 1941.

205.51 Pawnbrokers; records, inspection.—Every person engaged in the business of pawnbrokers shall pay the following license tax, in cities and towns having the following populations according to the last preceding state or federal census, to-wit:

Ten thousand inhabitants, or more, for each place of business, one hundred and fifty dollars.

Less than ten thousand inhabitants, for each place of business, one hundred dollars.

Pawnbrokers shall keep a complete and true record of all transactions, showing from whom each article of their stock was purchased, and the date of purchase, and the date and to whom each article was sold, which record shall at all times be subject to the inspection of all police or peace officers.

Any person violating the provisions of this section shall, upon conviction, be punished by imprisonment in the county jail for a period not exceeding six months.

History.—§42, ch. 6421, 1913; RGS 965, 5665; CGL 1237, 7868.

205.511 Reports to sheriff; penalty.—Every person engaged in the business of pawnbrokers, licensed under §205.51, shall make monthly reports to the sheriff of the county in which such business is operated of the information required to be maintained by such pawnbrokers under the provisions of §205.51, and any person failing to make such report shall be subject to the penalty provided in said section. Forms for the preparation of the reports required herein shall be prescribed and furnished by the Florida sheriffs bureau.

History.—§§1, 2, ch. 59-34.

205.52 Professions.—Every person engaged in the practice of any profession, whether or not such profession be regulated by law, shall pay a license tax of ten dollars for the privilege of practicing, which license tax shall not relieve the person paying same from the payment of any license tax imposed on any business operated by him. This section shall include real estate brokers but no license shall be required of their salesmen.

History.—§10, ch. 18011, 1937; CGL 1940 Supp. 1279(10); §10, ch. 20956, 1941.

205.53 Public service.—Every person engaged in any business, as owner, agent, or otherwise, that performs some service for the public in return for a consideration, shall for each place of business pay a license tax of three dollars, plus an additional amount equal to two dollars for each person in excess of one employed or working thereat.

No license shall be required under this section for any business, the principal function of which is the performance of some service for the public in return for a consideration, when the nature of the service is such that an occupational license is required of such business by some other section or law of this state, but this proviso shall not be construed to exempt service departments of merchandising and other lines of business from the license required by this section, with the exception of gasoline service stations with not more than three persons engaged in the performance of service for a consideration. No tax under the provisions of this section shall exceed fifty dollars.

History.—§6, ch. 18011, 1937; CGL 1940 Supp. 1279(6); §6, ch. 20956, 1941.

205.54 Refrigerator and tank cars.—Every person owning, controlling or operating refrigerator or tank cars, or both, on or over

any railroad or part thereof, or leasing or renting any such cars to any other person to operate on or transport freight on or over any railroad or part thereof in this state, shall, on the first day of October of each year, make return to the comptroller under oath, in such form as he may provide, of the number of refrigerator, tank or other cars mentioned in this section, owned, used or operated, leased or rented to be used on or over any railroad or any part thereof in this state, and shall, on the same day pay to the comptroller a license tax of five hundred dollars; provided, that this section shall not apply to any railroad company upon which a license tax is otherwise provided, when such railroad company owns the cars it operates; provided further, that no further license tax shall be imposed by any county or municipality.

All license taxes collected under this section shall be paid into the state treasury by the comptroller as license money.

History.—§46, ch. 6421, 1913; RGS 970; CGL 1242.

205.55 Schools, colleges, etc.—Every person engaged in the business of operating a school, college, or other educational or training institution for profit shall pay a license tax of ten dollars for each place of business, except that persons giving lessons or instructions in their homes without assistants or a staff shall not be required to pay a license.

History.—§13, ch. 18011, 1937; CGL 1940 Supp. 1279(13); §13, ch. 20956, 1941.

205.56 Telegraph systems. — Each person engaged in the business of owning or operating telegraph systems within this state shall pay a license tax to the comptroller of sixty-five cents per mile, said mileage to be based upon the actual distance from point to point and not upon the number of miles of wire, one-half of which tax shall be paid to each county in which or through which said telegraph lines run in proportion to the mileage in any such county, and no further license tax may be imposed by any county.

History.—§54, ch. 6421, 1913; RGS 986; CGL 1259.

205.57 Telephone systems. — Each person engaged in the business of owning or operating telephone systems in this state for profit shall pay a license tax as follows: On the first thousand phones or instruments, or fraction of a thousand, ten cents for each phone or instrument operated or installed; on the second thousand or fraction over one thousand, eight cents for each phone or instrument operated or installed; and all over two thousand, six cents for each phone or instrument operated or installed; provided, owners or managers of telephone systems operated or having installed less than one hundred phones or instruments shall not be required to pay a license tax.

History.—§54, ch. 6421, 1913; RGS 987; CGL 1260.

205.58 Trading, etc., in intangible personal property.—Every person engaged in the business of trading, bartering, buying, lending or selling intangible personal property, whether as owner, agent, broker or otherwise, shall pay a license tax of twenty-five dollars for each place of business.

No license shall be required under this section where the trading, bartering, buying, lending or selling is incidental to and a part of some other business classification on which an occupational license tax is imposed by this chapter, or other law of the state.

History.—§9, ch. 18011, 1937; CGL 1940 Supp. 1279(9); §9, ch. 20956, 1941.

205.59 Trading, etc., in tangible personal property.—Every person engaged in the business of trading, buying, bartering, serving, or selling tangible personal property as owner, agent, broker, or otherwise, shall pay a license tax of ten dollars (which shall entitle him to maintain one place of business, stationary or movable) and shall pay ten dollars for each additional place of business, provided that the license for each bulk plant or depot of wholesale dealers in petroleum products shall be twenty-five dollars. Vehicles used by any person for the sale and delivery of tangible personal property at wholesale from his established place of business on which a license is paid shall not be construed to be separate places of business and no license may be levied on such vehicles or the operators thereof as salesmen or otherwise, by the state or county or municipality, any other law to the contrary notwithstanding.

No license shall be required under this section, where the trading, buying, bartering, serving or selling of tangible personal property is a necessary incident of some other business classification for which an occupational license is required by this or another law of this state, and is carried on at the place of business licensed under such other classification, nor shall this section apply to any person engaged in the sale of motor vehicles or principally in the sale at retail of gasoline and other petroleum products.

History.—§5, ch. 18011, 1937; CGL 1940 Supp. 1279(5); §5, ch. 20956, 1941; §2, ch. 61-295.

205.60 Traveling shows and places of amusement.—Any person engaged in the business of traveling shows, exhibitions or amusement enterprises, including carnivals, vaudeville, minstrels, rodeos, theatrical, games or tests of skill, riding devices, dramatic repertoire, and all other shows or amusements operating in tents, enclosures, or temporary structures, whether covered or uncovered, shall pay a license tax as provided in §205.32.

For the purposes hereof the show, riding device, concession, or side show charging the highest admission or fee shall be considered the main show in determining the license tax to be levied. When there are more than one such riding devices, concessions, or side shows in this admission or free price group, any one of the same may be considered the main show.

The following, for the purposes hereof, shall be considered a side show on which shall be levied a license tax as provided in said §205.32.

All riding devices, including merry-go-

rounds, ferris wheels, or any other rides or automatic riding devices; all concessions, including revolving wheels, corn games, throwing balls, rolling balls, cane racks, knife racks, weighing machines, games or tests of skill or strength, candy machines, sandwich, confectionery or similar stands, or any other booth, unit, tent or stand commonly known as a concession; and every side show, exhibition, display, concert, athletic contest, lecture, minstrel, or performance to which admission is charged, a fee is collected, or a charge is made for anything of value.

History.—§§1-3, ch. 17758, 1937; CGL 1940 Supp. 1244(1).

205.61 Traveling shows using buildings fitted for their use, etc.—

(1) Theatrical shows, or traveling players and minstrels, in buildings fitted up for such shows or exhibitions, for each performance, shall pay a license tax as follows:

In cities and towns of ten thousand inhabitants or more, shall pay a license tax of twenty-five dollars.

In cities and towns of less than ten thousand inhabitants, fifteen dollars.

(2) Traveling moving picture shows in buildings or tents shall pay a license tax for each day as follows: In cities and towns of ten thousand inhabitants or more, shall pay a license tax of twenty-five dollars; in cities and towns of less than ten thousand inhabitants, fifteen dollars; provided, if they have any other features than moving pictures, they shall be subject to the license tax as otherwise provided for shows.

(3) Owners or managers of theaters or halls employing traveling troupes, theatrical, operatic or minstrel, giving performances in buildings fitted up for such purposes, or moving picture shows giving exhibitions in buildings permanently used for such purpose, shall be allowed to give as many performances or exhibitions in such building or theater as they wish on payment of the following license:

In cities or towns of twenty thousand inhabitants or more, shall pay a license tax of two hundred dollars per annum.

In cities and towns of less than twenty thousand and more than fifteen thousand inhabitants, shall pay a license tax of one hundred and fifty dollars per annum.

In cities and towns of less than fifteen thousand and more than ten thousand inhabitants, shall pay a license tax of one hundred dollars per annum.

In cities and towns of less than ten thousand and more than five thousand inhabitants, shall pay a license tax of fifty dollars per annum.

In cities and towns of less than five thousand inhabitants shall pay a license tax of ten dollars per annum.

(4) This section shall not apply to local amateur performances or to any hall owned or used by any charitable or fraternal organization giving performances or exhibitions for their own benefit.

History.—§48, ch. 6421, 1913; RGS 973; CGL 1245.

205.62 Toll bridges.—Owners of toll bridges shall pay a license tax of two hundred fifty dollars where the bridge is entirely within the limits or boundaries of any one county, and where the bridge joins two counties a license of two hundred fifty dollars in each such county shall be paid; provided, that nothing in this chapter shall apply to toll bridges owned by any county or municipality in the state.

History.—§17, ch. 18011, 1937; CGL 1940 Supp. 1279(17); §17, ch. 20956, 1941.

205.63 Vending machines.—Every person, except merchandise vending machine operators, who operates for profit any machine, contrivance, or device which is set in motion or made or permitted to function by the insertion of a coin, or slug, shall pay a license tax of five dollars for each machine, contrivance, or device; provided that when any merchandise vending machine is located in and operated only in a place of business for which a license has been duly issued for trading, buying, bartering, serving or selling tangible personal property under this or other law of this state the license tax thereon shall be two dollars for each machine, contrivance, or device; provided that when any machine, contrivance, or device as described herein operates by the insertion of a penny, the license tax thereon shall be fifty cents for each machine, contrivance, or device. This section shall license all coin-operated machines, contrivances or devices operated for amusement and that do not dispense any form of prize or reward, but shall not be construed to authorize the use of any machine, contrivance or device for gambling or as a game of chance. No license shall be required on coin-operated parcel-checking lockers and toilet locks, used in railroad, bus, airport stations, or depots, and in hotels, boarding houses, restaurants, and rest rooms for the convenience of, and in rendering service to the public, nor on penny-operated vending machines located in licensed places of business and dispensing only nuts, citrus juice and other food products.

History.—§19, ch. 18011, 1937; CGL 1940 Supp. 1279(19); §19, ch. 20956, 1941; §2, ch. 63-421.

205.631 United States postage stamp vending machines.—

(1) Whereas vending machines which vend only United States postage stamps make such stamps easily and readily available to the public without the necessity of travel by the public to postoffices or the establishment of sub-post offices by the United States Government, it is hereby declared that such vending machines render a general public service and are for the general public good.

(2) In view of such public service said machines are hereby exempted from the payment of any excise or license tax levied by the state or any county or municipality or other taxing district thereof.

History.—§§1, 2, ch. 23740, 1947.

205.632 Citrus juice vending machines.—Automatic coin operated vending machines which vend only unadulterated Florida pro-

duced citrus juice are hereby exempted from the payment of all excise or license taxes to the state or to any county or municipality thereof.

History.—§1, ch. 25124, 1949.

205.64 Water companies.—Each person engaged in the business of operating water companies shall pay the following license taxes, in cities and towns having the following populations according to the last preceding state or federal census, to-wit:

Forty thousand inhabitants or more, three hundred dollars.

Less than forty thousand, but not less than thirty thousand, inhabitants, two hundred dollars.

Less than thirty thousand, but not less than twenty thousand, inhabitants, one hundred dollars.

Less than twenty thousand, but not less than ten thousand, inhabitants, seventy-five dollars.

Less than ten thousand, but not less than five thousand, inhabitants, fifty dollars.

Less than five thousand, but not less than three thousand, inhabitants, twenty-five dollars.

Less than three thousand, but not less than one thousand, inhabitants, fifteen dollars.

Less than one thousand inhabitants, ten dollars.

For the purpose of this section, any person furnishing water for profit shall be construed to be a water company; provided, that persons having wells for private use, and who may furnish not more than twenty-five neighbors with water, shall be exempt from the provisions of this section.

History.—§56, ch. 6421, 1913; RGS 994; CGL 1267.

205.65 Doing business without license.—Any person who shall carry on or conduct any business or profession for which a license is required, without first obtaining such license shall, except in such cases as are otherwise provided for by law, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than double the amount required for such license, or imprisonment not exceeding six months.

History.—§57, ch. 5106, 1903; GS 3447; §11, ch. 5597, 1907; §59, ch. 6421, 1913; RGS 5308; CGL 7435.
cf.—§775.06 Alternative punishment.

205.66 Making false statement in application for license.—Any person who, in applying to the tax collector for a license based upon property valuation or capital stock, capacity or production, or any other contingency, shall make a false statement under oath of the value of the property, or amount of the capital stock, or capacity or production or other contingency, shall be deemed guilty of a misdemeanor and punished accordingly.

History.—§58, ch. 6421, 1913; RGS 5319; CGL 7447.
cf.—§775.07 Punishment for misdemeanor.

205.68 Definition of person.—The word "person", wherever used in this chapter, shall be construed to mean either person, firm, partnership, corporation, association, executor, administrator, trustee, or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

History.—§37, ch. 18011, 1937; CGL 1940 Supp. 1279(38); §37, ch. 20956, 1941.
cf.—§1.01 "Person" defined.

205.70 Coin operated radios; license tax imposed.—

(1) Every person, partnership or corporation operating one or more radio receiving sets activated or permitted to function by the insertion of a coin, installed in guest rooms in hotels, tourist homes, tourist courts, rooming houses and other businesses providing housing accommodations for the traveling public, shall pay an annual license tax for the privilege of engaging in such business, the sum of seven dollars, and shall further pay an annual license tax of twenty cents for each such radio receiving set installed and offered for the use of the public.

(2) Sections 205.01-205.14 shall be applicable to the provisions of this section.

History.—§§1, 2, ch. 25123, 1949.

205.71 Liquor salesmen.—No person shall sell or offer to sell, take orders for or offer to take orders for, or otherwise encourage or promote a deal or sale of any spirituous liquors to any vendor or distributor, unless such person be a licensed liquor salesman. Applicants for a liquor salesman's license shall have the same general qualifications as other applicants for beverage licenses and applications shall be filed with the director of the state beverage department on forms provided by him. Each liquor salesman shall pay an annual license tax of fifty dollars. Such license shall be suspended or revoked as other licenses. Any violation of this section shall be punishable as a misdemeanor.

History.—§2, ch. 28149, 1953; §1, ch. 59-187.
cf.—§775.07 Punishment for misdemeanor.

205.72 Operators of coin operated laundry equipment.—Every person who operates for profit any coin operated laundry equipment shall pay a license tax of fifty cents for each piece of coin operated laundry equipment.

History.—§1, ch. 61-282.

205.73 Merchandise vending machine operator.—Every person who operates for profit fifteen or more merchandise vending machines which require the insertion of a coin, coins, tokens, or paper currency and dispenses merchandise of a value of five cents or more without the necessity of replenishing the device between each operation shall pay an annual license tax of fifty dollars for the privilege of engaging in such business and shall further pay an annual license tax of fifty cents for each such machine and shall display in prominent place on such machine a proper sticker or decal, to be furnished by the comptroller, showing that such tax has been paid.

History.—§3, ch. 63-421.

CHAPTER 207

MOTOR FUELS, ETC.; REGULATION; DISTRIBUTORS; OTHER PERSONS

207.01 Definitions.—The following words, terms and phrases used in this section are for the purpose hereof defined as follows:

(1) "Motor Fuel" shall mean and include gasoline or other like products of petroleum and any and all liquid fuels or products of petroleum which are now or hereafter subjected to a tax computed by or measured by or based upon the sale, use, consumption, or distribution of said liquid fuels or products of petroleum.

(2) "Kerosene" shall include the ordinary household petroleum oil used with wick burners for illuminating, heating and cooking purposes.

(3) "Public Highways" shall mean and include every way or place, of whatever nature generally open to the use of the public as a matter of right, for the purpose of vehicular travel, and notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(4) "Person" shall mean and include natural persons, corporations, copartnerships, firms, companies, agencies or associations, counties, municipalities or other political subdivisions of this state, singular or plural.

(5) "Distributor" shall include any person, association of persons, firm, corporation, municipalities and political subdivisions of this state:

(a) That imports or causes to be imported and sells at wholesale or retail, or otherwise within this state, any of the motor fuel as specified above; or

(b) That imports or causes to be imported, and withdraws for use within this state by himself, or others, any such fuels, from the tank car, truck, or other original container, or package in which imported into this state; or

(c) That manufactures, refines, produces, or compounds any such fuels within this state, and sells the same at wholesale or retail or otherwise within this state for use or consumption within this state.

(d) That imports into this state from any other state or foreign country or shall receive by any means into this state, and keep in storage in this state for a period of twenty-four hours, or more after the same shall lose interstate character as a shipment in interstate commerce, any motor fuel which is intended to be used for consumption in this state.

(e) That are primarily liable under the motor fuel tax laws of this state for the payment of motor fuel taxes.

(f) That was holding, on January 1, 1953, an uncanceled license issued by the comptroller of the state to engage in business as a distributor of motor fuel.

(g) That purchases or receives in this state gasoline in bulk quantities for resale to retail dealers, upon which the tax has not been paid.

(6) "Comptroller" shall mean the comptroller of the state.

(7) "Duly licensed distributors" shall mean and include any distributor holding an unrevoked license issued by the comptroller of the state.

(8) "Motor fuel tax" shall mean and include any and all taxes imposed by the laws of the state upon or measured by the sale, use, distribution or consumption of motor fuel.

(9) "Motor fuel tax collection trust fund" shall mean any fund or funds heretofore or hereafter created by the legislature for the purpose of enforcing the motor fuel tax laws of the state.

History.—§1, ch. 16082, 1933; CGL 1936 Supp. 1167(62); (5) §1, ch. 28100, 1953; (5) §1, ch. 57-162; (9) §2, ch. 61-119.

207.02 Application for license.—It is unlawful for any distributor to engage in business as a distributor of motor fuel within this state unless such distributor is the holder of an uncanceled license issued by the comptroller to engage in such business. To procure such license every distributor shall file with the comptroller an application upon oath and in such form as the comptroller may prescribe, setting forth:

(1) The name under which the distributor will transact business within the state;

(2) The location, with street number address, of its principal office or place of business within this state;

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country, it shall also file with such application a certified copy of the certificate or license issued by the secretary of state showing that such corporation is authorized to transact business in the state.

Upon filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for, shall be filed with the comptroller. No license shall issue upon any application unless accompanied by such a bond.

Upon the filing of the application for a license, a filing fee of five dollars shall be paid to the comptroller.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.03 Application by person whose license has been canceled; procedure.—In the event that any application for a license certificate to transact business as a distributor in the state shall be filed by any person whose license shall at any time theretofore have been canceled for cause by the comptroller or in case said comptroller shall be of the opinion that such application is not filed in good faith, or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause by said comptroller, then and in any of said events the comptroller, after a hearing of which the applicant shall have been given five days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license certificate to transact business as a distributor in the state.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.04 Licensing of distributors.—The application in proper form having been accepted for filing, the filing fee paid, and the bond having been accepted and approved, the comptroller shall issue to such distributor a license certificate to transact business as a distributor in the state, subject to cancellation of such license as provided by law.

The license certificate so issued by the comptroller shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of said distributor in the state.

The comptroller shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all duly licensed distributors.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); §7, ch. 22858, 1945.

207.05 License number and cards; penalties.—Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the comptroller shall issue to each such licensee separate license cards for each tank truck operated by such distributor. Such license card shall indicate the number so assigned the distributor, the motor number of the truck authorized to be operated under such license card, and such other information as the comptroller may prescribe. Such license card shall be conspicuously displayed on the tank truck to which it is assigned and any distributor operating a tank truck in this state, conveying or transporting motor fuel without such license card shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars nor more

than one hundred dollars or to confinement in jail for not less than ten nor more than thirty days.

History.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63), 7794(5).
cf.—§775.06 Alternative punishment.

207.06 Bond required of licensed distributors.—Each distributor shall file with the comptroller a bond in a penal sum of not less than three thousand dollars nor more than thirty-five thousand dollars, said sum to be approximately three times the average monthly motor fuel tax paid or due by such distributor during the next preceding twelve calendar months under the laws of this state; provided, however, that any person subsequently becoming a distributor, as heretofore defined, shall file a bond in the minimum penalty of three thousand dollars. Such bond shall be in such form as may be approved by the comptroller, shall be executed by some surety company duly licensed to do business under the laws of the state as surety thereon, and upon which such distributor shall be the principal obligor and the state shall be the obligee, conditioned upon the prompt filing of true reports and the payment by such distributor to the comptroller of the state of any and all motor fuel taxes which are now or which hereafter may be levied or imposed by the state, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of the motor fuel tax laws of the state.

In the event that liability upon the bond thus filed by the distributor with the comptroller shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the comptroller any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the comptroller may require the distributor to file a new bond with satisfactory sureties in the same amount, failing which the comptroller shall forthwith cancel the license certificate of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

In the event that upon hearing, of which the distributor shall be given five days' notice in writing, the comptroller shall decide that the amount of the existing bond is insufficient to insure payment to the state of the amount of the tax and any penalties and interest for which said distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the comptroller file additional bond in the same manner and form with like security thereon as hereinbefore provided; provided further, that the total amount of any such additional bond as well as the bond required under the provisions of the first paragraph of this section shall not exceed the maximum of thirty-five thousand dollars, and the comptroller shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided.

Any surety on any bond furnished by a distributor as above provided shall be released and discharged from any and all liability to the State of Florida accruing on such bond after the expiration of sixty days from the date upon which such surety shall have lodged with the comptroller written request to be released and discharged; provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said sixty-day period. The comptroller shall, promptly on receipt of notice of such request, notify the distributor who furnished such bond, and unless such distributor shall on or before the expiration of such sixty-day period file with the comptroller a new bond with a surety company satisfactory to the comptroller in the amount and form hereinbefore in this section provided, the comptroller shall forthwith cancel the license of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

History.—§3, ch. 16082, 1933; CGL 1936 Supp. 1167(64); §1, ch. 57-78; §1, ch. 63-299.

207.07 Comptroller may cancel licenses; surrender of bond.—If a distributor shall at any time knowingly file a false monthly report of the data or information required by the motor fuel tax laws, or shall fail, refuse or neglect to file the monthly report required by such laws, or to pay the motor fuel tax as required by this chapter and the laws of the state, the comptroller may forthwith cancel the license of said distributor and notify such distributor in writing of such cancellation by registered mail to the last known address of such distributor appearing on the files of the comptroller.

The comptroller may cancel any license hitherto or hereafter issued to any distributor, such cancellation to become effective sixty days from the date of receipt of the written request of such distributor for cancellation thereof, or said comptroller may cancel the license of any distributor upon investigation and sixty days' notice mailed to the last known address of such distributor, if he shall ascertain and find that the person to whom such license has been issued is no longer engaged in business as a distributor, and has not been so engaged for the period of six months immediately preceding such cancellation; but no license shall be canceled upon the request of any distributor until and unless the distributor shall, prior to the date of such cancellation, have paid to the state all motor fuel taxes payable under the laws of the state, together with any and all penalties and fines accruing by reason of any failure on the part of said distributor to make accurate reports as required by the motor fuel tax laws of Florida or to pay said taxes and penalties. In the

event that the license of any distributor shall be canceled by the comptroller as hereinbefore in this section provided, and in the further event that said distributor shall have paid to the state all motor fuel taxes due and payable by it under the laws of the state together with any and all penalties accruing by reason of any failure on the part of said distributor to make accurate reports or to pay said tax and penalties, then the comptroller shall cancel and surrender the bond theretofore filed by said distributor.

History.—§4, ch. 16082, 1933; CGL 1936 Supp. 1167(65).
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

207.08 Estimate of amount of motor fuel taxes due and unpaid.—Whenever any distributor shall neglect or refuse to make and file any report for any calendar month, as required by the motor fuel tax laws of this state, or shall file an incorrect or fraudulent report, or shall be in default in the payment of any motor fuel taxes and penalties thereon payable under the laws of this state, the comptroller, after giving at least five days' notice to such distributor, shall, from any information he may be able to obtain from his office or elsewhere, estimate the number of gallons of motor fuel, with respect to which the distributor has become liable for taxes under the motor fuel laws of this state, and the amount of taxes due and payable thereon, to which sum shall be added a sum equal to ten per cent thereof, as a penalty for the failure of such distributor or his default aforesaid.

In any action or proceeding for the collection of the motor fuel tax and any penalties or interest imposed in connection therewith, an assessment by the comptroller of the amount of the tax due and interest or penalties due to the state shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the distributor to show that the assessment was incorrect or contrary to law.

History.—§§5, 24, ch. 16082, 1933; CGL 1936 Supp. 1167(66), 1167(84).

207.09 Suits for collection of unpaid taxes.—Upon demand of the comptroller the attorney general, or any state attorney of any judicial circuit, shall bring appropriate actions, in the name of the state or in the name of the comptroller in the capacity of his office, for the recovery of the above mentioned taxes, penalties and interest, and judgment shall be rendered for the amount so found to be due together with costs; provided, however, that if it shall be found as a fact that such failure to pay was willful on the part of any distributor, judgment shall be rendered for double the amount of the tax found to be due, with costs. The comptroller may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the motor fuel taxes provided for by the laws of this state and penalties and interest provided for by this chapter and fix the compensation for the services of said attorney at law.

History.—§5, ch. 16082, 1933; CGL 1936 Supp. 1167(66).

207.10 Comptroller's warrant for collection of unpaid taxes.—Upon the determination of the amount of unpaid taxes and penalties due, the comptroller may issue a warrant, under the official seal of his office, directed to the sheriff of any county of the state, commanding said sheriff to levy upon and sell the goods and chattels of such distributor found within his jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant and conducting the sale, and to return such warrant to the comptroller and to pay the comptroller the money collected by virtue thereof; provided, however, that any surplus resulting from said sale after all payments of costs, penalties and delinquent taxes have been made shall be returned to the defaulting distributor. The sheriff, to whom any such warrant shall be directed, shall proceed upon the same in all respects to and with like effect and in the same manner (with the exceptions herein noted) as prescribed by law in respect to executions issued against goods and chattels upon judgments by the several circuit courts. In the event there shall be a contest or claim of any kind with reference to the property levied upon, or the amount of taxes, costs or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by said court; provided, that the warrant issued as aforesaid shall constitute prima facie evidence of the amount of taxes, interest and penalties due to the state by said distributor, and the burden of proof shall be upon the distributor to show that said amounts or penalties were incorrect; provided further, that nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes or penalties by an action upon any bond that may be filed with the comptroller under the provisions of this chapter, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided; provided further, that any civil proceeding under this chapter shall not be construed as a waiver or estoppel in any criminal proceeding against such distributor under this chapter.

History.—§24, ch. 16082, 1933; CGL 1936 Supp. 1167(84); §7, ch. 22858, 1945.

207.11 Report from persons not distributors.—Every person purchasing or otherwise acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida not required by the provisions of this chapter to be licensed as a distributor in motor fuel or by the laws of Florida to make reports, shall file a statement setting forth the name under which such person is transacting business

within the state, the location with street number address of such person's principal office or place of business within the state, the name and address of the owner, or the names and addresses of the partners if such person is a partnership, or the names and addresses of the principal officers if such person is a corporation or association, and, on or before the fifteenth day of each calendar month, such person shall, on forms prescribed by the comptroller report to the comptroller all purchases or other acquisition and sales or other disposition of motor fuel during the next preceding calendar month, giving a record of each tank car, truck or cargo lot delivered to a point within Florida. Such report shall set forth from whom each tank car, truck or cargo lot was purchased or otherwise acquired, point of shipment, to whom sold or shipped, point of delivery, date of shipment, the name of the carrier, the initials and number of the car, and the number of gallons contained in such tank car, if shipped by rail, and the name and owner of the boat, barge or vessel, and the number of gallons contained therein, if shipped by water, and the name of the owner of the truck and the number of gallons contained in such truck if shipped by truck, and shall contain any other additional information the comptroller may require relative to such motor fuel.

History.—§6, ch. 16082, 1933: CGL 1936 Supp. 1167(67).

207.12 Penalty for failure to submit report.—When any person, not required by the provisions of this chapter to register as a distributor of motor fuel, purchasing or otherwise acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida, shall fail to submit his monthly report to the comptroller by the sixteenth day of the month succeeding the month in which said lot or lots of motor fuel were received, acquired or purchased, or when such person shall fail to submit in such monthly report the data required by this chapter, such person shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than one hundred dollars or to imprisonment of not more than thirty days, for the first offense; and shall be fined an amount not less than one hundred dollars nor more than one thousand dollars or be subjected to imprisonment for not less than thirty days, nor more than a year, for each subsequent offense.

History.—§6, ch. 16082, 1933; CGL 1936 Supp. 7794(6).
cf.—§775.06 Alternative punishment.

207.13 Reports from carriers transporting motor fuel, kerosene or similar products.—Every railroad company, street car, suburban or interurban railroad company, pipe line company, water transportation company, and common carrier transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha, or distillate, either in interstate or intrastate commerce, to points within Florida, and every person transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate, by whatever manner to a point in Florida from any point outside of said state, shall report under oath to the comptroller on forms prescribed by said comptroller all deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate so made to points within the state.

Such reports shall cover monthly periods, shall be submitted within fifteen days after the close of the month covered by the report, shall show the name and address of the person to whom the deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate have actually and in fact been made, the name and address of the originally named consignee, if motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein, if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein if shipped by water; the license number of each tank truck and the number of gallons contained therein, if transported by motor truck; if delivered by other means, the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel and kerosene as the comptroller may require.

History.—§7, ch. 16082, 1933; CGL 1936 Supp. 1167(68).

207.14 Reports to be filed whether taxes due or not.—All statements or reports required by this chapter and the motor fuel tax laws of this state to be made to the comptroller monthly, shall be filed each month regardless of whether or not a motor fuel tax is due under the provisions of the laws of Florida.

History.—§17, ch. 16082, 1933; CGL 1936 Supp. 1167(78).

207.15 Penalty for false statements in reports.—Any false or fraudulent statement or report submitted under the motor fuel tax laws of this state and sworn to by a person knowing same to be false or fraudulent, shall constitute perjury and upon conviction thereof, the person so convicted shall be punished as provided by law for conviction of perjury under §837.01.

History.—§17, ch. 16082, 1933; CGL 1936 Supp. 7794(12).

207.16 Retention of records by distributors and other persons.—Each distributor shall maintain and keep, for a period of two years, such record or records of motor fuel received, used, consumed, sold and delivered within this state by such distributor, together with invoices, bills-of-lading, and other pertinent records and papers as may be required by the comptroller for the reasonable administration of the motor fuel tax laws of this state.

Every person purchasing motor fuel taxable under the laws of the state from a distribu-

tor for the purpose of resale, shall maintain and keep for a period of one year a record of motor fuel received, the amount of tax paid to the distributor as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the comptroller shall require.

Penalty: Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars and costs of prosecution, or to undergo imprisonment for not more than one year.

History.—§8, ch. 16082, 1933; CGL 1936 Supp. 1167(69), 7794(7).
cf.—§775.06 Alternative punishment.

207.17 Inspection of records; hearings; forms.—The comptroller or any deputy, employee or agent authorized by him, may examine, during the usual business hours of the day, the records, books, papers, storage tanks, and any other equipment of any distributor, purchaser, or common or contract carrier, pertaining to motor fuel or kerosene received, sold, shipped, delivered or used, as the case may be, to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the motor fuel taxes imposed by law have been paid. The comptroller may, in the enforcement of the provisions of this chapter and of the motor fuel tax laws of this state, hold hearings, take the testimony of any person, and for such purpose may issue subpoenas and compel the attendance of witnesses, and may conduct such investigations as he may deem necessary.

History.—§9, ch. 16082, 1933; CGL 1936 Supp. 1167(70).

207.18 Motor fuel taxes a lien on property.—If any person liable for the motor fuel tax imposed by the laws of this state neglects or refuses to pay the same, the amount of such tax (including any interest, penalty or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the state upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person (whether such property is employed by such person in the prosecution of business or is in the hands of an assignee, trustee or receiver for the benefit of creditors) from the date said taxes are due and payable. Such lien shall have priority over any lien or incumbrance whatsoever except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the time when the comptroller shall have filed notice of such lien in the office of the clerk of the circuit court of the county in which the principal place of business of such person is located (for which filing no fee shall be required). Such lien shall continue until the amount of said tax, together with any penalties and interest subsequently accruing thereon, is paid. The comptroller may issue a certificate of release of lien when the amount of such tax, together with any penalties and interest subsequently accruing thereon, has been satisfied by such person, and such person may record the same with the clerk of the circuit court in and for the county in which the notice of lien was filed.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.19 Officer, etc., selling property belonging to a distributor.—No sheriff, receiver, assignee, master or other officer shall sell the property or franchise of any person who is distributor without first filing with the comptroller a statement containing the following information:

(1) Name of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) Name of the person whose property or franchise is to be sold:

(3) The time and place of sale:

(4) The nature of the property and the location of the same.

The comptroller after receiving notice as aforesaid shall furnish to the sheriff, receiver, trustee, assignee, master or other officer having charge of the sale, a certified copy or copies of all motor fuel taxes, penalties, and interest on file in the office of the comptroller as liens against such person, and in the event there are no such liens, a certificate showing that fact, which certified copies or copy of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.20 Comptroller to furnish certificates of liens.—The comptroller shall furnish to any person applying therefor a certificate showing the amount of all liens for motor fuel tax, penalties, and interest that may be of record in the files of the comptroller against any person under the provisions of this chapter.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.21 Foreclosure of liens.—The comptroller may cause to be filed in the name of the state a bill in chancery to foreclose the liens provided for herein, and the practice, pleading and procedure of foreclosure shall be as nearly as may be in accordance with the practice, pleading and procedure for foreclosure of mortgages on real estate. A certificate of the comptroller setting forth the amount of motor fuel taxes due shall be prima facie evidence of the matter therein contained. Said suit may be instituted at any time after said lien becomes effective. The purchaser at any sale in suits for the foreclosure of said liens shall be entitled to a deed and the same process and remedies to obtain possession of the premises as in suits for the foreclosure of mortgages. The title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.

History.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.22 Discontinuance or transfer of business; penalty.—Whenever a distributor ceases to engage in business as a distributor within the state by reason of the discontinuance, sale or transfer of the business of such distributor, such distributor shall notify the comptroller in writing at least ten days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All motor fuel taxes, penalties and interest not due and payable under the provisions of the laws of this state, shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale or transfer; and any such distributor concurrently with such discontinuance, sale or transfer, shall make a report, pay all such taxes, interest, and penalties, and surrender to the comptroller the license certificate theretofore issued to said distributor by the comptroller.

Unless the notice above provided for shall have been given to the comptroller as above provided, such purchaser or transferee shall be liable to the state for the amount of all taxes, penalties, and interest under the laws of Florida accrued against any such distributor selling or transferring his business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not less than fifty dollars nor more than three hundred dollars and costs of the prosecution, or to undergo imprisonment for not more than one year. Nothing in this section shall be construed as releasing the distributor so transferring or discontinuing his business of liability for any motor fuel tax, or for any interest or penalty due under the motor fuel tax laws.

History.—§11, ch. 16082, 1933; CGL 1936 Supp. 1167(72), 7794(8).
cf.—§775.06 Alternative punishment.

207.23 Not to settle for less than amounts actually due.—The comptroller shall have no right, power, or authority to settle or compromise with any distributor any claim of the state accruing under the motor fuel tax laws of this state for a sum less than the full amount due, in conformity with this chapter.

History.—§12, ch. 16082, 1933; CGL 1936 Supp. 1167(73).

207.24 Transportation of motor fuel over public highways.—Every person hauling, transporting or conveying motor fuel over any of the public highways of this state must, during the entire time he is so engaged, have in his possession an invoice or delivery ticket, bill of sale, or other record evidence showing the true name and address of the person from whom he has received the motor fuel, and the number of gallons so originally received by him from said person, and the true name and address of every person to whom he has made deliveries of said motor fuel, or any part thereof, and the number of gallons so delivered to each of said persons. The person hauling, transporting or conveying such motor fuel shall, at the request of any person required by law to inquire into or investigate said matters, produce and offer for inspection said invoice, or delivery ticket, or bill of sale, or record evidence. If said person fails to produce the invoice, or delivery ticket, or bill of sale or record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel over any of the public highways of the state except in vehicles plainly and visibly marked on each side and on the rear thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less than fifteen nor more than sixty days. The provisions of this section shall not apply to vehicles transporting motor fuel not in excess of one hundred gallons contained in the fuel tank of such vehicle provided for the carrying of motor fuel for propelling same, which motor fuel is to be used solely for the motive power of such vehicle, nor to vehicles transporting motor fuel in quantities of not more than five gallons for emergency purposes, nor to motor fuel being transported by common carrier in railroad cars.

History.—§13, ch. 16082, 1933; CGL 1936 Supp. 1167(74), 7794(9).
cf.—§775.06 Alternative punishment.

207.25 Transportation of motor fuel by boats over the navigable waters of this state.—Every person hauling, transporting or conveying motor fuel over any of the navigable waters of this state must, during the entire time he is so engaged, have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received said motor fuel and the true name and address of every person or persons to whom he is making deliveries of same, and the number of gallons (that is, a person hauling, transporting or conveying said motor fuel must have in his possession record evidence of the name and address of the person from whom he has received the same, and also of the name and address of the person to whom he is going to deliver the same, and the number of gallons). The person hauling, transporting or conveying said motor fuel shall at the request of any person authorized by law to inquire into or investigate said matters, produce and offer for

inspection said invoice or bill of sale or other record evidence. If said person fails to produce the invoice or bill of sale or other record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel in boats over any of the navigable waters of the state, except in boats plainly and visibly marked on both sides and above the water line thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the boat in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section, shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less that fifteen nor more than sixty days. The provisions of this section shall not apply to boats transporting motor fuel to be used solely for their own motive power.

History.—§14, ch. 16082, 1933; CGL 1936 Supp. 1167(75), 7794(10).

cf.—§775.06 Alternative punishment.

207.27 Forfeiture of vehicles and boats illegally transporting or delivering motor fuel.—The right of property in and to all conveyances, boats and other vehicles of transportation, and all tanks and other equipment used in connection therewith, employed in the illegal transportation or delivery of motor fuel in this state for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of this state, and all other personal property that may have been used by any person for the purpose of illegally evading or avoiding any such tax, or which may have been used to facilitate the illegal evasion or avoidance of any such tax, is hereby declared not to exist in any person, and the same shall be forfeited. The comptroller, the comptroller's deputies, the several sheriffs, deputy sheriffs, constables and police officers of municipalities, shall seize any and all such things, and the same shall be safely kept by the sheriff of the county until disposed of as in this section provided.

The sheriff of the county, within ten days after the receipt of any such things, shall make and subscribe to an affidavit in writing before some officer authorized by law to administer an oath, reciting such seizure, with the date, place and things seized, giving a reasonably full description thereof, and the name of the alleged owner and person from whose possession same were taken, if either or both be known to such sheriff, and a short statement of the circumstances under which said property was being used for the purpose of illegally evading or avoiding or had been used for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of Florida; and:

(1) Within ten days after the receipt of such things by the sheriff, such sheriff shall present such affidavit to the judge of the circuit court of the county where such things were seized, and the circuit judge of said court shall direct that such sheriff shall serve written notice upon such owner and person from whose possession such things were taken, if known, and if he, it or they be within the county, of time and place of the hearing upon such affidavit, which may be in term time or in vacation, and at any place within the judicial circuit as the circuit judge may fix, which notice shall be signed by the circuit judge citing such person to appear and show cause, if any, why such things should not be adjudged forfeited and disposed of as in this section provided; but,

(2) If such sheriff shall recite in his affidavit that such things were not taken from the possession of any person, or that the owner is unknown, or that either of such persons is without the county, conceals himself or themselves, or that personal service of such notice can not be made by such sheriff for any good reason, the circuit judge shall by written order direct that, in lieu of personal notice of such hearing to any such person, that written notice of such hearing shall be posted at the county court house door, directed to all persons interested in such things, and giving notice of such seizure, and of the date and place thereof and a reasonable description of the things seized, and of the time and place of the hearing upon such affidavit, which notice shall be signed by the circuit judge;

(3) If at the time and place provided for the hearing upon such affidavit no person shall appear and claim such things, the affidavit of the sheriff shall stand as confessed and taken as true, and the recitals therein contained shall not thereafter be open to question in any other court or proceeding, and the circuit judge shall thereupon make an order in writing directing the sale thereof;

(4) Such sale shall be in the presence of the clerk of the circuit court of the county, and at such times, places and in such manner as such judge shall in his order direct.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.28 Trial of issues interposed by defense; sale, etc.—Should any person appear at the hearing provided for in §207.27, and claim the things seized and interpose any defense to the affidavit mentioned in said section, the circuit judge shall determine whether the evidence adduced proves beyond a reasonable doubt that such things are forfeited and make his written order accordingly. And if he shall determine in the affirmative, such things shall be sold by the sheriff in the same manner and upon the same terms and conditions as provided in §207.27; but if he shall determine in the negative respecting all or any of such things, the part not forfeited shall be returned to the person legally entitled thereto. The hearing before the circuit judge shall be informal and he may make all needful rules and orders to carry this section into effect. And the sheriff

may call to his assistance the state attorney, county solicitor or other commissioned prosecuting attorney or other prosecuting attorney regularly employed by the county, to assist him in preparing the affidavit herein mentioned, and represent him at the hearing before the circuit judge, and in taking and perfecting any appeal from the final decision of the circuit judge. If the state, the sheriff, or the claimant shall be dissatisfied with the decision he may appeal from the final decision of the court to the appropriate district court of appeal in the same manner and within the time as appeals in chancery are taken under the Florida appellate rules, and upon such appeal being entered such circuit judge shall cause to be reduced to writing and authenticate with his signature all oral evidence considered by him upon such hearing and the same shall be filed with the papers in the case and thereby become a part of the record proper. If authorized by §4, Art. V of the state constitution, appeal may be taken to the supreme court. No appeal taken by any party shall operate as a supersedeas, but such things shall remain in the custody of the sheriff pending such appeal and to abide the final decision of the appellate court.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77); §20, ch. 63-559.

207.29 Costs and expenses of proceedings.—For the performance of the duties required of the sheriff by the provisions of §§207.27 and 207.28, he shall receive the same fees provided by law for the arrest and return of persons charged with crime, including the same mileage and the actual cost of transporting such things, and for each seizure made by him or his deputy, when the same are ordered sold by the circuit judge he shall receive an additional fee of five dollars, and all such fees and compensations shall be paid out of the proceeds of the sale. The clerks of the courts performing duties under the provisions aforesaid shall receive the same fees as prescribed by the general law for the performance of similar duties, and witnesses attending any investigation pursuant to subpoena shall receive the same mileage and per diem as if attending as a witness before the circuit court in term time. All fees and costs provided for shall be paid from the proceeds of the sale, or if there be no sale or if the proceeds of such sale be insufficient to meet such fees and costs then such fees and costs shall be paid out of the motor fuel tax collection trust fund or other funds available for the enforcement of the motor fuel tax laws by the comptroller. In the event the proceeds of the sale are more than sufficient to pay all costs and fees attending said sale then the surplus thereof shall be sent to the comptroller to be disposed of as provided for the disposition of the taxes collected under the motor fuel tax laws of the state; provided, however, that any property seized under §207.27, against which there is existing a mortgage lien or retain title contract held by a person who has no knowledge that such property is being used for the purpose of illegally evading or avoiding the payment of the motor fuel taxes provided for under the laws of the state, then such seizure shall not invalidate such lien or retain title contract, but the same shall be paid out of any funds derived from a sale of said property, provided the retain title holder or mortgagee shall within thirty days after seizure come into court and set up his claim to such retained title lien or mortgage.

History.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77); §2, ch. 61-119.

207.30 Restraining and enjoining violations.—Any person who shall violate any of the provisions of this chapter, or who shall fail to pay all motor fuel taxes and all interest and penalties due by him to the state under the provisions of the laws of this state may be restrained and enjoined in a suit or other proceeding in any court of competent jurisdiction instituted in the name of the state by the attorney general or by any state attorney at the direction of the comptroller, from selling, consuming, using, distributing or transporting any motor fuel which is taxable under the laws of this state until such person shall have paid all of said taxes, interest and penalties due the state, and have complied with the provisions of this chapter. Any proceeding instituted under this section shall not operate as a bar to the prosecution of any person guilty of violating any of the criminal laws of the state.

History.—§19, ch. 16082, 1933; CGL 1936 Supp. 1167(80).

207.31 Posting price of motor fuel plus tax. Distributors and all other persons selling motor fuel may add the amount of the motor fuel tax to the price of the motor fuel sold by them, and shall state the rate of the tax separately from the price of the motor fuel on all price display signs and invoices.

History.—§22, ch. 16082, 1933; CGL 1936 Supp. 1167(82).

207.32 Comptroller and deputies may make arrests, seize property and execute warrants.—The comptroller and his deputies, agents and employees may make arrests without warrants for any violation of any provision or provisions of this chapter or for any violation of the motor fuel tax laws of this state. In all such cases the person arrested for any violation of any provision of this chapter or of the motor fuel tax laws of this state shall be surrendered without delay to the sheriff of the county in which the arrest was made and formal complaint made against him, in accordance with law.

The comptroller and his deputies, agents and employees also may seize property as set out in §§207.27-207.29 and upon said seizure being made shall surrender without delay such seized property to the sheriff of the county where said property was seized for further procedure as set out in said sections.

When the comptroller deems advisable, he may direct the warrant provided for in §207.10, to one of the said comptroller's deputies, agents and employees who shall then execute said

warrant and proceed thereon in the same manner provided for sheriffs in such cases.

History.—§25, ch. 16082, 1933; CGL 1936 Supp. 1167(85).

207.33 Method for collection of tax cumulative.—The methods and means of effecting and enforcing the collection of motor fuel taxes as set out in this chapter shall be in addition to, and not in lieu of the methods and means of effecting and enforcing collection set out in the motor fuel tax laws of Florida.

History.—§28, ch. 16082, 1933; CGL 1936 Supp. 1167(87).

207.34 Review of comptroller's decisions.—Any person aggrieved by an order or decision of the comptroller may file a petition for the issuance of a writ of certiorari with the circuit court of Leon county for a review of said order or decision upon giving bond with sureties to be approved by the clerk of said court, payable to the state, conditioned to pay all costs by reason of the review. Either party may appeal to the appropriate district court of appeal from the order of the circuit court. The order of the comptroller shall not be suspended during proceedings had pursuant to this section. Review proceedings taken pursuant to this section shall be in the manner and within the time provided by the Florida appellate rules.

History.—§23, ch. 16082, 1933; CGL 1936 Supp. 1167(83); §2, ch. 63-512.

207.35 General penalties for violations.—Any person who shall violate any of the provisions of this chapter, a penalty for which is not otherwise provided, shall upon conviction thereof for a first offense be punished by a fine of not more than one hundred dollars, or by imprisonment for a term of not more than thirty days, and for a second or further offense, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars or by imprisonment for a term of not less than thirty days and not more than twelve months. Each day or part thereof, during which any person shall engage in business as a distributor without being the holder of an uncanceled license as provided by this chapter, shall constitute a separate offense within the meaning of this section; provided that in addition to the penalty imposed by this chapter the defendant shall be required to pay all motor fuel taxes and penalties due to the state.

History.—§20, ch. 16082, 1933; CGL 1936 Supp. 7794(13).
cf.—§775.06 Alternative punishment.

207.36 Records and files as public records.—The records and files in the office of the comptroller appertaining to this chapter shall be available to the public at any time during business hours. The comptroller shall prepare a list each month, of all distributors, and others, together with the amount of motor fuel tax or taxes paid thereby, and mail a copy thereof to each duly licensed distributor.

History.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.37 Exchange of information among the states.—The comptroller of the state shall, upon request duly received from the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel, kerosene or other petroleum products.

History.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.38 Comptroller to make rules and regulations.—The comptroller shall make reasonable rules and regulations, which shall have the force and effect of law, to effect a strict enforcement of the provisions of this law and of the motor fuel tax laws of the state.

History.—§18, ch. 16082, 1933; CGL 1936 Supp. 1167(79).

207.39 Refunds to city transit companies; definitions.—

(1) "City transit system" as that term is used in this act means any system of mass public transportation authorized to operate within any city, town or municipality in this state, as distinguished from any over-the-road system of public transportation operating between one or more cities, towns or municipalities. Provided, however, that a city transit system as defined above may operate within twenty-five miles outside the corporate limits of any city, town, or municipality when such operation outside the corporate limits is found necessary to adequately and efficiently provide mass public transportation services for the city, town or municipality involved. Provided further, that a city transit system, as defined above, shall not include taxicab or limousine operations.

(2) "City or cities" as that term is used includes collectively or individually any city, town or municipality organized in this state by virtue of any general or special law enacted by the legislature.

History.—§1, ch. 63-451.

207.40 Legislative findings.—It is hereby expressly recognized and declared by the legislature: That mass public transportation is essential to the continued economic growth and development of the cities of this state and therefore essential to the general welfare of the state; that the constant population growth throughout the state has brought an ever increasing use of private individual means of transportation, resulting in the overburdening of traffic arteries within our cities and thereby causing an increase in police requirements, higher cost of traffic regulation and law enforcement, and severe economic loss to and a blight on the central business districts in the cities; that relief of present city traffic congestion is essential to the continued economic growth and development of the cities of this state, and thus essential to the general welfare of this state; that further deterioration of the central areas of the cities must be prevented; that by reason of the heavy population growth and the increase in the use of private means of transportation, existing city transit systems have had to reduce route mileage and areas served, limit the hours of operation, and raise rates

to compensate for the loss in revenue; that by reason of the reduced operations of the city transit systems as described herein, income and capital investment have declined while operating expenses have increased, resulting in the obsolescence of equipment and a further decline in services; that present excise taxes imposed on city transit systems by chapters 208 and 209, constitute but a minor source of revenue to the state but constitute a major item of cost to each city transit system; and that the vehicles used by the city transit systems do not operate normally over state maintained roads but operate primarily over streets and roads maintained by the cities involved. In view of the foregoing facts, the legislature has found that the improvement, revitalization, modernization and expansion of the city transit systems of this state are necessary and proper in the best interest of the state, and in order to obtain these objectives the legislature has found it necessary to grant certain tax advantages to the said city transit systems as set forth below.

History.—§2, ch. 63-451.

207.41 Refunds on fuel used for city transit systems.—Any person who shall use any motor fuel for city transit systems, on which the taxes, as imposed by chapters 208 and 209, have been paid, shall be entitled to a refund of the first four cents of the said state taxes; provided, however that no refund shall be authorized unless sworn applications therefor containing such information as the comptroller may determine shall be filed with him not later than January 31 immediately following the year for which refund is claimed.

History.—§3, ch. 63-451.

207.42 Powers and duties of comptroller.—

(1) The comptroller shall make such rules and regulations as are necessary to establish the procedure for procuring the refund provided for in §207.41 and to enforce the provisions of §§207.39-207.51.

(2) Agents of the comptroller are authorized to go upon the premises of any person who has applied for or who has received a refund under §207.41 or of any licensed motor fuel dealer or his duly authorized agent as defined in §207.01, to make inspection to ascertain any matter connected with the operation of §§207.39-207.51 or the enforcement thereof; provided, however, that no agent shall enter the dwelling of any person without the occupant's consent or the authority from the court of competent jurisdiction.

History.—§4, ch. 63-451.

207.43 Permit for refunds required; procedure for issuance; bond.—

(1) No person shall secure a refund of tax under §207.41 unless such person is the holder of an unrevoked refund permit issued by the comptroller before the purchase of the motor fuel, which permit shall be numbered and issued annually, and which shall entitle such person to make application for a refund under §§207.39-207.51.

(2) To procure a permit every person shall file with the comptroller an application, on forms furnished by the comptroller, stating that he is engaged in the business of city transit systems and that he intends to file an application for refund for the current calendar year, and shall furnish the comptroller such other information as the comptroller shall request.

(3) No person shall, in any event, be allowed a refund unless he has filed the application provided for above with comptroller. The permit shall be effective on the date issued by the comptroller.

(4) The comptroller may, if applicant for a refund permit has violated any provision of §§207.39-207.51 or regulation pursuant thereto, or has been convicted of bribery, theft, or false swearing within the period of five years preceding the application, or if the comptroller has evidence of the applicant's financial irresponsibility, require the applicant to execute a corporate surety bond of one thousand dollars to be approved by the comptroller conditioned upon the payment of all taxes, penalties, and fines for which such applicant may become liable under §§207.39-207.51.

History.—§5, ch. 63-451.

207.44 Sales; invoices required.—When motor fuel is sold to a person who shall claim to be entitled to refund under §207.39, the seller of such motor fuel shall make out a motor fuel invoice in accordance with such rules, in such form and containing such information as the comptroller may require. No person shall execute a motor fuel invoice who is not a distributor, as defined in §207.01, or a jobber, agent, consignee or bailee duly authorized by a licensed distributor, to execute motor fuel invoices as his agent. No refund invoices shall be executed for purchases from retail filling stations.

History.—§6, ch. 63-451.

207.45 When refund claims allowed; procedure; right of refund nonassignable, exception; fee.—

(1) When the comptroller is satisfied that a refund is proper he shall authorize the first four cents of the state taxes imposed by chapters 208 and 209 to be refunded as other refunds are made; and the amount shall be refunded and deducted by him from current motor fuel tax receipts in his possession.

(2) The right to receive any refund under the provisions of this section shall not be assignable, except to the executor or administrator, or the receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such person entitled thereto.

(3) Claims shall be paid annually on a calendar year basis. Claims shall be filed not later than January 31 immediately following the year for which refund is claimed.

(4) The comptroller shall deduct a fee of two dollars for each claim, which two dollars

shall be deposited in the general revenue fund.
History.—§7, ch. 63-451.

207.46 Appropriation for payment of claims.—The comptroller is authorized to withhold from gas tax revenues and special fuel tax revenues sufficient funds to make the refund provided for in §207.39.
History.—§8, ch. 63-451.

207.47 False information in permit or refund application.—No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in a motor fuel refund invoice, or in an application for a refund of any taxes under this law; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought motor fuel or any part thereof to be used for any person other than as provided in §207.39.
History.—§9, ch. 63-451.

207.48 Revocation, suspension of refund permit.—

(1) The refund permit of any person who shall violate any provision of §207.47 shall be revoked by the comptroller and may not be reissued until two years have elapsed from the date of such revocation, and such person, whether or not his permit has been revoked by the comptroller shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than $200.00 nor more than $500.00, or imprisoned for a term of not less than 30 days nor more than 6 months, or both in the discretion of the court.

(2) The refund permit of any person who shall violate any provision of §207.39-207.51, other than those contained in §207.47, may be suspended by the comptroller for any period in his discretion not exceeding 6 months.
History.—§10, ch. 63-451.

207.49 Hearing required.—If the comptroller reasonably believes that any refund permit holder has been guilty of a violation of §§207.-39-207.51, which would subject the permit holder to a suspension or revocation of his permit under the provisions of §207.47 or §207.48, said permit holder may be cited to show cause at a public hearing before the comptroller why his permit should not be suspended or revoked. The permit holder shall be notified by registered letter or summons. The letter or summons shall inform the permit holder of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his permit may be revoked or suspended. The summons may be served in the same manner and by the same officer or person as provided by law, or it may be served in said manner by an employee of the department. The hearing shall be set at least five days after the summons is served or the letter delivered.
History.—§11, ch. 63-451.

207.50 Appropriation for administration.—All fees collected under §§207.39-207.51 are hereby appropriated to the comptroller for the purpose of defraying the cost of administering said sections.
History.—§12, ch. 63-451.

207.51 Violations by persons other than refund permit holders.—Any person other than the holder of a refund permit, who shall knowingly violate any provision of §§207.39-207.49 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100.00 nor more than $500.00, or imprisoned not exceeding 6 months, or both in the discretion of the court.
History.—§13, ch. 63-451.

CHAPTER 208

TAXES ON GASOLINE AND LIKE PRODUCTS

208.01 License tax upon dealers.—Every dealer in gasoline, or other like products of petroleum, in this state, under whatever name designated, shall pay a license tax of five dollars per annum, to the state.

History.—§1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); §1, ch. 20303, 1941.

208.02 Receipt for payment of license tax.—The comptroller shall issue to the licensee dealer in gasoline a receipt or certificate evidencing the payment of said license fees. Said receipt or certificate shall be posted on display and be so kept at all times open to the public view at the place of business for which same is issued.

History.—§4, ch. 15659, 1931; CGL 1936 Supp. 1167(19).

208.03 Disposition of license tax funds.—All moneys derived from the license tax of five dollars imposed by this law for the state license shall be paid into the state treasury to the credit of the general revenue fund.

History.—§5, ch. 15659, 1931; CGL 1936 Supp. 1167(20); §14, ch. 26869, 1951.

208.04 Gasoline taxes imposed.—

(1) An excise or license tax of six cents per gallon, herein termed "gas tax," is imposed upon every gallon of gasoline, or other like products of petroleum, sold in this state, upon which such tax has not been paid or the payment thereof not lawfully assumed by some person handling the same in this state. This levy of tax is upon the consumer but shall be paid upon the first sale or transfer within this state whether by a distributor or dealer, except as expressly provided in subsection (2), who shall act as agent for the state in the collection of said tax whether he be the ultimate seller or not;

(2) Provided, distributors who hold valid distributor's licenses, may purchase gasoline in bulk lots, without the tax imposed by this section being paid upon the first sale or transfer in this state as aforesaid, for sale in wholesale quantities to retail dealers in the state, and be liable for and shall pay the tax on all gasoline so purchased and sold, and shall act as agent

for the state in the collection and payment thereof. As a condition precedent to a distributor purchasing and selling gasoline and like products under this subsection without the tax being paid upon the first sale or transaction in this state, he must have made average monthly sales for the twelve months next preceding of not less than forty thousand gallons; provided that sales made under provisions of §208.45, shall be included in arriving at such average monthly sales.

(3) Upon the payment or lawful assumption of the tax by the distributor or dealer, the amount of the tax paid or assumed may be added to the sales price of the product sold, and the amount of the tax may be stated separately from the price of the product on all price display signs, sales or delivery slips, bills, or statements which advertise or indicate the price of the product. The delivery of the product sold shall be deemed to be made at the point of destination.

(4) The above "gas tax" is made up of two separate taxes:

First gas tax. A tax of four cents per gallon for the use of the state road department, as provided by law;

Second gas tax. A tax of two cents per gallon to be apportioned and used as provided in §16, Art. IX, of the state constitution.

History.—§1, ch. 15659, 1931; §1, ch. 18298, 1937; CGL 1940 Supp. 1167(16), 1167(29a); §1, ch. 20303, 1941; §2, ch. 57-162. cf.—§7.52 Pinellas county.

208.041 Tax on out-of-state purchased motor fuel.—

(1) DEFINITIONS.—The following words, terms, and phrases as used in this law are defined:

(a) "Motor fuel" means any fuel subject to tax under §§208.04 and 209.02.

(b) "Director" means director of the department of public safety.

(c) "Comptroller" means the state comptroller.

(2) LEVY OF TAX.—An excise tax of seven cents per gallon is hereby imposed upon every gallon of motor fuel carried in motor vehicle fuel tanks over and above the maximum of fifty gallons in any vehicle entering this state, except common passenger carriers with a seating capacity of more than seven persons.

(3) ADMINISTRATION OF LAW BY DIRECTOR.—The administration of this section shall be vested in the director of public safety of Florida who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof and shall administer and enforce the tax levied and imposed by this section. In enforcing this section, the director shall have all authority vested in him by chapter 317.

(4) DIRECTOR TO REPORT TO COMPTROLLER MONTHLY.—On or before the twenty-fifth day of each month, the director of public safety shall report under oath to the comptroller the number of gallons of motor fuel, separating the product as to quantity of gallons of gasoline and quantity of gallons of other motor fuel on which the tax was collected, the date of collection, and name and address of the taxpayer on all motor fuel collected during the preceding month, and at the same time pay to the comptroller the amount of tax above mentioned. And the proceeds shall be distributed pursuant to the provisions of §208.44(3).

History.—§§1-4, ch. 59-328.

208.05 Aviation motor fuel exempt from tax.—Each and every dealer in aviation motor fuel in the state by whatever name designated, who sells aviation motor fuel testing 78 octane number (A. S. T. M. method D-357-33T) or higher, of such quality not adapted for use in ordinary motor vehicles, being designed for and sold and exclusively used for aircraft motors, are exempted from the payment of any and all excise taxes levied by the state upon such motor fuel.

History.—§1, ch. 16789, 1935; CGL 1936 Supp. 1167(102).

208.06 Dealer to report to comptroller monthly; deduction.—The tax levied and assessed as provided in §208.04 shall be paid to the comptroller monthly in the following manner:

On or before the twenty-fifth day of each month the dealer shall report, under oath, to the comptroller the number of gallons of such products sold by him during the preceding month, and shall at the same time, pay to the comptroller the amount of tax computed to be due. The dealer shall deduct, from the amount of tax shown by the report to be payable an amount equivalent to two percent of the tax on motor fuel not exceeding five hundred thousand taxable gallons, and less an amount equivalent to one percent of the tax on motor fuels in excess of five hundred thousand gallons but not exceeding one million taxable gallons, which is hereby allowed to the dealer on account of services and expenses in complying with the provisions of this law, provided this allowance shall not be deductible unless payment of tax is made on or before the twenty-fifth day of the month as herein required. Such report shall show in detail the amount of products so sold and delivered by such dealer in the state. The taxes herein levied and assessed shall be in addition to any and all other taxes authorized, imposed, assessed or levied on gasoline and other like products of petroleum under any laws of the state.

History.—§1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); §1, ch. 20303, 1941; §1, ch. 24308, 1947; §1, ch. 26796, 1951.

208.07 Penalty for failure to report.—If any dealer shall fail to make the report and payment to the comptroller as provided in §208.06, on or before the twenty-fifth day of the month succeeding the month for which said tax is due as therein provided, the comptroller shall estimate the amount of such products sold by such dealer during such months from such information as he may be able to obtain and shall add ten per cent to the amount of such

taxes, as estimated, as the penalty for the failure of such dealer to make such report or payment and shall proceed to collect such tax, together with such penalty and costs, and obtain the same as delinquent railroad taxes are collected by law; provided, however, that the comptroller may waive the penalty if the dealer has regularly filed reports and made payments of the tax due for a period of twenty-four months in accordance with the provisions of §208.06 and the dealer files an acceptable excuse for the late filing under oath with the comptroller.

History.—§2, ch. 15659, 1931; CGL 1936 Supp. 1167(17); §2, ch. 24308, 1947; §11, ch. 25035, 1949; §1, ch. 63-302.
cf.—Ch. 195. Taxes upon railroads.

208.08 Payment of tax into state treasury.—All moneys derived from the gas taxes imposed by this chapter shall be paid into the state treasury by the comptroller, for deposit in the "gasoline tax clearing trust fund," which fund is created and from which the following transfers shall be made:

First gas tax.—After withholding fifty thousand dollars to be used as a revolving cash balance in the "gasoline tax clearing trust fund," shall be transferred into the "state roads trust fund," which fund is created for use as provided by law.

Second gas tax.—Shall be transferred into the "state roads distribution trust fund," which fund is created and determined by the legislature to be the same as the state roads distribution fund named in §16, Art. IX of the state constitution, for distribution as provided in §16 of Art. IX of the state constitution and §208.11.

Additional gas tax collected pursuant to §208.44.—Shall be transferred into the "seventh cent gas tax trust fund," which fund is created for distribution as provided in §208.44.

History.—§3, ch. 15659, 1931; CGL 1936 Supp. 1167(18). §3, ch. 61-119.

208.09 State roads trust fund; construction, etc., of roads.—All such moneys in the "state roads trust fund" shall be used for the construction and maintenance of state roads, as otherwise provided by law, under the direction of the state road department, which department may from time to time make requisition on the comptroller for fund to pay for the construction and maintenance of state roads. Money from said fund shall be drawn by the comptroller by warrant upon the state treasury pursuant to vouchers, and shall be paid in like manner as other state warrants are paid out of the appropriate fund against which same are drawn, and all sums of money necessary to provide for the payment of said warrants by the comptroller drawn upon said fund are appropriated annually out of said fund for the purpose of making such payments from time to time.

History.—§6, ch. 15659, 1931; CGL 1936 Supp. 1167(21); §2, ch. 61-119.

208.10 State roads trust fund; use as to county roads, etc.—It is expressly recognized and declared by the legislature that all roads being constructed or built or which have heretofore been constructed or built, or which will be hereafter constructed or built by the state road department under prior authorization or designation by the legislature as state roads, or which were constructed or built by any county or special road and bridge district or other special taxing districts thereof, were, are and will be constructed and built as state projects and undertakings, and that the cost of the construction and building thereof was, is and will be a legitimate proper state expense incurred for a general and state purpose and should be wholly borne by the state. It is expressly recognized that certain of the counties of the State of Florida and special road and bridge districts or other taxing districts of such counties have advanced or contributed and paid to the state road department varying sums of money to be used and expended by said state road department in the construction and building of state roads theretofore authorized or designated by the legislature as state projects, and it is expressly recognized that certain of the counties of the state and special road and bridge districts or other taxing districts of such counties have paid or expended or caused to have been paid or expended varying sums of money in the construction and building of certain roads that are now state roads and heretofore designated as state roads by the legislature and that all such moneys have been and are being expended, furnished, advanced, contributed or paid out on account of expenses of the state in construction and building of said state roads to and for the general benefit of the state and that such sums should be returned and repaid respectively to each county to the amount that such county or any special road and bridge district, or special taxing districts thereof, has advanced or expended in the construction of the same.

History.—§7, ch. 15659, 1931; CGL 1936 Supp. 1167(22).

208.11 Distribution of second gas tax to counties, etc.—

(1) The chairman and auditor of the state road department shall, within ninety days after this law takes effect, ascertain and certify to the comptroller of the state and to the board of administration and to each county within the state the amount of money advanced and paid by the several counties, and/or special road and bridge districts or other special taxing districts of any counties, to the state for the use of the state road department in the construction and building of state roads, specifying separately and particularly the amount advanced and paid by each county; and the chairman and auditor of the state road department shall, within ninety days after this law takes effect ascertain and certify to the comptroller and to the board of administration and to every county of the state, the amount of money furnished, advanced, contributed, paid out or expended by the several counties and/or special road and bridge districts or other special taxing districts of such counties in the building and construc-

tion of roads that are now designated state roads, specifying separately and particularly the amount furnished and expended by each county. The amount so certified as to any county shall include all moneys advanced, contributed, paid and expended, as aforesaid, by such county and by every special road and bridge district or other special taxing district for road and bridge purposes on roads now designated as state roads, in such county.

(2) Said certificate shall be audited by the comptroller, and, being found correct, shall constitute the basis for the subsequent allocation and apportionment of the moneys to be derived from the second gas tax and from which the disbursement shall be made to, or for the benefit of, such respective counties as herein provided, out of said 'state roads distribution trust fund' account. The comptroller shall each month draw his order on the treasurer of the state for the full net amount of moneys then with the state treasury in said 'state roads distribution trust fund', specifying the counties to which said moneys shall be paid, and the amount to be paid to each county, respectively. Said orders of said comptroller shall be countersigned by the governor, and shall be payable to the state treasurer as ex officio treasurer of the counties, respectively, participating therein. The monthly schedule of installments to be so paid to or for such counties shall be computed, determined and paid out monthly in the following ratio, to-wit:

(a) One-third part of the said second gas tax shall be apportioned to the credit of the several counties on the basis of area of said counties, that is to say, the apportionment shall be to the county in the proportion that the area of the county shall bear to the area of all the counties;

(b) One-third part of said second gas tax shall be apportioned to the credit of the several counties on the basis of population of the counties, that is to say, the apportionment shall be to the county in the proportion that the population of the county shall bear to the total population of the state, as determined by the last preceding general state or federal census taken; and

(c) One-third part of said second gas tax shall be apportioned to the credit of the several counties on the basis of contribution which has heretofore been made by the respective counties and/or special road and bridge districts or other special taxing districts of such counties to the construction of state roads prior to July 1, 1931, either through funds or the equivalent thereof of the county and/or special road and bridge district, or other special taxing districts, of such counties turned over to the state road department from time to time or through roads constructed by the counties and/or special road and bridge districts or other special taxing districts of such counties at county or district expense, and which were prior to July 1, 1931, made a part of the existing state highway system.

History.—§8(b), ch. 15659, 1931; CGL 1936 Supp. 1167(23); §§1, 2, ch. 20303, 1941; (2) §1, ch. 57-411; (3)-(6)r. §2, ch. 57-411; (2) §2, ch. 61-119.
cf.—§16, Art. IX; const. 1885.
§7.52 Pinellas county.

208.15 Reports required of wholesale dealers.—Each wholesale dealer in gasoline, or other like products of petroleum, shall, when making his report to the comptroller of the amount of such products sold in this state upon which the tax provided is due and payable by him to the comptroller of the state for the use of the state, at the same time report to the comptroller each and every sale made by such dealer of any quantity of gasoline, or other like products, which shall not have been at the time of such sale divested of its interstate character, which report shall show the name and business location of the person to whom the same is sold in this state. Every dealer shall, at the time other reports are required to be made to the comptroller, report to the comptroller each and every purchase of such products not theretofore divested of their interstate character made by such dealer upon which the tax is shown by the invoice thereof to have been assumed for report and payment by the dealer selling to him.

History.—§12, ch. 15659, 1931; CGL 1936 Supp. 1167(27).

208.16 Invoice to show whether or not tax paid.—Each dealer when selling to any other dealer any of the products taxed under this chapter, shall render an invoice of such sale to the purchaser and upon such invoice the dealer so rendering such invoice shall plainly state thereon whether or not the tax required will be reported and paid by him, and the purchaser so buying and receiving such products may fully rely upon the statement so made in such invoice.

History.—§13, ch. 15659, 1931; CGL 1936 Supp. 1167(28).

208.17 Dealer and road defined.—The term "dealer" as used in this chapter, or in any proceedings under this chapter, shall be deemed and taken to mean any person engaged in the business of selling in this state such of the products covered by this chapter as have been divested of their interstate character, and the tax imposed upon the quantity of such product sold in this state shall be collected only once and then upon the first sale after the same has lost its interstate character. The term "road" as used in this chapter, or in any proceeding under this chapter, shall be deemed and taken to include highways and bridges.

History.—§11, ch. 15659, 1931; CGL 1936 Supp. 1167(26).

208.18 Penalty for violation of chapter.—Any person violating any of the provisions of this chapter, for the first offense, shall be guilty of a misdemeanor and shall be punished accordingly, and for the second or further offense, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for a term of not more than twelve months; provided, however,

that the penalties provided in this section shall be in addition to those provided for in §208.07.

History.—§14, ch. 15659, 1931; CGL 1936 Supp. 7451(2).
cf.—§775.06 Alternative punishment.
§775.07 Punishment for misdemeanor.

208.181 Retail gasoline dealers, refund allowed.—Every person, firm or corporation licensed to sell gasoline at retail to the general public at posted retail prices, hereinafter referred to as "retail dealers" shall be entitled to a refund of two per cent on the first gas tax, as defined in §208.04, imposed by the state, on such gasoline purchased by such retail dealer; to cover losses due to evaporation and shrinkage of such gasoline, subject to the conditions set forth in the following sections.

History.—§1, ch. 29699, 1955.

208.182 Requirements for refund.—

(1) No retail dealer shall be entitled to a refund unless he is the holder of a current certificate of license as prescribed by §208.02.

(2) The comptroller shall not approve refund payment to any person other than a currently licensed retail dealer except the executor or administrator of the estate of the deceased currently licensed retail dealer.

History.—§2, ch. 29699, 1955; §1, ch. 63-332.
cf.—§1,01(13) defines registered mail to include certified mail with return receipt requested.

208.183 Application for refund.—

(1) Retail dealers holding a current certificate of license may file application for refunds provided by §§208.181-208.186 with the comptroller. Said application shall be filed quarterly, within six months of date of purchase of gasoline with respect to which refund is claimed, on forms prescribed by the comptroller; shall be sworn to; shall state total quantity of gasoline purchased, location where purchased, period for which refund is claimed, date of purchase, from whom purchased, and any other information reasonably required by the comptroller. Original or duplicate original invoice for each purchase of gasoline made during the period for which refund is claimed shall be attached to said application.

(2) The comptroller shall deduct a fee of one dollar for each claim, which shall be used by the comptroller to defray the expense of administering this law for the biennium.

History.—§3, ch. 29699, 1955; §2, ch. 63-332.

208.184 Approval of application; payment of refund.—The comptroller shall promptly examine each such application for refund and approve or disapprove it. If he disapproves the application for refund, he shall promptly notify the applicant of his reason therefor and a time and place when the applicant may be heard in support of his application. If he approves the application he shall authorize the amount claimed to be refunded as other refunds are made, and the amount shall be refunded and deducted by him from current motor fuel tax receipts. After refund is made the invoices required under §208.183 shall be perforated and returned to the applicant.

History.—§4, ch. 29699, 1955; §3, ch. 63-332.

208.185 Refund over-payment; adjustment.—In the event of over-payment of any refund provided for in §208.184, the comptroller shall refuse to make further refund until such over-payment is adjusted in a manner satisfactory to him.

History.—§5, ch. 29699, 1955.

208.186 False statement; penalty.—Any retail dealer who falsely swears to a refund application, knowing such statement to be false, is guilty of perjury; and upon conviction, in addition to the penalty prescribed by law, shall not be allowed to make future applications for refund during the current license year.

History.—§6, ch. 29699, 1955; §4, ch. 63-332.

208.19 Failure to account for tax collected; embezzlement.—If any dealer shall collect from another, upon an invoice rendered, the tax in this chapter contemplated, and shall fail to report and pay the same to the comptroller, as provided, he shall be deemed to be guilty of embezzlement of funds, the property of the state, and upon conviction shall be punished as if convicted of larceny of a like sum.

History.—§15, ch. 15659, 1931; CGL 1936 Supp. 7254(1).
cf.—§811.021. Punishment for larceny.

208.20 Gasoline tax imposed upon motor fuels in vehicle reservoirs.—A tax of seven cents per gallon is fixed and levied on all motor vehicle fuel carried in motor vehicle reservoirs upon which other gasoline taxes of this state have not been paid, and such tax shall be paid into the state treasury to the credit of the general revenue fund.

The terms "reserve motor vehicle reservoirs" and "reserve reservoirs" shall be deemed to be any reservoir or receptacle in, upon or attached to any motor vehicle other than the reservoir provided by the manufacturer as the container for fuel used in propelling said motor vehicle.

The term "motor vehicle fuel" shall be deemed to include any petroleum or petroleum products.

The term "other gasoline taxes" shall be deemed to refer to any gasoline taxes provided by law, as long as any such law shall be in effect, and to apply to any gasoline taxes provided for by any subsequent statute.

Gasoline inspection laws of the state are declared to be applicable to the enforcement of this section.

History.—§§1-3, ch. 16081, 1933; CGL 1936 Supp. 1167(55), 1167(56), 1167(57).
cf.—§§525.01, 525.03, 525.06—525.17 Gasoline and oil inspection.

208.21 Duties of police officers; penalties, etc.—

(1) All sheriffs, deputy sheriffs, constables and police officers in their respective jurisdictions shall, with or without warrant, stop and detain any person operating a motor vehicle in this state when they have good cause to suspect that such person is carrying motor vehicle fuel in reserve reservoirs upon which the gasoline taxes in this state have not been paid, and to seize any such motor vehicle fuel and re-

serve reservoirs containing such fuel that may be found and arrest the parties so operating such motor vehicle or having such motor vehicle fuel and reserve reservoir containing such fuel in their possession. If such fuel in such quantities as to confirm the belief of the illegal carrying of the same be found, the said fuel and the reserve reservoirs containing such fuel shall be prima facie evidence of the carrying of such fuel contrary to law.

(2) It is unlawful for any person to operate a motor vehicle in this state carrying motor vehicle fuel in reserve reservoirs upon which other gasoline taxes of this state have not been paid, and any person so operating a motor vehicle carrying motor vehicle fuel in reserve reservoirs upon which the other gasoline taxes of this state have not been paid or having such fuel in their possession shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided by law for misdemeanors.

(3) Upon the conviction of the person arrested for the violation of the provisions of this section, the judge of the court trying the case, after such notice to the person convicted and any other person entitled to such notice, as the judge may deem reasonable, may issue to the officer so making the arrest and seizure a written order adjudging and declaring such motor vehicle fuel and reserve reservoirs containing such fuel, or either, forfeited, and directing such officer to destroy such motor vehicle fuel or reserve reservoir containing such fuel. Such destruction shall be in the presence of such judge, or the clerk of his court, and at such time, place and in such manner as such judge shall in his order direct.

History.—§§4-6, ch. 16081, 1933; CGL 1936 Supp. 1167(58)-1167(60), 7794(4).
cf.—§775.07 Punishment for misdemeanor.

208.22 Stored motor fuels; license tax upon persons storing.—Every person, municipality, county or political subdivision, in this state, which shall import or receive by any means into this state, and keep in storage for a period of twenty-four hours or more after the same loses its interstate character as a shipment in interstate commerce, any gasoline or other like products of petroleum, which is intended to be stored or used for consumption in this state, shall, annually on the first day of October of each year, pay to the state a license fee of five dollars. Said license tax shall be paid into the state treasury in a special fund to the credit of the comptroller, who shall issue to the licensee a receipt evidencing the payment of said tax, which receipt shall be posted or displayed and so kept at all times open to the public view at the place of storage for which the same was issued.

It is unlawful for any person to keep in storage, for a period of twenty-four hours or more, after the same shall have lost its interstate character as a shipment in interstate commerce, any gasoline or like products of petroleum subject to taxation under this chapter, without having first obtained the license herein provided for and without otherwise complying, with the payment of taxes required to be paid.

History.—§§1, 2, 4, ch. 13756, 1929; CGL 1936 Supp. 1167(5), 1167(6), 1167(8).
cf.—§1.01 Person defined.

208.23 Stored motor fuels tax.—An excise or license tax of six cents per gallon is levied upon every gallon of gasoline, or other like products of petroleum, which shall be shipped or imported into this state and which shall thereafter for a period of twenty-four hours or more after it loses its interstate character as a shipment of interstate commerce, be kept in storage in this state to be used and consumed in this state, which has not already been subjected to the payment of an excise or license tax under some law of this state taxing gasoline or like products of petroleum. The tax herein provided shall not be fixed and taxed upon fuel oil, kerosene oil, distillate crude petroleum, residuum or smudge oil.

History.—§§1, 9, 10, ch. 13756, 1929; §1, ch. 15659, 1931; CGL 1936 Supp. 1167(5), 1167(13), 1167(14), 1167(16).

208.24 Stored motor fuels; disposition of taxes.—All taxes collected under §§208.22 and 208.23 shall be paid into the state treasury into a special fund to be credited to the account of the comptroller, which payments shall be made monthly. All persons subject to said taxes shall report, under oath, to the comptroller the number of gallons of gasoline, or other like products of petroleum held in storage by them for a period of more than twenty-four hours after the same has lost its inter-state character, together with the amount of such products, which are kept in storage to be used or consumed in this state. Said persons, shall, at the time of filing the report aforesaid, pay into the state treasury, to the account of the comptroller, the amount of taxes computed upon the number of gallons upon which said person is liable for above taxes. Said persons shall deduct, from the amount of tax shown by the report to be payable, an amount equivalent to two percent of the tax on motor fuel not exceeding five hundred thousand taxable gallons, and less an amount equivalent to one percent of the tax on motor fuels in excess of five hundred thousand gallons but not exceeding one million taxable gallons, which is hereby allowed to the dealer on account of services and expenses in complying with the provisions of this law, provided this allowance shall not be deductible unless payment of tax is made on or before the twenty-fifth day of the month as herein required. The said report shall show in detail such facts as may be required by the comptroller and shall be upon such forms as may be furnished by the comptroller. The comptroller may require such additional and supplementary reports as he may deem necessary in order to ascertain the facts in any particular case, and in order to determine whether or not liability for taxes has been

fully and truthfully reported and the tax fully paid.

History.—§2, ch. 13756, 1929; CGL 1936 Supp. 1167(6); §2, ch. 26796, 1951.

208.25 Stored motor fuels; failure to report; penalties.—Should any person fail to make report to the comptroller, or to make payment into the state treasury to the account of the comptroller, as provided in §208.24 on or before the twenty-fifth day of the month succeeding the month when due, the comptroller shall estimate the amount of products, liable for taxes from such information as he may be able to obtain, and the taxes due for each month, to which amount shall be added ten per cent thereof as a penalty for the failure of such person to make such report and payment, which amounts the comptroller shall proceed to collect together with all costs, in the same manner as delinquent railroad taxes are collected; provided, however, that the comptroller may waive the penalty if the person has regularly filed reports and made payments of the tax due for a period of twenty-four months in accordance with the provisions of §208.24 and the person files an acceptable excuse for the late filing under oath with the comptroller.

Any person who shall fraudulently evade the payment of any such tax to which he may be liable, or who knowingly assists any other person with whom he may be connected in evading payment of such taxes, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $5,000.00 or imprisonment in the county jail not to exceed 12 months.

History.—§3, ch. 13756, 1929; CGL 1936 Supp. 1167(7), 7451 (1); §3, ch. 24308, 1947; §2, ch. 63-302.
cf.—Ch. 195, Taxes upon railroads.
§775.06 Alternative punishment.

208.26 Stored motor fuels; application of chapter.—All provisions of this chapter, insofar as they relate to the duties and powers of the comptroller and the penalties and liabilities of persons violating the laws relating to stored motor fuels, shall apply to §208.22-208.25; however, the same shall not be construed as making any such gasoline, and other products of petroleum, liable to double taxation.

History.—§§5, 6, ch. 13756, 1929; CGL 1936 Supp. 1167(9), 1167(10).

208.27 Stored motor fuels; distribution of taxes.—The entire proceeds of all taxes collected under §§208.22 through 208.26, hereof, is annually appropriated for the following purposes, to-wit:

(1) For the payment of all costs and expenses of collection, including expenses of litigations for such collection and necessary clerical assistants and other expenses incurred in the administration of this chapter.

(2) All the remaining moneys derived from this chapter, after deducting the items mentioned in the preceding subdivision of this section, shall be distributed in like proportions and in the same manner and to the same objects as taxes collected from dealers in gasoline under other laws of the state are distributed.

History.—§8, ch. 13756, 1929; CGL 1936 Supp. 1167(12).

208.28 Comptroller to make rules; powers of comptroller.—The comptroller of the state shall make reasonable rules and regulations, which shall have the force and effect of law, to govern reports and accounts by all persons dealing in or handling gasoline or other like products of petroleum, including state, county and municipal authorities, for the purpose of enabling the comptroller to ascertain whether or not any gasoline or other like products of petroleum are being dealt with, handled or stored in this state under such circumstances as to become liable to the tax imposed by any law relating to a tax on gasoline or other like products of petroleum.

The comptroller is further given power to investigate, or cause to be investigated under his authority, all cases involving dealers in gasoline by persons receiving, handling or storing the same and to determine, from such investigation, whether or not any law relating to the gasoline tax, is being evaded or illegally avoided, and the determination of the comptroller in any case shall be prima facie, valid and authentic in all courts in this state, and all actions involving the validating of taxes on dealers in gasoline or persons subject to the provisions of this chapter.

History.—§7, ch. 13756, 1929; CGL 1936 Supp. 1167(11).

208.43 Legislative intention concerning senate joint resolution 324.—It is hereby declared to be the meaning and intention of the legislature that those provisions of senate resolution No. 324 of the 1941 session of legislature, relating to the remittance of twenty per cent of any balance in any year of the proceeds of said taxes contemplated by said resolution, to the board of county commissioners of any county for use on roads and bridges therein, provides, and the same shall be construed to provide, in the event said Resolution is adopted at the general election in 1942, that such funds shall be expended by the board of county commissioners of any such county for road and bridge purposes within the county, unless there exists a board of bond trustees or other authority in such county which is now or hereafter authorized by law to have the power of constructing, maintaining and supervising the roads and bridges of such county, and in such case, such board of bond trustees or other authority shall have the power and authority to use and expend such remitted twenty per cent funds for road and bridge purposes in the county until otherwise provided by law and it shall be the duty of the board of county commissioners in any such county to make such remitted funds available to such board of bond trustees or other authority for use on the public roads and bridges of such county immediately upon their remittance.

History.—§1, ch. 20937, 1941.

208.44 Additional tax upon gasoline or other like products of petroleum.—

(1) Every dealer in gasoline or other like products of petroleum, under whatever name designated in this state, in addition to all other taxes required by law, shall pay an additional tax of one cent per gallon for every gallon of gasoline or other like products of petroleum under whatever name designated, sold by him on which the tax herein provided has not been paid, or the payment thereof has not been assumed by a person preceding him in the handling of said lot of products. Delivery shall be deemed to be made at the point of destination. This additional license tax of one cent per gallon on gasoline or other like products of petroleum, under whatever name designated, shall be paid to the comptroller monthly in the following manner: On or before the 25th day of each month, the dealer shall report under oath to the comptroller the number of gallons of such products sold by him during the preceding month, and shall at the same time pay to the comptroller the amount of license tax computed to be due. Such report shall show in detail the amount of gallons of such products sold and delivered in each county. The dealer may deduct from the amount computed to be due, such amount as may be allowed by law for his services and expenses in complying with the provisions of this section.

(2) If any dealer shall fail to make such report and payment to the comptroller as herein provided, on or before the twenty-fifth day of the month succeeding the month for which the license tax is due as herein provided, the comptroller shall thereupon estimate the amount of such products sold by such dealer during such month from such information as he may be able to obtain, and shall add ten per cent of the amount of such taxes, as estimated, as the penalty for the failure of such dealer to make such report or payment, and shall proceed to collect such taxes, together with all costs and obtain the same as delinquent railroad taxes are collected by law; provided, however, that the comptroller may waive the penalty if the dealer has regularly filed reports and made payments of the tax due for a period of twenty-four months in accordance with the provisions of subsection (1) of this section, and the dealer files an acceptable excuse for the late filing under oath with the comptroller.

(3) The proceeds of said tax are hereby appropriated for public highway purposes in the manner following: The comptroller, after deducting his expenses of collection, shall monthly apply to said monthly collections the same ratio of distribution by which the two cents gasoline tax, known as the second gas tax, is prorated among the several counties under §16(a), Art. IX of the state constitution. The comptroller shall thereupon, monthly, remit the said respective distributive shares of each county as follows: Eighty per cent to the state road department for the construction, reconstruction, maintenance and repair of state roads and bridges within such county, for the lease or purchase of bridges connecting state highways within such county, acquisition of rights of way for state roads within such county or for reduction of bonded indebtedness of such county or special road and bridge districts within such county incurred for road and bridge purposes. Provided, however, that the state road department shall expend such funds solely for such purposes or on such state roads as shall be designated by appropriate resolution of the board of county commissioners of such county; and twenty per cent to the board of county commissioners of such county who shall use said funds solely and only for the acquisition of rights of way, or the construction, reconstruction, maintenance and repair of roads and bridges therein, or reduction of bonded indebtedness as aforesaid. Provided, however, that in the event that the powers and duties relating to roads and bridges usually exercised and performed by boards of county commissioners are exercised and performed by some other or separate county board, then and in such event such other or separate county board shall receive the proceeds and exercise the powers and perform the duties designated in this section to be done by the boards of county commissioners.

(4) The gasoline inspection laws of the state shall be and they are hereby declared to be applicable to the enforcement of this section.

(5) Any person, firm, corporation or association violating any of the provisions of this section, for the first offense shall be guilty of misdemeanor, and shall be punished accordingly, and for the second or further offense shall be fined not more than five thousand dollars, and in addition thereto, it shall be the discretion of the comptroller to revoke the dealer's license, and the proceeds of all fines and penalties imposed hereunder, less the costs, shall be paid into the county depository to the credit of the fine and forfeiture fund in the county where the conviction was had.

Provided, however, that the penalty provided in this subsection may be in addition to those provided for in subsection (2) of this section.

(6) The term "dealer" as used herein, or in any proceedings under this section, shall be deemed and taken to mean any person, firm, corporation or association engaged in the business of selling in this state such of the products covered by this section as have been divested of their interstate character, and the taxes herein imposed on the quantity of such products sold in this state shall be collected only once, and that, after the same has lost its interstate character.

(7) Each dealer, when selling to any other dealer any of the products herein taxed, shall render an invoice of such shipment to the purchaser, and such invoice of the dealer so selling shall plainly state whether or not the tax herein required will be reported and paid by him, and the purchaser, so buying and receiving such products may, in making his report to the comptroller, fully rely upon the statement so made in such invoice.

(8) Each wholesale dealer in gasoline or

other like products of petroleum, when making his report to the comptroller of the amount of such products sold in this state, upon which the tax herein provided is due and payable by him to the comptroller of the state, for the use of the state, at the same time shall report to the comptroller each and every sale made by such dealer of any quantity of gasoline or other like products of petroleum which shall not have been at the time of such sale divested of its interstate character, which report shall show the name and business location of the person, firm, corporation or association to whom the same is sold in this state. Every dealer shall, at the same time other reports are required to be made to the comptroller, report to the comptroller each and every purchase of such products made by said dealer upon which the tax is shown on the invoice thereof to have been assumed, reported and paid by the dealer selling to him.

(9) The license tax herein levied shall be in addition to all other license taxes levied under the laws of the state, and in addition to the dealer's license tax for each place of business levied under the provisions of the laws of the state.

(10) If any dealer shall collect from another upon an invoice rendered the license tax herein contemplated, and shall fail to report and pay the same to the comptroller as herein provided, he shall be deemed to be guilty of embezzlement of funds, the property of the State of Florida, and upon conviction shall be punished as if convicted of larceny of a like sum.

(11) It is the intent of this section that the effect hereof shall be to correspondingly increase the gasoline storage tax imposed by chapter 13756, acts of 1929, as provided by §9 of said act, as brought forward and revised in §208.23 to §208.28 inclusive, so as to equalize the gasoline gallonage storage tax with the gallonage sales tax.

(12) It is hereby expressly recognized and declared by the legislature that all public roads and bridges, being constructed or built, or which will be hereafter constructed or built, including the acquisition of rights of way as incident thereto, either by the state road department, or the several counties of the state, were, are and will be, constructed and built as general public projects and undertakings, and that the cost of the construction and building thereof including the acquisition of rights of way as incident thereto, was, is and will be, legitimate proper state expense incurred for a general public and state purpose. And it is expressly recognized and declared that the construction, reconstruction, maintenance and acquisition of rights of way of all secondary roads are essential to the welfare of the state, and that such roads when constructed, or reconstructed or maintained, or such rights of way when acquired, are and will be for a general public and state purpose. And, the legislature has found and hereby declares that for the proper and efficient construction and maintenance of public highways designated state roads, it is in the best interest of the state to further integrate the activities of the state road department and the several boards of county commissioners as provided in subsection (3) in order that both state and local highway needs may be adequately provided for.

(13) This section shall not repeal any law, or parts of laws, relating to the levying of any state license taxes or other state taxes upon gasoline or other like products of petroleum, with exception of chapter 25266, acts of 1949, provided, however, that no municipality or other political subdivision shall levy or collect any "gasoline tax" or other tax measured or computed by the sale, purchase, storage, distribution, use, consumption, or other disposition of gasoline or other like products of petroleum except such municipalities as are now levying such a tax under authorization of special laws; provided, further, that nothing herein shall prevent the levying by municipalities, or other political subdivisions, of reasonable flat license fees or taxes upon the business of selling gasoline or other like products of petroleum at wholesale or retail.

(14) This section shall take effect November 1, 1949. In the event of invalidity or ineffectiveness for any reason, of subsection (3) or (12) or of both such subsections of this section, the comptroller shall hold in a separate fund in the state treasury, all monies derived from the tax imposed by this section and such proceeds shall not be expended for any purpose, but shall be held as aforesaid until appropriated by act of the legislature in future session.

(15) It is declared to be the legislative intent that the funds derived from this section shall be used in such manner and for the purposes aforesaid to reduce the burden of ad valorem taxes in the several counties.

(16) This section may be known and cited as "secondary roads assistance act of 1949."

History.—§§1-11, 13, 14, ch. 20228, 1941; §§1-11, 13, 14, ch. 21639, 1943; §§1-11, 13, 14, ch. 22822, 1945; §§1-14, ch. 24172, 1947; §§1-14, ch. 25266, 1949; (2) §3, ch. 63-302.

208.45 Certain sales to United States tax exempt; rules and regulations.—

(1) Each and every dealer in gasoline or other like products of petroleum by whatsoever name designated shall be exempt from the payment of any and all excise taxes upon gasoline or other like products of petroleum sold by such dealer in the state to the United States, its departments, agencies and instrumentalities when such gasoline or other like products of petroleum is sold and delivered by such dealer in bulk lots of not less than five hundred gallons in each delivery to and for the exclusive use by the United States, its departments, agencies and instrumentalities.

(2) The term "exclusive use by the United States, its departments, agencies and instrumentalities" shall be construed to mean the consuming by the United States, its departments, agencies and instrumentalities of the

gasoline or other like products of petroleum in equipment, devices or motors owned and operated by the United States, its departments, agencies or instrumentalities, and operated by contract flying schools training cadet aviators for the United States air force under contract whereby the United States reimburses the contract flying school for the gasoline so used.

(3) The term "exclusive use by the United States, its departments, agencies or instrumentalities" shall be further construed to specifically exclude the use of such gasoline and other like products of petroleum by any person, firm or corporation, whether operating under contract with the United States, its departments, agencies, and instrumentalities or not, the original purchase by whom from a dealer in gasoline or other products of petroleum in this state would have rendered such dealer liable for the payment of excise taxes upon such gasoline and other like products of petroleum under the laws of the state.

(4) The above definitions of the term "exclusive use by the United States, its departments, agencies, and instrumentalities" shall in nowise be construed to be the sole meaning intended by the use of such term in this section, but such term shall be given its ordinary and usual meaning in all instances not specifically mentioned herein, and the enumeration of the above definitions shall be construed as an extension of the ordinary and usual meaning of the term "exclusive use."

(5) The comptroller of the state shall promulgate such rules and regulations and shall prescribe such forms as shall be necessary to effectuate and enforce the purposes of this section.

(6) If any subsection, provision, or clause of this section shall be declared to be invalid or unconstitutional and such invalidity or unconstitutionality shall have the effect of defeating or striking down the attempted exemption it shall not affect the operation or validity of other statutes of the state providing for the taxation of every gallon of gasoline sold in the state, it being hereby declared to be the legislative intent to grant exemption from taxation under conditions set forth in subsection (1) only in the event and to such extent that such exemption is lawful and constitutional; and it is further declared to be the legislative intent that if any subsection, provision or clause of this section shall be declared to be invalid or unconstitutional and such declaration shall have the effect of defeating or striking down the attempted exemption that then and in such event the dealers and distributors of gasoline or other like products of petroleum shall pay each and every excise tax levied upon every gallon of gasoline sold in the state.

History.—§§1-3, 5, ch. 21757, 1943; §1, ch. 22801, 1945; §§1-3, ch. 23676, 1947; §11, ch. 25035, 1949; (2), §1, ch. 28191, 1953; (3) §24, ch. 57-1.

208.47 Definitions for § § 208.48-208.63.—For the purposes of § § 208.48-208.63 the following words and terms when used herein shall have the following meanings:

(1) "Motor fuel" means motor fuel as defined in §207.01.

(2) "Distributor" means distributor as defined in §207.01.

(3) "Comptroller" shall mean the comptroller of the state.

(4) "Public highways" means public highways as defined in §207.01.

(5) "State" means the State of Florida.

(6) "Agricultural purposes" shall be construed to mean motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which is used in any vehicle or equipment driven or operated upon the public roads, streets, or highways of this state; provided, that this restriction shall not apply to the movement of farm vehicles or farm equipment between farms, provided further, that the transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

(7) "Commercial fishing purposes" as used in § § 208.48-208.63 shall be construed to mean motor fuel used in the operation of boats, vessels, and equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters under the jurisdiction of the state for resale to the public, but shall in no way be construed to include sports or pleasure fishing, and no part of which is used in any vehicle or equipment driven or operated upon the public roads, streets, or highways of this state.

History.—§2, ch. 28098, 1953; (6), §1, ch. 29913, 1955, superseded by §1, ch. 29916, 1955; (6), §1, ch. 57-205.

208.48 Refunds on fuel used for agricultural or commercial fishing purposes; limitation; claims.—Any person who shall use any motor fuel for agricultural purposes and commercial fishing purposes, on which the tax, as imposed by chapter 208 has been paid shall be entitled to a refund of the state tax except the two cents per gallon motor fuel tax known as the second gasoline tax and the seventh cent gas tax as provided by §208.44; provided, however, that no refund shall be authorized unless sworn applications therefor containing such information as the comptroller may determine shall be filed with him not later than January 31 immediately following the year for which refund is claimed, provided where a claim is filed after January 31 and there is presented to the comptroller a justified excuse for late filing and the last preceding claim has been filed on time, such late filing may be accepted through February of the year filed, and provided, further, that no refund shall be authorized for purchases of less than twenty-five gallons at any one time; and further provided that no refund shall be authorized unless the amount due is for five dollars or more in any twelve month period.

History.—§2, ch. 28098, 1953; §2, ch. 29916, 1955; §1, ch. 63-297.

208.49 Powers and duties of comptroller.—

(1) The comptroller shall make such rules

and regulations as are necessary to enforce the provisions of § § 208.47-208.63.

(2) Agents of the comptroller are authorized to go upon the premises of any permit holder or of any licensed motor fuel dealer or his duly authorized agent as defined in this law to make inspection to ascertain any matter connected with the operation of § § 208.47-208.63 or the enforcement thereof; provided, however, that no agent shall enter the dwelling of any person without the occupant's consent or the authority from the court of competent jurisdiction.

(3) The comptroller is hereby authorized to employ such additional persons, and incur travel, rental, and other current and capital expenses necessary properly to accomplish the purpose of § § 208.47-208.63 and to protect the motor fuel tax revenues of the state and to that end may call upon any state or local law enforcing agency to assist in enforcing the provisions of this law.

History.—§§2, 10, 12, ch. 28098, 1953.

208.50 Permit for refunds required; procedure for issuance; bond.—

(1) No person shall secure a refund of tax under §208.48, unless such person is the holder of an unrevoked refund permit issued by the comptroller before the purchase of the motor fuel, which permit shall be numbered and issued annually, and which shall entitle such person to make application for a refund under §§208.47-208.63.

(2) To procure a permit every person shall file with the comptroller an application, on forms furnished by the comptroller, stating that he is engaged in the business of farming or commercial fishing and that he intends to file an application for refund for the current calendar year, and shall furnish the comptroller such other information as the comptroller shall request.

(3) No person shall, in any event be allowed a refund unless he has filed the application provided for above with the comptroller. The permit shall be effective on the date issued by the comptroller, and continuous from year to year so long as the permit holder files refund claims year to year. In the event he fails to file a claim for any year then he must apply for a new permit.

(4) The comptroller may, if applicant for a refund permit has violated any provision of §§208.47-208.63 or regulation pursuant thereto, or has been convicted of bribery, theft, or false swearing within the period of five years preceding the application, or if the comptroller has evidence of the applicant's financial irresponsibility, require the applicant to execute a corporate surety bond of one thousand dollars to be approved by the comptroller conditioned upon the payment of all taxes, penalties, and fines for which such applicant may become liable under §§208.47-208.63.

History.—§§3, 9, ch. 28098, 1953; §3, ch. 29916, 1955; §1, ch. 63-297.

208.51 Permit numbers; tax refund blanks. —The comptroller shall annually assign each permit holder a new file number and furnish the permit holder with blank motor fuel tax refund applications.

History.—§4, ch. 28098, 1953; §4, ch. 29916, 1955; §1, ch. 63-297.

208.52 Sales; quantities limited; invoices required, requirements.—

(1) When motor fuel is sold to a person who shall claim to be entitled to refund under §208.48, the seller of such motor fuel shall make out a sales invoice which invoice shall contain the following information:

(a) The name, post office and resident address of the purchaser;

(b) The number of gallons purchased;

(c) The date on which purchase was made;

(d) The price paid for such refund motor fuel;

(e) The name and place of business of the seller of the refund motor fuel.

(2) The sales invoice shall be retained by the purchaser for attachment to his application for refund as a part thereof. No refund shall be allowed unless the seller executes such invoices and proof of payment of such taxes for which refund is claimed is attached. The comptroller may refuse to grant a refund if the invoice in any particular is incomplete and fails to contain the full information required under §§208.47-208.63. When refund payment is made the comptroller may perforate the invoices and return them to the permit holder.

(3) Refund motor fuel shall not be sold or delivered in quantities of less than twenty-five gallons.

(4) No person shall execute a sales invoice, as described in subsection (1), who is not a distributor, as defined in §207.01, or a jobber, agent, consignee or bailee duly authorized by a licensed distributor, to execute invoices as his agent. No refund invoices shall be executed for purchases from retail filling stations, except that the comptroller shall have authority to designate certain retail stations as agents of distributors where no distributors are available to serve commercial fishermen.

History.—§§5, 10, 12, ch. 28098, 1953; (6) §5, ch. 29916, 1955; §1, ch. 63-297.

208.53 Refund claim application forms.— The refund permit holder shall file with the comptroller an application for refund on forms furnished by the comptroller which shall contain blanks for listing:

(1) The quantity of motor fuel used on which refund is claimed;

(2) The name, post office and resident address of the purchaser;

(3) The amount of tax claimed to be refunded;

(4) The number of gallons purchased;

(5) That the same has been used exclusively by the purchaser for his own use;

(6) An oath that no part of said refund motor fuel has been sold, or used on the public roads, streets, or highways of this state;

(7) The quantity of refund motor fuel used in machines and equipment listed in claimant's application for refund;

(8) The quantity of motor fuel on hand at the beginning and the quantity of motor fuel on hand at the end of the period for which refund is claimed;

(9) The quantity of motor fuel used on which no refund claim is made,

(10) The name and address of the seller from whom the refund motor fuel was purchased, and

(11) Such other information as the comptroller shall require.

History.—§6, ch. 28098, 1953; (7) §6, ch. 29916, 1955.

208.54 When refund claims allowed; procedure; right of refund nonassignable, exception; fee.—

(1) When the comptroller is satisfied that a refund is proper he shall authorize the amount of the state motor fuel tax paid except the two cents per gallon motor fuel tax known as the "second gasoline tax" and the seventh cent gas tax as provided by §208.44, to be refunded as other refunds are made; and the amount shall be refunded and deducted by him from current motor fuel tax receipts in his possession. Such refunds shall be allowed only on motor fuel purchased in quantities of twenty-five gallons, or more, and used in machines, boats and equipment listed by the claimant in his application for refund.

(2) The right to receive any refund under the provisions of this section shall not be assignable, except to the executor or administrator, or to the receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such person entitled thereto.

(3) Claims shall be paid annually on a calendar year basis. Claims shall be filed not later than January 31 immediately following the year for which refund is claimed.

(4) The comptroller shall deduct a fee of two dollars for each claim, which two dollars shall be deposited in the general revenue fund.

History.—§§2, 6, ch. 28098, 1953; §7, ch. 29916, 1955.

208.55 Appropriation for payment of claims. —The annual claims to be refunded shall not exceed five hundred thousand dollars which amount shall be withheld from gasoline tax revenues available for the purpose of refund under § § 208.47-208.63. In event claims exceed this amount the comptroller shall reduce such refunds proportionally so that each claim shall receive the same percentage reduction.

History.—§2, ch. 28098, 1953.

208.56 Erroneous refunds.—If any excise taxes on motor fuel be erroneously refunded the comptroller shall advise the payee by registered mail of the erroneous refund. If the payee fails to reimburse the state within fifteen days after the receipt of the letter, an action may be instituted by the comptroller against such payee in the circuit court and the comptroller shall recover from the payee the amount of the erroneous refund plus a penalty of twenty per cent.

History.—§8, ch. 28098, 1953.

208.57 Records of sales and purchases of motor fuel under refund permit.—

(1) Each licensed distributor shall, in accordance with the comptroller's requirements, keep at his principal place of business in this state, or at the bulk plant where the sale is made, a complete record or duplicate sales tickets of all such motor fuel sold by him for refund provided for in §208.53, which records shall give the date of each such sale, the number of gallons sold, the name of the person to whom sold and the sale price. No licensed distributor or his agent or employee shall acknowledge or assist in the preparation of any claim for tax refund.

(2) Every person to whom a refund permit has been issued under the act shall, in accordance with the comptroller's requirements, keep at his residence or principal place of business in this state a record of each purchase of motor fuel from a licensed distributor or the distributor's authorized agent, the number of gallons purchased, the name of the seller, the date of the purchase and the sale price.

(3) The records required to be kept under subsections (1) and (2) of this section shall at all reasonable hours be subject to inspection by the comptroller or by any person duly authorized by him. Such records shall be preserved and shall not be destroyed until two years after the date the motor fuel to which they relate was sold or purchased.

History.—§7, ch. 28098, 1953; §1, ch. 63-297.

208.58 Comptroller's records of refunds open to public.—The comptroller shall keep a permanent record of the amount of refund claimed and paid to each claimant. Such records shall be open to public inspection.

History.—§9, ch, 28098, 1953.

208.59 False information in permit or refund application.—No person shall knowingly make a false or fraudulent statement in an application for refund permit or in an application for a refund of any taxes under this law; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought motor fuel or any part thereof to be used for any purpose other than as provided in §208.48.

History.—§9, ch. 28098, 1953; §1, ch. 63-297.

208.60 Revocation, suspension of refund permit.—

(1) The refund permit of any person who shall violate any provision of §208.59 shall be revoked by the comptroller and may not be reissued until two years have elapsed from the date of such revocation, and such person, whether or not his permit has been revoked by the comptroller shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned for a term of not less than thirty days nor more than six months, or both in the discretion of the court.

(2) The refund permit of any person who

shall violate any provision of § § 208.47-208.63, other than those contained in §208.59, may be suspended by the comptroller for any period in his discretion not exceeding six months.

History.—§9, ch. 28098, 1953.

208.61 **Hearing required.**—If the comptroller reasonably believes that any refund permit holder has been guilty of a violation of §§208.47-208.63, which would subject the permit holder to a suspension or revocation of his permit under the provisions of §§208.51 (5) or 208.60, said permit holder may be cited to show cause at a public hearing before the comptroller why his permit should not be suspended or revoked. The permit holder shall be notified by registered letter or summons. The letter or summons shall inform the permit holder of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his permit may be revoked or suspended. The summons may be served in the same manner and by the same officer or person as provided by law, or it may be served in said manner by an employee of the department. The hearing shall be set at least five days after the summons is served or the letter delivered.

History.—§11, ch. 28098, 1953.

208.62 **Appropriation for administration.**—All fees collected under §§208.47-208.63 are hereby appropriated to the comptroller for the purpose of defraying the cost of administering §§208.47-208.63.

History.—§12, ch. 28098, 1953; §24, ch. 57-1.
cf.—§282.001 Fees deposited in general revenue fund.

208.63 **Violations by persons other than refund permit holders.** — Any person other than the holder of a refund permit, who shall knowingly violate any provision of § § 208.47-208.62, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not exceeding six months, or both in the discretion of the court.

History.—§9, ch. 28098, 1953.

CHAPTER 209

TAX ON MOTOR FUELS OTHER THAN GASOLINE

209.001 Purpose.—The tax imposed by this law is levied for the purpose of providing revenue to be used by this state to defray in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this law and for no other purpose whatsoever.

History.—§1, ch. 26718, 1951.

209.01 Definitions.—The following words, terms and phrases as used in this law are defined:

(1) "Special fuels" means any liquid product or gas product or combination thereof used in an internal combustion engine or motor for the generation of power to propel motor vehicles on the public highways, except such fuels that are subject to the tax imposed by chapter 208.

(2) "Motor vehicles" means all vehicles, machines or mechanical contrivances which are propelled by internal combustion engines or motors, and required, or which would be required to be licensed under the motor vehicle license law if owned by a resident.

(3) "Public highways" includes every way or place of whatever nature, generally open to the use of the public as a matter of right for the purpose of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(4) "Person" includes any individual, association, firm, co-partnership, corporation, receiver, trustee, conservator or other officer appointed by any state or federal court, counties, municipalities or other political subdivisions of this state.

(5) "Use" means the placing of special fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion thereof, and with respect to special fuels brought into this state in any such receptacle, for consumption in this state.

(6) "User" includes any person who shall use special fuels within this state in an internal combustion engine or motor for the generation of power to propel a motor vehicle on the public highways of this state.

(7) "Comptroller" means the state comptroller.

(8) "Bulk dealer" means any person, firm, corporation, association of persons, or political subdivisions of this state, engaged in the business of delivering or selling direct to service stations and/or user-dealers in this state of such of the products covered by this act as have been deprived of their interstate character.

(9) "User-dealer" means any person who has obtained a license as required by §209.05.

History.—§1, ch. 19446, 1939; CGL 1940 Supp. 1167(103); §2, ch. 26718, 1951.

209.02 Levy of tax.—An excise tax of seven cents per gallon is hereby imposed on all licensed user-dealers of special fuels upon the transferring or delivering of any special fuels into the fuel supply tank of any motor vehicle. A like tax is also hereby imposed on any person using special fuels for propelling any motor vehicle over the public highways of this state on which the excise tax has not been paid to a licensed user-dealer in this state, except as provided in §209.05 (1).

History.—§2, ch. 19446, 1939; CGL 1940 Supp. 1167(104); §3, ch. 26718, 1951.

209.03 Allocation of tax.—All moneys derived from the taxes imposed by this chapter

shall be paid into the state treasury by the comptroller, for deposit in the "special motor vehicle fuel tax clearing trust fund," which fund is created and from which the following transfers shall be made:

After withholding five thousand dollars from the proceeds of four cents of said tax, to be used as a revolving cash balance, all other moneys shall be transferred in the same manner and for the same purposes as provided by law for allocation of the taxes on gasoline and other like products of petroleum.

History.—§3, ch. 19446, 1939; CGL 1940 Supp. 1167(105); §1, ch. 20554, 1941; §4, ch. 26718, 1951; §4, ch. 61-119.

cf.—§208.08 Payment of gasoline tax in state treasury.
§208.44(1) Additional gasoline tax.

209.04 Appropriation for expenses of administration.—The legislature shall include in its biennial appropriation act a sum sufficient for the payment by the comptroller of expenses incident to the administration of this chapter including legal expenses, costs and expenses incident to litigation, and the payment of such sums of money as the comptroller may from time to time determine shall be refunded to any person making over payment of such taxes.

History.—§4, ch. 19446, 1939; CGL 1940 Supp. 1167(106); §15, ch. 26869, 1951.

209.05 Licenses; necessity; prerequisites; issuance; non-assignability.—

(1) It shall be unlawful for any person to use, transfer or deliver special fuels into the fuel supply tank of any motor vehicle unless such person is the holder of a valid user-dealer license issued by the comptroller, provided, that no person shall be required to be licensed who uses only special fuels on which the tax has been paid to a licensed user-dealer, and provided, further, that the motor vehicle of any user may enter this state with a maximum of fifty gallons or gallonage to the capacity of the regular fuel tank attached to the vehicle, whichever is the lesser upon which a similar tax has been paid in another state.

(2) To procure a license as provided in subsection (1), every person shall file with the comptroller an application in such form as the comptroller may prescribe, with a bond, as provided in §209.06. No license shall be issued upon any application unless accompanied by said bond.

(3) When an application for said license shall be filed by a person whose license has been cancelled for cause by the comptroller, or in case the comptroller shall be of the opinion that such application is not filed in good faith, or that such application is filed by some person as a subterfuge for the real person in interest whose license has theretofore been cancelled, the comptroller shall have, after a hearing, of which the applicant shall have been given five days notice in writing and in which said applicant shall have the right to appear in person or by counsel and present evidence, if the evidence warrants, authority to refuse to issue to said person a license.

(4) Upon filing application for a license, a filing fee of one dollar shall be paid to the comptroller which shall be paid into the general revenue fund.

(5) All requirements of this section having been complied with, the comptroller shall issue to the applicant a license, and such license shall remain in effect until cancelled as provided in this law.

(6) Said license shall not be assignable and shall be valid only for the user-dealer in whose name issued and shall be displayed conspicuously by the user-dealer in the principal place of business for which it was issued.

History.—§5, ch. 19446, 1939; CGL 1940 Supp. 1167(107); §6, ch. 26718, 1951.

cf.—§775.06 Alternative punishment.

209.06 Bond required of licensed user-dealers.—

(1) Every user-dealer shall file with the comptroller a bond or bonds in a penal sum of not less than three thousand dollars nor more than twenty thousand dollars. The sum of said bond shall be approximately three times the average monthly special fuels tax paid or due by such user-dealer during the next preceding twelve calendar months under this law, with a surety approved by the comptroller, upon which the user-dealer shall be the principal obligor and the state shall be the obligee, conditioned upon the faithful compliance with the provisions of this law.

(2) When the liability upon the bond filed, as provided in subsection (1), shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the comptroller any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, the comptroller may require the user-dealer to file a new bond with satisfactory surety in the same form and amount.

(3) If such new bond shall be furnished as provided in subsection (2), the comptroller shall cancel and surrender the bond of the user-dealer for which such new bond shall be substituted. If the user-dealer shall fail to post said new bond, the comptroller shall forthwith cancel the license certificate of said user-dealer.

(4) If the comptroller shall determine that it is necessary to hold a hearing to determine the sufficiency of the existing bond filed, as provided in subsection (1), he shall give the user-dealer filing such bond, five days written notice of such hearing. If, after the hearing, the comptroller shall decide that the amount of the existing bond is insufficient to insure payment to the state of the amount of tax and any penalties and interest for which said user-dealer is liable, the user-dealer shall forthwith, upon the written demand of the comptroller, file additional bond in the same manner and form with like security thereon. The comptroller shall forthwith cancel the license certificate of any user-dealer failing to file the additional bond. The total amount of such additional bond and the bond required under the

provisions of subsection (1) shall not exceed twenty thousand dollars.

(5) Any surety on any bond furnished by a user-dealer, as provided in this section, shall be released and discharged from all liability to the state accruing on such bond after the expiration of sixty days from the date upon which such surety shall have lodged with the comptroller, written request to be released and discharged. Such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said sixty-day period. The comptroller shall, promptly on receipt of such request, notify the user-dealer who furnished such bond, and unless said user-dealer shall on or before the expiration of the sixty-day period, file with the comptroller a new bond with a surety company satisfactory to the comptroller in the amount and form as provided in subsection (1), the comptroller shall forthwith cancel the license of said user-dealer. If such new bond shall be furnished, the comptroller shall cancel and surrender the bond of said user-dealer for which the new bond shall be substituted.

History.—§6, ch. 19446, 1939; CGL 1940 Supp. 1167(108); §7, ch. 26718, 1951.

209.07 Tax reports; computation and payment of tax.—

(1) For the purpose of determining the amount of tax imposed by §209.02 each user-dealer shall, not later than the twentieth day of each calendar month, file with the comptroller on forms prescribed by said comptroller, monthly reports which shall include the total gallons of special fuels used, transferred or delivered into the fuel supply tank of any motor vehicle by the user dealer on which the tax has not been paid by a user-dealer in this state during the next preceding calendar month. The reports shall contain or be verified by a written declaration that such report is made under the penalties of perjury.

(2) At the time of filing said monthly report, each user-dealer shall pay to the comptroller the full amount of special fuels tax for the next preceding calendar month at the rate as provided for in §209.02.

(3) The report and remittance of said taxes shall be deposited in the United States mails, with postage prepaid, in sufficient time to reach the comptroller in the ordinary course of the mails on or before the twentieth day of the month.

History.—§7, ch. 19446, 1939; CGL 1940 Supp. 1167(109); §8, ch. 26718, 1951.

209.08 Surrender of bond or license.—

(1) Upon receipt of a written request from any user-dealer to cancel the license, the comptroller shall have the power to cancel such license, effective sixty days from the date of such written request. No such license shall be cancelled unless the user-dealer shall have, prior to the date of such cancellation, paid to this state all taxes due and payable, together with all penalties and interest accruing under any of the provisions of this law, and unless the user-dealer shall have surrendered to the comptroller the license issued to such user-dealer.

(2) If, upon investigation, the comptroller shall ascertain and find that any person to whom a license has been issued under this law is no longer engaged in the use, transfer or delivery of special fuels and has not been so engaged for a period of six months, the comptroller shall have the power to cancel the license by giving such person sixty days' notice of the cancellation, mailed to their last known address, in which event the license theretofore issued to such person shall be surrendered to the comptroller.

(3) If any license shall be cancelled by the comptroller as provided in this section, and if the user-dealer shall have paid to this state all taxes due and payable, together with any and all penalties and interest accruing under this law, the comptroller shall cancel and surrender the bond theretofore filed by said user-dealer.

History.—§8, ch. 19446, 1939; CGL 1940 Supp. 1167(110); §9, ch. 26718, 1951.

209.09 Penalty for failure to report and pay taxes promptly.—If any person shall wilfully fail to file the monthly report and pay the tax as provided in §209.07 the comptroller shall give notice to such person of an intention to revoke his license. Such user-dealer shall be entitled to five days within which to apply for a hearing on the license cancellation at which hearing evidence may be presented and if it appears that the failure to comply with this law was not due to fraud or to an intent to violate the law the license of the user-dealer shall not be revoked. If, after hearing, the license is revoked the user-dealer may file a petition with the appropriate circuit court for the issuance of a writ of certiorari to review the order of the comptroller. If no application is made for a hearing the comptroller may cancel the license forthwith and notify the user-dealer of such cancellation by first-class mail sent to the last known address appearing in the files of the comptroller.

History.—§9, ch. 19446, 1939; CGL 1940 Supp. 1167(111); §10, ch. 26718, 1951; §3, ch. 63-512.

209.10 Comptroller may estimate special fuels sold or used.—

(1) When any user-dealer shall neglect or refuse to file any report for any calendar month as required by §209.07, or shall file an incorrect or fraudulent report, the comptroller shall determine, after investigation, the number of gallons of special fuels with respect to which the user-dealer has incurred liability under this law, for any particular month or months, and fix the amount of taxes due and payable thereon, to which sum shall be added a sum equal to ten per cent thereof as a penalty for the default of such user-dealer; provided, however, that the comptroller may waive the penalty if the user-dealer has regularly filed reports and made payments of the tax due for a

period of twenty-four months in accordance with the provisions of §209.07, and the user-dealer files an acceptable excuse under oath with the comptroller for the late filing.

(2) In any action or proceeding, which must be commenced within two years of the date the taxes were due, for the collection of the tax, penalties or interest imposed in connection therewith, an assessment by the comptroller of the amount of the tax, penalties or interest due, shall be prima facie evidence of the claim of the state, and the burden of proof shall be upon the user-dealer to show the assessment was incorrect and contrary to law.

History.—§10, ch. 19446, 1939; CGL 1940 Supp. 1167(112); §11, ch. 26718, 1951; (1) §1, ch. 63-301.

209.11 Bulk dealers to report monthly.—Every bulk dealer shall make such report as may be required by the comptroller to the comptroller at the time and on the forms prescribed by the comptroller as provided in §209.13, of all special fuels delivered to licensed user-dealers.

History.—§11, ch. 19446, 1939; CGL 1940 Supp. 1167(113); §7, ch. 22858, 1945; §12, ch. 26718, 1951.

209.111 Enforcement of law; presumption as to fuel received.—For the purpose of enforcing the provisions of this chapter, it shall be prima facie presumed that all fuel received by a user-dealer into storage and dispensing equipment designed to fuel motor vehicles, is to be transferred or delivered by the user-dealer into the fuel supply tanks of motor vehicles.

History.—§13, ch. 26718, 1951.

209.12 Retention of records by user-dealers; penalty.—

(1) Each user-dealer shall maintain and keep for a period of two years, such record or records of special fuel received, used, transferred or delivered together with invoices, bills of lading, and other pertinent records and papers as may be required by the comptroller for the reasonable administration of this law.

(2) Any person wilfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not exceeding one hundred dollars, or by imprisonment for not more than sixty days, or both, in the discretion of the court.

History.—§12, ch. 19446, 1939; CGL 1940 Supp. 1167(114), 7451(6); §14, ch. 26718, 1951.

cf.—§775.06 Alternative punishment.

209.13 Inspection of records; hearings; forms; rules and regulations.—

(1) The comptroller shall have the authority to prescribe all forms upon which reports shall be made to him and any other forms required for the proper administration of this law and shall prescribe and publish all needful rules and regulations for the enforcement of this law, which rules and regulations shall have the force and effect of law.

(2) The comptroller, or any authorized deputy, employee or agent, is authorized to examine the records, books, papers and equipment of user-dealers, common carriers, or bulk dealers, to verify the truth and accuracy of any statement or report, to ascertain whether or not the tax imposed by this law has been paid.

(3) The comptroller, or any of his duly authorized agents, shall have the power in the enforcement of the provisions of this law to hold hearings, administer oaths to witnesses, and take sworn testimony of any person and cause it to be transcribed into writing; and for such purposes shall be authorized to issue subpoenas and subpoenas duces tecum and compel the attendance of witnesses, and shall have the power to conduct such investigations as he may deem necessary.

(4) If any user-dealer shall unreasonably refuse access to such records, books, papers or other documents or equipment, or if any person shall fail or refuse to obey such subpoenas duces tecum, or shall fail or refuse to testify, except for lawful reasons, before the said comptroller, or any of his authorized agents, the comptroller shall certify the names and facts to the clerk of the circuit court of any county and the said circuit court shall enter such order against such user-dealer or person in the premises as the enforcement of this law and justice shall require.

History.—§13, ch. 19446, 1939; CGL 1940 Supp. 1167(115); §15, ch. 26718, 1951.

209.14 Information privileged.—Any information obtained by the comptroller or his agent or representative as a result of a report, investigation or verification in this chapter authorized to be made, shall be confidential and any person divulging any such information except upon order of a court of competent jurisdiction or to an officer of the state entitled to receive the same in his official capacity shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than five hundred dollars.

History.—§14, ch. 19446, 1939; CGL 1940 Supp. 1167(116), 7451(7).

209.15 Failure to file statement; false statement; penalties, etc.—Any person who shall wilfully refuse or neglect to make any statement, report or return required by the provisions of this law or who shall knowingly make, or shall aid or assist any other person in making a false statement in a return or report, or in connection with an application for refund of any tax, or who shall knowingly collect, or attempt to collect or cause to be paid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same, or who uses, transfers or delivers into supply tank of any motor vehicle any special fuels upon which the tax has not been paid to a user-dealer in this state without being the holder of an uncancelled license, shall upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than one thousand

dollars or imprisonment in the county jail for a term of not less than thirty days and not more than one year or both such fine and imprisonment. Each day or part thereof during which any person shall engage in business as a user-dealer without being the holder of an uncancelled license shall constitute a separate offense within the meaning of this section.

History.—§15, ch. 19446, 1939; CGL 1940 Supp. 7451(8); §16, ch. 26718, 1951.
cf.—§775.06 Alternative punishment.

209.16 Discontinuance as a licensed user-dealer.—

(1) Whenever a user-dealer ceases to engage in the business of using, transferring or delivering special fuels into the fuel supply tanks of motor vehicles upon which the tax has not been paid to a user-dealer within this state, it shall be the duty of such user-dealer to notify the comptroller in writing within fifteen days after discontinuance. All taxes, penalties and interest under this chapter not then due and payable, shall, notwithstanding any provisions thereof, become due and payable forthwith. It shall be the duty of said user-dealer to make a report and pay all such taxes, interest and penalties and to surrender to the comptroller the license certificate theretofore issued.

(2) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not less than fifty dollars nor more than three hundred dollars and costs of the prosecution or by imprisonment for not more than one year or both.

History.—§16, ch. 19446, 1939; CGL 1940 Supp. 1167(117), 7451(9); §17, ch. 26718, 1951.
cf.—§775.06 Alternative punishment.

209.17 Exchange of information among the states.—The comptroller shall, upon request duly received from the officials to whom are entrusted the enforcement of the special fuels tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation and shipment by any person of special fuels.

History.—§17, ch. 19446, 1939; CGL 1940 Supp. 1167(118); §18, ch. 26718, 1951.

209.19 Tax lien on property.—

(1) If any person liable for the tax imposed by §209.02 neglects or refuses to pay the same, the amount of such tax (including any interest, penalty or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the state upon all franchises, property and right to property, whether real or personal, then belonging to or thereafter acquired by such person (whether such property is employed by such person in the prosecution of business or is in the hands of an assignee, trustee or receiver for the benefit of creditors) from the date said taxes are due and payable as provided in this law.

(2) Said lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment-creditor or purchaser whose rights shall have attached prior to the time when the comptroller shall have filed notice of such lien in the office of the clerk of the circuit court of the county in which the principal place of business of such person is located, or if such person has no principal place of business in the state, in the office of the secretary of state (for which filing no fee shall be required).

(3) Said lien shall continue until the amount of such tax together with any penalties and interest subsequently accruing thereon is paid. The comptroller may issue a certificate of release of lien when the amount of such tax together with any penalties and interest subsequently accruing thereon has been satisfied, and such certificate may be recorded with the recorder of the county in which the notice of lien was filed.

(4) No sheriff, receiver, assignee, master or other officer shall sell the property or franchise of any person who is a user-dealer without first filing with the comptroller a statement containing the following information:

(a) Name or names of the plaintiff or party at whose instance or upon whose account the sale is made;

(b) Name of the person whose property or franchise is to be sold;

(c) The time and place of sale;

(d) The nature of the property and the location of the same.

(5) It shall be the duty of the comptroller after receiving notice, as required by subsection (4), to furnish to the sheriff, receiver, trustee, assignee, master or other officer, having charge of the sale, a certified copy or copies of all special fuels tax, penalties and interest on file in the comptroller's office as liens against such person and in the event there are no such liens, a certificate showing that fact, which certified copy or copies of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

(6) It shall be the duty of the comptroller to furnish to any person applying therefor a certificate showing the amount of all liens for special fuels tax, penalties and interest that may be of record in the files of the comptroller against any person under the provision of this chapter.

History.—§20, ch. 26718, 1951.

209.20 Refund of taxes erroneously or illegally collected.—When any taxes or penalties imposed by this law have been erroneously or illegally collected, the comptroller may permit the user-dealer within one year to take credit against a subsequent tax report for the amount of the erroneous or illegal amount overpaid

or the user-dealer may apply for refund as provided by §215.26.

History.—§21, ch. 26718, 1951.
cf.—§215.26 Repayment of funds paid into state treasury through error, etc.

209.21 Reports from motor vehicle commissioner.—At the time of issuing a license plate to the owner of a motor vehicle, the motor vehicle commissioner shall determine the kind of fuel used to propel the motor vehicle, and for those motor vehicles using fuel other than gasoline, shall report to the comptroller within thirty days the name and address of the owner, the make and motor number of the vehicle. Forms for making such reports shall be furnished by the comptroller.

History.—§22, ch. 26718, 1951.

209.22 Municipalities and other political subdivisions prohibited from levying tax.—No municipality or other political subdivision shall levy or collect any "special fuel" tax or other tax measured or computed by the sale, purchase, storage, distribution, use, consumption, or other disposition of special fuels as defined in this chapter except such municipalities as are now levying such a tax under authorization of special laws; provided, that nothing in this chapter shall prevent the levying by municipalities, or other political subdivisions, of reasonable flat license fees or taxes upon the business of selling special fuels, as defined in this chapter, at wholesale or retail.

History.—§23, ch. 26718, 1951.

209.23 Certain sales to United States tax exempt; rules and regulations.—

(1) Every user-dealer shall be exempt from the payment of the excise taxes upon any special fuels for motor vehicle use transferred or delivered by such user-dealer to the United States, its departments, agencies and instrumentalities when such special fuel is delivered by such user-dealer in bulk lots of not less than five hundred gallons in each delivery to and for the exclusive use by the United States, its departments, agencies and instrumentalities.

(2) The term "exclusive use by the United States, its departments, agencies and instrumentalities" shall be construed to mean the consuming by the United States, its departments, agencies and instrumentalities of the special fuel in motor vehicles owned and operated by the United States, its departments, agencies or instrumentalities.

(3) The term "exclusive use by the United States, its departments, agencies or instrumentalities" shall be further construed to specifically exclude the use of such special fuel by any person, firm or corporation, whether operating under contract with the United States, its departments, agencies and instrumentalities or not, the original receipt by whom from a user-dealer in this state would have rendered such user-dealer liable for the payment of excise taxes upon such special fuel under the laws of this state.

(4) The above definitions of the term "exclusive use by the United States, its departments, agencies, and instrumentalities" shall in nowise be construed to be the sole meaning intended by the use of such term in this section, but such term shall be given its ordinary and usual meaning in all instances not specifically mentioned herein, and the enumeration of the above definition shall be construed as an extension of the ordinary and usual meaning of the term "exclusive use."

History.—§24, ch. 26718, 1951.

209.24 Short title.—This chapter shall be known and may be cited as the "Special Fuels Tax Law."

History.—§25, ch. 26718, 1951.

CHAPTER 210

TAX ON CIGARETTES

210.01 Definitions.—When used in this chapter the following words shall have the meaning herein indicated:

(1) "Cigarette" means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(2) "Persons" means any individual, copartnership, society, club, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

(3) "Sale" means any transfer, exchange or barter in any manner, or by any means whatever.

(4) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than resale.

(5) "Dealer" means any wholesale dealer as hereinafter defined.

(6) "Wholesale dealer" means any person who sells cigarettes to retail dealers or other persons for purposes of resale only, or any person who operates more than one cigarette vending machine located in more than one place of business.

(7) "Retail dealer" means any person other than a wholesale dealer engaged in the business of selling cigarettes.

(8) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(9) "Agent" means any person authorized by the director to purchase and affix adhesive or meter stamps under this chapter.

(10) "Director" means the director of the beverage department of the state as provided for in §561.05.

(11) "Use" means the consuming, giving away or disposing, in any manner, of cigarettes.

(12) "First sale" means the first use or consumption of cigarettes within this state.

(13) "Operating ad valorem millage" means all millages other than those fixed for debt service.

(14) "Distributing agent" means every person, firm or corporation in this state who acts as an agent for any person, firm or corporation outside or inside the state by receiving cigarettes in interstate or intrastate commerce and storing such cigarettes subject to distribution or delivery upon order from said principal to wholesale dealers and other distributing agents inside or outside this state.

(15) "Place of business" means any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if cigarettes are sold from a vending machine the place in which the vending machine is located.

(16) "Manufacturer's representative" means a person who represents a manufacturer of cigarettes but who has no place of business in this state where cigarettes are stored. A manufacturer's representative is required to obtain any cigarettes required by him through a wholesale dealer in this state and to make such reports as may be required by the state beverage department.

History.—§1, ch. 21946, 1943; §1, ch. 22645, 1945; §1, ch. 24363, 1947; §1, ch. 26320, 1949; (6) §1, (14), (15) n. §2, ch. 29884, 1955; (14), (16) n. §1, ch. 61-399.

210.02 Cigarette tax imposed; collection, credit for municipal tax, etc.—

(1) An excise or privilege tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution and use of cigarettes in this state, in the following amounts, except as hereinafter otherwise provided, for cigarettes of standard dimensions:

(a) Upon all cigarettes, as herein defined, three and one-half inches long or less, four mills on each cigarette;

(b) Upon all cigarettes, as herein defined, between three and one-half and six inches long, eight mills on each cigarette; and

(c) Upon all cigarettes, as herein defined, six inches long or longer, sixteen mills on each cigarette.

(2) The description of cigarettes contained in paragraphs (a), (b) and (c) of subsection (1) are hereby declared to be standard as to dimensions for taxing purposes as provided in this law and should any cigarette be received,

purchased, possessed, sold, offered for sale, given away or used of a size other than of standard dimensions, the same shall be taxed at the rate of one cent on each such cigarette.

(3) Where cigarettes, as described in subsection (1) (a) above, are packed in varying quantities of twenty cigarettes or less, the following rate shall govern:

(a) Packages containing ten cigarettes or less require a four-cent tax; and

(b) Packages containing more than ten but not more than twenty cigarettes require an eight-cent tax.

(4) Where cigarettes, as described in subsection (1) (b) above, are packed in varying quantities of twenty cigarettes or less, the following rates shall govern:

(a) Packages containing ten cigarettes or less require an eight-cent tax; and

(b) Packages containing more than ten but not more than twenty cigarettes require a sixteen-cent tax.

(5) Where cigarettes, as described in subsection (1) (c) above, are packed in varying quantities of twenty cigarettes or less, the following rates shall govern:

(a) Packages containing ten cigarettes or less require a sixteen-cent tax; and

(b) Packages containing more than ten but not more than twenty cigarettes require a thirty-two-cent tax.

(6) This tax shall be advanced and paid by the dealer to the director for deposit and distribution as hereinafter provided upon the first sale or transaction within the state, whether or not such sale or transfer be to the ultimate purchaser or consumer. The seller or dealer shall collect the tax from the purchaser or consumer and the purchaser or consumer shall pay the tax to the seller. The seller or dealer shall be responsible for the collection of the tax and the payment of the same to the director. Whenever cigarettes are shipped from outside the state to anyone other than a distributing agent or wholesale dealer, the person receiving the cigarettes shall be responsible for the tax on said cigarettes and the payment of same to the director.

(7) The taxpayer shall be entitled to a credit on the state tax imposed in this section to the extent of any tax imposed by any municipality as authorized in this chapter, such credit to be accomplished by a reduction of the state tax imposed in this section and in the distribution of the tax revenue as hereinafter provided, it being the legislative intent that the tax on cigarettes shall be uniform throughout the state and the same amount of tax shall be collected upon cigarettes subject to the municipal tax and those cigarettes not subject to a municipal tax.

(8) On July 1, 1963, the effective date of this act, before opening for business, each retailer of cigarettes in this state shall take an inventory of all cigarettes on hand, on forms prepared and furnished by the state beverage department, which report shall be certified and signed by the retailer or his authorized employee and mailed on or before July 10, 1963, to the state beverage department, Carlton building, Tallahassee, accompanied by check or money order for the amount of increased tax on said inventory as indicated on the report. If a retailer fails to make said report or remittance, the state beverage department may make an estimate of the July 1, 1963, cigarette inventory of such retailer which estimate shall be mailed by certified mail to the retailer at his last known address. If the retailer does not pay the amount of tax increase on the estimated inventory within thirty days from receipt thereof, the collection of said tax increase shall be subject to the provisions of §210.14. All taxes collected under the provisions of this subsection shall be paid to the state treasurer to the credit of the general revenue fund.

History.—§2, ch. 21946, 1943; §2, ch. 22645, 1945; §7, ch. 24337, 1947; §1, ch. 23871, §2, ch. 24363, 1947; §11, ch. 25035, 1949; §1, ch. 26320, 1949; (6) §3, ch. 29884, 1955; (1), (3)-(5) §1, (8) n. by §3, ch. 63-480.

210.03 Municipal tax authorized; prohibition against other taxes.—

(1) Any municipality in this state may, in the discretion of its governing body, impose an excise or privilege tax upon the sale, receipt, purchase, possession, consumption, handling, distribution and use of cigarettes sold or to be sold at retail within the territorial limits of such municipality up to the same amount for the same size and the same package content as set forth in §210.02, except cigarettes sold by a traveling location, such as an itinerant store or industrial caterer.

(2) The tax herein authorized shall be collected by the beverage department of the state in the same manner as the state tax imposed by §210.02.

(3) This tax, when imposed by a municipality, shall be advanced and paid by the dealer to the director, for deposit and distribution as hereinafter provided, upon the first sale or transaction within the state of cigarettes sold or to be sold at retail within the territorial limits of such municipality, irrespective of whether or not such sale or transfer be to the ultimate purchaser or consumer. The seller or dealer shall collect the tax from the purchaser or consumer, and the purchaser or consumer shall pay the tax to the seller.

(4) When any such municipality shall impose the tax herein authorized, a certified copy of the municipal law imposing said tax shall be filed with the director and the effective date of such municipal tax shall be the date of filing said certifed copy with the director.

(5) Any funds received under and by virtue of this chapter by municipalities shall be used and expended for the following purposes only, which said purposes are hereby found to be and are hereby designated as state functions and purposes within the state:

For the future cost, purchase, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing and otherwise operating any of the following:

Streets, bridges, storm sewers, curbs, drains, gutters, water supplies, sanitary facilities and services for the preservation, protection or improvement of the public health and safety, including hospitals, fire stations and fire fighting equipment, sanitary sewers, sewerage disposal systems, sewerage disposal plants and facilities, garbage and refuse collection and disposal services, facilities and equipment, incinerators and other facilities and services, including street cleaning, inspections and services for the protection of public health including the enforcement of ordinances designed to maintain safe health standards with respect to foods, mosquito, insect and rodent eradication and control, and the removal and abatement of nuisances which may be or constitute dangers to public health and the exercise of controls for public safety, facilities for the prevention of beach erosion, the enforcement of the laws of the state, and municipal ordinances with respect to public travel, health and safety, and such other state functions which are performed by municipal governments within their boundaries, and are otherwise performed by the state and county governments outside of the limits of incorporated municipalities.

(6) No municipality shall, after November 1, 1949, levy or collect any other excise or license tax on cigarettes, or on persons or vending machines to engage in the sale thereof.

History.—§1, ch. 26320, 1949; (1) §1, ch. 63-486. 63-486.

210.04 Construction; exemptions; collection, etc.—

(1) The amount of taxes, either state or municipal, advanced and paid to the state aforesaid shall be added to and collected as a part of the sales price of the cigarettes sold or distributed, which amount may be stated separately from the price of the cigarettes on all display signs. sales and delivery slips, bills and statements which advertise or indicate the price of the product.

(2) The cigarette tax imposed shall be collected only once upon the same package or container of such cigarettes.

(3) No tax shall be imposed by this chapter upon cigarettes not within the taxing power of the state under the commerce clause of the United States Constitution.

(4) (a) No tax shall be required to be paid upon cigarettes sold at post exchanges, ship service stores, ship stores, slop chests or base exchanges, to members of the armed services of the United States, when such post exchanges, ship service stores or base exchanges are operated under regulations of the army, navy or air force of the United States or military, naval or air force reservations in this state, or when such ship stores or slop chests are operated under the regulations of the United States navy on ships of the United States navy.

(b) Or upon the sale or gift of cigarettes by charitable organizations to bona fide patients in regularly established government veterans' hospitals in Florida for the personal use or consumption of such patients.

(5) It shall be presumed that all cigarettes are subject to the tax imposed by this chapter until the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them.

(6) The sale of single or loose unpacked cigarettes is prohibited. The director may authorize any person to give away sample packages of cigarettes, each to contain not less than two cigarettes upon which the taxes have been paid.

(7) Nothing in this chapter shall be construed to prohibit the sale of cigarettes, upon which the tax has been advanced, through the medium of vending machines where the tax is collected by the said vending machines.

(8) Except as hereinafter provided, all agents shall be liable for the collection and payment of the tax imposed by this chapter or the tax imposed by any municipality as authorized herein, and shall pay the tax to the director by purchasing, under such regulations as he shall prescribe, adhesive stamps of such design and denominations as he shall prescribe.

(9) Agents, located within or without the state, shall purchase stamps and affix such stamps in the manner prescribed to packages or containers of cigarettes to be sold, distributed or given away within the state, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. Provided however, that the director may, in his discretion, authorize manufacturers to distribute in the state, through their representatives, free sample packages or containers of cigarettes containing not less than two or more than five cigarettes without affixing any tax stamps provided that copies of shipping invoices to such representatives be furnished, and payment of all taxes imposed on said cigarettes by law be made, directly to the director not later than the 10th day of each calendar month.

History.—§2, ch. 21946, 1943; §2, ch. 22645, 1945; am. §3, ch. 24363, 1947; §11, ch. 25035, 1949; §1, ch. 26320, 1949; (9) §1, ch. 28227, 1953; (4)(a) §1, ch. 57-169.

210.05 Preparation and sale of stamps; discount.—

(1) The tax imposed by this chapter, or by any municipality as authorized herein, shall be paid by affixing stamps in the manner herein set forth, or by affixing stamp insignia through the device of metering machines authorized in this act.

(2) The director shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax imposed by this chapter, or the tax imposed by any municipality as authorized herein, and may from time to time and as often as he deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The director shall make provisions for

the sale of such stamps at such places and at such time as he may deem necessary.

(3) The director may appoint dealers in cigarettes, manufacturers of cigarettes, within or without the state as agents to buy or affix stamps to be used in paying the tax herein imposed, or the tax imposed by any municipality as authorized herein, but an agent shall at all times have the right to appoint a person in his employ who is to affix the stamps to any cigarettes under the agent's control; provided, however, that any wholesale dealer in the state shall have the right to buy and affix such stamps. Whenever the director shall sell and deliver to any such agent or wholesaler any such stamps, such agent or wholesaler shall be entitled to receive as compensation for his services and expenses as such agent or wholesaler in affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a discount of five per cent of the par value of any amount of stamps purchased during any fiscal year from July 1 through June 30 of the following year, up to and including two million stamps, and a discount of three and one-half per cent of the par value of any amount of stamps purchased during any fiscal year from July 1 through June 30 of the following year in excess of two million stamps. All stamps purchased from the director under this chapter shall be paid for in cash.

(4) The director may in his discretion revoke the authority of any agent failing to comply with the requirements of this chapter or the rules and regulations promulgated hereunder and such agent may in addition be punished in accordance with the provision of this chapter.

History.—§3, ch. 21946, 1943; §3, ch. 22645, 1945; §1, ch. 26320, 1949; (3) §1, ch. 57-255; (3) §2, ch. 63-480.

210.06 Affixation of stamps; presumption.—Every dealer within or without the state shall affix or cause to be affixed to such package or container of such cigarettes, stamps, evidencing the payment of the tax imposed by virtue of this chapter before such cigarettes are offered for sale or use or consumed or before they are otherwise disposed of in the state.

Each retail dealer shall open such box, carton or other container of cigarettes prior to exposing for sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp. If unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the dealer from whom said cigarettes were purchased. Upon such notification, the dealer from whom said cigarettes were purchased shall replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed, or immediately affix thereto the proper amount of stamps.

Whenever any cigarettes are found in the place of business of any such retail dealer, or in the possession of any other person without the stamps affixed, the presumption shall be that such cigarettes are kept in violation of the provisions of this law. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser. All stamps shall be affixed in the manner prescribed by the director.

History.—§4, ch. 21946, 1943; §4, ch. 22645, 1945; §1, ch. 26320, 1949.

210.07 Metering machines.—

(1) The tax may also be paid through the use of cigarette tax stamp insignia to be applied by the use of metering machines. The director shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such cigarette taxes through the use thereof, requiring adequate surety bonds of the users thereof to assure the proper use of such machines and payment of all cigarette taxes that might come due by the users thereof, and all other rules and regulations necessary and proper to govern the use of same.

(2) All provisions of this chapter governing the use of cigarette tax stamps, the compiling of records, the making of reports, permits and revocation of permits, seizures and forfeitures, penalties, and all other provisions pertaining to the payment of cigarette taxes through the use of stamps, shall likewise be applicable to the payment of said taxes through the use of metering machines.

(3) Wholesale or retail dealers of cigarettes, owning, leasing, furnishing or operating cigarette vending machines shall affix to each such machine in a conspicious place, an identification sticker furnished by the state beverage department. Sticker shall show the name and address of the cigarette wholesale or retail dealer owning, leasing, furnishing or operating said vending machines.

No vending machine shall be allowed to operate in the state that does not have affixed thereto the identification sticker required by this section nor shall any vending machine be allowed to operate in the state that does not display at all times at least one package of each brand of the packages located therein so the same are clearly visible and arranged in such a manner that the cigarette tax stamps or meter impressions of stamps affixed thereto are clearly visible. It shall be the duty of any person, firm or corporation operating a cigarette vending machine in this state, to furnish the beverage department the location of the vending machine and to report within thirty days to the beverage department any change of location of the vending machine.

History.—§5, ch. 21946, 1943; §5, ch. 22645, 1945; §1, ch. 26320, 1949; (3) n. §2, ch. 57-169; (3) §2, ch. 61-399.

210.08 Bond for payment of taxes.—Each dealer, agent or distributing agent shall file with the director a surety bond acceptable to the director in the sum of ten thousand dollars as surety for the payment of all taxes; provided, however, that where in the discretion of the

director the amount of business done by the dealer, agent or distributing agent is of such volume that a bond of less than ten thousand dollars will be adequate to secure the payment of all taxes assessed as authorized by the cigarette tax law, the director may accept a bond in a lesser sum than ten thousand dollars, but in no event shall he accept a bond of less than one thousand dollars, and he may at any time in his discretion require any bond in an amount less than ten thousand dollars to be increased not to exceed ten thousand dollars.

History.—§6, ch. 22645, 1945; §1, ch. 26320, 1949; §3, ch. 57-169.

210.09 Records to be kept; reports to be made; examination.—

(1) Every person who shall possess or transport any unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this state and subject to the provisions of this chapter.

(2) The director is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the director by any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by §210.02, and the taxes imposed by any municipality as authorized in §210.03. All reports shall be made on or before the tenth day of the month following the month for which the report is made, unless the director by rule or regulation shall prescribe that reports be made more often.

(3) All distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of three years at the place of business where any transaction takes place, such records of cigarettes received, sold or delivered within the state as may be required by the director. The director or his duly authorized representative is hereby authorized to examine the books, papers, invoices and other records, stock of cigarettes in and upon any premises where the same are placed, stored and sold and equipment of any such distributing agents, wholesale dealers, agents or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this chapter. To verify the accuracy of the tax imposed and assessed by this chapter or any municipal tax imposed as authorized herein, each person is hereby directed and required to give to the director or his duly authorized representatives the means, facilities and opportunity for such examinations as are herein provided for and required.

(4) (a) All persons who are either cigarette wholesalers, vending machine operators or distributing agents, and agents and employees of the same, are required to keep daily sales tickets or invoices of cigarette sales and it shall be the duty of said persons to see that each sales ticket and invoice handled by them or on behalf of them show the correct name and address to whom sold and the number of packages or cartons of each brand sold. It shall also be the duty of said persons to see that each sales ticket or invoice correctly shows whether the same is inside or outside of a qualified municipality and if the sale is made within the limits of a qualified municipality, the correct name of the municipality must be indicated.

(b) The director shall suspend or revoke the license of any person who is either a cigarette wholesaler, vending machine operator or distributing agent upon sufficient cause appearing that the said persons, their agents or employees have failed to keep daily sales tickets or invoices in accordance with this section.

(c) Before the director shall suspend or revoke the license of any licensee under the cigarette tax law, the procedure set out in §561.29 shall be followed.

(5) Common carriers in this state are required to report to the state beverage department all packages or cartons of unstamped cigarettes which are refused by the consignee because of damage or otherwise. Authority in writing from the state beverage department must be obtained to sell or dispose of such unstamped cigarettes. Any dealer or distributing agent, who refuses any shipment or part of a shipment of unstamped cigarettes, must show in his next monthly report to the state beverage department the number of packages or cartons of cigarettes refused and the name of the common carrier from whom the cigarettes were refused.

History.—§§6, 10, 11, ch. 21946, 1943; §§7, 11, 12, ch. 22645, 1945; §1, ch. 26320, 1949; (2), (3) §4, ch. 29884, 1955; (4) n. §4, ch. 57-169; (5) n. §1, ch. 57-784.

210.10 General powers of the director; salary.—

(1) The director is authorized to prescribe and promulgate all rules and regulations necessary to effectuate the provisions of this chapter, and consistent with the terms hereof. All cigarette permits issued hereunder shall have printed thereon a notice to the effect that such permit is issued subject to the provisions of this chapter and said rules and regulations. The director shall provide upon request without charge to any applicant for a permit a copy of this chapter and the rules and regulations prescribed by him pursuant hereto.

(2) The director and all officers and employees under this chapter shall, in the administration thereof and in the administration of the state beverage law, have all the authority and power vested in officers and employees of the state beverage department as provided by §§561.07 and 561.52, and such power and authority is hereby conferred upon the director and all officers and employees under this chap-

ter with respect to the administration of this chapter and also with respect to the administration of the beverage law.

History.—§7, ch. 21946, 1943; §8, ch. 22645, 1945; §1, ch. 26320, 1949; (3) r. §7, ch. 29615, 1955.

210.11 Refunds; sales of stamps and payment of tax.—Whenever any cigarettes upon which stamps have been placed, or upon which the tax has been paid by metering machine, have been sold and shipped into another state for sale or use therein, or have become unfit for use and consumption or unsalable, or have been destroyed the dealer involved shall be entitled to a refund of the actual amount of the tax paid with respect to such cigarettes less any discount allowed by the director in the sale of the stamps or payment of the tax by metering machine, upon receipt of satisfactory evidence of the dealer's right to receive such refund, provided application for refund is made within three months of the date the cigarettes were shipped out of the state, became unfit or were destroyed. No person other than the director shall sell, or offer for sale, any stamp or stamps issued under this chapter. The director may redeem unused stamps lawfully in the possession of any person. The director may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this chapter. Appropriation is hereby made out of revenues collected under this chapter for payment of such allowances.

History.—§8, ch. 21946, 1943; §9, ch. 22645, 1945; §1, ch. 26320, 1949; §5, ch. 29884, 1955.

210.12 Seizures; forfeiture proceedings.—

(1) The state, acting by and through the director, shall be authorized and empowered to seize, confiscate and forfeit for the use and benefit of the state, any cigarettes upon which taxes payable hereunder may be unpaid, and also any vending machine or receptacle in which such cigarettes are held for sale, or any vending machine that does not have affixed thereto the identification sticker required by the provisions of §210.07, or which does not display at all times at least one package of each brand of cigarettes located therein so the same is clearly visible and arranged in such a manner that the cigarette tax stamp or meter impression of the stamp affixed thereto is clearly visible. Such seizure may be made by the director, his duly authorized representative, or any sheriff or deputy sheriff, or any police officer.

(2) The procedure for seizure, the listing, appraisal, advertisement and sale of the property seized, the bond of any claimant, the court proceedings, if any, including the parties, personal service of citation, and other personal services, the services by publication, judicial sale, and all other proceedings for the confiscation and forfeiture of the property for the nonpayment of the taxes shall be regulated, conducted, governed and controlled in the manner provided by chapter 562, relating to the seizure, confiscation and forfeiture of property under the beverage law which is incorporated herein by reference except to the extent that such sections may conflict or be inconsistent herewith.

(3) From the proceeds of any sale hereunder the director shall collect the tax on the property, together with a penalty of fifty per cent thereof and the costs incurred in such proceedings; the balance, if any, shall be payable by the director to the person in whose possession the said property was found or as the court may direct.

(4) The distribution by the director of the proceeds of the sale from any cigarettes or other property that may be forfeited and confiscated hereunder, shall, after the payment of expenses of such forfeiture, be governed by the provisions of this chapter.

(5) No sale shall be made hereunder to any person except a licensed wholesale or retail dealer authorized to engage in the sale of cigarettes under the laws of Florida. All sales shall be made to the highest and best bidder for cash. The director shall provide for the payment of any taxes payable upon any cigarettes sold hereunder before the same are delivered to any purchaser.

(6) The state attorney for the judicial circuit in which such property was seized shall act as the attorney for the director in such confiscation and forfeiture proceedings.

History.—§9, ch. 21946, 1943; §10, ch. 22645, 1945; §1, ch. 26320, 1949; (1) §5, ch. 57-169.

210.13 Determination of tax on failure to file a return.—If a dealer fails to file any return required under this chapter, or having filed an incorrect or insufficient return, fails to file a correct or sufficient return, as the case may require, within ten days after the giving of notice to him by the director that such return or corrected or sufficient return is required, the director shall determine the amount of tax due by such dealer any time within three years after the making of the earliest sale included in such determination, and give written notice of such determination to such dealer. Such a determination, shall finally and irrevocably fix the tax unless the dealer against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director for a hearing. After such hearing, the director shall give notice of his decision to the dealer liable for the tax. The decision of the director may be reviewed in the circuit court of the county where such dealer is authorized to do business if a petition for the issuance of a writ of certiorari is filed by the dealer within the time and in the manner provided by the Florida appellate rules. Review by such court shall not be granted unless the amount of tax stated in the decision, with penalties thereon, if any, shall have been first deposited with the director, and an undertaking or bond filed in the circuit court in which such cause may be pending in such amount and with such sureties as the circuit judge shall approve, conditioned that if such proceeding be dismissed or the decision of the director confirmed, the

applicant for review will pay all costs and charges which may accrue against him in the prosecution of the proceeding. At the option of the applicant such undertaking or bond may be in an additional sum sufficient to cover the tax, penalties, costs and charges aforesaid, in which event the applicant shall not be required to pay such tax and penalties precedent to the granting of such review by such court.

History.—§12, ch. 21946, 1943; §13, ch. 22645, 1945; §1, ch. 26320, 1949; §1, ch. 63-512.

210.14 Warrant for collection of taxes.—

(1) In addition to all other remedies for the collection of any taxes due under the provisions of this chapter, the director may issue a warrant directed to the sheriff of any county commanding said sheriff to levy upon and sell the goods and chattels of the specified delinquent person found within his jurisdiction, for the payment of the amount of such delinquency plus a penalty equal to fifty per cent of the amount thereof, and interest on the total at six per cent per annum and the cost of executing the warrant, and to return such warrant to the director and to pay him the money collected by virtue thereof within sixty days after receipt of such warrant. The sheriff shall, within five days after receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax and penalties for which the warrant was issued and the date that such copy is filed. Said clerk shall be allowed the same fees as are allowed by law for similar services rendered in judgment execution proceedings.

(2) Thereupon the amount of such warrant so docketed shall become a lien upon the title to or the interest in real or personal property of the person against whom the warrant is issued. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner.

(3) In the discretion of the director a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the director may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the state had recovered judgment therefor and execution thereon had been returned satisfied.

History.—§13, ch. 21946, 1943; §14, ch. 22645, 1945; §1, ch. 26320, 1949; (1) §6, ch. 29884, 1955.
cf.—§562.17 Collection of unpaid beverage taxes.

210.15 Permits.—

(1) Every person, firm or corporation desiring to deal in cigarettes as a distributing agent or wholesale dealer within this state shall file an application for a cigarette permit for each place of business with the director or any assistant designated by him. Every application for a cigarette permit shall be made on forms furnished by the director and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the director may require. If the applicant has or intends to have more than one place of business dealing in cigarettes within this state, the application shall state the location of each place of business. If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof and any other information prescribed by the director for the purpose of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person, and in the case of an association or partnership, members or partners thereof, and in the case of a corporation, by an executive officer thereof or by any person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of this authority. The cigarette permit for a distributing agent shall be issued annually for which an annual fee of five dollars shall be charged. The holder of any duly issued, annual permit for a distributing agent shall be entitled to a renewal of his annual permit from year to year as a matter of course, on or before July 1, upon making application to the director and upon payment of this annual permit fee. The permit for a wholesale dealer shall be issued only to persons of good moral character, who are not less than twenty-one years of age. Wholesale dealer permits to corporations shall be issued only to corporations whose officers are of good moral character and not less than twenty-one years of age. There shall be no exemptions from the permit fees herein provided to any persons, association of persons or corporation, any law to the contrary notwithstanding. No wholesale dealer permit shall be issued to any person who has been convicted within the last past five years of any offense against the cigarette laws of this state or who has been convicted in this state, any other state, or the United States during the past five years of any offense designated as a felony by such state or the United States, or to a corporation, any of whose officers have been so convicted. The term "conviction" shall include an adjudication of guilt on a plea of guilty or a plea of nolo contendere, or the forfeiture of a bond when charged with a crime. The director may refuse to issue a wholesale permit to any person, firm or corporation whose permit under the cigarette law has been revoked or to any corporation, an officer of which

has had his permit under the cigarette law revoked, or to any person who is or has been an officer of a corporation whose permit has been revoked under the cigarette law. Any permit issued to a firm or corporation prohibited from obtaining such permit under the cigarette law may be revoked by the director. Prior to an application for a wholesale dealer permit being approved, the applicant shall file two sets of fingerprints on regular United States department of justice forms for himself. The applicant shall also file a set of fingerprints for any person or persons interested directly or indirectly with the applicant in the business for which the permit is being sought, when so required by the director. If the applicant or any person interested with the applicant, either directly or indirectly, in the business for which the permit is sought shall be such a person as is within the definition of persons to whom a wholesale dealer permit shall be denied, then the application may be denied by the director. If the applicant is a partnership, all members of the partnership are required to file said fingerprints, or if a corporation, all principal officers of the corporation are required to file said fingerprints. The cigarette permit for a wholesale dealer shall be originally issued at a fee of one hundred dollars which sum is to cover the cost of the investigation required before issuing such permit. The cigarette permit for a wholesale dealer shall be renewed from year to year as a matter of course at an annual cost of five dollars on or before July 1 upon making application to the director and upon payment of the annual renewal fee. Permittees, by acceptance of their permits, agree that their places of business or vehicles transporting cigarettes shall always be subject to be inspected and searched without search warrants for the purpose of ascertaining that all provisions of this chapter are complied with by authorized employees of the beverage department and also by sheriffs, deputy sheriffs and police officers during business hours or during any other time such premises are occupied by the permittee or other persons. Retail cigarette dealers and manufacturers' representatives by dealing in cigarettes, agree that their places of business or vehicles transporting cigarettes shall always be subject to inspection and search without search warrant for the purpose of ascertaining that all provisions of this chapter are complied with by authorized employees of the beverage department and also by sheriffs, deputy sheriffs and police officers during business hours or other times when the premises are occupied by the retail dealer or manufacturers' representatives or other persons.

No retail sales of cigarettes may be made at a location for which a wholesale dealer or distributing agent permit has been issued. Retail sales of cigarettes may be made from any location for which a general retailer's license has been issued. The excise tax on sales made to any traveling location, such as an itinerant store or industrial caterer, shall be paid into the general revenue fund unallocated. Cigarettes may be purchased for retail purposes only from a person holding a wholesale dealer permit. The invoices for the purchase of cigarettes must show the place of business for which the purchase is made and, if such place is a traveling location, this fact must be shown on the invoices and the cigarettes cannot be transferred to any other place of business for the purpose of resale.

(2) The director may not sell stamps or approve the use of meter machines to evidence the payment of the taxes on cigarettes except to qualified wholesale dealers.

(3) Upon approval of the application, the director shall grant and issue to each applicant a cigarette permit for each place of business within the state set forth in his application. Cigarette permits shall not be assignable and shall be valid only for the persons in whose names issued, and for the transaction of business at the places designated therein, and shall at all times be conspiciously displayed at the places for which issued.

(4) All permits of distributing agents and wholesale dealers shall remain in force and effect until July 1 following their issuance, or until suspended, surrendered or revoked for cause by the director before July 1 following their issuance.

(5) Whenever any permit issued under the provisions of this chapter is destroyed or lost, the holder thereof shall immediately make application for a duplicate permit on a form prescribed by the director, which application shall be filed with the director or any assistant designated by him. The said application shall be under oath and shall state that the applicant is a holder of a valid permit which has been destroyed or lost as the case may be and that the said permit has not been suspended, surrendered or revoked for cause by the director.

(6) Applicants for a permit hereunder, by the acceptance of such permit, agree that their places of business covered by such permit shall always be subject to be inspected and searched without search warrant by the director or any of his authorized assistants and also by sheriffs, deputy sheriffs or police officers.

(7) The director shall promulgate suitable rules for carrying out the provisions of this section.

History.—§14, ch. 21946, 1943; §15, ch. 22645, 1945; §1, ch. 26320, 1949; (1), (4) §7, (7) n. §8, ch. 29884, 1955; (1), (4), (5) §6, ch. 57-169; (1) and (4) §3, ch. 61-399; (1) §2, ch. 63-486.

210.16 Revocation or suspension of permit.—The director is given full power and authority upon sufficient cause appearing of the violation of any of the provisions of this chapter by any wholesale or retail dealer receiving a permit to engage in business under this chapter to revoke the permit of such wholesale or retail dealer. Before the director shall revoke the permit of such wholesale or retail dealer, he shall give such wholesale or retail dealer a written statement of such cause for revocation of such permit and a fair hearing, if the wholesale or retail dealer shall demand a hearing. Provided, that said wholesale or re-

tail dealer shall in writing demand a hearing within ten days after receipt by him of the statement of the cause for revoking such permit, which said notice shall, within said ten day period, be delivered in person to the director or transmitted to him by due course of mail. If such hearing is not demanded within the time herein fixed the director shall proceed to revoke the permit. At such hearing, the wholesale or retail dealer shall be entitled to produce witnesses and be represented by counsel. In order to permit a wholesale or retail dealer, whose permit shall be revoked, opportunity to apply to the courts for relief, no revocation of a permit by the director shall become effective until the elapse of the period of time allowed for making application for review. If within the time provided by the Florida appellate rules a wholesale or retail dealer whose permit has been revoked shall apply for the issuance of a writ of certiorari to the circuit court or to any judge thereof of the county wherein such wholesale or retail dealer is permitted to do business under this chapter to review the proceedings before the director, such court or the judge thereof shall dispose of the proceeding as expeditiously as possible. The director may suspend for a reasonable period of time, in his discretion, the permits of wholesale or retail dealers issued under the provisions of this chapter for the same causes and under the same limitations as is authorized hereunder to revoke the permits of such wholesale or retail dealers. No wholesale or retail dealer whose permit for any place of business has been revoked shall engage in business under this chapter at such place of business after such revocation until a new permit is issued to him. No wholesale or retail dealer whose permit for any place of business has been revoked shall be permitted to have said permit renewed, or to obtain an additional cigarette permit for any other place of business for a period of six months after the date such revocation becomes final.

History.—§15, ch. 21946, 1943; §16, ch. 22645, 1945; §1, ch. 26320, 1949; §1, ch. 63-512.

210.18 Penalties.—

(1) Any person who possesses or transports any unstamped packages of cigarettes upon the public highways, roads, or streets in the state for the purpose of sale, or, who sells or offers for sale unstamped packages of cigarettes in violation of the provisions of this chapter, or, who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter, or the payment thereof, shall be guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars, or both; provided, that any person, who shall have been convicted of a violation of any provision of the cigarette tax law and shall thereafter be convicted of a further violation of the cigarette tax law, shall, upon conviction of said further offense, be deemed guilty of a felony and shall be punished by imprisonment of not more than two years in the state penitentiary or fined not more than two thousand dollars, or both.

(2) Any wholesale or retail dealer who shall fail, neglect or refuse to comply with, or shall violate the provisions of this chapter or the rules and regulations promulgated by the director under this chapter shall be guilty of a misdemeanor and shall upon conviction be punished by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars, or both; provided, that any wholesale or retail dealer, who shall have been convicted of a violation of any provision of the cigarette tax law and shall thereafter be convicted of a further violation of the cigarette tax law, shall, upon conviction of said further offense, be deemed guilty of a felony and shall be punished by imprisonment of not more than two years in the state penitentiary or fined not more than two thousand dollars, or both.

(3) Any person who falsely or fraudulently makes, forges, alters, or counterfeits any stamp or impression die used in meter machines prescribed by the director under the provisions of this chapter, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp or die, or knowingly and wilfully utters, purchases, passes or tenders as true any such false, altered, or counterfeited stamp or die impression shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not less than two thousand dollars nor more than five thousand dollars or to be imprisoned for a term of not more than five years in the state prison, or both, in the discretion of the court.

History.—§16, ch. 21946, 1943; §17, ch. 22645, 1945; §1, ch. 26320, 1949.

210.19 Records to be kept by director.—The director shall keep records showing the total amount of taxes collected, which records shall disclose the amount of taxes collected for any municipality levying a tax as herein authorized and which records shall be open to the public during the regular office hours of the director.

History.—§1, ch. 26320, 1949.

210.20 Employees and assistants; distribution of funds.—

(1) The director under the applicable rules of the Florida merit system, shall have the power to employ such employees and assistants and incur such other expenses as may be necessary for the administration of this chapter, within the limits of an appropriation for the operation of said department as may be authorized by the general appropriations act.

(2) As collections are received by the director from such cigarette taxes, he shall pay the same into a trust fund in the state treasury designated " cigarette tax collection trust fund" which shall be paid and distributed as follows:

(a) The director shall from month to month certify to the comptroller the amount derived from each municipal tax authorized in §210.03, and such amount, less the service charge provided for in §215.22, shall be paid to such

municipality by warrant drawn by the comptroller upon the state treasury, which amount is hereby appropriated monthly out of such cigarette tax collection trust fund. The director shall from month to month certify to the comptroller the amount derived from the cigarette tax imposed by §210.02 on all cigarettes sold at retail on any property of the Inter-American center authority, created by chapter 554, and such amount, less the service charge provided for in §215.22, shall be paid to said Inter-American center authority by warrant drawn by the comptroller upon the state treasury, which amount is hereby appropriated monthly out of such cigarette tax collection trust fund. In those counties of the state that have no incorporated municipalities, and subject to the foregoing provisions of this section concerning payments to the Inter-American center authority, it shall be the duty of the director to certify to the comptroller the amount derived from this tax in such counties and fifty per cent of such amount, less the service charge provided for in §215.22, shall be paid to the board of county commissioners of such counties by warrant drawn by the comptroller upon the state treasury which amount is hereby appropriated monthly out of the cigarette tax collection trust fund.

(b) After all distributions hereinabove provided for have been made, the balance of the revenue produced from the tax imposed by this chapter, shall be deposited in the general revenue fund.

History.—§17, ch. 21946, 1943; §18, ch. 22645, 1945; §1, ch. 26320, 1949; §16, ch. 26869, 1951; §1, ch. 29827, 1955; (1) §7, ch. 57-169; (2) §2, ch. 61-119 and §3, ch. 61-493.

210.22 Declaration of legislative intent.—In the event that any section or clause hereof shall for any reason be held or declared invalid, the same shall be eliminated and the remaining portion or portions hereof shall remain in full force and effect as if such invalid clause or section had not been incorporated herein, provided that §§210.03 and 210.20 are declaratory of the specific legislative intent in the passage of this chapter, and should either of said sections be declared unconstitutional, ineffective or invalid, then in such event, the entire chapter shall become inoperative and void.

History.—§3, ch. 26320, 1949.

CHAPTER 211

TAX ON PRODUCTION OF OIL AND GAS

211.01 Definitions.—Whenever used in this chapter, the following words and terms shall have the definition and the meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(1) The word "board" means the state board of conservation of the state.

(2) The word "comptroller" means the comptroller of the state.

(3) The word "annual" means the calendar year, or the taxpayer's fiscal year, when permission is obtained from the comptroller to use a fiscal year as a tax period in lieu of a calendar year.

(4) The word "value" means the sales price, or market value, at the mouth of the well. If the oil or gas is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the comptroller shall determine the value of the oil or gas subject to tax, considering the sales price for cash at the place where produced of oil or gas of like quality. Where gas is returned to a horizon or horizons in the field where produced either through wells on the lease from which produced or on other leases, that portion of the gas so returned shall not be considered in arriving at the value of the gas produced.

(5) The word "taxpayer" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind liable for the tax imposed by this chapter.

(6) The word "oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the results of condensation of gas after it leaves the reservoir.

(7) The word "gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (6) above.

(8) The word "severed" means the extraction or withdrawal from below the surface of the soil or water of any oil or gas, whether such extraction or withdrawal shall be by natural flow, mechanically enforced flow, pumping, or any other means employed to get the oil or gas from below the surface of the soil or water, and shall include the withdrawal by any means whatsoever of oil or gas upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface, and the recovery of escaped oil or gas on which the tax has not been paid.

(9) The word "person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, receiver, or any other group, or combination acting as a unit, and the plural as well as the singular number.

(10) The word "producer" means any person, owning, controlling, managing or leasing any oil or gas property, or oil or gas well, and any person who produces in any manner any oil or gas by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any oil or gas or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(11) The word "barrel," for oil measurements, means a barrel of forty-two U. S. gallons of two hundred thirty-one cubic inches per gallon, computed at a temperature of sixty degrees fahrenheit.

(12) The term "cubic feet," for gas measurement, means the volume of gas expressed in cubic feet and computed at a base pressure of four ounces per square inch above the average atmosphere barometric pressure of fourteen and four-tenths pounds per square inch, a standard base and flowing temperature of sixty degrees fahrenheit; correction to be made for pressure according to Boyle's law, and for specific gravity according to test made by the balance method.

(13) The word "production," for oil measurement, means the total gross amount of oil produced and saved, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or determined by tank tables compiled to show one hundred per centum of the full capacity of tanks without deduction for overage or

losses in handling. Allowance for any reasonable and bona fide deduction for basis sediment and water, and for correction of temperature to sixty degrees fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than one hundred per centum of the full capacity of tanks, then such amount shall be raised to a basis of one hundred per centum for the purpose of the tax imposed by this chapter.

(14) The word "production," for gas measurement, means the total gross amount of gas produced and sold, or used, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or determined by meter readings showing one hundred per centum of the full volume expressed in cubic feet.

(15) The term "gathering system" means the pipe lines, pumps, compressors, meters, and other property used in gathering or removing oil or gas from the property on which it is produced, the tanks used for storage at a central place, loading racks and equipment for loading oil into tank cars or other transporting media, and all other equipment and appurtenances necessary to a gathering system for transferring oil or gas into trunk pipe lines.

History.—§1, ch. 22748, 1945; §1, ch. 23883, 1947; §11, ch. 25035, 1949.

211.02 Levy of oil and gas tax and amount thereof; first and second taxes; basis of tax.—

(1) There is hereby levied, to be collected hereafter, as provided herein, an excise tax upon every person engaging or continuing within this state in the business of producing or severing oil or gas, as defined herein, from the soil or water for sale, transport, storage, profit or for commercial use. The amount of such tax shall be measured by the value of the oil produced and saved, and by the value of the gas produced and sold, or used, is hereby levied and assessed at the following rates; for oil, five per centum of the gross value thereof at the point of production; and for gas, five per centum of the gross value thereof at the point of production; said tax on oil and gas being made up of two separate taxes being.

(a) FIRST OIL AND GAS TAX: eighty per centum of the total tax for the state for the use of the general revenue fund.

(b) SECOND OIL AND GAS TAX: twenty per centum of the total tax for the county in which the oil and gas is produced for the use of the general revenue fund of the board of county commissioners.

(2) It is the intention of the legislature to impose the first oil and gas tax as a state excise tax and to impose the second oil and gas tax as a county excise tax to compensate the county in which oil and gas is produced for the loss of ad valorem taxes by reason of the provision of this chapter, and to make it possible for the board of county commissioners of such county to provide the additional public services that will be required in a county where oil and gas are produced.

(3) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil is severed from the soil or water, and in its natural, unrefined, or unmanufactured condition, provided, however, oil and gas used for lease operations on the lease where produced shall not be taxed hereunder.

History.—§2, ch. 22784, 1945; §2, ch. 23883, 1947.

211.03 Measure of value.—In computing the tax levied under this chapter, where the gross proceeds of sales of such oil or gas are taken as the measure of the value of such products for the purpose of computing the tax, if such products shall have been sold on a delivered price, the actual freight charge prepaid by the taxpayer or included in the invoice price on such products to the place of delivery shall be deducted from the gross proceeds of sales used in determining the amount of the tax.

History.—§3, ch. 22784, 1945; §3, ch. 23883, 1947.

211.04 Assessment upon escaped oil; claims against same.—

(1) When any regular monthly report required from taxpayers by this chapter does not disclose the actual source of any oil taxable under this chapter, but does show such oil to have escaped from a well or wells and to have been recovered from streams, lakes, ravines, or other natural depression; it shall be the duty of the comptroller to collect, in addition to the excise tax herein imposed, an additional amount equal to twelve and one-half per centum of the gross value of such escaped oil. The comptroller shall hold such additional collection in a special escrow account for a period of twelve months from the date of the collections, during which time any person or persons, who claim to be the rightful owner or owners of any royalty interest in the escaped oil, may present proper and satisfactory proof of such ownership to the comptroller. If the comptroller shall be satisfied as to the ownership of such escaped oil, then he shall pay to such claimant or claimants a proportionate part of such additional collection held in escrow, according to their proper interest or interests. No payment to any claimant shall be made, however, before it is approved by the attorney general or before it is ordered by any court having proper jurisdiction.

(2) After the lapse of twelve months from the date of any additional collection, if no claim or claims have been made to it, or to the balance remaining of it after the payment by the comptroller of any claim or claims, the comptroller shall distribute the additional collection or any balance of it in the same manner as is herein provided for the distribution of the tax imposed by this chapter.

History.—§4, ch. 22784, 1945; §4, ch. 23883, 1947.

211.05 Penalty for failure to pay tax.— Should the taxpayer fail to pay when due the tax levied hereunder and same becomes delin-

quent, such tax as a penalty for such delinquencies shall bear interest at the rate of eighteen per centum per annum from the date such tax is due and payable and shall be collected in the manner hereinafter provided. If any taxpayer shall fail to make the report or return herein required as to the production of oil or gas from any well in this state it shall be the duty of the comptroller to examine the books, records and files of such taxpayer to ascertain the amount and value of such production, to compute the tax thereon as herein provided, and he shall add thereto the cost of such examination, together with any penalties accrued thereon.

History.—§5, ch. 22784, 1945; §5, ch. 23883, 1947.

211.06 Oil and gas tax trust fund; distribution.—

(1) All taxes herein levied and collected shall be placed in a special fund known as the oil and gas tax trust fund and shall be monthly distributed by the comptroller as follows:

(a) After the cost of collection of the taxes herein levied is deducted, the proceeds from the first oil and gas tax shall be paid into the state treasury to the credit of the general revenue fund of the state.

(b) The proceeds from the second oil and gas tax shall be paid into the general revenue fund of the board of county commissioners of the county in which the tax is imposed.

(2) There is hereby annually appropriated out of the proceeds of the first oil and gas tax coming into the hands of the comptroller under the provisions of this chapter the amount necessary for the effective and efficient enforcement of the provisions of this chapter, and for that purpose the comptroller is authorized to employ such additional employees as he may from time to time deem necessary to carry out the terms and provisions of this chapter. The comptroller is authorized and empowered to adjust and make proper settlements and refunds in cases of overpayment of the tax or where payment is made when no tax is due or when payment is made through error, under regulations prescribed by him, and there is hereby appropriated a sufficient amount for the comptroller to refund said taxes, when and if on proper application and proof filed with him within one year from the date of the payment of such taxes, he deems it necessary to make such refunds, and this provision shall in no way prejudice any right of action that may accrue to any person liable for the payment of the tax to contest in any court of competent jurisdiction the payment of any or all of the taxes imposed herein.

History.—§6, ch. 22784, 1945; §6, ch. 23883, 1947; (1) §2, ch. 61-119.

211.07 When taxes due; statements; information; penalties; powers of comptroller.—

(1) The taxes levied hereunder shall be due and payable on or before the 25th day of the calendar month next succeeding the calendar month in which the tax accrued.

(2) Every producer of oil or gas, as defined in this chapter, shall on or before the 25th day of each calendar month file with the comptroller a statement on forms prescribed by the comptroller, showing the location of each oil or gas well operated or controlled by such producer during the last preceding calendar month, the kind of oil or gas produced; the gross quantity thereof produced, and the actual cash value thereof at the time and place of production, including any and all premiums received from the sale thereof; the amount of royalty payable thereof; and, where such royalty is claimed to be exempt from taxation by law, the facts on which such claim of exemption is based; and such other information as the comptroller may require. Such statement shall be accompanied by a return showing the amount of tax payable on the oil or gas covered by such report, together with a remittance for the amount of the tax due. Such statement and report shall be mailed or sent to the office of the comptroller and shall be signed by the taxpayer or duly authorized agent of the taxpayer and shall be verified by oath.

(3) The comptroller shall have the power to require any person engaged in the production of oil or gas, and the purchaser thereof, or the owner of any royalty interest therein to furnish any information by him deemed necessary for the purpose of computing correctly the amount of tax to be levied and collected under the provisions of this chapter; and to examine the books, records and files of such persons, and shall have power to conduct hearings and compel the attendance of witnesses and the production of books, records and papers of any person.

(4) Any person or any member of any firm, association or corporation, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the comptroller shall require; or who shall fail or refuse to furnish any other evidence which the comptroller may require; or who shall fail or refuse to answer any competent questions which may be put to him by the comptroller, touching the business, property, assets or effects of any such person, firm, association or corporation, or relating to the gross production tax imposed by this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or imprisonment in the jail of the county where such offense shall have been committed, for not more than one year, or by both such fine and imprisonment; and each day such refusal on the part of such person shall constitute a separate and distinct offense.

(5) The comptroller shall have the power and authority to ascertain and determine whether or not any return herein required to be filed with him is a true and correct return of the gross products and of the value, quantity or volume thereof of such person engaged in the production of oil or gas; and, if any person has made an untrue or incorrect return of the gross production or value, or quantity, or volume thereof, as hereinbefore required, or shall have failed or refused to make such return, the comptroller shall, under rules and regulations prescribed by

him ascertain the correct amount of either, and compute said tax.

History.—§7, ch. 22784, 1945; §7, ch. 23883, 1947.

211.08 Common carriers to furnish information; inspection of bills of lading.—

(1) When requested by the comptroller, all transporters, railroads, motor vehicles, pipe lines, or other carriers, of oil or gas out of, within, or across the state shall be required to furnish the board such information relative to the transportation of such oil or gas as may be required.

(2) The comptroller shall have authority to inspect bills of lading, waybills, or other similar documents, and such books and records as may relate to the transportation of oil or gas in the facilities of each transporter herein referred to; and the comptroller shall further be empowered to demand the production of such bills of lading, waybills or other similar documents and books and records relating to the transportation of oil or gas at any point in the state which he may designate.

(3) Provided, however, that in case of common carriers using bills of lading or waybills prescribed or approved by the interstate commerce commission, such common carriers shall only be required to keep the usual records at office or offices in this state where such records usually are kept.

History.—§8, ch. 22784, 1945; §8, ch. 23883, 1947; §11, ch. 25035, 1949.

211.09 Collection of tax.—

(1) The tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance, the proportionate amount of the tax herein levied before making payments to such producers; said tax shall become due and payable as provided by this chapter, and such tax shall constitute a first lien upon any of the oil or gas so produced, when in the possession of the original producer, or any purchaser of such oil or gas in its unmanufactured state or condition.

(2) When any person in charge of production operations shall sell the oil or gas produced by him to any person under contracts requiring such purchaser to pay all owners of such oil or gas direct, then the person in charge of the production operations may not be required to deduct the tax herein levied, but, in which event, such deduction shall be made by the purchaser before making payments to each owner of such oil or gas, and the purchaser in that case shall account for the tax; provided that nothing herein shall be construed as releasing the person in charge of production operations from liability for the payment of said tax.

(3) When any person in charge of production operations shall sell oil or gas produced by him on the open market, or shall use or dispose of the oil or gas for fuel or any purpose other than for lease operations on the lease where produced, he shall withhold the tax imposed by this chapter, and, if he is required to pay other interest holders, is hereby authorized, empowered and required to deduct from any amounts due them the amount of the tax levied and due under the provisions of this chapter before making payment to them.

(4) Every person in charge of production operations by which oil or gas is severed from the soil or water in this state, who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such oil or gas is sold or purchased under contract or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest, and penalties due which should have been deducted, withheld and remitted to the state; and the comptroller shall proceed to collect the tax from the person in charge of production operations, under the provisions of this chapter, as if he were the producer of the oil and gas.

History.—§9, ch. 22784, 1945; §9, ch. 23883, 1947.

211.10 Procedure where tax in dispute.— When the title to any oil or gas that has been severed or is being severed from the soil or water, is in dispute, or whenever the producer of such oil or gas, or the purchaser thereof, shall be withholding payments on account of litigation, or for any other reason, such producer or purchaser is hereby authorized, empowered and required to deduct from the gross amount thus held, the amount of the tax herein levied and imposed, and to make remittance thereof to the comptroller as provided by this chapter.

History.—§10, ch. 22784, 1945; §10, ch. 23883, 1947.

211.11 Lien of tax.—Such tax, interest and penalty shall constitute and remain a lien upon the property, assets and effects of the taxpayer until paid and may be recovered at the suit of the comptroller on behalf of the state in any court of competent jurisdiction of the county where any such property, assets and effects are located. All penalties and other revenue derived hereunder in addition to any delinquent tax shall be apportioned in the same manner as the taxes are apportioned.

History.—§11, ch. 22784, 1945; §11, ch. 23883, 1947.

211.12 Delinquent taxes.—When any tax provided for in this chapter shall become delinquent the comptroller shall issue his warrant directed to the sheriff of any county wherein the same or any part thereof accrued for the collection of said tax, interest and penalty; and the sheriff to whom the said warrant shall be directed shall proceed to levy upon the property, assets and effects of the person, firm, association or corporation against whom said tax is assessed and shall sell the same and make return thereof as upon execution and such sheriff shall execute and deliver to the purchaser a bill of sale or deed as the case may be. The state, through its comptroller, shall be authorized to make bids at any such sale to the amount of the tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall

issue proper muniment of title to the comptroller who shall hold such title for the use and benefit of the state; and any taxpayer or transferee of such taxpayer shall have the right at any time within thirty days from the date of such sale to redeem such property upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicants shall not be entitled to a credit upon such taxes, penalties and costs by reason of any revenue that might have accrued to the state or other purchaser under sale prior to such redemption. After the expiration of the period of redemption herein provided for, the comptroller may sell such property at public auction upon giving a seven day's notice in writing, said notice to be published in one issue in a newspaper of general circulation published in the county in which such property is located, to the highest and best bidder for cash, or, if such newspaper is not published in said county, then such notice shall be published in a newspaper of general circulation published in Leon county. Upon a sale had thereof or when a redemption is made the comptroller, for and on behalf of the state, shall issue bill of sale or quit claim deed as the case may be, to the successful bidder or other redemptioner. Such muniment of title shall be executed by the comptroller of the state.

History.—§12, ch. 22784, 1945; §12, ch. 23883, 1947.

211.13 Tax exclusive.—No other excise or license tax in addition to the tax provided herein shall be imposed by the state, counties, municipalities, drainage districts, road, school and other taxing districts within this state upon any person who produces in any manner any oil or gas by taking it from the earth or water of this state. The several tax assessors of this state and of the cities therein, when assessing the value of any land for ad valorem taxes, shall not increase the value thereof by reason of the fact that there may be oil or gas under the surface of such land, in as much as it is impossible under known valuation methods to accurately ascertain the true value of oil and gas in place and taxation thereof is more certainly accomplished after its capture or severance from the earth or water. The value of land for ad valorem tax purposes shall not be increased by reason of the location thereon of any producing oil or gas equipment or machinery used in and around any oil or gas well and actually used in the operation thereof and no ad valorem tax shall be imposed upon such producing equipment and machinery.

History.—§13, ch. 22784, 1945; §13, ch. 23883, 1947.

211.14 Severance of oil rights; tax certificates; rights of holder; tax deeds, etc.—

(1) Whenever any severance of title between the surface ownership of land and the subsurface ownership of any right, title or interest in gas or oil, or both, thereunder, takes place with respect to land in this state, by any type of severing conveyance or reservation, the interests so severed or reserved shall, notwithstanding such severance or reservation, continue to be a part of the surface ownership for the purpose of all ad valorem taxation imposed by any taxing authority in this state. All title forfeitures, foreclosures, reverters, and sales of lands for nonpayment of ad valorem taxes shall include the subsurface oil and gas and mineral interests.

(2) Unless provided by contract, the owner of any subsurface interest is under no obligation to pay taxes levied and assessed against the surface interest of such land and shall have all of the rights of a stranger to purchase tax sales certificates against the surface interest, and in addition to such right of purchase shall by depositing with the proper tax collecting official of the state or any political subdivision thereof the amount due on any tax sales certificate held by any person (other than an owner of a part of the subsurface interest) be issued a duplicate tax sales certificate, which duplicate tax sales certificate shall have all the force and effect as if the original certificate had been purchased by such subsurface owner, and the tax official shall cancel the original certificate and pay to the holder thereof the money so deposited for its purchase.

History.—§14, ch. 22784, 1945; §14, ch. 23883, 1947.

211.15 Holder of tax certificates; rights.—The holder of any tax sales certificate covering land in which he holds any subsurface interest may, at any time after two years from the date of its issuance, obtain a tax deed by application to the clerk of the circuit court or to the proper official of any other political subdivision of the state (which shall include any municipality) wherein such land is located, and the surrender of such certificate and the payment to such official of the proper amount for the purchase and surrender of all other outstanding certificates covering said land and payment of all subsequent and omitted taxes and all fees and costs incident to such application, including fees and costs for sending notices provided for herein, such deed shall be substantially in the form provided by law for tax deeds except such tax deed shall show on its face that it was issued under authority of this chapter provided, however, that in the event such holder of a tax sales certificate shall be the owner of only a part of the subsurface oil and gas interest, then and in such event any other person owning a part of the subsurface interest shall have the right at any time during thirty days following the publication or posting of the notice hereinafter provided to pay such part of the amount due in delinquent taxes as evidenced by the tax sales certificates and the cost of obtaining such tax deed as his part of the subsurface interest bears to the total of such subsurface interest, and, upon such payment shall be entitled to be a joint grantee of the tax deed to the surface interests in the same proportion that his part of the subsurface interest bears to the total of the subsurface interest.

History.—§14, ch. 22784, 1945; §14, ch. 23883, 1947.

211.16 Issuance of tax deed.—

(1) No tax deed as herein provided for shall issue until thirty days after the first publication or posting of notice of application for tax deed, such notice to give the name of the owner, if

known, or can be ascertained from the records hereinafter prescribed to be examined by the clerk, and a description of the land, such notice also to state that a tax deed will issue after the expiration of thirty days. The clerk of the circuit court or the tax official of any other political subdivision to whom application shall be made for such tax deed shall advertise notice of such application by publishing the same once each week for two successive weeks in some newspaper of general circulation wherein the land lies, or if no newspaper be published in such county, then by posting such notice at the court house door or city hall door.

(2) In addition to the publication or posting of such notice, such tax official to whom application is made shall mail a copy of such notice to the owner of the property for which a tax deed is applied, if the name and address of such owner appears on the tax rolls for the year in which taxes were last extended on said property and if the name and address of such owner does not appear on said tax roll, then notice shall be mailed to the person last paying taxes upon such land as shown by the tax collector's receipt book and in the event no address is shown thereon, no notice shall be required, which notice shall be mailed not more than fifteen days after the first publication or posting of the notice aforesaid. In addition to notice to the owner as prescribed above, the clerk shall send a copy of such notice at the same time that notice to the owner is sent, to any mortgagee or lienor of record, if any.

(3) At any time within thirty days after the first publication or posting of the notice aforesaid, any person owning the land or any part or parcel thereof or any interest therein or any mortgagee or lienor of such owner may redeem the same by paying to the clerk or other tax official of any other political subdivision of the state the full amount that may then be due the applicant for all certificates, fees and costs of the publication or posting or such portion thereof as the part or interest therein redeemed shall bear to the whole together with eight per cent interest per annum thereon, and if there be no such redemption at the expiration of thirty days the clerk or other proper taxing official to whom application is made shall immediately issue the tax deed herein provided for.

(4) For his services in receiving such application, calculating all taxes due, and issuance of such tax deed, and all other services in connection therewith, the tax official shall receive the fees provided by law for issuance of tax deeds. Proof of publication or posting of the notice and all other records of application for an issuance of such deed shall be filed in the records of the office issuing such deed.

History.—§14, ch. 22784, 1945; §14, ch. 23883, 1947.

211.17 Rules and regulations.—The comptroller shall prescribe rules and regulations and appropriate forms for effectuating the purposes of §§211.14-211.18.

History.—§14, ch. 22784, 1945; §14, ch. 23883, 1947.

211.18 Records.—It shall be the duty of the clerk of the circuit court to keep a record book to be provided by the board of county commissioners of the county for tne purpose of accepting for record any subsurface owner's interest in real estate of said county and any owner of subsurface interest in the lands of said county may register with the clerk the name of such owner, his address, the description of the land in which he has subsurface interest and such recording shall entitle such subsurface owner to notice by registered mail with return receipt requested of nonpayment of taxes by the surface owner, sale of tax certificates affecting the surface of said lands, application for tax deed of the surface interest and any foreclosure proceedings against said lands for unpaid taxes thereon, and no tax deed nor foreclosure proceedings shall affect such subsurface owner's interest if the notice hereby provided for is not given. For his services in registering such subsurface owner's interest as herein provided, the clerk shall receive a fee of one dollar, plus the fee per page for recording now provided by law. Where an owner of a subsurface interest or interests has registered with the clerk of the circuit court of the county in which said subsurface interest is located, the name of such owner, his address, and the description of the land in which he has subsurface interests pursuant to the provisions of chapter 22784, acts of 1945, such registration shall be and operate as a registration of his subsurface interests and shall entitle the owner thereof to the notices and immunities hereinabove provided the same as if such owner had registered with said clerk his subsurface interests under and pursuant to this chapter.

History.—§14, ch. 22784, 1945; §14, ch. 23883, 1947.

211.19 Appeal to courts.—Any person aggrieved by any findings or order of the comptroller shall have the right of redress in accordance with the provisions of §§196.01, 196.02 and 196.03.

History.—§15, ch. 22784, 1945; §15, ch. 23883, 1947.

211.20 Construction of chapter.—Nothing in this chapter shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due under existing laws, prior to July 1, 1947, whether such assessment, appeal, suit, claim or action shall have been begun before the said date, or shall thereafter be begun; and any existing law amended or repealed by this chapter is expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due under it prior to July 1, 1947, and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

History.—§16, ch. 22784, 1945; §16, ch. 23883, 1947.

CHAPTER 212

TAX ON SALES, USE AND OTHER TRANSACTIONS

PART I TAX ON SALES, USE AND CERTAIN TRANSACTIONS
PART II WHOLESALE FISHING AND OTHER EQUIPMENT REVENUE ACT

PART I TAX ON SALES, USE AND CERTAIN TRANSACTIONS

212.01 Short title.—Part I of this chapter shall be known as the "Florida revenue act of 1949" and the taxes imposed herein shall be in addition to all other taxes imposed by law.

History.—§1, ch. 26319, 1949.

212.02 Definitions.—The following terms and phrases when used in part I of this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) Person includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and shall include any political subdivision, municipality, state agency, bureau or department, and the plural as well as the singular number.

(2) Sale means (a) any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and (b) shall include the rental of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses or rooming houses, tourist or trailer camps, as hereinafter defined in part I of this chapter, and (c) includes the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting, and (d) the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property.

A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price, shall be deemed a sale.

(3) (a) Retail sale or a sale at retail means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions that may be made in lieu of retail sales or sales at retail. A resale must be in strict compliance with rules and regulations and any dealer making a sale for resale which is not in strict compliance with rules and regulations shall himself be liable for and pay the tax.

(b) The terms retail sales, sales at retail, use, storage, and consumption shall include the sale, use, storage or consumption of all tangible advertising materials imported or caused to be imported into this state. Tangible advertising material shall include displays, dis-

play containers, brochures, catalogs, price lists, point of sale advertising and technical manuals or any tangible personal property which does not accompany the product to the ultimate consumer.

(c) The terms retail sales, sale at retail, use, storage, and consumption shall not include the sale, use, storage or consumption of industrial materials for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product or are used directly and immediately dissipated in fabricating, converting or processing such materials or parts thereof, nor shall such term include materials, containers, labels, sacks or bags intended to be used one time only for packaging tangible personal property for shipment or sale. Immediately dissipated as used herein shall mean one-time use.

(d) The term gross sales means the sum total of all retail sales of tangible personal property as defined herein, without any deduction whatsoever of any kind or character, except as provided in part I of this chapter.

(4) Sales price means the total amount for which tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever; provided that cash discounts allowed and taken on sales shall not be included.

(5) Cost price means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(6) Lease, let, or rental means leasing or renting of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, rooming houses, tourist or trailer camps, the same being defined as follows:

(a) Every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, in which ten or more rooms are furnished for the accommodation of such guests, and having one or more dining rooms or cafes where meals or lunches are served to such transient or permanent guests, such sleeping accommodations and dining rooms or cafes being conducted in the same building or buildings in connection therewith, shall, for the purpose of part I of this chapter, be deemed a hotel.

(b) Any building or part thereof, where separate accommodations for two or more families living independently of each other are supplied to transient or permanent guests or tenants, shall for the purpose of part I of this chapter be deemed an apartment house.

(c) Every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters, sleeping or housekeeping, accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings, shall for the purpose of part I of this chapter be deemed a rooming house.

(d) In all hotels, apartment houses and rooming houses within the meaning of part I of this chapter, the parlor, dining room, sleeping porches, kitchen, office and sample rooms shall be construed to mean rooms.

(e) A tourist camp is a place where two or more tents, tent houses, or camp cottages are located and offered by a person or municipality for sleeping or eating accommodations, most generally to the transient public for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business. A trailer camp is a place where space is offered, with or without service facilities, by any persons or municipality to the public for the parking and accommodation of two or more automobile trailers which are used for lodging, for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business, such space being hereby defined as living quarters, and the rental price thereof shall include all service charges paid to the lessor.

(f) Lease, let or rental also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein. Provided that, where two taxpayers, in connection with the interchange of facilities, rent or lease property, each to the other, for use in providing or furnishing any of the services mentioned in §167.431, the term lease or rental shall mean only the net amount of rental involved.

(7) Storage means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business.

(8) Use means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it shall not include the sale at retail of that property in the regular course of business.

(9) Business includes any activity engaged in by any person, or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect. The term business shall not be construed in part I of this chapter to include occasional and isolated sales or transactions involving tangible personal property by a person who does not hold himself out as engaged in business, but shall include all charges of admission and all rentals and leases of living quarters, sleeping or house-

keeping accommodations in hotels, apartment houses, rooming houses, tourist or trailer camps, as hereinbefore defined in this chapter, made subject to a tax imposed by part I of this chapter.

(10) Retailer means and includes every person engaged in the business of making sales at retail, or for distribution, or use, or consumption, or storage to be used or consumed in this state.

(11) The term comptroller means and includes the comptroller of the state or his duly authorized assistants.

(12) Tangible personal property means and includes personal property, which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term tangible personal property shall not include stocks, bonds, notes, insurance, or other obligations or securities, or intangibles as defined by the intangible tax law of the state nor pari-mutuel tickets sold or issued under the racing laws of the state.

(13) The term use tax referred to in this chapter includes the use, the consumption, the distribution, and the storage as herein defined.

(14) The term intoxicating or alcoholic beverages referred to in part I of this chapter includes all such beverages as are so defined or may be hereafter defined by the laws of the state.

(15) The terms cigarettes or tobacco or tobacco products referred to in part I of this chapter includes all such products as are defined or may be hereafter defined by the laws of the state.

(16) The term admissions shall mean and include the net sum of money after deduction of any federal taxes for admitting a person or vehicle, or persons, to any place of amusement, sport or recreation, or where there is any show, game or exhibition and where any charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, all dues paid to private clubs providing recreational facilities, including but not limited to golf, tennis, swimming, yachting and boating facilities; but specifically excluding civic, fraternal and religious clubs and organizations, participation fees, entrance fees, or other fees.

(17) In this state or in the state means within the exterior limits of Florida and includes all territory within these limits owned by or ceded to the United States.

History.—§2, ch. 26319, 1949; (3)(b), (6)(e) and (f), (16) §§1-3, ch. 26871, 1951; (2) §1, ch. 29883, 1955; (2) §13, ch. 59-1; (3) §§1-3, (17) n. §4, ch. 59-288; (16) §3, ch. 61-274; (3), (4), (6), and (16) §1, ch. 63-526.

212.03 Transient rentals tax; rate, procedure, enforcement, etc.—

(1) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing or letting any living quarters, sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, rooming house, tourist or trailer camp, as hereinbefore defined in part I of this chapter. For the exercise of said privilege a tax is hereby levied as follows: in the amount equal to three per cent of and on the total rental charged for such living quarters, sleeping or housekeeping accommodations by the person charging or collecting the rental; provided that such tax shall apply to hotels, apartment houses, rooming houses, tourist or trailer camps, as hereinbefore defined in part I of this chapter, whether or not there be in connection with any of the same, any dining rooms, cafes or other places where meals or lunches are sold or served to guests.

(2) The tax provided for herein shall be in addition to the total amount of the rental and shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in part I of this chapter, who receives said rental or payment. The owner, lessor or person receiving the rent shall remit the tax to the comptroller at the times and in the manner hereinafter provided for dealers to remit taxes under part I of this chapter. The same duties imposed by part I of this chapter upon dealers in tangible personal property respecting the collection and remission of the tax, the making of returns, the keeping of books, records and accounts and the compliance with the rules and regulations of the comptroller in the administration of part I of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, rooming houses, tourist and trailer camps, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under part I of this chapter.

(3) Where rentals are received by way of property, goods, wares, merchandise, services or other things of value, the tax shall be at the rate of three per cent of the value of said property, services or other things of value.

(4) The tax levied by this section shall not apply to, be imposed upon, or collected from any person who shall reside continuously longer than twelve months at any one hotel, apartment house, rooming house, tourist or trailer camp, and shall have paid the tax levied by this section for twelve months of residence in any one hotel, rooming house, apartment house, tourist or trailer camp; provided, however, that any person who, upon July 1, 1963, shall have resided continuously for six months at any one place enumerated above shall be deemed to qualify fully for the exemption set forth herein so long as such person shall remain at said place. Notwithstanding other provisions of part I of this chapter, no tax shall be imposed upon rooms provided guests where there is no consideration involved between guest and the public lodging establishment.

(5) The tax imposed by this section shall constitute a lien on the property of the lessee or rentee of any sleeping accommodations in the same manner as and shall be collectible as are

liens authorized and imposed by §§85.19 and 85.20.

History.—§3, ch. 26319, 1949; (4), (5) §4, ch. 26871, 1951; §2, ch. 29883, (5) and (6) r. §3, ch. 29883, 1955; (4) §2, (6) r. §7, ch. 63-526.
cf.—Ch. 86 Enforcement of statutory liens.

212.04 Admissions tax; rate, procedure, enforcement, etc.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who sells or receives anything of value, by way of admissions and that every person who sells admissions to any place of amusement, sport or recreation, or for the privilege of entering or staying in any place of amusement, sport or recreation, including but not limited to theatres, outdoor theatres, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees or other fees, or receipts of anything of value measured on an admission or entrance or length of stay, or seat box accommodations, in any place of business or where there is any exhibition, entertainment, amusement, sport or recreation. There shall be exempt all admissions to athletic events held by elementary, junior high schools, deaf and blind school and state correctional institutions. Provided, however, that no municipality of the state shall hereafter levy an excise tax on admissions. The taxes imposed by this section shall be collected in addition to the admission tax collected pursuant to §550.09, but the amount collected under §550.09 shall not be subject to taxation under part I of this chapter. For the exercise of said privilege a tax is levied as follows:

(1) At the rate of three per cent of sales price, or the actual value received for such admissions said three per cent to be added and collected with all such admissions from the purchaser thereof and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph. Each ticket shall reflect on its face the actual sales price of admission and the tax shall be computed and collected on the basis of each such admission price.

(2) The sale price or actual value of admission shall for the purpose of part I of this chapter, be that price remaining after deduction of federal taxes, if any, imposed upon said admission and the rate of tax on each admission shall be according to the brackets established by §212.12(10).

Provided that no tax shall be levied as to admissions to athletic events engaged in by high schools, junior colleges and institutions of higher education in the state until December 26, 1963.

(3) Such taxes shall be paid and remitted at the same time and in the same manner as provided for remitting taxes on sales of tangible personal property, as hereinafter provided.

(4) Each person who, after November 1, 1949, exercises the privilege of charging admission taxes, as herein defined, shall apply for and at that time shall furnish the information and comply with the provisions of §212.18, not inconsistent herewith, and receive from the comptroller a certificate of right to exercise such privilege, which certificate shall apply to each place of business where such privilege is exercised, and shall be in the manner and form prescribed by the comptroller. Such certificate shall be issued upon payment to the comptroller of a registration fee of one dollar by the applicant. The county tax collectors are hereby made the agents of the comptroller for the purpose of issuing such certificates within the respective counties and upon application they shall issue such certificate, the county tax collector shall forward a copy of each of the same to the comptroller. Each person exercising the privilege of charging such admission taxes as herein defined shall cause such records and accounts showing the admission which shall be in the form as the comptroller may from time to time prescribe, inclusive of records of all tickets numbered and issued for a period of not less than three years, and inclusive of all bills or checks of customers who are charged any of the taxes defined herein, showing the charge made to each for a period of not less than three years. The comptroller shall be empowered to use each and every one of the powers granted herein to the comptroller to discover the amount of tax to be paid by each such person, and to enforce the payment thereof as are hereby granted the comptroller for the discovery and enforcement of the payment of taxes hereinafter levied on the sales of tangible personal property. The failure of any person to pay such taxes before the twenty-first day of the succeeding month after the same are collected shall render such person liable to the same penalties that are hereafter imposed upon such person for being delinquent in the payment of taxes imposed upon the sales of tangible personal property and the failure of any person to render returns and to pay taxes as prescribed herein shall render such person subject to the same penalties, by way of charges for delinquencies, at the rate of five per cent per month for the total amount of tax delinquent up to a total of twenty-five per cent of such tax, and at the rate of fifty per cent penalty for attempted evasion of payment of any such tax, or for any attempt to file false or misleading returns that are required to be filed by the comptroller.

(5) All of the provisions of part I of this chapter relating to collection, investigation, discovery and aids to collection of taxes upon sales of tangible personal property shall likewise apply to all privileges described or referred to in this section, and the obligations imposed in part I of this chapter upon "retailers" are hereby imposed upon the seller of such admissions. Where tickets or admissions are sold and not used but returned and credited by the seller, the seller may apply to the comptroller for a credit allowance for such returned tickets or admissions where advance payments have been made by the buyer and have been returned by the seller upon such form and in such manner as the comptroller may from time to time prescribe, and the comptroller may

upon obtaining satisfactory proof of the refunds on the part of seller credit the seller for taxes paid upon admissions that have been returned unused to the purchaser of those admissions. The seller of admissions upon the payment of the taxes before they become delinquent and the rendering of the returns in accordance with the requirement of the comptroller, and as provided in this law, shall be entitled to a discount of three per cent of the amount of taxes upon the payment of the same before the same become delinquent, in the same manner as permitted the sellers of tangible personal property in part I of this chapter.

(6) Admission taxes required to be paid by part I of of this chapter shall be paid to the comptroller by the owner or the collector of such admission, and where any place of business is sold or transferred by any owner, or owners, thereof, wherein such admission taxes have or are accruing shall be obligated before such sale becomes effective to notify the comptroller of such pending sale and secure from the comptroller a permit as prescribed in this section, and the purchaser shall become obligated to withhold from the sales price such sum of money as will safely be required to discharge all accrued admission taxes upon such places of business, and that upon the failure of any such purchaser or purchasers shall become obligated to pay all accrued admission taxes, and the same shall become a lien upon all of the purchaser's assets until the same have been paid and fully discharged.

(7) That the taxes under this section shall become a lien upon the assets of the owner of any business exercising the privilege of selling admissions, and the collection of such admissions, as defined hereunder, and shall remain a lien until fully paid and discharged, and such lien may be enforced in the manner provided hereinafter for the enforcement of the collection of taxes imposed upon the sales of tangible personal property.

(8) The word owners as used in this law shall be taken to include and mean all persons obligated to collect and pay over to the state the tax imposed under this section, inclusive of all holders of permits issued as herein provided, and wherever the words "owner" or "owners" are used herein it shall be taken to mean and include all persons liable for such admission taxes unless and except it appear from the context that the words are descriptive of property owners.

History.—§4, ch. 26319, 1949; (2), (3) §§5, 6, ch. 26871, 1951; (5) §4, ch. 29883, 1955; (4) §2, ch. 57-109; (1), (2) §2, ch. 61-274; (2) §3, ch. 63-526.

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under part I of this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state. For the exercise of said privilege a tax is levied as follows:

(1) At the rate of three per cent of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every retail sale.

(2) At the rate of three per cent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed or stored for use or consumption in this state.

(3) At the rate of three per cent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, except the rental of motion picture film where an admission is charged for viewing such film, where the lease or rental of such property is an established business or part of an established business, or the same is incidental or germane to said business.

(4) At the rate of three per cent of the lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee, to the owner of the tangible personal property.

(5) The said tax shall be collected from the dealer as defined herein and paid at the time and in the manner as hereinafter provided.

(6) The tax so levied is and shall be in addition to all other taxes, whether levied in the form of excise, license or privilege taxes, and shall be in addition to all other fees and taxes levied.

History.—§5, ch. 26319, 1949; (2) §3, ch. 59-289; (3) §4, ch. 63-526.

212.06 Sales, storage, use tax; collectible from dealers; dealers defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(1) The aforesaid tax at the rate of three per cent of the retail sales price, as of the moment of sale, or three per cent of the cost price, as of the moment of purchase, or three per cent of the cost price, as of the moment of commingling with the general mass of property in this state, as the case may be, shall be collectible from all dealers as herein defined on the sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state, of tangible personal property. The full amount of the tax on credit sales, installment sales and sales made on any kind of deferred payment plan shall be due at the moment of the transaction in the same manner as a cash sale.

(2) (a) The term dealer as used in part I of this chapter shall include every person, who manufactures or produces tangible personal property for sale at retail, for use, consumption or distribution, or for storage to be used or consumed in this state.

(b) The term dealer is further defined to mean every person, as used in part I of this chapter, who imports or causes to be imported, tangible personal property from any state or

foreign country, for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state.

(c) The term dealer is further defined to mean every person, as used in part I of this chapter, who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein.

(d) The term dealer is further defined to mean any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by part I of this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property.

(e) The term dealer is further defined to mean any person, as used in part I of this chapter, who leases or rents tangible personal property, as defined in part I of this chapter, for a consideration, permitting the use or possession of said property without transferring title thereto, except as expressly provided for to the contrary herein.

(f) The term dealer is further defined to mean any person as used in part I of this chapter, who maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room, or house, warehouse or other place of business.

(g) Dealer also means and includes every person who solicits business either by direct representatives, indirect representatives, manufacturers agents, or by distribution of catalogs or other advertising matter or by any other means whatsoever and by reason thereof receives orders for tangible personal property from consumers, for use, consumption, distribution and storage for use or consumption in the state, and such dealer shall collect the tax imposed by part I of this chapter from the purchaser and no action either in law or in equity on a sale or transaction as provided by the terms of part I of this chapter may be had in this state by any such dealer unless it be affirmatively shown that the provisions of part I of this chapter have been fully complied with.

(h) Dealer also means and includes every person who, as a representative, agent, or solicitor, of an out-of-state principal or principals, solicits, receives and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer.

(3) Every dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, or use or other consumption, in this state, shall at the time of making sales, collect the tax imposed by part I of this chapter from the purchaser.

(4) On all tangible personal property imported or caused to be imported from other states, territories, the district of Columbia, or any foreign country, and used by him, the dealer as herein defined, shall pay the tax imposed by part I of this chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of part I of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

(5) It is not the intention of part I of this chapter to levy a tax upon tangible personal property imported, produced or manufactured in this state for export, provided that tangible personal property shall not be considered as being imported, produced or manufactured for export unless the importer, producer or manufacturer delivers the same to a licensed exporter for exporting, or to a common carrier for shipment outside the state or mails the same by United States mail to a destination outside the state; nor is it the intention of part I of this chapter to levy a tax on radio broadcasting, or any sale which the state is prohibited from taxing under the constitution or laws of the United States.

(6) It is however, the intention of part I of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass property of this state.

(7) It is further specifically provided that the use tax shall not apply to tangible personal property owned or acquired in this state, or imported into this state or held or stored in this state prior to November 1, 1949. But, the use tax will apply to all tangible personal property imported or caused to be imported into this state on or after November 1, 1949.

(8) The taxes imposed by part I of this chapter shall not apply to the use, sale or distribution or religious publications, bibles, hymn books, prayer books, vestments, altar paraphernalia, sacramental chalices and like church service and ceremonial raiments and equipment.

History.—§6, ch. 26319, 1949; (5), (9) §§7, 8, ch. 26871, 1951; (5) §4, ch. 29883, 1955; (1) §1, (2) (g) §2, ch. 59-397; (7) §1, (8) §2, ch. 59-289; (1) §1, ch. 61-275; (7) r. §1, ch. 61-279.

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; penalties; general exemptions.—

(1) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

(2) Dealers shall, as far as practicable, add the amounts of the tax imposed under part I of this chapter to the sale price and the tax shall be separately stated on any charge tickets, sales slips, invoices, or other tangible evidence of sale, and such tax shall constitute a part of such price, charge or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable

at law in the same manner as other debts. Any dealer who shall neglect, fail or refuse to collect the tax herein provided, upon any, every, and all retail sales made by him, or his agents, or employees, of tangible personal property which is subject to the tax imposed by part I of this chapter shall be liable for and pay the tax himself.

(3) Any dealer who shall fail, neglect or refuse to collect the tax herein provided, either by himself or through his agents or employees, shall, in addition to the penalty of being liable for and paying the tax himself, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail for not more than three months, or both, in the discretion of the court.

(4) A dealer engaged in any business taxable under part I of this chapter shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property sold or released or when added that it or any part thereof will be refunded either directly or indirectly by any method whatsoever. A person who violates this provision with respect to advertising or refund shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred fifty dollars, or imprisonment in the county jail for not exceeding three months, or both, in the discretion of the court. For a second or subsequent offense, the penalty shall be double.

(5) The gross proceeds derived from the sale in this state of livestock, poultry and other farm products, direct from the farm are exempted from the tax levied by part I of this chapter, provided that such sales are made directly by the producers. The producers shall be entitled to such exemptions although said livestock so sold in this state may have been registered with a breeders or registry association prior to said sale and although said sale takes place at a livestock show or race meeting, so long as said sale is made by the original producer and within this state. When sales of livestock, poultry or other farm products are made to consumers by any person, as defined herein, other than a producer, they are not exempt from the tax imposed by part I of this chapter.

(6) It is specifically provided that the "use tax" as defined herein shall not apply to livestock and livestock products, to poultry and poultry products, to farm and agricultural products, when produced by the farmer and used by him and members of his family and his employees on the farm.

(7) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is exempted from any and all provisions of part I of this chapter, including payment of the tax applicable to the sale, storage, use, transfer or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one tax be exacted.

(8) The term agricultural commodity, for the purposes hereof, shall mean horticultural, poultry and farm products, and livestock and livestock products.

History.—§7, ch. 26319, 1949; (5) §1, ch. 28297, 1953; (2), (4) §1, ch. 61-276.

212.08 Sales, rental, storage, use tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution and the storage to be used or consumed in this state, of the following tangible personal property, is hereby specifically exempt from the tax imposed by part I of this chapter.

(1) EXEMPTIONS; GENERAL GROCERIES.—There shall be exempt from the tax imposed by part I of this chapter foods for human consumption, particularly including foods such as milk and milk products, cereal and cereal products (meal, grits, flour, bread and other bakery products), meats (fresh, frozen, canned, salt or cured) and meat products, poultry and poultry products, vegetables and vegetable juices, fruits and fruit juices (not including soft drinks), seafoods, canned goods (including jams, jellies and preserves), nuts, berries, melons, sugar, salt, coffee and coffee substitutes, tea, cocoa, condiments, spices, spreads, relishes, desserts, flavoring, oleomargarine and shortening; also candy when the price at which the same is sold is twenty-five cents or less; provided, that none of such items of food and/or drink shall mean foods and drinks (which include meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold in or by restaurants, drug stores, lunch counters, cafeterias, hotels, or other like places of business, or by any business or place required by law to be licensed by the hotel and restaurant commission of the state, or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle.

(2) EXEMPTIONS, MEDICAL.—There shall be exempt from the tax imposed by part I of this chapter medicine compounded in a retail establishment by a pharmacist licensed by the state according to an individual prescription or prescriptions written by a practitioner of the healing arts licensed by the state, and common household remedies recommended and generally sold for the relief of pain, ailments, distress or disorders of the human body, according to a list prescribed and approved by the state board of health, which said list shall be certi-

fied to the comptroller from time to time and be included in the rules promulgated by the comptroller; artificial eyes and limbs, eyeglasses, dentures, hearing aids, crutches, prosthetic and orthopedic appliances and funerals. Funeral directors shall pay tax on all tangible personal property used by them in their business. This subsection shall be strictly construed and enforced.

(3) EXEMPTIONS, PARTIAL; MOTOR VEHICLES; AND CERTAIN FARM EQUIPMENT.—There shall be exempt from the tax imposed by part I of this chapter so much of such tax as shall exceed two per cent on the sale (including occasional or isolated sales), the use, consumption or storage for use in this state of motor vehicles, and self-propelled or power-drawn farm equipment used exclusively by a farmer on a farm owned, leased or sharecropped by him in plowing, planting, cultivating and harvesting crops. No title certificate shall be issued by the motor vehicle commissioner on any motor vehicle unless there be filed with such application for title certificate a receipt issued by an authorized motor vehicle dealer, or by a designated agent of the comptroller or by the comptroller evidencing the payment of such tax where the same is payable. For purposes of enforcing this provision, all county tax collectors and any and all persons or firms authorized to sell or issue motor vehicle licenses are hereby designated agents of the comptroller and are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. No such receipt shall be required upon application for transfer of any title certificate issued by another state having a sales tax equal to or greater than the tax required by this state and requiring such tax to be paid before the issuance of title certificate. Other provisions of part I of this chapter relating to trade-ins are applicable to motor vehicles; however, all transfers of title to motor vehicles are presumed to be a taxable transaction until otherwise shown. The term motor vehicles as used in this subsection shall have the same meaning ascribed in §320.01 (1), when used in the plural form; and shall include the purchase of a motor vehicle to be used exclusively for rental purposes; however, any vehicle required to be licensed under §320.08, with a "GW" series tag shall not be construed to be a motor vehicle under the provisions of this subsection and is taxable at the rate of three per cent. The term "motor vehicle dealer" as used in this subsection shall have the same meaning ascribed in §320.60(6).

(4) EXEMPTIONS, LIMITED; INDUSTRIAL MACHINERY.—There shall be exempt from the tax imposed by part I of this chapter on any single transaction so much of said tax as shall exceed five thousand dollars on the sale or rental to, the use, consumption or storage for use in this state of machines and equipment and parts and accessories therefor used in mining, quarrying, compounding, processing, producing or manufacturing, personal property for sale in this state, or used in furnishing communication, transportation or public utility services. As used in this subsection "single transaction" shall include each order placed and accepted for the sale and delivery within six months by one supplier, and the use in one particular location of specifically described items on which this exemption is allowed; and the term "machines and equipment and parts and accessories therefor" shall mean only such machines, machinery and equipment and parts and assessories therefor which are specifically designed for use in some phase or process of the operations mentioned in this subsection. The comptroller is authorized to further define the terms used herein by rules and regulations not inconsistent herewith for the purpose of uniformity in the enforcement of this subsection.

(5) EXEMPTIONS, ITEMS BEARING OTHER EXCISE TAXES, ETC.—Also exempt from the tax imposed by part I of this chapter are fuels (including crude oil, fuel oil, gasoline, kerosene, diesel oil, natural and artificial gas, coal, coke and cordwood), electric power or energy, water (not exempting mineral water or carbonated water), and ice. Gasoline and other fuels used or consumed in airplanes or other aeronautical devices or used or consumed in railroad trains or locomotives used to transport persons or property in interstate or foreign commerce, are subject to tax imposed in this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier, during the previous fiscal year of the carrier, such ratio to be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to the total purchases made in this state by the carrier of gasoline and other fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under part I of this chapter. Aviation fuels or fuels consumed in railroad trains or locomotives intrastate are taxable hereunder. Alcoholic beverages and malt beverages are not exempt. The terms "alcoholic beverages" and "malt beverages" as used in this subsection shall have the same meaning ascribed to them in §561.01 (7) and (3), respectively. It is determined by the legislature that the classification of alcoholic beverages made in this subsection for the purpose of extending the tax imposed by part I of this chapter is reasonable and just, and it is intended that such tax be separate from and in addition to any other tax imposed on alcoholic beverages.

(6) EXEMPTIONS; ACCOUNT OF USE.—There shall be exempt from the tax imposed by part I of this chapter nets and ships designed for and exclusively used by commercial fisheries; feeds for raising poultry and livestock on farms and for feeding dairy cows; fertilizers, insecticides and fungicides used for application on crops or groves; containers used for processing farm products; field and garden seeds;

cheesecloth for shading tobacco and seed beds, used exclusively by a farmer on a farm owned, leased or share-cropped by him in cultivating and harvesting crops; provided, that such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein.

(7) EXEMPTIONS; POLITICAL SUBDIVISIONS, COMMUNICATIONS.—There shall also be exempt from the tax imposed by part I of this chapter, sales made to the United States government, the state or any county, municipality or political subdivision of this state; provided this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof where such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof, except public works in progress or for which bonds or revenue certificates have been validated on or before August 1, 1959. Likewise exempt are newspapers, communication services, film rentals where an admission is charged for viewing such film and charges for services rendered by radio and television stations, including line charges, talent fees or charges, and charges for films and transcriptions and other expendable items in producing radio or television broadcasts.

(8) MISCELLANEOUS EXEMPTIONS.—

(a) *Religious, charitable and educational.*—There shall be exempt from the tax imposed by part I of this chapter articles of tangible personal property sold or leased direct to or by churches or sold or leased to, nonprofit religious, nonprofit educational, or nonprofit charitable institutions and used by such institutions in carrying on their customary nonprofit religious, nonprofit educational, or nonprofit charitable activities, including church cemeteries.

(b) *School books and school lunches.*—This exemption shall apply to school books used in regularly prescribed courses of study, and school lunches served to students, in public, parochial or nonprofit schools operated for and attended by pupils of grades one through twelve. School books and food sold or served at junior colleges and other institutions of higher learning are taxable.

(c) *Restrictive definitions.*—The provisions of this section authorizing exemptions from tax shall be strictly defined, limited and applied in each category as follows:

1. Religious institutions shall mean churches and established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on.

2. Educational institutions shall mean state tax supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the southern association of colleges and secondary schools, state department of education or the Florida council of independent schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

3. Charitable institutions shall mean only nonprofit corporations operating physical facilities in Florida at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay.

(d) *Hospital meals and rooms.*—Also exempt from payment of the tax imposed by part I of this chapter on rentals and meals are patients and inmates of any hospital or other physical plant or facility designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated or otherwise dependent on special care or attention.

(e) *Professional services.*—Also exempted are professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

The above exempted personal service transactions do not exempt the sale of information services involving the furnishing of printed, mimeographed, multigraphed matter or matter duplicating written or printed matter in any other manner, other than professional services and services of employees, agents or other persons acting in a representative or fiduciary capacity or information services furnished to newspapers. Information services shall mean and include the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons.

(f) *Magazines.*—There shall likewise be exempt from the tax imposed by part I of this chapter subscriptions to magazines entered as second class mail sold for an annual or longer period of time.

(9) PARTIAL EXEMPTIONS, VESSELS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—All vessels and parts thereof used to transport persons or property in interstate or foreign commerce shall be subject to the taxes imposed in part I of this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier during the previous fiscal year. The ratio would be determined at the close of the carrier's fiscal year. This ratio applied to the total purchases by the carriers of vessels and parts thereof each month to establish that portion of the total used and consumed in intrastate movement and subject to tax at the applicable rate. Vessels and parts thereof used to transport persons or property in interstate and foreign commerce are hereby determined to be susceptible to a distinct and separate classification for taxation under the provisions of part I of chapter 212.

(10) PARTIAL EXEMPTIONS, VEHICLES ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—Vehicles and parts thereof used

to transport persons or property in interstate or foreign commerce are subject to tax imposed in part I of this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage travelled by the carrier during the previous fiscal year of the carrier, such ratio to be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to the total purchases by the carriers of vehicles and parts thereof which are used in Florida to establish that portion of the total used and consumed in intrastate movement and subject to tax under part I of this chapter, subject to the provisions of §212.08(4).

History.—§8, ch. 26319; §§1, 2, ch. 26323, 1949; §9, ch. 26871, 1951; (9) n. §1, ch 28082, 1953; §§1-8, ch. 29883, 1955; (1) §1, ch. 57-76; (1)-(8) §1, ch. 57-398, (8) (c) n. §1, ch. 57-821; (3) §1, ch. 57-1971; (3) §1, ch. 59-287; (5) §1, ch. 59-402; (7) §1, ch. 57-1968; (7) §2, ch. 59-448 and §2, ch. 59-402; (9) n. §1, ch. 59-448; (3) §1, ch. 61-464; (4) and (9) §2, ch. 61-276; (8) §1, ch. 61-274; (2)-(7) §5, (10) n. §6, ch. 63-526; (8) §1, ch. 63-565.

212.081 Legislative intent.—It is hereby declared to be the legislative intent of the amendments to §§212.08, 212.11(1), (3), 212.12 (10) and 212.20 by ch. 57-398:

(1) To raise the additional revenue required to meet the appropriations of the legislature, by amending the sales and use tax exemptions previously allowed on clothing, fabrics, lubricating oil and grease and cigarettes included in this section. By amending the sales and use tax exemption on alcoholic and malt beverages to exclude from such exemption alcoholic and malt beverages consumed on the premises, and imposing a partial tax on motor vehicles, by increasing the tax on industrial machinery from three hundred dollars to one thousand dollars and further restricting and clarifying the definition of such machinery; and by eliminating all other exemptions allowed by §212.08, not specifically mentioned herein.

(2) To aid in the enforcement of part I of this chapter by recognizing the effect of court rulings involving such enforcement and to incorporate herein substantial rulings of the comptroller which have been recognized as necessary to supplement the interpretation of some of the terms used in this section.

(3) To arrange the exemptions allowed in this section in more orderly categories thereby eliminating some of the confusion attendant upon the present arrangement where cross-exemptions frequently occur.

It is further declared to be the legislative intent that the tax levied by part I of this chapter and imposed by this section is not a tax on motor vehicles as property but a tax on the privilege to sell, to rent, to use or to store for use in this state motor vehicles; that such tax is separate from and in addition to any license tax imposed on motor vehicles; and that such tax is not intended as an ad valorem tax on motor vehicles as prohibited by the constitution.

It is also the legislative intent that there shall be no pyramiding or duplication of excise taxes levied by the state under part I of this chapter and no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or consumption which is subject to a tax under part I of this chapter unless permitted by general law, provided, however, that this provision shall not impair valid municipal ordinances which are in effect and under which a municipal tax is being levied and collected on July 1, 1957.

(4) It is hereby declared to be the legislative intent that revenue produced by this law [ch. 59-402 amending §212.08(5) and (7)] together with other available general revenue in excess of money required to meet the general revenue appropriations shall accrue to the sixth fund, the same being the working capital fund, as provided by law.

(5) It is hereby declared to be the legislative intent that all purchases made by banks are subject to state sales tax in the same manner as is provided by law for all other purchasers. It is further declared to be the legislative intent that if for any reason, the sales tax on federal banks is declared invalid, that sales tax shall not apply or be applicable to purchases made by state banks.

History.—§1, ch. 57-398; (4) n. §3, ch. 59-402; (5) n. §4, ch. 61-274.

212.082 Effective date of amendments enacted by ch. 57-398.—It is hereby declared to be the legislative intent that the amendments enacted by chapter 57-398 to §§212.08, 212.11 (1), (3), 212.12(10) and 212.20 are an integral part of a revenue program designed to raise an estimated one hundred twenty million dollars revenue, thirty-six million dollars of which is herein appropriated to the county school fund of the respective counties, which program includes and is dependent upon the enactment of a separate act increasing intangible taxes and another act increasing documentary stamp taxes, each of such acts to be passed by the 1957 session of the legislature of the state; therefore, said amendments shall take effect July 1, 1957 immediately after and only after the said two other separate acts become effective; provided, however, if for any reason either of the two said other and separate acts should fail to become a law, then in such event it is the declared legislative intent that these amendments shall not take effect but shall become inoperative and void.

History.—§6, ch. 57-398.

212.09 Trade-ins deducted.—

(1) Where used articles are taken in trade, or a series of trades, as a credit or part payment on the sale of new articles, the tax levied by part I of this chapter shall be paid on the sales price of the new article, less the credit for the used article taken in trade.

(2) Where used articles are taken in trade, or a series of trades, as a credit or part payment on the sale of used articles, the tax levied by part I of this chapter shall be paid on the sales price of the used article less the credit for the used article taken in trade.

History.—§9, ch. 26319, 1949.

212.10 Sale of business; liability for tax, procedure, penalty for violation.—

(1) If any dealer liable for any tax, interest or penalty levied hereunder shall sell out his business or stock of goods, he shall make a final return and payment within fifteen days after the date of selling the business; his successor, successors, or assigns, shall withhold a sufficient portion of the purchase money to safely cover the account of such taxes, interest, or penalties due and unpaid until such former owner shall produce a receipt from the comptroller showing that they have been paid or a certificate stating that no taxes, interest, or penalty are due. If the purchasers of a business or stock of goods shall fail to withhold sufficient amount of the purchase money as above provided, he shall be personally liable for the payment of the taxes, interest and penalties accruing and unpaid on account of the operation of the business by any former owner, owners or assigns.

(2) If any dealer liable for any tax, interest or penalty shall quit the business without the benefit of a purchaser and there is no successor, successors or assigns he shall make a final return and payment within fifteen days. Any person failing to file such final return and make payment shall be denied the right to engage in any business in the state until he complies with such requirements, and the attorney general is hereby authorized to proceed by injunction, when requested by the comptroller so to do, to prevent by injunction any activity in the performance of any such business activity until either such permit is secured, or such bond is executed and filed, or such tax is paid in advance, and any temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

(3) In the event any dealer is delinquent in the payment of the tax herein provided for, the comptroller may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer or owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall within five days after receipt of the notice advise the comptroller of all such credits, other personal property, or debts in their possession, under their control, or owing by them. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the comptroller consents to a transfer or disposition or until sixty days elapse after the receipt of the notice, whichever period expires the earlier. All persons notified shall likewise within five days advise the comptroller of any subsequent credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which may come within their possession or under their control during the time prescribed by the notice or until the comptroller consents to a transfer or disposition whichever expires the earlier. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the state for any indebtedness due under part I of this chapter from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. All such credits or other personal property or debts are subject to garnishment by the comptroller for satisfaction of the delinquent tax due.

(4) Any violation of the provisions of this section shall be a misdemeanor and punishable as such.

History.—§10, ch. 26319, 1949; §1, ch. 59-426; (3) §3, ch. 61-276.

212.11 Tax returns and regulations.—

(1) That the taxes levied hereunder upon rentals, admissions and sales of tangible personal property shall be due and payable monthly on the first day of each month and for the purpose of ascertaining the amount of tax payable under part I of this chapter, it shall be the duty of all dealers to make a return, on or before the twentieth day of the month to the comptroller, upon forms prepared and furnished by him, showing the rentals, admissions, gross sales or purchases as the case may be, arising from all leases, rentals, admissions, sales or purchases, taxable under part I of this chapter during the preceding calendar month. Any dealer who operates two or more places of business for which returns are required to be filed with the comptroller and who maintains records for such places of business in a central office or place, shall have the privilege on each reporting date of filing a consolidated return for all such places of business in lieu of separate returns for each such place of business.

(2) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the comptroller may prescribe.

(3) Whenever the tax on rentals of any machine described in §212.08, shall amount to the total tax which would have been paid on said machine had the same been a sale

rather than a rental, then there shall be no further rental tax thereon.

(4) Except as otherwise expressly provided for herein, it is hereby declared to be the intention of part I of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto.

History.—§11, ch. 26319, 1949; §10, ch. 26871, 1951; (1), (3) §2, ch. 57-398.

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of comptroller in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(1) For the purpose of compensating the lessors of real and personal property taxed hereunder, and for the purpose of compensating dealers in tangible personal property and for the purpose of compensating owners of places where admissions are collected, as compensation for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such seller, lessor, owner and dealer shall be allowed three per cent of the amount of the tax due and accounted for and remitted to the comptroller, in the form of a deduction in submitting his report and paying the amount due by him, and the comptroller shall allow the said deduction of three per cent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, and for paying the amount due to be paid by him provided, however, that the three per cent allowance shall not be granted nor shall any deduction be permitted where the tax is delinquent at the time of payment, or where there is a manifest failure to maintain proper records or make proper prescribed reports; and as further compensation to dealers in tangible personal property for the keeping of prescribed records and collection of taxes and remitting the same.

(2) When any person, firm or corporation required hereunder to make any return or to pay any tax imposed by part I of this chapter, shall fail to make such return or shall fail to pay such tax, within the time required hereunder, in addition to all other penalties provided herein, and by the laws of Florida in respect to such taxes, the specific penalty shall be added to the tax in the amount of five per cent if the failure is for not more than thirty days, with an additional five per cent for each additional thirty days, or fraction thereof, during the time which the failure continues, not to exceed, however, a total penalty of twenty-five per cent in the aggregate. In the case of a false or fraudulent return or a wilful intent to evade payment of any tax imposed under part I of this chapter, in addition to the other penalties provided by law, the person making such false or fraudulent return or wilfully attempting to evade the payment of such a tax shall be liable to a specific penalty of fifty per cent of the tax bill and for fine and punishment as provided by law for a conviction of a misdemeanor.

(3) When any dealer, or other person charged herein, fails to remit the tax, or any portion thereof, on or before the day when such tax shall be required by law to be paid, there shall be added to the amount due interest at the rate of six per cent per annum from the date due until paid.

(4) All penalties and interest imposed by part I of this chapter shall be payable to and collectible by the comptroller in the same manner as if they were a part of the tax imposed.

(5) The comptroller for good cause shown by written request, may extend, but not to exceed thirty days, the time for making any returns required under the provisions of part I of this chapter, and may compromise penalties after his investigation reveals that the penalty would be too severe or unjust, but interest shall be collected.

(6) In the event any dealer, or other person charged herein, fails to make a report and pay the tax as provided by part I of this chapter, or in case any person receiving rentals, or any dealer, owner or person charged herein with the duty to report, fails to make a report, or makes a grossly incorrect report, or makes a report that is false or fraudulent, then in either such event, it shall be the duty of the comptroller to make an assessment from an estimate for the taxable period of retail sales of such dealer, or of the gross proceeds from rentals, or the total admissions received or amounts received from leases of tangible personal property by a dealer, and an assessment from an estimate of the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in this state of tangible personal property with interest, plus penalty, if such have accrued, and as the case may be, then the comptroller shall proceed to collect such taxes on the basis of such assessment, which shall be considered prima facie correct, and the burden to show the contrary shall rest upon the dealer, seller, owner or lessor as the case may be.

(7) The comptroller is given the power to prescribe the records to be kept by all persons subject to taxes imposed by part I of this chapter and it shall be the duty of every person required to make a report and pay any tax under part I of this chapter, and every person receiving rentals, and owners of places of admission, to keep and preserve suitable records of the sales, leases, rentals, admissions, or purchases, as the case may be, taxable under part I of this chapter, and such other books of account as may be necessary to determine the amount of the tax due hereunder, and other information as may be required by the comptroller; and it shall be the duty of every such person so charged with such duty, moreover, to keep and preserve, for a period of three years, all invoices and other records of goods, wares and merchandise, records of admissions, leases and rentals and all other subjects of taxation under part I of this chapter; and all such books, invoices and other records shall be open to ex-

amination at all reasonable hours to the comptroller or any of his duly authorized agents.

(8) In the event the dealer has imported the tangible personal property and he fails to produce an invoice showing the cost price of the articles as defined in part I of this chapter, which are subject to tax, or the invoice does not reflect the true or actual cost price as defined herein, then the comptroller shall ascertain, in any manner feasible, the true cost price, and assess and collect the tax thereon with interest plus penalties, if such have accrued on the true cost price as assessed by him. The assessment so made shall be considered prima facie correct, and the duty shall be on the dealer to show to the contrary.

(9) In the case of the lease or rental of tangible personal property, or other rentals as herein defined and taxed, if the consideration given or reported by the lessor, person receiving rental or dealer does not, in the judgment of the comptroller, represent the true or actual consideration, then the comptroller is authorized to ascertain the same and assess and collect the tax thereon in the same manner as above provided, with respect to imported tangible property, together with interest, plus penalties, if such have accrued.

(10) Taxes imposed by part I of this chapter upon the privilege of the use, consumption, or storage for consumption, or sale of tangible personal property, admissions and rentals as herein taxed shall be collected upon the basis of an addition of the tax imposed by part I of this chapter to the total price of such admissions, rentals, or sale price of such article or articles that are purchased, sold or leased at any one time by or to a customer or buyer, and the dealer, or person charged herein, is required to pay a privilege tax in the amount of the tax imposed by part I of this chapter of the total of his gross sales of tangible personal property, admissions, and rentals, and such person or dealer shall add the tax imposed by part I of this chapter to the price, rental or admissions and collect the total sum from the purchaser, admittee, lessee or consumer. Notwithstanding the rate of taxes imposed upon the privilege of sales, admissions and rentals, and in order to avoid fractions of pennies, the following brackets shall be applicable to all three percent taxable transactions:

(a) On single sales of less than ten cents no tax shall be added.

(b) On single sales in amounts from ten cents to thirty-five cents, both inclusive, one cent shall be added for taxes.

(c) On sales in amounts from thirty-six cents to sixty-five cents, both inclusive, two cents shall be added for taxes.

(d) On sales in amounts from sixty-six cents to one dollar, both inclusive, three cents shall be added for taxes.

(e) On sales in amounts of more than one dollar, three percent shall be charged upon each dollar of price, plus the above bracket charges upon any fractional part of a dollar in excess of even dollars.

(11) It is hereby declared to be the legislative intent, that wherever in the construction, adminstration or enforcement of part I of this chapter there may be any question respecting a duplication of the tax, that the end consumer, or last retail sale shall be the sale intended to be taxed and in so far as may be practicable there be no duplication or pyramiding of the tax.

(12) In order to aid the administration and enforcement of the provisions of part I of this chapter with respect to the rentals, each lessor of any hotel, apartment house, rooming house, tourist or trailer camp, or any interest therein, or any portion thereof, inclusive of owners, property managers, lessors, landlords, hotel, apartment house and rooming house operators and all licensed real estate agents within the state leasing or renting such property, shall be required to keep a record of each and every such lease or rental transaction which is taxable under part I of this chapter, in such a manner and upon such forms as the comptroller may prescribe, and to report such transaction to the comptroller, or his designated agents, and to maintain such records for a period of not less than three years, subject to the inspection of the comptroller and his agents, and failure of such owner, property manager, lessor, landlord, hotel, apartment house, rooming house, tourist or trailer camp operator, or real estate agent to keep and maintain such records and to make such reports upon the forms and in the manner prescribed, shall be deemed to be a misdemeanor and upon conviction, such owner, property manager, lessor, landlord, hotel, apartment, rooming house, tourist or trailer camp operator, receiver of rent, property manager or real estate agent shall be subject to a fine of not less than fifty dollars, nor more than two hundred dollars or imprisonment in the county jail for not less than ten days nor more than thirty days, or both, for the first offense; and for subsequent offenses, they shall each be subject to a fine of not more than five hundred dollars and by imprisonment in the county jail of not more than six months, or by both such fine and imprisonment.

History.—§12, ch. 26319, 1949; (10) §11, ch. 26871, 1951; (7) §3, ch. 57-109; (10) §3, ch. 57-398; (12) §4, ch. 61-276.

212.13 Records required to be kept; power to inspect.—

(1) For the purpose of enforcing the collection of the tax levied by part I of this chapter, the comptroller is hereby specifically authorized and empowered to examine at all reasonable hours the books, records and other documents of all transportation companies, agencies, or firms that conduct their business by truck, rail, water, aircraft, or otherwise, in order to determine what dealers, or other persons charged with the duty to report or pay a tax under part I of this chapter, are importing or are otherwise shipping in articles or tangible personal property which are liable for said tax. In the event said transportation company, agency or firm shall refuse to permit such examination of its books, records, or other documents by the comp-

troller as aforesaid, it shall be deemed guilty of a misdemeanor punishable by a fine of not less than fifty or more than five hundred dollars; provided further, that the comptroller shall have the right to proceed in any chancery court to seek a mandatory injunction or other appropriate remedy to enforce his right against the offender as granted by this section, to require an examination of the books and records of such transportation company or carrier.

(2) Each dealer, as defined in part I of this chapter, shall secure, maintain, and keep for a period of three years a complete record of tangible personal property received, used, sold at retail, distributed or stored, leased or rented within this state by said dealer together with invoices, bills of lading, gross receipts from such sales and other pertinent records and papers as may be required by the comptroller for the reasonable administration of part I of this chapter, and all such records shall be open for inspection to the comptroller at all reasonable hours at his store, sales office, warehouse or place of business located in this state. Any dealer who wishes the inspection conducted at a point outside this state is required to reimburse this state for the necessary travel and per diem expended for this purpose. Any dealer subject to the provisions of part I of this chapter who shall violate these provisions shall be guilty of a misdemeanor and upon conviction shall be punished as provided by the general law.

(3) For the purpose of enforcement of part I of this chapter, every manufacturer and seller of tangible personal property licensed within this state is required to permit the comptroller to examine his books and records at all reasonable hours, and upon his refusal the comptroller may require him to permit such examination by resort to the circuit courts of this state, subject however to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept, provided further that such person's books and records are kept within the state.

(4) For the further purpose of enforcement of part I of this chapter every wholesaler of tangible personal property licensed within this state is required to permit the comptroller to examine his books and records at all reasonable hours. He must also maintain such books and records for a period of not less than three years in order to disclose the sales of all goods sold, and to whom sold, and also the amount of items sold, in such form and in such manner as the comptroller may reasonably require, and so as to permit the comptroller to determine the volume of goods sold by wholesalers to dealers, as defined under part I of this chapter, and the dates and amounts of sales made. The comptroller may require any manufacturer or wholesaler who refuses to keep such records or to permit such inspection through the circuit courts of Florida to submit to such inspection, subject however to the right of removal of the cause as hereinbefore provided in this section.

History.—§13, ch. 26319, 1949; (2) §4, ch. 57-109; (2) §1, ch. 59-290; (4) §5, ch. 61-276.

212.131 Revolving trust fund for out of state inspections.—There is hereby created a revolving fund to be known as "sales tax special revolving trust fund," and there is hereby transferred to said fund the sum of five thousand dollars from the moneys appropriated to the comptroller's office for expenses by the 1959-61 general appropriations act. Only expenses and per diem authorized by §112.061 shall be paid out of said fund to officers and employees of the comptroller's office engaged in making out-of-state inspections and audits in the administration and enforcement of part I of this chapter. All moneys collected under §212.13(2) shall be deposited in such fund; provided, however, at the end of each fiscal year all moneys in excess of twenty thousand dollars existing in such fund shall be deposited as unallocated to the general revenue fund.

History.—§2, ch. 59-290; §2, ch. 61-119.

212.14 Comptroller's powers; hearings, subpoena; distress warrants; time for assessments.

(1) Any person required to pay a tax imposed under part I of this chapter, or to make a return, either or both, and who renders a return or makes a payment of a tax with intent to deceive or defraud the state, and to prevent the state from collecting the amount of taxes imposed by part I of this chapter, or otherwise fails to comply with the provisions of part I of this chapter for the taxable period for which any return is made, or any tax is paid, or any report is made to the comptroller, may be required by the comptroller to show cause before the comptroller, or his designated agents, at a time and place to be set by the comptroller, after ten days' notice in writing requiring such books, records or papers as the comptroller may require relating to the business of such person for such tax period, and the comptroller may require such person, or persons, or their employee or employees to give testimony under oath and answer interrogatories by the comptroller, or his assistant, respecting the sale, use, consumption, distribution or storage rental of real or personal property within the state, or admissions collected therein, or the failure to make a true report thereof, as provided by part I of this chapter, or failure to pay the true amount of the tax required to be paid under part I of this chapter. At said hearing, in the event such person fails to produce such books, records or papers, or to appear and answer questions within the scope and investigation relating to matters concerning taxes to be imposed under part I of this chapter, or prevents or impedes his or her agents or employees from giving testimony, then the comptroller is authorized under part I of this chapter to estimate any unpaid deficiencies in taxes to be assessed against such person upon such information as may be available to him and to issue a distress warrant for the collection of such taxes, in-

terest or penalties estimated by him to be due and payable, and such assessment shall be deemed prima facie correct. In such cases said warrant shall be issued to any sheriff in the state where such person owns or possesses any property and such property as may be required to satisfy any such taxes, interest or penalties shall be by such sheriff seized and sold under said distress warrant in the same manner as property is permitted to be seized and sold under distress warrants issued to secure the payments of delinquent taxes as hereinafter provided, and the comptroller shall also have the right to writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels or effects of the delinquent dealer in the hands, possession or control of the third person in the manner provided by law. Respecting the place for the holding of a hearing, by the comptroller or his agents, as provided in this section, the person whose tax return or report being investigated, may by written request to the comptroller require the hearing be set at a place within the judicial circuit of Florida wherein the person's business is located, or within the judicial circuit of Florida wherein such person's books and records are kept.

(2) Wherever returns are required to be made to the comptroller hereunder the full amount of the taxes required to be paid as shown by said return shall be paid and accompany said return, and the failure to remit said full amount of taxes at the time of making said return shall cause said taxes to become delinquent. All taxes and all interest and penalties imposed under part I of this chapter shall be paid to the comptroller at Tallahassee, or to such designated offices throughout the state as the comptroller may from time to time designate and in the form of remittance required by him.

(3) The comptroller may require all reports of taxes to be paid under part I of this chapter to be accompanied with a written statement, of the person or by an officer of any firm or corporation required to pay such taxes setting forth such facts as the comptroller may reasonably require in order to advise the comptroller as to the amount of taxes that are due and payable upon said return. Filing of return not accompanied by payment is prima facie evidence of conversion of the money due. Any person or any duly authorized corporation officer or agent, members of any firm or incorporated society, or organization who refuses to make a return and pay the taxes due, as required by the comptroller and in the manner and in the form that the comptroller may require, or to state in writing that the return is correct to the best of his knowledge and belief, as so required by the comptroller, shall be subject to a penalty of six per cent per annum of the amount due and shall upon conviction, be deemed guilty of a misdemeanor and shall be punished accordingly. The signing of a written return shall have the same legal effect as if made under oath without the necessity of appending such oath thereto.

(4) In all cases where it is necessary to insure compliance with the provisions of part I of this chapter the comptroller shall require a cash deposit, bond, or other security as a condition to a person obtaining, or retaining, a dealer's permit under part I of this chapter. Such bond shall be in the form and such amount as the comptroller deems appropriate under the particular circumstances. Any security required to be deposited may be sold by the comptroller at public sale if it becomes necessary so to do in order to recover any tax, interest or penalty due. Notice of such sale may be served upon the person who deposited such securities personally or by mail. If by mail, notice sent to the last known address, as the same appears in the records of the comptroller's office shall be sufficient for the purpose of this requirement. Upon such sale the surplus, if any above the amount due under part I of this chapter, shall be returned to the person who deposited the security.

(5) Any person entering into a contract for the repair, alteration, construction or improvement of realty who is required to obtain a contractor's occupational license under the laws of this state and where the total contract price, or compensation received amounts to more than ten thousand dollars, shall, before entering into the performance of such contract, secure a dealer's permit, unless such person has held such contractor's occupational license for a period of at least one year. As a prerequisite for the issuance of such dealer's permit such dealer shall execute and file with the state comptroller a good and valid bond endorsed by a surety company authorized to do business in this state, or with sufficient sureties to be approved by the comptroller, conditioned that all taxes which may accrue to the state under part I of this chapter will be paid when due. Provided, however, that any taxpayer may pay the tax in advance on any contract in lieu of furnishing bond. Every person failing to procure the permit required by this law, shall be denied the right to perform such contract until he complies with such requirement, and the attorney general is hereby authorized to proceed by injunction, when so requested by the comptroller to prevent any activity in the performance of such contract until such permit is secured, and any temporary injunction enjoining the execution of such contract may be granted without notice by any judge or chancellor now authorized by law to grant injunctions. The bond shall remain in full force and effect during the terms of the contract or until such time as the comptroller has issued a formal certificate of clearance stating that the tax due on the contract has been paid.

(6) The amount of any tax imposed under part I of this chapter may be determined and assessed for a period of three years after the tax became due and payable. The beginning of the three year period for determination and assessment of tax due shall be the first day of the month corresponding to the month in which a request for inspection and examination of the

books and records has been made by the comptroller. No suit or other proceeding, without assessment, for the collection of such tax shall be begun after the expiration of such period.

(7) This section as amended by ch. 59-449 shall apply only to all contracts executed subsequent to September 1, 1959.

History.—§14, ch. 26319, 1949; (4) §9, ch. 29883, 1955; (4) §24, ch. 57-1; (5) n. §1, ch. 57-109; (1) §2, ch. 59-426; (5) n. §1, (5) renumbered and reenacted (6), §2, (7) n. by §3, ch. 59-449; (3), (6) §6, ch. 61-276.

212.15 Taxes declared state funds, penalties for embezzlement; due and delinquent dates; appeals.—

(1) The taxes imposed by part I of this chapter shall become state funds from the moment of collection, and §812.10, relating to embezzlement by state, county or municipal officers shall apply to every person who collects any taxes imposed by this chapter.

(2) The taxes imposed by part I of this chapter shall for each month be due to the comptroller on the first day of the succeeding month and delinquent on the twenty-first day of such month.

(3) All taxes collected under part I of this chapter shall be remitted to the comptroller. The comptroller is empowered and it shall be his duty, when any tax becomes delinquent under part I of this chapter, to issue a warrant for the full amount of the tax due or estimated to be due, together with the interest, penalties and cost of collection, directed to all and singular the sheriffs of the state, and mail such warrant to the sheriff of the county wherein any property of the taxpayer is located; and upon receipt of such warrant, the sheriff shall record the same in the office of the clerk of the circuit court of said county and thereupon the amount of such warrant shall become a lien upon the title to any real or personal property of such taxpayer, situated in said county, against whom such warrant is issued in the same manner as a judgment duly docketed and recorded in the office of such clerk of the circuit court. Upon the recording of such warrant, the clerk of the circuit court shall issue execution thereon, the same as on a judgment. Such sheriff shall thereupon proceed in all respects and with like effect and in the same manner as prescribed by law and in respect to executions issued against property upon judgment of the circuit court and shall be entitled to the same fees for his services in executing the warrant to be collected. The comptroller shall also have the right to writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of such execution, warrant, judgment or garnishment the comptroller shall, within thirty days, satisfy the lien of record and is hereby specifically authorized and directed to do so.

(4) If any taxpayer or person required by part I of this chapter to remit taxes to the comptroller shall feel aggrieved by any action of the comptroller, he shall have the right within thirty days to appeal to the comptroller for rehearing and re-examination and in support thereof may submit such data as may be relevant. All exceptions and objections to the actions of the comptroller must be filed with the comptroller in duplicate at least ten days prior to the date set for such rehearing and re-examination. If the comptroller's decision is determined adversely to the taxpayer or person required by part I of this chapter to remit to the comptroller, such person shall have the right within thirty days from notice of such determination to have the comptroller's determination reviewed in appropriate proceedings in the circuit court of Leon county, and in such review there shall be no presumption in favor of the comptroller's findings.

(5) In any action involving the legality of any tax assessed under part I of this chapter, the court shall inquire into and determine the legality and validity of the same and shall render decrees setting aside such tax assessment or any part of the same which is contrary to law, provided that the complainant shall in every case, except where the taxes assessed, including interest and penalties, have been paid to the state comptroller prior to the institution of suit, tender into court and file with the complaint the full amount of the assessment complained of, including any interest and penalties included in such assessment, or file with the complaint a cash bond, surety bond endorsed by a surety company authorized to do business in this state, or by such sureties as may be approved by the court, conditioned to satisfy any judgment or decree in full, including the taxes complained of, costs, interest and penalties.

History.—§15, ch. 26319, 1949; §12, ch. 26871, 1951; (3) §3, ch. 59-426; §7, ch. 61-276.

212.151 Jurisdiction of suits for violation of revenue act; service on retailers, dealers or vendors not qualified to do business in state.— In all suits brought hereafter in any of the courts of this state by the comptroller against any retailer, dealer or vendor for any violation of the Florida revenue act of 1949, such suits shall be brought thereon in the circuit courts of this state having jurisdiction of the subject matter. Every retailer, dealer or vendor not qualified to do business in this state shall designate with the comptroller an agent for service within the state for the purpose of enforcing part I of this chapter. If a retailer, dealer or vendor has not designated or shall fail to designate with the comptroller an agent for service within the state, then the secretary of state shall be deemed the agent for service, or any agent or employee of the retailer, dealer or vendor within the state shall be deemed agent for service.

History.—§10, ch. 29883, 1955.

212.16 Importation of goods; permits; seizure for noncompliance; procedure; review.—

(1) For the protection of the revenue of this state, to prevent the illegal importation of tangible personal property which is subject to tax in this state, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by part I of this chapter, the comptroller is hereby authorized and empowered to put into operation, a system of permits whereby any person or dealer as defined in part I of this chapter may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having said truck, automobile, or other means of transportation seized and subjected to legal proceedings for its forfeiture. Such system of permits shall require the person or dealer who desires to import tangible personal property into this state, which property is subject to tax imposed by part I of this chapter, to apply to the comptroller or his designated agent for a certificate of registration and a permit stating the kind of vehicle used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee and such other information as the comptroller may deem necessary to prevent the illegal transportation of tangible personal property into this state. Such certificate of registration and permit shall be free of cost to the applicant and forms for such certificate of registration and permit may be obtained from the comptroller or his designated agents.

(2) The importation into this state of tangible personal property which is subject to tax, by truck, automobile, or other means of transportation other than a common carrier without having first obtained a certificate of registration and permit as hereinabove described, (if the tax imposed by part I of this chapter on the said tangible personal property has not been paid) shall be construed as an attempt to evade payment of the said tax and the same is hereby prohibited and the said truck, automobile or other means of transportation, other than that of common carrier, and said taxable property may be seized by the comptroller in order to secure the same as evidence in a trial and the same shall be subject to forfeiture and sale in the manner provided for in part I of this chapter. No certificate of registration or permit shall be required to transport personal effects of a driver, owner, or passengers of any private automobile or carrier vehicle not engaged in carrying goods for resale within the state. The comptroller may issue a certificate of registration and permit to a person who is regularly or frequently importing into this state tangible personal property in trucks owned by him in connection with his own business, requiring that reports, copies of sales documents, and other information may be filed at regular or frequent intervals with the comptroller after importation of tangible personal property subject to the tax, and the comptroller may require as a condition for the issuance of such certificate of registration and permit that such person post a bond payable to the comptroller in an amount sufficient to guarantee payment of the tax on such goods as may be imported by such person, which amount the comptroller shall set.

(3) Subject to the above stated exception of private vehicles, any truck, automobile, or other means of transportation other than a common carrier which is used to import into this state tangible personal property which is subject to tax under part I of this chapter, together with the contents thereof, is hereby declared to be contraband and subject to confiscation unless a certificate of registration and permit as herein above described was first obtained. The comptroller may confiscate any such truck, automobile, or other means of transportation other than a common carrier together with its contents whenever the same is found to be importing without the certificate of registration and permit tangible personal property, the sale or use of which is taxable under part I of this chapter. Such permit shall be posted in or on the vehicle or made immediately available for inspection. The comptroller or his agent is authorized hereby to turn over to any sheriff or constable for safekeeping any vehicle or property seized hereunder, and such sheriff or constable shall collect from the vehicle owner costs provided by the general law for performing similar service.

(4) Upon seizure for confiscation, the comptroller or his representatives shall appraise the value of the vehicle and its said contents according to his best judgment and shall deliver to the person, if any found in possession of such property, a receipt showing the fact of seizure, from whom seized, the place of seizure, a description of the vehicle and contents seized. A copy of said receipt shall be filed in the office of the comptroller and shall be open to public inspection.

(5) The comptroller, or any representative of the comptroller, shall within thirty days advertise the said vehicle and its contents or other property so seized for sale to the highest bidder by one proper notice in a newspaper published in the county where the property is to be sold, if the county has such a newspaper, if there is no newspaper in such county, then by notice on the courthouse door, at least thirty days prior to the date of sale and contain a description of the vehicle and property to be sold.

(6) Any person claiming any property so seized as contraband goods, may, at any time before the sale, file with the comptroller, at Tallahassee, a claim in writing requesting a hearing and stating his interest in the article seized. The comptroller shall set a date and place for hearing within ten days from the day the claim is filed. The comptroller is hereby empowered to subpoena witnesses and compel their attendance at the hearing authorized under part I of this chapter. All parties to the proceeding including the person claiming such property shall have the right to have subpoenas issued by the comptroller to compel the attendance of all witnesses deemed by such parties to be necessary for

a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileages shall be paid as a part of the cost of the proceeding.

(7) In the event the ruling of the comptroller is favorable to the claimant, the comptroller shall deliver to the claimant the vehicle or property so seized. If the ruling of the comptroller is adverse to the claimant, the comptroller shall proceed to sell such contraband goods in accordance with the foregoing provisions of part I of this chapter. The expense of storage and transportation, shall be adjudged as part of the cost of the proceedings in such manner as the comptroller shall fix pending any proceeding to recover a vehicle or other property seized under part I of this chapter. The comptroller may order delivery thereof to any claimant who shall execute with one or more sureties, approved by the comptroller, and deliver to the comptroller, a bond in favor of the state for the payment of a sum double the appraised value thereof as of the time of the hearing; and providing further that if the vehicle or other property is not returned at the time of the hearing the bond shall stand in lieu of, and be forfeited in the same manner as such vehicle or other property.

(8) The action of the comptroller may be reviewed by a petition for common law writ of certiorari addressed to the circuit court of any county wherein said hearing was held which petition shall be filed within the time provided by the Florida appellate rules.

(9) Immediately upon the granting of the writ of certiorari the comptroller shall cause to be made, certified, and forwarded to said court a complete transcript of the proceeding in said cause, which shall contain all the proofs submitted before the comptroller. All defendants named in the petition desiring to make defense, shall answer or otherwise plead to said petition within ten days from the date of the filing of said transcript unless the time be extended by the court.

(10) Said decision of the comptroller shall be reviewed by the circuit court solely upon the pleadings and a transcript of the evidence before the comptroller, and neither party shall be entitled to introduce any additional evidence in the circuit court. The confiscated vehicle or goods shall not be sold pending such review but shall be stored by the comptroller until the final disposition of said case.

(11) Within the discretion of the comptroller, the claimant may be awarded possession of the confiscated goods pending the decision of the circuit court under the petition for certiorari, provided the claimant shall be required to execute a bond payable to the state, in an amount double the value of the property seized, the sureties to be approved by the comptroller. The condition of the bond shall be that the obligors shall pay to the state, the full value of the vehicle or goods seized unless upon certiorari the decision of the comptroller shall be reversed and the property awarded to the claimant.

(12) If no claim is interposed such vehicle, or other goods shall be forfeited without further proceedings and the same sold as hereinabove provided. The above procedure is the sole remedy of any claimant and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas, or in any other manner.

(13) Any funds derived from the sale of confiscated vehicles or other goods shall be distributed or allocated in the same manner as other funds derived from the taxing statute.

History.—§16, ch. 26319, 1949; (1)-(3) §8, ch. 61-276; §4, ch. 63-512.

212.17 Credits for returned goods, rentals or admissions; additional powers of comptroller.—

(1) In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by part I of this chapter has been collected, or charged to the account of the consumer or used, the dealer shall be entitled to reimbursement of the amount of tax collected or charged by him, in the manner prescribed by the comptroller; and in case the tax has not been remitted by the dealer to the comptroller, the dealer may deduct the same in submitting his return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by said signed statement, which period shall not be longer than ninety days. The comptroller shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted by the comptroller at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of part I of this chapter, provided in cases where a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the comptroller that the tax was not due.

(2) The comptroller shall design, prepare, print and furnish to all dealers, or make available to said dealers, all necessary forms for filing returns and instructions to insure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to secure such forms shall not relieve such dealer from the payment of said tax at the time and in the manner herein provided.

(3) The comptroller and his assistants are hereby authorized and empowered to administer the oath for the purpose of enforcing and administering the provisions of part I of this chapter.

(4) The comptroller shall have the power to make, prescribe and publish reasonable rules and regulations not inconsistent with part I of this chapter, or the other laws, or the constitution of this state, or the United States, for the enforcement of the provisions of part I of this chapter and the collection of revenue hereunder, and such rules and regulations shall when enforced be deemed to be reasonable and just.

(5) The comptroller, where admissions or rental payments are made and thereafter returned to the payers, after the taxes thereon have

been paid, shall return or credit the taxpayer for taxes so paid on the monies returned in the same manner as is provided for returns or credits of taxes where purchases or tangible personal property are returnable to a dealer.

History.—§17, ch. 26319, 1949.

212.18 Administration of law; rules and regulations.—

(1) The cost of preparing and distributing the reports, forms and paraphernalia for the collection of said tax and the inspection and enforcement duties required herein shall be borne by the revenue produced by part I of this chapter, provisions for which are hereinafter made.

(2) The comptroller shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by part I of this chapter. He is authorized to make and publish such rules and regulations not inconsistent with part I of this chapter, as he may deem necessary in enforcing its provisions in order that there shall not be collected on the average more than the rate levied herein. The comptroller is authorized to and he shall provide by rule and regulation a method for accomplishing this end. He shall prepare instructions to all persons required by part I of this chapter to collect and remit the tax to guide such persons in the proper collection and remission of such tax and to instruct such persons in the practices that may be necessary for the purpose of enforcement of part I of this chapter and the collection of the tax imposed hereby. The use of tokens in the collection of this tax is hereby expressly forbidden and prohibited.

(3) Every person desiring to engage in or conduct business as a dealer as defined in part I of this chapter, or in leasing, renting or letting of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, rooming houses, tourist or trailer camps, as hereinbefore defined in part I of this chapter, in this state shall file with the comptroller a certificate of registration for each place of business, show the name of the interested persons in such business, their residences, the address of the business, and such other data as the comptroller may reasonably require. Such application shall be made to the comptroller on or before thirty days after November 1, 1949, or on or before such person, firm or corporation may engage in such business, and it shall be accompanied by a registration fee of one dollar. The comptroller, upon receipt of such application will grant to the applicant, a separate certificate of registration for each place of business which certificate shall not be assignable and shall be valid only for the person, firm or corporation to whom issued, and such certificate shall be placed in a conspicuous place in the business or businesses for which it is issued, and so displayed at all times. No person shall engage in business as a dealer, or in leasing, renting or letting of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, rooming houses, tourist or trailer camps, as hereinbefore defined on or before thirty days after November 1, 1949, without first having obtained such a certificate, and no person shall receive any license from any authority within the state to engage in any such business after November 1, 1949, without first having obtained such a certificate. The engaging in the business of selling or leasing tangible personal property or as a dealer as defined in part I of this chapter, or engaging in leasing, renting or letting of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, or rooming houses, or tourist or trailer camps, as hereinbefore defined without such certificate first had and obtained within the time limits set forth above, or after being cancelled by the comptroller, is hereby prohibited. Failure or refusal of any individual or copartnership to so qualify where required hereunder is a misdemeanor subject to maximum fine of five hundred dollars or six months in jail, either or both; or to injunctive proceedings as provided by law.

(4) The comptroller is hereby given the authority to purchase such supplies and equipment as may be necessary and incur any other necessary expenses as are proper for the enforcement and administration of part I of this chapter.

History.—§18, ch. 26319, 1949; (3) §9, ch. 61-276.

212.19 All state agencies to cooperate in administration of law.—The comptroller is further empowered to call on any state agency, department, bureau or board for any and all information which may, in his judgment, be of assistance in administering or preparing for the administration of part I of this chapter, and such state agency, department, bureau or board is hereby authorized, directed and required to furnish such information.

History.—§19, ch. 26319, 1949; §12, ch. 57-1.

212.20 Funds collected, disposition; additional powers of comptroller; operational expense.—

(1) The comptroller shall pay over to the treasurer of the state, all funds received and collected by him under the provisions of part I of this chapter, to be credited to the account of the general revenue fund of the state.

(2) The comptroller is authorized to employ all necessary assistants to administer part I of this chapter properly and is also authorized to purchase all necessary supplies and equipment which may be required for this purpose.

(3) The estimated amount of money needed for the administration of part I of this chapter shall be included by the comptroller in his biennial legislative budget request for the operation of his office.

History.—§20, ch. 26319, 1949; (4) r. §7, ch. 29615, 1955; (2) §13, ch. 57-1; §4, ch. 57-398; (3) r. §13, ch. 59-1; §1, ch. 59-336.

cf.—§236.075 County school sales tax fund; creation and use of; appropriation.

212.21 Declaration of legislative intent.—

(1) If any section, subsection, sentence, clause, phrase or word of part I of this chapter is for any reason held or declared to be unconstitutional, invalid, inoperative, ineffective,

inapplicable, or void, such invalidity or unconstitutionality shall not be construed to affect the portions of part I of the chapter not so held to be unconstitutional, void, invalid, or ineffective, or affect the application of this chapter to other circumstances not so held to be invalid, it being hereby declared to be the express legislative intent that any such unconstitutional, illegal, invalid, ineffective, inappplicable or void, portion or portions of part I of this chapter did not induce its passage, and that without the inclusion of any such unconstitutional, illegal, invalid, ineffective or void portions of part I of this chapter, the legislature would have enacted the valid and constitutional portions thereof.

(2) It is hereby declared to be the specific legislative intent to tax each and every sale, admission, use, storage, consumption, or rental levied and set forth in part I of this chapter except as to such sale, admission, use, storage, consumption, or rental, as shall be specifically exempted therefrom, subject to the conditions appertaining to such exemption. It is further declared to be the specific legislative intent that should any exemption or attempted exemption from the tax or the operation or imposition of the tax or taxes be declared to be invalid, ineffective, inapplicable, unconstitutional or void for any reason, such declaration shall not affect the tax or taxes imposed herein, but such sale, admission, use, storage, consumption or rental or any of them exempted or attempted to be exempted from the tax or taxes or the operation or the imposition of the tax or taxes, shall be subject to the tax or taxes and the operation and imposition thereof to the same extent as if such exemption or attempted exemption had never been included herein.

(3) It is further declared to be the specific legislative intent to exempt from the tax or taxes or from the operation or the imposition thereof only such sales, admissions, uses, storages, consumption or rentals in relation to or in respect of the things set forth as exempted from the tax, as may be exempted in accordance with the provisions of the constitution of the state and of the United States, and it is further declared to be the specific legislative intent to tax each and every the taxable privileges made subject to the tax or taxes or the operation of the tax or taxes, or the imposition of the tax or taxes except such sales, admissions, uses, storages, consumption or rentals as are specifically exempted therefrom, and such exemption is made only to the extent that such exemption may be made in accordance with the provisions of the constitution of the state and of the United States.

(4) It being further declared to be the specific legislative intent that in the event any exemption or attempted exemption of any sale, admissions, use, storage, consumption or rental from the tax or taxes imposed by part I of this chapter is for any reason declared to be unconstitutional, ineffective, inapplicable or void, that then and in such event each and every such sale, admission, use, storage, consumption or rental shall be subject to the tax or taxes imposed by part I of this chapter as fully and to the same extent as if such exemption or attempted exemption had never been included herein, it being declared to be the specific legislative intent that no unconstitutional, invalid, ineffective, inapplicable or void exemption or attempted exemption or exemptions or attempted exemptions induced the passage of part I of this chapter, it being further declared to be the specific legislative intent that without the inclusion herein of any such unconstitutional, invalid, ineffective, inapplicable or void exemption or attempted exemption, exemptions or attempted exemptions, the valid portions of part I of this chapter would have been enacted; provided, however, that should the provisions, or any one or more of them, set forth in §212.22, requiring two certain other and separate acts of the 1949 extraordinary session of the legislature to become laws as conditions precedent to this act becoming a law, for any reason be held or declared to be unconstitutional, inoperative or void, then in such event it is not intended that §212.22 or any part thereof be separable from any of the remaining provisions of part I of this chapter, but in such event it is expressly intended that part I of this chapter be inseparable in its entirety.

History.—§21, ch. 26319, 1949.

212.22 Savings provision.—Nothing herein contained shall be construed as repealing any general or special act authorizing a municipality to levy a special tax upon admission tickets which said tax is now being levied by such municipality.

History.—§23, ch. 26319, 1949.

212.23 Additional declaration of legislative intent.—It is hereby declared to be the legislative intent that part I of this chapter is an integral part of a revenue program, which program includes, in addition to the provisions set forth in part I of this chapter, certain aid to municipalities through another and separate act (ch. 210), designed to authorize municipalities to levy a tax up to five cents per package on cigarettes, which tax shall be collected by the state beverage director and remitted to the municipalities levying such taxes pursuant to said other act, and certain aid to counties through another and separate act (§208.44), designed to allocate to the several counties of the state, the proceeds of the so-called "7th Cent Gas Tax" in the manner as provided in said other and separate act.

History.—§24, ch. 26319, 1949.

PART II

WHOLESALE FISHING AND OTHER EQUIPMENT REVENUE ACT

212.50 Short title.—Part II of this chapter may be cited as the wholesale fishing and other equipment revenue act.

History.—§2, ch. 63-527.

212.51 Declaration of legislative findings and intent.—

(1) It is the finding of the legislature that an equitable means of financing the programs established by the outdoor recreation and conservation act of 1963 is to impose a tax on certain sales, uses, and storages of fishing, hunting, camping, swimming and diving equipment, all as herein provided or defined, in that the establishment, enhancement and expansion of such programs will greatly increase and expand such sales, uses and storages of such equipment and further in that the burden, incidence, or impact, if any, of such tax will be borne either by those persons benefiting directly from such increased and expanded sales, uses, and storages or by those persons directly utilizing the facilities and lands developed or acquired by virtue of the provisions of the outdoor recreation and conservation act of 1963 or otherwise directly receiving the benefits of such act.

(2) The tax herein imposed is not intended to be and shall not be construed or administered as an ad valorem tax upon tangible personal property as prohibited by §2, Art. IX, of the constitution.

(3) It is the finding of the legislature that the classification of fishing, hunting, camping, swimming, and diving equipment established in part II of this chapter is reasonable and just and that said classification of such equipment and the tax herein imposed fairly and reasonably results in the encompassing of those sales, uses, and storages which will be increased and expanded by the implementation of the outdoor recreation and conservation act of 1963.

(4) It is the finding of the legislature that the imposition of a tax by part II of this chapter upon certain wholesale sales is reasonable and just and that the imposition of this tax at such level will because of the nature of the equipment involved permit economy, uniformity, and fairness in collection of the tax and in the administration of part II of this chapter.

(5) It is the intention of the legislature that part II of this chapter not be construed or administered as taxing any sale, use, or storage, the taxation of which by the state would violate the constitution of the state or of the United States.

(6) It is the intention of the legislature that if any express exemption herein is construed as causing the tax herein imposed to be discriminatory, every such sale, use, and storage exempted shall be subject to said tax, it being the intent of the legislature to enact no unconstitutional or discriminatory exemptions.

(7) The tax herein imposed and levied shall be in addition to any and all other taxes imposed by law, regardless of the nature of the same.

History.—§1, ch. 63-527.

212.52 Definitions.—As used in part II of this chapter:

(1) Cost price means and includes the actual cost of fishing, hunting, camping, swimming and diving equipment without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(2) Dealer means and includes:

(a) Every person who manufactures or produces fishing, hunting, camping, swimming and diving equipment for sale at wholesale, for use or for storage; or

(b) Every person who imports or causes to be imported fishing, hunting, camping, swimming and diving equipment from any place outside the state for sale at wholesale, for use, or for storage; or

(c) Every person who sells at wholesale or offers to sell at wholesale, or who has in possession for sale at wholesale, for use, or for storage fishing, hunting, camping, swimming and diving equipment; or

(d) Every person who has sold at wholesale, used, or stored fishing, hunting, camping, swimming and diving equipment and who cannot prove the tax levied by part II of this chapter has been paid upon such sale at wholesale, use, or storage; or

(e) Every person who purchases, imports or causes to be imported into this state for resale, fishing, hunting, camping, swimming and diving equipment, who cannot prove that the tax levied by part II of this chapter has been paid to his supplier or vendor.

(f) Every person who maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business; or

(g) Every person who solicits business either by direct representatives, indirect representatives, manufacturer's agents, or by distribution of catalogs or other advertising matter or by any other means whatsoever and by reason thereof receives orders for fishing, hunting, camping, swimming, and diving equipment from consumers for use or storage in the state; or

(h) Every person who, as representative, agent, or solicitor, of an out-of-state principal or principals, solicits, receives, and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer.

(3) Fishing, hunting, camping, swimming, and diving equipment means and includes any device, implement, tool, article, or object customarily or primarily used, operated, or consumed by participants in the course of and in the furtherance of the recreational pursuit of fishing, whether in salt or fresh water and including the capturing, harvesting, or other obtaining of any creature from or beneath waters, whether or not the same be regarded as a fish; hunting, whether of animals, birds, fowl, fish, reptiles, or other creatures; camping, whether independently of or in conjunction with fishing, hunting, swimming or diving; swimming, whether in salt or fresh water, or diving, whether in salt or fresh water, including but not limited to poles, rods, reels, lines, seines, nets, tackle, tackle boxes, hooks, lures, swivels, sinkers, floats, leader wires, weights, firearms, ammunition, decoys, tents, sleeping bags, camping stoves, diving tanks, diving masks, diving lungs, diving weights and belts, diving regulators, diving suits, water skis, tow ropes, fins, bathing and swimming suits, underwater spears, spear guns, and similar, related, or like items; provided that fuels, oils, lubricants, motor vehicles and parts thereof, boats and watercraft, motors, engines and parts for boats and watercraft, devices or articles designed or utilized primarily as life-saving, safety, or first aid equipment, and articles of clothing or apparel other than bathing, swimming, or diving suits, shall not be included within this definition.

(4) Person means and includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and shall include the plural as well as the singular number.

(5) Sale and sold and derivatives thereof mean and include any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of fishing, hunting, camping, swimming, and diving equipment, and shall include a transaction whereby the possession of such equipment is transferred to the buyer, but wherein title to the same or a mortgage upon the same is retained by the seller as security for the payment of the price.

(6) Sale at retail, sold at retail and retail sale mean and include a sale of fishing, hunting, camping, swimming, and diving equipment by any person other than the manufacturer to a consumer or to any person for any purpose other than for resale of such equipment in the same form.

(7) Sale at wholesale, sold at wholesale and wholesale sale mean and include any sale of fishing, hunting, camping, swimming and diving equipment which is not a retail sale or sale at retail; provided that where the mode or method of sale or distribution of such equipment results in there being more than one sale at wholesale prior to the sale at retail, the sale at wholesale shall be deemed to be the sale immediately preceding the sale at retail.

(8) Sales price means and includes the total amount for which fishing, hunting, camping, swimming, and diving equipment is sold, including any services that are part of the sale, valued in money, whether paid in money or otherwise, and including any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expense whatsoever; provided that cash discounts allowed and taken on sales shall not be included.

(9) Storage and stored mean and include any keeping or retention of fishing, hunting, camping, swimming, and diving equipment in the state for use or consumption in the state, except that it shall not mean or include a sale at wholesale, wholesale sale, sale at retail, or retail sale.

(10) Use and used mean and include the exercise in this state of any right or power over fishing, hunting, camping, swimming, and diving equipment incident to the ownership of such equipment or any interest therein, or the consumption or distribution thereof, except that it shall not mean or include a sale at wholesale, wholesale sale, sale at retail, or retail sale.

History.—§3, ch. 63-527.

212.53 Imposition and levy of tax.—

(1) It is hereby declared that every person is exercising a taxable privilege who engages in the business of selling at wholesale fishing, hunting, camping, swimming and diving equipment in this state, or who stores or uses in this state fishing, hunting, camping, swimming or diving equipment. For the exercise of said privilege a tax is imposed and levied as follows:

(a) At the rate of five per cent of the sales price of each item of fishing, hunting, camping, swimming, and diving equipment sold at wholesale in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every wholesale sale.

(b) At the rate of five per cent of the cost price of each item of fishing, hunting, camping, swimming and diving equipment purchased, imported or caused to be imported into this state for resale unless the purchaser thereof can prove that the tax levied by part II of this chapter has been paid to his supplier or vendor.

(c) At the rate of five per cent of the cost price of each item of fishing, hunting, camping, swimming, or diving equipment when the same is not sold at wholesale, but is used or stored in the state.

(2) The said tax shall be collected from and by the dealer and paid at the time and in the manner provided herein. No action at law or

in equity on any sale at wholesale may be maintained in any court in the state by any dealer who has not fully complied with the provisions of part II of this chapter.

(3) The full amount of the tax on credit sales, installment sales, and sales made on any kind of deferred payment shall be due at the moment of the transaction in the same manner as a cash sale.

History.—§4, ch. 63-527.

212.54 Collection of tax.—

(1) The aforesaid tax at the rate of five per cent of the sales price, as of the moment of sale, or five per cent of the cost price, as of the moment of commingling with the general mass of property in the state, as the case may be, shall be collectible from all dealers on the sale at wholesale, use, or storage in the state of fishing, hunting, camping, swimming and diving equipment.

(2) Every dealer making sales at wholesale, whether within or without the state, or fishing, hunting, camping, swimming or diving equipment for storage or use in the state shall at the time of sale collect the tax imposed by part II of this chapter from the purchaser.

(3) Every dealer shall pay the tax imposed by part II of this chapter on all fishing, hunting, camping, swimming, and diving equipment imported or caused to be imported from any other state, territory, or district of the United States, or from any foreign country, and made the subject of use or storage by him, the same as if said equipment had been sold at wholesale for use or storage in this state.

(4) There shall be no duplicate payment of the tax under part II of this chapter in that if a tax is paid on the sale at wholesale of such equipment as provided in §212.53(1)(a) it shall not be necessary to pay a tax on use or storage of such equipment as provided in §212.53(1)(b).

History.—§5, ch. 63-527.

212.55 Administration.—

(1) The tax herein imposed shall be collected by and paid to the comptroller, who shall administer the collection thereof and who is empowered to promulgate reasonable rules and regulations to implement and effectuate the purposes of part II of this chapter; provided that all rights and duties of the comptroller under part II of this chapter shall be deemed to lie in the state revenue commission or any other agency or board succeeding to the duties of the comptroller under chapter 212 at and after the time of such succession.

(2) It is the intent of the legislature that part II of this chapter be administered in accordance with procedures paralleling, as closely as lawful or practicable, those utilized in the administration of part I of chapter 212 and that the comptroller, state revenue commission or other agency or board collecting the tax hereunder shall have available under this act every means of enforcement available under part I of chapter 212.

(3) The provisions of §§212.07(2)(3)(4); 212.09(1) and (2); 212.10(1)-(4); 212.11(1); 212.12(1)-(8); 212.13(1)-(4); 212.14(1)-(6); 212.15(1)-(5); 212.151; 212.16(1)-(13); 212.17-(1)-(4); 212.18(1)-(4); 212.19; and 212.20(2), as far as lawful or practicable, shall be applicable to the tax herein levied and imposed and the collection thereof, as if fully set out in this act, provided:

(a) That the term tangible personal property used therein shall be understood to include fishing, hunting, camping, swimming and diving equipment;

(b) That no provision of any such section shall apply if it conflicts with any provision of part II of this chapter;

(c) That the term comptroller used therein shall be deemed to mean the state revenue commission or any other agency or board succeeding to the duties of the comptroller under part I of chapter 212 at and after the time of any such succession;

(d) The term retail sales or sale at retail used therein shall be understood to include sale at wholesale;

(e) Any term used therein which is defined in part II of this chapter shall be deemed to have the meaning ascribed to it in part II of this chapter.

(f) Part II of this chapter shall not apply to nets and seines, and gear attached to or used directly in connection with same, used for commercial production of fish and other marine life, and such nets and gear are exempted from the payment of the tax herein proposed.

History.—§6, ch. 63-527.

212.56 Earmarking of tax.—The comptroller, or the state revenue commission or other agency collecting the tax hereunder, shall pay to the treasurer all sums collected hereunder for deposit in the land acquisition trust fund. Such sums so deposited may be used for any purposes for which funds deposited in the land acquisition trust fund may lawfully be used, and may be used to pay the cost of the collection and enforcement of the tax imposed and levied herein; provided that not exceeding twenty per cent of all funds collected under part II of this chapter shall be used for research and capital outlay for research relating to recreational and commercial salt water fisheries and fishing.

History.—§7, ch. 63-527.

212.57 Exemptions.—All sales at wholesale to, or use or storage by the United States, the state or any county, municipality, or other political subdivision thereof, churches or religious institutions, nonprofit educational institutions, or nonprofit charitable institutions in the course of their nonprofit educational, religious, or charitable activities, shall be exempt from any tax under part II of this chapter.

History.—§8, ch. 63-527.

212.58 Penalty.—Violation of any provision of part II of this chapter shall constitute a misdemeanor, and shall be punished as provided by law.

History.—§9, ch. 63-527.

STATE REVENUE LAWS; ADMINISTRATION

CHAPTER 213

213.01 State revenue laws; legislative intent.—It is hereby declared to be legislative intent that the revenue laws of the state be administered in a fair, efficient and impartial manner. It is further declared to be legislative intent that in order to insure the fair, efficient and impartial administration of the revenue laws of the state, that the collection of revenue insofar as is provided herein be the administrative responsibility of the elected officials of this state.

History.—§1, ch. 63-253.

213.02 State revenue commission; membership.—There is hereby created a board under the state cabinet to be known as the state revenue commission which shall be composed of the governor, the secretary of state, the comptroller, the state treasurer, the attorney general, the commissioner of agriculture, and the state superintendent of public instruction, who shall exercise such powers and discharge such duties as in this chapter provided. A majority vote of said commission shall be necessary to decide matters and questions coming before said commission.

History.—§2, ch. 63-253.

213.03 Employment of director, general counsel; compensation.—The revenue commission shall employ a director and set his compensation. The director shall possess such qualifications as the board may prescribe and he shall serve at the pleasure of the board. It shall be the duty of the director to act as agent for the state revenue commission in coordinating and directing its activities and the discharge of its responsibilities. The revenue commission shall also employ a general counsel and set his compensation. The general counsel shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The commission may employ such other assistance as is necessary to carry out its responsibilities.

History.—§3, ch. 63-253.

213.04 Bond of director.—The director of the state revenue commission shall, before he enters upon the discharge of the duties of his office, give bond conditioned upon the faithful discharge of the duties of said office in such amounts and under such conditions as may be prescribed by the revenue commission.

History.—§4, ch. 63-253.

213.05 Commission; control and administration of revenue laws.—The state revenue commission shall have the responsibility of regulating, controlling and administering all revenue laws and performing all other duties now vested in the state comptroller as provided in: chapter 203, gross receipts taxes generally; chapter 204, retail store license taxes; chapter 207, motor fuels, etc.; regulation, distributors, other persons; chapter 208, taxes on gasoline and like products; chapter 209, tax on motor fuels other than gasoline; and chapter 212, tax on sales, use and certain transactions. The state revenue commission shall also have the responsibility of regulating, controlling and administering the duties now vested in the secretary of state relative to the capital stock tax collection as provided in chapter 608. The revenue commission shall notify the secretary of state of all corporations subject to dissolution for failure to pay capital stock tax under §608.36.

History.—§5, ch. 63-253.

213.06 Rules and regulations.—The state revenue commission shall be authorized to adopt such rules and regulations as are necessary to carry out the intent and purposes of this act.

History.—§6, ch. 63-253.

213.07 Assumption of certain duties of comptroller and secretary of state.—All laws or parts thereof in conflict herewith are hereby repealed. All laws relating to the assessment, collection and enforcement of the taxes enumerated herein shall be interpreted so as to permit the state revenue commission to assume these responsibilities and duties. The words comptroller or state comptroller when used in chapters 203, 204, 207, 208, 209 and 212, shall hereafter mean the state revenue commission. The words secretary of state as they relate to the collection of the capital stock tax as used in chapter 608, shall hereafter mean the state revenue commission.

History.—§7, ch. 63-253.

213.08 Transfer of certain sums to commission's account.—After the appointment of a director of the state revenue commission, the state budget commission is hereby authorized and directed to transfer to the account of the state revenue commission all sums appropriated for the regulation and administration of chapters 203, 204, 207, 208, 209 and 212. That portion of the moneys appropriated by the 1963 legislature to the secretary of state consisting of eighty-eight thousand dollars for the administration of the capital stock tax under chapter

608 shall also be transferred to the state revenue commission along with the six authorized positions of the capital stock tax division of the secretary of state's office.

History.—§8, ch. 63-253.

213.09 Transfer of certain physical properties.—The state comptroller is authorized and directed to transfer to the state revenue commission upon proper receipt all physical properties, supplies and equipment owned by or leased to the state for the administration of chapters 203, 204, 207, 208, 209 and 212. The secretary of state is authorized and directed to transfer to the state revenue commission all such property utilized by him in the administration of the capital stock tax under chapter 608.

History.—§9, ch. 63-253.

213.10 Deposit of tax moneys collected.—Any and all tax moneys collected by the state revenue commission shall be deposited in the appropriate fund as provided by law.

History.—§10, ch. 63-253.

CHAPTER 215

FINANCIAL MATTERS, GENERALLY

215.01 Fiscal year.—The fiscal year shall begin on the first day of July and end on the thirtieth day of June in each and every year.

History.—§5, ch. 515, 1853; RS 405; GS 597; RGS 1032; §1, ch. 10124, 1925; §1, ch. 10130, 1925; CGL 1343.

215.02 Manner of paying money into the treasury.—Whenever any officer of this state or other person desires to pay any money in to the treasury of the state on account of his indebtedness to the state, he shall first go into the comptroller's office, and there ascertain from the comptroller's books the amount of his indebtedness to the state, and thereupon the comptroller shall give him a memorandum or certificate of the amount of such indebtedness, and on what account. Second, he shall take said certificate with him to the treasurer's office and deliver the same to the treasurer, and pay over to the treasurer the amount called for in said certificate. Third, the treasurer shall receive the money, make a proper entry thereof, file the comptroller's certificate, and give a certificate to the party paying over the money, acknowledging the receipt of the money, and on what account; which certificate thus received from the treasurer, the party shall return to the comptroller's office, on receipt of which the comptroller shall give the party a receipt for the amount, and enter a credit on the party's account in his books for the amount thus paid by him to the treasurer, and file the treasurer's certificate received.

History.—§1, ch. 1292, 1861; RS 406; GS 598; RGS 1033; CGL 1344.

215.03 Party to be reimbursed on reversal of judgment for state.—Whenever upon appeal in civil cases, any judgment in favor of the state has been or shall be reversed and set aside, which may have been paid in part by the appellant, the comptroller shall issue his warrant upon the treasurer to reimburse the appellant for all sums paid in discharge of

such judgment and cost, provided the appellant shall adduce satisfactory evidence to the comptroller of the sums paid as aforesaid.

History.—§1, ch. 723, 1855; CS 615; RGS 1051; CGL 1362; §21, ch. 63-559.

215.04 Comptroller to report delinquents.—The comptroller shall report to the state attorney of the proper circuit the name of any delinquent officer whose delinquency concerns the financial department of the government, so soon as such delinquency shall occur; and the state attorney shall proceed forthwith against such delinquent.

History.—§4, Mar. 4, 1839; RS 407; GS 599; RGS 1034; CGL 1345.

215.05 Comptroller to certify accounts of delinquents.—When any revenue officer or other person accountable for public money shall neglect or refuse to pay into the treasury the sum or balance reported to be due to the state, upon the adjustment of his account, the comptroller shall immediately hand over to the state attorney of the proper circuit the statement of the sum or balance certified under his hand and seal of office, so due; and the state attorney shall institute suit for the recovery of the same, adding to the sum or balance stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment is obtained thereon, and an interest of eight per cent per annum from the time of the delinquent's receiving the money until it shall be paid into the state treasury.

History.—§1, Feb. 10, 1832; RS 408; GS 600; RGS 1035; CGL 1346.

215.06 Certified accounts of delinquents as evidence.—In every case of delinquency, where suit has been or shall be instituted, the certified statement provided for in §215.05, shall be admitted as evidence and shall be prima facie proof of the facts therein stated. All copies of bonds, contracts, or other papers relating to or connected with the settlement of any account between the state and an individual, when certified as aforesaid to be true copies of the original, may be annexed to such statement aforesaid, and shall have equal validity and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court; provided, where suit is brought upon a bond or other sealed instrument, and the defendant shall plead non est factum, or upon motion to the court, such plea or motion being verified by the oath of the defendant, it is lawful for the court to take the same into consideration, and, if it shall appear necessary for the attainment of justice, to require the production of the original bond, contract, or other paper specified in such affidavit.

History.—§2, Feb. 10, 1832; RS 409; GS 601; RGS 1036; CGL 1347.

215.07 Preference of state in case of insolvency.—When any revenue officer or other person now indebted or hereafter becoming indebted to the state, by bond or otherwise, shall become insolvent, or when the estate of any deceased debtor in the hands of executors or administrators shall not be sufficient to pay all the debt due from the deceased, the debt due to the state shall be first satisfied; and the priority established shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor shall be attached by process of law, as to cases in which the party shall be insolvent.

History.—§5, Feb. 10, 1832; RS 410; GS 602; RGS 1037; CGL 1348.

215.08 Delinquent collectors to be reported to state attorney.—The comptroller, the county judge, the chairman of the board of county commissioners and the members of the said board, representing the same, after sufficient time has expired to receive the reports required of the tax collector by law and they have not received them, or if the collector has failed to turn over money collected to either the proper state or county officer as provided by law, shall report the same to the state attorney of the circuit in which the collector resides; and the state attorney shall institute such proper proceedings, both civil and criminal, as are authorized by law; and the said state attorney shall, in case the said defaulting tax collector shall either attempt to collect taxes or perform any other act prohibited by law, or shall fail or refuse to deliver all the official tax rolls and books, with the statement required by law, to his successor or the person appointed by the governor to perform the duties appertaining to the office of the collector of any county in lieu of any such defaulting collector, apply in a summary way, by petition to the circuit court or to the judge thereof in vacation, of the proper county, for an order prohibiting and enjoining in the one case such defaulting collector from collecting or attempting to collect taxes, or performing any other act prohibited to him by law, and requiring him in the other case to deliver to his successor, or to the person appointed by the governor to perform his duties as aforesaid, all the official tax rolls and books, with the statement required by law; and the said court or judge in vacation may make such order and compel the performance of, or obedience to, such order by attachment and punishment as for a contempt of court.

History.—§3, ch. 1977, 1874; RS 411; GS 603; RGS 1038; CGL 1349.

215.09 Delinquent collectors; forfeiture of commissions.—For any failure on the part of any tax collector to make reports or to pay over any money as required by law, he shall forfeit for every week's delay one-fifth of his commissions, and if the delay extends beyond thirty days he shall forfeit all commissions on all amounts to which such failure applies, and all future commissions upon all collections to be made; provided, that the comptroller, for good cause shown him, may suspend the force

and operation of this section with regard to such defaulting collector.

History.—§5, ch. 1977, 1874; RS 412; GS 604; RGS 1039; CGL 1350.

215.10 Delinquent collectors; suspension.—For a failure or refusal of any tax collector or other officer, whose duty it is to perform any act connected with the assessment or collection of taxes, to perform any duty or act, to make any return, or pay over any money required by law, the governor, by his written order, may suspend any such defaulting or non-complying collector or other officer from office, and from further acting in his office until his further order, but not beyond the adjournment of the next session of the senate; and appoint or designate some other person to perform and discharge all the duties of such collector or other officer, who shall discharge such duties until the further order of the governor, but not beyond the adjournment of the next session of the senate, and to whom the official tax rolls, books and statements as required by law shall be delivered.

History.—§4, ch. 1977, 1874; §15, art. IV, Florida constitution; RS 413; GS 605; RGS 1040; CGL 1351.

215.11 Defaulting officers; comptroller to report to clerk.—The comptroller shall, within ninety days after the expiration of the term of office of any tax collector, sheriff, clerk of the circuit or criminal court, treasurer or any other officer of any county, who has the collection, custody and control of any state funds, who shall be in arrears in his accounts with the state, make up and forward to the clerk of the circuit court of such county a statement of his accounts with the state.

History.—§1, ch. 3854, 1889; RS 417; GS 606; RGS 1041; CGL 1352.

215.12 Defaulting officers; duty of clerk.—The clerk of the circuit court to whom any such statement shall be forwarded, shall file the same in his office, and within ten days thereafter shall furnish each of the sureties of such delinquent officer with an abstract of such statement, showing the amount of indebtedness of such delinquent officer to the state, and shall at the same time furnish the sureties with a statement showing his indebtedness to the county, if there be any.

History.—§2, ch. 3854, 1889; RS 418; GS 607; RGS 1042; CGL 1353.

215.15 School appropriations to have priority.—Appropriations, other than from the general revenue fund, made for school purposes under any statute or law, shall be payable out of the first funds available after payment of the salaries of public officers and other current expenses as hereinbefore provided, and the moneys for such appropriations shall be available as fast as they come in, without waiting for the whole amount of any such appropriation to be received into the treasury.

History.—§2, ch. 5603, 1907; §1, ch. 19001, 1939; RGS 1053; CGL 892(39), 1364.

215.16 School appropriations from general revenue fund.—All state appropriations, from the general revenue fund, for the benefit of the uniform system of public free schools and the state institutions of higher learning shall be on a parity with all other state appropriations for all other purposes from the general revenue fund; provided, that the appropriations by the legislature of the proceeds from specific tax levies set aside and earmarked for a particular purpose shall not be affected by this section.

If the state appropriations from the general revenue fund for the benefit of the uniform system of public free schools and the state institutions of higher learning cannot be paid in full during any given year, they shall be diminished only in the same proportion that appropriations for all other purposes from the general revenue fund are diminished during such year.

History.—§§1, 2, ch. 19001, 1939; CGL 1940 Supp. 892(39), 892(40).

215.18 Transfers between funds; limitation.—Whenever there exists in any fund provided for by §215.32, a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist in the other funds in the state treasury moneys which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last mentioned funds, the governor may, with the approval of the comptroller, order a temporary transfer of moneys from one fund to another in order to meet temporary deficiencies in a particular fund without resorting to the necessity of borrowing money and paying interest thereon; provided, that the fund from which any money is temporarily transferred, shall be repaid the amount transferred from it not later than the end of the fiscal year in which such transfer is made, the date of repayment to be specified in the order of the governor and approved by the comptroller.

History.—§2, ch. 12295, 1927; CGL 1365; §24, ch. 57-1; §1, ch. 59-82; §15, ch. 63-572.

215.19 Rate of wages for laborers, mechanics and apprentices employed on public works.—(1) (a) Every contract in excess of five thousand dollars in amount to which the state, any county or municipality in the state, or any political subdivision of the state or other public agency or authority is a party which requires or involves the employment of free laborers, mechanics, or apprentices in the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall contain a provision that the rate of wages for all laborers, mechanics and apprentices, if such apprentices are available in the area in which the said public work is located, employed by any contractor or subcontractor on the work covered by the contract shall be not less than the prevailing rate of wages for similar skills or classification of work in the city, town, village or other civil division of the state in which the said public

work is located, which provision shall refer to and incorporate this section in the contract by reference.

(b) The provisions of this section shall be called to the attention of all prospective bidders on public contracts of this nature by a notice in the specifications, and by the insertion in the specifications of a schedule of prevailing wage rates in the locality or area where the work is contemplated, furnished by the Florida industrial commission, and such schedule of prevailing wage rates shall for the purpose of the contract and for the duration of the contract be deemed the prevailing wage rates as contemplated by this section regardless of any previous or subsequent determination by the Florida industrial commission.

(c) Every request for payment made by the contractor on such work shall contain an affidavit by the contractor that all provisions of this section regarding apprentices and payment of wages have been complied with by him, and to the best of his knowledge and belief, by all his subcontractors, which affidavit shall be accompanied by like affidavits of all his subcontractors, but nothing herein shall be construed to make a contractor liable in any way for statements or misstatements contained in the affidavits of his subcontractors.

(d) Apprentices hereunder shall be persons defined as apprentices by §446.07 who shall be working under either an apprentice agreement registered and approved by the apprenticeship council as provided by §446.09(2) or an apprenticeship agreement of higher standards as provided in §446.13; provided, however, that the contractor or subcontractor shall file with the Florida industrial commission at Tallahassee, within fifteen days from the first date of employment, the name, classification and wage rate applicable to each apprentice employed by him or any subcontractor under him on such job.

(2) (a) The Florida industrial commission shall make a continuing study to determine the prevailing wage rates of laborers, mechanics and apprentices usually employed in work similar to that contemplated by this section to the various parts of the state, and shall furnish to any person upon request, a schedule of applicable prevailing wage rates in the area where public work of similar character is in progress or contemplated.

(b) Every public contracting authority shall, when contemplating public work of the character described in subsection (1) hereof, and before publication of invitations to bid, notify the commission of the nature and magnitude of the work and its location.

(c) Any contracting authority who is a party to any contract as contemplated by this section, shall cause the schedule of prevailing wages required by subsection (1)(b) to be posted and permanently maintained throughout the job in a secure, protected, prominent place on the premises where the contract is being performed, and the contractor shall mail to the Florida industrial commission in Tallahassee an affidavit certifying that such notice has been posted and is being maintained on such job, which affidavit shall be forwarded within ten days of the commencement of work on the job and the posting of such notice. Such affidavit shall contain information identifying the job, the contractor, or subcontractor, the contracting authority, and the prevailing wage determination number applicable to such job.

(3) (a) If the contractor or subcontractor fails to comply with this section relative to the payment of prevailing wages, any aggrieved employee on behalf of himself, and other employees similarly aggrieved on the same job, shall make such fact known to the contracting authority, the contractor and/or subcontractor by written sworn affidavit signed by each such aggrieved employee setting forth the name of the employee or employees, the name of the alleged noncomplying contractor or subcontractor, the name of the contracting authority, a designation of the public work upon which such employees were employed, the employee's job classification, the number of hours each employee has been employed on the public work, the amount of wages paid the employees by the contractor or subcontractor, and the amount claimed by the employees to be due and unpaid by the contractor or subcontractor.

The affidavit hereinabove provided shall be filed with the contracting authority within thirty days from the last date of alleged noncompliance, and in no event shall such affidavit be filed more than thirty days after the completion and acceptance of the public work contracted for.

(b) After receipt of any such affidavit the contracting authority shall withhold from the contractor, until final determination of the claim, an amount of money equal to the amount claimed in such affidavit to be due and unpaid and the contracting authority shall forthwith attempt to settle the dispute between the contractor or subcontractor and the complaining employee and if the contracting authority is unable to effect such settlement the matter shall forthwith be referred by the contracting authority to the Florida industrial commission for determination. In all cases the said commission may make such investigation as it shall deem necessary. The decision of the commission shall be conclusive, upon all parties, subject to judicial review.

(c) All hearings (including taking testimony, receiving other evidence, and argument) necessary in such determination shall be held in the municipality where the work is done, or if not done in a municipality, then in the county where the work is done, unless another place is agreed upon by the parties in dispute, otherwise the commission may formulate its own rules for hearings. In the discharge of the duties imposed by this section the commission and any authorized representative of the commission shall have the power to administer oaths, take depositions, certify to official acts, and the commission shall have the power to

issue subpoenas to compel the attendance of witnesses and the production of such excerpts of payroll records as pertain to the wages only of each aggrieved employee and certificates issued in connection therewith which are material and relevant to an affidavit filed under subsection (3) (a) of this section, for review by the commission without disclosing the remainder of such payroll records in connection with any authorized investigation or hearing required by this section, provided that all information and evidence including affidavits, certificates, testimony or other documents, which are obtained by the commission pursuant to this section shall be deemed to be privileged and shall not be made the subject matter or basis of any suit for slander or libel but may be considered only by the commission to the extent necessary for a proper determination of the issues involved. Any circuit court of this state within the jurisdiction of which such hearing or inquiry is carried on or within the jurisdiction of which any person who has refused to comply with a duly authorized subpoena of the commission resides, or transacts business, upon application of the commission or any authorized representative of the commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission or its authorized representative, there to produce evidence if so ordered or to give testimony touching on the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as contempt thereof.

(d) Upon settlement of the dispute by the contracting authority or upon determination of the matter by the Florida industrial commission the contracting authority shall pay to the complaining employee such amount as shall be found to be due said employee and shall pay to the contractor the balance of the monies withheld as herein above provided.

(e) The contracting authority on its own initiative or upon the written complaint of any aggrieved party, may initiate its own investigation to determine whether any contractor or subcontractor has failed to comply with the provisions of this section, and upon the basis of its findings as a result of its determination shall withhold from the contractor or subcontractor until final determination of the claim by the Florida industrial commission any amounts which it finds to be due any employee of the contractor or any of his subcontractors on such job, who has been paid less than the prevailing wages for the classification of services performed by him as prescribed in the wage determination, and shall pay such amount to such employee and deduct it from the total due the contractor.

(4) Nothing in this section shall apply to contracts for the construction, repair or maintenance of public roads or highways, except that all its provisions shall apply to contracts for the construction of bridges on public roads and highways, where the contract price for such construction shall exceed fifty thousand dollars or such bridge shall be located in a large metropolitan area; provided, however, that the provisions of this section shall not be applicable to any construction or contracts for public works with respect to which prevailing wage rates are required to be established pursuant to federal authority. The words "metropolitan area" are defined for the purpose of this section as any county in Florida having a population of one hundred thousand according to the last preceding state or federal census.

(5) The Florida industrial commission shall not take into consideration either in establishing prevailing wage rates or classifications or in hearing disputes in regard to prevailing wage rates or classifications; conditions, classifications or wage rates in any area outside the geographic limits of the state.

(6) In case of a state of emergency, the governor may suspend the provisions of this section.

(7) The Florida industrial commission shall include in its legislative budget request the estimated amounts needed for the purpose of administering the provisions of this section and the legislature shall appropriate such amounts as it deems necessary for this purpose.

(8) Any contractor or subcontractor who knowingly violates any provision of this subsection or any lawful order or rule of the contracting authority or of the Florida industrial commission authorized by this section and for which no other penalty is specifically prescribed, shall upon conviction thereof in a court of competent jurisdiction be subject to punishment by such court by a fine of not less than $100.00 nor more than $1,000.00, or by imprisonment for not longer than 60 days, or by both such fine and imprisonment.

History.—§1, ch. 16300, 1933; §1, ch. 16301, 1933; CGL 1936 Supp. 1365(5), §1, ch. 28264, 1953; §1, ch. 29782, 1955; (2) §1, ch. 57-339; (3) §1, ch. 57-755; (7)n. §2, ch. 57-339; (2)(c) n. §1, (3)(a), (3)(c) §§2, 3, ch. 59-347; (4) §1, ch. 59-159; (7) §1, ch. 61-27; §1, ch. 63-380.

215.20 Certain moneys and certain trust funds to contribute to the general revenue fund.—A deduction of four per cent, representing the estimated pro rata share of the cost of general government paid from the general revenue fund, shall be made from the moneys and trust funds enumerated in §215.22. The deduction shall be as provided in §215.22. All such deductions shall be deposited in the general revenue fund.

History.—§2, ch. 20890, 1941; §1, ch. 61-493; §1, ch. 63-567.

215.22 Certain moneys and certain trust funds enumerated. — The following described moneys and trust funds, by whatever name designated, shall be those from which the deductions authorized by §215.20 shall be made:

(1) The first gas tax levied pursuant to the provisions of §208.04.

(2) The seventh cent additional tax upon gasoline or other like products of petroleum levied pursuant to the provisions of §208.44.

(3) The stored motor fuels tax levied pursuant to the provisions of §208.23.

(4) All taxes levied on motor fuels other than gasoline, exclusive of two cents of said tax, levied pursuant to the provisions of §209.02.

(5) The trust funds of the examining and licensing boards as defined in §215.37, unless a different percentage is authorized in the aforesaid section.

(6) All income of a revenue nature deposited in the general inspection trust fund and subsidiary accounts thereof, unless a different percentage is authorized in §570.20.

(7) All income of a revenue nature received by the state racing commission.

(8) All income of a revenue nature deposited in the Florida citrus advertising trust fund created in §601.15(7), including transfers from any subsidiary accounts thereof, unless a different percentage is authorized in the aforesaid section.

(9) All income of a revenue nature deposited in the special disability trust fund created in §440.15(5)(d) 7.a.

(10) All income of a revenue nature deposited in the workmen's compensation administration trust fund created in §440.50(1)(a).

(11) All transfers to the special employment security administration trust fund created in §443.14(2).

(12) All income of a revenue nature deposited in the employment security administration trust fund created in §443.14(1).

(13) All income of a revenue nature deposited in the municipal firemen's pension trust fund created in §175.07.

(14) All income of a revenue nature deposited in the municipal police officers' retirement trust fund created in §185.10.

(15) All income of a revenue nature deposited in the liquefied petroleum gas administrative trust fund created in §527.02.

(16) All income of a revenue nature deposited in the state fire marshal trust fund named in §624.0314.

(17) All income of a revenue nature deposited in the insurance commissioner's miscellaneous service trust fund created in §624.0324.

(18) All income of a revenue nature deposited in the insurance commissioner's license receipts trust fund created in §624.0323.

(19) All income of a revenue nature deposited in the insurance commissioner's automobile warranty administration trust fund created in §634.221.

(20) All income of a revenue nature deposited in the educational certification and service trust fund created in §231.30.

(21) All income of a revenue nature deposited in the special school lunch program trust fund created in §236.171.

(22) All income of revenue nature deposited in the cigarette tax collection trust fund created in §210.20.

(23) All income of a revenue nature deposited in the internal improvement trust fund created in §253.01.

(24) All income of a revenue nature deposited in the Florida alcoholic rehabilitation trust fund created in §396.121.

(25) All income of a revenue nature deposited in the revenue bond fee trust fund created in §288.20.

(26) All income of a revenue nature deposited in the airport operations trust fund authorized in §288.25.

(27) All income of a revenue nature deposited in the motorboating revolving trust fund created in §371.171.

(28) All income of a revenue nature deposited in the state game trust fund established in §372.09.

(29) All income derived from outdoor advertising and overweight violations which is deposited in the state roads trust fund created in §208.08.

(30) All income of a revenue nature deposited in the milk commission trust fund established in §501.09.

(31) All income of a revenue nature deposited in the Florida egg commission trust fund established in §504.12.

(32) All income of a revenue nature deposited in the agents and solicitors county license tax trust fund established in §624.0304, unless a different percentage is authorized in the aforesaid section.

(33) The motor carrier mileage tax levied pursuant to the provisions of chapter 323, unless a different percentage is authorized in the aforesaid chapter.

The enumeration of the above moneys or trust funds shall not prohibit the applicability thereto of §215.24 should the governor determine that for the reasons mentioned in said §215.24 said money or trust fund should be exempt herefrom, as it is the purpose of this law to exempt all trust funds from its force and effect where, by the operation of this law, federal matching funds or contributions to any trust fund would be lost to the state.

History.—§4, ch. 20890, 1941; §2, ch. 61-493; (21) r. §16, ch. 63-572; (33) §2, ch. 63-496.

215.23 When contributions to be made.—The deduction hereby required shall be paid into the general revenue fund by the comptroller or by the state treasurer, as the case may be, for quarterly periods ending March 31, June 30, September 30, and December 31 of each year, and when so paid into the general revenue fund shall thereupon become a part of said fund to be accounted for and disbursed as provided by law with respect to the general revenue fund.

History.—§5, ch. 20890, 1941.

215.24 Exemptions where federal contributions.—

(1) Should any state fund be the recipient of federal contributions, either by the matching of state funds or by a general donation to state funds, and the payment of monies into the general revenue fund under this law should cause such fund to lose federal assistance, the governor shall certify to the comptroller and to the state treasurer that said fund is for that reason exempt from the force and effect of this law.

(2) Should it be determined by the governor that by reason of payments already made into the

general revenue fund by any fund under this law, such fund is subject to the loss of federal assistance, then the governor shall certify to the comptroller and to the state treasurer that such fund is exempt from the provisions of this law, and the comptroller or the state treasurer, as the case may be, shall thereupon refund and pay over to such fund any amount or amounts previously paid into the general revenue fund by such fund.

History.—§6, ch. 20890, 1941; (3)r. §5, ch. 61-493.

215.25 Manner of contributions; rules and regulations. — The comptroller and the state treasurer are hereby authorized to ascertain and determine the manner in which the required amounts shall be deducted and paid and to adopt and effectuate such rules and procedure as may be necessary for carrying out the provisions of this law. Such rules and procedure shall be approved by the budget commission.

History.—§7, ch. 20890, 1941.

215.26 Repayment of funds paid into state treasury through error, etc.—

(1) The comptroller of the state may refund to the person who paid same, or his heirs, personal representatives or assigns, any moneys paid into the state treasury which constitute:

(a) An overpayment of any tax, license or account due;

(b) A payment where no tax, license or account is due; and

(c) Any payment made into the state treasury in error;

and if any such payment has been credited to an appropriation, such appropriation shall at the time of making any such refund, be charged therewith. There are appropriated from the proper respective funds from time to time such sums as may be necessary for such refunds.

(2) Application for refunds as provided by this section shall be filed with the comptroller within three years after the right to such refund shall have accrued else such right shall be barred and such application shall be on a form to be prescribed by the comptroller and shall be sworn to and supplemented with such additional proof as is necessary to establish such claim; provided, such claim is not otherwise barred under the laws of this state.

(3) No refund of moneys referred to in this section shall be made of an amount which is less than one dollar, except upon application.

History.—§1, ch. 22008, 1943; (2) §14, ch. 57-1; (3) n. §1, ch. 57-18; (2) §1, ch. 59-181; (2) §1, ch. 63-271.
cf.—§95.37 Limitation on claims against state.

215.28 Defense stamps and war bonds, purchase by state and county officers and employees; deductions from salary.—

(1) Upon the request in writing, signed by any officer or employee of the state, or of any county, or other political subdivision or subordinate agency of the state or any county, any officer or employee who acts as disbursing agent for the payment of salaries and wages is hereby authorized and empowered to deduct from the salary or wages of such officer or employee, periodically, such sum as authorized by such written application, for the purchase of United States securities.

(2) The participation in such pay-roll deduction plan by any officer or employee shall be entirely voluntary at all times, and any officer or employee may from time to time increase or decrease the amount to be so deducted, or cancel his pay-roll deduction authorization, or change the form of registration for securities to be purchased.

(3) All deductions so made by any such disbursing authority shall be deposited in a trust account separate and apart from the funds of the state, county or subordinate agency. Such account will be subject to withdrawal only for the purchase of United States securities on behalf of officers and employees, or for refunds to such persons in accordance with the provisions of this law. Whenever the sum of eighteen dollars and seventy-five cents or the purchase price of the security requested to be purchased is accumulated from deductions so made from the salaries or wages of an officer or employee, such disbursing agent shall arrange the purchase of the bond or security applied for and have it registered in the name or names requested in the deduction authorization. Securities so purchased will be delivered in such manner as may be convenient for the issuing agent and the purchaser.

(4) Upon request, the disbursing agent will advise the officer or employee of the amount accumulated in his account for the purchase of United States securities. A periodic statement showing amounts accumulated to the credit of the officer or employee need not be issued.

(5) When an officer or employee leaves the service of the state, county or subordinate governmental agency, the pay-roll deduction authorization will be canceled automatically and any amount credited to the officer or employee's account shall immediately be refunded and paid to the officer or employee entitled to receive the same. In case of death of an officer or employee, the pay-roll deduction authorization will be canceled automatically and any amount to the credit of the officer or employee's account will be paid immediately to the surviving spouse, children or parents of the officer or employee, according to and as provided by §§222.15 and 222.16.

(6) The disbursing agent is authorized to promulgate such reasonable rules and regulations with reference to the handling of such pay-roll deduction plan as will promote the purposes thereof and as shall most conveniently meet the facilities of the office of such disbursing agent.

History.—§§1-6, ch. 21794, 1943.

215.29 Classification of comptroller's warrants; report.—All disbursements made by the state upon comptroller's warrants countersigned by the governor shall be classified according to officers, offices, bureaus, divisions, boards, commissions, institutions, or other agencies and undertakings and shall be further classified according to personal services, contractual services, commodities, current charges,

current obligations, capital outlays, debt payments, investments, and such additional classifications as may be prescribed or authorized by law; and such detail classifications shall be printed in the comptroller's annual reports.

History.—§1, ch. 22901, 1945.

215.31 State funds; deposit in state treasury.—From and after June 30, 1945, revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency or undertaking of the state shall be promptly deposited in the state treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the comptroller as to source and no money shall be paid from the state treasury except as appropriated and provided by the biennial general appropriations act, or as otherwise provided by law.

History.—§2, ch. 22833, 1945.

215.311 State funds; exceptions.—The provisions of §215.31, shall not apply to funds collected by and under the direction and supervision of the Florida council for the blind as provided under §§413.011, 413.041 and 413.051; provided, nothing in this section shall be construed to except from the provisions of §215.31, any appropriations made by the state to the Florida council for the blind.

History.—§1, ch. 29872, 1955.

215.32 State funds; segregation.—

(1) All moneys received by the state shall be deposited in the state treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the state treasurer and the comptroller within the following funds, which funds are hereby created and established:

(a) General revenue fund,

(b) Trust funds, and

(c) Working capital fund.

(2) The source and use of each of the aforesaid funds shall be as follows:

(a) The general revenue fund shall consist of all moneys received by the state from every source whatsoever, except as provided in paragraphs (b) and (c) of this subsection. Said moneys shall be expended pursuant to general revenue fund appropriations acts or transferred as provided in paragraph (c) of this subsection.

(b) The trust funds shall consist of moneys required by law to be deposited in a trust fund or moneys of a trust nature received by the state. Such moneys shall be properly accounted for and held in such trust funds until disbursed as provided by law or as provided in the trust provisions under which such moneys are received.

(c) The working capital fund shall consist of not more than fifty million dollars which shall be accrued from moneys in the general revenue fund which are in excess of the amount needed to meet the general revenue fund appropriation acts as determined by the comptroller; said moneys shall be used as a revolving fund for transfers as provided by §215.18, and when the comptroller determines that said moneys are not needed for that purpose they may be temporarily invested as provided in §§215.44-215.54; provided, however, the requirement of §215.18 relating to repayment of said transfers in the same fiscal year in which the transfer is made is hereby suspended for the biennial period beginning July 1, 1961 and ending June 30, 1963 insofar as it relates to repayments of transfers from the working capital fund during the 1961-63 biennium.

History.—§3, ch. 22833, 1945; (5) §1, ch. 59-91; §2, ch. 59-257; §1, ch. 61-119.

215.34 State funds; noncollectible items; procedure.—Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions or charges of any sort authorized to be made under the laws of the state and deposited in the state treasury as provided herein, which may be returned for any reason by the bank upon which same shall have been drawn shall be forthwith returned by the state treasurer for collection to the state officer or the state agency making the deposit. In such case, the treasurer is hereby authorized to issue a debit memorandum charging the proper fund or account to which same shall have been originally credited and shall send a copy of said debit memorandum to the state agency making the deposit and to the comptroller stating his reasons for returning the said check, draft, or other order. Such procedure for handling noncollectible items shall not be construed as paying funds out of the state treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

History.—§5, ch. 22833, 1945.

215.35 State funds; warrants and their issuance.—All warrants issued by the comptroller shall be numbered in chronological order commencing with number one in each fiscal year and each warrant shall refer to the comptroller's voucher by the number thereof, which voucher shall also be numbered as above set forth. Each warrant shall state the name of the payee thereof and the amount allowed, and said warrant shall be stated in words at length. No warrant shall issue until same has been authorized by an appropriation made by law but such warrant need not state or set forth such authorization. The comptroller shall register each warrant in his office. The warrants shall be coded to show the fund, account, purpose and department involved in the issuance of such warrant. In those instances where the expenditure of funds of regulatory boards or commissions has been provided for by laws other than the biennial appropriation bill, warrants shall issue upon requistion to the state comptroller by the governing body of such board or commission.

History.—§6, ch. 22833, 1945.
cf.—A9 S4 Money drawn from treasury.

215.36 State funds; laws not repealed.—Nothing in §§215.30-215.36 shall be construed as repealing §§215.20 to 215.25, inclusive, or as affecting the proceeds of two cents per gallon of the total tax levied by state law upon gasoline and other like products of petroleum now known as the second gas tax, and upon other fuels used to propel motor vehicles, placed in the state treasury and divided and distributed as required by §16 of Art. IX of the constitution of this state.

History.—§7, ch. 22833, 1945.

215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; ten per cent to general revenue fund; appropriation.—

(1) For the purposes of this section examining and licensing boards shall include: state board of accountancy, Florida state board of architecture, barbers' sanitary commission, board of examiners in the basic sciences, state board of beauty culture, board of chiropody examiners, board of chiropractic examiners, Florida state board of dental examiners, Florida state board of engineer examiners, state board of funeral directors and embalmers, Florida board of massage, state board of medical examiners, state board of naturopathic examiners, Florida state board of nursing, state board of dispensing opticians, Florida state board of optometry, state board of osteopathic examiners, Florida board of pharmacy, Florida state board of examiners of psychology, Florida real estate commission, sanitarians registration board, structural pest control commission of Florida, state board of veterinary examiners, and Florida watchmakers' commission.

(2) All fees, licenses, and other charges collected by each examining and licensing board, shall be deposited in the state treasury into a separate trust fund to the credit of the individual board collecting same.

(3) Each board shall be financed solely and individually from income accruing to it from fees, licenses, and other charges collected by the board, and all such moneys are hereby appropriated to each such board. All salaries and expenses shall be paid as budgeted after said budgets have been approved by the state budget commission or within the limitations of any appropriation for that purpose which may be included in the general appropriations act.

(4) Each board shall be charged ten per cent of all revenue collections (excluding refunds, grants, donations, etc.) made and credited to its account. The amount so charged shall be deposited in the general revenue fund.

(5) Each board shall submit a biennial legislative budget and operating budgets as required of all governmental subdivisions in chapters 215 and 216, to be based upon anticipated revenues together with any unexpended balance of moneys which may accrue to the credit of the particular board. Such budgets shall be subject to appropriate legislative action.

(6) Each board shall operate financially within the budget approved by the state budget commission and all disbursements shall be made by the comptroller only as provided by law for all agencies of government.

(7) It is the intent and purpose of the legislature to place all examining and licensing boards under strict budgetary control and to determine the policy of budgeting all collections and expenditures of moneys collected through examining and licensing laws and to be used by the boards for enforcement and administrative purposes.

History.—§8, ch. 28115, §3, ch. 28231, 1953; (5) §24, ch. 57-1; (5) §13, ch. 59-1; §1, ch. 61-514.
cf.—§216.211 Appropriations, maximum; adjustment of budgets.

215.42 Purchases from appropriations, proof of delivery.—The state comptroller may require proof, as he deems necessary, of delivery and receipt of purchases before honoring any voucher for payment from appropriations made in the general appropriations act or otherwise provided by law.

History.—§20, ch. 28115, §14, ch. 28231, 1953.

215.43 Public bonds, notes, and other securities.—

(1) DEFINITIONS.—As used in this section, the following words and term shall have the following meanings:

(a) The word "unit" shall mean any department, board, commission or other agency of Florida, or any county, city, town, village, district or any other political subdivision of the state, heretofore or hereafter created or established, or any board, commission, authority or other public agency or instrumentality which is now or may hereafter be authorized by law to issue bonds.

(b) The term "governing body" shall mean the officer or officers, or the department, board, body, council, commission, authority or other agency which is authorized by law to take the proceedings which are required to authorize or to provide for the issuance of bonds.

(c) The word "bonds" shall include all bonds, notes, certificates and other similar obligations and securities of a unit whether payable in whole or in part from the proceeds of ad valorem taxes, revenues or any other source.

(2) EXECUTION OF PUBLIC SECURITIES.—Any bonds heretofore or hereafter authorized to be issued by any unit under the provisions of any general, special or local law heretofore or hereafter enacted and any interest coupons attached thereto may, if so authorized by the governing body of such unit, bear or be executed with the facsimile signature of any official authorized by such law to sign or to execute such bonds or coupons; provided, however, that each such bond shall be manually signed by at least one official of such unit. In case any such law shall provide for the sealing of such bonds with the official or corporate seal of such unit or of its governing body or any official thereof, a facsimile of such seal may be imprinted on the bonds if so author-

ized by the governing body of such unit, and it shall not be necessary in such case to impress such seal physically upon such bonds.

In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers.

History.—§§1, 2, ch. 57-763.

215.431 Issuance of bond anticipation notes.—Each of the counties, school boards, districts, authorities and municipalities in the state shall have power, at any time and from time to time after the issuance of bonds thereof shall have been authorized, whether such bonds be general, special, revenue or other obligations of such county, school board, district, authority, or municipality, and, if the approval of such bonds at an election is required after the holding of such election, to borrow money for the purposes for which such bonds are to be issued in anticipation of the receipt of the proceeds of the sale of such bonds and within the authorized maximum amount of such bond issue. Any such loan shall be paid within three years after the date on which the issuance of such bonds shall have been authorized or, if such bonds shall have been approved at an election, within five years after the date on which such election shall have been held. Bond anticipation notes shall be issued for all moneys borrowed under the provisions of this law, and such notes may be renewed from time to time, but all such notes shall mature within the time above limited for the payment of the original loan. Such notes shall be authorized by resolution of the governing body of the issuer and shall be in such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by law or by the resolution or ordinance authorizing the issuance of the bonds, whichever shall be the lesser, shall be in such form and shall be executed in such manner, all as such governing body shall prescribe. Such notes may be sold at either public or private sale or, if such notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the governing body shall determine. The governing body may, in its discretion, retire any such notes by means of current revenues, in lieu of retiring them by means of bonds, provided, however, that before the retirement of such notes by any means other than the issuance of bonds it shall amend or repeal the resolution or ordinance authorizing the issuance of the bonds in anticipation of the proceeds of the sale of which such notes shall have been issued so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. Such amendatory or repealing resolution or ordinance shall take effect upon its passage and need not be published. All powers and rights conferred by this law shall be in addition to and supplemental to those conferred by any other general or special law and shall be liberally construed to effectuate the purposes hereof.

History.—§1, ch. 59-127.

215.44 Board of administration; powers and duties in relation to investment of funds of state agencies.—

(1) Except where otherwise specifically provided by the state constitution, the state board of administration, hereinafter sometimes referred to as "board", composed of the governor as chairman, the state treasurer, and the state comptroller, shall have and exercise all the rights, powers, jurisdiction, duties, privileges and authority heretofore vested by law in any state department, agency, institution, or officer relating to the investment or reinvestment of moneys and the purchase, sale or exchange of any investments or securities of or for any investment funds or investment accounts under the control and management of such departments, agencies, institutions or officers, and required by law to be deposited with the state treasurer.

(2) The board shall have the power to make purchases, sales, exchanges, investments and reinvestments for and on behalf of any of the funds or accounts referred to in subsection (1), and it shall be the duty of the board to see that moneys invested under the provisions of §§215.44-215.54 are at all times handled in the best interests of the state.

History.—§§1, 2, ch. 57-353.

215.45 Sale and exchange of securities.—Securities or investments purchased or held under the provisions of this chapter may be sold or exchanged for other securities or investments; provided, however, that no sale or exchange shall be at a price less than the market price of the securities or investments to be sold or exchanged unless such sale or exchange has received the unanimous approval of the board.

History.—§3, ch. 57-353.

215.46 Collection of defaulted investments.—In the event of default in the payment of principal of, or interest on, any investments made, the attorney general, upon request of the board, is authorized to institute the proper proceedings to collect such matured principal or interest, and may, with the approval of the board, accept proposals for the exchange of bonds for refunding bonds or other evidences of indebtedness at interest rates to be agreed upon with the obligor, and to make such compromises, adjustments, or disposition of interest or defaulted principal, or to make such compromises or adjustments as to future payments of interest

or principal, as deemed advisable for the purposes of protecting the funds invested.

History.—§4, ch. 57-353.

215.47 Investments; authorized securities.—Moneys available for investment under §§215.44-215.54 may be invested in the following types of securities and in no other:

(1) Without limitation in:

(a) Florida county road and bridge bonds issued on or before July 1, 1931, or refunding issues thereof, which are administered by the state board of administration and are commonly referred to as SBA bonds.

(b) School bonds of the state board of education, issued pursuant to §18 of Art. XII of the Florida constitution.

(c) Bonds of the several counties or districts in Florida containing a pledge of the full faith and credit of the county or district involved.

(d) Bonds of the Florida state improvement commission and the Florida development commission containing a pledge of the eighty percent surplus two cents gasoline tax accruing under the provisions of §16 of Art. IX of the Florida constitution.

(e) Bonds, notes, or other obligations guaranteed by the United States.

(2) Not more than ten per cent of any particular fund in any one of the following six types of securities, based upon the par value of securities in the particular fund and not upon the principal amount of the fund:

(a) Bonds, notes, or obligations of any municipal or political subdivision or any agency or authority of this state, issued pursuant to a law of this state; provided that the issuer has not, within ten years prior to the making of the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes, or obligations; and provided, further, if the bonds are city, county, agency, authority or utility district revenue bonds, the revenues of which, other than for payment of operation and maintenance expenses, are pledged wholly to the payment of the interest and principal of such indebtedness, and the project has been completely self-supporting from such pledged revenue sources for a period of five years next preceding the date of investment.

(b) Bonds, debentures, or other obligations issued by a federal land bank, or by a federal intermediate credit bank, under the act of congress of July 17, 1916, known as the "federal farm loan act," as amended or supplemented from time to time.

(c) Bonds, debentures, or other obligations issued by any mortgage association under the act of congress of June 27, 1934, known as the "national housing act," as amended or supplemented from time to time.

(d) Obligations of any state or municipal authority issued pursuant to the laws of this state; provided, however, that for each of the five years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than one and one-fifth times its average annual fixed charges requirements over the life of such obligations.

(e) Savings share accounts of any savings and loan association incorporated under the laws of this state or in savings share accounts of any federal savings and loan associations situated in this state, to the extent that such investments are insured by the federal government or an agency thereof.

(f) Savings accounts of any bank incorporated under the laws of this state or in any national bank organized under the laws of the United States doing business and situated in this state, to the extent that such investments are insured by the federal government or an agency thereof.

(3) Not more than thirty per cent of any fund to June 30, 1964, and not more than thirty-five per cent of any fund, thereafter, based upon the par value of securities in the particular fund and not upon the principal amount of the fund, in interest bearing obligations with a fixed maturity of any corporation within the United States, if such obligations are rated by at least two nationally recognized rating services in any one of the three highest classifications approved by the comptroller of the currency for the investment of the funds of national banks; provided, however, that if only one nationally recognized rating service shall rate such obligations, then such rating service shall have rated such obligations in any one of the two highest classifications heretofore mentioned.

History.—§5, ch. 57-353; (3) n. §1, ch. 61-462; (2) §1, ch. 63-341; (3) §1, ch. 63-446.

215.48 Consent and ratification of appropriate board or agency.—By and with the consent and approval of any constitutional board or agency now having the constitutional power to make investments, and in accordance with the provisions of §§215.44-215.54, the board shall have the power to make purchases, sales, exchanges, investments and reinvestments for and on behalf of any such board or agency for subsequent ratification thereof by such board or agency.

History.—§6, ch. 57-353.

215.49 Making funds available for investment.—It shall be the duty of each department, agency, institution or officer now or hereafter charged with the administration of the investment funds referred to in §215.44 to make such moneys available for investment as fully as is consistent with the cash requirements of the particular fund. Monthly and more often as circumstances require, such official or agency shall notify the state board of administration of the amount available for investment, and the investment shall be made by the board, and paid for by the state treasurer upon order of the comptroller countersigned by the governor, or as may be otherwise provided by law. Such notification shall include the name and number

of the fund for which the investments are to be made, and of the life of the investment if the principal sum is subsequently to be required for meeting obligations; provided, however, that nothing herein shall be construed as legislative intent to make available for investment any funds other than those designated as investment funds referred to in §215.44.

It shall also be the duty of each department, agency, institution or official referred to in §215.44, to furnish the board as of August 1, 1957, an inventory of all securities in the particular fund, together with such additional information as may be requested by the board.

History.—§7, ch. 57-353.

215.50 Custody of securities purchased; interest, etc.—

(1) All securities purchased or held shall be in the custody of the state treasurer who may, with the approval of the board, deposit same with a bank or trust company to be held in safekeeping by such bank or trust company for collection of principal and interest, or of the proceeds of sale thereof.

(2) It shall be the duty of the state treasurer to collect the interest, or other income on, and the principal of such securities in his custody as the said sums become due and payable, and to pay the same, when so collected, into the fund to which the investments belong.

(3) Whenever a given investment is owned by two or more funds, the income shall be prorated in accordance with the ownership of the respective funds.

History.—§8, ch. 57-353.

215.51 Investment accounts; changes; notice, etc.—

(1) The board shall keep, for each fund for which investments are made, a separate account, to be designated by name and number, which shall record the individual amounts and the totals of all investments belonging to such fund. Every receipt and collection or disbursement when received or made shall be immediately reported to the board for recording to the particular fund to which it belongs.

(2) The board shall make written report monthly to each and every interested state official or agency the changes in investments made during the preceding month for their respective fund or funds, and, in addition, shall furnish the details on the investment transaction of any fund upon written request of such state official or agency or head thereof.

History.—§9, ch. 57-353.

215.52 Rules and regulations.—The board shall have power and authority to make reasonable rules and regulations necessary to carry out the provisions of §§215.44-215.54.

History.—§10, ch. 57-353.

215.53 Powers of existing officers, boards, and agencies not affected.—It is the intent of the legislature that transfer of the powers, duties and responsibilities of existing officers, boards and agencies made by §215.44-215.54 to the board shall include only the particular powers, duties and responsibilities hereby transferred, and all other existing powers shall in no way be affected by said sections. The powers, duties and responsibilities conferred by §§215.44-215.54 upon the board are additional and supplemental to the existing powers of the officers composing the said board.

History.—§11, ch. 57-353.

215.54 Fire insurance fund.—Sections 215.44-215.53 shall not apply to the state fire insurance trust fund as provided by §284.09.

History.—§13, ch. 57-353; §2, ch. 61-119.

215.55 Flood control trust fund; county distribution.—The funds collected and deposited in the flood control trust fund shall be distributed annually to the county in which the money is collected, as follows: Fifty per cent to the board of county commissioners and fifty per cent to the board of public instruction in such counties; provided, that all moneys accruing to Marion county hereunder shall be paid to the internal improvement commission until loan of six thousand dollars, now owed to said commission by Marion county, has been repaid in full; thereafter, all moneys accruing hereunder shall be paid as provided for other counties herein.

History.—§1, ch. 59-204; §2, ch. 61-119.

215.56 Bond review board; state board of administration.—

(1) There is hereby created a bond review board, whose membership shall consist of the governor, the comptroller and the treasurer of the state, the president of the Florida senate and one other member of the senate to be appointed by such president, the speaker of the house of representatives of Florida and one other member of such house to be appointed by the speaker. All such members shall serve during their tenure in such designated office except the member of the senate and the member of the house appointed by the president and speaker, respectively, whose term shall be for four years from date of appointment unless sooner terminated by failure to qualify as a member of the legislative branch from which appointed.

(2) The bond review board shall adopt rules and regulations prescribing for state agencies, boards, commissions and authorities the criteria which shall govern such agencies, boards, commissions and authorities in the preparation and submission of proposed bond issues and revenue certificates to the bond review board for their approval or disapproval. These criteria shall establish limits on interest rates and interest costs, underwriting fees, maturities, fees paid for all professional services rendered, and all other matters deemed essential in establishing the legal and fiscal sufficiency of proposed bond or revenue certificate issues.

(3) It shall be the responsibility of the bond review board to review all bond and revenue certificate financing for all state agen-

cies, boards, commissions and authorities and to determine that such financing has legislative approval and is in keeping with legislative intent. No such bonds or revenue certificates shall be issued unless such bonds or revenue certificates have first been approved by the bond review board.

(4) Unless otherwise provided by law, all revenue bonds or revenue certificates to be issued by or on behalf of each state agency, board, commission or authority shall be first submitted to the constitutional state board of administration, who in addition to all other legal responsibilities shall as fiscal agent have the responsibility and authority for approving such issues as to legal and fiscal sufficiency and after approval by such board, such proposed issues shall be submitted to the bond review board for final approval or disapproval.

History.—§§1-4, ch. 63-335.

CHAPTER 216

STATE BUDGET COMMISSION

216.01 Membership of budget commission.—The budget commission for the state shall be composed of the governor, the secretary of state, the comptroller, the state treasurer, the attorney general, the commissioner of agriculture and the state superintendent of public instruction, who shall exercise such powers and discharge such duties as in this chapter provided. A majority vote of said commission shall be necessary to decide matters and questions coming before said commission.

History.—§1, ch. 8426, 1921; §1, ch. 10034, 1925; CGL 1366.

216.02 Estimates to be furnished by departments, bureaus, institutions, etc.—

(1) On or before the fifteenth day of November, biennially, prior to the meeting of the legislature, each of the several departments, bureaus, divisions, officers, commissions, institutions, boards, and all other state agencies created by legislative act and supported by any form of taxation or licenses, fees, imposts, or exactions, hereinafter referred to as "agencies", shall report to the budget director the following:

(a) An estimate in itemized form showing the amount needed for operational expenditures for the next two years, beginning the first day of July thereafter.

(b) An estimate in itemized form showing the amount needed for building and equipment expenditures for the next ten years, beginning the first day of July thereafter.

(c) A summary of each contract awarded, if any, for the acquisition or construction of buildings and equipment during the current biennium, together with a statement giving the present status of acquisition or construction.

(d) A complete list of each building and equipment appropriation not acted upon during the current biennium, the reasons therefor, and a statement as to whether contracts are to be let thereunder in the succeeding biennium.

(2) The form of reports shall be prescribed by the budget director, shall be as nearly uniform as may be, and shall designate the kind of information to be given thereon.

History.—§2, ch. 8426, 1921; CGL 1367; §1, ch. 14654, 1931; §2, ch. 22857, 1945; §1, ch. 27994, 1953.

216.021 Limitation on power.—No right to require reports from the legislature or from the legislative council and reference bureau is granted by this chapter.

History.—§1, ch. 29660, 1955.

216.022 Data on legislative expenses.—

(1) On or before November fifteenth, biennially, in the year next preceding the convening of the state legislature, estimates of the financial needs of the legislature during the ensuing legislative session and expenses of interim committees shall be prepared by a committee consisting of the president-designate of the senate, speaker-designate of the house, chairman-designate of the senate committee on legislative expenses (or management) and the chairman-designate of the house committee on legislative expenses. These estimates shall be furnished to the budget commission by the secretary of the senate, and clerk of the house of representatives and certified by them.

(2) On or before November fifteenth, biennially, in the year next preceding the convening of the legislature, estimates of the financial needs of the legislative council and reference bureau for each of the two fiscal years of the ensuing biennial period, shall be

furnished to the budget commission by the chairman of the legislative council or such other person as may be designated by the council for that purpose. These estimates shall include salaries of the employees of the legislative reference bureau and the estimates of other requirements for the legislative council and reference bureau as approved by the legislative council.

(3) All of the data relative to the legislative branch of the government shall be for the budget commission's information and guidance in estimating the total financial needs of the state for the ensuing biennial period; but none of these estimates shall be subject to revision or review by the commission and must be included in the budget report as prepared by it.

History.—§2, ch. 29660, 1955.

216.04 Statements, information, etc., to be furnished by comptroller.—On or before the fifteenth day of December, biennially, prior to the meeting of the legislature, the comptroller shall furnish to the budget commission the following statements, classified and itemized in strict accordance with the budget classifications adopted by the budget commission:

(1) A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, officer, board, commission, institution and all other agencies of the state created by legislative act and supported from any form of taxation or licenses, fees, imposts, or exactions at the end of the last preceding appropriation year.

(2) A statement showing the monthly expenditure and revenues from each appropriation account, and the total monthly expenditures and revenues from all appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.

(3) A statement showing the annual expenditures in each appropriation account, and the revenues from all sources, including expenditures and revenues from special and all other appropriations, for each of the last two appropriation years, with a separate column showing the increase or decrease for each item.

(4) An itemized and complete financial balance sheet for the state at the close of the last preceding fiscal year.

(5) Such other statements as the budget commission shall request.

History.—§4, ch. 8426, 1921; CGL 1369; §3, ch. 14654, 1931; §3, ch. 22857, 1945.

216.041 Filing of state agency balance sheets; handling by comptroller.—

(1) On or before July 31 of each year, each of the several departments, bureaus, divisions, officers, commissions, institutions, boards, and all other state agencies created by legislative act and supported by any form of taxation or licenses, fees, imposts, or exactions, hereinafter referred to as agencies, shall file with the comptroller a balance sheet as of June 30 of each year showing all assets and liabilities of the respective agencies.

(2) It shall be the duty of the comptroller to:

(a) Compile the respective balance sheets filed pursuant to subsection (1) into one balance sheet and furnish the legislature with a copy of the same no later than March 1 of each year the legislature convenes, and

(b) Furnish the budget commission with a copy of said compiled balance sheet pursuant to §216.04(4).

History.—§§1, 2, ch. 63-493.

216.06 The chief budget officer through the budget director may request information from departments, bureaus, etc.—The agencies mentioned in §216.02, upon request, shall promptly furnish to the budget director in such form as he may prescribe, any information in relation to the affairs or activities of such agency. The chief budget officer through the budget director shall have authority to examine and inspect any and all records of such departments, and shall bring to the attention of the budget commission such matters in reference thereto as he may deem necessary.

History.—§5, ch. 8426, 1921; CGL 1370; §4, ch. 22857, 1945.

216.07 Public hearings, etc. — The budget commission shall provide for public hearings on any and all estimates to be included in the budget report to the legislature, which shall be held at such time as the budget commission may fix. The budget commission shall require the attendance at these hearings of the heads or responsible representatives of all state departments, bureaus, divisions, officers, boards, commissions, institutions, and all other agencies of the state created by legislative act and supported by any form of taxation or licenses, fees, imposts or exactions.

History.—§6, ch. 8426, 1921; CGL 1371; §5, ch. 22857, 1945.

216.08 Budget commission to make survey of departments, bureaus, etc.—On or before the fifteenth day of December, or as soon thereafter as practicable, biennially, prior to the meeting of the legislature, the budget commission must have completed a careful survey of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and all other agencies of the state created by legislative act and supported by any form of taxation, licenses, fees, imposts or exactions, through which they shall be in possession of the working knowledge upon which to base their recommendations to the legislature.

History.—§7, ch. 8426, 1921; CGL 1372; §4, ch. 14654, 1931; §6, ch. 22857, 1945.

216.09 Governor to be chief budget officer and to appoint a budget director with the approval of the budget commission.—The governor shall be the chief budget officer of the state, and to facilitate the carrying out of the provisions of this law, a budget director shall be appointed by the governor with the approval of the budget commission to serve at the will of the budget commission. The budget commission shall set the salary of the budget director unless otherwise provided by law. To

carry out the duties required by law, the budget director shall employ such competent assistants and office help as may be necessary and shall fix their duties and compensation, payable from the general revenue appropriation biennially made by the legislature for that purpose. The budget director shall have no vote in the deliberations of the budget commission.

History.—§11, ch. 8426, 1921; CGL 1376; §7, ch. 22857, 1945; §1, ch. 59-210.

216.10 Duties of budget director.—

(1) It shall be the duty of the director to make a detailed study of each of the several state departments, bureaus, divisions, officers, commissions, agencies, institutions, and undertakings receiving or asking aid from the state, including such as are permitted by laws to charge, collect, and receive fees for inspection, examination, licenses or other perquisites, all hereinafter referred to as "agencies", with a view toward ascertaining and determining the needs thereof, whether changes should be made in existing organizations, their activities and methods of operation, what appropriation should be made therefor, whether the operations and activities of different agencies or within the same agencies should be combined, consolidated or integrated, or whether the same should be regrouped and rearranged, all to the end of securing greater economy without sacrificing efficiency in the operations of such agencies.

(2) Such study shall cover a period not less than the preceding fiscal year. The results thereof shall be embodied in a report which shall also include:

(a) The estimates furnished by state agencies covering their respective operating requirements.

(b) The estimates furnished by state agencies covering their respective building and equipment requirements.

(c) The respective operational amounts, and, building and equipment amounts requested by them to be appropriated by the legislature for the next biennium.

(3) Said report shall also show the director's own estimate for operating costs, and, building and equipment costs, separately and in such detail as may be necessary and the amounts required for each. Annual amounts last appropriated by the legislature shall be shown, together with amounts expended for the last fiscal year, amounts expended to the latest available date for the report, and an estimate of the amount required for the remainder of the current fiscal year, together with such other data as will reflect the financial condition of the state and its agencies at the close of the last fiscal year, and an estimate of what that condition will be at the close of the current year.

(4) The report shall be submitted to the budget commission not later than the fifteenth day of December, biennially, prior to the convening of the legislature.

History.—§13, ch. 8426, 1921; CGL 1378; §8, ch. 22857, 1945; §2, ch. 27994, 1953.

216.101 Uniform system of reporting; institutions of higher learning.—The state budget director may prescribe a uniform system of reporting for the institutions of higher learning on all phases of budget and fiscal matters, including uniform reporting on student enrollment, personnel, compensation and pay scales, buildings and equipment, and such other matters as he deems necessary. It shall be the duty and the responsibility of the governing body and the executive head of each of the state's institutions of higher learning to insure that the institutions comply with the prescribed uniform system of reporting.

History.—§2, ch. 29902, 1955.

216.11 Budget to be furnished legislature; copies to members, etc.—

(1) On or before March first, biennially, prior to the meeting of the legislature, the budget commission shall send by mail to each representative and senator a printed copy of the budget based on their own conclusions and judgment. The budget shall be distinctly separated into two sections, section one of the budget shall be entitled "operations". Section two shall be entitled "Buildings and Equipment". The budget shall contain a complete itemized plan of all proposed expenditures for each state department, bureau, division, officer, board, commission, institution, or other agency or undertaking, classified by function, character and object, and of estimated revenues for each year beginning with the first day of July thereafter. Opposite each item of proposed expenditure the budget shall show in separate parallel columns the amount appropriated for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. This budget shall be presented by the budget commission to the presiding officer of each house on the first day of each regular session of the legislature.

(2) The budget commission shall accompany the budget with:

(a) A statement of the revenues and expenditures for each of the two appropriation years next preceding, classified and itemized in accordance with the official budget classification adopted by the budget commission.

(b) A statement of the current assets, liabilities, reserves and surplus or deficit of the state.

(c) A statement of the funds of the state.

(d) A statement showing the budget commission's itemized estimates of the condition of the state treasury as of the beginning and end of each year.

(e) An itemized and complete financial balance sheet for the state at the close of the last preceding fiscal year.

(f) A recommendation of priorities for building and equipment expenditures for the next biennium.

(g) A recommendation of the total amount to be expended by that session of the legislature for 1. operations and 2. buildings and equipment.

(h) An itemized and complete list of all state owned buildings, together with a brief summary as to their present use or non-use, their present condition, major repairs needed, and the life expectancy of each of such buildings.

(i) A summary of each contract awarded, if any, for the acquisition or construction of buildings and equipment during the current biennium, together with a statement giving the present status of acquisition or construction.

(j) A complete list of each building and equipment appropriation not acted upon during the current biennium, the reasons therefor, and a statement as to whether contracts are to be let thereunder in the succeeding biennium.

History.—§8, ch. 8426, 1921; CGL 1373; §5, ch. 14654, 1931; §3, ch. 27994, 1953.

216.12 Meetings of appropriation committees, etc.—The appropriation committees of the house of representatives and of the senate, being in charge of appropriation measures, shall sit jointly in open sessions while considering the budget, and shall begin such joint meetings within five days after the budget has been submitted to the legislature by the budget commission. This joint committee may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the state to furnish such information and answer such questions as the joint committee shall require, and to these sessions shall be admitted, with the right to be heard, all persons interested in the estimates under consideration. Members of the budget commission, or their representatives, may sit at these public hearings, and be heard on all matters coming before the joint committee.

History.—§9, ch. 8426, 1921; CGL 1374.

216.13 Appropriation bills to be itemized.—All bills introduced in either house carrying appropriations shall be itemized in accordance with the classifications used in the budget.

History.—§10, ch. 8426, 1921; CGL 1375.

216.14 Legislature may change items in budget.—The legislature may increase or decrease items in the budget bill as it may deem to be in the interests of greater economy and efficiency in the public service.

History.—§10, ch. 8426, 1921; CGL 1375.

216.15 Appropriation.—The legislature shall appropriate such amounts as it may determine to be sufficient for the purpose of carrying out the duties and responsibilities of the commission.

History.—§12, ch. 8426, 1921; CGL 1377; §9, ch. 22857, 1945; §1, ch. 61-25.

216.16 Departments to file annual expense budgets.—

(1) Not later than the first day of July subsequent to adjournment of the legislature, and during other years not later than the first day of June, each state agency shall prepare and file with the budget director a full and complete operational expense budget of all expenditures anticipated to be made for the next ensuing fiscal year, giving details as to number and amounts to be paid employees and for necessary and regular expense, and such others as are provided for by specific appropriations. At the same time each state agency shall prepare and file with the budget director a full and complete building and equipment budget of all expenditures anticipated to be made for those purposes for the next ensuing fiscal year, giving such details thereon as the director may request. The budget director shall examine said budgets, and as soon as practicable shall transmit to the budget commission his report thereon. The budget commission shall examine the budgets and the report of the director and shall approve or disapprove or amend said budgets. When approved, the budget director shall certify the action of the budget commission on each subject to the comptroller and such certification shall be the comptroller's guide in reference to the requirements of each; provided, however, this section shall not apply to the budgets for legislative expense, nor to the appropriation for the legislative council and reference bureau, nor to any appropriation specifically made for any other committees of the legislature, for use either during a session or in the interim of sessions. The budget commission shall have no authority over said budgets until and unless a determination shall be made that a shortage of revenues requires a reduction in all appropriations made by the legislature, in which event any percentage reserve required of all departments for which appropriation is made shall apply equally to such budgets.

History.—§10, ch. 22857, 1945; §4, ch. 27994, 1953; §3, ch. 29660, 1955.

216.17 Work programs of spending agencies; powers of budget commission.—

(1) Immediately before the beginning of each fiscal year, the state budget commission shall require the head of each spending agency to submit on forms prescribed by the state budget commission, a work program for the budget year, which program shall include all appropriations for operation and all anticipated revenue and receipts, and maintenance expenditures and for the acquisition of property, and it shall show the requested allotments of said appropriations for such spending agency for the ensuing year. The state budget commission shall review the requested allotments in the light of the work program of the spending agency concerned, and the state budget commission shall, if it deems necessary, revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total appropriations available to said spending agency for the budget year. The state budget commission shall trans-

mit a copy of the approved allotments to the head of the spending agency concerned and also a copy to the state comptroller. The state comptroller shall authorize all expenditures to be made from the appropriations on the basis of such allotments, and not otherwise.

(2) The head of any spending agency of the government, whenever he shall deem it necessary by reason of changed conditions, may revise the work program of his agency at the beginning of any quarter during the budget year and submit such revised program to the state budget commission with his request for a revision of the allotments for the remaining quarters of the budget year. If, upon a re-examination of the work program, the state budget commission shall decide to grant the request for a revision of the allotments, the same procedure, as far as it relates to review, approval and control, shall be followed as in making the original allotments.

(3) In order to provide funds for possible emergencies arising during the budget year in the operation and maintenance expenditures of the various spending agencies, the state budget commission may require the head of each spending agency, in making the original allotments, to set aside at least five per cent of the total amount appropriated as a reserve. At any time during the budget year, this reserve, or any portion of it, may be returned to the appropriation to which it belongs and be added to any one or more of the allotments, provided the state budget commission shall deem such action necessary and shall notify the comptroller of such action; any unused portion thereof shall remain at the end of the budget period as an unexpended balance of the appropriation.

(4) The provisions of this section shall not apply to the state road department.

History.—§11, ch. 22857, 1945; §14, ch. 26859, 1951; §1, ch. 26942, 1951; §15, ch. 28231, 1953; §5, ch. 28231, 1953.

cf.—§216.211 Appropriations, maximum; adjustment of budgets.

216.18 Services of director to be available to legislature, etc.—During the legislative session, the services of the director shall be available to the legislature for procuring such fiscal data as it may require. He shall have ready by the beginning of each session and shall furnish to the legislature and to the governor the following:

A tabulation showing:

(1) The operating cost of each state agency for the past fiscal year and an estimate of the cost for the current fiscal year, arranged by groups according to fund or funds from which supported or paid.

(2) The then balance, and an estimate of the probable final balance, which will remain at the close of the biennium to each agency and to the fund out of which supported, or the deficit therein or amount by which the same fails to meet requirements imposed by the legislature.

And, during the session:

(3) As the legislature progresses in its work and makes provision for reduced or additional activities or expansions, a prompt ascertainment of funds required therefor.

(4) A tabulation, adjusted daily or as appropriations are made and as revenue is provided, showing the estimated requirements for revenue, the revenue anticipated from existing and proposed sources, and the additional required, if any.

History.—§12, ch. 22857, 1945.

216.19 Budget of Florida citrus advertising trust fund.—The budget of the Florida citrus advertising trust fund, except expenditures provided for under §601.10, shall be approved as submitted by the Florida citrus commission.

History.—§13, ch. 22857, 1945; §1, ch. 26982, 1951; §2, ch. 61-119.

216.20 Budgets for federal funds; approval.—Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services shall have such request or budget approved in writing by the state budget commission before submitting it to the proper federal authority. When such federal authority has approved the request or budget, the agency of the state government shall resubmit it to the director of the budget for recording before any allotment or encumbrance of the federal funds can be made.

History.—§1, ch. 26538, 1951.

216.211 Appropriations, maximum; adjustment of budgets.—

(1) All appropriations provided in the general appropriations act or otherwise provided by law shall be maximum appropriations, based upon the collection of sufficient revenue to meet and provide for such appropriations. If, in the opinion of the governor, the revenues to be collected will be insufficient to meet the appropriations provided for in said general appropriations act, he shall so certify to the state budget commission, and the state budget commission shall adjust the budget of any department or board to the end that efficiency and economy may result therefrom, and the appropriations kept within the revenues of the state. In the event the state budget commission shall fail to adjust the budgets of the several departments after the governor has certified that the anticipated revenue will not permit the maximum appropriation made, the governor is hereby vested with the power and authority to effect such changes by executive order, it being the intent and purpose of this section to prevent any deficit in any department of the state government, and that the revenues available shall be used in the most efficient and economical manner; provided, however, that this section shall not be construed to mean that the governor or the state budget commission has the power to eliminate any department of government.

(2) No additional funds shall be released by the budget commission to any revenue producing department in excess of the amounts

provided in the general biennial appropriations act, or as provided by chapter 28231, 1953.

History.—§12, ch. 28115, §§8, 9, ch. 28231, 1953; §215.38, 1955.

216.22 Emergency or contingency appropriations; approval of expenditures.—Any appropriation to any department or agency which is classified as "emergency" or "contingency" may be expended only with the expressed approval of the state budget commission. The department or agency desiring the use of any such appropriation shall submit to the state budget commission application therefor in writing setting forth the facts from which the alleged emergency arises. The state budget commission shall, at a public hearing, review such application promptly and approve or disapprove the same as the circumstances may warrant; provided, that an affirmative vote of five members of the state budget commission shall be required for approval of such request.

History.—§19, ch. 28115, §13, ch. 28231, 1953; §215.39, 1955.

216.25 Motor vehicles; purchase by state budget commission.—The state budget commission is hereby authorized to purchase all motor vehicles for the various state officers, agencies and departments under the supervision of the state board of control, provided such purchases are within legislative appropriations therefor. Both motor vehicle appropriations and appropriations for necessary and regular expense of the proposed purchaser, may be considered in determining whether or not the purchase is within such appropriations.

History.—§2, ch. 20896, 1941; §116.17, 1955.
cf.—§116.16 Motor vehicles; purchase by board of control and commissioners of state institutions.

216.27 Authority to fix and collect fees for extension work.—The state board of control is hereby empowered to fix and collect fees for materials, correspondence study and extensions incident thereto, through the general extension division and it is expressly provided that all such fees so collected by the said board of control shall not affect the state appropriation or be deducted therefrom, and they shall be used only for the purposes for which they are collected; provided, however, that said fees shall not be expended except in pursuance of detailed budgets filed with and approved by the state budget commission; and said fees shall be deposited in the state treasury, for accounting with the comptroller of the state, who, upon the order of said board of control, shall draw his warrants on the state treasurer in payment for the said materials, correspondence study, and extension teaching and expenses incident thereto. In its biennial report, the board of control shall make report in detail of the collections and expenditure of said funds, together with a report of the work done.

History.—§6, ch. 28115, §2, ch. 28231, 1953; §240.071, 1955.

216.28 Additional appropriation.—All moneys received by the institutions under the management of the state board of control, other than from state and federal sources, are hereby appropriated to the use of the state board of control, for the respective institutions collecting same, to be expended as the state board of control may direct; provided, however, that said funds shall not be expended except in pursuance of detailed budgets filed with and approved by the state budget commission, and shall not be expended for the construction or reconstruction of buildings except as provided under §240.102.

History.—§5, ch. 28115, §1, ch. 28231, 1953; §240.091, 1955; §1, ch. 57-400; §1, ch. 61-500.

CHAPTER 218

FINANCIAL MATTERS PERTAINING TO POLITICAL SUBDIVISIONS

218.01 Authority to accept benefits of bankruptcy acts.—For the purpose of rendering effective the privilege and benefits of any amendments to the bankruptcy laws of the United States that may be enacted for the relief of municipalities, taxing districts and political subdivisions, the state represented by its legislative body gives its assent to, and accepts the provisions of any such bankruptcy laws that may be enacted by the congress of the United States for the benefit and relief of municipalities, taxing districts and political subdivisions and its several municipalities, taxing districts and political subdivisions, at the discretion of the governing authorities thereof, may institute and conduct and carry out, by any appropriate bankruptcy procedure that may be enacted into the laws of the United States for the purpose of conferring upon municipalities, taxing districts and political subdivisions, relief by proceedings in bankruptcy in the federal courts.

History.—§1, ch. 15878, 1933; CGL 1936 Supp. 1365(2).

218.02 Disposition of unused funds relating to the refunding of bonds.—All funds heretofore or hereafter raised or created by any county or taxing district for the purpose of applying toward the payment of interest or principal of refunding bonds of such county or taxing district, when such refunding bonds are not issued and such funds not otherwise lawfully disposed of, shall revert back to the county or special taxing district to be used by the governing body or board of such county or taxing district for such general and lawful purposes of the county or taxing district raising such funds as in the judgment and discretion of such governing body or board shall seem to the best interest of the county or taxing district.

For the purpose of carrying out the intent of this section, every officer or board, now or hereafter having the custody of any of the said funds shall transmit and return the same to the governing body or board of the county or taxing district, taking receipt therefor from such governing body or board.

History.—§§1, 2, ch. 15907, 1933; CGL 1936 Supp. 1365(4).

218.03 Creation of political subdivisions validated.—The creation, organization and existence of all cities, towns, counties, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state which have heretofore issued or taken proceedings toward the issuance of any bonds for the purpose of financing or aiding in financing any work, undertaking or project financed or to be financed in whole or in part by a loan or grant heretofore made or agreed to be made to such public body by the United States acting through the federal emergency administrator of public works are validated, ratified, approved and confirmed.

History.—§2, ch. 17750, 1937; CGL 1940 Supp. 1365(44).

218.04 Proceedings relating to certain bonds sold, etc., to federal government validated. — All proceedings heretofore taken in connection with the authorization or issuance of any issue of bonds, all or a part of which have heretofore been purchased by the United States through the federal emergency administrator of public works, or an agreement for the purchase of all or a part of which has heretofore been entered into by the United States through the federal emergency administrator of public works, issued or to be issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body are validated, ratified, approved and confirmed notwithstanding any lack of power of such public body, or the governing board, council, commission or officers thereof, to authorize such bonds, or to execute the same, and notwithstanding any defects or irregularities in such proceedings or in such sale, execution or delivery, and all bonds heretofore or hereafter issued pursuant to such proceedings shall constitute binding, legal, valid and enforceable obligations of such public body.

History.—§3, ch. 17750, 1937; CGL 1940 Supp. 1365(45).

218.05 Certain bonds sold to federal government, etc., validated.—All bonds heretofore issued for the purpose of financing or aiding in financing any work, undertaking or project by any public body to which any loan or grant has heretofore been made or agreed to be made by the United States of America through the federal emergency administrator of public works for the purpose of financing or aiding in financing of such work, undertaking or project,

including all proceedings for the authorization and issuance of such bonds and the sale, execution and delivery thereof, are validated, ratified, approved and confirmed, notwithstanding any lack of power of such public body or the governing board, council or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body.

The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, revenue certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History.—§§1, 4, ch. 17750, 1937; CGL 1940 Supp. 1365(43), 1365(45).

218.06 Transfer of funds by county commissioners with relation to public works grants.—Boards of county commissioners of the several counties of the state, whenever it may be necessary to meet the requirements of the United States government with reference to obtaining grants of federal funds in connection with the program of the public works administration, may by resolution of such board, transfer and expend such sums of money as may be necessary to obtain said grant, from any fund to such other fund as may be necessary to meet said requirements and carry out the intent and purposes of the said transfer; provided, however, that no such transfer may be made by any county of the state without first having obtained the approval of the comptroller of the state thereto, and in the counties of the state where there is provision for a budget commission, without first having also obtained the approval of said budget commission to said transfer.

The comptroller of the State of Florida and the budget commissions of the several counties of the state in which there are provisions for such budget commissions, may approve such transfers whenever in their opinion such transfers are necessary and proper.

History.—§1, ch. 18023, 1937; CGL 1940 Supp. 1373(73).

218.07 Surplus properties; purchase by the state, counties and municipalities and their agencies.—Authority to enter into any contract or contracts with the United States, or with any owning or disposal agency thereof, for the lease, purchase, or other acquisition of any equipment, supplies, materials, or other property, real or personal, offered for lease, sale, or other disposal, under the provisions of the act of congress known as the surplus property act of 1944, or any amendments thereto, or any other law providing for the disposal of such property as is the subject matter of said act, is hereby granted to the following political entities:

(1) The state and every board, commission, department, or other state agency, and every officer of the state authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for state use or purposes.

(2) Every county of the state, board of county commissioners, county boards of public instruction, or other county agency, and every county officer authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for county use or purposes.

(3) Every municipality of the state, and every officer thereof, authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for municipal use or purposes.

History.—§1, ch. 22677, 1945.

218.08 Surplus properties; authority and method of purchasing.—Any of the political entities and officers described in §218.07 may designate by appropriate resolution or order, any officer, employee or agency to enter a bid or bids in its, or their behalf for any surplus property, real or personal, offered for lease, sale or other disposal by the United States, or any owning or disposal agency thereof, and may authorize such officer, employee or agency to make any down payment, or payment in full, required in connection with such bidding.

History.—§2, ch. 22677, 1945.

218.09 Surplus properties; advertisement not required.—The authority granted in §218.07 may be exercised by the grantees of such authority without reference to the requirements of any general or special law, charter or ordinance, providing for advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, and with respect to, and to the extent of, the contracts herein authorized, all general or special laws, charters or ordinances relating to advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, are hereby abrogated, in order to effectuate the purposes of this law.

History.—§3, ch. 22677, 1945.

218.10 Surplus properties; terms of purchase.—The contracts herein authorized may be entered into for cash, or upon such credit terms or plan not in conflict with organic law, and as may be deemed advisable or expedient; any general or special law, charter or ordinance to the contrary is hereby modified to the extent of permitting entering into the contracts herein authorized, in order to effectuate the purposes of this law.

History.—§4, ch. 22677, 1945.

218.11 Surplus properties; construction of law.—Sections 218.07-218.10 shall not be construed as in anywise repealing, altering, modifying or qualifying any general or special law, charter or ordinance, relating to advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, or purchasing of property on credit terms, except to the extent herein provided.

History.—§5, ch. 22677, 1945.

CHAPTER 219

COUNTY PUBLIC MONEY, HANDLING BY STATE AND COUNTY

219.01 Definitions.—The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) For the purposes of this act, the term "officer" shall be taken to mean a county officer, including an officer whose authority is ordinarily confined to a district within a county, whose duties require or authorize him to collect public money; the term "officer" shall not include any board or commission or any member thereof acting as such.

(2) The term "public money" shall be taken to mean and include all money collected by a county officer which he is required or authorized by law, as such county officer, to collect, and underpayments, overpayments, partial payments and deposits of such money, except his salary when his sole compensation is provided by such salary.

History.—§1, ch. 57-349.

219.02 Handling of public money.—It shall be the duty of each officer to issue a receipt for each collection of public money made by him, a copy of which receipt shall be retained by the officer and shall be a public record. The receipt may be printed and registered by a cash register or validating machine, or may be by prenumbered license, or may be by prenumbered receipt blank. In addition to the foregoing alternative methods, any one or more of which may be used by the officer, he may use also any other form or method prescribed or approved by the state comptroller which will record collections of public money in a manner adequate for a proper post audit. The forms, the methods, the built-in characteristics of the cash register or validating machine, and the procedures for their use shall be prescribed or approved by the state comptroller. The state comptroller shall furnish the forms prescribed by him and keep a record of the prenumbered receipt blanks issued by him to each officer. The officer shall keep safely all unused receipt blanks issued to him.

It shall be the duty of each officer to keep safely all the public money collected by him. Each officer shall exercise all possible care for the protection of the public money in his custody, and all public money shall be kept separate in the depository and shall not be commingled with personal funds.

It shall be the duty of the several boards of county commissioners to provide suitable facilities, and adequate insurance, for the protection of the public money in the respective county offices; provided, that if it shall appear to an officer that the facilities or the insurance provided by the board of county commissioners are inadequate, he may, with the approval of the state comptroller, provide the additional facilities and insurance found to be necessary, and may charge the cost thereof to the expense of his office.

History.—§2, ch. 57-349.

219.03 Deputies and employees.—Each deputy and employee handling public money in county offices may be placed under bond by the officer, and the premium on the bond may be charged to the expense of the office.

History.—§3, ch. 57-349.

219.04 Cash book.—Each officer as defined in this act, shall keep a cash book, or books, wherein shall be entered daily all receipts and disbursements of public money, either by items or by summaries of itemized entries in other records, including machine tapes, kept in such office. The cash book shall be balanced, it shall show the amount of money on hand, and shall be a permanent record of the office.

The cash book and the lists and records subsidiary to it and essential to the proper identification of and accounting for public money received or disbursed shall be on forms prescribed by or approved by the state comptroller.

History.—§4, ch. 57-349.

219.05 Depositories.—Public money as defined in this act may be deposited in a depository qualified under the provisions of chapter 136, and the regulations of the comptroller pursuant thereto. Such deposits shall be made sufficiently often to keep the amount of the money in the office within the insurance coverage; provided, that any public money may be paid directly to the officer, person or fund entitled to receive it, without first depositing it in the depository, if a receipt is taken and the transaction is properly recorded in the cash book.

The title of each depository account shall include the name of the office, the name of the county, and such other suitable designation as may be required or desired, and withdrawals shall be made only by checks signed with the title of the account, by such officer, or by his duly authorized and bonded deputy or employee.

Whenever a county office is vacated by any officer who carries a depository account carried under this act, the retiring officer shall transfer each of his official depository accounts to the incoming officer, and if he should fail to do so, the depository shall transfer such account or accounts to the person succeeding to the office, upon his written request, and ex-

hibition to the said depository of his commission.

No handling or service charges shall be deducted by the depository from the amounts deposited. Any handling or service charges which are authorized by the depository agreement or by applicable federal law shall be billed to the board of county commissioners and paid by the said board from the general fund of the county.

The comptroller shall prescribe and furnish the necessary forms and regulations to carry out the purposes of this section.

History.—§5, ch. 57-349; §7, ch. 59-23.

219.06 Income and expenses.—Each officer whose compensation for his official duties is paid wholly or partly by fees or commissions, or fees and commissions, shall handle all collections of fees, commissions, and other compensation for his official duties in the same manner as other public money is herein required to be handled, and shall record them in detail sufficient to furnish the information required for the sworn statement required by §145.03, to be made to the board of county commissioners.

Fees and commissions collected in the same transactions with collections of other public funds may be kept or deposited with such other public funds, and accounted for with them, until distribution is made of such other public funds.

The officer may withdraw from the earnings of the office for his personal use at any time any amount which, together with previous withdrawals, shall not exceed his interest therein if his compensation were calculated to that time, prorated according to the number of days that had elapsed since the beginning of the calendar year.

Disbursements made from the earnings of an officer for the expenses of the office shall be made by check payable to the person performing the service or furnishing the goods, supported by an itemized bill or voucher, except that a petty cash fund may be maintained for necessary cash expenditures and such petty cash fund may be reimbursed from time to time by checks supported by vouchers showing the purposes of the expenditures.

History.—§6, ch. 57-349.

219.07 Disbursements.—Each officer shall, not later than the fortieth day after the end of each calendar month, distribute all public money collected by him during that calendar month which he is required to pay over to others to the officer, agency, fund or person entitled to receive the same; provided, that distributions or partial distributions may be made more frequently; and provided further, that money required by law or court order, or by the purpose for which it was collected, to be held and disbursed for a particular purpose in a manner different from that set out herein shall be held and disbursed accordingly.

History.—§7, ch. 57-349; §1, ch. 59-177.
cf.—§116.01 Payment of public funds into treasury.

219.08 Continuing duty.—Each of the duties required to be performed or done under the provisions of this act which is not done or performed at or within the time or times herein prescribed shall continue to be the duty of the person charged therewith until it is actually and completely performed.

History.—§8, ch. 57-349.

TITLE XIV

HOMESTEAD AND EXEMPTIONS

CHAPTER 222

METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

222.01 Designation of homestead by owner before levy.—Whenever any person, being the head of a family, residing in this state, desires to avail himself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale under any process of law, he may make statement, in writing, containing a description of the real property claimed to be exempt, and declaring that the same is the homestead of the party in whose behalf such claim shall be made. Such statement shall be signed by the person making the same and recorded in the office of the county judge.

History.—§1, ch. 1715, 1869; RS 1998; GS 2520; RGS 3875; CGL 5782.
cf.—Art. X Florida constitution.
§192.17 Homestead exemptions, duty of assessor.

222.02 Designation of homestead after the levy.—Whenever a levy is made upon the lands or tenements of such head of a family whose homestead has not been set apart and selected, such person, his agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of this state duly authorized to administer the same, at any time before the day appointed for the sale thereof, of what he regards as his homestead, with a description thereof, and the remainder only shall be subject to sale under such levy.

History.—§2, ch. 1715, 1869; RS 1999; GS 2521; RGS 3876; CGL 5783.

222.03 Survey at instance of dissatisfied creditor.—If the creditor in any execution or process sought to be levied is dissatisfied with the quantity of land selected and set apart, and shall himself, or by his agent or attorney, notify the officer levying, the officer shall at the creditor's request cause the same to be surveyed, and when the homestead is not within the corporate limits of any town or city, the person claiming said exemption shall have the right to set apart that portion of land belonging to him which includes the residence, or not, at his option, and if the first tract or parcel does not contain one hundred and sixty acres, the said officer shall set apart the remainder from any other tract or tracts claimed by the debtor, but in every case taking all the land lying contiguous until the whole quantity of one hundred and sixty acres is made up. The person claiming the exemption shall not be forced to take as his homestead any tract or portion of a tract, if any defect exists in the title, except at his option. The expense of such survey shall be chargeable on the execution as costs; but if it shall appear that the person claiming such exemption does not own more than one hundred and sixty acres in the state, the expenses of said survey shall be paid by the person directing the same to be made.

History.—§3, ch. 1715, 1869; §1, ch. 1944, 1873; RS 2000; GS 2522; RGS 3877; CGL 5784.

222.04 Sale after survey.—After such survey has been made, the officer making the levy may sell the property levied upon not included in such property set off in such manner.

History.—§4, ch. 1715, 1869; RS 2001; GS 2523; RGS 3878; CGL 5785.

222.05 Setting apart leasehold.—Any person owning and occupying any dwelling house on land not his own which he may lawfully possess, by lease or otherwise, and claiming such house as his homestead, shall be entitled

to the exemption of such house from levy and sale as aforesaid.

History.—§5, ch. 1715, 1869; RS 2002; GS 2524; RGS 3879; CGL 5786.

222.06 Method of exempting personal property; inventory.—When a levy is made by writ of execution, writ of attachment or writ of garnishment upon any personal property, money, choses in action, or other property of a personal nature, which may be exempt from levy and sale by any process upon which levy shall have been made, the debtor, if he wishes to claim said property as exempt from sale, as aforesaid, shall make or cause to be made an inventory of the whole of his personal property, affixing thereto true and correct cash valuations thereof, and shall attach to such inventory an affidavit made by himself, his attorney or authorized agent that said inventory contains a true and correct list or schedule of all the personal property owned by him in the state, and the true cash value thereof, and shall in such schedule designate which said property he claims to be exempt, or wishes to have set aside as his said exemption. Said inventory or schedule shall be in duplicate, and both thereof shall be delivered to the officer making the levy, or serving the writ under which said property has been levied upon. Thereupon such officer shall serve one of said schedules of said property upon the creditor or plaintiff, or his attorney or agent, within twenty-four hours after the same shall be so delivered to him. Then the said creditor, his attorney or agent, if he wishes to contest the claim of exemption so made by the debtor, shall file with such officer his notice of contest thereof within twenty-four hours after receipt of copy of schedule by him; and upon failure or refusal of the creditor, his attorney or agent, to file notice of contest of such exemption within twenty-four hours as aforesaid, the said officer shall release the said property from such levy, and re-deliver the same to the said debtor. If notice of contest shall be filed, as aforesaid, then said officer shall appoint three disinterested appraisers who shall be citizens of the county, who, after having made oath before said officer that they will faithfully appraise said property, shall appraise the same at its cash value and affix to the several items of property enumerated in the inventory or schedule its cash value, and the appraisement shall be signed and sworn to by the said appraisers. Notice of the time and place of appraisement shall be given to the said creditor, his attorney or agent at least twenty-four hours before the making of the same. The appraisers shall be entitled to the same fees as are allowed to jurors, and the same shall be allowed as costs upon the process in the hands of the officer, but no costs shall be required of the debtor for the proceedings to appraise and exempt any property claimed by him to be exempt; provided, that any property owned by him, over and above the amount allowed by law as exempt, shall be liable to sale under such process, and for the costs of this proceeding. The officer levying such writ may demand of the creditor sufficient deposit of costs to pay the expenses of appraisement, as aforesaid, not exceeding the sum of twelve dollars, before he shall be required to appoint appraisers.

Garnishment.—If the property or any part thereof claimed to be exempt is held under a writ of garnishment, the officer levying said writ shall file, within thirty-six hours, if no contest of said exemption has been filed with him, the debtor's schedule of property claimed to be exempt with the clerk, or judge if there be no clerk, of the court out of which said writ issued, and thereupon the clerk, or the judge if there be no clerk, shall make an order, without delay, releasing or discharging the said writ, which said order may be delivered to the garnishee by the debtor, his attorney or agent, or may be served by the said officer; for the making and serving of said order a fee of one dollar each may be collected by the officer and by the clerk or judge, but no other or further charges therefor shall be made against the debtor.

History.—§7, ch. 1715, 1869; RS 2003; GS 2525; §§1, 2, ch. 6927, 1915; RGS 3880; CGL 5787.

222.07 Defendant's rights of selection.—Upon the completion of the inventory the person entitled to the exemption, his agent or attorney, may select from such an inventory an amount of property not exceeding, according to such appraisal, the amount of value exempted; but if the person so entitled, or his agent or attorney, does not appear and make such selection, the officer shall make the selection for him, and the property not so selected as exempt may be sold.

History.—§8, ch. 1715, 1869; RS 2004; GS 2526; RGS 3881; CGL 5788.

222.08 Jurisdiction to set apart homestead and exemption.—The circuit courts have equity jurisdiction to order and decree the setting apart of homesteads and of exemptions of personal property from forced sales.

History.—§2, ch. 3246, 1881; RS 2005; GS 2527; RGS 3882; CGL 5789.

222.09 Injunction to prevent sale.—The circuit courts have equity jurisdiction to enjoin the sale of all property, real and personal, that is exempt from forced sale.

History.—§1, ch. 3246, 1881; RS 2006; GS 2528; RGS 3883; CGL 5790.

222.10 Jurisdiction to subject property claimed to be exempt.—The circuit courts have equity jurisdiction upon bill filed by a creditor or other person interested in enforcing any unsatisfied judgment or decree, to determine whether any property, real or personal, claimed to be exempt, is so exempt, and in case it be not exempt, the court shall, by its decree subject it, or so much thereof as may be necessary, to the satisfaction of said judgment or decree and may enjoin the sheriff or other officer from setting apart as exempt property, real or personal, which is not exempt, and

may annul all exemptions made and set apart by the sheriff or other officer.

History.—§3, ch. 3246, 1881; RS 2007; GS 2529; RGS 3884; CGL 5791.

222.11 Exemption of wages from garnishment.—No writ of attachment or garnishment or other process shall issue from any of the courts of this state to attach or delay the payment of any money or other thing due to any person who is the head of a family residing in this state, when the money or other thing is due for the personal labor or services of such person.

History.—§1, ch. 2065, 1875; RS 2008; GS 2530; RGS 3885; CGL 5792.

222.12 Proceedings for exemption.—Whenever any money or other thing due for labor or services as aforesaid is attached by such process, the person to whom the same is due and owing may make oath before the officer who issued the process that the money attached is due for the personal labor and services of such person, and he is the head of a family residing in said state. When such an affidavit is made, notice of same shall be forthwith given to the party, or his attorney, who sued out the process, and if the facts set forth in such affidavit are not denied under oath within two days after the service of said notice, the process shall be returned, and all proceedings under the same shall cease. If the facts stated in the affidavit are denied by the party who sued out the process within the time above set forth and under oath, then the matter shall be tried by the court from which the writ or process issued, in like manner as claims to property levied upon by writ of execution are tried, and the money or thing attached shall remain subject to the process until released by the judgment of the court which shall try the issue.

History.—§2, ch. 2065, 1875; RS 2009; GS 2531; RGS 3886; CGL 5793.

222.13 Life insurance policies; disposition of proceeds.—

(1) Except as otherwise provided in subsections (2) and (3), whenever any person residing in the state shall die leaving insurance on his life, the said insurance shall inure exclusively to the benefit of the surviving child or children and husband or wife of such person in equal portions, or to any person for whose use and benefit such insurance is declared in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy declares otherwise. Except as otherwise provided in subsections (2) and (3), whenever the insurance is for the benefit of the estate of the insured or is payable to the estate or to the insured, his executors, administrators, or assigns, and in the event the insured should die intestate or die leaving a will which does not effectively bequeath the proceeds or any part of the proceeds of any insurance in effect on the life of the decedent at the time of his death, or which does not effectively direct or authorize the executor of the insured to use said proceeds or any part thereof for the payment of debts, estate and inheritance taxes, or charges or expenses of administration, such proceeds not effectively bequeathed or used in accordance with such effective authorization of the testator, of any policy in effect at the time of the death of the insured and made payable as above provided, shall be paid to the personal representative of the insured's estate for the benefit of the surviving child or children and husband or wife in equal portions, and be distributed without regard to §§734.03 and 734.04 upon the order of the county judge on petition of any interested party or like proceedings pursuant to §734.25(5); and if the county judge determines that administration of the insured's estate is unnecessary and the insured is survived by a child or children or husband or wife, the order of no administration necessary shall direct payment of the proceeds of any such policy to said child or children and husband or wife in equal portions.

(2) Whenever any person residing in the state shall die leaving surviving no child or spouse, and leaving insurance on his life for the benefit of the estate of the insured or payable to the estate or to the insured, his executors, administrators or assigns, the proceeds of the insurance not effectively bequeathed or used by the executor in accordance with the effective authorization of the testator for the uses or purposes herein specified, shall descend and be distributed in accordance with the laws of descent and distribution of this state in like manner as any other property or effects of the insured if the insured should die intestate or die leaving a will which does not effectively bequeath the proceeds or any part of the proceeds of such insurance in effect on the life of the decedent at the time of his death. The proceeds of any such insurance shall be paid to the personal representative for the payment of debts, estate and inheritance taxes, claims, charges and expenses of administration, and to enforce contribution and to equalize advancement and for distribution. The provisions of this subsection shall apply to all policies of insurance which at the time of death of the insured may be payable as above provided, regardless of whether or not any such policy is so payable by reason of the death of any beneficiary specifically named in such policy. If the county judge determines that administration of the insured's estate is unnecessary and if the insured leaves surviving no child or spouse, such proceeds of any policy in effect at the time of the death of the insured and made payable as above provided, shall be paid as directed in the order of no administration necessary.

(3) Whenever any person residing in the state shall die leaving insurance on his life for the benefit of the estate of the insured or payable to the estate or to the insured, his executors, administrators or assigns, the proceeds of the insurance may be bequeathed by the insured in like manner as he may be-

queath or devise any other property or effects which shall be subject to disposition by last will and testament, and for such purpose specific or general expressions in the will referring to insurance or insurance proceeds shall be sufficient and effective; and the insured may, in his will, direct or authorize his executor to use all or any part of the proceeds of any such insurance made payable as above provided, for the payment of debts, estate and inheritance taxes, claims, charges and expenses of administration, or for any of such purposes or uses, and for such purpose specific or general expressions in the will referring to insurance or insurance proceeds shall be sufficient. The proceeds of any such insurance shall be paid to the personal representative of the insured's estate and, if in his will the insured has bequeathed any of such proceeds or has directed or authorized his executor to use any of such proceeds for the payment of debts, estate or inheritance taxes, claims, or charges or expenses of administration, such proceeds shall be assets in like manner as other assets, in the hands of the personal representative, subject to any such effective direction of the testator as to the use thereof, for the payment of dower, legacies, debts, family allowance, estate and inheritance taxes, claims, charges and expenses of administration, and to enforce contribution and to equalize advancement and for distribution. The provisions of this subsection shall apply to all policies of insurance which at the time of the death of the insured may be payable as hereinabove provided, regardless of whether or not any such policy is so payable by reason of the death of any beneficiary specifically named in such policy and regardless of whether or not any such policy was in existence or was so payable at the time of the execution of the last will and testament of the insured or any codicil thereto. If the county judge determines that administration of the insured's estate is unnecessary, payment of such proceeds shall be made as directed in the order of no administration necessary.

(4) When the personal representative of the insured's estate is required by law or by order of the county judge to file bond, the condition of the bond of the personal representative shall be deemed to include the faithful performance of the duties of such personal representative according to law with respect to such proceeds.

(5) Payments as herein directed in every such case shall discharge the insurer from any further liability under the policy, and the insurer shall in no event be required or be responsible for the application of such payments.

History.—§1, ch. 1864, 1872; RS 2347; §1, ch. 4555, 1897; §1, ch. 5165, 1903; GS 3154; RGS 4977; CGL 7065; §1, ch. 29861, 1955; §1, ch. 59-333; §1, ch. 63-230.

222.14 Exemption of cash surrender value of life insurance policies from legal process.—The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured, unless the insurance policy was effected for the benefit of such creditor.

History.—§1, ch. 10154, 1925; CGL 7066.

222.15 Wages due deceased employee may be paid wife, etc.—

(1) It is lawful for any employer, in case of the death of an employee, to pay to the wife or husband, and in case there is no wife or husband, then to the child or children, provided the child or children be over the age of eighteen years, and in case there is no child or children, then to the father or mother, any wages or traveling expenses that may be due said employee at the time of his death.

(2) It is also lawful for the industrial commission, in case of death of any unemployed individual to pay to those persons referred to in subsection (1), any unemployment compensation payments that may be due said individual at the time of his death.

History.—§1, ch. 7366, 1917; RGS 4979; CGL 7068; §1, ch. 20407, 1941; §1, ch. 63-165.
cf.—§215.28(5) Payment of wages due deceased employee.

222.16 Wages or unemployment compensation payments so paid not subject to administration.—Any wages, traveling expenses or unemployment compensation payments so paid under the authority of §222.15 shall not be considered as assets of the estate and subject to administration; provided, however, that the traveling expenses so exempted from administration shall not exceed the sum of three hundred dollars.

History.—§2, ch. 7366, 1917; RGS 4980; CGL 7069; §1, ch. 20407, 1941; §2, ch. 63-165.
cf.—§215.28(5) Payroll deductions.

222.17 Manifesting and evidencing domicile in Florida.—

(1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he resides in and maintains a place of abode in that county which he recognizes and intends to maintain as his permanent home.

(2) Any person who shall have established a domicile in the State of Florida, but who shall maintain another place or places of abode in some other state or states, may manifest and evidence his domicile in this state by filing in the office of the clerk of the circuit court for the county in which he resides, a sworn statement that his place of abode in Florida constitutes his predominant and principal home, and that he intends to continue it permanently as such.

(3) Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the state, and shall set forth therein his place of residence within the state, the city, county and state wherein he formerly resided, and

the place or places, if any, where he maintains another or other place or places of abode.

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his domicile in such state other than the State of Florida, he may manifest and evidence his permanent domicile and his intention to permanently maintain and continue his domicile in such state other than the State of Florida, by filing in the office of the clerk of the circuit court in any county in the State of Florida in which he may have a place of abode or in which he may have done or performed such acts which independently may indicate that he is or may intend to be or become domiciled in the State of Florida, a sworn statement that his domicile is in such state other than the State of Florida, as the case may be, naming such state where he is domiciled and stating that he intends to permanently continue and maintain his domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his domicile within the State of Florida.

(5) Upon the filing of such declaration it shall be the duty of the clerk of the circuit court in whose office such declaration is filed, to record the same in a book to be provided for that purpose, and for the performance of the duties herein prescribed, the several clerks of the circuit courts of the state shall, for each declaration, collect a fee of one dollar.

(6) It shall be the duty of the attorney general of the state to prescribe a form for the declaration herein provided for, and to furnish the same to the several clerks of the circuit courts of the state.

(7) Nothing herein shall be construed to repeal or abrogate other existing methods of proving and evidencing domicile except as herein specifically provided.

History.—§§1-6, ch. 20412, 1941; §1, ch. 26896, 1951.

222.18 Exempting disability income benefits from legal processes.—Disability income benefits under any policy or contract of life, health, accident or other insurance of whatever form, shall not in any case be liable to attachment, garnishment, or legal process in the state, in favor of any creditor or creditors of the recipient of such disability income benefits, unless such policy or contract of insurance was effected for the benefit of such creditor or creditors.

History.—§1, ch. 20741, 1941.

TITLE XV

EDUCATION

CHAPTER 228

STATE PLAN FOR PUBLIC EDUCATION

228.001 Name.—All of the laws of Florida relating to public education shall be known as and shall comprise "The Florida School Code."

History.—§2, ch. 29764, 1955.

228.002 Purpose; construction.—The purpose of the Florida school code is for the establishment, maintenance and support of public education in the state and the provisions thereof shall be liberally construed to the end that its objects may be effected.

History.—§3, ch. 29764, 1955.
Note.—Formerly §§227.03, 227.04.

228.01 State plan for public education.—It is the purpose of the state plan for public education to insure the establishment of a state system of schools, courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the state.

History.—§201, ch. 19355, 1939; CGL 1940 Supp. 892(20).

228.02 State system of public education established.—There is organized and established in keeping with the state plan for public education a state system of public education which shall be maintained and supported as hereinafter provided.

History.—§202, ch. 19355, 1939; CGL 1940 Supp. 892(21).

228.03 Scope of state system.—The state system of public education includes such school systems, schools, institutions, agencies, services, and types of instruction as may be provided and authorized by law, or by regulations of the state board within limits prescribed by law.

History.—§203, ch. 19355, 1939; CGL 1940 Supp. 892(22).
cf.—§229.06 Regulations of state board have force of law.

228.04 Uniform system of public schools included.—As required by §1, art. XII of the constitution, this state system of public education shall include the uniform system of public free schools as established and which shall be liberally maintained.

History.—§204, ch. 19355, 1939; CGL 1940 Supp. 892(23).

228.041 Specific definitions.—Specific definitions shall be as follows:

(1) STATE SYSTEM OF PUBLIC EDUCATION.—The state system of public education shall consist of such publicly supported and controlled schools, institutions of higher learning, other educational institutions, and other educational services as may be provided or authorized by the constitution and laws of Florida.

(a) *Public schools.*—The public schools shall consist of nursery schools and kindergarten classes; elementary and secondary school grades and special classes; junior colleges; adult, part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under the control of county boards.

(b) *Institutions of higher learning.*—The institutions of higher learning shall consist of all state supported educational institutions offering work above the public school level, other than junior colleges, that are authorized and established by law, together with all activities and services authorized by law to be administered by or through each of those institutions.

(c) *Other educational institutions.*—Other state supported institutions primarily of an educational nature shall be considered parts of the state system of public education. The educational functions of other state supported institutions not primarily of an educational nature but which have specific educational responsibilities shall be considered responsibilities belonging to the state system of public education.

(d) *Other educational services.*—These shall include health services, vocational rehabilitation, and such special services and functions as may be authorized by law or by regulations of the state board as prescribed by law and as are considered necessary to improve, promote, and protect the adequacy and efficiency of the state system of public education.

(2) COUNTY SCHOOL SYSTEM.—A county school system is a part of the state system of public education and shall consist of all schools, courses, agencies, and services under the control of a county board.

(3) SCHOOL DISTRICT.—A school district is a special tax district created and existing pursuant to §10, Art. XII of the constitution and §230.34.

(4) COUNTY SCHOOL BOARD ELECTION DISTRICT.—A county school board election district is one of the districts into which a county is divided for the purpose of electing members of the county board.

(5) SCHOOL DISTRICT ELECTION.—A school district election is the election which is to be held on the first Tuesday after the first Monday in November of odd-numbered years for the purpose of voting the school district tax levy for maintenance purposes and for selecting trustees for the ensuing two years.

(6) ELECTOR; SCHOOL DISTRICT ELECTIONS.—An elector qualified to vote in any school district election is any qualified elector whose voting registration is in the school district where said election is being held, who pays a tax on real or personal property within such district.

(7) ELECTOR; BOND ELECTIONS.—An elector eligible to vote in any school district bond election is any freeholder in such district who is an elector qualified to vote in a school district election in such district.

(8) SCHOOLS AND JUNIOR COLLEGES DISTINGUISHED.—

(a) *School.*—A school is an organization of pupils for instructional purposes into classes or grades at any school center on an elementary, high, secondary or other public school level except junior colleges, approved by and under regulations of the state board.

(b) *Junior college.*—A junior college is an educational institution operated by a county board as part of a county school system under specific authority and regulations of the state board.

(9) SCHOOL CENTER.—A school center is a place of location of any school or schools on the same or on adjacent sites.

(10) ATTENDANCE AREA.—An attendance area is the area from which pupils are designated to attend a given school; that is, the territory served by any given school.

(11) SCHOOL PLANT.—A school plant includes all physical features incident to or necessary to accommodate pupils and teachers and the activities of the educational program of each school center. It includes site, playgrounds and equipment, athletic field, the school building or buildings with all their mechanical and educational equipment, gymnasiums, vocational buildings, bus sheds, teachers' homes, and other equipment wherever located necessary to provide an adequate school program.

(12) SCHOOL OFFICERS.—The officers of the state system of public education shall be the state superintendent of public instruction and the members of the state board of education and for each county school system the officers shall be the county superintendent of public instruction and members of the county board of public instruction.

(13) TRUSTEES.—The trustees of each school district shall be subordinate school officers and shall be referred to herein as trustees.

(14) INSTRUCTIONAL PERSONNEL.—Instructional personnel comprises the members of the instructional staff and includes supervisors, principals, teachers, librarians, and others engaged in an instructional capacity in the schools.

(a) *Principal.*—A principal is the head of any school or school center having more than one teacher. He may be a teaching principal, who devotes half or more of his time to actual classroom teaching, or a supervising principal, who devotes less than half of his time to actual classroom teaching and has charge of one or more schools. A supervising principal is a principal designated to have supervision of instruction in all schools in a particular part of a school district.

(b) *Teacher.*—A teacher, except as otherwise designated, shall be any person employed primarily in an instructional capacity.

(15) ADMINISTRATIVE PERSONNEL.—Administrative personnel comprises the county superintendent and those persons who may be employed as professional administrative assistants to the county superintendent, but does not include secretarial, clerical, or other office assistants.

(16) PARENT AND SCHOOL PATRON.—The terms parent and school patron shall be interpreted to refer to either or both parents, to any guardian, or to any person in parental relationship to a child or exercising supervisory authority in place of a parent over a child of public school age.

(17) SCHOOL GRADE.—A school grade is one of the divisions or sections of the public school program which represents the work of a school year.

(18) SCHOOL DAY.—A school day for any group of pupils is that portion of the day in which school is actually in session and shall comprise not less than five net hours, and not less than six hours including intermissions for all grades above the third; not less than four net hours for the first three grades; and not less than three net hours in kindergarten and nursery school grades; provided that the minimum length of the school day herein specified may be decreased not to exceed one net hour under regulations of the state board.

(19) SCHOOL WEEK.—A school week shall comprise the school days of any calendar

week during which schools are actually in session plus any school holidays authorized under regulations of the state board and occurring within that week.

(20) SCHOOL MONTH.—A school month shall consist of twenty school days, excluding any school holidays.

(21) SCHOOL HOLIDAY.—A school holiday is a legal or other prescribed holiday falling on a regular school day during which schools are authorized in accordance with regulations of the state board not to be in session, but for which school employees do not receive compensation as for any day on which schools are in session.

(22) SCHOOL VACATION PERIOD.—That period of the school year beginning on or before December 24 and continuing for a period of time to be fixed by the county board which shall include Christmas day and New Year's day, shall be set apart as a vacation period, and during that time schools shall not be in session and that time shall not be considered a part of the school month. Any period when schools are not in session between the end of one school year and the beginning of the next school year shall also be considered a school vacation period.

(23) SCHOOL YEAR.—The school year shall comprise the period during which the schools are regularly in session for the minimum number of one hundred eighty days for pupils plus periods for pre-school and post-school conferences during any school fiscal year beginning on or after July 1 and ending on or before June 30; provided that the state board may in special cases on application by the county board approve a school year which begins not to exceed ninety days before the beginning of the school fiscal year.

(24) SCHOOL FISCAL YEAR.—The school fiscal year shall begin on July 1 and shall end at the close of June 30 in each and every year.

(25) EXCEPTIONAL CHILDREN.—The term "exceptional children" as used in §§232.38, 236.04(4), 236.61, and 236.62 shall mean a child or youth who having been identified as exceptional by competent authority designated by the state board, shall be determined to require special classes, facilities or services or a combination thereof to be properly educated.

(26) SPECIAL SERVICES.—Means such related services to the exceptional child or youth as transportation, special teaching situations, i.e., (home, hospital) corrective teaching in speech, sight and health habits, the provision of special seats or equipment. In addition, special materials and/or teaching supplies may be required for the proper instruction of exceptional children and youth.

(27) The state board of education shall be authorized to set standards for the certification of personnel to effectuate the services prescribed in subsections (25) and (26) and in §§236.61 and 236.62.

(28) YEAR OF SERVICE.—The minimum time which may be recognized in administering the state program of education, not including retirement, as a year of service by a school employee shall include full time actual service, exclusive of sick leave and other types of leave and holidays, for a total of more than half of the number of days required for the normal contractual period of service for the position held, which shall be one hundred ninety-six days or longer, or the minimum required for the county to participate in the minimum foundation program in the year service was rendered, or the equivalent for service performed on a daily or hourly basis; provided further that absence from duty after the date of beginning service shall be covered by leave duly authorized and granted; provided further that the county board of public instruction shall have authority to establish a different minimum for local county school purposes.

History.—§4, ch. 29764, 1955; (14) §1, (18)-(27) n. §2, ch. 57-217; (20), (21) §1, (23) r. subsections (23), (25), (26) §2, ch. 59-371; §1, ch. 61-288; (8), (14) §1, ch. 63-495; (28) n. §1, ch. 63-376.
Note.—Formerly §227.13.

228.06 Display of flags.—

(1) The flag of the United States shall be displayed daily when the weather permits upon one building or on a suitable flagstaff upon the grounds of each state educational institution and upon every county school building or the grounds of the same except when the institution or school is closed for vacation; provided, that for a school center at which two or more school buildings are located on the same or on adjacent sites one flag may be displayed for the entire group of buildings.

(2) Every publicly supported and controlled school, institution of higher learning and other educational institution as may be provided or authorized by the constitution and laws of Florida shall display daily the official flag of Florida when the weather permits upon one building or on a suitable flagstaff upon the grounds of each state educational institution and upon every county school building or the grounds of the same except when the institution or school is closed for vacation; provided, that for a school center at which two or more school buildings are located on the same or on adjacent sites one flag may be displayed for the entire group of buildings.

History.—§206, ch. 19355, 1939; CGL 1940 Supp. 892(25); (2) n. §1, ch. 29789, 1955.

228.07 School officers and trustees to turn over money and property to successors.—Every school officer and trustee shall turn over to his successor or successors in office on retiring all books, papers, documents, records, funds, money and property of whatever kind which he may have acquired, received and held by virtue of his office and shall take full receipt for them from his successor and shall make in correct form all reports required by the state. No school officer who receives any salary or compensation for his

services shall be entitled to be paid or compensated for the last month of his services until the provisions of this section have been fully observed. Any person violating the provisions of this section, upon conviction of the same, shall forfeit his compensation for the last month served and shall be fined not exceeding five hundred dollars or imprisoned in the county jail for a period of time not exceeding six months, or he may be imprisoned and fined in the discretion of the court.

History.—§207, ch. 19355, 1939; CGL 1940 Supp. 892(26), 8115(1); §1, ch. 20970, 1941.

cf.—§775.06 Alternative punishment.
§230.33 County superintendent to make records available to successor.

228.09 Separate schools for white and negro children required.—The schools for white children and the schools for negro children shall be conducted separately. No individual, body of individuals, corporation, or association shall conduct within this state any school of any grade (public, private, or parochial) wherein white persons and negroes are instructed or boarded in the same building or taught in the same classes or at the same time by the same teachers.

History.—§209, ch. 19355, 1939; CGL 1940 Supp. 892(28).

228.11 When voting machines may be used in school elections.—Whenever voting machines are authorized to be used in general or primary elections in any county, the county board may, in its discretion, require such machines to be used in any other elections provided for under the school code.

History.—§211, ch. 19355, 1939; CGL 1940 Supp. 892(30).
cf.—Ch. 101, et seq. Voting machines.

228.13 Public schools required.—The public schools of the state shall provide for twelve consecutive years of instruction which shall constitute the uniform system of public free schools prescribed by §1, Art. XII of the constitution and which shall include the following:

(1) ELEMENTARY SCHOOLS.—Elementary schools shall comprise all classes and grades through the sixth or, upon decision by the county board when authorized by regulations of the state board, may include work through the eighth grade.

(2) HIGH OR SECONDARY SCHOOLS.—High or secondary schools shall include junior high schools with grades seven to nine, inclusive; senior high schools with grades ten to twelve, inclusive; or junior-senior high schools with grades seven to twelve, inclusive; or, upon decision by the county board when authorized by regulations of the state board, may be organized as four-year high schools comprising grades nine to twelve, inclusive.

History.—§213, ch. 19355, 1939; CGL 1940 Supp. 892(32).

228.14 Other public schools; nursery schools, kindergartens, junior colleges, special schools and courses.—The public schools of Florida shall, in addition to the elementary and high schools prescribed in §228.13, include nursery schools, kindergartens, junior colleges and special schools, courses or classes as authorized below:

(1) NURSERY SCHOOLS.—Nursery schools shall comprise classes for children who have attained the ages prescribed by §232.05, and may be established in the discretion of county boards where sufficient children of these ages are available to make possible an organization of at least twenty such children at any school center.

(2) KINDERGARTEN.—Kindergarten classes comprising children between the ages as provided by §232.04, may be established in the discretion of county boards; provided, sufficient children of these ages are available to make possible an organization of at least twenty such children at any school center.

(3) JUNIOR COLLEGES.—Junior colleges may be established in the discretion of the county boards in the manner prescribed by law. The term, junior college, as used herein shall mean an educational institution operated by the county board as part of the county school system and offering (a) a program of general education consisting of classical and scientific courses in the thirteenth and fourteenth grades parallel to that of the first and second years of work at a senior four-year state institution of higher learning, (b) terminal courses of a technical and vocational nature, and (c) courses for adults.

(4) OTHER SCHOOLS, COURSES AND CLASSES.—There may be established at the discretion of county boards other schools, courses and classes pursuant to law or by regulation of the state board for (a) giving instruction in applied arts and sciences, (b) rehabilitation of atypical, dependent and delinquent children, (c) promoting the education of adults, (d) furnishing part-time, evening and vocational schools and classes, (e) providing vocational training, and (f) offering other types of instruction of a similar nature.

History.—§214, ch. 19355, 1939; CGL 1940 Supp. 892(33); §7, ch. 29764, 1955; §1, ch. 57-252.

228.15 Junior college board.—

(1) CREATION OF STATE JUNIOR COLLEGE BOARD.—There is hereby created a state junior college board which shall consist of seven prominent and representative citizens of the state appointed by the governor for four year overlapping terms. The terms of all members shall begin on July 1. A majority of the members shall reside in counties contributing to the support of a public junior college, but not more than one member shall reside in any county or group of counties participating in the support of a single junior college.

(2) ORGANIZATION OF STATE JUNIOR COLLEGE BOARD.—The board shall select one of its members to serve as chairman. The chairman shall serve a term of one year but may be re-elected. The board shall meet upon call of the chairman or of the state superintendent of public instruction. The members of the board shall receive no compensation but

shall be reimbursed for traveling expenses as provided in §112.061.

(3) POWERS AND DUTIES OF THE STATE JUNIOR COLLEGE BOARD.—The board shall be responsible for the establishment of state-wide policy regarding the operation of the public junior colleges and shall determine ways and means to effect articulation and coordination of junior colleges with other institutions, subject to the approval of the state board of education. The board shall recommend establishment of new junior colleges in accordance with the state plan to the state board of education; it shall review all capital outlay requests for state appropriations; and it shall perform such other duties as may be delegated to it by law or by the state board of education. In the performance of these responsibilities, the board shall be authorized to make studies and to employ such consultants or professional assistance as may be necessary and advisable, if funds are available therefor.

History.—§215, ch. 19355, 1939; CGL 1940 Supp. 892(34); §1, ch. 23726, 1947; §8, ch. 29764, 1955; §2, ch. 57-252; §1, ch. 61-267; (1), (3) §2, ch. 63-495; (2) §19, ch. 63-400.

228.16 Support of public schools.—The public schools shall be supported and financed as prescribed below and in chapters 236 and 237. No matriculation or tuition fees shall be charged pupils whose parents are bona fide residents of Florida, except as prescribed herein.

(1) NURSERY SCHOOLS.—Nursery schools, when organized as public schools or public school classes, shall be supported and maintained from county taxes, district taxes, or from such funds supplemented by tuition charges, or from funds from federal or other lawful sources, exclusive of state sources.

(2) KINDERGARTENS. — Kindergartens, when organized as public schools or public school classes comprising children who have attained the age as provided by §232.04, shall be considered as part of the elementary school organization and shall be supported and maintained by funds from state, county, district, federal or other lawful sources or combinations of sources.

(3) ELEMENTARY AND SECONDARY SCHOOLS.—

(a) Public education in grades one to twelve inclusive, comprising elementary and secondary schools and vocational departments or schools, shall be made available at public expense for a minimum term of at least nine months each year (one hundred eighty actual teaching days) to all persons who have attained the age as provided by §232.01. The funds for the support and maintenance of these schools shall be derived from state, county, district, federal or other lawful sources, combinations of sources, or as specifically set forth in this subsection.

(b) Pupils whose parent, parents, or guardian are nonresidents of Florida shall be charged a tuition fee of fifty dollars payable at the time the pupil is enrolled. For the purposes of this subsection a nonresident is defined as a person who has lived in Florida less than one year, or who has not purchased a home which is occupied by him as his residence prior to the enrollment of his child or children in school, or who has not filed a manifestation of domicile in the county where the child is enrolled. No tuition shall be charged pupils whose parent, parents, or guardian are in the federal military service or are a civilian employee, the cost of whose education is provided in part or in whole by federal subsidy to state-supported schools, or whose parent, parents, or guardian are migratory agricultural workers.

(c) Funds as set forth in paragraph (b) of this subsection shall be collected by the school in which the child is enrolled and remitted to the county board of public instruction for the county in which the funds are collected. The board of public instruction shall use the funds for the operation and maintenance of its schools.

(4) JUNIOR COLLEGES; TECHNICAL OR VOCATIONAL SCHOOLS AND SCHOOLS OFFERING UNGRADED WORK.—Junior colleges, and technical or vocational schools and schools offering ungraded work for persons regardless of age, when organized in accordance with the provisions of law, shall be supported and maintained as a part of the county school system from funds derived from state, county, district, federal or other lawful sources or combinations of sources; provided, that tuition or matriculation fees may be charged only if and as authorized by regulations of the state board.

(5) OTHER SCHOOLS, COURSES, AND CLASSES.—Other schools, courses and classes shall be supported by state, county, district, and federal funds or by any combinations of these funds supplemented by funds from such other lawful sources as may be available; provided, that tuition or matriculation fees may be charged only if and as authorized by regulations of the state board.

History.—§216, ch. 19355, 1939; CGL 1940 Supp. 892(35); §2, ch. 23726, 1947; (2), (3) §9, ch. 29764, 1955; (4) §3, ch. 57-252; (3) §1, ch. 59-388.

228.161 Junior college; purchase of land by municipality. — Any municipality wherein a junior college (as defined by §228.16(4)) is situated, is authorized and empowered to purchase land with municipal funds and to donate and convey such land or any other land, to the board of public instruction of the county wherein such municipality is located for the use of any such junior college.

History.—§1, ch. 57-736.

228.19 Other public educational services.—The general control of other public educational services shall be vested in the state board except as provided herein. The state board may, at the request of the board of commissioners of state institutions, advise as to standards and requirements relating to education to be met in all state schools or institutions under their control which

provide educational programs. The state department of education, may provide supervisory services for the educational programs of all such schools or institutions. The direct control of any of these services provided as part of the county program of education shall rest with the county board. These services shall be supported out of state, county, district, and federal or other lawful funds depending on the requirements of the services being supported.

History.—§219, ch. 19355, 1939; CGL 1940 Supp. 892(38); §3, ch. 23726, 1947.

CHAPTER 229

FUNCTIONS OF STATE EDUCATIONAL AGENCIES

229.01 State functions. — Public education is basically a function and responsibility of the state. The responsibility for establishing such minimum standards and regulations as shall tend to assure efficient operation of all schools and adequate educational opportunities for all children is retained by the state. The responsibility for the actual operation and administration of all schools needed within the counties in conformity with regulations and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state are delegated by law to the school officials of the respective counties.

History.—§301, ch. 19355, 1939; CGL 1940 Supp. 892(41).

229.04 Meeting dates.—On or before July first of each year the state board shall designate and set aside one day each month as a regular meeting day. Special meetings may be held on request of the state superintendent.

History.—§304, ch. 19355, 1939; CGL 1940 Supp. 892(44).

229.05 Quorum. — Three members of the state board shall constitute a quorum. No business may be transacted at any meeting unless a quorum is present.

History.—§305, ch. 19355, 1939; CGL 1940 Supp. 892(45).

229.06 Regulations and standards have force of law.—All rules and regulations and minimum standards adopted or prescribed by the state board in carrying out the provisions of the school code shall, if not in conflict therewith, have the full force and effect of law.

History.—§306, ch. 19355, 1930; CGL 1940 Supp. 892(46).

229.07 General powers of state board.—The state board shall exercise the following general powers:

(1) DETERMINE POLICIES.—The state board shall determine and adopt such policies as are required by law and as in the opinion of the state board are necessary for the more efficient operation of any phase of public education.

(2) ADOPT RULES AND REGULATIONS.—The state board shall adopt and prescribe all needful rules and regulations for

the proper enforcement and carrying out of the provisions of the school code.

(3) PRESCRIBE MINIMUM STANDARDS.—Whenever the establishment of minimum standards will aid in providing adequate educational opportunities and facilities, the state board shall adopt such minimum standards for any phase of education as are considered necessary in carrying out the provisions of the school code.

(4) PERFORM DUTIES AND EXERCISE RESPONSIBILITIES.—The state board shall have the power to perform such duties and to exercise such responsibilities as are assigned to it by law or as it may find necessary for the improvement of the state system of public education.

History.—§307, ch. 19355, 1939; CGL 1940 Supp. 892(47); §12, ch. 29764, 1955.
cf.—§228.15 Junior colleges; state board.
§231.11 State board may prescribe minimum curricula for training of instructional personnel.
§232.18 Regulations relating to attendance.

229.08 Duties and responsibilities of state board.—It shall be the responsibility of the state board to exercise all powers and perform all duties prescribed below:

(1) HOLD MEETINGS.—To hold meetings as prescribed for the transaction of business relating to the operation of the state system of public education.

(2) RECORDS TO BE KEPT.—To require to be kept by the secretary such records as are necessary to set forth clearly all actions and proceedings of the state board.

(3) ADOPT SEAL.—To adopt a seal to be used in authenticating all official acts.

(4) HOLD TITLE TO LANDS HELD FOR INSTITUTIONS UNDER MANAGEMENT AND CONTROL OF STATE BOARD OF CONTROL.—To hold title to all lands and interests in lands had, held, or possessed by or for any or all of the institutions under the management and control of the state board of control.

*(5) ADMINISTER STATE SCHOOL TRUST FUND.—To provide for the proper administration of the state school fund established by § 4, art. XII of the constitution herein designated as the state school trust fund so that the principal shall remain sacred and inviolate, as required by §5, art. XII of the constitution.

(6) CONTROL SCHOOL LANDS.—To obtain possession of, to hold title to, and take general charge, oversight, and management of all lands granted to or held by the state for educational purposes; to fix the terms of sale and policies relating to rental or use of such lands, and to adopt whatever policies may be necessary to preserve them from trespass or injury and to provide for their improvement.

(7) INSTITUTIONS UNDER MANAGEMENT AND CONTROL OF STATE BOARD OF CONTROL.—To exercise such control and supervision over the institutions under the management and control of the state board of control as may be deemed proper by said state board of education with due regard to the highest interest of education.

(8) BIENNIAL BUDGET: ADOPTION OF.—To adopt and transmit to the state budget commission on official blanks furnished for such purposes on or before December fifteenth, biennially, prior to the meeting of the state legislature, estimates of expenditure requirements for the institutions, agencies, and services under the control of the state board except as otherwise provided in the school code, for each fiscal year of the ensuing biennium.

(9) VOCATIONAL EDUCATION: TO CONSTITUTE COOPERATING BOARD.—To constitute the state board for vocational education required by the acts of congress; to cooperate with the office of education, United States department of health, education and welfare, in the administration of all acts of congress relating to vocational education and vocational rehabilitation; to have all necessary authority to cooperate with the office of education in the administration of these acts; to administer any legislation pursuant thereto enacted by the state, and to administer the funds provided by the federal government and the state for the promotion of vocational education in agricultural subjects, trade and industrial subjects, distributive education, home economics subjects, and in vocational rehabilitation; to approve plans for the promotion of vocational education in such subjects as an essential and integral part of the public school system of the state and to provide for the preparation of teachers in such subjects; to fix the compensation of such officials and assistants as may be necessary to administer the provisions of any federal acts relating to these subjects in the state, and to pay such compensation and other necessary expenses of the administration from funds appropriated for these purposes; to provide for the making of studies and investigations relating to vocational education in such subjects; to promote and aid in the establishment by local communities of schools, departments, or classes; to prescribe qualifications for the teachers and supervisors of such subjects, and to have full authority to provide for the certification of such teachers and supervisors; to cooperate with local communities in the maintenance of schools, departments, or classes or to establish such schools, departments, or classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers; and to provide otherwise for the proper conduct of the vocational education and vocational rehabilitation program and for the articulation of this work with other phases of the state program.

(10) FEDERAL GOVERNMENT; COOPERATE WITH.—

(a) To approve plans for cooperating with the federal government in carrying out any or all phases of the educational program in which it may find cooperation to be desirable,

and to provide for the proper administration of funds which may be appropriated by congress and apportioned to the state for any or all educational purposes.

(b) The state board of education shall prescribe regulations under which contracts, agreements or arrangements may be made with agencies of the federal government for funds, services, commodities, or equipment to be made available to the public tax-supported schools, school systems and educational institutions under the supervision or control of the state board of education.

(c) All contracts, agreements or arrangements made by public tax-supported schools, school systems or educational institutions under the supervision or control of the state board of education involving funds, services, commodities, or equipment which may be provided by agencies of the federal government shall be entered into in accordance with regulations prescribed by the said board of education and in no other manner.

(11) OTHER AGENCIES: COOPERATE WITH. — To approve plans for cooperating with other agencies, federal, state, county, and municipal, in the development of regulations and in the enforcement of laws for which the state board and such agencies are jointly responsible and to approve plans for cooperating with other appropriate agencies for the improvement of conditions relating to the welfare of schools.

(12) STATE BOARD OF CONTROL.—To supervise the work of the state board of control as prescribed by law.

(13) PROVIDE FOR ADMINISTRATION OF INSTITUTIONS, AGENCIES, AND SERVICES CONTROLLED BY STATE BOARD.—To provide for the proper administration of and to determine policies governing the operation of all institutions, agencies, and services directly under the control of the state board.

(14) APPOINT COMMITTEE MEMBERS.—To appoint with the advice of the state superintendent such committees and such members of committees as may be required by the school code or as it may find desirable on the basis of educational needs in the state.

(15) REMOVAL FROM OFFICE. — To remove from office for cause any person appointed by the state board under the provisions of the school code, and any trustee. Cause for such removal shall be incompetency, immorality, misconduct in office, gross insubordination, or willful neglect of duty. The charges against any such person shall be made known to him in writing through the state superintendent, and the person against whom charges are preferred shall be given, on not less than ten days' notice of the time and place of the hearing by the state board an opportunity to be heard in his own defense in person or by counsel.

(16) TO HEAR AND DETERMINE CONTROVERSIES.—To advise and counsel with school officials concerning the interpretation and meaning of the school code and the rules and regulations adopted pursuant thereto; and whenever practicable to adjust amicably and settle such controversies arising thereunder as may be submitted to it by all persons directly concerned.

(17) AUTHORIZE FORMS AND REQUIRE REPORTS. — To authorize, approve, and require to be used such forms as are needed to promote uniformity, accuracy, and completeness in executing contracts, keeping records, and making reports, and to require such reports to be made in such manner as may be recommended by the state superintendent.

(18) PROVIDE FOR ENFORCEMENT OF LAWS AND REGULATIONS.—To provide for the proper enforcement of all laws relating to the state system of public education and of all regulations or actions of the state board.

(19) PRESCRIBE MINIMUM STANDARDS AND RULES AND REGULATIONS.—To prescribe such minimum standards and rules and regulations as are required by law or as are recommended by the state superintendent in accordance with the provisions of subsection (20), §229.17, and as it may find desirable to aid in carrying out the purposes and objectives of the school code.

(20) ADOPT LONG-TIME PROGRAM.—To adopt and use for guidance in determining policies, regulations, and minimum standards a long-time program for the development of the state system of public education based on special studies and surveys and recommendations submitted by the state superintendent.

(21) COOPERATE WITH STATE SUPERINTENDENT.—To cooperate fully with the state superintendent at all times to the end that the state system of public education may be constantly improved.

(22) OTHER RESPONSIBILITIES.—To assume such other responsibilities and to exercise such other powers and perform such other duties as may be assigned to it by law or as it may find necessary to aid in carrying out the purposes and objectives of the school code.

History.—§308, ch. 19355, 1939; CGL 1940 Supp. 892(48); (10) §13, ch. 29764, 1955; (9) §4, ch. 59-371; (16) §§1-6, ch. 59-404; (5) §2, ch. 61-119; (16)(a) 2. §1, (16)(b),(c) §2, (16)(d) §3, ch. 61-396; (16)r. by §2, ch. 63-225; subseq. subsections renumb. cf.—§3, Art. XII, Florida constitution. Power of state board to remove school officer.

§230.41 Removal of trustees.

§231.28 Revocation of certificate by state board.

§235.04 Disposal of school property by county board.

***Note.**—Ch. 63-522 amended sub. §(5) as set forth below subject to the ratification of a constitutional amendment at the 1964 general election:

(5) ADMINISTER STATE SCHOOL TRUST FUND.—To provide for the proper administration of the state school fund established by §4, Art. XII of the constitution herein designated as the state school trust fund so that the principal shall remain sacred and inviolate except for expenditure for capital outlay on behalf of state institutions of higher learning, including junior colleges, and capital outlay for public schools, as provided and required by §5, Art. XII of the constitution, and to utilize the principal of such fund for the payment of the cost and expense necessary for and attendant to such capital outlay and capital improvement projects at institutions of higher learning, including junior colleges, and capital outlay for public schools, as may have been authorized or approved by the legislature in a general appropriations act or by other legislation.

229.082 Federal funds.—The state board is authorized, in its discretion, to accept the provision of any act of congress appropriating and apportioning funds to the state for use in connection with any phase of the state system of public education. Such funds shall be apportioned and disbursed as follows:

(1) STATE BOARD TO PRESCRIBE REGULATIONS.—The state board shall prescribe such regulations as it finds necessary to provide for the proper apportionment and disbursement of these funds.

(2) DISBURSEMENT OF FUNDS.—Disbursement of such funds shall be made by the state treasurer on warrants to be drawn by the state comptroller upon requisition by the state superintendent and approval by the state board.

History.—§14, ch. 29764, 1955.
Note.—Formerly §236.23.

229.091 Annual registration of all educational institutions with state board of education.—

(1) The state board of education shall organize and maintain in the office of the state superintendent of public instruction a register of educational institutions within the state coming within the provisions of this act. There shall be included in the registration of each institution the name and address of the institution, names of administrative officers, deans of colleges or schools, deans of students, enrollment, and number of teachers.

(2) For the purpose of organizing and maintaining this register, each indiviual, association, copartnership, or corporation, which designates itself as an elementary, secondary, business, technical or grade school below college level, or which gives pre-employment or supplementary training in technology or in fields of trade or industry, or any post-secondary school, junior college, college or university; or other institutions which offer academic, literary, or vocational training below college level, or any combination of the above, including institutions which perform the functions of the above schools through correspondence or extension, shall annually on a day designated by the state board of education register with the state superintendent of public instruction by executing and filing a registration form. The inquiries to be contained and answered in such form shall be prescribed by the state board of education, and sufficient copies of these forms shall be furnished annually to each such institution; provided any such institution publishing an annual catalogue containing the information as required by the registration form may file copies of such catalogue in lieu of the registration form; and provided further that institutions operated by the state or political subdivisions thereof, colleges or schools accredited by the southern association of colleges and schools, or the Florida association of colleges and universities, or the accrediting commission of business schools, or the Florida council of independent schools, or by the Florida state department of education of schools created pursuant to the provisions of the private school corporation act of 1959, chapter 623, or institutions operated by established religious bodies, or schools offering courses in in-service training given in connection with the primary purpose of the firm, person, association, partnership, or corporation and such primary purpose is not education, do not come within the provisions of this act.

(3) The failure of any institution to file the annual registration form as required by the state board of education shall be grounds for revoking the certificate of approval and the charter. Failure by proper authorities of institutions to file such registration shall be judged a misdemeanor and upon conviction shall be subject to a fine not exceeding $500.00.

(4) It is the intent of the legislature in the passage of this act, to create a centralized registry where current information may be had relative to the educational institutions of this state coming within the provisions of this act as a service to the public, to governmental agencies and other interested parties.

History.—§§1-4, ch. 63-549.

229.12 Bond of state superintendent.—Before entering upon the duties of his office, the state superintendent shall execute with two good and sufficient sureties approved by the state board or with a surety company authorized to do business in Florida a bond in the amount of five thousand dollars, the premium for which shall be paid from money appropriated for the operation of the state department.

History.—§312, ch. 19355, 1939; CGL 1940 Supp. 892(52).
cf.—§113.07 Bonds of officials.

229.15 State superintendent to be executive officer of state board.—The state board of education shall consist of the governor, the secretary of state, the attorney general, the state treasurer and the superintendent of public instruction; of which the governor shall be the president and the state superintendent of public instruction shall be secretary and executive officer.

History.—§315, ch. 19355, 1939; CGL 1940 Supp. 892(55); §20, ch. 29764, 1955.

229.16 General powers of state superintendent.—The state superintendent shall have the following general powers:

(1) GENERAL SUPERVISION.—To exercise general supervision over the state system of public education in order to promote progress, to determine problems and needs, and to recommend improvements.

(2) RECOMMEND TO, AND EXECUTE POLICIES OF STATE BOARD.—To advise and counsel with the state board on all matters pertaining to education; to recommend to the state board for approval such matters and policies as, in his opinion, should be acted upon or adopted; and to execute or to provide for the execution of all such measures and policies as are approved.

(3) RECOMMEND AND SUPERVISE EX-

ECUTION OF RULES AND REGULATIONS.—To prepare and organize by subjects and submit to the state board for adoption such rules and regulations as, in his opinion, will contribute to the more orderly operation of any aspect of public education, and, when such rules and regulations have been adopted, to see that they are properly executed.

(4) RECOMMEND AND PUT INTO EFFECT MINIMUM STANDARDS.—From time to time to prepare, organize by subjects, and submit to the state board for adoption such minimum standards relating to the operation of any phase of the state system of public education as, in his opinion, will aid in assuring more adequate educational opportunities for all, and to see, insofar as practicable that such minimum standards as are adopted by the state board are put into effect and are properly observed.

(5) ADMINISTER STATE DEPARTMENT.—To organize, staff, and administer the state department so as to render the maximum service to public education in the state.

(6) PERFORM DUTIES AND EXERCISE RESPONSIBILITIES.—To perform such duties and exercise such responsibilities as are assigned to him by law or as may be found necessary by the state board for the improvement of the state system of public education in carrying out the purposes and objectives of the school code.

(7) PUBLICATION AND DISTRIBUTION OF FLORIDA SCHOOL CODE.—The state superintendent of public instruction shall cause to be printed such copies of said Florida school code as he may find necessary to meet the needs of his department, to supply the necessary copies to county school officials of the state, to be used by him in the mutual exchange of school laws with other states, to meet such needs as may be determined under regulations of the state board of education, and for sale to the general public. The price of the copies of the Florida school code to be sold to the general public shall be fixed by the state board of education to cover the cost of printing and distributing same.

(8) OTHER PUBLICATIONS.—In order that all persons concerned may be adequately informed regarding educational progress, conditions, plans, and needs, the state superintendent shall authorize publication through the department of such bulletins, reports, manuals, periodicals, circulars, and notices as he may consider advisable and desirable to promote public education in the state.

History.—§316, ch. 19355, 1939; CGL 1940 Supp. 892(56); §21, ch. 29764, 1955.
Note.—Formerly §227.07(7).

229.17 Duties and responsibilities of state superintendent.—It shall be the responsibility of the state superintendent to exercise all powers and perform all duties prescribed below; provided, that in those fields in which policies are required by law to be approved by the state board the state superintendent shall act as the advisor and executive officer of the state board.

(1) MEETINGS OF THE STATE BOARD.—To attend all meetings of the state board, submit such recommendations and information to the state board for consideration as he may deem advisable or as may be requested of him by the state board, to advise and counsel with the state board regarding these matters, and to call such special meetings of the state board as he shall deem necessary.

(2) KEEP RECORDS.—To keep such records as are necessary to set forth clearly all acts and proceedings of the state board. These records shall include a minute book giving a chronological record of all proceedings as well as such indices and supplementary records as are necessary to classify and to locate any and all actions.

(3) SEAL.—To have a seal for his office, with which, in connection with his own signature, he shall authenticate true copies of decisions, acts, or documents.

(4) APPORTION STATE SCHOOL FUNDS.—To apportion all state school funds to the credit of the county general school funds of the respective counties in accordance with the provisions of law and of rules and regulations of the state board.

(5) STATE SCHOOL TRUST FUND.—To recommend to the state board policies and steps designed to protect and preserve the principal of the state school trust fund and to provide an assured and stable income from the fund, and to execute such policies and actions as are approved.

(6) SCHOOL LANDS.—To investigate and submit proposals for sale of all school lands held by the state for educational purposes; to recommend policies for rental, use, or improvement of such lands and for preserving them from trespass or injury; to execute such policies as are approved.

(7) INSTITUTIONS UNDER MANAGEMENT AND CONTROL OF STATE BOARD OF CONTROL.—To make such recommendations regarding the institutions under the management and control of the state board of control as he may deem advisable.

(8) BIENNIAL BUDGET: PREPARATION OF.—To prepare for transmission and submission to the state board, on or before November fifteenth, biennially, prior to the meeting of the state legislature, estimates of the expenditure requirements for the institutions, agencies, and services under the control of the state board, except as otherwise provided in the school code, for each fiscal year of the ensuing biennium.

(9) VOCATIONAL EDUCATION.—To act as secretary and executive officer of the state board in matters pertaining to vocational education and vocational rehabilitation; to recommend to the state board, and, when approved by the board, to execute plans for cooperating with the federal government for the

conduct of the vocational rehabilitation program in the state; to designate such assistants as are necessary to carry out properly the program and plans; to carry into effect such rules and regulations as the state board may adopt for the promotion of vocational education and vocational rehabilitation in the state; to keep all necessary records and make all required reports, and to provide for the proper articulation of vocational education and vocational rehabilitation with all other phases of education in the state.

(10) FEDERAL GOVERNMENT. — To recommend ways and means of cooperating with the federal government in carrying out any or all phases of the educational program in which, in his opinion, cooperation is desirable. To recommend policies for administering funds which may be appropriated by congress and apportioned to the state for any or all educational purposes, and to execute such plans as are approved.

(11) OTHER AGENCIES. — To recommend policies and ways and means of cooperating with other agencies, federal, state, county, and city, for carrying out those phases of the program in which such cooperation is required by law or is deemed by him to be desirable, and to cooperate with such agencies in planning and bringing about improvements in the educational program.

(12) STATE BOARD OF CONTROL.— To bring to the attention of the state board recommendations of the state board of control relating to matters which are required to be approved by the state board.

(13) INSTITUTIONS, AGENCIES, AND SERVICES CONTROLLED BY STATE BOARD.—To recommend policies and regulations and to see that approved policies and regulations relating to the operation of schools, institutions, agencies, and services under the direct control of the state board are properly carried out.

(14) RECOMMEND COMMITTEE MEMBERS.—To recommend to the state board the personnel of such committees as are authorized by law; also to recommend to the state board the establishment and personnel of such committees as may be deemed by him to be desirable in carrying out the purposes and objectives of the school code.

(15) REMOVAL FROM OFFICE. — To recommend when he deems it desirable that the state board remove from office for cause any person appointed by the state board or any other person removable by the state board; to act for the state board in notifying any such person of the charges against him and of the date on which the hearing has been scheduled, and to assemble and present to the state board any evidence that may be available relating to any charges which are filed.

(16) ISSUE CERTIFICATES AND LICENSES AND RECOMMEND REVOCATION. —To issue to qualified applicants in accordance with state board regulations certificates, permits, and licenses authorized by law, and to recommend to the state board revocation of any certificate, permit, or license for cause on the basis of evidence assembled and submitted to the state board.

(17) TO HEAR AND DETERMINE CONTROVERSIES.—To advise and counsel concerning the interpretation and meaning of the school code and the rules and regulations adopted pursuant thereto; and whenever practicable to amicably adjust and settle such controversies arising thereunder as may be submitted to him by all persons directly concerned.

(18) FORMS AND REPORTS.—To prepare for approval of the state board such forms and procedures as are deemed necessary to be used by county boards, school officials, principals, teachers, and other employees and to assure uniformity, accuracy, and efficiency in the keeping of records, the execution of contracts, the preparation of budgets, and the submission of reports; to furnish at state expense, when deemed advisable by him, those forms which can more economically and efficiently be provided in that manner; and to notify the county board of any county for which any report has not been filed in the manner or by the date prescribed by law or by regulations of the state board that the salary of the county superintendent must be withheld until the report has been properly filed.

(19) LAWS AND REGULATIONS.—To see, insofar as practicable, that all laws and regulations of the state board relating to education are properly observed and to report to the state board any violation which he does not succeed in having corrected.

(20) MINIMUM STANDARDS AND RULES AND REGULATIONS.—To prepare, organize, and recommend to the state board such minimum standards and rules and regulations in the following fields as are required by law or as he may find necessary to aid in carrying out the purposes and objectives of the school code; and to execute such standards and rules and regulations as are adopted by the state board in the following fields: (1) establishment, organization, and operation of schools, agencies, services, and institutions, including the classification or accreditation of parochial, denominational, and private schools; (2) personnel; (3) child welfare; (4) courses of study and instructional aids; (5) transportation; (6) school plant; (7) finance; (8) records and reports.

(21) LONG-TIME PROGRAM. — To assemble all data relative to the preparation of a long-time program for the development of the state system of public education, to prepare and propose such a program after consulting with educational and lay leaders, as well as with the state board, and, from time to time, to make such revisions in the proposed program as he may consider necessary.

(22) CONDUCT SPECIAL STUDIES AND SURVEYS.—To conduct in cooperation

with county boards or with other school officials any special studies or surveys which he may consider desirable as a basis for bringing about improvements in the educational program.

(23) RECOMMEND CHANGES AND IMPROVEMENTS IN THE SCHOOL CODE.—To draw up and submit to the legislature, when he deems it necessary, recommendations for additional legislation or changes in the school code, which recommendations may be in the form of prepared bills.

(24) EXAMINE, ACCREDIT, AND RECOMMEND IMPROVEMENTS IN SCHOOLS, SCHOOL SYSTEMS, AND INSTITUTIONS.—To examine the school plant, personnel, instruction, schools, methods of keeping accounts, records and reports and other aspects of county school systems and educational institutions; to make recommendations to the proper authorities for needed changes and improvements; and to classify or accredit schools or services on the basis of standards and regulations prescribed by the state board.

(25) SECRETARY AND EXECUTIVE OFFICER OF STATE TEXTBOOK PURCHASING BOARD.—To serve as secretary and executive officer for the state textbook purchasing board as described in chapter 233.

(26) CALL MEETINGS.—To call at such times and places as he may find practicable and desirable conferences or other meetings on educational matters of county superintendents, other county school officials, principals, teachers, or others connected with the state system of public education, these meetings to be used as the basis for obtaining and imparting information and instructions on the practical workings and problems of the school system and the means of promoting its efficiency and usefulness.

(27) PUBLICATIONS.—To arrange for the preparation, publication, and distribution of materials relating to the state system of public education which will supply information concerning needs, problems, plans, possibilities; also to prepare and publish at least biennially a report giving statistics and other useful information pertaining to the state system of public education; to have printed copies of school laws, forms, instruments, instructions and regulations of the state board and to provide for the distribution of the same under regulations of the state board.

(28) OTHER RESPONSIBILITIES.—To assume such other responsibilities and to perform such other duties as may be assigned to him by law or as may be deemed by him to be necessary to aid in the more efficient operation of the state system of public education in carrying out the purposes and objectives of the school code.

History.—§317, ch. 19355, 1939; CGL 1940 Supp. 892(57); (5) §2, ch. 61-119.

cf.—§3, Art. XII Florida constitution, state superintendent to be secretary of state board.
§231.13 Conferences of personnel.
§233.13 State to furnish textbooks in public schools.
§236.03 State superintendent to determine units and apportion funds.
§236.29 Apportionment of county current school fund.

229.18 State department under direction of state superintendent.—The state department of education shall act as an administrative and supervisory agency under the direction of the state superintendent. The state superintendent and his staff shall comprise the state department.

History.—§318, ch. 19355, 1939; CGL 1940 Supp. 892(58); §22, ch. 29764, 1955.

229.19 Functions of state department.—The state department shall be located in the offices of the state superintendent, shall operate under the direction and control of the state superintendent and shall assist him in providing professional leadership and guidance, and in carrying out the policies, procedures, and duties authorized by law or by the state board or found necessary by him to attain the purposes and objectives of the school code.

History.—§319, ch. 19355, 1939; CGL 1940 Supp. 892(59).

229.20 Organization of state department.—The state department shall be organized into such divisions, branches, or sections as may be found necessary and desirable by the state superintendent to perform all proper functions and render maximum services relating to the operation and improvement of the state system of public education; provided, that the organization shall be such as to promote coordination of functions and services relating to administrative and financial problems, on the one hand, and to instructional problems, on the other hand.

History.—§320, ch. 19355, 1939; CGL 1940 Supp. 892(60).

229.201 Records; preservation; destruction.—

(1) The purpose of this section is to make available for the use of the state superintendent of public instruction sufficient floor space to enable him to efficiently administer the affairs of the office.

(2) The state superintendent of public instruction is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character which in his discretion he may select, and the state superintendent of public instruction is authorized to destroy any of the said documents after they have been photographed and after audit of his office has been completed for the period embracing the dates of said instruments. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

(3) The state superintendent of public instruction is authorized, in his discretion, to destroy general correspondence which is over three years old; records of bills, accounts,

vouchers and requisitions which are over five years old and copies of which have been filed with the comptroller; and other records, papers and documents over three years old which do not serve as part of an agreement or understanding nor have value as permanent records.

History.—§§1-3, ch. 29745, 1955.

229.21 Maintenance of state department.—Appropriations and other funds available for the maintenance of the state department shall be expended as provided by law.

History.—§321, ch. 19355, 1939; CGL 1940 Supp. 892(61).

229.22 Employees; appointment, compensation.—The state superintendent shall appoint with due regard to qualifications for the duties to be performed, designate the titles, prescribe the duties, determine the compensation, and effect the removal for cause of all employees in the state department, the total amount of compensation for employees to be subject to the limitations of the appropriations available for the maintenance of the state department.

History.—§322, ch. 19355, 1939; CGL 1940 Supp. 892(62).

229.23 Special services of the state department; pooling of purchases by county boards.—The state department of education shall render such special services as will be of benefit to the schools of the state. As one phase of these services it shall assist county boards in securing school buses, contractual needs, equipment, and supplies at as reasonable prices as possible by providing a plan under which county boards may voluntarily pool their bids for such purchases. The state department of education shall prepare bid forms and specifications, obtain quotations of prices and make such information available to county boards in order to facilitate this service. County boards from time to time, as prescribed by the state board, shall furnish the state department of education with information concerning the prices paid for such items and the state department of education shall furnish to county boards periodic information concerning the lowest prices at which school buses, equipment, and school supplies are available based upon comparable specifications; provided, that no county board shall make any such purchases which exceed three hundred dollars at any higher prices except during emergencies as prescribed by the state board; provided, further, that all prices are to be computed f.o.b. point of destination.

History.—§323, ch. 19355, 1939; CGL 1940 Supp. 892(63); §4, ch. 23726, 1947; §23, ch. 29764, 1955; §2, ch. 61-288.

229.24 State board authorized to accept gifts.—

(1) The state board of education shall have authority to accept, on behalf of the state system of public education or of any school fund established or recognized by law, any gift or bequest of money, royalty or other personal or real property given or bequeathed to the state system of public education, or to any school fund established or recognized by law; provided, that no conditions shall be attached to any such gift or bequest of money, royalty or other personal or real property given or bequeathed for the purposes designated herein which are contrary to the provisions of law or regulations of the state board relating to the use or expenditure of the fund.

(2) The state treasurer shall be treasurer and custodian of all such gifts and bequests of money, royalty and other personal property given or bequeathed for the purposes designated herein. He shall receive and provide for the proper custody and disbursement of any such funds, in accordance with the provisions of law and regulations of the state board.

History.—§§1, 2, ch. 20879, 1941.

cf.—§272.01 Board to hold title to patents, trade marks, copyrights, etc.

229.241 State board authorized to exchange land.—

(1) The state board of education of this state is hereby authorized in its discretion to exchange land of the state school fund held by said board for other land in this state held by any other state agency, or by any county in this state, or by any person, private or corporate, where such exchange will be advantageous to said fund.

(2) The said state board of education shall have authority to fix the terms and conditions of any such exchange and to select and agree upon the lands to be conveyed to and to be received by said board, and to make and enter into contracts and agreements therefor. To be acceptable, the land to be received by said board in exchange shall be free of tax or other debt and shall be clear as to title.

(3) In making exchange of land, the said board may in its discretion convey said land without the reservation of oil, gas, or of phosphate and other minerals required by §270.11, where deeds to land received in exchange convey title in fee simple without such reservations, or to determine the part or parts to be reserved and the part or parts to be conveyed so as to facilitate exchange on a basis as nearly equal as may be.

(4) In pursuance of the provisions of the constitution of this state that "The principal of the state school fund shall remain sacred and inviolate," the land comprising part of said fund shall not be subject to taxes of any kind whatsoever, but shall enjoy constitutional immunity therefrom, nor shall taxes of any kind be imposed thereon; nor, since not subject to tax, shall the state or any state agency be liable for taxes or the equivalent thereof sought to be imposed upon said land. All outstanding tax sale certificates against land of the state school fund are hereby cancelled.

(5) Any such exchanges of land heretofore made by said state board of education are hereby confirmed and validated.

History.—§§1-5, ch. 25186, 1949.

229.25 Short title.—Sections 229.25-229.39 shall be known as the "vocational rehabilitation law of Florida."

History.—§1, ch. 25364, 1949.

cf.—§§236.15-236.22 Funds for vocational education and rehabilitation.

229.26 Definitions.—

(1) "State board" means the state board of education designated as the state board of vocational education in §229.08(9);

(2) "Division" means the division of vocational rehabilitation established by §229.27;

(3) "Executive officer" means the state superintendent designated as the executive officer of the state board of vocational education in §229.17(9);

(4) "Director" means the director of the division of vocational rehabilitation;

(5) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in an impairment of occupational performance;

(6) "Disabled individual" means any person who has a substantial employment handicap;

(7) "Vocational rehabilitation" and "vocational rehabilitation services" mean any service, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap, and to enable him to engage in an occupation, including but not limited to, medical and vocational diagnosis, vocational guidance, counselling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, placement equipment and materials, maintenance, and training books and materials;

(8) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(9) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing service, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions;

(10) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ;

(11) "Occupational licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(12) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(13) "Regulations" means regulations made by the director with the approval of the executive officer and state board and promulgated in the manner prescribed by law.

History.—§2, ch. 25364, 1949.

229.27 Establishment of division of vocational rehabilitation.—There is hereby established in and under the supervision of the state board a division of vocational rehabilitation.

History.—§3, ch. 25364, 1949.

229.28 Director of division of vocational rehabilitation.—The division shall be administered, under the general supervision and direction of the executive officer, by a director appointed by the executive officer with the approval of the state board in accordance with established personnel standards and on the basis of his education, training, experience, and demonstrated ability in the field of vocational rehabilitation. The director shall devote his full time to the administration of the vocational rehabilitation program. In carrying out his duties under §§229.25-229.39 the director

(1) shall, with the approval of the executive officer, prepare regulations for promulgation by the state board governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of §§229.25-229.39;

(2) shall, with the approval of the executive officer and the state board, establish appropriate subordinate administrative units within the division;

(3) shall, recommend to the executive officer for appointment such personnel as he deems necessary for the efficient performance of the functions of the division;

(4) shall, prepare and submit to the state board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out §§229.25-229.39 and estimates of the amounts to be made available for this purpose from all sources;

(5) shall, with the approval of the executive officer, make requisitions for disbursement, in accordance with §229.082;

(6) shall, with the approval of the executive officer and the state board, take such other action as he deems necessary or appropriate to carry out the purposes of §§229.25-229.39;

(7) may, with the approval of the executive officer and the state board, delegate to any officer or employee of the division such of his powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he finds necessary to carry out the purposes of §§229.25-229.39.

History.—§4, ch. 25364, 1949.

229.29 Administration.—Except as may be

otherwise provided by the law for the vocational rehabilitation of the blind, the state board, through the division, shall provide vocational rehabilitation services to disabled individuals determined to be eligible therefor and, in carrying out the purposes of §§229.25-229.39, the division is authorized, among other things,

(1) to cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of §§229.25-229.39, such programs, facilities and services as may be necessary or desirable;

(2) to enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;

(3) to conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

History.—§5, ch. 25364, 1949.

229.30 Cooperation with federal government.—The state board, through the division, shall cooperate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration not in conflict with the laws of Florida as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History.—§6, ch. 25364, 1949.

229.301 State accepts provisions of vocational rehabilitation act.—The consent of the state is given to the provisions and requirements of the act of congress approved by the president, June 2, 1920, amended June 5, 1924, entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," and any acts supplementary thereto or amendatory thereof. State and county funds may also be used subject to regulations of the state board for the maintenance of physically-handicapped persons in training under the provisions of this act in cases where such persons could not otherwise avail themselves of the services which the national act was designed to provide. The treasurer of Florida may receive the grants of money appropriated under said act and amendments thereto, and the state board is empowered and instructed to cooperate with the office of education in accord with the terms and conditions expressed in the act of congress aforesaid.

History.—§1021, ch. 19355, 1939; CGL 1940 Supp. 892(340); §24, ch. 29764, 1955.
Note.—Formerly §236.21.

229.302 Cooperative agreements with other governmental agencies relative to joint use of services and facilities.—

(1) The division of vocational rehabilitation of the state board for vocational education is authorized to enter into cooperative agreements with any state agency or institution, county, county agency or institution, municipality, or municipal agency or institution having legal responsibility for the care of the disabled for the purpose of enabling the division and the cooperating governing bodies, agencies and institutions to utilize jointly their services and facilities to enlarge and improve the opportunities for disabled individuals to achieve self-support or self-care.

(2) For this act to be valid an agreement must be entered into mutually by the governing bodies, agencies, or institutions involved and must be approved by the administrative officers or by the boards governing the counties, municipalities, agencies, or institutions. The agreements shall provide only for those services by each political subdivision, agency or institution which the political subdivision, agency or institution is authorized by law to provide; provided that any political subdivision, agency or institution shall be permitted to withdraw and terminate its part of an agreement at the end of any fiscal year by giving the other political subdivision, agency or institution involved thirty days notice.

(3) In order to effectuate the provisions of this act, the state budget commission is authorized and empowered within its discretion when it finds it to be in the public interest to permit two or more agencies, institutions, county or city governments, pursuant to their mutual, unanimous request to pool portions of their funds or to transfer portions of their funds to the account of the division of vocational rehabilitation in order to carry out plans for rehabilitation which are lawful and which give promise of better achieving the rehabilitation of disabled persons than would result through the separate efforts of the participants in the agreement. Funds pooled or transferred under this act may be made available for expenditures for rehabilitation by the agency designated in the agreement to disburse such funds. Funds expended pursuant to agreements authorized under this act may be utilized for the purpose of matching funds available under the terms of U.S. public law 565 or other federal laws pertaining to the rehabilitation of handicapped persons.

(4) A copy of each agreement made pursuant to this act shall be filed with the secretary of state within a period of thirty days following the consummation of such agreement.

History.—§§1-4, ch. 63-246.

229.303 Cooperative agreements with Florida school for the deaf and blind.—

(1) The division of vocational rehabilitation of the state board for vocational education is authorized to enter into cooperative agreements with the Florida school for the deaf and

blind for the purpose of enabling said agencies to utilize jointly their services and facilities to enlarge and improve the opportunities for deaf and blind individuals to achieve self-support or self-care.

(2) (a) For such an agreement to be valid, it must be entered into mutually by such agencies and must be approved by the administrative officers or by the boards governing same. The agreement may provide for those services which each agency or institution is authorized by law to furnish; provided that such agreement may establish a vocational rehabilitation facility for the deaf at the Florida school for the deaf and blind which facility may accept as clients any deaf adult otherwise qualified for admission. Either agency may withdraw and terminate its part of such agreement at the end of any fiscal year by giving the other agency involved thirty days notice.

(b) The Florida school for the deaf and blind is authorized to use funds now in its budget for matching those of the division of vocational rehabilitation, in furtherance of such agreement. Said school may employ such additional personnel as may be necessary to implement such agreement.

(3) In order to effectuate the provisions of this act, the state budget commission shall, upon the conclusion of any such agreement, pool portions of the funds of said agencies as indicated in such agreement. Funds pooled or transferred under this act may be made available for expenditures for rehabilitation by the agency designated in the agreement to disburse such funds, and may be used to compensate additional personnel employed under subsection (2)(b). Funds expended pursuant to any agreement authorized under this act may be utilized for the purpose of matching funds available under the terms of federal laws pertaining to the rehabilitation of the deaf.

(4) A copy of any such agreement, when and if concluded pursuant hereto, shall be filed with the secretary of state within a period of thirty days following the consummation of such agreement.

History.—§§1-4, ch. 63-389.

229.31 Appropriations.—Budget estimates of the amount of appropriations needed each fiscal year for vocational rehabilitation services and for the administration of said program shall be submitted to the state budget commission and the legislature by the executive officer of the state board or in such other manner as may be provided by law and sufficient funds for the purpose of carrying out the provisions of §§229.25-229.39 shall be appropriated by the legislature. In the event federal funds are available to the state for vocational rehabilitation purposes, the division of vocational rehabilitation is authorized to comply with such requirements as may be necessary to obtain said federal funds in the most advantageous proportions possible insofar as this may be done without violating other provisions of the state law and constitution. Any federal funds received as reimbursement of state expenditures for a prior year or biennium shall be added to the state appropriation for the biennium during which such funds are reimbursed and the same shall be made available for expenditure and so expended as to entitle the state board to receive any federal matching funds which may be available for vocational rehabilitation pursuant to such expenditures.

History.—§7, ch. 25364, 1949; §25, ch. 29764, 1955.

229.32 Gifts.—The director is hereby authorized and empowered with the approval of the state board, to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of §§229.25-229.39. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of §§229.25-229.39 and the laws of the United States and the laws of Florida may be so accepted and shall be held, invested, reinvested, and used in accordance with the condition of the gift.

History.—§8, ch. 25364, 1949.

229.33 Eligibility for vocational rehabilitation.—Vocational rehabilitation services shall be provided to any disabled individual (a) who is a resident of the state at the time of filing his application therefor and whose vocational rehabilitation, the director determines after full investigation, can be satisfactorily achieved, or (b) who is eligible therefor under the terms of an agreement with another state or with the federal government: provided, that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state board thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(1) Physical restoration;

(2) Transportation provided for other purposes than to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(3) Occupational licenses;

(4) Placement equipment and materials;

(5) Maintenance;

(6) Training books and materials.

History.—§9, ch. 25364, 1949.

229.34 Benefits not assignable.—The right of a disabled individual to any of the benefits under §§229.25-229.39 shall not be transferrable or assignable at law or in equity and any benefits, including money, goods or chattels received hereunder shall be exempt from all state, county and municipal taxes and from sale under the process of any court, except for obligations contracted for the purchase of such property.

History.—§10, ch. 25364, 1949.

229.35 Retention of title to and disposal of equipment.—The division is authorized to re-

tain title to any property, tools, instruments, training supplies, equipment or other items of value acquired for use of handicapped persons or employed personnel in the operation of the vocational rehabilitation program, and to repossess and transfer same for the use of other handicapped persons or employees.

The director, with the approval of the state board, is authorized to offer for sale any surplus items acquired in the operation of the program when they are no longer necessary, or to exchange them for necessary items which may be used to greater advantage. When any such surplus equipment is sold or exchanged a receipt for same shall be taken from the purchaser showing the consideration given for such equipment and forwarded to the treasurer and any funds received by the state board pursuant to any such transactions shall be deposited in the state treasury in the appropriate federal or state rehabilitation funds and shall be available for expenditure for any purpose consistent with §§229.25-229.39.

History.—§11, ch. 25364, 1949.

229.36 Hearings.—Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division shall be entitled, in accordance with regulations, to a hearing in accordance with the regulations adopted and promulgated by the state board on that subject.

History.—§12, ch. 25364, 1949.

229.37 Misuse of vocational rehabilitation lists and records.—It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any violation of this provision is hereby declared to be a misdemeanor and shall be punishable accordingly.

History.—§13, ch. 25364, 1949.

229.38 Limitation on political activity.—No officer or employee engaged in the administration of the vocational rehabilitation program shall use his official authority or influence to permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose. No such officer or employee, excluding elective officials and constitutional officers, shall take any active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinion as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. Any officer or employee violating this provision shall be subject to discharge or suspension. No such officer or employee engaged in the administration of the vocational rehabilitation program (except elective officials and constitutional officers) shall be appointed or promoted as a reward for loyalty and effort in a political campaign or other political activity, nor shall any such officer or employee be demoted or discharged because of political affiliation or lack of same except as a disciplinary measure in instances of violation of the prohibitions against political activity. Any violation of this section is declared to be a misdemeanor and punishable accordingly.

History.—§14, ch. 25364, 1949.
cf.—§104.31 Political activities of state officers and employees.

229.39 Duties of other agencies and officials regarding §§229.25-229.39.—It shall be the duty of all officials in charge of state or county agencies whose official duties enable them to know the needs of disabled individuals for vocational rehabilitation to report to the state board the names of such individuals who come to their attention and who appear to be eligible and feasible for vocational rehabilitation services provided under §§229.25-229.39. Such officials shall cooperate with the state board in carrying out the purpose of §§229.25-229.39 in so far as their duties and facilities permit, but the board may not delegate any of its duties and responsibilities under §§229.25-229.39 to any other agency or individual except with respect to disabled individuals for each of whom a vocational rehabilitation plan has been approved by the director or by a member of his staff to whom he has delegated authority to approve individual vocational rehabilitation plans. Provided, however, that nothing in §§229.25-229.39 shall be so construed as to prevent other agencies from rendering services to disabled individuals not designed especially for the purpose of vocationally rehabilitating such individuals or services to which disabled individuals might be entitled without regard to their disabilities.

History.—§15, ch. 25364, 1949.

229.411 Self-care program for handicapped; legislative findings.—It is hereby found by the legislature of the state that many seriously disabled persons are institutionalized or require the services of an attendant and that studies and demonstrations have shown that many such persons, although not apparently feasible for vocational rehabilitation services based on a plan designed to prepare for employment in a designated vocation as now required for eligibility for vocational rehabilitation services nevertheless could be substantially assisted toward achieving ability for self-care by the services the division of vocational rehabilitation could render to them and that such persons

might be made able to dispense with or greatly reduce the need for services of an attendant or for institutional care, thereby relieving such individuals from being a burden on others and helping to restore and maintain their independence and self respect; and some such persons, after achieving the ability to care for themselves, may later through further rehabilitation services be rendered able to perform remunerated work thereby making them less dependent on others for financial support. The legislature further finds that the division of vocational rehabilitation which serves approximately twenty thousand disabled individuals annually, is specially qualified and equipped by over thirty years of rehabilitation experience and by the nature of its comprehensive program of disability evaluation, studies of individual capacity for employment and vocational rehabilitation services leading to the employment of handicapped persons to administer such a program and that it is in the best interest of the state that such a program be established as a means of providing necessary services to individuals, thereby reducing and discouraging dependency and encouraging individual effort for self support.

History.—§1, ch. 59-385.

229.42 Definitions.—

(1) "Severely handicapped person" is defined to mean a person of employable age with a physical or mental disability so handicapping as to require that he be institutionalized or have the services of an attendant in order to provide himself with his daily living requirements.

(2) "Evaluation services for rehabilitation purposes" means comprehensive, individual case studies including diagnosis, psychological and physical tests of capacity for training and rehabilitation, and such other procedures and observations necessary to determine the nature and extent of a handicap, its effect on employability and ability for self-care, the attitude of the individual toward his handicap and especially his desire to overcome the handicap through training and rehabilitation procedures, the prognosis for improvement and the practical procedures and training necessary to achieve the ability for self care and for eventual employment.

(3) "Self-care rehabilitation services" means such diagnostic, psychological, medical, surgical, physical restoration, guidance, training and related services including equipment and prosthetic appliances and training in their use needed to enable a severely handicapped person to dispense with or largely dispense with the need for institutional care or for the services of an attendant and to achieve, insofar as practicable, the ability for independent living.

(4) "Severely handicapped person eligible for self-care rehabilitation services" means such person whose rehabilitation for self-care purposes the division of vocational rehabilitation finds to be feasible under the provisions of this law.

(5) "Division of vocational rehabilitation" means the division of vocational rehabilitation authorized by the vocational rehabilitation laws of Florida, §§229.25-229.39.

History.—§2, ch. 59-385.

229.43 Administration.—The division of vocational rehabilitation of the state board for vocational education is hereby authorized, in addition to its other duties and responsibilities, to administer a program of self-care rehabilitation services for severely handicapped persons who appear to be feasible for such services.

History.—§3, ch. 59-385.

229.44 Powers of division of vocational rehabilitation.—The division of vocational rehabilitation in carrying out a program of providing self-care rehabilitation services to severely handicapped persons shall be authorized to:

(1) Employ necessary personnel;

(2) Employ consultants;

(3) Provide diagnostic, medical, and psychological and other evaluation services;

(4) Provide training necessary for rehabilitation;

(5) Provide for persons found to require financial assistance with respect thereto maintenance while undergoing rehabilitation, transportation incident to necessary rehabilitation services, physical restoration services, prosthetic appliances and other equipment determined to be necessary for rehabilitation.

(6) Provide rehabilitation facilities necessary for the rehabilitation of the handicapped or contract with such facilities for necessary services. The division shall not, however, assume responsibility for permanent custodial care of any individual and shall provide rehabilitation services only for a period long enough to accomplish the rehabilitation objective or to determine that rehabilitation is not feasible through the services which can be made available to the individual being served.

History.—§4, ch. 59-385.

229.45 Cooperation by division with state agencies.—The division of vocational rehabilitation is hereby authorized to cooperate with other agencies of the state government or with any non-profit, charitable corporations or foundations concerned with the problems of the disabled. The division may provide disability evaluation, work capacity appraisal and appraisal of vocational rehabilitation potential of handicapped individuals for other public agencies pursuant to agreements made with the approval of the state board at the request of such agencies. The division may charge the agencies contracting for these services the actual cost thereof.

History.—§5, ch. 59-385.

229.46 Cooperation with federal agencies.—The division of vocational rehabilitation is hereby authorized to cooperate with any agency of the federal government charged with the

responsibility for administering laws relating to rehabilitation of handicapped individuals or the evaluation of the capacity of handicapped persons for employment, or for preparation for employment or for self-care. The division shall further be authorized to accept and disburse any funds appropriated by congress and made available to the state for the purpose of rehabilitating disabled individuals or the evaluation of disabled individuals for rehabilitation or for gainful activity, or for any other purpose related to the lawful function of the division, and the division is authorized to take such action, with the approval of the state board, as may be necessary to execute the purposes of any such federal grants.

History.—§6, ch. 59-385.

229.47 Utilization of state and federal funds.—The state board for vocational education is authorized to utilize for purposes of this law and for matching any federal funds which may be available for similar rehabilitation purposes any funds appropriated or allotted to the board for the rehabilitation of the handicapped. The board shall further authorize the division of vocational rehabilitation to accept such gifts and refunds as may be made unconditionally or as are not burdened with conditions inconsistent with the purposes of the rehabilitation program.

History.—§8, ch. 59-385.

229.48 State treasury depository.—The state treasury shall be the depository of all funds appropriated by the state legislature or received as federal grants or received as gifts from private individuals for the purposes of this program. Such funds shall be kept in a separate account distinct from all other state funds. Funds received by grant or gift, other than state appropriations, shall not lapse or be converted to the general fund at the end of any appropriations period.

History.—§9, ch. 59-385.

229.49 Reports of division of vocational rehabilitation.—The division of vocational rehabilitation shall prepare at the end of each fiscal year for submission to the state board for vocational education a report showing the activities of the division, the number of handicapped persons served, the effects of such service, the expenditures made in carrying out the purposes of this law, the funds necessary for the succeeding year or biennium; the division shall also make recommendations to the board relative to rehabilitation services which it believes necessary to improve the economic conditions of Florida's handicapped citizens.

History.—§11, ch. 59-385.

229.50 State advisory committee on rehabilitation of handicapped.—The executive officer of the state board for vocational education shall appoint a state advisory committee on rehabilitation of the handicapped. The purpose of the committee shall be to advise the state board and the division of vocational rehabilitation regarding the rehabilitation of the handicapped and to advise the division with regard to services which are available to disabled and handicapped persons through other agencies of the state government and through private agencies and to make recommendations for the coordination and improvement of services which are designed for the rehabilitation of the citizens of Florida. The membership of the committee shall include the state health officer, the state director of public welfare, the state director of the crippled children's commission, the chairman of the Florida industrial commission, and the coordinator of the state board of institutions. In addition to these designated members, the executive officer shall appoint six other members, two of whom shall be chosen from the medical profession, one shall be selected from organized labor, one shall be a person who is engaged as an employer or manager in commerce or industry, one shall be selected from a private agency or association having a major interest in the rehabilitation of the handicapped. One member of the advisory committee shall be selected from the membership of the Florida legislature. The committee shall serve without compensation but shall be reimbursed for traveling expenses as provided in §112.061. Members designated from the public agencies named above shall serve continuously on the committee. The other members shall serve for terms designated by the executive officer of the state board for vocational education.

History.—§7, ch. 59-385; §19, ch. 63-400.

CHAPTER 230

THE COUNTY SCHOOL SYSTEM

230.01 County unit.—Each county shall constitute a unit for the control, organization, and administration of schools.

History.—§401, ch. 19355, 1939; CGL 1940 Supp. 892(64); §27, ch. 29764, 1955.

230.02 Scope of county system.—A county school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that county which are under the direction of the county school officials.

History.—§402, ch. 19355, 1939; CGL 1940 Supp. 892(65).

230.03 Control; organization, administration, and supervision.—The county school system shall be controlled, organized, administered, and supervised as follows:

(1) COUNTY SYSTEM. — The county school system shall be considered as a part of the state system of public education. All actions of county school officials shall be consistent and in harmony with state laws and with rules and regulations and minimum standards of the state board. County school officials, however, shall have the authority to provide additional educational opportunities, as desired,

which are authorized but not required by law.

(2) COUNTY BOARD. — Responsibility for the organization and control of the public schools of the county shall be vested in the county board, as provided in §§230.04-230.23.

(3) COUNTY SUPERINTENDENT.—Responsibility for the administration of the schools and for the supervision of instruction in the county shall be vested in the county superintendent as the secretary and executive officer of the county board, as set forth in §§230.24-230.33.

(4) TRUSTEES.—The school district trustees shall constitute an advisory body for the district as set forth in §§230.34-230.43.

(5) PRINCIPAL OR HEAD OF SCHOOL. —Limited responsibility for the administration of any school or schools at a given school center and for the supervision of instruction therein shall be delegated to the principal or head of the school or schools as hereinafter set forth.

History.—§403, ch. 19355, 1939; CGL 1940 Supp. 892(66); (4), (5) r. by §28, ch. 29764, 1955, remaining subsections renumbered; (4) §1, ch. 57-249.

230.04 Membership of county board.—The county board in each county shall be composed of five members. Each member of the county board shall be a qualified elector of the county in which he serves, and shall be a resident of the county board member residence district from which he is elected as hereinafter prescribed.

History.—§404, ch. 19355, 1939; CGL 1940 Supp. 892(67); §5, ch. 23726, 1947.

230.05 Term of office.—County board members shall be elected at the general election in November for terms of four years.

History.—§405, ch. 19355, 1939; CGL 1940 Supp. 892(68); §29, ch. 29764, 1955.

230.061 County board member residence districts.—

(1) For the purpose of nominating and electing county school board members, each county shall be divided into five county school board member residence districts, which shall be numbered one to five, inclusive, so as to place in each district, as nearly as practicable, the same number of qualified electors.

(2) The county school board of any county may make any change which it deems necessary in the boundaries of any county school board residence district of the county at any meeting of the county school board; provided that such changes shall be made only in odd-numbered years and provided further, that no change which would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the county board, and shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the county within thirty days after the adoption of the resolution, or, if there be no newspaper published in the county, shall be posted at the county courthouse door for four weeks thereafter. A certified copy of this resolution shall be transmitted to the office of the secretary of state.

History.—§3, ch. 57-249; (2) §1, ch. 59-232.

230.08 Nomination in primary elections.—Each political party holding a primary election during any election year shall nominate one nominee for membership on the county board from each county board member residence district from which a member is to be elected. The nomination from each county board member residence district shall be by vote of the qualified electors of the entire county.

History.—§408, ch. 19355, 1939; CGL 1940 Supp. 892(71); §7, ch. 23726, 1947; §32, ch. 29764, 1955.

230.10 Election of board by county-wide vote. —The election of members of the county board shall be by vote of the qualified electors of the entire county. Each candidate who qualifies to have his name placed on the ballot of the general election shall be listed according to the county board member residence district in which he resides. Each qualified elector of the county shall be entitled to vote for one candidate from each county board member residence district. The candidate from each county board member residence district who receives the highest number of votes in the general election shall be elected to the county board.

History.—§410, ch. 19355, 1939; CGL 1940 Supp. 892(73); §9, ch. 23726, 1947.

230.11 County board members to represent entire county. — The county board of each county shall represent the entire county. Each member of the county board shall serve as the representative of the entire county, rather than as the representative of any district in the county.

History.—§411, ch. 19355, 1939; CGL 1940 Supp. 892(74).

230.12 Board members shall qualify.—Before entering upon the duties of office after being elected, or, if appointed, within ten days after receiving notice of appointment, each member of the county board shall take the prescribed oath of office.

History.—§412, ch. 19355, 1939; CGL 1940 Supp. 892(75).

230.15 Organization of board.—On the first Tuesday after the first Monday in January following each general election, the county board shall organize by electing a chairman, the county superintendent to act as the ex officio secretary; provided, that if a vacancy should occur in the chairmanship, the county board shall proceed to elect a chairman at the next ensuing regular or special meeting. At the organization meeting, the county superintendent shall act as chairman until the organization is completed. The chairman and the secretary shall then make and sign a copy of the proceedings of organization, including the schedule for regular meetings and the names and addresses of all county school officers, annex their affidavits that the same is a true and correct copy

of the original, and the secretary shall file the document within two weeks with the state superintendent.

History.—§415, ch. 19355, 1939; CGL 1940 Supp. 892(78); §26, ch. 29754, 1955.

230.151 Vice-chairman of board; powers.—Any county school board of Florida is hereby authorized to elect one of its members as vice-chairman in the same manner and for the same term as the chairman.

History.—§§1, 2, ch. 26905, 1951; §1, ch. 29754, 1955.

230.16 Regular and special meetings.—The county board shall hold not more than one regular meeting each month for the transaction of business according to a schedule arranged by the county board and shall convene in special sessions when called by the county superintendent or by the county superintendent on request of the chairman of the county board or on request of a majority of the members of the county board; provided, that actions taken at special meetings shall have the same force and effect as if taken at a regular meeting; and, provided further, that in the event the county superintendent should fail to call a special meeting when requested to do so, as prescribed herein, such a meeting may be called by the chairman of the county board or by a majority of the members of the county board by giving two days' written notice of the time and purpose of the meeting to all members and to the county superintendent, in which event the minutes of the meeting shall set forth the facts regarding the procedure in calling the meeting, and the reason therefor, and shall be signed either by the chairman or by a majority of the members of the county board.

History.—§416, ch. 19355, 1939; CGL 1940 Supp. 892 (79).

230.17 Place of meetings.—All regular and special meetings of the county board shall be held at the county seat and in the office of the county superintendent or in a room convenient to that office and regularly designated as the county board meeting room.

History.—§417, ch. 19355, 1939; CGL 1940 Supp. 892(80).

230.18 Majority a quorum. — A majority shall constitute a quorum for any meeting of the county board. No business may be transacted at any meeting unless a quorum is present, except that a minority of the county board may adjourn the meeting from time to time until a quorum is present.

History.—§418, ch. 19355, 1939; CGL 1940 Supp. 892(81).

230.19 Vacancies; how filled.—The office of any county board member shall be vacant when he removes his residence from the county board election district from which he was elected. All vacancies on the county board shall be filled by appointment by the governor.

History.—§419, ch. 19355, 1939; CGL 1940 Supp. 892(82).

230.201 Compensation of members of county board.—In addition to the salary provided in §145.041, each member of a county board shall be allowed from the county school fund reimbursement of traveling expenses as authorized in §112.061, provided, however, that any travel outside of the county shall also be governed by the rules and regulations of the state board.

History.—§25, ch. 29754 and §37, ch. 29764, 1955; §4, ch. 57-249; §9, ch. 63-400.
Note.—Formerly §242.02.

230.21 County board to constitute a corporation.—Each county board is constituted a body corporate by the name of "The Board of Public Instruction of _____ County, Florida." In all suits against county boards, service of process shall be had on the chairman of the county board, or, if he can not be found, on the county superintendent as executive officer of the county board, or, in the absence of the chairman and the county superintendent, on another member of the county board.

History.—§421, ch. 19355, 1939; CGL 1940 Supp. 892(84).
cf.—§47.13 Service of process, generally.

230.22 General powers of county board.—The county board, after considering recommendations submitted by the county superintendent, shall exercise the following general powers:

(1) DETERMINE POLICIES.—The county board shall determine and adopt such policies as are deemed necessary by it for the efficient operation and general improvement of the county school system.

(2) ADOPT RULES AND REGULATIONS.—The county board shall adopt such rules and regulations to supplement those prescribed by the state board as in its opinion will contribute to the more orderly and efficient operation of the county school system.

(3) PRESCRIBE MINIMUM STANDARDS.—The county board shall adopt such minimum standards as are considered desirable by it for improving the county school system.

(4) CONTRACT, SUE, AND BE SUED.—The county board shall constitute the contracting agent for the county school system. It may, when acting as a body, make contracts, also sue and be sued in the name of the county board; provided, that in any suit, a change in personnel of the county board shall not abate the suit, which shall proceed as if such change had not taken place.

(5) PERFORM DUTIES AND EXERCISE RESPONSIBILITY.—The county board may perform those duties and exercise those responsibilities which are assigned to it by law or by regulations of the state board and, in addition thereto, those which it may find to be necessary for the improvement of the county school system in carrying out the purposes and objectives of the school code.

History.—§422, ch. 19355, 1939; CGL 1940 Supp. 892(85).

230.221 Permitting courses in Bible study and religion.—The county school board may install in the public schools in the county a secular program of education including but not

limited to an objective study of the Bible and of religion.

History.—§1, ch. 63-532.
cf.—§231.09(2) Bible reading.

230.23 Powers and duties of county board. —The county board acting as a board shall exercise all powers and perform all duties listed below:

(1) REQUIRE MINUTES AND RECORDS TO BE KEPT.—Require the county superintendent, as secretary, to keep such minutes and records as are necessary to set forth clearly all actions and proceedings of the county board.

The typed minutes of each meeting shall be read, corrected if necessary, and approved at the next regular meeting; provided, that this action may be taken at an intervening special meeting if the board desires. The minutes shall be signed by the chairman and county superintendent immediately after correction and approval, and shall be kept as a public record in a permanent, bound book in the county superintendent's office.

The minutes shall show the vote of each member present on all matters on which the board takes action. It shall be the duty of each member to see to it that both the matter and his vote thereon are properly recorded in the minutes. Unless otherwise shown by the minutes, it shall be presumed that the vote of each member present supported any action taken by the board in either the exercise of, violation of or neglect of the powers and duties imposed upon the board by law or legal regulation, whether such action is recorded in the minutes or is otherwise established. It shall also be presumed that the policies, appointments, programs and expenditures not recorded in the minutes but made and actually in effect in the county school system were made and put into effect at the direction of the county board, unless it can be shown that they were done without the actual or constructive knowledge of the members of the board.

(2) CONTROL PROPERTY.—Retain possession of all property to which title is now held by the county board and to obtain possession of and accept and hold under proper title as a body corporate by the name of "The Board of Public Instruction of _____ County, Florida," all property which may at any time be acquired by the county board for educational purposes in the county; manage and dispose of such property to the best interests of education; contract, sue, receive, purchase, acquire by the institution of condemnation proceedings if necessary, lease, sell, hold, transmit, and convey the title to real and personal property, all contracts to be based on resolutions previously adopted and spread upon the minutes of the county board; receive, hold in trust, and administer for the purpose designated, money, real and personal property, or other things of value granted, conveyed, devised, or bequeathed for the benefit of the schools of the county or of any one of them.

(3) ADOPT SCHOOL PROGRAM.—Authorize the assembling of all data and the making of school surveys essential to the development of a school program for the entire county and to adopt such a program as the basis for operating the schools—one phase of the program to be a long-time program and another phase to constitute the annual program.

(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.—Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the county, as follows:

(a) *Schools and attendance areas.* — After considering recommendations of the county superintendent to authorize schools to be located and maintained in those communities in the county where they are needed to accommodate as far as practicable and without unnecessary expense all the youth who should be entitled to the facilities of such schools, separate schools to be provided for white and negro children; and approve the area from which children are to attend each such school, such area to be known as the attendance area for that school; provided, that only under exceptional circumstances as defined under regulations of the state board may an elementary school be located within four miles of another elementary school and a high school within ten miles of another high school in rural areas for children of the same race.

(b) *Adequate educational facilities for all children without tuition.*—See that adequate educational facilities are provided through the uniform system of public schools for all children of school age in the county, these facilities to be provided with due regard to the needs of the children on the one hand and to economy on the other. Insofar as possible, arrangements are to be made for children to attend, without tuition charges to such children on account of county lines, those schools offering the facilities needed by the children which are most readily accessible and which would involve the least cost, regardless of whether those schools are located in another county; provided, that nursery schools and kindergartens may be established, as provided by law, and fees for such schools may be prescribed in the discretion of the county board.

(c) *Elimination of school centers and consolidation of schools.*—Provide for the elimination of school centers within the county and for the consolidation of schools whenever the needs of pupils can better and more economically be served at other school centers than those which they have been attending.

(d) *Cooperate with boards of adjoining counties in maintaining schools.*—Approve plans for cooperating with county boards of adjoining counties in this state or in adjoining states for establishing school attendance areas composed of territory lying within the counties and for the joint maintenance of county-line schools or other schools which are to serve those attendance areas. The conditions

of such cooperation shall be as follows:

1. Establishment. — The establishment of a school to serve attendance areas lying in more than one county and the plans for maintaining the school shall be effected by resolutions spread upon the minutes of each county board concerned, which resolutions shall set out the territorial limits of the areas from which children are to attend the school and the plan to be followed in maintaining and operating the school.

2. Control.—Control of the school or schools involved shall be vested in the county board of the county in which the school or schools are located unless otherwise agreed by the county boards.

3. Settlement of disagreements. — In the event an agreement can not be reached relating to such attendance areas or to the school or schools therein, the matter may be referred jointly by the cooperating county boards or by either county board to the state superintendent for decision under regulations of the state board, and his decision shall be binding on both county boards.

(e) *Classification and standardization of schools.*—Adopt plans and regulations for determining those school centers at which work is to be restricted to the elementary grades, school centers at which work is to be offered only in the high school grades, and school centers at which work is to be offered in any or all grades, and in accordance with such plans and regulations to determine the grade or grades in which work is to be offered at each school center; approve standards and regulations for classifying and standardizing the various schools of the county on such bases as to furnish incentive for the improvement of all schools.

(f) *Opening and closing of schools; fixing uniform date for.*—Fix, insofar as possible, a uniform date each year for the opening of all schools under its control, on which date, unless otherwise authorized by the county board, all schools shall open, in order that the keeping of records, the making of reports, the payment of salaries, and the supervision of instruction may be facilitated; provided, that all schools, unless excepted under regulations of the state board, shall begin so as to close before the last day of June of any year; fix the closing date for all schools in the county, these dates to be so determined as to assure, as far as practicable, uniform terms for all schools in the county; adopt regulations for the closing of schools during an emergency and to provide for the payment of salaries to the members of the instructional staff on such occasions. However, notwithstanding any of the foregoing, any county board may, in its discretion operate any or all of the county schools on a quarterly basis; provided that all education requirements required by law are complied with. Any county board so instituting a twelve-month school program shall have full authority in the assignment of pupils so as to equalize the number of pupils attending the schools during any quarter and so as to utilize school facilities to the maximum extent on a year-round basis and shall also have full authority to enter into contracts with principals, teachers and other school personnel for employment on a twelve-month basis at the same rate of monthly compensation and with the same monthly ratio of minimum foundation program contributions as is applicable to employment on a ten-month basis.

(g) *Observance of school holidays and vacation periods.*—Approve and designate the school holidays to be observed during the year, except for emergencies; provided, that the number of such school holidays shall not exceed a total of one day for each thirty days of the term; approve the manner of observance of such holidays by the schools of the county; and approve and designate the school vacation periods. These holidays and vacation periods shall, insofar as practicable, be uniform for all schools of the county.

(h) *Vocational classes and schools.*—Provide for the establishment and maintenance of vocational schools, departments, or classes, giving instruction of less than college grade in agriculture, trades and industries, distributive education, or in home economics, and use any moneys raised by public taxation in the same manner as moneys for other school purposes are used for the maintenance and support of public schools or classes of less than college grade.

(i) *Vocational rehabilitation.* — Provide for the establishment and maintenance of vocational rehabilitation services for the physically handicapped, consistent with state and federal laws.

(j) *County boards authorized to establish public evening schools.*—The county boards of public instruction in the state may establish and maintain, in the respective counties, public evening schools, elementary or high, as a branch of the public school system of the county; and such evening schools, when so maintained, shall be available to all residents of Florida, native or foreign born, who, for any satisfactory cause, have been unable to attend any day public school of the county or school district; and all evening schools so maintained shall be under the direction and control of the county board of public instruction and the county school superintendent and shall be subject to the same laws, rules and regulations prescribed for the conduct of day schools in the school district or county, as the case may be, in which such evening schools are maintained; and the expense thereof shall be paid out of the county school fund.

(k) *Instruction in operation of motor vehicles.*—

1. Beginning with the school year 1961-62, there may, and beginning with the school year 1963-64, there shall, be installed in all secondary schools of the state, a course of study and instruction in the safe and lawful operation of a motor vehicle. Such course of study and employment of instructors therefor shall be ad-

ministered under rules and regulations of the state board of education.

2. For the purpose of financing the driver education program in the secondary schools, there shall be levied an additional fifty cents per year to the driver's license fee required by §322.21. The additional fee shall be promptly remitted to the department of public safety. The department of public safety shall transmit the additional fee to the state treasurer, and such fee shall be deposited in the general revenue fund.

3. All moneys appropriated biennially for driver education shall be expended by the department of education solely for the purpose of financing a program of instruction in safe driving of motor vehicles in the public schools throughout the state for young people who have not attained their twentieth birthday or who are enrolled in a secondary school or students of the state school for the deaf and blind.

4. All moneys appropriated for driver education shall be administered under the direction of the state superintendent of public instruction and shall be made available to the respective county boards of public instruction upon certification to the state comptroller by the state superintendent of public instruction based upon facts reported to him by the county superintendents of the respective counties, provided that:

a. Instructional personnel engaged in driver education shall be approved and certified in accordance with standards prescribed by the state board of education.

b. All schools offering a course of instruction in driver education shall require of each enrollee a physical screening examination in conformity with regulations prescribed by the state board of education.

c. Distribution of the funds to the respective county boards of public instruction shall be in a uniform manner, reimbursing them for the expense of their driver education program to the extent that the appropriation will permit, based on the principles defined in the minimum foundation program so that opportunity for driver education shall be on an equal basis in all the counties as to instruction and equipment, in accordance with the rules and regulations which shall be promulgated by the state board of education in accord herewith.

5. From the appropriated funds, the state superintendent of public instruction is hereby empowered to provide funds and authorize expenditures by county boards of public instruction for purchasing equipment and supplies, including automobiles purchased through the department of public safety, for the training of personnel, for identifying and encouraging correction of health problems which limit ability to operate a motor vehicle, and for such other purposes as may be deemed necessary for the adequate and efficient administration of the aims and objectives of this subsection.

6. The state superintendent of public instruction is empowered from the funds appropriated, to incur expenditures for the employment and expenses of such personnel on the state department of education staff as may be necessary, for the conducting of studies, and for any and all requirements for carrying out the purposes of this subsection.

7. The state board of education is authorized to adopt rules and regulations pertaining to the driver education program in the public school system, provided, that such courses shall not be made a part of or a substitute for any of the minimum requirements for graduation, and provided that a sufficient number of driver education courses shall be offered during out-of-school hours, in the late afternoon or evening, on Saturdays and during the summer months so that no person will find it necessary to take driver education at the expense of some other essential part of his program of studies or of his employment. Such restricted license as may be necessary for such instruction shall be provided by the department of public safety.

(l) *Americanism vs. communism; required high school course.*—

1. The legislature of the state hereby finds it to be a fact that

a. The political ideology commonly known and referred to as communism is in conflict with and contrary to the principles of constitutional government of the United States as epitomized in its national constitution,

b. The successful exploitation and manipulation of youth and student groups throughout the world today are a major challenge which the free world forces must meet and defeat, and

c. The best method of meeting this challenge is to have the youth of the state and nation thoroughly and completely informed as to the evils, dangers and fallacies of communism by giving them a thorough understanding of the entire communist movement, including its history, doctrines, objectives and techniques.

2. The public high schools shall each teach a complete course of not less than thirty hours, to all students enrolled in said public high schools entitled "Americanism versus communism."

3. The course shall provide adequate instruction in the history, doctrines, objectives and techniques of communism and shall be for the primary purpose of instilling in the minds of the students a greater appreciation of democratic processes, freedom under law, and the will to preserve that freedom.

4. The course shall be one of orientation in comparative governments and shall emphasize the free-enterprise-competitive economy of the United States as the one which produces higher wages, higher standards of living, greater personal freedom and liberty than any other system of economics on earth.

5. The course shall lay particular emphasis upon the dangers of communism, the ways to fight communism, the evils of communism, the fallacies of communism, and the false doctrines of communism.

6. The state textbook committee and the state board of education shall take such action as may be necessary and appropriate to prescribe suitable textbook and instructional material as provided by state law, using as one of its guides the official reports of the house committee on un-American activities and the senate internal security sub-committee of the United States congress.

7. No teacher or textual material assigned to this course shall present communism as preferable to the system of constitutional government and the free-enterprise-competitive economy indigenous to the United States.

8. The course of study hereinabove provided for shall be taught in all of the public high schools of the state no later than the school year commencing in September 1962.

(m) *Cooperate with other agencies in joint projects.*—Adopt plans for cooperating with county boards of other counties in this state or in adjoining states or with other governmental agencies or with nonprofit corporations as provided in this act for such joint projects or activities as may be authorized by regulations of the state board. The conditions of such cooperation shall be as follows:

1. Establishment.—The project or activity shall be initiated by resolutions spread upon the minutes of each county board concerned.

2. Control.—The control and ownership of any physical property and the control and administration of any project or activity engaged in under the provisions of this section shall be vested in the board of public instruction of the county of location unless otherwise agreed by the county boards or unless the project or activity is undertaken as authorized in subsection (3).

3. Other agencies.—The state board may, by regulation, authorize one or more county boards to engage in a contractual relationship with governmental agencies or with nonprofit corporations which have been formed and incorporated for the purpose of providing a coopperative educational service to the counties.

4. Settlement of disagreements.—In the event an agreement cannot be reached relating to any phase of the project or activity, the matter may be referred jointly by the cooperating county boards, or by any individual county board of the cooperating counties, to the state superintendent for decision under regulations of the state board, and his decision shall be binding on all county boards of the cooperating counties.

(5) PERSONNEL. — Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of chapter 231; provided, however, that in all Florida counties wherein trustees are abolished, nominations of such school personnel as had hitherto been made to said trustees shall be made directly to the county board of public instruction at the times regularly prescribed by law for nomination by trustees in those counties in which trustees have not been abolished.

(a) *Positions and qualifications.*—Act upon recommendations submitted by the county superintendent for positions to be filled and for minimum qualifications for personnel for the various positions.

(b) *Appointment; other than instructional staff and other employees in district schools.*—Act on written recommendations submitted by the county superintendent of persons to act as administrative, supervisory, technical, attendance or health assistants, his office assistants, and bus drivers and appoint persons to fill such positions.

(c) *Appointment of instructional staff.*—Act not later than six weeks before the close of school during any year on the nomination by the trustees of supervising principals or principals and act not later than four weeks before the close of school during any year on the nomination by the trustees of all other members of the instructional staff. The county board may reject, but only for good cause, any supervising principal, principal, or other member of the instructional staff nominated, and, in case the second nomination by the trustees for any such position be rejected, the said county board shall then proceed on its own motion to fill such position; provided, that in the event the trustees do not make nominations within the time limits hereinabove prescribed, the county board may upon its own motion, appoint supervising principals or principals or other members of the instructional staff, as the case may be.

(d) *Appointment of instructional staff and other employees.*—Act not later than six weeks before the close of school during any year on the nomination by the county superintendent of supervising principals or principals; act not later than four weeks before the close of school during any year on the nominations by the county superintendent of all other members of the instructional staff; and act on the nomination by the county superintendent of all other employees in such schools. The county board may reject any supervising principal, principal, or other member of the instructional staff, or other employee nominated, and in case the second nomination by the county superintendent for any position be rejected, the said county board shall then proceed on its own motion to fill such positions.

(e) *Compensation and salary schedules.*—Adopt a salary schedule or salary schedules to be used as a basis for paying members of the instructional staff and other school employees, such schedules to be arranged, insofar as practicable, so as to furnish incentive for improvement in training and for continued and efficient service; fix and authorize the compensation of members of the instructional staff and other school employees on the basis of such schedules.

(f) *Contracts and terms of service.*—Provide written contracts for all regular members of the instructional staff. All contracts with

members of the instructional staff shall be in accordance with the salary schedule adopted by the county board and shall be in writing for definite amounts and for definite terms of service and shall specify the number of monthly payments to be made. All such contracts shall be executed in duplicate and a true signed copy retained by the board in the office of the county superintendent. The county board is prohibited from paying any salary to any member of the instructional staff, except when this provision has been observed.

(g) *Transfer and promotion.*—Act on recommendations of the county superintendent regarding transfer and promotion of any employee, subject to the provisions of §§230.34-230.43.

(h) *Suspension and dismissal.*—Suspend or dismiss members of the instructional staff and other school employees; provided, that no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged or removed during the term for which he is employed without opportunity to be heard at a public hearing after at least ten days' written notice of the charges against him and of the time and place of hearing; and, provided further, that the charges must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the county board, the county board may suspend such person without pay, pending a speedy hearing of such charges, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the county board or by the county superintendent, the county board shall hold a public hearing, after notice as above provided, to determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained and such employee is discharged, his contract of employment is thereby canceled.

(6) CHILD WELFARE.—Provide for the proper accounting for all children of school age, for the attendance and control of pupils at school, for proper attention to health, safety, and other matters relating to the welfare of children in the following fields, as prescribed in chapter 232.

(a) *School census.*—Provide for an accurate school census of the children of the county as a basis for determining children who should attend school and for enforcing compulsory school attendance laws.

(b) *Admission, classification, promotion, and graduation of pupils.*—Adopt rules and regulations for admitting, classifying, promoting, and graduating pupils to or from the various schools of the county, including discretionary power to separate the sexes in the various schools of the county.

(c) *Enforcement of attendance laws.*—Provide for the enforcement of all laws and regulations relating to the attendance of pupils at school and for employing such assistants to the county superintendent as may be needed to enforce effectively these laws.

(d) *Control of pupils.*—Adopt rules and regulations for the control, disciplining, and suspension of pupils and decide all cases recommended for dismissal.

(e) *Provide for education of special groups.*—Provide, insofar as practicable, for special facilities for classes for backward, defective, truant, or incorrigible children of school age and for children with unusual ability; and provide facilities in the way of day, part-time, or night schools or classes for adolescents and adults, including illiterates and groups needing Americanization and, when desirable and practicable, provide for the education of children below the first grade level in nursery school or kindergarten classes.

(f) *Health examinations and treatments.*—Provide for all children of school age in the county to have periodic physical and dental examinations and, insofar as practicable, arrange and cooperate with other organizations for the prompt treatment of all pupils who are in need of remedial and preventive treatment; provided, that except in emergencies pupils may be given remedial or preventive treatment only on written consent of the parent.

(7) COURSES OF STUDY AND OTHER INSTRUCTIONAL AIDS. — Provide adequate instructional aids for all children as follows and in accordance with the requirements of chapter 233.

(a) *Courses of study; adoption.*—Adopt courses of study for use in the schools of the county; provided, that such courses shall comprise materials needed to supplement minimum courses of study prescribed by the state board for all schools.

(b) *Textbooks.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all textbooks and other books furnished by the state and furnish such other textbooks and library books as may be needed; provided, that the county board shall not requisition from the state any textbooks for pupils attending a junior college, nor shall it furnish any textbooks to pupils attending a junior college.

(c) *Other instructional aids.*—Provide such other teaching accessories and aids as are needed to carry out the program.

(d) *School libraries; establishment and maintenance.*—Establish and maintain school libraries or school libraries open to the public and, in addition thereto, such traveling or circulating libraries as may be needed for the proper operation of the county school system.

(8) TRANSPORTATION OF PUPILS.—After considering recommendations of the county superintendent to make provision for the transportation of pupils to the public schools or school activities they are required or expected to attend; authorize transportation routes arranged efficiently and economically; provide the necessary transportation facilities, and, when authorized under regulations of the state board and if more economical to do so, provide limited subsistence in lieu thereof; and adopt the necessary rules and regulations to insure safety, economy, and efficiency in the operation of all buses, as prescribed in chapter 234.

(9) SCHOOL PLANT. — Approve plans for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and condemning school property as prescribed in chapter 235, and as follows:

(a) *School building program.*—Approve and adopt a county-wide school building program, indicating the centers at which school work is to be offered on the various levels, the type, size, and location of schools to be established, and the steps to be taken to carry out the program. This program shall be a part of the long-time program for the county and, insofar as practicable, shall be based on the recommendations of a survey made or approved under the direction of the state department.

(b) *Sites, buildings, and equipment.*—Select and purchase school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed and of adequate size to meet the needs of pupils to be accommodated; to approve the proposed purchase of any site, playground, or recreational area for which district funds are to be used; to expand existing sites; to rent buildings when necessary; to erect or contract for the erection of buildings and provide for the proper supervision of construction; to make or contract for additions, alterations, and repairs on buildings and other school properties; to insure that all plans and specifications for buildings provide adequately for the safety and well-being of pupils, as well as for economy of construction by having such plans and specifications submitted to the state department for approval; to provide furniture, books, apparatus, and other equipment necessary for the proper conduct of the work of the schools.

(c) *Maintenance and upkeep of school plant.*—Provide adequately for the proper maintenance and upkeep of school plants, so that children may attend school without sanitary or physical hazards and provide for the necessary heat, lights, water, power, and other supplies and utilities necessary for the operation of the schools.

(d) *Insurance of school property.*—Carry insurance on every school building in all school plants including contents, boilers and machinery, except buildings of three classrooms or less which are of frame construction and located in a tenth class public protection zone as defined by the Florida inspection and rating bureau; and on all school buses and other property under the control of the county board or title to which is vested in the county board, except as exceptions may be authorized under regulations of the state board.

In consideration of the premium at which each policy shall be written it shall be a part of the policy contract between the county and the named insured that the company shall not be entitled to the benefit of the defense of governmental immunity for the insured by reason of exercising a governmental function on any suit brought against the insured. Immunity of the county board against liability damages is waived to the extent of liability insurance carried by the county board. Provided, however, no attempt shall be made in the trial of any action against a county board of public instruction to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

(e) *Condemnation of buildings.*—Condemn and prohibit the use for public school purposes of any building which can be shown for sanitary or other reasons to be no longer suitable for such use, and when any building is condemned by any state or other government agency as authorized in chapter 235, to see that it is no longer used for school purposes.

(10) FINANCE. — Take steps to assure children adequate educational facilities through the financial procedure authorized in chapters 236 and 237 and as prescribed below:

(a) *Provide for all schools to operate at least one hundred and eighty days.*—Provide for the operation of all public schools, both elementary and secondary, as free schools for a term of at least one hundred and eighty days; determine county and district current school funds necessary in addition to state funds to operate all schools for such minimum term; arrange for the levying of county school taxes necessary to provide the amount needed from county sources; and certify, to be included on the ballot of the school district at the regular biennial election, the rate of taxes which must be levied in order to provide the district funds necessary to maintain the term herein prescribed, or such higher rate as is recommended by the trustees.

(b) *Annual budget.*—Cause to be prepared, approve, and have submitted to the state superintendent on or before August first, as required by law and by regulations of the state board, the annual school budget, such budget to be so prepared and executed as to promote the improvement of the county school system.

(c) *Tax levies.*—Adopt and spread on its minutes a resolution fixing the county school

tax levy, provided for under §8, Art. XII of the constitution, necessary to carry on the school program adopted for the county for the next ensuing fiscal year as required by law, and fixing the district bond interest and sinking fund tax levy necessary for districts against which bonds are outstanding; adopt and spread on its minutes a resolution suggesting the tax levy provided for in §10, Art. XII of the constitution, found necessary to carry on the school program adopted for the county for the next ensuing fiscal year.

(d) *School funds.*—See that, insofar as practicable, an accurate account is kept of all funds which should be transmitted to the county board for school purposes at various periods during the year from all sources and, if any funds are not transmitted promptly, to take the necessary steps to have such funds made available.

(e) *Borrow money.*—Borrow money, as prescribed in §§237.25-237.28, when necessary in anticipation of funds reasonably to be expected during the year as shown by the budget.

(f) *Financial records and accounts.*—Provide for keeping of accurate records of all financial transactions, including records of school and student activity funds, and school lunch programs, on forms prescribed by the state board and have these records kept under the various classifications commonly used in school financial accounting; authorize and compensate such trained assistants to the county superintendent as may be needed to maintain adequate records.

(g) *Approval and payment of accounts.*—Approve and pay monthly all accounts; keep all payments within the amounts specified in the budget, as required by law; make available all records for proper audit by state officials; have prepared monthly statements showing receipts, balances, and expenditures to date and require a copy of each such statement to be filed with the state superintendent as provided by law.

(h) *Bonds of employees.*—Fix and prescribe the bonds, and pay the premium on all such bonds, of all school employees who are responsible for school funds in order to provide reasonable safeguards for all such funds or property.

(i) *Contracts for materials, supplies, and services.*—Contract for materials, supplies, and services needed for the county school system; provided, that no contract for supplying these needs shall be made with any member of the county board, with the superintendent, or with any trustee in the county, or with any business organization in which any county board member, the county superintendent, or any trustee has any financial interest whatsoever, except that any trustee may submit sealed competitive bids and be awarded a contract as provided by law for the lowest and best bid.

(11) SCHOOL DISTRICTS.— Adopt policies needed to provide adequate school facilities in the county, as follows:

(a) *Elections and trustees.*—Provide for all elections in special tax school district number one to be held on a uniform date on odd-numbered years as herein prescribed and to supervise the holding of such elections, canvass returns, and announce the results. If, after any biennial election in which trustees are elected a vacancy should occur among the trustees, the county board shall appoint, after consulting with the patrons of the school, a qualified person from the district to serve in the position of trustee until the next biennial election.

(b) *Approval of budget and expenditure of district funds.*—Approve annual budgets recommended by the county superintendent for the expenditure of funds from special tax school district number one for the benefit of the public school pupils of the district as herein provided, and authorize the expenditure of funds within the budget.

(c) *Bonds.*—Approve tentatively, as prescribed hereinafter, the amount of bonds proposed to be issued in the special tax school district; arrange for elections to be held as prescribed by law to determine whether the proposed issue of bonds will be approved by the electors of the school district and, if such a bond issue be approved, arrange, as prescribed in §§236.35-236.51, for the sale of bonds in the amount designated and for the proper expenditure of the funds derived therefrom.

(d) *School tax areas.*—Tax areas for building, repairing or making additions to school buildings and equipment on projects approved by the state superintendent in accordance with regulations of the state board on the basis of a survey authorized under regulations of said board may be created in any county as hereinafter provided. Tax areas so created may be of two kinds: 1. elementary school tax areas, and 2. high school tax areas. Elementary school tax areas shall as near as practical include the real property of the county within the attendance area most accessible to a particular or proposed elementary school or schools which will receive the educational advantages and benefits from such school or schools. High school tax areas shall as near as practical include the real property of the county within the attendance area most accessible to a particular or proposed high school or schools which will receive the educational advantages and benefits from such school or schools, and high school tax areas may overlap in part or entirely one or more elementary school tax areas. There may be as many tax areas as necessary. Whenever a petition signed by not less than ten per cent of the registered qualified freeholders within a proposed tax area meeting the above territorial requirements and requesting creation of such a tax area is presented to the county school board, the county school board shall within fifteen days after receipt of petition call a hearing of

all freeholders of the district and shall advertise in a local newspaper of general circulation at least once a notice of the proposed hearing and the subject matter to be discussed, together with a legal description of the proposed territory to be included in the tax area. Such hearing shall have the purpose of receiving any objections by any freeholder and for the exclusion of any property which will not receive the benefit or services anticipated within the attendance area as described.

Following such hearing the school board shall allow twenty days in which legal action may be brought by any freeholder concerning the proposed election. If no complaint or legal proceedings are initiated within twenty days the school board then shall declare by resolution the tax area to be created, and shall immediately determine the sum necessary to do the proposed building, repairing or making additions to school buildings and equipment in said area, within the limits of §17, Art. XII, Florida constitution, and thereafter call an election within and under the requirements of said §17, Art. XII to determine whether or not bonds shall be issued for the purpose of financing same. In the election only freeholders shall participate, and at least two questions shall be submitted:

1. Shall a special tax school district area be created?

2. Shall bonds be sold in a certain amount for purposes set forth in the law for a school building and equipment within the special tax school district area?

If as a result of such election the bonds are issued the county school board shall proceed to carry out the program but if the bonds are not authorized the tax area so created shall cease to exist. For the purpose of this law tax areas herein provided for are defined as being special tax school districts and shall bear such title designated as the county school board shall determine, as provided for and contemplated by §17, Art. XII of the Florida constitution and the creation of tax areas as herein provided shall not be held to alter or disturb the present one school district for administrative and district school tax purposes, and counties wherein tax areas are created shall still be eligible to participate in the minimum foundation program to the same extent as such counties would be if no tax areas had been set up. Only the property in the tax areas or special tax school districts as described and provided for in this section shall be pledged for payment of bonds issued for the public schools within any such special tax school districts and the county school board shall be unconditionally obligated and shall have power to levy an ad valorem tax on all taxable property within said district for payment of principal and interest on said bonds without limit as to rate or amount, and each such special tax school district shall be a body corporate for the purpose of issuing and payment of bonds. No capital outlay funds as provided by the minimum foundation program are in any way to be pledged to secure payment of any such bonds issued under the provisions of this law and of §17, Art. XII of the constitution of Florida, but such bond issues shall be separate and apart from and in no way affect the provisions of the minimum foundation program, however capital outlay funds or any other funds may be used for the retirement or payment of such bonds or for any purpose when not inconsistent with the requirements of the minimum foundation program. The provision of this paragraph shall not apply to counties having more than 150,000 population according to the last official federal census.

(12) RECORDS AND REPORTS.—Provide for the keeping of all necessary records and the making of all needed or required reports, as follows:

(a) *Forms, blanks, and reports.*—Require all members of the instructional staff, attendance assistants, school lunch personnel, bus drivers, and other employees to keep accurately all records and to make promptly in the proper form all reports required by law or by regulations of the state board, such records and reports to be kept on forms and blanks provided by the state board, or, if such forms and blanks are not provided, to prescribe the necessary forms and blanks for these records and reports; require the keeping of such additional records; and the making of such additional reports as may be deemed by the county board to be necessary to provide data essential for the operation of the school system, and to prescribe such forms and furnish such blanks as may be required for these records and reports.

(b) *Reports to the state superintendent.*—See that the county superintendent prepares all reports to the state superintendent that may be required by law or by rules and regulations of the state board, using therefor such forms and blanks as may be prescribed by the state board; provided, that these reports and such other reports as shall be required or authorized in the school code shall be the only reports required to be filed with state officials or agencies; see that all such reports are promptly transmitted to the state superintendent; to withhold the further payment of salary to the county superintendent when notified by the state superintendent that he has failed to file any report within the time or in the manner prescribed; and to continue to withhold the salary until the county board is notified by the state superintendent that said report has been received and accepted; provided, that when any report has not been received by the date due and after due notice has been given to the county board of that fact, the state superintendent, if he deems it necessary, may require the report to be prepared by a member of his staff, and the county board shall pay all expenses connected therewith. Any member of the county board who shall be responsible for the violation of this provision shall be subject to suspension and removal.

(13) COOPERATION WITH OTHER AGENCIES.—Cooperate with federal, state,

county, and municipal agencies in the enforcement of laws and regulations pertaining to vocational education, vocational rehabilitation, physical restoration of children and adults, health of pupils, school attendance, child welfare, and other matters relating to education.

(14) ENFORCEMENT OF LAW AND RULES AND REGULATIONS. — See that all laws and rules and regulations of the state board or of the county board are properly enforced.

(15) COOPERATE WITH COUNTY SUPERINTENDENT.—Cooperate fully with the county superintendent at all times to the end that the county school system may constantly be improved.

(16) NURSING SCHOLARSHIPS.—Any county board of public instruction or board of county commissioners may create scholarships, loans or other financial assistance to persons qualified as candidates for either a three-year professional nurse program or a one-year course in practical nursing in a recognized training school.

(17) SCHOOL LUNCH PROGRAM.—Assume such responsibilties and exercise such powers and perform such duties as may be assigned to it by law or as may be required by regulations of the state board or as in the opinion of the county board are necessary to assure school lunch services, consistent with needs of pupils; effective and efficient operation of the program; and the proper articulation of the school lunch program with other phases of education in the county.

(18) OTHER RESPONSIBILITIES.—Assume such other responsibilities and exercise such powers and perform such duties as may be assigned to it by law or as may be required by regulations of the state board or as, in the opinion of the county board, are necessary to provide for the more efficient operation of the county school system in carrying out the purposes and objectives of the school code.

History.—§423, ch. 19355, 1939; CGL 1940 Supp. 892(86); (13) (e), §1, ch. 26775, 1951; §1, ch. 29644, §§1-8, ch. 29738, §§1-6, ch. 29746, §2, ch. 29754, (1), (2) and (13) (a) r. §38, ch. 29764, 1955, remaining subsections renumbered; (6) (g) r. §8, ch. 31380, 1956; (4) (f) §1, ch. 57-370; (4) (k) §1, ch. 57-276; (5) (c), (e), (9) (b) §5, ch. 57-249; (5) (d) r. §6, ch. 57-249, subsequent paragraphs renumbered; (7) (b) §12, ch. 57-252; (11) (d) §24, ch. 57-1; (4) (k) 3. §1, ch. 59-239; (6) (b) §1, ch. 59-138; (5) (9) (d), (10) (h) §1, ch. 59-339; (4) (c) §3, ch. 61-288; (4) (k) §1, ch. 61-79; (4) (k) 2. and 5. b. §2, ch. 61-119; (4) (1) n. §§1-7, 9, ch. 61-77; (10) (c) §3, ch. 61-288; (4) (m) n. §2, (5) (b) §3, (10) (f) §4, (12) (a) §5, (17) n. and renumbered (18) §6, ch. 63-376.

cf.—§231.04 County board may prescribe qualifications of personnel.

§232.11 Lists of pupils of compulsory attendance age.
§232.29 Physical and mental examination.
§237.06 Form of annual budget required.
§322.21 Driver's license fees.

230.232 Pupil assignment; powers and duties of county boards of public instruction.—

(1) The county board of public instruction of the several counties are hereby authorized and directed to provide for the enrollment in a public school in the county of each child residing in such county who is qualified under the laws of this state for admission to a public school and who applies for enrollment in or admission to a public school in such county. The authority of each such board in the matter of the enrollment of pupils in the public schools shall be full and complete. No pupil shall be enrolled in or admitted to attend any public school in which such child may not be enrolled pursuant to the rules, regulations, and decisions of such board.

(2) In the exercise of authority conferred by subsection (1) upon the county boards of public instruction, each such board shall provide for the enrollment of pupils in the respective public schools located within such county so as to provide for the orderly and efficient administration of such public schools, the effective instruction of the pupils therein enrolled, and the health, safety, education and general welfare of such pupils. In the exercise of such authority the board shall prescribe school attendance areas and school bus transportation routes and may adopt such reasonable rules and regulations as in the opinion of the board shall best accomplish such purposes. The county boards of public instruction shall prescribe appropriate rules and regulations to implement the provisions of this subsection and other applicable laws of this state and to that end may use all means legitimate, necessary and proper to promote the health, safety, good order, education and welfare of the public schools and the pupils enrolling therein or seeking to enroll therein. In the accomplishment of these objectives the rules and regulations to be prescribed by the board may include, but be not limited to, provisions for the conduct of such uniform tests as may be deemed necessary or advisable in classifying the pupils according to intellectual ability and scholastic proficiency to the end that there will be established in each school within the county an environment of equality among pupils of like qualifications and academic attainments. In the preparation and conduct of such tests and in classifying the pupils for assignment to the schools which they will attend, the board shall take into account such sociological, psychological and like intangible social scientific factors as will prevent, as nearly as practicable, any condition of socio-economic class consciousness among the pupils attending any given school in order that each pupil may be afforded an opportunity for a normal adjustment to his environment and receive the highest standard of instruction within his ability to understand and assimilate. In designating the school to which pupils may be assigned there shall be taken into consideration the request or consent of the parent or guardian or the person standing in loco parentis to the pupil, the available facilities and teaching capacity of the several schools within the county, the effect of the admission of new students upon established academic programs, the effect of admission of new pupils on the academic progress of the other pupils enrolled in a particular school, the suitability of established curriculum

to the students enrolled or to be enrolled in a given school, the adequacy of a pupil's academic preparation for admission to a particular school, the scholastic aptitude, intelligence, mental energy or ability of the pupil applying for admission and the psychological, moral, ethical and cultural background and qualifications of the pupil applying for admission as compared with other pupils previously assigned to the school in which admission is sought. It is the intention of the legislature to hereby delegate to the local school boards all necessary and proper administrative authority to prescribe such rules and regulations and to make such decisions and determinations as may be requisite for such purposes.

(3) (a) The parent or guardian of any child, or the person standing in loco parentis to any child who shall apply to the appropriate public school official for the enrollment of any such child in any public school within the county in which such child resides, and whose application for such enrollment shall be denied may, pursuant to rules and regulations established by the county boards of public instruction, apply to such board for enrollment in such school and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by such board. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application and the decision of the majority of the members present at such hearing shall be the decision of the board. If at such hearing the board shall find that such child is entitled to be enrolled in such school or if the board shall find that the enrollment of such child in such school will be for the best interest of such child and will not interfere with the proper administration of the school or with the proper instruction of the pupils there enrolled and will not endanger the health or safety of the pupils there enrolled, the board shall direct that such child be enrolled in and admitted to such school. If the board finds that the child is not entitled to be enrolled in such school or that his enrollment in such school would not be for the best interest of the child or that his enrollment would seriously interfere with the proper administration of such school or with the proper instruction of the pupils there enrolled or that the child's admission to such school would endanger the health or safety of the children there enrolled, the board shall deny the petition for enrollment and direct the enrollment of the child in such other school in the county as shall be determined by the board to be best adapted or qualified to serve the best interests of the child and of the public school system.

(b) If a parent or guardian of any child whose application for enrollment has been denied, or the person standing in loco parentis to any such child, shall be dissatisfied with the decision of any county board with respect to the school in which such child shall be enrolled, such parent or guardian, or such person standing in loco parentis to such child, may seek a review of such decision by making and filing with the state board of education within thirty days after the rendition of such decision, an application for review thereof, and as soon as practicable, but not later than thirty days after receiving such application, the state board of education shall cause the county school board, whose decision is sought to be reviewed, to transmit to it the transcript of the evidence in such case before them, and within said thirty day period of time affirm, reverse or modify said decision or remand the matter to the county board for further proceedings, provided, however, that the state board of education may, in its discretion, take or direct to be taken any additional evidence or testimony and may consider such additional testimony in connection with the original transcript, and shall affirm, reverse or modify the decision of the board of public instruction or remand the matter to the county board for further proceedings, and in all such proceedings, the county superintendent of public instruction and the board of public instruction of said county shall be notified and shall be considered as a party to the review.

In addition to the matters and things set forth herein to be considered by the county board of public instruction in the assignment of such pupil to a school, the state board of education may take into consideration any matter and thing which in its judgment and discretion relates to the welfare, safety, well-being, peace and tranquility of the community or area affected, and taking all such matters into consideration, shall render its decision, either reversing the action or actions theretofore taken as provided above or modifying the decision or decisions previously taken, or remand the matter to the county board of public instruction for further proceedings.

(c) Any parent or guardian of any child or any person standing in loco parentis to any child, or a majority of the board of public instruction of any county affected by the decision of the state board of education, if dissatisfied, may have the decision reviewed by the circuit court of Leon county by making application to said court for a writ of certiorari. The review proceeding shall be had in the manner and within the time provided by the Florida appellate rules.

In any such review proceeding the board shall be the sole party respondent and the attorney general of this state shall be given notice thereof and shall take such action therein as he shall be directed by the board.

(d) In any proceeding brought pursuant to the provisions of this section the attorney general of this state is authorized upon request to furnish representation to the county school board, and to represent the state board of education of this state as the case may be, and upon request shall furnish such services as may be necessary to properly present and defend the action of the public bodies and of-

ficials charged with the responsibility of administering the provisions of this section.

(e) Reviews by the state board of education of this state of any decisions rendered by the county school boards in the state shall be considered and construed as a step in the local proceeding.

(4) The county school boards of the public schools of Florida are authorized and empowered to conduct surveys within their respective counties to determine the attitudes and feelings of the citizens of their respective communities with the subsequent purpose of formulating plans to maintain, preserve and improve the public school system of Florida.

(5) The county school boards are authorized and empowered to create and appoint citizens committees and study groups from their localities to assist in the aforementioned surveys and plans.

(6) The county school boards shall be authorized to employ special counsel to assist the county school board's attorney in representing the board in any litigation involving rules and regulations and rulings and decisions of the board under the provisions of this section.

(7) The provisions of this law are severable, and if any section or provision of this law shall be held to be in violation of the constitution of Florida or of the United States, such decision shall not affect the validity or enforceability of the remainder of this law.

History.—§§1-6, ch. 31380, 1956; (2) §1, (7) n. §2, ch. 59-428; (3)(c) §8, ch. 63-512.

230.233 Automatic closing and suspension of public schools.—

(1) In the event the national guard or any other military forces or personnel are employed or used upon the order or direction of any federal authority on public school properties of this state or in the vicinity of any public school in this state to prevent acts of violence or alleged acts of violence precipitated or alleged to be precipitated by the operation of said school or student or students attending such school, said school shall be closed automatically and its operation suspended so long as said troops remain on such school properties or within the vicinity of said school.

(2) The board of public instruction of any county wherein a school is closed pursuant to the provisions of subsection (1) hereof, is authorized and directed to take necessary steps to carry out the provisions of this said section.

(3) The board of public instruction of any county in which a school is closed under the provisions of this section may authorize and provide for the transfer to another school in the county of any pupil enrolled in such closed school upon petition of the parent or the person standing in loco parentis to such child requesting such transfer.

(4) For the purpose of the preparation of attendance records required by law, pupils enrolled in any school closed under the provisions of this section shall be considered and reported "present" during period of suspension of operation.

History.—§§1-4, ch. 57-1975.

230.24 County superintendent; election and term of office. — The county superintendent shall be elected for a term of four years or until the election or appointment and qualification of his successor.

History.—§424, ch. 19355, 1939; CGL 1940 Supp. 892(87).

230.26 Oath of county superintendent.—Before entering upon the duties of his office, the county superintendent shall take the oath of office prescribed by the constitution of the state.

History.—§426, ch. 19355, 1939; CGL 1940 Supp. 892(89). cf.—§2, Art. XVI Florida constitution, Oath of office.

230.28 Vacancy in office of county superintendent.—The office of county superintendent in any county shall be vacant when the county superintendent removes his residence from the county.

History.—§428, ch. 19355, 1939; CGL 1940 Supp. 892(91); §40, ch. 29764, 1955.

230.29 Office of county superintendent; where located; how maintained.—The county superintendent shall have his office at the county seat. Office space shall be provided and heat and light furnished by the board of county commissioners; provided, however, that in the event such office space as above required is not provided by the commissioners, the county board may provide such space as is needed. The office shall be provided with furniture, equipment, telephone, supplies, and other essentials by the county board.

History.—§429, ch. 19355, 1939; CGL 1940 Supp. 892(92). cf.—§4, Art. XVI, Florida constitution, Offices of county officers.

230.30 County superintendent to devote full time to office.—The position of county superintendent of public instruction in each county shall be considered a full time position.

History.—§430, ch. 19355, 1939; CGL 1940 Supp. 892(93); §11, ch. 23726, 1947; §41, ch. 29764, 1955.

230.301 Basis for compensation of county superintendents.—On and after the first day of July, 1947, the annual salaries of county superintendents of the respective counties of Florida shall be fixed and based upon the total number of instruction units in said counties during the preceding fiscal year as prescribed by §236.04; provided, however, that (1) no county superintendent shall receive an annual salary in excess of seven thousand five hundred dollars, (2) no county superintendent shall receive under this law a salary during any year which is less than the salary he lawfully received during 1946-47, and (3) no county superintendent shall receive a salary during any year which exceeds by more than nine hundred dollars, the salary he lawfully received during the year 1946-47. The basis for determining the salary of the county superintendent in each county subject to the above limitations, shall be as follows:

(a) For the first fifteen instruction units in the county: two hundred dollars per unit shall be paid.

(b) For the next five instruction units or fraction thereof in the county: one hundred dollars per unit shall be paid.

(c) For the next ten instruction units or fraction thereof in the county: fifty dollars per unit shall be paid.

(d) For the next one hundred twenty instruction units in the county: ten dollars per unit shall be paid.

(e) For any additional instruction units in the county, five dollars per unit shall be paid.

The annual salary of each county superintendent as herein authorized shall be paid in twelve equal monthly installments on the last day of each month or on the first day of the ensuing month.

History.—§1, ch. 5658, 1907; RGS 451; CGL 551; §2, ch. 15033, 1931; §1, ch. 17862, 1937; §7, ch. 22000, 1943; §§1, 3, ch. 22780, 1945; §43, ch. 23726, 1947.
Note.—Formerly §242.01.

230.302 Basis for compensation of county superintendents, counties of less than 200,000.—(1) On and after the first day of July, 1957, the annual salary of the superintendent of public instruction of each county within the state of a population of less than two hundred thousand according to the latest official census shall be fixed, and paid, according to the total number of instruction units within the county during the immediately preceding fiscal year, and at the following rates:

(a) Two hundred and fifty dollars for each of the first fifteen units.

(b) One hundred dollars for each unit in excess of fifteen and not exceeding twenty.

(c) Fifty dollars for each unit in excess of twenty and not exceeding thirty.

(d) Ten dollars for each unit, or fraction thereof, in excess of thirty and not exceeding four hundred.

(e) Five dollars for each unit, or fraction thereof, in excess of four hundred.

(2) Provided, however, that

(a) No county superintendent of public instruction shall receive for his annual salary a sum in excess of the highest maximum annual salary established by law to be paid to the other highest paid county official in his county;

(b) No county superintendent of public instruction shall receive a salary during any year which shall be less than six thousand dollars;

(3) The total number of instruction units in each county of the state, for the purpose of determining the salaries here prescribed, shall be determined as provided in §236.04, or any amendment thereof.

(4) The salaries of each superintendent of public instruction within the state shall be paid in twelve equal monthly payments, which shall be payable upon the last day of each month.

(5) This section shall not be construed to repeal any special or local act, or any general act of local application fixing or regulating the compensation of county superintendents of public instruction, and provided further, that this section shall not be construed to apply to any special or local act or any general act of local application passed at this session of the legislature regulating the compensation of superintendents of public instruction.

History.—§§1-3, ch. 26795, 1951; §§1, 2, ch. 57-391; (5) r. §1, ch. 59-518, subsequent subsection renumbered.
Note.—Formerly §242.011.

230.31 Secretary and executive officer of the county board.—The county superintendent shall be the secretary and executive officer of the county board; provided, that when the county superintendent of any county is required to be absent on account of performing services in the volunteer forces of the United States or in the National Guard of the state or in the regular Army or Navy of the United States, when the said county superintendent shall be called into active training or service of the United States under an Act of Congress or pursuant to a proclamation by the President of the United States, he shall then be entitled to a leave of absence for not to exceed the remaining portion of the term for which he was elected.

History.—§431, ch. 19355, 1939; CGL 1940 Supp. 892(94); §2, ch. 20970, 1941.

230.32 General powers of county superintendents.—The county superintendent shall have the authority, and when necessary for the more efficient and adequate operation of the county school system, the county superintendent shall exercise the following powers:

(1) GENERAL OVERSIGHT. — Exercise general oversight over the county school system in order to determine problems and needs, and recommend improvements.

(2) ADVISE, COUNSEL, AND RECOMMEND TO COUNTY BOARD. — Advise and counsel with the county board on all educational matters and recommend to the county board for action such matters as should be acted upon.

(3) RECOMMEND POLICIES. — Recommend to the county board for adoption such policies pertaining to the county school system as he may consider necessary for its more efficient operation.

(4) RECOMMEND AND EXECUTE RULES AND REGULATIONS.—Prepare and organize by subjects and submit to the county board for adoption such rules and regulations to supplement those adopted by the state board as, in his opinion, will contribute to the efficient operation of any aspect of education in the county. When rules and regulations have been adopted, the county superintendent shall see that they are executed.

(5) RECOMMEND AND EXECUTE MINIMUM STANDARDS.—From time to time to prepare, organize by subjects, and submit to the county board for adoption such minimum standards relating to the operation of any phase of the county school system as are needed to supplement those adopted by the state board and as will contribute to the efficient operation of any aspect of education in the

county; to see that minimum standards adopted by the county board are observed.

(6) PERFORM DUTIES AND EXERCISE RESPONSIBILITIES. — Perform such duties and exercise such responsibilities as are assigned to him by law and by regulations of the state board.

History.—§432, ch. 19355, 1939; CGL 1940 Supp. 892(95).

230.321 County superintendents appointed under §2A., Art. XII, state constitution.—

(1) In every county authorized to appoint a superintendent of public instruction under Art. XII of the state constitution, he shall be the executive officer of the county board of public instruction and shall not be subject to the provision of law, either general or special, relating to tenure of employment or continuing contracts of other school personnel. His duties relating to the county school system shall be as provided by law and rules and regulations of the state board of education.

(2) This county board of public instruction of each of said counties shall fix the salary of, and enter into contracts of employment up to a maximum of four years tenure with the county superintendent of public instruction and shall adopt special rules and regulations relating to his appointment.

History.—§§1, 2, ch. 57-308.

230.33 Duties and responsibilities of county superintendent.—The county superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law; provided, that in so doing he shall advise and counsel with the county board.

The recommendations, nominations, proposals and reports required by law and regulation to be made to the county board by the county superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes and filed in the public records of the board. It shall be presumed that, in the absence of the record required in this paragraph, the recommendations, nominations and proposals required of the county superintendent were not contrary to the action taken by the county board in such matters.

(1) ASSIST IN ORGANIZATION OF BOARD.—Preside at the organization meeting of the county board and transmit to the state superintendent, within two weeks following such meeting, a certified copy of the proceedings of organization, including the schedule of regular meetings, and the names and addresses of county school officials.

(2) REGULAR AND SPECIAL MEETINGS OF THE BOARD.—Attend all regular meetings of the county board, call special meetings when emergencies arise, and advise, but not vote, on questions under consideration.

(3) RECORDS FOR THE BOARD.—Keep minutes of all official actions and proceedings of the county board and keep such other records, including records of property held or disposed of by the county board, as may be necessary to provide complete information regarding the county school system.

(4) SCHOOL PROPERTY.—Act for the county board as custodian of such school property as may be placed in his charge by the county board.

(a) *Recommend purchase and plans for control.*—Recommend to the county board plans for contracting, receiving, purchasing, acquiring by the institution of condemnation proceedings if necessary, leasing, selling, holding, transmitting, and conveying title to real and personal property.

(b) *Property held in trust.*—Recommend to the county board plans for holding in trust and administering property, real and personal, money, or other things of value, granted, conveyed, devised, or bequeathed for the benefit of the schools of the county or of any one of them.

(5) SCHOOL PROGRAM: PREPARE LONG-TIME AND ANNUAL PLANS FOR.—Supervise the assembling of data and sponsor studies and surveys essential to the development of a planned school program for the entire county; prepare and recommend such a program to the county board as the basis for operating the county school system. One phase of this program shall be a long-time program, and another phase shall constitute the annual program. The long-time program shall be concerned with the location and development of elementary, high, and special schools, school buildings, transportation, personnel, instruction, and other educational features involving the interest and welfare of the children and citizens of the county over a period of years. The annual program shall be concerned with the budget, sites to be purchased, buildings to be constructed, transportation routes, personnel, instruction, and all other phases of the school program for any particular school year, which shall be developed, insofar as possible, in harmony and conformity with the long-time program.

(6) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS, CLASSES, AND SERVICES.—Recommend the establishment, organization, and operation of such schools, classes, and services as are needed to provide adequate educational opportunities for all children in the county, including:

(a) *Schools and attendance areas.*—Recommend the location of schools needed to accommodate the pupils of the county and the area from which children should attend each school.

(b) *Recommend adequate facilities for all children.*—Recommend plans and procedure necessary to provide adequate educational facilities for all children of the county.

(c) *Elimination of school centers and consolidation of schools.*—Determine when the needs of pupils can better be served by eliminating school centers and by consolidating schools; recommend to the county board plans for the elimination of such school centers as should be eliminated and for the consolidation of such schools as should be consolidated.

(d) *Cooperation with other counties in*

maintaining schools.—Recommend plans and procedures for cooperating with county boards of adjoining counties, in this state or in bordering states, in establishing school attendance areas composed of territory lying within the counties and for the joint maintenance of county line or other schools which should serve such attendance areas, and carry out such plans and administer such schools for which his county is to be responsible under any agreement which is effected.

(e) *Classification and standardization of schools.*—Recommend plans and regulations for determining those school centers at which work should be restricted to the elementary grades, school centers at which work should be offered only in the high school grades, and school centers at which work should be offered in any or in all grades; recommend the grade or grades in which work should be offered at each school center; recommend bases for classifying and standardizing the various schools of the county in order to provide proper incentive for the improvement of all schools.

(f) *Opening and closing dates of schools.*—Recommend and arrange for a uniform date each year for the opening of all schools in the county, unless other dates shall be found necessary and desirable; recommend and arrange the closing dates for all schools in the county, these dates to be so determined as to assure, as far as practicable, uniform terms for all schools in the county. Recommend regulations for the closing of any or all schools during an emergency and when emergencies arise to close any or all schools in the county and immediately notify the county board of the action taken and the reason therefor.

(g) *School holidays and vacation periods.*—Recommend school holidays to be observed and the manner of such observance by the schools and see that such holidays as are approved by the county board are properly observed; also recommend school vacation periods.

(h) *Vocational classes and schools.*—Recommend plans for the establishment and maintenance of vocational schools, departments, or classes, giving instruction of less than college grade in agriculture, trades and industries, distributive education, or in home economics, and administer and supervise instruction in such schools, departments, or classes as are established by the county board.

(i) *Vocational rehabilitation.* — Recommend plans for the establishment and maintenance of vocational rehabilitation services for the physically handicapped, consistent with state and federal laws, and to administer and supervise such services.

(j) *Cooperation with other counties in special projects or activities.*—Recommend plans and procedures for cooperating with other county boards or with other agencies, in this state or in bordering states, in special projects or activities which can be more economically or advantageously provided by such cooperation.

(k) *School lunches.*—Recommend plans for the establishment, maintenance, and operation of school lunch program consistent with state laws and regulations of the state board, and to administer and supervise such services.

(7) PERSONNEL.— Be responsible, as required herein, for directing the work of the personnel, subject to the requirements of chapter 231 and in addition he shall have the following duties:

(a) *Positions and qualifications.*—Recommend to the county board duties and responsibilities which need to be performed and positions which need to be filled to make possible the development of an adequate school program in the county and recommend minimum qualifications of personnel for these various positions.

(b) *Assistants and bus drivers.*—Recommend in writing to the county board persons to act as administrative, supervisory, technical, attendance, or health assistants, his office assistants, and bus drivers.

(c) *Supervising principals or principals of district schools.*—Submit to the trustees of the school district his recommendation of a person to fill the position of supervising principal or principal of each school.

(d) *Members of the instructional staff of county schools.*—Confer with the supervising principals or principals with reference to the persons who shall be recommended to the trustees for nomination as members of the instructional staff (other than principal) of county schools.

(e) *Compensation and salary schedules.*—Prepare and recommend to the county board for adoption a salary schedule or salary schedules to be used as the basis for paying members of the instructional staff and other school employees, arranging such schedules, insofar as practicable, so as to furnish incentive for improvement in training and for continued and efficient service.

(f) *Contracts and terms of service.*—Recommend to the county board terms for contracting with employees and prepare such contracts as are approved; provided, that contracts with the members of the instructional staff are to be prepared, recommended, and executed as hereinbefore prescribed.

(g) *Transfer and promotion.*—Recommend employees for transfer and transfer any employee during any emergency and report the transfer to the county board at its next regular meeting.

(h) *Suspension and dismissal.*—Suspend members of the instructional staff and other school employees during emergencies for a period of not to exceed ten school days, notify the county board immediately of such suspension, and, when authorized to do so, serve notice on the suspended member of the instructional staff of the charges made against him and of the date of hearing; recommend employees for dismissal under the terms prescribed herein.

(i) *Direct work of employees and super-*

vise instruction.—Direct or arrange for the proper direction and improvement, under regulations of the county board, of the work of all members of the instructional staff and other employees of the county school system; supervise or arrange under regulations of the county board for the supervision of instruction in the county and take such steps as are necessary to bring about continuous improvement.

(8) CHILD WELFARE. — Recommend plans to the county board for the proper accounting for all children of school age, for the attendance and control of pupils at school, for the proper attention to health, safety, and other matters which will best promote the welfare of children in the following fields, as prescribed in chapter 232:

(a) *School census.*—Keep an accurate census of the children of the county and make such reports thereon as may be required.

(b) *Admission, classification, promotion and graduation of pupils.*—Recommend rules and regulations for admitting, classifying, promoting, and graduating pupils to or from the various schools of the county.

(c) *Enforcement of attendance laws.*—Recommend plans and procedures for the enforcement of all laws and regulations relating to the attendance of pupils at school and for the employment of such qualified assistants as may be needed by him to enforce effectively those laws.

(d) *Control of pupils.*—Propose rules and regulations for the proper control, discipline and suspension of pupils and review recommendations for suspension of pupils and transmit to the county board for action recommendations for dismissal of pupils.

(e) *Educational facilities for special groups.*—Recommend plans and procedure for special facilities or classes for backward, defective, truant, or incorrigible children of school age, and for children with unusual ability; and recommend facilities in the way of day, part-time, or night schools or classes for adolescents and adults, including illiterates and groups needing Americanization, as well as for children below the first grade level.

(f) *Health examination and treatments.*—Recommend plans and supervise arrangements so that all children in the county may have periodic physical and dental examinations and arrange, insofar as practicable, for prompt treatment of all pupils in need of remedial and preventive treatment; provided, that except in emergencies pupils may be given remedial or preventive treatment only on written consent of the parent.

(9) COURSES OF STUDY AND OTHER INSTRUCTIONAL AIDS. — Recommend such plans for improving, providing, distributing, accounting for, and caring for textbooks and other instructional aids as will result in general improvement of the county school system, as prescribed in chapter 233 and including the following:

(a) *Courses of study.*—Prepare and recommend for adoption, after consultation with teachers and principals and after considering any suggestions which may have been submitted by trustees or patrons of the schools, courses of study for use in the schools of the county needed to supplement those prescribed by the state board.

(b) *Textbooks.*—See that all textbooks and library books furnished by the state and needed in the county are properly requisitioned, distributed, accounted for, stored, cared for, and used; and recommend such additional textbooks or library books as may be needed.

(c) *Other instructional aids.*—Recommend plans for providing and facilitate the provision and proper use of such other teaching accessories and aids as are needed.

(d) *School libraries; establishment and maintenance.*—Recommend plans for establishing and maintaining school libraries, or school libraries open to the public, and, in addition thereto, such circulating or traveling libraries as are needed for the proper operation of the county school system.

(10) TRANSPORTATION OF PUPILS.—Ascertain which pupils should be transported to school or to school activities, determine the most effective arrangement of transportation routes to accommodate these pupils; recommend such routing to the county board; recommend plans and procedures for providing facilities for the economical and safe transportation of pupils; recommend such rules and regulations as may be necessary and see that all rules and regulations relating to the transportation of pupils approved by the county board, as well as regulations of the state board, are properly carried into effect, as prescribed in chapter 234.

(11) SCHOOL PLANT. — Recommend plans, and execute such plans as are approved regarding all phases of the school plant program, as prescribed in chapter 235, and including the following:

(a) *School building program.*—Recommend plans and procedures for having a survey made under the direction of the state department, or by some agency approved by the state department, as a basis for developing a county-wide school building program as a phase of the long-time program for the county; recommend such program when sufficient evidence is available, specifying the centers at which school work should be offered on the various levels, the type, size, and location of schools to be established, and the steps to be taken to carry out the program.

(b) *Sites, buildings, and equipment.*—Recommend the purchasing of school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed and of adequate size to meet the need of pupils to be accommodated; or of additions to existing sites when needed; recommend the rental of buildings when necessary; recommend the erection of buildings; recommend

additions, alterations, and repairs to buildings and other school properties; insure that all plans and specifications for buildings provide adequately for the safety of pupils as well as for economy of construction by submitting such plans and specifications to the state superintendent for approval; recommend the purchasing of furniture, books, apparatus, and other equipment necessary for the proper conduct of the work of the schools.

(c) *Maintenance and upkeep of the school plant.*—Propose plans for assuring proper maintenance and upkeep of the school plant and for the provision of the utilities and supplies for the operation of the schools; and when the plans are approved by the county board, take such steps as are necessary to see that buildings are kept in proper sanitary and physical condition and that heat, lights, water and power and other supplies and utilities are adequate.

(d) *Insurance of school property.*—Propose plans and procedures for insuring economically every plant and its contents, boilers and machinery as well as school buses and other property, under the control of the county board and see that the proper records are kept of such insurance.

(e) *Condemnation of buildings.*—Inspect periodically all school buildings and surroundings to determine whether there are any unsanitary conditions or whether there are physical hazards which are likely to jeopardize the health or life of the pupils or instructional staff; request competent assistance from the state or other authorized agency, if necessary to determine whether buildings found to be defective should be condemned and to recommend to the county board condemnation of buildings which should be abandoned.

(12) FINANCE. — Recommend measures to the county board to assure adequate educational facilities throughout the county, in accordance with the financial procedure authorized in chapters 236 and 237, and as prescribed below:

(a) *Plan for operating all schools for minimum term.*—Determine and recommend county and district funds necessary in addition to state funds to provide for at least a one hundred eighty day term for all schools, and recommend plans for insuring the operation of all schools for the term authorized by the county board.

(b) *Annual budget.*—Prepare the annual school budget to be submitted to the county board for approval according to law; submit this budget, when approved by the county board, to the state superintendent on or before August first of each year, on forms required under regulations of the state board; provided, that the tentative school district budget shall be open to examination by the trustees before such budget is included in the county budget for submission to the county board.

(c) *Tax levies.*—Recommend to the county board, on the basis of the needs shown by the budget, the amount of county school tax levy necessary to provide the county current school funds needed for the maintenance of the public schools of such county for at least one hundred eighty days; recommend to the county board the tax levy required on the basis of the needs shown in the budget for the district bond interest and sinking fund of each district; and recommend to the county board to be included on the ballot at each biennial election prescribed by the law the school district tax levies necessary to carry on the school program for a term of at least one hundred eighty days.

(d) *School funds.*— Keep an accurate account of all funds which should be transmitted to the county board for school purposes at various periods during the year and see, insofar as possible, that these funds are transmitted promptly; report promptly to the county board any delinquencies or delays that occur in making available any funds that should be made available for school purposes.

(e) *Borrowing money.* — Recommend when necessary the borrowing of money as prescribed by law.

(f) *Financial records and accounting.*— Keep or have kept accurate records of all financial transactions on forms prescribed by the state board.

(g) *Payrolls and accounts.*—Prepare, at least monthly, payrolls and statements of accounts due to be paid by the county board; certify these statements as correct and complete and recommend them to the county board for payment; prepare monthly statements showing receipts, balances, and disbursements to date, a copy of such monthly statements to be filed with the state superintendent. A copy of the monthly statement for the district current school funds shall be furnished to trustees upon their request.

(h) *Bonds for employees.*—Recommend the bonds of all school employees who should be bonded in order to provide reasonable safeguards for all school funds or property.

(i) *Contracts.*—Recommend to the county board the desirable terms, conditions, and specifications for contracts for supplies, materials, or services to be rendered; see that materials, supplies, or services are provided according to contract.

(13) SCHOOL DISTRICTS.—

(a) *Elections.*—Recommend plans and procedures for holding and supervising all elections.

(b) *Budgets and expenditures.*—Prepare, after consulting with the principals of the various schools and with trustees tentative annual budgets for the expenditure of district funds for the benefit of public school pupils of the county; provided, that such budget shall not be submitted to the county board for adop-

tion until the trustees have had opportunity to examine such budgets as hereinafter provided.

(c) *Bonds.*—Recommend the amounts of bonds to be issued in the district and assist in the preparation of the necessary papers for an election to determine whether the proposed bond issue will be approved by the electors; if such bond issue be approved by the electors, recommend plans for the sale of bonds and for the proper expenditure of the funds derived therefrom.

(14) RECORDS AND REPORTS.—Recommend such records as should be kept in addition to those prescribed by regulations of the state board or by the state superintendent; prepare forms for keeping such records as are approved by the county board; see that such records are properly kept, and make all reports that are needed or required, as follows:

(a) *Forms, blanks, and reports.*—See that all members of the administrative and instructional staff, attendance assistants, school lunch personnel, bus drivers, and other employees keep accurately all records and make promptly in proper form all reports required by the school code or by regulations of the state board, such records and reports to be kept on forms and blanks authorized by the state board and provided by the state superintendent, or, if such forms and blanks are not provided, prepare necessary forms and blanks for these records and reports; recommend the keeping of such additional records and the making of such additional reports as may be deemed necessary to provide data essential for the operation of the school system, and prepare such forms and blanks as may be required and see that these records and reports are properly prepared.

(b) *Reports to the state superintendent.*—Prepare for the approval of the county board all reports that may be required by law or by rules and regulations of the state board to be made to the state superintendent, using therefor such forms and blanks as may be prescribed by the state board. and to transmit promptly all such reports, when approved, to the state superintendent, as required by law; provided, that if any such reports are not transmitted at the time and in the manner prescribed by law or by state board regulations the salary of the county superintendent shall be withheld until such report has been properly submitted. Unless otherwise provided by regulations of the state board, the annual report on attendance and personnel shall be due on or before July first, and the annual school budget and the report on finance shall be due on or before August first of each year.

(c) *Failure to make reports; penalty.*—Any county superintendent who knowingly signs and transmits to any state official a false or incorrect report shall forfeit his right to any salary for the period of one year from that date.

(15) COOPERATION WITH OTHER AGENCIES.—Recommend plans for cooperating with and on the basis of approved plans to cooperate with federal, state, county, and municipal agencies in the enforcement of laws and regulations pertaining to vocational education, vocational rehabilitation, physical restoration of children and adults, health of pupils, school attendance, child welfare, and other matters relating to education.

(16) ENFORCEMENT OF LAWS AND REGULATIONS.—See, insofar as practicable, that all laws and regulations of the state board, as well as supplementary regulations of the county board, are properly observed; report to the county board any violation which he does not succeed in having corrected.

(17) COOPERATE WITH COUNTY BOARD.—Cooperate with the county board in every manner practicable to the end that the county school system may continuously be improved.

(18) VISITATION OF SCHOOLS.—Visit the schools; observe the management and instruction; give suggestions for improvement; and advise with trustees, supervisors, principals, teachers, patrons, and other citizens with the view of promoting interest in education and improving the school conditions of the county.

(19) CONFERENCES, INSTITUTES, AND STUDY COURSES.—Call and conduct institutes and conferences with supervisors, principals, teachers, attendance assistants, school lunch personnel, janitors, bus drivers, trustees, patrons and other interested citizens; organize and direct study and extension courses for teachers, advising them as to their professional studies; assist patrons and people generally in acquiring knowledge of the aims, services, and needs of the schools.

(20) PROFESSIONAL AND GENERAL IMPROVEMENT. — Attend such conferences for superintendents as may be called or scheduled by the state superintendent and avail himself of means of professional and general improvement so that he may function most efficiently.

(21) RECOMMEND REVOKING CERTIFICATES.—Recommend in writing to the state superintendent the revoking of any certificate for good cause, including a full statement of the reason for his recommendation.

(22) MAKE RECORDS AVAILABLE TO SUCCESSOR. — Leave with the county board and make available to his successor upon retiring from office a complete inventory of school equipment and other property, together with all official records and such other records as may be needed in supervising instruction and in administering the county school system.

(23) OTHER DUTIES AND RESPONSIBILITIES.—Perform such other duties as may be assigned to him by law or by regulations of the state board.

History.—§433, ch. 19355, 1939; CGL 1940 Supp. 892(96); §3, ch. 29754, §42, ch. 29764; (7)(e) r. §42, ch 29764, 1955, remaining pararaphs renumbered; (11), (12)(b), (h) §5, ch. 59-371; (12)(b), (c) §4, ch. 61-288; (6)(j), (k) n.; (7)(b), (14)(a), (19), §7, ch. 63-376.

cf.—§228.07 School officers to turn over money and property to successors.
§232.29 Physical and mental examination.
§233.35 Storage of books.

230.331 Reproduction and destruction of county school records.—

(1) The purpose of this section is to reduce the present space required by the county school systems for the storage of their records and to permit the county superintendent of public instruction to administer the affairs of the county school system more efficiently.

(2) The county superintendent of public instruction is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character which in his discretion he may select, and the county superintendent of public instruction is authorized to destroy any of the said documents after they have been photographed and after audit of his office has been completed for the period embracing the dates of said instruments. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

(3) The county superintendent of public instruction is authorized, in his discretion, to destroy general correspondence which is over three years old and other records, papers and documents over three years old which do not serve as part of an agreement or understanding nor have value as permanent records.

History.—Comp. §1-3, ch. 57-378.

230.34 Consolidation of school districts.—

(1) On and after January 1, 1948, all school districts and all territory not included in school districts in each county of the state, shall be consolidated in each county into one school district to be known as "Special Tax School District Number 1," and the boundaries of said "Special Tax School District Number 1" shall be coextensive with the boundaries of the county and subject to all general law relative to school districts.

(2) All obligations of each special tax school district incurred prior to consolidation shall continue to remain the obligation of the area which incurred the obligation and such consolidation shall in nowise impair the security of any bonds or other indebtedness outstanding at the time of the consolidation, and it shall be the duty of the county board to see that the obligations of each district so consolidated shall be faithfully discharged.

(3) Three trustees for said "Special Tax School District Number 1" shall be elected by the qualified electors of said county at the time and place prescribed by or fixed pursuant to law, but not more than one trustee shall come from any one residence district for which a county board member is provided for by law. The persons qualified to hold such office and who receive the greatest number of votes cast for election of trustees, subject to the limitation prescribed above, shall serve for the ensuing two years as trustees for said school district.

(4) The millage for the ensuing biennium for said "Special Tax School District Number 1" shall also be voted on and determined at the same time, as prescribed by law.

(5) No tax that shall have been levied or assessed prior to the time when the provisions hereof shall be of full force and effect, shall be hereby impaired.

(6) Insofar as applicable and insofar as consistent with the provisions hereof, and when not in conflict herewith, the provisions of the general law of this state relating to school districts and to the consolidation of school districts, shall be applicable to said "Special Tax School District Number 1" upon this act becoming a law.

(7) All of the area of each county of the state shall become one school district, as hereinbefore provided, as of January 1, 1948, and the trustees thereof shall take office on said date.

(8) The county board of each county may in its discretion divide the county into school community areas for the purpose of setting up school advisory committees for such areas; each school community area shall follow precinct lines and as nearly as practicable comprise the attendance area for such school community; school community areas may be formulated either from incorporated territory or from rural territory or from a combination of both; provided, however, that any municipality or area for which a supervising principal is employed shall lie wholly within one school community area. The advisory committee for each school community area shall consist of three members and shall be selected in the manner prescribed by the county board of each county in conformity with regulations prescribed by the state board. Each school advisory committee herein authorized shall have the authority at all times to consult and advise with the supervising principal or principal of the school community area and with the county superintendent and county board concerning the conditions and needs of the schools which they represent, but the school advisory committee shall not have any of the powers and duties now reserved by law to school district trustees or to the county board.

History.—§434, ch. 19355, 1939; CGL 1940 Supp. 892(97); §12, ch. 23726, 1947.

cf.—§11, Art. XII, Florida constitution, Incorporated town or city may constitute school district.

230.35 Schools under control of county board and county superintendent.—All public schools conducted within the county shall be under the direction and control of the county board with the county superintendent as executive officer and shall be subject to the same laws and rules and regulations as are prescribed for the conduct for all schools in the county, except as hereinafter provided.

History.—§435, ch. 19355, 1939; CGL 1940 Supp. 892(98); §43, ch. 29764, 1955.

230.37 Organization and term of trustees.— Trustees for any school district shall consist

of three members who are qualified electors in the district and who are elected biennially for two-year terms by vote of the qualified electors of the district. New members shall take office on the first Tuesday after the first Monday in January following their election. The trustees shall meet and select one member as chairman at any time during the month of January after a biennial election is held.

History.—§437, ch. 19355, 1939; CGL 1940 Supp. 892(100).
cf.—§10, Art. XII, Florida constitution, Election of trustees.

230.38 Biennial election at time biennial school election.—The biennial election for trustees of any school district shall be held the first Tuesday after the first Monday in November of odd-numbered years, at which time the school district tax levy is to be voted on as set forth in chapters 236 and 237; provided, that in counties in which another election is scheduled by law to be held on that date, the county board may prescribe another date on which the biennial school district election shall be held, such date to be within six weeks of the date herein prescribed.

History.—§438, ch. 19355, 1939; CGL 1940 Supp. 892(101); §45, ch. 29764, 1955.
cf.—§236.31 Election biennially.

230.39 Procedure for conducting biennial school district elections.—The manner and method for conducting the biennial school district elections shall be as prescribed in chapter 236; provided, that the county board shall publish once each week for four successive weeks, beginning not more than forty-five days nor less than thirty days prior to the date set for the election, in some newspaper published in the county and with general circulation throughout the county, a notice of the election; and, provided further, that persons whose names are to be printed on the ballot for approval of trustees as prescribed in §236.32 (1) may be nominated at any time up to fifteen days preceding the date of the election. One notice of the election shall be sufficient for all districts in the county. In case there shall be no newspaper published in the county, the notice of election shall be posted at least thirty days prior to the election in each of the districts in the county.

History.—§439, ch. 19355, 1939; CGL 1940 Supp. 892(102); §3, ch. 20970, 1941.

230.40 Vacancy in office of trustee.—The position of trustee shall be considered to be vacant in any school district when any person holding the office of trustee removes his residence from the district.

History.—§440, ch. 19355, 1939; CGL 1940 Supp. 892(103).

230.41 Removal of trustees. — Any trustee failing to discharge the duties of his position may be removed by the state board after ten days' written notice to such trustee as provided in §229.08.

History.—§441, ch. 19355, 1939; CGL 1940 Supp. 892(104).
cf.—§3, Art. XII, Florida constitution, Power of state board to remove school officer.

230.42 General powers of trustees. — The powers of the trustees shall be supervisory in nature and not administrative or controlling powers. The general supervisory powers of trustees shall be as follows:

(1) CONSULT WITH PATRONS, TEACHERS, AND PRINCIPALS. — The trustees of any school district shall consult with patrons, teachers, or principals regarding all matters relating to the welfare of the schools of the district, in order to determine the progress and needs of those schools. They shall, however, have no authority over instructional matters except in an advisory capacity.

(2) ADVISE WITH COUNTY SCHOOL OFFICIALS.—The trustees shall advise with the county superintendent and county board and make recommendations with respect to the general welfare and needs of the schools of the district.

History.—§442, ch. 19355, 1939; CGL 1940 Supp. 892(105).
cf.—§10, Art. XII, Florida constitution, Powers of trustees.

230.43 Specific powers and responsibilities of trustees.—The specific powers of the trustees, which shall be exercised by the trustees of any district only when acting as a body, shall be the following:

(1) NOMINATION OF SUPERVISING PRINCIPALS OR PRINCIPALS.—To consider the recommendations of the county superintendent regarding all persons to be nominated by them for supervising principals or principals of all district schools and to make nominations for such positions to the county board; provided, that all nominations for reappointment of supervising principals or principals shall be submitted to the county board at least eight weeks before the close of school.

(2) NOMINATION OF OTHER MEMBERS OF THE INSTRUCTIONAL STAFF.—To consider recommendations of the supervising principal or the principals of the schools in the district and the county superintendent regarding the nomination of teachers and other members of the instructional staff to serve in the schools and to make nominations for such positions to the county board; providing, that all nominations for reappointment of members of the instructional staff shall be submitted to the county board at least six weeks before the close of school. If any nomination is rejected for good cause as herein prescribed, the trustees shall, after considering recommendations of the supervising principals or the principals of the schools in the district and the county superintendent, submit a second nomination for such position to the county board.

(3) RECOMMEND DISMISSAL OF MEMBERS OF THE INSTRUCTIONAL STAFF.—To file with the county board written charges against any member of the instructional staff whom they may recommend for dismissal for cause.

(4) SCHOOL BUILDINGS, GROUNDS, AND EQUIPMENT.—To have general supervision of the buildings, grounds, equipment, and other property of the schools of the district and to recommend to the county superintendent or to the county board at an official

meeting such repairs and alterations as may be considered necessary.

(5) USE OF PROPERTY FOR OTHER PURPOSES.—To permit the use of the school buildings and grounds of the district for civic, social, recreation and community purposes; provided, however, that such use does not interfere with the school program nor materially increase the maintenance cost of the property.

History.—§443, ch. 19355, 1939; CGL 1940 Supp. 892(106); (2), (5), (10) §4, ch. 29754, 1955; (1), (2) §7, (4), (7)-(9) r. §8, ch. 57-249, remaining subsections renumbered; (4), (5) deleted and subsequent subsections renumbered §5, ch. 61-288.

cf.—§236.50 Disposition of surplus of bond issue.
§237.02 Expenditures from district current school funds.
§237.09 County superintendent to prepare budget.

230.45 Patriotic programs, rules and regulations.—The board of public instruction of any county is hereby authorized to adopt rules and regulations pertaining to and requiring to be used in all of the schools of the county any program of a patriotic nature to encourage greater respect for the government of the United States, its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state; provided, that when the national anthem is played, students and all civilians shall always stand at attention, men removing the headdress; and provided, further, that the pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all," be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress, as provided by §7 of United States public law No. 623, approved June 22, 1942, as amended by United States public law No. 829, approved December 22, 1942.

History.—§1, ch. 22015, 1943; §47, ch. 29764, 1955.

230.46 When junior colleges may be organized.—

(1) COUNTY BOARD MAY ESTABLISH OR ACQUIRE JUNIOR COLLEGE.—Any county board, upon first obtaining the approval of the state board, may, as a part of the county school system, organize, establish and operate a junior college, or acquire and operate a junior college previously established.

(2) COUNTY BOARDS OF CONTIGUOUS COUNTIES MAY ESTABLISH OR ACQUIRE JUNIOR COLLEGE.—The county boards of any two or more contiguous counties, upon first obtaining the approval of the state board, may enter into an agreement to organize, establish and operate, or acquire and operate, a junior college in one of the counties under the conditions set forth in this section; provided, that no county board may discontinue performing its part of any agreement with another county or counties for the acquisition or operation of a junior college without first obtaining the approval of the state board.

(3) PLAN TO ACQUIRE, ESTABLISH AND OPERATE JUNIOR COLLEGE MUST BE APPROVED BY STATE BOARD.—No junior college shall be established, acquired or operated as provided in this section until the proposed plan of operation and financial support has been approved by the state board, which plan shall contain provisions for serving all eligible students in the attendance area to be served by such junior college.

(4) COUNTY BOARD MAY NOT TAKE OVER ALL OR ANY PART OF FOUR-YEAR INSTITUTION OF HIGHER LEARNING; COURSES BEYOND SOPHOMORE LEVEL PROHIBITED.—No county board, under subsections (1) and (2) of this section shall acquire or operate as a junior college any established four-year institution of higher learning or any part thereof. No junior college shall offer courses or degrees beyond the sophomore level as determined by the state board.

History.—§1, ch. 19159, 1939; §47, ch. 23726, 1947; §1, ch. 28068, 1953; §4, ch. 57-252.
Note.—Formerly §242.41.

230.47 Junior college part of county school system; employment of president; advisory committee; minimum standards.—

(1) JUNIOR COLLEGE PART OF COUNTY SCHOOL SYSTEM; DIRECTED BY A PRESIDENT.—A junior college, established or acquired under the provisions of §230.46, shall comprise a part of the county school system of the state, shall be subject to the general school laws of the state insofar as such laws are applicable, shall be under the control of the county board of the county in which it is located and shall be directed by a president, who shall be responsible through the county superintendent to the county board of the county in which the junior college is located. A junior college may be separately organized and operated or may be organized and operated in connection with a secondary school.

(2) EMPLOYMENT OF PRESIDENT; MINIMUM SALARY.—When a vacancy exists in the presidency of a junior college, the county board shall employ a qualified person to fill the position who has been approved by the state board. No county board shall contract with a person to be president of a junior college for a salary less than seven thousand five hundred dollars per year.

(3) DUTIES AND POWERS OF ADVISORY COMMITTEE.—For each junior college established or acquired by a county board or county boards, an advisory committee shall be appointed as hereinafter prescribed. The advisory committee may meet with the county board of the county in which the junior college is located whenever matters involving the junior college are being acted upon, and the advisory committee shall advise the county board on such matters, but the members of the advisory committee shall not have a right to vote at the meeting of the county board. The advisory committee shall meet at least once each quarter and shall submit to the county board, after consult-

ing with the president of the junior college, whatever recommendations relating to personnel, curricula, finance and policies in general it deems to be for the best interest of the junior college.

(4) MEMBERS AND METHOD OF APPOINTMENT OF ADVISORY COMMITTEE; SECRETARY; MINUTES.—The advisory committee shall be comprised of five lay members when a junior college is operated by one county board, and of not more than nine lay members when operated by more than one county board. Members of the advisory committee shall be appointed by the state board for three-year overlapping terms in accordance with a plan to be prescribed by said board; provided, that all such appointments shall be made from a list of persons recommended by the county board or boards of the counties contributing to the support of the junior college, on or before June 1 of each year in accordance with this plan; provided further, that each county contributing to the support of the junior college shall have not less than one representative on the advisory committee. Only persons living in a county contributing to the support of the junior college shall be eligible for appointment to the advisory committee. On the first Tuesday after the first Monday in June of each year the advisory committee shall organize by electing a chairman. The president of the junior college shall act as the ex-officio secretary of the committee. The secretary shall keep the minutes of the meetings and file copies with the county superintendent, and such minutes shall be available to the county board.

(5) STATE BOARD SHALL PRESCRIBE MINIMUM STANDARDS.—The state board shall prescribe minimum standards which must be met before a junior college is organized, acquired or operated, and which will assure that the purposes of the junior college are attained.

History.—§2, ch. 19159, 1939; §48, ch. 23726, 1947; §1, ch. 29367, 1955; §5, ch. 57-252.

Note.—Formerly §242.42.

***230.48 State and county financial support of junior colleges.—**

(1) STATE SUPPORT OF JUNIOR COLLEGES.—Each junior college approved by the state board shall participate in the minimum foundation program funds for junior colleges. The amounts of money to be allocated for this purpose from the minimum foundation program fund shall be according to the formula established by law.

(2) COUNTY SUPPORT OF JUNIOR COLLEGES.—Each county board operating a junior college and each county board participating in the operation of a junior college, under provision of law, shall make a financial effort to support the junior college which is at least equal to five per cent of the minimum local financial effort required to support the minimum foundation program for grades one to twelve, inclusive, in those counties, as prescribed in §236.07(8), provided that no funds calculated to be included in the minimum foundation program for kindergarten through grade twelve shall be used for the support of a junior college, and provided further that no county board or group of county boards operating a junior college shall be required to make a financial effort to support the junior college of more than fifty per cent of the total cost of the minimum foundation program for such junior college. Subject to the foregoing proviso, the county board of each county participating in the operation of a junior college shall annually appropriate to the county board of the county in which the junior college is located a sum at least equivalent to five per cent of the minimum financial effort required for the county board making the appropriation to support the minimum foundation program for grades one to twelve, inclusive, which sum shall be used by the county board to which it is appropriated exclusively for the purpose of supporting the junior college. Any county board which fails to make the financial effort required hereunder to support the junior college, shall during such default be ineligible to receive any state funds under the minimum foundation program. No matriculation or tuition fees may be charged pupils attending a junior college unless such fees are authorized by the state board, and, if such authorization is made, any fees charged shall conform to the requirements for such fees prescribed by the state board.

History.—§3, ch. 19159, 1939; §49, ch. 23726, 1947; §6, ch. 57-252.

Note.—Formerly §242.43.

*Note.—Local contributions as prescribed by this section are apparently superseded by the provisions of §236.74(6) enacted by the 1963 legislature as §7 of ch. 63-495.

230.49 Budgets for junior colleges.—A tentative budget of the estimated income and expenditures for each junior college shall be prepared by the president of each junior college and presented for approval to the advisory committee of such junior college. When approved by the advisory committee, the budget shall be submitted to the county superintendent of the county in which the junior college is located, who shall submit said budget to the county board operating the junior college. Upon the approval of the budget by the county board, the county superintendent shall submit it to the state superintendent for approval, who shall notify the county board of his approval or of his refusal to approve same with his reasons for not approving it. Such budget shall become final only when approved by the state superintendent, pursuant to regulations of the state board. Funds provided in this budget shall be used exclusively for junior college purposes. The method for preparation and approval of the junior college budget as set out herein shall be exclusive of any method of other budgets of the county board.

History.—§2, ch. 28068, 1953; §7, ch. 57-252.

230.56 Location of college in two-county area.—In establishing a junior college in a two-county area in which the counties are of comparable size and the principal municipality of each county is of comparable size, the state board of education shall approve a site located

between each said municipalities, taking into consideration the convenience of service and accessibility to: first, the people of the said municipalities and, secondly, the people of other populated areas in said counties.

History.—§8, ch. 57-760.

230.57 Junior colleges; ownership of real and personal property.—All real or tangible personal property acquired in whole or in part, or on which buildings shall have been constructed, with funds appropriated herein or hereafter shall be the property of the county board of public instruction of the county in which the junior college is located, subject, however, to divestment by law of the legislature transferring title to the state board of education.

History.—§9, ch. 57-760.

230.58 Establishment of junior colleges.—(1) LEE, LAKE, COLUMBIA AND ORANGE COUNTIES.—Authorization is hereby given for the establishment of junior colleges to be located in Lee, Lake, Columbia and Orange counties in accordance with provisions of §230.46.

(2) MONROE AND POLK COUNTIES.—Authorization is hereby given for the establishment of junior colleges to be located in Monroe and Polk counties in accordance with provisions of §230.46.

(3) OKALOOSA COUNTY.—Authorization is hereby given for the establishment of junior colleges to be located in Okaloosa county in accordance with provisions of §230.46. The need for junior college facilities shall be established by a survey made under the supervision of the state department of education; the facilities recommended by such survey must be approved by the state board of education and the projects must be constructed according to the provisions of §§235.25-235.33 and state board of education regulations.

(4) DUVAL COUNTY.—Authorization is hereby given for the establishment of junior colleges to be located in Duval county in accordance with provisions of §230.46. There is hereby appropriated the amount of $30,000.00 to the board of public instruction of Duval county to defray expenses incurred in organzing said junior college or colleges. Upon certification by the state superintendent of public instruction to the comptroller of the creation of a junior college, in said county, the comptroller shall draw his warrant in the amount of $30,000.00 on the general revenue fund payable to the board of public instruction of Duval county. Upon receipt of such warrant said board of public instruction shall create and deposit said warrant in a junior college fund to be expended for expenses incurred in organizing said junior college or colleges.

History.—§§1, chs. 61-214, 61-527, 61-528, 61-529; (2) n. §§1, chs. 63-317, 63-411; (3) n. §1, ch. 63-445; (4) n. §§1, 2, ch. 63-438.

cf.—§228.15 Junior colleges; state board.

230.59 Educational television systems; definitions.—The following definitions shall apply to §§230.59-230.62:

(1) EDUCATIONAL TELEVISION SYSTEM.—A station or stations owning or having custody of a valid federal communications commission license providing for the operation of an educational television station. This term shall include transmission equipment and facilities for the production of and the transmission of open or closed circuit telecasting and services and channels obtained from communication common carriers.

(2) LICENSEE.—The holder of a valid federal communications commission educational television station license.

(3) AVERAGE DAILY ATTENDANCE.—The average daily attendance computed for grades kindergarten through twelve and junior college for the year prior to that for which the allocation is being made.

(4) HALF HOUR COURSE.—Not less than twenty minutes of actual instruction, with not more than a ten-minute period allocated to musical interludes or silent time for changing of classes, transmitted by the licensee and being actually used by one or more participating counties in the regular school academic program.

(5) LIVE PROGRAMMING.—A course produced and transmitted by the originating television system. This term shall apply to either production and transmission simultaneously, or to the first transmission of a course subsequent to production.

(6) PRERECORDED PROGRAMMING.—All transmission not included in the definition of live programming.

(7) CONTRACTING COUNTY.—A county entering into a contract for acquisition, establishment or operation of an educational television system or to a county entering into a contract with an educational television station to provide educational television programming to such county, or to a county entering into a contract for services and channels. It shall not include contracts for the purchase or sale of personal property or the leasing of real property.

(8) Privately owned television broadcast station, community antenna television system or closed circuit television system shall mean such broadcast stations or systems operated by private individuals or corporations, and offering their services for educational television either as a public service or for compensation.

History.—§1, ch. 63-221.

230.60 Educational television stations may be established.—

(1) COUNTY BOARD MAY ESTABLISH OR ACQUIRE AN EDUCATIONAL TELEVISION SYSTEM.—Any county board, after first obtaining the approval of the state board of education may, as a part of the county school system, organize, establish, contract for and operate an educational television system, or acquire and operate a system previously established, or may contract for providing educational television courses with privately owned television stations, with community antenna

television systems or closed circuit television systems.

(2) COUNTY BOARDS OF COOPERATING COUNTIES MAY ESTABLISH OR ACQUIRE EDUCATIONAL TELEVISION SYSTEMS.—A county board of any two or more cooperating counties, after first obtaining the approval of the state board, may enter into a contract to organize, establish and operate or acquire and operate an educational television system under the conditions set forth in this section, provided that no county board may discontinue performing its part of any agreement with another county or counties for the acquisition or operation of an educational television system without first obtaining the approval of the state board.

(3) PLAN TO ACQUIRE, ESTABLISH, AND OPERATE EDUCATIONAL TELEVISION SYSTEM MUST BE APPROVED BY STATE BOARD.—No educational television system shall be established, acquired, or operated as provided in this section until the proposed plan for operation and financial support has been approved by the state board.

History.—§1, ch. 63-221.

230.61 Educational television system part of county school system; advisory committee; minimum standards.—

(1) EDUCATIONAL TELEVISION STATION OR SYSTEM PART OF COUNTY SCHOOL SYSTEM.—An educational television system established or acquired under the provisions of §230.60 shall comprise a part of the county school system of the state, shall be subject to the general school laws of the state insofar as such laws are applicable, shall be under the control of the county board holding the federal communications commission license for the operation of the educational television system and shall be directed by a manager who shall be responsible through the county superintendent to the licensee board.

(2) DUTIES AND POWERS OF ADVISORY COMMITTEE.—For each educational television system operated by a county board or county boards, or contracting with a county board to provide educational television programming, an advisory committee shall be appointed as hereinafter prescribed. The members of the advisory committee shall serve without compensation but shall be entitled to per diem and travel in accordance with §112.061. The advisory committee may meet with the licensee whenever matters involving the educational television system are being acted upon. The advisory committee shall meet at least once each quarter and submit to the licensee, after consulting with the manager of the educational television system, whatever recommendations relating to personnel, course offerings, finance, and policies in general it deems to be for the best interest of the educational television system. The advisory committee shall advise the licensee on such matters but the members of the advisory committee shall not have the right to vote at any joint meeting.

(3) MEMBERS AND METHOD OF APPOINTMENT OF ADVISORY COMMITTEE.—

(a) The advisory committee shall be composed of: The county superintendent of each of the cooperating or contracting counties; one member of the educational staff at the supervisory level from each of the cooperating or contracting counties, said member to be nominated by the respective county boards of public instruction and approved by the state board of education; and one lay resident of either the licensee county or one of the contracting counties, said member to be nominated annually by the other members of the advisory committee and approved by the state board of education.

(b) When there are no cooperating or contracting counties and the educational television system is operated by one county board, said county board after considering the recommendations of the county superintendent shall nominate three additional members of the advisory committee to be approved by the state board of education.

(4) STATE BOARD SHALL PRESCRIBE MINIMUM STANDARDS.—The state board shall prescribe minimum standards and adopt applicable regulations which must be met before an educational television system is organized, acquired or operated which will assure that the purposes of the educational television system are obtained.

(5) ADVERSE RULING, APPEAL BY ADVISORY COMMITTEE.—If the licensee is a county board of public instruction and said board acts adversely to the recommendation of the advisory committee, the advisory committee may appeal the action to the state board of education within ten days. The appeal shall serve as a stay of action, and the licensee board shall take no action in the matter until after the decision of the state board, which decision shall be final.

History.—§1, ch. 63-221.

230.62 Budgets for educational television stations or systems operated by a county board.—A tentative budget of the estimated income and expenditures for each educational television system operated by a county board shall be prepared by the manager of such educational television system and presented for approval to the advisory committee for such educational television system. When approved by the advisory committee, the budget shall be submitted to the county superintendent of the licensee county, who shall submit said budget to the county board operating the educational television system. Upon the approval of the budget by the county board, the county superintendent shall submit it to the state superintendent for approval who shall notify the county board of his approval or his refusal to approve same, with his reasons for not approving it. Such budget shall become final only when approved by the state superintendent, pursuant to regulations of the state board, which regulations shall specify the sources of revenue, the purposes of the expenditures and the amount of reserve to be included in said budget. Funds provided in this budget shall

be used exclusively for the operation and maintenance of the educational television system. Method of preparation and approval of the educational television system budget as set out herein shall be exclusive of any method of preparation or approval of other budgets of the county school board.

History.—§1, ch. 63-221.

230.63 When area vocational-technical centers may be organized.—

(1) COUNTY BOARD MAY ESTABLISH OR ACQUIRE AREA VOCATIONAL-TECHNICAL CENTERS.—Any county board of a county, upon first obtaining the approval of the state board, may, as a part of the county school system under the provisions of §228.14, organize, establish and operate an area vocational-technical center, or acquire and operate a vocational-technical school previously established.

(2) COUNTY BOARDS OF CONTIGUOUS COUNTIES MAY ESTABLISH OR ACQUIRE AREA VOCATIONAL-TECHNICAL CENTERS. —The county boards of any two or more contiguous counties, may, upon first obtaining the approval of the state board, enter into an agreement to organize, establish and operate, or acquire and operate, an area vocational-technical center under this section; provided, that no county board may enter into such an agreement if it is performing its part of any agreement with another county or counties for the acquisition or operation of a junior college.

History.—§1, ch. 63-475.

230.64 Area vocational-technical center part of county school system; minimum standards.—

(1) AREA VOCATIONAL - TECHNICAL CENTER PART OF COUNTY SCHOOL SYSTEM DIRECTED BY A DIRECTOR.—An area vocational-technical center established or acquired under the provisions of §§228.14 and 230.60, shall comprise a part of the county school system of the state and shall mean an educational institution offering terminal courses of a technical and vocational nature, and courses for out-of-school youth and adults, shall be subject to the general school laws of the state insofar as such laws are applicable, shall be under the control of the county board of the county in which it is located and shall be directed by a director, who shall be responsible through the county superintendent to the county board of the county in which the center is located.

(2) STATE BOARD SHALL PRESCRIBE MINIMUM STANDARDS.—The state board shall prescribe minimum standards which must be met before an area vocational-technical center is organized, acquired or operated, and which will assure that the purposes of the center are attained.

History.—§1, ch. 63-475.

230.65 State and county financial support of area vocational-technical centers.—Each area vocational-technical center approved by the state board shall participate in the minimum foundation program funds for the public schools. The amounts of money to be allocated for this purpose from the minimum foundation program fund shall be according to the formula established by law.

History.—§1, ch. 63-475.

CHAPTER 231

PERSONNEL OF SCHOOL SYSTEM

231.01 Terminology.—As used in this chapter the term "personnel" refers to the county superintendent and to any person employed by the county board and comprises the following:

(1) ADMINISTRATIVE PERSONNEL—as defined in §228.041.

(2) INSTRUCTIONAL PERSONNEL — as defined in §228.041.

(3) ATTENDANCE ASSISTANTS — includes those persons employed by the county board to assist in any phase of attendance work.

(4) HEALTH ASSISTANTS — includes nurses, physicians, and others engaged in any phase of school health work other than instruction.

(5) TRANSPORTATION PERSONNEL —includes all persons involved in the operation or maintenance of school busses, or assisting otherwise in transporting pupils to school.

(6) OTHER PERSONNEL — includes all other employees of the county school system.

History.—§501, ch. 19355, 1939; CGL 1940 Supp. 892(107).

231.02 Qualifications of personnel.—To be eligible for appointment in any position in any county school system a person shall be of good moral character and shall, when required by law, hold a certificate or license issued under regulations of the state board of education or the state board of health.

History.—§502, ch. 19355, 1939; CGL 1940 Supp. 892(108); §14, ch. 23726, 1947.

231.03 Minimum ages of instructional personnel.—No person may be employed in any instructional capacity in the public schools of Florida who has not attained the age of twenty years unless he has received a four year degree from an accredited institution of higher learning. No person shall be employed as principal of a school with three or more teachers or as a supervisor of instruction who has not had two

or more years of experience as a teacher and attained the age of twenty-three years.

History.—§503, ch. 19355, 1939; CGL 1940 Supp. 892(109); §8, ch. 63-376.

231.04 County board may prescribe qualifications. — The county board of any county may, in addition to and not inconsistent with qualifications prescribed by law or by regulations of the state board, prescribe those qualifications for any or all positions which, in the opinion of the county board, will best promote progress in the public school system of the county.

History.—§504, ch. 19355, 1939; CGL 1940 Supp. 892(110).
cf.—§230.23 Duties of county board in providing for appointment, etc., of personnel.

231.05 Jury and military duty.—The members of the instructional staff while actually engaged in the work of their profession shall not be required to perform jury or military service.

History.—§505, ch. 19355, 1939; CGL 1940 Supp. 892(111).
cf.—§40.08 Persons exempt from jury duty.
§250.05 Exemptions from military duty.

231.06 Assaults upon instructional personnel; penalty.—Any parent or other person not subject to the discipline of the school who assaults any person employed in an instructional capacity on school property shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars or imprisoned in the county jail for a period not to exceed thirty days.

History.—§506, ch. 19355, 1939; CGL 1940 Supp. 8115(2).
cf.—§784.02 Punishment of assault.
§775.06 Alternative punishment.

231.07 Insulting instructional personnel; disturbing school functions.—Any person who upbraids, abuses or insults any member of the instructional staff on school property or in the presence of the pupils at a school activity, or any person not otherwise subject to the rules and regulations of the school who creates a disturbance on the property or grounds of any school, who commits any act that interrupts the orderly conduct of a school or any activity thereof shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned in the county jail for a period not exceeding thirty days, or both, in the discretion of the court. This section shall not apply to any pupil in or subject to the discipline of a school.

History.—§507, ch. 19355, 1939; CGL 1940 Supp. 8115(3); §1, ch. 21989, 1943.
cf.—§847.04 et seq. Using profane or obscene language.
§775.06 Alternative punishment.

231.09 Duties of instructional personnel.—Members of the instructional staff of the public schools, subject to the rules and regulations of the state board and of the county board, shall perform the following functions:

(1) TEACHING. — Teach efficiently and faithfully, using the books and materials required, following the prescribed courses of study, and employing approved methods of instruction, the following: the essentials of the United States constitution, flag education, including proper flag display and flag salute, the elements of civil government, the elementary principles of agriculture, the true effects of all alcoholic and intoxicating liquors and beverages and narcotics upon the human body and mind, kindness to animals, the history of the state, conservation of natural resources, and such additional materials, subjects, courses, or fields in such grades as may be prescribed by law or by regulations of the state board and the county board in fulfilling the requirements of law; provided, that state and county school officials shall furnish and put into execution a system and method of teaching the true effects of alcohol and narcotics on the human body and mind, provide the necessary textbooks, literature, equipment, and directions, see that such subjects are efficiently taught by means of pictures, charts, oral instruction, and lectures and other approved methods, and require such reports as are deemed necessary to show the work which is being covered and the results being accomplished, and provided further, that any child whose parent shall present to the school principal a signed statement that the teaching of disease, its symptoms, development and treatment, and the viewing of pictures or motion pictures of such subjects conflict with the religious teachings of their church, shall be exempt from such instruction, and no child so exempt shall be penalized by reason of such exemption.

(2) BIBLE READING.—Have, once every school day, readings in the presence of the pupils from the Holy Bible, without sectarian comment.

(3) EXAMPLE FOR PUPILS. — Labor faithfully and earnestly for the advancement of the pupils in their studies, deportment and morals, and embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty and patriotism and the practice of every Christian virtue.

(4) TREATMENT OF PUPILS. — Treat pupils under their care kindly, considerately, and humanely, administering discipline in accordance with regulations of the state board and the county board; provided, that in no case shall cruel or inhuman punishment be administered to any child attending the public schools.

(5) OBJECTIVE FOR PUPILS.—Require the pupils to observe personal cleanliness, neatness, order, promptness, and gentility of manners, avoid vulgarity and profanity, and cultivate in them habits of industry and economy, a regard for the rights and feelings of others, and their own responsibilities and duties as citizens.

(6) CONFERENCES.—Attend such conferences relating to education as may be required by law, by the state superintendent, or by the county superintendent.

(7) COOPERATION. — Cooperate with the state, county, and local school officials in the enforcement of school laws and of state and county board regulations.

(8) RECORDS AND REPORTS. — Keep such records and prepare and submit such reports as may be required by law, by regulations of the state board, or of the employing county board.

(9) RULES AND REGULATIONS.—Conform to all rules and regulations that may be prescribed by the state board and by the county board.

(10) PROTECT PROPERTY. — See that the school building, and all things pertaining thereto, are not unnecessarily defaced or injured.

(11) FIRE AND EMERGENCY DRILLS. —Give instructions in and hold under the direction of the school principal, such fire and emergency drills as may be prescribed by law, by regulations of the state board and of the county board, and as otherwise may be deemed necessary.

(12) CUSTODY OF PROPERTY. — Deliver, on closing or suspending school, all keys, records and reports, and account for all other school property to the principal of the school, to the county superintendent, or to a trustee as may be prescribed by regulations of the state board and of the county board.

(13) CONTRACTS.—Fulfill the terms of any written contract, unless released from the contract by the county board, as prescribed in §§231.36 and 231.361.

History.—§509, ch. 19355, 1939; CGL 1940 Supp. 892(113); (1) §1, ch. 28055, 1953; (13) §1, ch. 61-459.

cf.—§230.221 Courses in bible study and religion.
§232.14 Attendance records and reports required.
§235.14 Fire drills.

231.10 Florida teacher education advisory council.—To aid in developing desirable standards and particularly to assist in the improvement of teacher, administrator and supervisor education in the state there shall be organized a council which shall be designated as the Florida teacher education advisory council. This council shall be comprised of representatives from the following: one member designated by each institution of higher learning in the state which offers courses for the preparation of teachers; one additional member from each institution of higher learning in the state which offers courses for the preparation of teachers and which has a separate college or school of education; provided that in each such institution one representative shall be a member of the staff of the school or college of education and one representative shall be a member of the staff of the college of arts and sciences; two members from the state department of education, one of whom shall be the director of certification and accreditation and one of whom shall be the director of instructional field services; two representatives from the Florida education association, one of whom shall be the executive secretary thereof and one of whom shall be the president thereof; two each secondary teachers, junior high school teachers and elementary teachers, who shall be appointed by the state superintendent of public instruction upon recommendation of those associations constituting the largest state-wide organization of such teachers; one each junior college representative, county superintendent, supervisor, secondary principal, junior high principal and elementary principal, who shall be appointed by the state superintendent of public instruction upon recommendation of those associations constituting the largest state-wide organization of such persons; six persons appointed by the governor, one of whom shall be a member of a county school board, one of whom shall be a parent of a child enrolled in the public schools of the state, and four of whom shall be by citizens not connected with the educational system of the state or any county therein.

Members shall serve for three year overlapping terms and shall be entitled to reimbursement for expense of attending meetings of the council. Reimbursement for such expense shall be made by the state treasurer from funds appropriated for the state department of education on warrants to be drawn by the state comptroller upon requisitions approved by the state superintendent.

The duties of the Florida teacher education advisory council shall be as follows:

(1) To plan and conduct, in cooperation with the state department of education and institutions of higher learning, studies relating to the selection, education, guidance and placement of school personnel and especially of instructional and administrative personnel in the state.

(2) To submit to the state board, through the state superintendent, on or before January 1 of each year, a report summarizing the findings of studies conducted during the year and proposing such recommendations for improvement in the program as are considered desirable.

History.—§510, ch. 19355, 1939; CGL 1940 Supp. 892(114); §15, ch. 23726, 1947; §48, ch. 29764, 1955; §1, ch. 59-357.

cf.—§229.07 General powers of state board.

231.11 Program for education of public school personnel; approval of institutions.—The state board shall prescribe minimum standards including minimum curricula for the education of personnel engaged in public school work in the state. The state board, on the basis of standards prescribed by it, shall have the authority to approve institutions both within and without the state for the purpose of certificating administrative and instructional personnel for the public schools.

History.—§511, ch. 19355, 1939; CGL 1940 Supp. 892(115); §16, ch. 23726, 1947; §49, ch. 29764, 1955.

231.12 Recommendations regarding teacher training institutions. — The state superintendent shall make periodic inspections of the teacher training institutions under the control of the state board of control, and make rec-

ommendations to the presidents of these institutions in matters pertaining to their teacher training functions.

History.—§512, ch. 19355, 1939; CGL 1940 Supp. 892(116).

231.13 Conferences.—As a means of stimulating the professional improvement of personnel in service, the state superintendent may call conferences of personnel of the public schools on matters relating solely to education, which conferences, if held on a school day within the period of time covered by a contract, shall be attended with pay by all who may be designated in the call of the state superintendent; provided, that the call of the state superintendent may indicate that attendance is optional, and that in any case of those absent from their usual duties during the time of the conference, only those actually in attendance at the conference shall be entitled to pay for time covered by the conference.

History.—§513, ch. 19355, 1939; CGL 1940 Supp. 892(117). cf.—229.17 State superintendent may call meetings.

231.14 Certificate required.—No person shall be employed to serve in an administrative or instructional capacity as a regular or part-time teacher in the public schools of the state who does not hold a valid certificate to teach in Florida granted or recognized pursuant to law under regulations of the state board; nor shall any county board employ, contract with, or pay any person a salary for administrative or instructional services who does not hold such a valid certificate; provided, that previous residence in Florida shall not be required as a prerequisite for any person holding a valid Florida certificate to serve in an instructional or administrative capacity in schools of the state.

History.—§514, ch. 19355, 1939; CGL 1940 Supp. 892(118); §17, ch. 23726, 1947.

231.15 Positions for which certificates required.—Each person employed or occupying a position as administrative assistant to the county superintendent, school supervisor, helping teacher, principal, teacher, attendance assistant, school librarian, or other position in which the employee serves in an administrative or instructional capacity in any public school of any county of this state, shall hold the certificate required by law, and by regulations of the state board in fulfilling the requirements of the law for the type of service rendered; provided, however, that the certification requirements for employment by the county board may be waived under regulations of the state board, for personnel engaged in providing educational experiences by occasional personal lectures, by occasional instruction of adults, or by means of radio or television transmission.

History.—§515, ch. 19355, 1939; CGL 1940 Supp. 892(119); §9, ch. 57-249; §9, ch. 63-376.

231.151 Certificates for personnel employed in junior colleges.—Each person employed in an administrative or instructional position in a public junior college shall hold a valid certificate in accordance with §§231.14 and 231.15. Such certificate shall be issued on the basis of qualifications set by the state board for junior college personnel; provided that §231.16(2) shall not apply to the issuance of junior college certificates to persons having three or more years of teaching experience or its equivalent as defined by regulations of the state board, or to continuing contracts for junior college personnel.

History.—§1, ch. 63-398.

231.16 Types, classes and ranks of certificates to be issued; examinations.—

(1) The state board shall prescribe the types, classes and ranks of certificates to be issued, the subjects or fields of instruction which these certificates shall cover, and the requirements for such certificates; provided, that regulations of the state board in regard to certification shall not be inconsistent with the provisions of law; and provided, further, that new regulations adopted at any time shall not become effective to the exclusion of prior regulations for a period of one year. The regulations of the state board shall include regulations specifying, as prerequisite to each type of certificate to be granted, a definite amount of college credits in prescribed professional courses and subject fields and the period of time prior to the application for certificate within which time a specified portion of such college work shall have been done, and may require a definite period of time during which the applicant shall have served under supervision in the public schools.

(2)(a) No certificate other than one interim certificate, valid for one year only, shall be issued to an applicant who has not made a score of at least five hundred or such higher minimum score as may be fixed by regulation of the state board of education, on the common examinations of the national teacher examinations, or on a comprehensive examination approved by the state board of education as at least equivalent thereto. The rank of such interim certificate shall be determined by the applicant's academic degree and other qualifications. If, at the expiration of the interim certificate, the applicant has made the minimum score as prescribed above, he may be issued upon application a certificate, the rank of which shall be determined by his academic degree and other qualifications. If, at the expiration of the interim certificate, the applicant has not made the prescribed minimum score, he may be issued upon application one temporary certificate which shall be in rank V; provided that the holder of a temporary certificate in rank V may not become eligible for a higher rank certificate subsequent to September 1 of the school fiscal year in which the rank V certificate was issued. The provisions of this subsection shall not apply to personnel certified for part-time employment.

(b) Any person holding a certificate dated July 1, 1961, or July 1, 1962, shall be adjudged to have held the interim certificate as provided in paragraph (a).

(3) Nothing contained in subsection (2) of

this section shall impair, for the rank certificated, the validity of any certificate dated on or before July 1, 1961.

History.—§516, ch. 19355, 1939; CGL 1940 Supp. 892(120); §18, ch. 23726, 1947; §2, ch. 61-263; (2) §1, ch. 63-223.

231.162 Construction of chapter 61-263.—Nothing in chapter 61-263 amending chapters 231 and 236 shall be construed to impair the authority of the legislature to change from time to time, as it may deem in the best interest of education, the qualifications and requirements for issuance and renewal of certificates as a prerequisite to continuance in service as instructional personnel under continuing contracts and the qualifications and requirements for competence awards and any other awards or increments.

History.—§6, ch. 61-263.

231.17 Certificates granted on application to those meeting prescribed requirements.—The state superintendent shall issue a certificate of the proper type to any person possessing the qualifications for such a certificate, as prescribed herein, and by rules and regulations of the state board, who pays the required fee, makes application in writing on the form prescribed by the state superintendent, submits satisfactory evidence that he possesses said qualifications, and who meets the requirements given in §231.18. To be eligible for a certificate to serve in an administrative or instructional capacity, the applicant shall be a citizen of the United States, shall be at least twenty years of age or shall have received a four year degree from an accredited institution of higher learning and shall not have attained the age of seventy years, shall meet such academic and professional requirements based on credentials certified to by standard teacher-training institutions of higher learning as may be prescribed by the state board, shall be recommended for a teaching certificate by the institution of higher learning from which he was graduated, shall be free from malignant, communicable, or mental diseases, and from any physical illness, defect, or deformity which would impair or prevent the performance of duties, functions, or responsibilities of a teacher, and shall be of good moral character; provided, that the state board shall have authority to prescribe regulations under which certificates or permits may be issued to citizens of other nations not antagonistic to democratic forms of government who may be needed to teach, or who may be assigned to teach in the state on an exchange basis, and that the provisions of §231.18 shall not apply to such persons.

History.—§517, ch. 19355, 1939; CGL 1940 Supp. 892(121); §2, ch. 21989, 1943; §19, ch. 23726, 1947; §1, ch. 26894, 1951; §5, ch. 29754, 1955; §10, ch. 57-249; §6, ch. 59-371; §10, ch. 63-376.

231.171 Ranks I and II; limitation on teaching field.—It is the intent of the legislature that all instructional personnel certificated in rank I and rank II subsequent to July 1, 1961, shall teach only in the fields or areas for which such personnel are certificated; provided, that instructional personnel may be employed by county boards of public instruction to teach out of the field in which they are certificated only upon certification by the county superintendent to the state superintendent that suitable personnel, properly certificated for the vacancies, are not available; provided further that minimum foundation program salary allocation for instructional units sustained by instructional personnel in rank I and rank II not included in the above conditions shall be computed at the unit value prescribed for rank III; provided further that instructional personnel now taking courses for the completion of degrees leading to rank I or rank II certification who will complete such programs prior to July 1, 1963, shall not be considered to fall within the purview of this act. This section shall become effective July 1, 1962.

History.—§§1, 2, ch. 61-294.

231.18 Support of the United States constitution.—Each person applying for a certificate which would make him eligible to serve in an administrative or instructional capacity in the schools of Florida in addition to meeting all other requirements, and before receiving a certificate, shall file along with his other credentials a written statement under oath that he subscribes to and will uphold the principles incorporated in the constitution of the United States.

History.—§518, ch. 19355, 1939; CGL 892(122); §20, ch. 23726, 1947.

231.20 Graduate certificate.—Upon fulfilling the requirements given in §231.17, a graduate certificate valid for five years from the date of issue, extendible as specified in §231.24, and authorizing the holder thereof to teach the grades, subjects, or subject fields indicated on the certificate, shall be issued to any regular graduate of a standard institution of higher learning, approved under regulations of the state board, requiring the completion of a four-year course for graduation, who is recommended by that institution for a certificate.

History.—§520, ch. 19355, 1939; CGL 892(124); §2, ch. 26894, 1951.

231.24 Extension of certificates.—All certificates except temporary and provisional certificates issued under the provisions of the Florida Statutes, shall be extendible for successive periods under regulation of the state board prescribing such additional training or experience, or both, as may be deemed necessary for said extension; provided, that the applicant for the extension of the certificate has not reached his seventieth birthday; and provided, however, that when any person holding a valid Florida teacher's certificate is called into or volunteers for actual wartime service or required peacetime military training, his certificate shall be extended for a period of time equal to the time he spends in military service, providing such person makes proper application and presents substantiating evidence to the state superintendent regarding such military service.

History.—§524, ch. 19355, 1939; CGL 1940 Supp. 892(128); §1, ch. 20909, 1941; §4, ch. 26894, 1951; §7, ch. 59-371.

231.28 Revocation of certificates.—The state board of education shall have authority to suspend the teaching certificate of any person for one year, thereby denying him the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (6); or, revoke the teaching certificate of any person, thereby denying him the right to teach for a period of time not to exceed ten years, with reinstatement subject to provisions of subsection (6); or, revoke permanently the teaching certificate of any person, provided:

(1) It can be shown that such person obtained the teaching certificate by fraudulent means, or has proved to be incompetent to teach or to perform his duties as an employee of the public school system, or to teach in or to operate a private school, or has been guilty of gross immorality or an act involving moral turpitude, or has had his certificate revoked in another state, or has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation, or upon investigation has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the county board, or has otherwise violated the provisions of law, the penalty for which is the revocation of the teaching certificate, or has refused to comply with the regulations of the state board of education or the board of public instruction in the county in which he is employed.

(2) The procedure for the revocation or suspension of a teaching certificate shall be prescribed in state board of education regulations, in compliance with the laws of Florida and constitutional guarantees of due process of law.

(3) The plea of guilty in any court, or the decision of guilty by any court, or the forfeiture by the teaching certificate holder of a bond in any court of law, or the written acknowledgment, duly witnessed of offenses listed in subsection (1), to the county superintendent of public instruction or his duly appointed representative, or to the county board of public instruction shall be prima facie proof of grounds for revocation of the certificate as listed in subsection (1) in the absence of proof by the certificate holder that his plea of guilty, forfeiture of bond or admission of guilt were caused by threats, coercion or fraudulent means. Should additional evidence be needed, the state board of education may appoint a state professional education organization or a special agency or individual to conduct an investigation to determine the facts in the case.

(4) Notice of charges and hearing sent by registered mail to the certificate holder's last known address shall be considered as adequate notice under this act. Inability to deliver the notice by mail or the refusal of the certificate holder to accept the notice, or his failure to reply to such notice within the time limits as prescribed in the state board of education regulations, shall not be construed as a bar to further proceedings in such matters by said state board of education. In either case, the state board of education may proceed to consider the charges in the absence of the accused or his counsel and to take such action as it may deem proper.

(5) The revocation by the state board of education of a teaching certificate of any person shall automatically revoke any and all Florida teaching certificates held by that person.

(6) The teaching certificate which has been suspended under §231.28 is automatically reinstated at the end of the suspension period, provided such certificate did not expire during the period of suspension. If the certificate expired during the period of suspension, the holder of the former certificate may secure a new certificate by making application and by meeting the certification requirements of the state board current at the time of the application for the new certificate.

The person whose teaching certificate has been revoked, as provided in §231.28, may apply for a new certificate at the expiration of that period of ineligibility as fixed by the state board of education by making application and by meeting the certification requirements of the state board current the time of the application for the new certificate.

The county superintendent of public instruction shall report to the state board of education the name of any person who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

History.—§528, ch. 19355, 1939; CGL 1940 Supp. 892(132); §6, ch. 29754, 1955; (1) §2, ch. 59-339; §1, ch. 63-225; (6) §1, ch. 63-248.

cf.—§229.08 Duty of state board to revoke certificate.
§229.17 State superintendent may recommend revocation.
§230.33 (21) County superintendent may recommend revocation to state superintendent.

231.29 Record of personnel.—The state superintendent shall maintain a complete statement of the academic preparation, professional training, and teaching experience of each person to whom a certificate is issued. The applicant, or the county superintendent, shall furnish the information making up such records on blanks furnished by the state superintendent. The state superintendent shall furnish a transcript of all essential information in this statement to the county superintendent in the county where the person is employed.

(1) The county superintendent shall be responsible for the records of each person employed in his county. The file of each person shall be open to inspection only by the county board, the county superintendent, the principal, the person himself, and by such other person as he may authorize in writing.

(2) By July 1 of each year and at each time that employment is terminated, the principal or the county superintendent shall evaluate the services of each certificate holder, and such evaluation shall become part of the personnel file required of this section, and a copy shall be forwarded to the state superintendent for his file.

(3) The state board shall by regulation pre-

scribe the procedures for evaluating the services of instructional personnel.

(4) Whenever a person ceases to be employed in any county, the county superintendent shall send the personnel file to the state superintendent.

(5) To carry out the provisions of this act there is hereby annually appropriated from the general revenue fund to the state department of education the amount of ten thousand dollars.

History.—§529, ch. 19355, 1939; CGL 1940 Supp. 892(133); §1, ch. 61-286.

231.30 Fees; disposition. — Each applicant for a certificate shall pay a fee of five dollars. The fee shall be retained whether the certificate is granted or not, provided that incomplete applications including fees and overpayments may be returned. An applicant for a duplicate certificate shall pay a fee of one dollar and shall present evidence establishing his identity as the holder of the original certificate. The proceeds from the collection of certification fees shall be remitted by the state superintendent to the state treasurer and shall by him be kept in a separate fund to be known as the "educational certification and service trust fund" and disbursed for the payment of expenses incurred in the printing of forms and bulletins, the issuing of certificates, and the providing of a registration service under §231.31 upon warrants drawn by the comptroller upon vouchers approved by the state superintendent.

History.—§530, ch. 19355, 1939; CGL 1940 Supp. 892(134); §7, ch. 22858, 1945; §17, ch. 26869, §5, ch. 26894, 1951; §1, ch. 57-330; §2, ch. 61-119.

231.31 Registration service for certificated personnel. — The state superintendent may maintain in his office a registration service which shall provide for keeping a list of certificated instructional personnel who apply to him to be placed on such list as an aid to securing positions. For each such applicant the record shall show the position or positions he or she is certificated to fill and such other information as may be helpful to those seeking qualified individuals. This list is to be used in giving service to instructional personnel interested in securing positions, to school officials who wish to secure lists of properly certificated personnel for consideration for various types of positions, and for use by the state superintendent when called upon to suggest names of certificated persons qualified to fill positions in various fields in which local school officials fail to locate properly certificated personnel.

History.—§531, ch. 19355, 1939; CGL 1940 Supp. 892(135).

231.32 Service fees authorized. — Any person interested in an instructional position who applies for listing with the registration service for instructional personnel, as authorized by §231.31, shall pay a fee of not exceeding one dollar, as prescribed by regulations of the state board, to cover the expenses incident to the operation of the service, which fee shall entitle the teacher or other person interested in an instructional position to have his name maintained on the list and his record of credentials preserved for the period of one year. The proceeds derived from these fees shall be remitted by the state superintendent to the state treasurer, and shall be kept by him in the "educational certification and service trust fund" and disbursed as set forth in §231.30.

History.—§532, ch. 19355, 1939; CGL 1940 Supp. 892(136); §7, ch. 22858, 1945; §2, ch. 61-119.

231.33 School bus driver's license. — Each driver of a school bus shall hold a school bus driver's license which shall be issued, extended, and revoked as prescribed in §§234.14-234.21. Fees paid by applicants shall be remitted by the state superintendent to the state treasurer to become a part of the "educational certification and service trust fund" and shall be disbursed as a part of that fund.

History.—§533, ch. 19355, 1939; CGL 1940 Supp. 892(137). §2, ch. 61-119.

cf.—§234.16 License requirements.
§322.01(4) School bus defined.

231.34 Certificates for other personnel.— The state board of education shall have authority to classify school services and to prescribe regulations in accordance with which certificates shall be issued by the state superintendent to school employees who meet the standards prescribed by such regulations for their class of service. Each person employed as a school nurse shall hold a license to practice nursing in the state and each person employed as a school physician shall hold a license to practice medicine in the state. This section shall not be construed to include the management, control and operation of lunchrooms in public schools where such lunchrooms are not operated under the control and direction of the county school board.

History.—§534, ch. 19355, 1939; CGL 1940 Supp. 892(138); §1, ch. 22839, 1945; §11, ch. 63-376.

cf.—§232.29 et seq. Health and sanitation.

231.35 Appointment of employees.—All employees of the county school system shall be appointed as prescribed in chapter 230; provided that the terms "to consider the recommendations of" or "to act upon the recommendations of" shall be interpreted to mean that neither the trustees nor the county board shall act on the appointment of employees without having considered any recommendations or nominations submitted as prescribed by law, that such recommendations or nominations may be rejected only for good cause, and that when any such rejection has been made, a second and if necessary a third recommendation or nomination shall be requested and if made within a reasonable time as prescribed by the county board, shall be considered or acted on as prescribed by law before the trustees or county board shall have a right to nominate or to appoint on their own motion; and, provided further, that the following procedure shall be observed in making appointments and reappointments of instructional personnel:

(1) FILLING VACANCIES. — The county

board shall prescribe regulations which define reasonable time limits within which trustees shall be required to submit nominations of persons to fill vacancies. If the trustees of any district fail to submit a proper nomination or nominations within the time limits prescribed by these regulations, the county board shall have the authority to appoint persons to fill any such vacancies after acting on nominations of qualified persons submitted by the county superintendent. Nominations to fill vacancies shall not be required to be submitted at the time nominations for reappointment are required by law except when prescribed by regulations of the county board.

(2) REAPPOINTMENTS. — It shall be the duty of the trustees of each district to file with the county board in writing by the time prescribed by law and not more than four weeks in advance of the time prescribed by law for filing nominations for reappointment, a definite recommendation for or against the reappointment of each person subject to annual nomination for reappointment. It shall likewise be the duty of the county board through the county superintendent to notify in writing each person subject to annual reappointment whether or not he has been reappointed for the ensuing year. If the trustees should fail to act on any reappointment by the time prescribed by law for such action, it shall be the duty of the county board to act on its own volition after considering nominations submitted by the county superintendent.

History.—§535, ch. 19355, 1939; CGL 892(139); §4, ch. 20970, 1941.

231.351 Annual contracts under certain conditions.—Any teacher who is otherwise entitled to receive a continuing contract under §231.36, may in the alternative be retained on an annual basis if the county board of public instruction of the particular county upon the recommendation of the county superintendent shall by majority vote find that such teacher does not meet the desired standards. Among the criteria to be considered shall be educational qualifications, efficiency, capability, character and capacity to meet the educational requirements of the community. A recommendation to grant such annual contract shall be made by the county superintendent of public instruction and shall be submitted at least three months prior to the close of the school year, giving good and sufficient reasons for such recommendation. Such annual contract shall be automatically renewed by the county board at least four weeks prior to the close of each successive school year unless the county superintendent or such teacher shall, not later than three months prior to the close of the school year, request the county board to reconsider the annual contract. The county board may reconsider any annual contract on its own motion and shall take whatever action that it deems necessary and proper as authorized by this or any other section.

History.—§1, ch. 63-316.

231.36 Contracts with instructional staff and with professional administrative assistants.—Each person employed as a member of the instructional staff in any county school system or as a professional administrative or attendance assistant, supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230; provided, that any person so employed who shall violate the terms of his contract by leaving his position without first being released from his contract by the county board of the county in which he is employed shall be ineligible for employment in the school system of the state or any county therein for the period of one year from the date of such violation; provided, that the school board shall take official action on such violation and furnish a copy of the proceedings to the certification section of the state department of education, whereupon the certificate of the violator shall be considered as invalid for the period of one year from the date of violation; provided, also, that the county board of each county shall provide continuing contracts as prescribed herein. Each member of the instructional and administrative staff in each county school system, except in counties operating under local, special or general tenure laws with stated population application, who holds a regular certificate based at least on graduation from a standard four year college, or as otherwise provided by law, who has completed three years of probationary service in the same county of the state during a period not in excess of five successive years; such service being continuous except for leave duly authorized and granted, who has been reappointed for the fourth year, and, who has met the requirements of §231.16(2), relating to comprehensive examination and score thereon, shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board; provided, however, that such continuing contract shall be effective at the beginning of the school fiscal year following the completion of all requirements; provided, that the period of probationary service provided herein may be extended to four years when prescribed by the county board and agreed to in writing by the employee at the time of reappointment. Each person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similiar position in the county at the salary schedule authorized by the county board without the necessity for annual nomination or reappointment until such time as the position is discontinued, the person resigns or his contractual status is changed as prescribed below:

(1) Any member of the county administrative or supervisory staff who is under continuing contract may be dismissed or may be returned to annual contract status for another three years in the discretion of the county board, when a recommendation to that effect is submitted in writing to the county board by the

county superintendent, or by a majority of the county board, at least three months before the close of any school year, giving good and sufficient reasons therefor, and when after ten days written notice to the employee a public hearing is held, if such hearing is requested in writing by the person under consideration, and when the reasons given by the county superintendent or by a majority of the county board are sustained by majority vote of the county board. Any such decision of the county board adverse to the employee, may, however, be appealed by him in writing to the state board, through the state superintendent for review, and the decision of the state board shall be final as to sufficiency or insufficiency of the reasons for dismissal or discontinuation of the continuing contract status.

(2) Should the county board of public instruction have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a county board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the county board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractural relationship. In the evaluation of these factors the decision of the county board of public instruction shall be final.

(3) Any member of the instructional staff, including any principal, who is under continuing contract may be dismissed or may be returned to annual contract status for another three years when a recommendation to that effect is submitted in writing to the county board on or before April 1 of any school year, giving good and sufficient reason therefor, by the county superintendent, or by the principal if his contract is not under consideration or by a majority of the county board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least five days prior to the filing of the written recommendation with the county board, and such notice shall include a copy of the charges and the recommendation to the county board. If the employee upon being officially notified in writing by the county board that it will consider the charges filed against him wishes a public hearing, he shall notify the board in writing within ten days after the date of the official notice. Upon receiving such a request, the county board shall within ten days notify the teacher of the time and place of the public hearing. In the event the teacher does not request a public hearing, the county board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by an affirmative vote of four members of the county board. Any such decision adverse to the employee may be appealed by him in writing to the state board, through the state superintendent, for review; provided such appeal is filed within thirty days after the decision of the county board, and provided further that the decision of the state board shall be final as to sufficiency or insufficiency for dismissal or discontinuation of the continuing contract status.

(4) The county board of public instruction of any given county may, at its own discretion, grant to a person who has served as county superintendent of public instruction in that county, at the completion of his service as superintendent, a continuing contract as a classroom teacher. Service as superintendent shall be construed as continuous teaching service in the public schools of this state.

(5) Any member who has retired may interrupt retirement and be re-employed in any public school during periods of emergency or critical need as determined by the county school board; any member so re-employed by the same county from which he retired shall be entitled to continue on the same contractual basis that existed immediately prior to retirement.

(6) Any teacher who is employed in a cooperative education program in this state may be immediately placed on continuing contract with the county board wherein the cooperative education program is produced if, at the time of employment, such person is on a continuing contract in a county which is participating in support of the particular cooperative education program in which the person is employed; provided that if at the time of reappointment of personnel, during the first three years, said person is not recommended for continued employment in the cooperative education program, he shall automatically revert to continuing contract status in the county of immediate prior employment; and provided further, that in meeting the requirements for a continuing contract prescribed herein prior successive years of service rendered in any county participating in the support of the particular cooperative education program may be counted as years of probationary service for a continuing contract with the county board wherein the cooperative education program is produced.

History.—§536, ch. 19355, 1939; CGL 1940 Supp. 892(140); §21, ch. 23726, 1947; §2, ch. 25363, 1949; (2) n. §1, ch. 29890, 1955; (2) §1, ch. 31391, 1956; §8, ch. 59-371; (3) n. §1, ch. 59-252; (4) n. §1, ch. 59-359; (5) n. §1, ch. 59-421; §3, ch. 61-263; intro. para., (3) a., (6) n. §12, ch. 63-376.

231.361 Vocational teachers; status.—Vocational teachers, and other teachers who qualify for certificates on the basis of non-academic preparation, shall be entitled to all the contractual rights and privileges now granted to other instructional personnel holding certificates of corresponding rank.

History.—§1, ch. 29625, 1955.

231.362 Junior college personnel.—Any person who is employed in any junior college in this state shall be immediately placed on continuing contract with the county board wherein the junior college is located if, at the time of employment, such person is on a continuing contract in a county which is participating in support of the particular junior college in which such person is employed; provided, that if at the time of annual contract renewal during first three years of employment in the junior college said person is not recommended for reappointment in the junior college, he shall automatically revert to continuing contract status in the county in which he was employed immediately prior.

(1) If in the establishment of a junior college a public educational institution has been or is consolidated with a public junior college, instructional and administrative personnel of such an institution who are on tenure or who are entitled to tenure under the rules and regulations governing such institutions and who are subsequently employed in the junior college may, at the discretion of the county board, be placed on continuing contract with the county board wherein the junior college is located.

(2) In meeting the requirements for a continuing contract as prescribed by §231.36, prior successive years of service rendered in a public educational institution which is consolidated with a junior college may be counted as years of probationary service.

History.—§1, ch. 59-344; §13, ch. 63-376.

231.37 Salary.—Any person employed in an instructional capacity shall receive the salary prescribed by the salary schedule adopted by the county board in compliance with the requirements of chapter 230.

History.—§537, ch. 19355, 1939; CGL 1940 Supp. 892(141).

231.38 Contracts with personnel other than instructional personnel.—Contracts with personnel other than instructional personnel shall be made as prescribed by law, by regulations of the state board, and by regulations of the county board.

History.—§538, ch. 19355, 1939; CGL 1940 Supp. 892(142).

231.39 Provisions for leave of absence.—Any member of the instructional staff may secure leave of absence during the year when it is necessary to be absent from duty as prescribed by law and, under certain conditions may receive compensation during such period of absence. Any such leave of absence shall be classified as sick leave, illness-in-line-of-duty leave, professional leave, or personal leave. Subject to the provisions in the sections which follow, county boards shall prescribe regulations governing the granting of leaves of absence during the year. County boards shall also have authority to prescribe regulations for the granting, and with the approval of the trustees of the district in which the person is serving, to grant more extended leaves of absence, as follows:

(1) EXTENDED PROFESSIONAL LEAVE.—Extended leave for professional improvement may be granted for a period not to exceed one year to any member of the instructional staff who has served satisfactorily and successfully in the schools of the county; provided, that partial compensation may be authorized only when the person has served in the county for seven years or more.

(2) MILITARY LEAVE.—Military leave shall be granted without pay, except as provided by §115.07, to employees of a county board of public instruction who are required to serve in the armed forces of the United States or this state in fulfillment of obligations incurred under selective service laws or because of membership in reserves of the armed forces or national guard, and may be granted at the discretion of the county board without pay to any employee volunteering for military duty. Employees granted such leave for military service shall, upon completion of the tour of duty, be returned to employment without prejudice, provided application for re-employment is filed within six months following the date of discharge or release from active military duty; and provided further that the county board of public instruction shall have a reasonable time, not to exceed six months, to reassign the employee to duty in the school system. Military leave shall not be counted as years of service toward a continuing contract or for allocation of minimum foundation funds.

History.—§539, ch. 19355, 1939; §5, ch. 20970, 1941; CGL 892(143); §14, ch. 63-376.

231.40 Sick leave.—Any member of the instructional staff employed in the public schools of the state who is unable to perform his duty in the school because of illness, or because of illness or death of father, mother, brother, sister, husband, wife, child, or other close relative, or member of his own household, and consequently has to be absent from his work shall be granted leave of absence for sickness by the county superintendent, or by someone designated in writing by him to do so. The following provisions shall govern sick leave:

(1) EXTENT OF LEAVE.—Each member of the instructional staff shall be entitled to not more than ten days of sick leave during any one school year; provided, that such leave shall be taken only when necessary because of sickness as herein prescribed. Such sick leave shall be cumulative from year to year; provided, that not more than eighty school days sick leave, including sick leave for the current year and accumulated sick leave for previous years may be claimed in any one year; and provided, that unused sick leave credit for any year may not be claimed later than the end of the twelfth year thereafter; and provided, further, that at least half of this cumulative leave must be established within the same county school system. County school boards of the several counties may establish policies which will allow a teacher two days in each year for religious holidays; provided, that the use by the teacher

of such days for religious holidays shall be charged to the sick leave provided for herein; and provided, further, that leave for religious holidays shall be non-cumulative.

(2) COMPENSATION.—Any individual so employed shall receive full compensation for the time justifiably absent on sick leave as prescribed in subsections (1) and (3) hereof.

(3) CLAIM MUST BE FILED.—Any member of the instructional staff who finds it necessary to be absent from his position because of illness shall notify the principal of his school if possible before the opening of school on the day on which he must be absent, or during that day except for emergency reasons recognized by the county board as valid. Any member of the instructional staff shall, before claiming and receiving compensation for the time absent from his or her duties while absent because of sick leave as prescribed in this section, make and file by the end of the school month following his return from such absence with the county superintendent of the county in which he is so employed a written certificate which shall set forth the day or days absent, that such absence was necessary and that such person is entitled to receive pay for such absence in accordance with the provisions of §§231.39-231.49; provided, however, that the county board of any county may prescribe regulations under which the county superintendent may require a certificate from a licensed physician or from the county health officer.

History.—§540, ch. 19355, 1939; CGL 1940 Supp. 892(144); §22, ch. 23726, 1947; §1, ch. 29624, 1955; (1) §1, ch. 57-79; (1) §1, ch. 61-61.

231.41 Illness-in-line-of-duty leave. — Any member of the instructional staff shall be entitled to illness-in-line-of-duty leave when he has to be absent from his duties because of a personal injury received in the discharge of duty or because of illness from any contagious or infectious disease contracted in school work. The following requirements shall be observed:

(1) DURATION OF LEAVE AND COMPENSATION.—Leave of any such member of the instructional staff shall be authorized for a total of not to exceed ten school days during any school year for illness contracted from such causes as prescribed above; provided that county boards shall be authorized, when in the opinion of the county board it is desirable to do so, to carry insurance to safeguard the county board against excessive payments during any year.

(2) CLAIMS. — Any member of the instructional staff who has any claim for compensation while absent because of illness contracted or injury incurred as prescribed herein shall file a claim in the manner prescribed in §231.40 (3), by the end of each month during which such absence has occurred. The county board of the county in which such person is employed shall approve such claims and authorize the payment thereof; provided that the county board shall satisfy itself that the claim correctly states the facts and that such claim is entitled to payment in accordance with the provisions of this section.

History.—§541, ch. 19355, 1939; CGL 1940 Supp. 892(145).

231.42 Professional leave.—Any member of the instructional or professional administrative staff who finds it necessary to be absent from his duties for professional reasons or is assigned by the county superintendent under regulations of the county board to be absent for professional reasons or any county superintendent may apply for professional leave during such absence. Such leave may be granted under regulations of the county board. The county board shall also prescribe by regulations, subject to any regulations of the state board, conditions under which compensation is to be allowed and the extent of compensation for such leave; provided, that any leave granted under this section for members of the instructional or professional administrative staff must be approved by the county superintendent.

History.—§542, ch. 19355, 1939; CGL 1940 Supp. 892(146); §23, ch. 23726, 1947.

231.43 Personal leave. — The county board of each county shall adopt regulations prescribing conditions under which members of the instructional staff shall be granted leave of absence for personal reasons. Any such leave of absence shall be approved by the county superintendent, subject to regulations of the county board. Any member of the instructional staff who is absent for personal reasons shall not be entitled to pay while absent.

History.—§543, ch. 19355, 1939; CGL 1940 Supp. 892(147).

231.44 Absence without leave.—Any member of the instructional staff of any county who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his contract shall be subject to cancellation by the county board.

History.—§544, ch. 19355, 1939; CGL 1940 Supp. 892(148); re-enacted by §6, ch. 61-288.

231.45 Principal and county superintendent to keep records of absences. — The principal of each school shall see that a record is kept of the days present for duty and the days absent from duty for each teacher in his school and see that both the days present and absent for each teacher are reported to the county superintendent at least once each month on the forms prescribed for that purpose. This report shall include the exact dates and the reasons for each absence. The county superintendent of each county in the state shall keep full and complete records of all absences of instructional personnel provided for in §§231.39-231.49, with the exact day when each such absence occurred and the nature of the cause of such absence and advise with the county board as to the disposition to be made of claims arising for payment of such benefits as are provided in said sections.

History.—§545, ch. 19355, 1939; CGL 1940 Supp. 892(149); §2, ch. 61-459.

231.46 Forms to be provided.—The county boards of the respective counties shall provide and furnish all blank forms necessary for compliance with the provisions of this section which are not furnished by the state department; provided, that the state board shall prescribe the necessary wording for any such forms not furnished by the state department in order that the same shall be uniform throughout the state.

History.—§546, ch. 19355, 1939; CGL 1940 Supp. 892(150).

231.47 Substitute teachers.—Provisions for substitute teachers shall be as follows:

(1) ABSENCE FOR TEN DAYS OR LESS.—When any member of the instructional staff of any county is absent for any reason for ten days or less and a substitute is deemed necessary by the principal of the school or by the county superintendent to carry on the work effectively, a person properly qualified to act as substitute shall be secured by the county superintendent or by the principal to fill the temporary vacancy; provided, that a person who is not properly certificated may be employed as a temporary substitute only in cases of emergency as authorized under regulations of the county board. The amount of pay the substitute shall receive shall be determined by regulations of the county board.

(2) ABSENCE FOR MORE THAN TEN DAYS.—When any member of the instructional staff of any county shall be absent for any reason for more than ten days the temporary absence shall be filled as prescribed in subsection (1) herein, by a properly qualified and certificated person until the next meeting of the county board, at which time the vacancy shall be filled in the same manner in which the regular positions are filled; provided, that the county board may in accordance with the procedure prescribed for the appointment of regular teachers authorize and approve employment of properly qualified persons who are to serve regularly as substitutes.

(3) COMPENSATION OF SUBSTITUTE TEACHERS.—The county board shall adopt regulations prescribing the compensation and the procedure for compensating substitute teachers; provided, that when a member of the instructional staff is granted sick leave, illness-in-line-of-duty leave, or professional leave for absence the substitute shall be paid by the county board.

History.—§547, ch. 19355, 1939; CGL 1940 Supp. 892(151); (1), (2) §11, ch. 57-249; (1) §3, ch. 61-459.

231.48 Absences of other personnel. — The county school board shall make regulations governing absences of any personnel not covered by the school code; provided that, any bus driver employed in the school system of the state unable to perform his or her duties because of illness requiring absence from work shall be granted a leave of absence by the school board and shall be entitled to not more than six days per annum sick leave, which may be made accumulative not to exceed thirty-six days. Such bus driver shall be entitled to receive full compensation for sick leave granted.

History.—§548, ch. 19355, 1939; CGL 1940 Supp. 892(152); §1, ch. 57-744; §1, ch. 59-338.

231.49 Provisions relating to Florida workmen's compensation law. — Nothing contained in this chapter shall supersede any of the provisions of the Florida workmen's compensation law; provided, however, that where amounts payable under the provisions of the school code, for injuries, accidents, or other disabilities which would entitle an employee to compensation under the provisions of said Florida workmen's compensation law, exceed the amounts payable under the said compensation law, payments shall be made, as provided in the school code, for the difference between the amount paid under Florida workmen's compensation law and the amount due under the provision of the school code.

History.—§549, ch. 19355, 1939; CGL 1940 Supp. 892(153).

231.50 Monthly allowance; when made.—

(1) Whenever any person shall have served as a teacher in the public schools of Florida or shall have served therein as county superintendent of public instruction, or both, for an aggregate period of thirty-five or more years, and such person is then incapacitated to do and perform any vocational work sufficient to earn a livelihood, such person shall thereafter, so long as the above conditions exist, during the remainder of his life, be entitled to a monthly allowance of one hundred dollars; provided that if the last salary received by such person as a teacher was less than one hundred dollars per month, the monthly allowance hereunder shall be not more than said last monthly salary, but in no event shall the allowance be less than eighty-five dollars per month; provided, however, that no person shall be entitled to receive such allowance who is receiving any other retirement allowance or pension under any other law of this state; and provided, however, that no person who has ever been eligible to become a member of the teacher's retirement system of the state shall be entitled to receive such allowance.

(2) Every person receiving a monthly allowance under §231.50 (1) is entitled to receive in addition to any amount received thereunder, an increased allowance of twenty-five dollars monthly.

(3) The sum of sixteen thousand two hundred dollars is hereby appropriated from the general revenue fund of the state for the purpose as stated herein.

History.—§550, ch. 19355, 1939; CGL 1940 Supp. 892(154); §1, ch. 22017, 1943; §1, ch. 22841, 1945; §1, ch. 25411, 1949; §1, ch. 29918, 1955; §1, ch. 63-540.

231.51 Proof required.—For any person to obtain the allowance as set forth in §231.50 the said person shall make such proof of the facts and conditions entitling him to the said allowance as shall reasonably be required by the state board, and when such proof has been

submitted to the satisfaction of the state board, the state treasurer shall pay to such person the monthly allowance herein provided for on warrants drawn by the comptroller.

History.—§551, ch. 19355, 1939; CGL 1940 Supp. 892(155); §1, ch. 20914, 1941.

231.52 Monthly allowance to widows of pensioners.—When any teacher, drawing pension under §231.50, shall die leaving surviving a widow to whom such pensioner has been married for a continuous period of at least ten years immediately prior to his death, and from whom no divorce is obtained, such widow, upon proof of marriage to and continuation of marriage for the minimum period with, and death of, her said husband, shall be granted a pension payable from the date of the death of her said husband, and at the same time and rate as other pensions paid under §231.50. The comptroller is hereby authorized and directed to draw his warrants in payment of such pensions so long as such widow shall remain unmarried and continue to be a resident of the state; provided, however, that nothing herein contained shall be so construed as to allow such pension to be paid to any widow where such widow of a deceased pensioner under this section receives a like pension in her own right as a retired school teacher.

History.—§1, ch. 20914, 1941.

231.53 Appropriation for monthly allowance to incapacitated teachers.—There is appropriated out of any moneys in the state treasury not otherwise appropriated, a sufficient sum of money to meet the requirements of §231.50.

History.—§3, ch. 14782, 1931.
Note.—Formerly §242.06.

231.54 Short title.—Sections 231.54-231.55 shall be known as the professional teaching practices act.

History.—§1, ch. 63-363.

231.55 Legislative intent; declaration.—It is the intent and purpose of the legislature that the practice of teaching in the public school system and its related services including administering and supervisory services, shall be designated as professional services. Teaching is hereby declared to be a profession in Florida, with all the similar rights, responsibilities and privileges accorded other legally recognized professions.

History.—§1, ch. 63-363.

231.56 Code of ethics; standards.—

(1) The members of this profession under the leadership of the largest organization of practitioners shall develop and provide for adoption of codes of ethics and professional performance.

(2) In meeting its responsibilities the profession shall carry out its activities in accordance with the provisions of the constitution and laws of Florida.

(3) Upon the adoption of such professional standards as may be required those who practice in this profession shall be obligated to abide by these standards.

History.—§1, ch. 63-363.

231.57 Professional practices commission.—

(1) A professional practices commission is created consisting of nineteen members appointed by the state board of education. A member, in order to be qualified for appointment, shall be certified to teach in the state, or a member of the faculty of an institution of higher learning, and a citizen of the United States and a resident of the state, and have practiced his profession in Florida for at least five years immediately preceding his appointment. The commission shall be composed of four elementary school classroom teachers and four secondary school classroom teachers, one elementary school principal, one secondary school principal, one supervisor, one superintendent, one representing the state department of education, one representing the public junior colleges, one representing the state university system, two representing the Florida education association, and two representing the Florida state teachers association.

(2) The members of the commission shall be nominated by the teaching profession as provided in subsection (3) and the names of nominees shall be submitted by the state superintendent of public instruction to the state board of education.

(3) A panel of three nominees for each place on the commission for which each group is responsible shall be submitted to the state superintendent by each of the following: Florida education association, Florida state teachers association, Florida association of public junior colleges, and by the public institutions of higher learning; and by the organization representing the majority of each of the following: elementary school principals, secondary school principals, supervisors of instruction, and county superintendents. The classroom teachers department shall submit a panel of twelve each of elementary classroom teachers and secondary classroom teachers. Initial appointments shall be: six for one year, six for two years, and seven for three years. Thereafter, terms shall be for three years. A member may be reappointed to the commission only one time.

(4) The commission is given the initial responsibility of developing, through the teaching profession, criteria of professional practices in areas including, but not limited to:

(a) Ethical and professional performance.

(b) Preparation for and continuance in professional services.

(c) Transfer and assignment of teaching personnel.

(5) (a) The commission shall have the authority to select its own chairman, and, subject to approval of the state board of education, shall have the authority to establish procedures for developing codes or standards of ethics, professional performance, and practices as described herein, to adopt such codes and standards, and to adopt rules and regulations to effectuate the purposes of this act.

(b) The commission shall have the power to recommend action in cases of violation of

the standards of professional practice for all teachers, which shall represent the generally accepted standards within the teaching profession with respect to competent performance and ethical practice toward other members of the profession, parents, students, and the community.

(c) A violation of any of the standards so adopted shall be deemed to be unprofessional practice.

(d) In carrying out its functions of developing standards the commission may incorporate in its recommendations the proposals developed by any of the committees of any existing professional organizations under the professional teaching practices act.

(6) (a) The commission in administering this act after a public hearing may make recommendations to the state board of education that a member of the profession be warned or reprimanded, may make recommendations to the state board of education in cases involving suspension or revocation of certificates of members of the profession, and may make any recommendations to the state board of education or to local or county boards of public instruction which will promote an improvement of the teaching profession.

(b) In analyzing charges of breach of ethical or professional practices, the commission may request assistance through any of the investigative processes of any existing professional organization.

(7) The commission shall have the authority to subpoena witnesses and place them under oath.

History.—§2, ch. 63-363.

231.58 Removal from commission.—The state board of education may remove any member from the commission for misconduct or malfeasance in office, incapacity, or neglect of duty.

History.—§3, ch. 63-363.

231.59 Commission; financial affairs.—The commission shall be financed by the members of the teaching profession in the amount necessary to carry out the purposes of this act.

History.—§4, ch. 63-363.

CHAPTER 232

COMPULSORY SCHOOL ATTENDANCE; CHILD WELFARE

232.01 Regular school attendance required between ages of seven and sixteen; permitted at the age of six; exceptions.—All children, except those who become or have become married, unmarried students who are pregnant, and students who have already had a child outside of wedlock, who have attained the age of seven years or who will have attained the age of seven years by February 1 of any school year or who are older than seven years of age but who have not attained the age of sixteen years are required to attend school regularly during the entire school term except as hereinafter provided; provided that a child who attains the age of sixteen years during the school year shall not be required to attend school beyond the date upon which he attains that age; provided, further, that any child who has attained the age of five years and nine months on or before the first day of the month within which schools open in any county during any year shall be admitted at the beginning of the school term or may be admitted at any time during the first month of the school year to the first grade of any school having annual promotions, but if any child is not so enrolled in the first grade during the first month of the school year except for illness as certified by a physician, he shall not be admitted to the first grade until the beginning of the following school year; and provided, further, that a pupil who has attained the age of five years and eleven months on or before the opening day of any semester shall be admitted at the beginning of the said semester or may be admitted at any time during the first two weeks of the said semester to any school having semi-annual promotions; provided further, however, that any other provisions of this sec-

tion notwithstanding, no child shall be compelled to attend any school in which the races are commingled when a written objection of the parent or guardian has been filed with the board of public instruction. If in connection therewith a requested assignment or transfer is refused by the board, and if no other school facility as defined by §232.02 shall exist in the county which can and will accept the pupil whose parent or guardian objects to his attendance in a school where the races are commingled, the parent or guardian may notify the board in writing that he is unwilling for the pupil to remain in the school to which assigned and the assignment and further attendance of the pupil shall thereupon terminate, and such parent or guardian and pupil shall thereupon be exempt from the operation of §§232.01 and 232.02.

The county boards of public instruction of the several counties shall have the authority to adopt rules and regulations governing the attendance of married students in public schools.

The county boards of public instruction may develop policies under which pupils may be transferred to the first grade from another state, provided their parents or guardians are legal residents of that state.

History.—§601, ch. 19355, 1939; CGL 1940 Supp. 892(172); §24, ch. 23726, 1947; §1, ch. 59-419; §§1, 2, ch. 59-412; §7, ch. 61-288.

232.02 What constitutes school attendance.—Regular attendance is the actual attendance of a pupil during the entire school day as defined in §228.041(18), or a half day which shall be counted as a half day's attendance. Regular attendance within the intent of §232.01 may be achieved by attendance at: (a) a public school supported by public funds; (b) a parochial or denominational school; (c) a private school supported in whole or in part by tuition charges or by endowments or gifts; and (d) with a private tutor who meets all requirements prescribed by law and regulations of the state board for private tutors.

History.—§602, ch. 19355, 1939; CGL 1940 Supp. 892(173); §9, ch. 59-371.

232.03 Evidence of date of birth required.—Before admitting a child to the first grade, the principal shall require evidence that the child has attained the age at which he should be admitted in accordance with the provisions of §232.01. The county superintendent or attendance assistant may require evidence of the age of any child whom he believes to be within the limits of compulsory attendance as provided for in §§232.01-232.19. If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(1) A duly attested transcript of the child's birth record filed according to law with a public officer charged with the duty of recording births; or

(2) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent; or

(3) An insurance policy on the child's life which has been in force for at least two years; or

(4) A bona fide contemporary Bible record of the child's birth accompanied by an affidavit sworn to by the parent; or

(5) A passport or certificate of arrival in the United States showing the age of the child; or

(6) A transcript of record of age shown in the child's school record of at least four years prior to application, stating date of birth; or

(7) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if neither of these shall be available in the county, by a licensed practicing physician designated by the county board, which certificate shall state that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct.

History.—§603, ch. 19355, 1939; CGL 1940 Supp. 892(174); §51, ch. 29764, 1955.

232.04 In kindergartens.—Children who will have attained the age of four years and nine months on or before the first day of the month within which schools open in any county during the school year shall be eligible for admission to public kindergartens during that school year under rules and regulations prescribed by the county board. If any school in which a kindergarten department is organized has mid-year admissions, a child who has attained the age of four years and eleven months at the beginning of the second semester may be enrolled in such kindergarten at that time.

History.—§604, ch. 19355, 1939; CGL 1940 Supp. 892(175); §52, ch. 29764, 1955; §12, ch. 57-249.

232.05 In nursery schools.—Children who will have attained the age of three years and nine months on or before the first day of the month within which schools open in any county during the school year may be eligible for admission to public nursery schools during that year under rules and regulations of the county board; provided, that if any school in which a nursery school department is organized has midyear admissions, then and in that event a child who is three years and nine months of age at the beginning of the second semester may be enrolled in such nursery school at that time.

History.—§605, ch. 19355, 1939; CGL 1940 Supp. 892(176); §7, ch. 29754, 1955; §13, ch. 57-249.

232.051 Part-time schools.—Wherever there are fifteen children for any cause, except mental or physical disability or the completion of the eight grammar grades, exempted from regular school attendance upon any school or schools three miles or less apart and residing or employed within the regular attendance area of such school or schools, the board of public instruction shall provide a part-time school or schools; such part-time school or schools to be

in session at least one hundred forty-four hours in any one school year during regular employment hours and furnishing instruction in any subjects designed to enlarge the civic or vocational intelligence of such children.

History.—§1, ch. 8550, 1921; CGL 500.
Note.—Formerly §242.10.
cf.—§228.14 State system of education includes part-time schools.

232.052 Part-time; exemption from regular school attendance.—Any board of public instruction may, at its discretion, exempt from regular school attendance any child fourteen years of age or over, who may be properly employed under the laws of Florida and who is enrolled in a part-time school as provided in §§232.051 and 232.053; provided, that this section shall be mandatory upon boards of public instruction only where federal funds provided for under act of congress and funds matching such federal funds are available for the salaries of teachers of such part-time schools.

History.—§2, ch. 8550, 1921; CGL 501.
Note.—Formerly §242.20.
cf.—§§232.06, 232.07 Exemption certificates.

232.053 Part-time; subjects to be taught.—Boards of public instruction may provide part-time schools furnishing instruction to persons fourteen years of age, or over, in any subjects designed to enlarge the civic or vocational intelligence of such persons.

History.—§3, ch. 8550, 1921; CGL 502.
Note.—Formerly §242.21.

232.054 Part-time; when attendance required; night school.—Any parent, guardian or other person having the control, custody or charge of any child who has been exempted from regular school for any cause, except mental or physical disability, or the completion of the eight grammar grades, shall cause such child to attend a part-time school for at least one hundred forty-four hours in any one school year wherever such part-time school has been provided in compliance with §§232.051-232.053; and any person employing such child shall permit such child to attend such part-time school; provided, that wherever a night school, giving instruction equal in length to that of a part-time school established in compliance with §232.051, has been established prior to the passage of chapter 8550, acts of 1921, and is maintained by the board of public instruction, the board of public instruction may accept such night school attendance in lieu of part-time school attendance.

History.—§4, ch. 8550, 1921; CGL 503.
Note.—Formerly §242.22.

232.055 Part-time; compulsory attendance laws applicable.—The provisions of law relating to the enforcement and administration of compulsory school attendance are applicable to the enforcement and administration of §§232.051-232.054; and the state board of education may prescribe such rules and regulations as, in its discretion, are necessary to carry out the provisions of said sections.

History.—§5, ch. 8550, 1921; CGL 504.
Note.—Formerly §242.23.

232.06 Certificates of exemptions authorized in certain cases.—Children within the compulsory attendance age limits who hold valid certificates of exemption which have been issued by the county superintendent shall be exempt from attending school. A certificate of exemption shall cease to be valid at the end of the school year in which it is issued. Children entitled to such certificates and the conditions upon which they may be issued are as follows:

(1) PHYSICAL AND MENTAL DISABILITY.—Children whose physical or mental condition is such as to prevent or render inadvisable their attendance at school or application to study; provided, that before issuing a certificate for physical or mental disability, the county superintendent shall require the submission of a statement from the county health officer, if a licensed physician, in counties having such an officer, and in other counties from a licensed practicing physician designated by the county board, certifying that the child is physically or mentally incapacitated for school attendance; provided further, that children who are so handicapped by deafness or blindness as to be unable to make satisfactory progress in the public schools shall attend the Florida state school for the deaf and the blind or some other institution within or without the state in which equivalent instruction is offered, the rating of such instruction to be determined by the state superintendent under regulations prescribed by the state board; and provided further, that if any child is so seriously crippled as to make impossible or inadvisable his or her attendance at a regular public school, the county superintendent shall attempt to make arrangements for such child to attend a public or other school for crippled children.

(2) DISTANCE EXEMPTION.—Children from six years of age to ten years of age, inclusive, unless deaf, blind, or seriously crippled, who, because of distance and lack of public transportation, would be compelled to walk more than three miles by the nearest traveled route to the school or to the nearest publicly maintained school bus route to attend a public school, and children eleven years of age or older, unless deaf, blind, or seriously crippled, who, because of distance and lack of public transportation, would be compelled to walk more than four miles by the nearest traveled route to the nearest school or the nearest publicly maintained school bus route to attend a public school.

(3) EMPLOYMENT EXEMPTION.—Children who have reached fourteen years of age who hold employment certificates and are employed under provisions of the child labor law.

(4) JUDICIAL EXEMPTIONS.—Upon the recommendation of a judge of the juvenile court and the agreement of the county superintendent any child within the compulsory attendance age limit may be granted a certificate of exemption.

History.—§606, ch. 19355, 1939; CGL 1940 Supp. 892(177); (4) n. §1, ch. 57-229.

232.07 Employment certificates authorized for certain children.—The county superintendent of each county or an attendance assistant or principal of a school authorized by the county superintendent in writing may issue on his own initiative or on the recommendation of the principal or trustees concerned, employment certificates to children fourteen or fifteen years of age, provided such certificates may be issued to children twelve to fifteen years of age who are exempt from school attendance under the provisions of §§232.01 and 232.06, without meeting the requirements of subsections (1) through (5), when, in the opinion of the county superintendent such action is in the best interest of the child. Evidence of the age of the child shall be obtained as prescribed in §232.03. Employment certificates shall be issued in triplicate upon a form prescribed by the state board, one copy to be sent to the employer, one copy to be sent within one week thereafter through the state superintendent to the Florida industrial commission and one copy to be filed in the office of the county superintendent. The copy furnished to the employer shall be returned by the employer to the county superintendent within ten days after he ceases to employ the child regularly, and the certificate shall then cease to be valid; provided, that the employer may, if he desires, retain the copy of the certificate for his records and notify the county superintendent by written notice delivered to the county superintendent that he is no longer employing the child regularly. An employment certificate may be isued when all required conditions have been satisfactorily met, as follows:

(1) APPLICATION.—The child accompanied by his parent shall appear and make application in person to the principal, an attendance assistant, or to the county superintendent.

(2) STATEMENT OF PARENT. — The parent shall file a written statement upon a form prescribed by the state board showing that the employment of the child is necessary for the support and maintenance of the family, that the child has a satisfactory position, and shall give such additional facts in regard to the income, expenditures, and financial situation of the family as shall be needed in substantiating such statement. The county superintendent shall, after considering this statement of the parents and such facts as he may obtain from his own subsequent investigation, determine whether the employment of the child is necessary for the support and maintenance of the family. If he determines this matter in the affirmative, he shall forthwith issue an employment certificate, and, if he shall determine this matter in the negative, he shall file in his office an order setting forth his reasons for refusing to issue such certificate.

(3) STATEMENT OF EMPLOYER.—The person into whose service the child is to enter shall state in writing upon forms prescribed by the state board that he or it desires to employ the child, explaining the nature of the occupation for which the child is to be employed; provided, that the parent may be considered as the employer as mentioned in this section; and provided, further, that the county superintendent shall cancel an employment certificate issued under such circumstances when he shall have ascertained or have been notified, upon forms prescribed by the state board, by the attendance assistant that such employment is no longer regular or in amount sufficient to justify absence from school, as determined under regulations prescribed by the state board, or necessary for the maintenance and support of the family.

(4) STATEMENT OF PRINCIPAL. — A statement signed by the principal or teacher in charge of the school last attended by the child and certifying that the child has completed the eighth grade of the public schools, or its equivalent, shall be submitted. Such statement shall give the age and date of birth of the child as shown on the records of the school; also, the name and address of the parent. If such a statement cannot be obtained, the child may be examined by the county superintendent to determine whether he meets the required educational standards. A record of each such examination shall be kept in the files of the county superintendent.

(5) HEALTH CERTIFICATE. — A certificate signed by a physician designated by the county board shall be submitted, stating that such physician has personally examined the child; that in his opinion the child is fourteen years of age or over, is of good physical development for his age, is of sound health, and is physically qualified to perform the work for which he is to be employed. Such physical examination and such expression of opinion shall be based upon forms and standards prescribed jointly by the state board of health and the state board of education. In a county in which the county board has not designated a physician for that purpose, such an examination may be made and certified to only by a licensed practicing physician authorized by the county board to make the examinations and issue such certificate.

History.—§607, ch. 19355, 1939; CGL 1940 Supp. 892(178); §53, ch. 29764, 1955; §8, ch. 61-288.
cf.—§1.01 "Person" defined.
§450.011 et seq. Child labor.

232.08 Age certificates authorized for children who have reached sixteen years of age.—The county superintendent, or an attendance assistant or principal of a school authorized by the county superintendent in writing to do so, shall upon application issue age certificates for employment purposes upon a form prescribed by the state board, which certificates shall be different in form and color from employment certificates, and shall be issued to children who are sixteen years of age or over. Evidence as prescribed in §232.03 that the child is sixteen years of age or over shall be submitted to the person authorized to issue certificates.

History.—§608, ch. 19355, 1939; CGL 1940 Supp. 892(179).

232.09 Parents responsible for attendance of children.—Each parent of a child within the compulsory attendance age shall be responsible for such child's school attendance as required under the provisions of §§232.01-232.19. The absence of a child from school shall be prima facie evidence of a violation of this section; provided, that no parent of a child shall be held responsible for such child's nonattendance at school under any of the following conditions:

(1) WITH PERMISSION. — The absence was with permission of the head of the school; or

(2) WITHOUT KNOWLEDGE OR UNABLE TO CONTROL.—The absence was without the parent's knowledge, consent, or connivance; or that he or she has made a bona fide and diligent effort to control and keep the child in school and that he or she is unable to do so; in which cases the child shall be dealt with as a delinquent; or

(3) FINANCIAL INABILITY.—That he or she was unable financially to provide necessary clothes for the child, which inability was reported in writing to the county superintendent prior to the opening of school or immediately after the beginning of such inability; provided, that the validity of any claim for exemption under this subsection shall be determined by the county superintendent subject to appeal to the county board; or

(4) SICKNESS, INJURY, OR OTHER INSURMOUNTABLE CONDITION.—That attendance was impracticable or inadvisable on account of sickness or injury, attested to by a written statement of a licensed practicing physician, or was impracticable because of some other stated insurmountable condition as defined by regulations of the state board; or

(5) DISTANCE EXEMPTION.—That attendance was impossible because of the distance of the home of the child from the nearest school and the lack of transportation at public expense, as set forth in §232.06.

History.—§609, ch. 19355, 1939; CGL 1940 Supp. 892(180).

232.10 Absence must be explained.—Whenever a child of compulsory school attendance age is absent without the permission of the person in charge of the school, the parent of the child shall, as soon as practicable after learning of the absence, report and explain the cause of such absence to the teacher or principal of the school. If the parent of the child knows of the absence, failure to make such report and explanation shall be prima facie evidence of the child's being absent with the consent or connivance of the parent.

History.—§610, ch. 19355, 1939; CGL 1940 Supp. 892(181).

232.11 County superintendent to prepare lists; principals to check.—The county superintendent shall make, from the latest child accounting records available to his office and from membership lists furnished to him by each school at the end of each year, lists of pupils of compulsory attendance age who should attend the various schools of the county, and shall furnish each principal on or before the opening day of school of each year with a record of changes in the list of children who should attend his school. Upon the opening of school and after receipt of such information, the principal shall check the enrollment of the school to determine whether all children required to attend have entered school, and if any have failed to enter to make diligent effort to ascertain the reason for such failure to enroll.

History.—§611, ch. 19355, 1939; CGL 1940 Supp. 892(182). cf.—§230.23 (6)(a) School census.

232.12 Report of nonattendance in public schools.—At the end of the tenth school day from the opening of each school, the principal or teacher in charge of the school shall, on a form prescribed by the state superintendent, report to the county superintendent of his county or of the county in which the child resides the name and address of each child from the attendance area of that school who is required to attend under the provisions of §232.01 and who has not enrolled in the school, together with the reason, if known, for such nonenrollment, and at the same time he shall report the names of all children enrolled in the school whose names did not appear on the list furnished by the county superintendent, furnishing such additional information about each child as may be required by the county superintendent for his records. Weekly thereafter, throughout the school year, he shall report the name and address of each such child and the name and address of each child who has been absent during the week without permission or satisfactory explanation by the parent.

History.—§612, ch. 19355, 1939; CGL 1940 Supp. 892(183).

232.13 Lists of deaf, blind, and crippled children.—At the close of the second week of school each year the principals of the schools in each county shall transmit to the county superintendent and the county superintendent shall transmit to the state superintendent a list of the deaf children and a list of the blind children in the county, said lists to be transmitted by the state superintendent promptly to the president of the Florida School for the Deaf and Blind. Similarly a list comprising all other children who have serious physical disabilities which prevent their attendance in public schools, or which greatly impede their progress in school, shall at the same time be prepared by the principals of the schools and sent by the county superintendent to the state superintendent for transmission to the Crippled Children's Commission or to any other agency providing services for handicapped children.

History.—§613, ch. 19355, 1939; CGL 1940 Supp. 892(184); §6, ch. 20970, 1941.

232.14 Attendance records and reports required.—All officials, teachers, and other employees in public, parochial, denominational, and private schools, including private tutors, shall keep all records and shall prepare and

submit promptly all reports that may be required by law and by regulations of state and county boards under the provisions of §§232.01-232.19.

History.—§614, ch. 19355, 1939; CGL 1940 Supp. 892(185).

232.141 Attendance checked twice daily; attendance defined.—The attendance of all public school pupils shall be checked morning and afternoon of each school day and recorded in the teacher's register or by some approved system of recording attendance; provided that pupils may be counted in attendance only if they are actually present or if away from school on field trips or other activities sponsored by the schools under the actual supervision of school authorities.

History.—§1, ch. 29802, 1955.

232.142 Falsification of attendance records; penalty.—The presentation of reasonable and satisfactory proof that any teacher, principal, any other school personnel or school officer, has falsified or caused to be falsified attendance records for which he is responsible shall be sufficient grounds for the revocation of his teaching certificate by the state board of education, or for dismissal or removal from office; provided that such individual shall be entitled to hearing as provided by law or state board of education regulations.

History.—§2, ch. 29802, 1955.

232.15 Public, parochial, denominational, and private schools must keep records and make reports. — The principal or teacher in charge of each school, public, parochial, denominational, and private, and each private tutor shall keep a register of enrollment and attendance and make such reports therefrom as may be required under regulations of the state board, which said register shall show the absence or attendance of each enrolled child for each school day of the year and shall be open for inspection by the county superintendent or attendance assistant of the county in which the school is located.

History.—§615, ch. 19355, 1939; CGL 1940 Supp. 892(186).

232.16 County superintendent responsible for enforcement.—The county superintendent shall be responsible for the enforcement of the provisions of §§232.01-232.19. In a county in which no attendance assistant is employed, the county superintendent shall have those duties and responsibilities and exercise those powers assigned by the provisions of said sections to attendance assistants.

History.—§616, ch. 19355, 1939; CGL 1940 Supp. 892(187).

232.17 Attendance assistants; qualifications; compensation; duties. — Provisions for the employment, qualifications, compensation, and duties of attendance assistants shall be as follows:

(1) EMPLOYMENT AND QUALIFICATIONS OF ATTENDANCE ASSISTANTS.—The county board of each county, on its own initiative or upon the recommendation of the county superintendent, may employ and fix compensation, including reimbursement for travel, of a sufficient number of qualified attendance assistants, who hold a certificate prescribed under regulations of the state board, to guarantee regular attendance at school of all children of the county within compulsory school age requirements who are not herein exempted from attendance. No attendance assistant shall receive any compensation or reimbursement for any month until he shall have filed such reports and met such qualifications as may be required under regulations of the county board and of the state board.

(2) DUTIES AND RESPONSIBILITIES OF ATTENDANCE ASSISTANTS.—The duties and responsibilities of the attendance assistant shall be exercised under the direction of the county superintendent and shall be as follows:

(a) *Maintain records.*—Central county child accounting records, unless maintained by others assigned by the county superintendent, shall be kept by attendance assistants. These records shall be on forms prescribed by the state board.

(b) *Investigate nonenrollment and unexcused absences.*—In accordance with procedure established by the state board, attendance assistants shall investigate cases of nonenrollment and unexcused absences from school of all children within the compulsory school age.

(c) *Give written notice.*—Under the direction of the county superintendent the attendance assistant shall give written notice, either in person or by registered mail, to the parent when no valid reason is found for a child's nonenrollment or absence from school, requiring enrollment or attendance within three days from the date of notice. If such notice and requirement should be ignored the attendance assistant shall report the case to the county superintendent, and that official as hereinafter provided shall take such steps as are necessary to bring criminal prosecution against the parent, guardian, or other person having control.

(d) *Return child to parent.*—The attendance assistant shall visit the home or place of residence of a child and any other place in which he is likely to find any child who is required to attend school when such child is absent from school during school hours, and, when such child shall have been found, shall return him to his parent or to the principal or teacher in charge of the school, or to the private tutor from whom absent.

(e) *Visit home.*—The attendance assistant shall visit promptly the home of each child of school age in his attendance district not in attendance upon the school, and of any child who should attend the Florida state school for the deaf and the blind, and who is reported as not enrolled in that school or as absent without excuse. If no valid reason is found for such nonenrollment or absence from such school or schools he shall give written notice to the par-

ent, requiring the child's enrollment or attendance as prescribed above. He shall secure the written approval of the president of the Florida state school for the deaf and the blind before he directs or requests the parents of any child to take or send such child to that school. Ten days' notice must be given in the case of a child who is ordered sent to that school. On refusal or failure of the parent to meet such requirement, the attendance assistant shall report the same to the county superintendent, and that official shall proceed to take such action as is prescribed in §232.19(2).

(f) *Report to the Florida industrial commission.*—The attendance assistant shall report to the Florida industrial commission or to any person acting in similar capacity who may be designated by law to receive such notices, all violations of the child labor law that may come to his knowledge.

(g) *Right to inspect.*—The attendance assistant shall have the same right of access to, and inspection of, establishments where minors may be employed or detained as is given by law to the Florida industrial commission only for the purpose of ascertaining (a) whether children of compulsory school age holding employment certificates for work in that establishment are actually employed there and are actually working there regularly, (b) whether children of compulsory school age without employment certificates are employed in the establishment, (c) whether the nature of the work being done by the child is substantially the same as that described by the employer in the statement required to be made by him in §232.07(3). The attendance assistant shall, if he finds unsatisfactory working conditions or violations of the child labor law, report his findings to the Florida industrial commission, or its agents. The county superintendent may, on recommendations based on such inspection by the attendance assistant, cancel the employment certificate of any child employed or supposed to be employed in that establishment.

(h) *Record of visits.*—The attendance assistant shall keep an accurate record of all children returned to schools or homes, of all cases prosecuted, and of all other service performed. A written report of all such activities shall be made monthly to the county board and shall be filed in the office of the county superintendent.

History.—§617, ch. 19355, 1939; CGL 1940 Supp. 892(188); §10, ch. 26484, 1951; §54, ch. 29764, 1955.
cf.—§450.111, Employment certificates.

232.18 State board shall adopt rules and regulations.—The state board, in order better to effect the purposes of §§232.01-232.19, shall adopt rules and regulations which shall have the full force and effect of law, and shall become effective thirty days after adoption. Upon adoption, the state superintendent shall promptly mail a certified copy of such rules and regulations to each county superintendent.

History.—§618, ch. 19355, 1939; CGL 1940 Supp. 892(189); §55, ch. 29764, 1955.
cf.—§229.07 General power of state board to pass rules and regulations.

232.19 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this chapter, relating to compulsory school attendance, shall be as follows:

(1) COURT JURISDICTION.—The juvenile court shall have original and exclusive jurisdiction of all proceedings against, or prosecutions of, children under the provisions of this chapter. Proceedings against, or prosecutions of, parents or employers as provided by this section shall be in the court of each county having jurisdiction of misdemeanors wherein trial by jury is afforded the defendant.

(2) NONENROLLMENT AND NONATTENDANCE CASES.—In each case of nonenrollment or of nonattendance upon the part of a child who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the county superintendent shall institute a criminal prosecution against the child's parent.

(3) HABITUAL TRUANCY CASES.—In case a child becomes an habitual truant the attendance assistant shall file with the juvenile court a complaint alleging the facts.

(4) ATTENDANCE REGISTER AS EVIDENCE.—The register of attendance of pupils at a public, parochial, denominational, or private school, or of pupils taught by a private tutor, kept in compliance with rules and regulations of the state board, shall be prima facie evidence of the facts which it is required to show. A certified copy of any rule or regulation and a statement of the date of its adoption and promulgation by the state board shall be admissible as prima facie evidence of the provisions of such rule or regulation and of the date of its adoption or promulgation.

(5) PROCEEDINGS AND PROSECUTIONS; WHO MAY BEGIN.—Proceedings or prosecutions under the provisions of this chapter may be begun by the county superintendent, by an attendance assistant, by the probation officer of the county, by the executive officer of any court of competent jurisdiction, or by an officer of any court of competent jurisdiction, or by a duly authorized agent of the state superintendent.

(6) PENALTIES.—Penalties for refusing or failing to comply with the provisions of this chapter shall be as follows:

(a) *The parent.*—The parent who refuses or fails to have a child under his control to attend school regularly shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars or sentenced to imprisonment in the county jail for not more than ninety days. The continued or habitual absence of a child without the consent of the principal or teacher in charge of the school he attends or should attend, or of the tutor who instructs or should instruct him, shall be prima facie evidence of a violation of this chapter.

(b) *The child.*—The child who, because of irregular attendance, habitual truancy, or

persistent misconduct, has become incorrigible and a menace to the school he attends or should attend shall be dealt with by the juvenile court of the county, as if he were a dependent, neglected, or delinquent child.

(c) *The principal or teacher.* — The principal or teacher in charge of a school, public, parochial, denominational, or private, or the private tutor who willfully violates any provisions of this chapter may, upon satisfactory proof of such violation, have his certificate revoked by the state board.

(d) *The employer.*—The employer who fails to notify the county superintendent when he ceases to employ a child to whom an employment certificate has been issued, or who employs a child under sixteen years of age without receiving an employment certificate as provided for in §232.07, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than ninety days.

History.—§619, ch. 19355, 1939; CGL 1940 Supp. 892(190), 8115(8), 8115(9); §56, ch. 29764, 1955; (1)a. by §1, ch. 61-101.
cf.—§775.06 Alternative punishment.

232.20 Continuing or periodic child accounting required.—The state board shall establish and prescribe forms for accounting for every resident of Florida between the ages of six and eighteen years, said accounting to constitute a continuing or periodic school census record including such information as shall be recommended by the state superintendent. If a periodic school census is maintained, it shall be brought up to date at least twice in each decade by a utilization of facts derived from the federal and state census compilations, and from any other available sources. The county superintendent of each county shall be responsible for maintaining the continuing or periodic school census record of his county in accordance with the provisions of this chapter and with regulations of the state board.

History.—§620, ch. 19355, 1939; CGL 1940 Supp. 892(191).

232.21 Continuing or periodic child accounting records and their use.—The records of the continuing or periodic census for each county prescribed in §232.20 shall be kept in the office of the county superintendent and shall be accessible to all who wish to examine them. These records shall be organized and used by the county superintendent and attendance assistants as follows:

(1) ENROLLMENT FILE.—A file shall be kept showing all children enrolled in school in the county.

(2) NONENROLLMENT FILE. — The records of children not enrolled in school shall be separated and kept in a manner to provide ready reference concerning children with employment certificates, children with age certificates, children with exemption certificates according to causes for exemption, and children whose enrollment in school should be required.

History.—§621, ch. 19355, 1939; CGL 1940 Supp. 892(192).

232.22 Record and report forms; promotion and transfer of pupils. — Record and report forms as prescribed by the state board shall be used as follows:

(1) THE TEACHER'S REGISTER.—Each teacher employed in the public schools of the state who is assigned the responsibility for keeping a record of the attendance of pupils shall keep in a register prepared for that purpose an accurate record of the daily attendance of each pupil enrolled, with such other data as may be required to be kept in the said register.

(2) PUPIL'S REPORT CARDS.—At regular intervals reports shall be made by principals or teachers in public schools to parents or those having parental authority over the children enrolled and in attendance upon their schools, apprising them of the progress being made by the pupils in their studies and giving other needful information.

(3) TEACHER'S MONTHLY AND FINAL REPORTS. — At the close of each school month and at the end of the school year any teacher assigned the responsibility for keeping a record of the attendance of pupils shall make a report to the principal on blanks furnished by the state for that purpose; provided, that in cases of one-teacher schools the monthly and final reports are to be made by the teacher directly to the county superintendent.

(4) PRINCIPAL'S MONTHLY AND FINAL REPORTS.—Upon receipt of teachers' monthly reports the principal shall make consolidated reports to the county superintendent on blanks furnished by the state for that purpose, and at the end of the school year shall make consolidated final reports to the county superintendent on blanks prescribed and furnished by the state for that purpose. When requested by the trustees of the district, the principal shall provide them with a copy of such reports. No teacher or principal shall be entitled to receive any salary from public school funds unless all such records and reports required of him by this section have been made, except as provided in chapter 237.

(5) BUS DRIVER'S REPORTS.—Drivers of school busses shall make such reports to principals and county superintendents from time to time as may be required by the county board, or by regulations of the state board.

History.—§622, ch. 19355, 1939; CGL 1940 Supp. 892(193).

232.23 Transfer of records and procedure. —All records of children who transfer from school to school shall be made through the central child record file in each county on forms prescribed by the state board. The procedure for transferring and maintaining records of such children shall be prescribed by regulations of the state board.

History.—§623, ch. 19355, 1939; CGL 1940 Supp. 892(194).

232.24 Promotion of pupils.—In accordance with rules and regulations adopted by the county board, not inconsistent with rules

and regulations adopted by the state board, pupils attending the public schools shall, upon satisfactory completion of the required studies, be promoted by the teacher on approval of the principal from one grade to another; provided, that records of all promotions and nonpromotions shall be reported to the county superintendent, and that said records of promotions and nonpromotions shall become a part of the permanent child accounting records in the office of the county superintendent.

History.—§624, ch. 19355, 1939; CGL 1940 Supp. 892(195).

232.25 Pupils subject to control of school.—Subject to law and rules and regulations of the state board and of the county board, each pupil enrolled in a school shall, during the time he is being transported to or from school at public expense, during the time he is otherwise en route to or from school, during the time he is attending or is presumed by law to be attending school, and during the time he is on the school premises, be under the control and direction of the principal or teacher in charge of the school, and under the immediate control and direction of the teacher or other member of the instructional staff or of the bus driver to whom such responsibility may be assigned by the principal.

History.—§625, ch. 19355, 1939; CGL 1940 Supp. 892(196).

232.26 Authority of principal.—Subject to law and rules and regulations of the state board and of the county board, the principal or teacher in charge of a school may delegate to any teacher or other member of the instructional staff or to any bus driver transporting pupils of the school such responsibility for the control and direction of the pupils as he may consider desirable. The principal may suspend a pupil for wilful disobedience, for open defiance of authority of a member of his staff, for use of profane or obscene language, for other serious misconduct, and for repeated misconduct of a less serious nature; provided, that each such suspension with the reasons therefor shall be reported immediately in writing to the parent and to the county superintendent; and provided, further, that no one suspension shall be for more than ten days and that no suspension shall be made a dismissal unless so ordered by the county board in a resolution adopted and spread upon its minutes. He may suspend any pupil transported to or from school at the public expense from the privilege of riding on a school bus for a period of ten days, or until such suspension is modified or made a dismissal by the county board, giving immediate notice in writing to the county superintendent and to the parent as provided above.

History.—§626, ch. 19355, 1939; CGL 1940 Supp. 892(197); §15, ch. 63-376.

232.27 Authority of teacher.—Each teacher or other member of the staff of any school shall assume such authority for the control of pupils as may be assigned to him by the principal and shall keep good order in the classroom and in other places in which he is assigned to be in charge of pupils, but he shall not inflict corporal punishment before consulting the principal or teacher in charge of the school, and in no case shall such punishment be degrading or unduly severe in its nature. Under no circumstances may a teacher (except of a one-teacher school) suspend a pupil from school or class.

History.—§627, ch. 19355, 1939; CGL 1940 Supp. 892(198).

232.28 Authority of school bus driver.—The driver of a school bus shall assume such authority for the control of pupils being transported to or from the school as may be assigned to him by the principal. He shall preserve order and good behavior on the part of all persons being transported to or from school or school functions at public expense. Any pupil who persists in disorderly conduct on the bus shall be reported to the principal of the school he attends, but no pupil shall be suspended from being transported or be given physical punishment by the bus driver or be put off the bus at other than the regular stop for that pupil except on permission of the principal or parent.

History.—§628, ch. 19355, 1939; CGL 1940 Supp. 892(199).

232.29 Physical and mental examination.—The state board of education and the state board of health shall jointly prescribe uniform forms, rules and regulations, and, through their executive officers, shall arrange for the examination at appropriate intervals of each child attending the public schools of the state for the purpose of discovering, reporting, and promoting treatment of mental and physical defects that require medical or surgical treatment for the proper development of each child.

History.—§629, ch. 19355, 1939; CGL 1940 Supp. 892(200).
cf.—§230.23 Duty of county board to provide for health examination.
§230.33 Recommendation of county superintendent.

232.30 Medical examination of school children under supervision of state board of health.—Subject to these rules and regulations the state board of health shall have supervision over all matters pertaining to the medical examination of school children in Florida, with such duties and powers as are prescribed by law pertaining to public health, and all school children shall be examined as to their physical condition at appropriate intervals. Any work done by health authorities in schools shall be arranged with the school authorities, provided, however, that any child shall be exempt from medical or physical examination, or medical or surgical treatment, upon written request of the parent or guardian of such child who objects to the examination and/or treatment on religious grounds, and provided further that the laws, rules and regulations relating to contagious or communicable diseases and sanitary matters shall not be violated.

History.—§630, ch. 19355, 1939; CGL 1940 Supp. 892(201); §1, ch. 28054, 1953.

232.31 County boards and health authorities to cooperate.—County boards of public instruc-

tion and county health authorities shall cooperate in providing and arranging for periodic medical examinations of all school children under regulations of the state board of education and the state board of health. In a county in which adequate medical inspection service is not provided by county health authorities or by the state board of health, the county board shall have the authority to employ one or more county school physicians or school nurses for that purpose.

History.—§631, ch. 19355, 1939; CGL 1940 Supp. 892(202). cf.—§231.34 Licenses for health assistants.

232.32 County health units; cooperation.—In counties in which county health units have been provided and are in active operation, the county board and the county superintendent shall cooperate with said units in all matters having to do with the health and welfare of school children; provided, that if the periodic medical inspection of school children is a part of the program of a county health unit such medical inspection shall be considered as meeting the requirements for a medical inspection as set forth in this chapter.

History.—§632, ch. 19355, 1939; CGL 1940 Supp. 892(203).

232.33 Child ill at school.—If a child becomes ill while at school the teacher or principal shall segregate such child from other children until such time as he can be removed to his home.

History.—§633, ch. 19355, 1939; CGL 1940 Supp. 892(204).

232.34 Procedure during epidemics.—In case of an epidemic of a communicable disease among the pupils of a school, the county superintendent shall observe such measures as are advised by the full-time county health officer who shall act in accordance with rules and regulations prescribed by the state board of health. In case there is no full-time county health officer, the county superintendent shall act on the advice of a physician designated by the county board, which physician shall act in accordance with rules and regulations prescribed by the state board of health regarding control of communicable diseases.

History.—§634, ch. 19355, 1939; CGL 1940 Supp. 892(205).

232.35 Admittance of child after illness with communicable disease. — A school child who has been ill of a communicable disease shall in no case be allowed to return to school except upon the written permission of the full-time county health officer or other reputable physician licensed to practice in the state.

History.—§635, ch. 19355, 1939; CGL 1940 Supp. 892(206).

232.36 Sanitation of schools; state regulations.—The state board of education and the state board of health shall jointly adopt and promulgate all needful rules and regulations having to do with sanitation of school buildings, grounds, shops, cafeterias, toilets, school busses, laboratories, rest rooms, first aid rooms, and all rooms or places in which pupils congregate in pursuit of the school duties or activities.

History.—§636, ch. 19355, 1939; CGL 1940 Supp. 892(207).

232.37 Duties of county boards with reference to sanitation.—The county board shall see that all state rules and regulations having to do with sanitation of the schools under their control are enforced; provided, that additional rules and regulations not in conflict with the state rules and regulations may be adopted by the county board and enforced through the county superintendent.

History.—§637, ch. 19355, 1939; CGL 1940 Supp. 892(208).

232.38 Exceptional children; names to be reported to county superintendents.—The Florida crippled children's commission, the state board of health, and the state board of social welfare shall direct their field workers to review their case records on or before March 31 of each year and to report to the county superintendent of each county the names and other pertinent information for all exceptional children in the county whose conditions, in their opinion, require special educational services.

History.—§2, ch. 20910, 1941; am. §25, ch. 23726, 1947.

232.39 Secret societies prohibited in public schools.—It shall be unlawful for any person, group or organization to organize or establish a fraternity, sorority or other secret society in the state whose membership shall be comprised in whole or in part of pupils enrolled in any public school whether elementary or secondary or to go upon any school premises for the purpose of soliciting any pupils to join such an organization. A secret society shall be interpreted to be a fraternity, sorority or other organization whose active membership is comprised wholly or partly of pupils enrolled in the public schools of the state and which perpetuates itself wholly or partly by taking in additional members from the pupils enrolled in public schools on the basis of the decision of its membership rather than on the right of any pupil who is qualified by the rules of the school to be a member of and take part in any class or group exercise designated and classified according to sex, subjects included in the course of study or program of school activities, fostered and promoted by the county board of public instruction and county superintendent of public instruction or by principals of the schools.

Provided, that this shall not be construed to prevent the establishment of an organization fostered and promoted by the school authorities, or which is first approved and accepted by the school authorities and whose membership is selected on the basis of good character, good scholarship, leadership ability and achievement; provided further that full information regarding the charter, principles, purposes, and conduct of any such excepted organization shall always be available to all students and instructional personnel of any school where same may be organized.

Provided further that this law shall not be construed to relate to any junior organization or society sponsored by the knights of pythias, the oddfellows, the moose, the woodmen of

the world, the knights of Columbus, the elks, the masons, the B'nai B'rith, the young men's and young women's Hebrew associations and the young men's and young women's Christian associations, kiwanis, rotary, optimist, civitan and exchange clubs.

History.—§1, ch. 21777, 1943; §1, ch. 24072, 1947; §1, ch. 26987, 1951; §1, ch. 28287, 1953; §1, ch. 63-63.
Note.—Formerly §242.46.

232.40 Pupils prohibited from belonging to secret societies.—It shall be unlawful for any pupil enrolled in any public school whether elementary or secondary of this state to be a member of, to join or to become a member of or to pledge himself to become a member of any secret fraternity, sorority or group wholly or partly formed from the membership of pupils attending such public schools or to take part in the organization or formation of any such fraternity, sorority or secret society; provided that this shall not be construed to prevent any pupil from belonging to any organization fostered and promoted by the school authorities, or which is first approved and accepted by the school authorities and whose membership is selected on the basis of good character, good scholarship, leadership ability and achievement.

History.—§2, ch. 21777, 1943; §2, ch. 24072, 1947.
Note.—Formerly §242.47.

232.41 County boards may prescribe regulations.—The county board of public instruction of each county shall have full power and authority to enforce the provisions for carrying out the provisions of this law and to prescribe and enforce such rules and regulations as are necessary for carrying out the provisions of this law. County boards are hereby required to enforce the provisions of this law by suspending or, if necessary, expelling any pupil in any elementary or secondary school who refuses or neglects to observe these provisions.

History.—§3, ch. 21777, 1943.
Note.—Formerly §242.48.

232.42 Institutions of higher learning excepted.—The provisions of §§232.39-232.41 shall not apply to students enrolled at the university of Florida, Florida state university, or any private school, college or university.

History.—§4, ch. 21777, 1943.
Note.—Formerly §242.49.

232.43 Insuring school students engaged in athletic activities against injury.—Any school athletic association or school of the state may formulate and conduct a plan or method of insuring school students against injury sustained by reason of such students engaging and participating in the athletic activities conducted or sponsored by such association or school in which such students are enrolled.

History.—§1, ch. 20727, 1941; §3, ch. 59-339.
Note.—Formerly §242.45.

232.44 Audit of records of nonprofit corporations and associations handling interscholastic activities.—

(1) The state auditor shall, at least every six months, audit the books and records of any nonprofit association or corporation which operates for the purpose of supervising and controlling interscholastic activities of the public high schools in the state and whose membership is composed of duly certified representatives of public high schools in the state, and whose rules and regulations are established by members thereof.

(2) Any such nonprofit association or corporation shall keep adequate and complete records of all moneys received by it, including the source and amount, and all moneys spent by it, including salaries, fees, expenses, travel allowances, and all other items of expense. All records of any such organization shall be open for inspection by the state auditor or his employees.

History.—§§1, 2, ch. 59-474.

CHAPTER 233

COURSES OF STUDY AND INSTRUCTIONAL AIDS

233.01 Courses of study committee; appointment; qualifications; term; compensation.—The state superintendent shall recommend and the state board shall appoint a continuing committee on courses of study, to be composed of twelve persons of which nine shall be actively engaged in teaching or supervision of teaching in public elementary schools, public high schools, and teacher-training institutions of the state and three persons shall be lay citizens of the state; provided, that not less than two representatives from the elementary school field and two representatives from the junior and senior high school field shall be appointed. The state superintendent and a member of his department whom he shall designate shall be additional and ex officio members of the committee. Appointments shall be made to the courses of study committee for terms of four years. Initial appointment of lay citizens from the state shall be: one person shall be appointed for a period of two years; one person shall be appointed for a period of three years; and one person shall be appointed for a period of four years, and thereafter every appointment shall be for a period of four years. Vacancies on the committee shall be filled for unexpired terms in the same manner as the original appointments were made. Each member of the committee, except ex officio members, shall receive compensation at the rate of ten dollars for each day of actual service and in addition shall be reimbursed for traveling expenses as provided in §112.061 when attending meetings of the committee. All meetings of said committee shall be held in Florida. Payment of such compensation and traveling expenses shall be made by the state treasurer from the appropriation for the administration of the state textbook program on warrants to be drawn by the state comptroller upon requisition approved by the state superintendent.

History.—§701, ch. 19355, 1939; CGL 1940 Supp. 892(209); §57, ch. 29764, 1955; §1, ch. 59-282; §2, ch. 63-55; §19, ch. 63-400.

233.02 Courses of study committee; affidavits of members.—Before transacting any business, each member of the committee on courses of study and its secretary shall make an affida-

vit to be filed with the state superintendent that he will faithfully discharge the duties imposed upon him as a member or as secretary of the committee; that he has no interest and that, while a member of the committee, he will assume no interest as author, as associate author, as publisher, or as representative of author or publisher of any textbook; that he is in no way connected with, and that, while a member of the committee, he will assume no connection with the distribution of such books; and that he is not pecuniarily interested, and that, while a member of the committee, he will assume no pecuniary interest directly or indirectly in the business or profits of any person engaged in manufacturing, publishing, or selling school books or other publications designed for use in classroom teaching.

History.—§702, ch. 19355, 1939; CGL 1940 Supp. 892(210). cf.—§1.01 "Person" defined.

233.03 Duties of courses of study committee.—The duties of the courses of study committee shall be as follows:

(1) MEETINGS.—To meet at the call of the state superintendent, and to remain in session for such periods, not to exceed twenty days for each session, as the state superintendent may consider necessary or desirable.

(2) ORGANIZATION.—To elect, during the first meeting of each year, one of its members chairman. An employee of the state department shall serve as secretary to the committee and shall keep an accurate record of its proceedings.

(3) EXAMINE COURSES OF STUDY.—To examine carefully courses of study now used with a view to utilization of the best ideas thus obtained in revising from time to time courses of study for the Florida schools.

(4) PREPARATION OF TENTATIVE COURSES OF STUDY.—To prepare, as the state superintendent may direct, for immediate or future use in the uniform system of public schools of the state, courses of study or revisions of existing courses of study.

(5) REPORTS TO THE STATE SUPERINTENDENT.—To prepare and submit on or before March 15 of each year to the state superintendent for his consideration:

(a) Recommendations for possible changes in the courses of study or curricula of the uniform system of the public schools of the state.

(b) Recommendations as to revisions in the list of subjects in which textbooks are to be furnished by the state.

(c) Recommendations as to the need for change of any textbook being furnished by the state.

(d) Recommendations as to instructional aids and materials which would be of assistance to teachers in carrying out the intent of the courses of study.

History.—§703, ch. 19355, 1939; CGL 1940 Supp. 892(211); (5)(a), §58 ch. 29764, 1955; (5) §2, (6) r. §3, ch. 59-282.

233.04 Recommendations of state superintendent.—The state superintendent shall study carefully the report or reports of the courses of study committee, and shall consider in connection therewith both the cost of the projected program and the educational value of the proposed changes. After giving due consideration to the recommendations of the courses of study committee, the state superintendent shall make such recommendations for such textbook changes, replacements, or additions as he may consider necessary or desirable. He shall transmit on or before April 15 of each year the report or reports of the courses of study committee, together with his own recommendations, to the state board.

History.—§704, ch. 19355, 1939; CGL 1940 Supp. 892(212); §4, ch. 59-282.

233.05 Decisions by state board.—On or before May 15 of each year the state board shall, after consideration of the reports of the courses of study committee and the recommendations of the state superintendent, make final decision as to what books, if any, shall be changed, and as to what changes, if any, shall be made in the list of subjects for which texts are to be furnished by the state, and a copy of its decisions in regard to changes of textbooks, and the educational fields in which adoptions are to be made shall be furnished to the state textbook purchasing board.

History.—§705, ch. 19355, 1939; CGL 1940 Supp. 892(213); §5, ch. 59-282.

233.06 Special committees for courses of study planning.—The state superintendent shall, at his discretion, appoint committees, each to be composed of not less than three nor more than twelve persons actively engaged in teaching or supervision of teaching in public elementary schools, public high schools and teacher-training institutions of the state who shall undertake such curricular studies or the development of such curriculum guides as the courses of study committee may recommend and as the state superintendent may approve. Each special committee, at the direction of the state superintendent, shall meet at a place to be designated by him and shall remain there in session for such period or periods as the state superintendent may direct. Members of these special committees shall be reimbursed for traveling expenses as provided in §112.061, such payments to be made by the state treasurer from the appropriation for the administration of the state textbook program on warrants drawn by the comptroller upon presentation of a requisition approved by the state superintendent.

History.—§706, ch. 19355, 1939; CGL 1940 Supp. 892(214); §6, ch. 59-282; §2, ch. 63-55; §19, ch. 63-400.

233.07 State textbook committees, appointment; term; compensation.—

(1) Each school year, not later than June 15, the state board of education shall, upon recommendation of the state superintendent, appoint textbook committees composed of persons actively engaged in teaching or in the supervision of teaching in the public elementary schools, high schools and institutions of higher learning of the state, and representing the major fields and levels in

which textbooks are used in the public schools of the state, and in addition lay citizens not professionally connected with education. There shall be a separate committee for the selection of textbooks for the elementary grades, and separate committees for the social sciences, English, mathematics, science, foreign languages, and such other fields as may be necessary up to a maximum number of twelve committees. There shall be lay members on all committees, and such lay members shall make up at least one third of the total membership of the elementary and social science textbook committees. The elementary and social science committees shall consist of twelve members, and all other textbook committees shall consist of not more than nine members. The state superintendent and a member of his department whom he shall designate shall be additional and ex officio members of each committee. The names and mailing addresses of the members of the state textbook committees shall be made public when appointments are made, and members shall be appointed for three-year overlapping terms. Vacancies on the committees shall be filled for unexpired terms in the same manner as the original appointments were made. Each member of the committees shall receive compensation at the rate of ten dollars a day, and in addition shall be reimbursed for traveling expenses as provided in §112.061 for actual service in meetings of committees called by the state superintendent. Payment of such compensation and travel expenses shall be made by the state treasurer from moneys appropriated for the administration of the state textbook program on warrants to be drawn by the state comptroller upon requisition approved by the state superintendent.

(2) It is the intent of the legislature that all other references in the law to the state textbook committee shall apply to each committee created by this section.

History.—§707, ch. 19355, 1939; CGL 1940 Supp. 892(219); §1, ch. 28210, 1953; §7, ch. 59-282; §§1, 3, ch. 61-322; §19, ch. 63-400.

233.08 Affidavit of members of state textbook committee.—Before transacting any business, each member of the state textbook committee shall make an affidavit, to be filed with the state superintendent, that he will faithfully discharge the duties imposed upon him as a member or as a secretary of the committee; that he has no interest and that, while a member of the committee, he will assume no interest as author, as associate author, as publisher, or as representative of author or publisher of any textbook; that he is in no way connected and that, while a member of the committee, he will assume no connection with the distribution of such books; and that he is not pecuniarily interested and that, while a member of the committee, he will assume no pecuniary interest directly or indirectly in the business or profits of any person engaged in manufacturing, publishing, or selling school books or other publications designed for use in classroom teaching; that he will not accept any emolument or promise of future reward of any kind from any publisher of school books, his agent, or any one interested in or intending to bias his judgment in any way in the selection of any book to be adopted.

History.—§708, ch. 19355, 1939; CGL 1940 Supp. 892(220); §8, ch. 59-282.

233.09 Duties of each state textbook committee.—The duties of each state textbook committee shall be as follows:

(1) PLACE AND TIME OF MEETING.—To meet at the call of the state superintendent at a place in the state designated by him, and to remain there in session for any period of time, not to exceed twenty days, which the state superintendent may require.

(2) ORGANIZATION.—A chairman and vice-chairman shall be elected by the committee for each adoption. An employee of the state department of education shall serve as secretary to the committee and shall keep an accurate record of its proceedings.

(3) RULES AND REGULATIONS.—To adopt rules and regulations for evaluating textbooks submitted by publishers in each adoption. Included in these rules and regulations shall be:

(a) Provisions which afford each publisher or his representative an opportunity to present to the members of the state textbook committee the merits of each textbook submitted in each adoption.

(b) Procedures which shall be used in the counties for evaluating textbooks by county committees or individual members of the profession during a state level adoption.

Where field studies of textbooks submitted for consideration in an adoption are made at the request of the state textbook committee, the committee may adopt rules and regulations regarding the distribution of sample copies of textbooks.

(4) EVALUATION OF TEXTBOOKS.—To evaluate carefully each textbook or series of textbooks submitted, to ascertain which textbook or series of textbooks, if any, submitted for consideration best implement the curricular objectives of the schools of the state. The evaluation shall take into consideration subject matter, treatment, printing, material, and mechanical make-up. Each textbook or series of textbooks shall be evaluated according to its suitability, usability, and desirability.

(5) REPORT OF COMMITTEE.—After a thorough study of all data submitted on each textbook or series of textbooks and after each member of the appropriate committee has carefully evaluated each textbook or series of textbooks, each state textbook committee shall present a written report to the state board for transmission to the state textbook purchasing board, and such report shall be made public. The report shall include:

(a) Description of the procedures used in determining the textbook or series of textbooks to be recommended to the state board of education.

(b) Recommendations of not more than

three textbooks for each grade and subject field in the curriculum of public elementary and high schools in the state in which adoptions are to be made, except in reading in the elementary school, where not more than five textbooks for each grade level may be recommended. If deemed advisable, the committee may include such other information, expression of opinion, or recommendation as would be helpful to the state textbook purchasing board. If there be a difference of opinion among the members of the committee as to the merits of any textbook, any member may file an expression of his individual opinion. No textbook which treats a subject in a partisan manner shall be included in the list of suitable, usable, and desirable textbooks; it being hereby declared that it be the legislative intent that material in textbooks used in elementary and secondary schools of this state shall not editorialize or propagandize communistic philosophy or other principles inimical to our form of constitutional government, and persons charged with the selection of textbooks should use their best efforts to carry out such legislative intent to effectuate the use of materials which provide all students with the traditional ideals and basic concepts of American democracy.

History.—§709, ch. 19355, 1939; CGL 1940 Supp. 892(221); §9, ch. 59-282; §2, ch. 61-322.

233.10 Findings of committee confidential.—The findings of the committee, including the evaluation of textbooks, shall be in executive session. Any person who reveals any of the findings of the committee except as herein provided shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed five hundred dollars, or imprisoned in the county jail for a term not to exceed six months.

History.—§710, ch. 19355, 1939; CGL 1940 Supp. 892(222), 8115(11); §10, ch. 59-282.
cf.—§775.06 Alternative punishment.

233.11 Contact with publishers or publishers' representatives.—It is lawful for any member of the state textbook committee to discuss matters relating to textbooks with any agent or representative of a publishing house, either directly or indirectly, except that during the period when the committee shall have been called into session for the purpose of evaluating books submitted for adoption, such discussions shall be limited to official meetings of the committee and in accordance with rules and regulations adopted by the committee for that purpose.

History.—§711, ch. 19355, 1939; CGL 1940 Supp. 892(223), 8115(12); §2, ch. 28210, 1953; §11, ch. 59-282.

233.12 Miscellaneous instructional aids.—The state superintendent may appoint from time to time special committees on elementary or high school levels of three persons to be approved by the state board to study and evaluate instructional materials and aids available in the various fields as supplementary material. These special committees shall render reports of their investigations to the state superintendent, and on the basis of said reports he may publish lists of approved instructional materials for which purposes expenditures by county boards may be considered legitimate. Committees shall meet on call of the state superintendent and the members shall be reimbursed for traveling expenses as provided in §112.061, payments to be made by the state treasurer from the appropriation for the administration of the state textbook program on warrants drawn by the comptroller upon requisition by the state superintendent.

History.—§712, ch. 19355, 1939; CGL 1940 Supp. 892(224); §28, ch. 63-376; §2, ch. 63-55; §19, ch. 63-400.

233.13 State to furnish textbooks in public schools.—All textbooks adopted for use in the public schools in the state shall be furnished by the state for the use of pupils of such public schools, and the board of commissioners of state institutions of the state shall constitute the state textbook purchasing board, and the same shall enter into contracts with any publisher or publishers for furnishing books for the period of time for which such books have been adopted. In all matters relating to adoption or purchase of textbooks the state superintendent shall act as secretary and executive officer of the state textbook purchasing board; provided, that the state shall not furnish any textbooks for the use of pupils attending a junior college.

History.—§713, ch. 19355, 1939; CGL 1940 Supp. 892(225); §59, ch. 29764, 1955; §13, ch. 57-252.
cf.—§229.17 State superintendent as secretary and executive officer of state textbook purchasing board.

233.14 Bids or proposals; advertisement and its contents; sample books; where deposited.—Beginning on or before May 15 of any year in which purchases are to be made, the state board shall advertise in a newspaper published in Tallahassee, once each week for a period of four weeks preceding the date on which the bids shall be received, that a certain designated time not later than June 15 sealed bids or proposals to be deposited with the secretary of state will be received from publishers for furnishing the book or books or other instructional materials proposed to be adopted as listed in the advertisement for a five year period, dating from July 1 following the adoption.

The advertisement shall state that each bid shall be accompanied by a specimen copy of each book included in the bid, which specimen copies shall be identical with those furnished to the members of the state textbook committee as prescribed hereafter in this section and with those furnished to the state and county superintendents as provided in §233.18. The advertisement shall state that a contract covering the adoption of a book or books shall be for a definite term of five years. The advertisement shall fix the time within which the required contract must be executed and shall state that the state textbook purchasing board reserves the right to reject any or all bids or proposals. The advertisement shall also give information as to how specifications which

have been adopted by the state board in regard to paper, binding, cover boards, and mechanical make-up, can be secured.

The bids or proposals submitted shall be for furnishing the designated book, books, or other materials in accordance with specifications for a five year period. The proposal or bid shall state the lowest wholesale price or prices at which the book, books, or other materials will be furnished, delivered f. o. b. to the Florida depository of the publisher or bidder. Specimen copies of all books or materials upon which bids or proposal are based shall be delivered by the publisher to the state superintendent for distribution to each member of the state textbook committee.

History.—§714, ch. 19355, 1939; CGL 1940 Supp. 892(226); §12, ch. 59-282.

233.15 Deposit must accompany bid.—The state board shall require each publisher who submits a bid or proposal for furnishing any book or books under the provisions of this chapter to deposit with the state treasurer such sum of money or certified check as may be determined by the state board, the amount to be not less than five hundred dollars and not more than two thousand five hundred dollars, according to the number of books or series of books covered by the proposal, which deposit shall be forfeited to the state for the benefit of the appropriation for the purchase of textbooks if the bidder making the deposit shall fail or refuse to execute such contract and bond within thirty days from date of acceptance in case his bid or proposal is accepted.

History.—§715, ch. 19355, 1939; CGL 1940 Supp. 892(227); §1, ch. 63-55.

233.16 Powers and duties of state textbook purchasing board.—The powers and duties of the state textbook purchasing board shall be:

(1) SELECTION AND ADOPTION OF BOOKS.—As soon as practicable the state textbook purchasing board shall notify all publishers who have submitted bids that, at a designated time and place, it will open bids and proposals which have been submitted and deposited with the secretary of state. At the time and place designated the bids or proposals shall be opened, read, and tabulated in the presence of the bidders or their representatives. A publisher may not revise his bid after the bids have been filed. When all bids or proposals have been carefully considered, the state textbook purchasing board shall, from the list of suitable, usable, and desirable books reported by the state textbook committee, select and adopt not more than three textbooks for each grade and subject field in the curriculum of public elementary and high schools in the state in which adoptions are made, except in reading in the elementary schools, where not more than five textbooks for each grade level may be adopted, in the subject areas designated in the advertisement, which adoption shall continue for a five year period, the period to begin on the ensuing July 1 unless otherwise ordered by the state board. The state textbook purchasing board shall always reserve to itself the right to reject any and all bids, or proposals, if it shall be of the opinion that any or all bids, for any reason, should be rejected, and said state textbook purchasing board may ask for new sealed bids from publishers whose books were recommended by the state textbook committee as suitable, usable, and desirable, to specify the dates for filing such bids and the date on which they shall be opened, and proceed in all matters regarding the opening of bids and awarding contracts as required by the terms and provisions of this chapter; provided, that in all cases bids or proposals shall be accompanied with a cash deposit or certified check of from five hundred dollars to two thousand five hundred dollars, as the state board may direct. The state textbook purchasing board, in adopting books, shall give due consideration both to the prices bid for furnishing books and to the report and recommendations of the state textbook committee. When the state textbook purchasing board shall have finished with the report of the state textbook committee, the report shall be filed and preserved in the office of the state superintendent and shall be open at all times for public inspection.

(2) CONTRACT WITH PUBLISHERS; BOND.—The attorney general of the state as soon as practicable after the state textbook purchasing board shall have made the adoption of any book or books and all bidders or publishers having secured the adoption of any book or books have been notified of the same by registered letter, shall prepare a contract in accordance with the provisions of the school code, in triplicate, with every bidder publisher awarded the adoption of any books; said contracts shall be executed by the governor and secretary of state under the seal of the state, one copy to be kept by the contractor, one copy to be filed in the office of the secretary of state, and one copy to be filed in the office of the state superintendent. Any publisher or publishers to whom any contract shall be let under the provisions of this chapter shall be required to give bond in such amount as the said state textbook purchasing board shall deem advisable, payable to the state, conditioned for the faithful, honest, and exact performance of said contract, and the said bond shall further provide for the payment of reasonable attorney's fees in case of recovery in any suit upon the same. The surety on such bond shall be a guaranty or surety company authorized by the laws of the state to do business in the state; provided, however, that said bond shall not be exhausted by a single recovery but may be sued upon from time to time until the full amount thereof shall be recovered, and the said state textbook purchasing board may at any time, after giving thirty days' notice, require additional security or additional bond. The form of any bond or bonds, contract or contracts, under the provisions of this chapter, shall be prepared and approved by the attorney general of the state. Any publisher or publishers with whom such book con-

tract or contracts are made shall establish and maintain in some city or town in the state, convenient as a distribution point, an agency or depository, where a stock of books covered by the contract or contracts held by such publisher or publishers shall be kept at all times in sufficient quantities to supply all immediate demands for such book or books; provided, however, that any publisher or publishers not maintaining an individual or separate state agency or depository as above set forth, shall maintain in this state a joint agency or depository, to be located at some suitable and convenient distribution point, at which general agency or depository each publisher joining in such joint agency or depository shall keep on hand at all times books in sufficient quantities to supply all immediate demands for such book or books covered by the contract or contracts of the publisher or publishers maintaining such joint agency or depository. The maximum price at which the state textbook purchasing board shall contract to pay, f.o.b. the Florida depository of the publisher, for any books to be used in the public schools of this state shall not exceed the minimum price at which the publisher sells such books in wholesale quantities, f.o.b. the publisher's publishing house, after all discounts have been deducted. Any contract made for the purchase of books for the use in the public schools of this state at a higher price than the maximum price fixed by the preceding sentence shall be void. It shall be stipulated in every contract entered into under the provisions of this chapter between the state textbook purchasing board and any publisher or publishers to whom any contract shall be let under the provisions of this chapter, that if at any time during the life of said contract any book or books therein included shall be sold in any other state at a lower price by said publisher or publishers than is designated in such contract the said lower price shall immediately become the price of such book or books to the state and the state textbook purchasing board shall, at any time said board may find that any such book or books have been sold at a lower price to any state, county, school district, or city in the United States, or to any person, sue upon the bond herein provided for and recover the difference between the contract price and the lower price for which they find the book or books have been sold.

(3) REGULATIONS GOVERNING THE CONTRACT.—The state textbook purchasing board may, from time to time, make any necessary regulations, not contrary to the provisions of this chapter, to secure the prompt and faithful performance of all contracts, and it is expressly provided that, should any contractor fail or refuse to furnish books as provided in this chapter, or otherwise break his contract, the state textbook purchasing board may sue on the bond hereinbefore required, in the name of the state, in the courts of the state having jurisdiction, and recover damages on the bond given by the contractor for failure to furnish books, the sum recovered to inure to the appropriation for the purchase of textbooks.

(4) RETURN OF DEPOSIT; DEPOSIT FORFEITED.—When a successful bidding publisher shall have executed contract and submitted the required bond within thirty days after the awarding of the contract, notice of which awarding shall be given by registered letter, the state textbook purchasing board shall advise the state treasurer, who shall return to the publisher the cash deposit made by him. At the same time or prior thereto, the state textbook purchasing board shall inform the state treasurer of the names of the unsuccessful bidders, whose deposits shall be returned to them. Should any successful bidder fail or refuse to execute contract and bond within thirty days after the awarding of the contract the cash deposit shall be forfeited to the State of Florida to be placed by the state treasurer to the credit of the appropriation for the purchase of textbooks.

(5) FORFEITURE OF CONTRACT AND BOND.—In case of the failure of any publisher to furnish a book or books as provided in the contract, his bond shall stand forfeited, and the state textbook purchasing board shall make another contract on such terms as they may find desirable after giving due consideration to the recommendations of the state superintendent.

History.—§716, ch. 19355, 1939; CGL 1940 Supp. 892(228); (1) §13, ch. 59-282; (3), (4) §1, ch. 63-55.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

233.17 Term of adoption of textbooks.—The term of adoption for any book or books shall be for a five year period, beginning on July 1 following the adoption.

History.—§717, ch. 19355, 1939; CGL 1940 Supp. 892(229); §14, ch. 59-282.

233.18 Copies of bids, contracts, and books retained.—Specimen copies of all textbooks, which have been made the bases of contracts under the provisions of this chapter, clearly marked and identified as such, shall be deposited by their publishers with the state superintendent and each county superintendent, which specimens said officials shall preserve and keep open for inspection by the public. All contracts and bonds executed under the provisions of this chapter shall be signed in triplicate. One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved in the office of the state superintendent for at least five years beyond the termination of the contract.

History.—§718, ch. 19355, 1939; CGL 1940 Supp. 892(230).

233.21 Parents may purchase state adopted books.—Nothing in this chapter shall be construed to prohibit parents, guardians, or other persons from purchasing from the publishers textbooks adopted by the state under the provisions of the school code.

History.—§721, ch. 19355, 1939; CGL 1940 Supp. 892(233).

233.22 State superintendent to file order with publisher; books to be delivered at destination.—The state superintendent shall upon

the receipt of requisition for books from the county superintendent of each county, either revise or return for revision or approve such requisition and order the publisher or publishers, with whom contracts have been made, or the agency or depository heretofore provided for of any publisher or publishers, to forward to any such county superintendent the books shown by such approved requisition to be needed in that particular county. The publisher or publishers of such depository shall prepare triplicate invoices or bills for the books so shipped, one copy thereof to be mailed to the state superintendent at Tallahassee, and the other two to the county superintendent, to whom the books are shipped.

History.—§722, ch. 19355, 1939; CGL 1940 Supp. 892(234).

233.23 County superintendent to check and forward invoice to state superintendent.—The county superintendent of each county shall, upon receipt of any shipment of books made to him under the provisions of this chapter, check the same with the invoices or bills rendered therefor, and if the shipment is in accordance with the invoices or bills, he shall approve and receipt the invoices or bills and shall forward one copy to the state superintendent.

History.—§723, ch. 19355, 1939; CGL 1940 Supp. 892(235).

233.24 Approval and payment of textbook invoices.—The state superintendent shall, upon receipt of the approved invoice or bill, provided for in §233.23, for said books, present same to the state board for approval, and when approved by the state board the same shall be delivered to the state comptroller who shall issue a warrant therefor, countersigned by the governor and payable out of money in the appropriation for the purchase of textbooks.

History.—§724, ch. 19355, 1939; CGL 1940 Supp. 892(236); §1, ch. 63-55.

233.25 Procedure to be followed by publisher.—

(1) REGISTRATION.—Any bidder or publisher submitting textbooks to the state for adoption shall, on or before the day bids are received, register in the office of the state superintendent the names and home addresses of all agents, or employees of any kind, or persons retained for legal or other services to whom there is being paid or to whom there will be paid any salary, commission, or royalty for representing the bidder or publisher in the state in the book adoption for which books have been submitted, and this registered list shall be open for inspection by the public and copies of it shall be made available to the members of the state textbook committee and to the members of the state textbook purchasing board. The failure of any bidder or publisher to register the names and addresses of representatives of any kind as herein specified shall be deemed sufficient cause for summary rejection of the bid or proposal of such bidder or publisher.

(2) CONTACT WITH STATE TEXTBOOK COMMITTEE.—It is unlawful, except as herein provided, for any agent or representative of a publishing house to discuss matters relating to the books under consideration with any member of the state textbook committee either directly or indirectly. Any person violating any provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding ninety days.

History.—§725, ch. 19355, 1939; CGL 1940 Supp. 892(237), 8115(13); §15, ch. 59-282.

cf.—§775.06 Alternative punishment.

233.27 State board to adopt rules and regulations governing school libraries.—The state board shall prescribe such rules and regulations for the establishment, government, preservation, and maintenance of public school libraries as will insure to the public school pupils of the state the best practicable library opportunities.

History.—§727, ch. 19355, 1939; CGL 1940 Supp. 892(239).

233.28 County boards to supplement rules and regulations of state board.—Each county board shall provide such rules for book classification, distribution, accounting, preservation, and care as are in its opinion necessary or desirable and as are consistent with state board rules and regulations for the government, maintenance, and preservation of public school libraries.

History.—§728, ch. 19355, 1939; CGL 1940 Supp. 892(240).

233.29 County boards to establish and maintain libraries.—Each county board may in its discretion locate, establish, and maintain, as essential to the instructional program, adequate libraries and library services in the public schools of the county which it serves. Each county board may, upon requisition by the principal of a school and, when district current school funds are involved, with the approval of the trustees of the district and upon recommendation of the county superintendent, purchase for each public school in the county such library books and provide such library services as will meet the library standards approved by the state board for schools of comparable size, condition, and organization. The costs of such library services shall, except as otherwise provided herein, be defrayed out of available county general school funds, district current school funds under limitations prescribed by law, or other funds which may be or may become available for such purposes.

In addition thereto each county board, subject to rules and regulations of the state board, may establish and maintain mobile circulating libraries whenever in its opinion such mobile circulating libraries are necessary or desirable, and the cost thereof shall be proper charges against the county general school fund, and, within limitations prescribed by law, proper charges against district current school funds, and proper charges against other funds which may be or may become available for such pur-

poses; provided, that nothing herein shall be construed to inhibit or limit the right of schools or other agencies to raise and expend money for school library books.

History.—§729, ch. 19355, 1939; CGL 1940 Supp. 892(241).

233.30 County board cooperative libraries.—Each county board may, at its discretion, make contracts or agreements with county or community groups or organizations for a cooperative program or programs of library establishment, maintenance, and use, and all such contracts or agreements with county or community groups or organizations shall provide that such cooperative school and county or school and community libraries shall be established on public school property and shall continue under the supervision and control of such county board; and such part of the costs therefor as may, by contract or agreement, be properly chargeable to such county board shall be defrayed out of available county general school funds or, under limitations prescribed by law, other funds which may be or may become available for such purposes.

History.—§730, ch. 19355, 1939; CGL 1940 Supp. 892(242).

233.31 Library personnel.—The library personnel shall be regarded as part of the instructional staff, except as otherwise designated under regulations of the state board.

History.—§731, ch. 19355, 1939; CGL 1940 Supp. 892(243).

233.32 Rules and regulations for accounting for, distribution, and preservation of textbooks.—The state board on the recommendation of the state superintendent shall prescribe needful rules and regulations for the accounting for, distribution, and preservation of state-owned textbooks. Each county board, subject to approval of the state superintendent, shall make such supplemental rules and regulations as are necessary to promote economy and efficiency in county textbook administration.

History.—§732, ch. 19355, 1939; CGL 1940 Supp. 892(244).

233.33 List of books adopted; unlawful not to use.—The state superintendent, as soon as practicable after the state textbook purchasing board shall have adopted books and completed all contracts and approved bonds for the faithful performance of contracts for furnishing or supplying books for use in the public schools of the state, shall issue a statement announcing such fact to the people of the state, and direct the use of books adopted. The books adopted as a uniform system of textbooks for use in the high schools and in the elementary schools shall be introduced and used as textbooks in all public schools of the state. It is unlawful to use in the public schools of the state, to the exclusion of a book adopted for the same subject, any book not on the adopted list.

History.—§733, ch. 19355, 1939; CGL 1940 Supp. 892(245).

233.34 Textbook allocation.—Prior to June first of each year the state superintendent shall, on a basis approved by the state board, apportion to each of the several counties, a credit in the state textbook fund which, except as herein modified, shall mark the maximum amount for which a county superintendent may requisition textbooks during the school year for which such credit in the state textbook fund has been apportioned. The state superintendent shall reserve from allocation to the several counties, an amount which, in his opinion, will be sufficient to provide for proper costs of the state textbook program other than textbook purchase; and additions to county textbook allocations made necessary because of increased enrollments, inadequate inventories occasioned by conservative requisitions in previous years, and textbook replacements occasioned by fire or storm losses which, as provided herein, represent proper charges against the state textbook fund.

History.—§734, ch. 19355, 1939; CGL 1940 Supp. 892(246); §17, ch. 59-282.

233.35 Storage of books.—Subject to the rules and regulations prescribed by the state board, each county board shall provide safe and dry places for keeping books that have been delivered to the county superintendent, and use every reasonable means to safeguard and account for all books.

History.—§735, ch. 19355, 1939; CGL 1940 Supp. 892(247). cf.—§230.33 Duties of county superintendent.

233.36 Records.—The state superintendent shall keep a record of all books delivered to the county superintendent of each county under the provisions of this chapter, as shown by invoices to the state superintendent by the county superintendent, as herein provided for, and shall make periodic audits of books which have been furnished by the state, requiring a complete accounting for all such books. Any necessary blanks required for assisting in carrying into effect the provisions of this chapter shall be prescribed and furnished by the state superintendent, and the expense thereof paid from the appropriation for the administration of the state textbook program.

History.—§736, ch. 19355, 1939; CGL 1940 Supp. 892(248); §2, ch. 63-55.

233.37 Schools to continue to use books until unserviceable.—When a change of textbooks has been made for any subject, each county superintendent shall designate which schools of his county shall use the old textbooks which he has on hand or in the schools of his county, and all such textbooks shall continue to be used until they are in such physical condition as to make them unsuitable for further use or until the content is obsolete. The county superintendent shall not requisition copies of the newly adopted textbook for those pupils for whom copies of the old textbooks are available; provided, that under rules and regulations of the state board, the state superintendent may dispose of the books of the old adoption when they have become unserviceable, upon such terms and conditions as shall yield their fair salvage value. All sums or amounts which shall accrue to the state by reason of the

sale, exchange, or other disposition of such textbooks shall be placed to the credit of the appropriation for the purchase of textbooks.

History.—§737, ch. 19355, 1939; CGL 1940 Supp. 892(249); §4, ch. 61-459; §1, ch. 63-55.

233.38 Exchange of textbooks.—To effectuate economical and expeditious distribution of textbooks to the several counties of the state for use in the public schools, the state superintendent is directed to arrange for exchange of books among the several counties in accordance with their respective needs, and to that end, the county superintendents in the several counties shall, upon direction from the state superintendent, crate and ship such books as shall be designated to such counties in the state as the state superintendent may determine, and the state superintendent may, when he deems advisable, direct surplus books in any county to be shipped to some central point to be designated by him to be held or distributed as the need therefor shall arise.

History.—§738, ch. 19355, 1939; CGL 1940 Supp. 892(250).

233.39 Renovation and repair of textbooks.—The state board of education shall prescribe rules and regulations under which the state superintendent shall, whenever requested to do so by any county superintendent, make necessary arrangements for the renovation and repair of books which could thereby be put into serviceable condition. All proper expense in connection with such renovation and repair, upon approval of the state board, is made a proper charge against the appropriation for the purchase of textbooks. The state board shall formulate and prescribe such rules and regulations for the letting of contracts for the renovation and repair of books used in the public schools of the state as in its judgment may be practicable and economically feasible and shall enter into such contracts upon the basis of competitive bids from responsible firms who must, prior to contract award, have on hand in their plants that equipment necessary to perform the work of rebinding specified by the state board. For the purpose of rebinding, textbooks shall be classified by the state superintendent as to size, and such classification shall be the basis for bids from rebinding firms. Bids from rebinding firms shall be on the basis of minimum quantities of one hundred books in each classification. No such contract shall be entered for the renovation and repair of books used in the public schools of this state where the cost of renovation and repair shall exceed the original acquisition cost of such books, or the cost of replacing such books, whichever is the lesser; provided, however, that nothing herein contained shall be construed to prohibit the inmates of the state prison from repairing and renovating any public school textbooks.

History.—§739, ch. 19355, 1939; CGL 1940 Supp. 892(251); §1, ch. 26900, 1951; §18, ch. 59-282; §1, ch. 63-55.

233.40 Fumigation of textbooks.—The state board shall issue, upon recommendation of the state board of health, such rules and regulations governing the occasion for and the manner of fumigation of used textbooks as will protect the pupils from infections, if any, which may be transmitted through reissued textbooks. The cost of such fumigation, when authorized and done in accordance with regulations of the state board, is made a proper charge against the appropriation for the purchase of textbooks.

History.—§740, ch. 19355, 1939; CGL 1940 Supp. 892(252); §1, ch. 63-55.

233.41 Suits in name of state; credit of amount recovered.—Any suit of any nature instituted under the provisions of this chapter shall be brought in the name of the state and any amount recovered by reason of such suit shall be placed to the credit of the appropriation for the purchase of textbooks.

History.—§741, ch. 19355, 1939; CGL 1940 Supp. 892(253); §1, ch. 63-55.

233.42 Suits for damage to books.—Any loss occasioned by the neglect, carelessness, or failure of the county superintendent or any principal or teacher in charge of any school to account for textbooks or failure to comply with the provisions of this chapter shall entitle the state to bring suit for the recovery of the amount of the loss occasioned thereby.

History.—§742, ch. 19355, 1939; CGL 1940 Supp. 892(254).

233.43 Duties of county superintendent relating to books.—The duties and responsibilities of each county superintendent for the requisition, receipt, storage, distribution, use, conservation, records, and reports of textbooks shall be as follows:

(1) REQUISITION.—To transmit on or before June twentieth of each year to the state superintendent a requisition for additional books needed for the following school year for the pupils of the public elementary, junior, and senior high schools of his county, such requisition to be based on the known minimum textbook needs of his county school system. Where more than one textbook is adopted by the state in a grade or subject field, the county superintendent may requisition the quantity of each adopted textbook needed by his county, provided that the interest and abilities of pupils enrolled in the schools in his county require the fullest utilization of each textbook requisitioned for that year. Within limits defined by the state superintendent, the county superintendent may file as many requisitions for textbooks during each year as shall be necessary to complete the textbook needs of his county.

(2) INVOICES.—To check any shipments of books made to him, under the provisions of this chapter, with the invoices or bills rendered therefor, and if the shipments are in accordance with the invoices or bills, he shall approve and receipt the invoices and bills and shall forward an original copy to the state superintendent.

(3) STORAGE. — To store books in a safe and dry central book depository or in

book rooms which have been designated, as provided by law, by county boards; to keep separately the books which have been used in white and negro schools.

(4) DISTRIBUTION. — To deliver, upon receipt of any books provided under the terms of this chapter, to the principal or teacher in charge of each school in the county the proper number of books required for use in the school of which said principal or teacher has charge, and take a receipt therefor.

(5) RECEIPT.—To issue a receipt for all books returned to him by principals or teachers either during or at the close of the school year.

(6) MONEY COLLECTED FOR LOST OR DAMAGED BOOKS.—To make full report to the state superintendent at the time of submitting his annual report of the amount of money which has been collected from pupils, parents, or guardians on account of loss of textbooks and paid to the state treasurer through the state superintendent during the period of time since the last similar report.

(7) USE.—To make sure that, when a change in textbooks has been made by reason of a new adoption, the schools of his county make such new book changes or continue in use such books of the old adoption as the state superintendent may direct.

(8) FUMIGATION.—To cause the used books in his county to be fumigated at such times and in such manner as may be approved and prescribed by the state board upon the recommendation of the state board of health.

(9) CONSERVATION AND CARE. — To make and enforce regulations, not contrary to the provisions herein, which will insure that books issued by him are properly treated in the schools and in the hands of pupils.

(10) ACCOUNTING BY PRINCIPALS AND TEACHERS.—To require of principals and teachers such accounting procedures and reports as may be prescribed by the state superintendent under powers granted herein and under rules and regulations of the state board.

(11) INVENTORY REPORT. — To prepare and transmit each year, as a part of his annual report to the state superintendent, an inventory of books on hand in the several schools of the county and in the county school offices or other places provided for textbook storage.

(12) TEXTBOOK ACCOUNTING AND RECORDS.—To prepare such other textbook accounting records or reports at such times and in such manner as the state superintendent may direct, or as the county superintendent may find necessary.

(13) SCHOOL LIBRARY BOOKS. — To requisition, under limitations prescribed in §233.34, books for the public school libraries of his county.

(14) EVALUATION OF TEXTBOOKS.— To conduct an evaluation of each textbook to be requisitioned that has not been used previously in the schools of the county. This evaluation should provide evidence that each textbook to be requisitioned which has not previously been used in the schools of the county would be appropriate, acceptable and usable in the schools of the county. The county superintendent shall submit such reports of county evaluations as may be required by the state board.

History.—§743, ch. 19355, 1939; CGL 1940 Supp. 892(255); (1) §19, (14) n. §20, ch. 59-282.

233.44 When books may be dropped from the records.—

(1) LOST, DESTROYED, OR DAMAGED BOOKS.—Books which have been lost, destroyed, or damaged for which proper charges have been assessed and collected and remitted to the state superintendent, or books which have been destroyed by order of a competent health officer, or a representative of the state superintendent, shall be dropped from the record of books for which, as provided by law, county boards are held responsible.

(2) BOOKS DESTROYED BY FIRE OR STORM.—Books which have been destroyed by fire or storm will not constitute a charge against the county textbook allocation if evidence acceptable to the state superintendent is presented, showing that reasonable safeguards and precautions were taken for the protection of the books so destroyed.

History.—§744, ch. 19355, 1939; CGL 1940 Supp. 892(256).

233.45 Penalty for school officers dealing in textbooks.—No county superintendent, county board member, or any person officially connected with the government of or direction of public schools, or teacher thereof, shall receive during the months actually engaged in performing duties under his contract any private fee, gratuity, donation, or compensation, in any manner whatsoever, for promoting the sale or exchange of any school book, map, or chart in any public school, or be an agent for the sale, or the publisher of any school textbook or reference work, or be directly or indirectly pecuniarily interested in the introduction of any such textbook, and any such agency or interest shall disqualify any persons so acting or interested from holding any school office whatsoever, and the person so offending shall be fined in the sum not exceeding one hundred dollars, or imprisoned not more than thirty days; provided, that this section not be construed as preventing the adoption of any book written in whole or in part by a Florida author.

History.—§745, ch. 19355, 1939; CGL 1940 Supp. 8115(14).

233.46 Duties of principals and teachers.— The duties and responsibilities of principals and teachers for textbook management and care are as follows:

(1) REQUISITION. — To prepare and transmit, at such times and in such manner as the county superintendent may direct, such requisitions for textbooks as represent the known textbook needs of the school or schools served by such principal or teacher.

(2) STORAGE.—To store books when not in use in a dry book room. Books in storage shall be neatly arranged and segregated by title, subject, and grade.

(3) DISTRIBUTION. — To distribute books received from the county superintendent in such quantities as may be necessary or desirable to pupils of the school of which the principal or teacher may have charge.

(4) RECEIPT.—To require a receipt from each pupil to whom a book or books are issued, and to give a receipt to each such pupil upon the return of the book or books so issued.

(5) MONEY COLLECTED FOR LOST OR DAMAGED BOOKS.—To collect from each pupil or his parent the purchase price of each book the pupil has lost, destroyed, or unnecessarily damaged and to report and transmit such amounts so collected to the county superintendent for the transmission to the state superintendent; provided, that if such textbook so lost, destroyed, or damaged has been in school use for more than one year, a sum ranging between fifty and seventy-five per cent of the purchase price of the book shall be collected; such sum shall be determined by the physical condition of the book. The state superintendent shall deposit all such remittances to the credit of the appropriation for the purchase of textbooks, notwithstanding the provisions of §§255.01-255.03, and the amounts so deposited shall be available for textbook purchases as provided in §233.48(2).

(6) SALE OF TEXTBOOKS.—When requested by the parent of a pupil in the school where he is employed, he shall sell to such parent any textbook or textbooks used in the school. All such sales shall be made under regulations prescribed by the county board of public instruction and by the state board of education. No such sale shall be made if there is a retail dealer or retail outlet for such textbooks in the attendance area, or within the corporate limits of the city where the school is located where such textbooks may be purchased. All money collected from the sale of textbooks shall be reported and transmitted to the county superintendent, who shall report and transmit the same to the state superintendent of public instruction, who shall deposit all such remittances to the credit of the appropriation for the purchase of textbooks, and the amounts so deposited shall be available for textbook purchases as provided in §233.48(2).

(7) CONSERVATION AND CARE.—To ascertain by inspection, and to insure through every available agency, that all books issued to the school by the county superintendent, either in the hands of pupils or in storage, are cared for properly.

(8) ACCOUNTING FOR TEXTBOOKS. —To see that all books are fully and properly accounted for on forms prescribed by the state superintendent, and on forms which are supplied through the office of the county superintendent.

(9) RECORDS AND REPORTS. — To prepare and transmit such textbook records and reports as may be required by the state superintendent and such supplementary records and reports as the county superintendent may direct.

History.—§746, ch. 19355, 1939; CGL 1940 Supp. 892(257); §1, ch. 26922, 1951; (5), (6) §3, ch. 63-55.

233.47 Responsibility of pupils, parents, or guardians for textbooks.—All books purchased under the provisions of this chapter shall be the property of the state, and, when distributed to the pupils as provided for in this chapter, they shall be merely loaned to the pupils of the school while pursuing the courses of study therein, and are to be returned at the direction of the principal or teacher in charge. Each parent, guardian, or other person having charge of a pupil or pupils to whom or for whom books have been issued, as provided herein, shall be held liable for any loss, destruction, unnecessary damage, or failure of such pupil or pupils to return such books when directed by the principal or teacher in charge, and shall be required to pay for such loss, destruction, or unnecessary damage as provided in §233.46.

History.—§747, ch. 19355, 1939; CGL 1940 Supp. 892(258).

233.48 State textbook program; expenditures.—

(1) ADMINISTRATIVE EXPENSES.—All costs of the state textbook program, other than those costs enumerated in subsection (2) of this section, shall be paid from moneys to be appropriated for administrative expenses of the state textbook program.

(2) STATE TEXTBOOKS.—All contractual obligations for the purchase, renovation, repair, or fumigation of state textbooks, and transportation charges from the depository to the counties, shall be paid from the appropriation for the purchase of textbooks.

(3) The state superintendent shall audit all invoices, requisitions, vouchers, and other proper charges against the appropriations for the state textbook program, and shall present them for approval and payment as required by law or in accordance with regulations of the state board.

History.—§748, ch. 19355, 1939; CGL 1940 Supp. 892(259); §4, ch. 63-55.

233.49 Textbooks; children with impaired vision.—The state superintendent of public instruction is authorized to purchase and arrange for distribution among county school systems previously adopted textbooks which are prepared in various media for the use of partially sighted children enrolled in the public schools of Florida.

History.—§1, ch. 63-373.
cf.—§282.011 Miscellaneous appropriations.

CHAPTER 234

TRANSPORTATION OF SCHOOL CHILDREN

234.01 Purpose.—County boards, after considering recommendations of the county superintendent and any suggestions which may have been submitted by trustees of the district shall provide transportation for each pupil who should attend a public school when and only when transportation is necessary for accomplishment of one of the following purposes: (1) to provide adequate educational facilities and opportunities which otherwise would not be available; (2) to transport pupils whose homes are more than a reasonable walking distance, as defined by regulations of the state board, from the nearest appropriate school; provided, that no state funds shall be paid for the transportation of pupils whose homes are within two miles from the nearest appropriate school; and, provided further, that in each case where transportation of pupils would be impracticable, the county board is authorized to take steps for making available educational facilities as are authorized by law and as, in the opinion of the county board, are practical.

History.—§801, ch. 19355, 1939; CGL 1940 Supp. 892(260); §8, ch. 29754, 1955.

234.02 Safety and health of pupils.—Maximum regard for safety and adequate protection of health shall be primary requirements which must be observed by county boards in routing buses, appointing drivers, and providing and operating equipment.

History.—§802, ch. 19355, 1939; CGL 1940 Supp. 892(261).

234.03 Liability insurance.—Liability insurance shall be carried on school buses and may be carried on other motor vehicles as provided below:

(1) LIABILITY INSURANCE REQUIRED TO PROTECT PUPILS TRANSPORTED.—County boards are required to secure and keep in force, in companies duly authorized to do business in Florida, insurance covering liability for damages on account of bodily injury, or death resulting therefrom, to pupils legally enrolled in the public schools, by reason of the ownership, maintenance, operation, or use of school buses and other vehicles while said pupils are being transported to or from a school or school activity. Such liability insurance shall be carried in the sum of ten thousand dollars for bodily injury, or death resulting therefrom, to any one pupil and shall, for any one accident, be limited to five thousand dollars multiplied by the rated seating capacity of the bus or vehicle as determined by regulations of the state board of education.

(2) OTHER LIABILITY INSURANCE PERMITTED.—County boards of public instruction struction are hereby permitted in their discretion to secure and keep in force:

(a) Insurance covering liability for damages on account of bodily injury, or death resulting therefrom, to persons, other than pupils legally enrolled in the public schools, by reason of the ownership, maintenance, operation, or use of school buses. If such bodily injury liability insurance is provided, it shall be carried in the sum of ten thousand dollars for bodily injury, or death resulting therefrom, to any one person and shall, for any one accident, be limited to five thousand dollars multiplied by the rated seating capacity of the bus as determined by regulations of the state board of education.

(b) Insurance covering liability for damage on account of bodily injury to pupils and other persons by reason of the ownership, maintenance, operation, or use of vehicles other than those used for transportation of pupils, or if such vehicles are other than school owned, to require owners of such vehicles to show evidence of the existence of adequate insurance during the time that such vehicles are in the service of the county board of public instruction. If such bodily injury liability insurance is provided, it shall be carried in the sum of not less than ten thousand dollars for bodily injury, or death resulting therefrom, to any one person and shall be for any one accident not less than twenty thousand dollars.

(c) Medical payments insurance on school buses and other vehicles. If medical payments insurance is provided, it shall be carried in the sum of not less than five hundred dollars per person.

(d) Insurance covering liability for dam-

age to property of others on all vehicles by reason of ownership, maintenance, operation, or use, or if other than school owned to require owners of such vehicles to show ample evidence of the existence of adequate insurance during the time that such vehicles are in the service of the county board of public instruction. If such property damage liability insurance is provided, it shall be carried in the sum of not less than five thousand dollars for any one accident.

(3) PREMIUM PAYMENT AUTHORIZED.—The premiums for such insurance shall be paid from the county current school fund, the district current school fund, or the state fund apportioned to the county for transportation.

(4) WAIVER OF IMMUNITY.—In consideration of the premium at which each policy shall be written it shall be a part of the policy contract between the county and the named insured that the company shall not be entitled to the benefit of the defense of governmental immunity for the insured by reason of exercising a governmental function on any suit brought against the insured. Immunity of the county board against liability damages is waived to the extent of liability insurance carried by the county board. Provided, however, no attempt shall be made in the trial of any action against a county board of public instruction to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

(5) PENALTY.—The members of any county board which owns or operates a school bus or other vehicle used for the transportation of pupils without complying with the provisions of this section shall for such failure be subject to removal from office, and any person owning or operating a school bus or other vehicle used for the transportation of pupils as set forth in this section and failing to comply with its provisions shall be deemed guilty of a misdemeanor.

History.—§803, ch. 19355, 1939; CGL 1940 Supp. 892(262), 8115(15); §60, ch. 29764, 1955; (2), (3) §4, ch. 59-339; (2), (3) §9, ch. 61-288; (1)-(3) §16, ch. 63-376.
cf.—§775.07, Punishment for misdemeanor.

234.04 Traffic to stop for school bus.—

(1) Any person using, operating or driving a motor vehicle upon or over the roads or highways of this state, upon approaching any school bus used in transporting school pupils to or from school which is properly identified by being painted a uniform color as approved by the state board of education, with the words "school bus" on the front and back in black letters at least four inches high, while such bus is stopped upon the roads or highways of this state, is required to bring such motor vehicle to a full stop before passing such school bus. If a stop signal which meets standard requirements prescribed by the state board shall be displayed from the bus, said signal shall be due warning to the driver of any approaching vehicle that children may be on the highway and such vehicle shall not pass the school bus until the signal has been withdrawn.

(2) The driver of a vehicle upon a divided highway where the one-way roadways are separated by an intervening unpaved space of at least five feet or physical barrier need not stop upon meeting or passing a school bus which is on a different roadway.

(3) Any person failing to comply with the requirements of this section, or violating any of the provisions hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $300 or by imprisonment in the county jail not to exceed 90 days.

History.—§804, ch. 19355, 1939; CGL 1940 Supp. 892(263), 8115(16); §9, ch. 29754, 1955; §1, ch. 59-218.
cf.—§775.06, Alternative punishment.

234.041 School buses; unlawful to simulate color or use secondhand buses without effecting certain changes.—

(1) It shall be unlawful for any person to use on the public highways of the state any bus of an orange or yellow color, known as school bus chrome, or any color purporting to resemble the color of a school bus for the transportation of passengers other than school pupils.

(2) It shall be unlawful for any person to use on the public highways of the state any bus of an orange or yellow color, known as school bus chrome, or any color purporting to resemble the color of a school bus when said vehicle has ceased to be so used, unless and until said bus has been changed from said colors to some other color by repainting, and unless and until all signs and insignia which mark or designate it as a school bus have been removed therefrom.

(3) Any person violating any provision hereof shall be deemed guilty of a misdemeanor.

History.—§§1-3, ch. 57-280; (1), (2) §5, ch. 61-459.

234.05 Physical examination of bus drivers.—Each county board shall designate a physician or physicians to examine and report the physical condition of bus drivers and driver applicants in accordance with regulations of the state board and procedure prescribed by the state superintendent.

History.—§805, ch. 19355, 1939; CGL 1940 Supp. 892(264).

234.06 Definition of transportation equipment.—"Transportation equipment" is defined as any vehicle or conveyance used for transportation of pupils when the cost of rent, lease, purchase, maintenance, or operation of said vehicle or conveyance is defrayed in whole or in part from public school funds.

History.—§806, ch. 19355, 1939; CGL 1940 Supp. 892(265); §61, ch. 29764, 1955.

234.07 General requirements for equipment.—All transportation equipment shall be of such construction as to provide for safe, comfortable, and economical transportation of passengers. Equipment which is used to transport

nine or more public school pupils at one time shall be constructed, maintained, and operated in accordance with all requirements of law and regulations of the state board relating to school buses.

History.—§807, ch. 19355, 1939; CGL 1940 Supp. 892(266).

234.08 **School buses.**—School buses shall be defined as set forth below and shall meet specifications as follows:

(1) DEFINITION.—For the purpose of the school code, a school bus is defined as a motor vehicle regularly used for the transportation of pupils of the public schools to and from school or to and from school activities, and owned, operated, rented, or leased by any county board, excepting motor vehicles of the type commonly called pleasure cars and carrying eight pupils or less; and excepting motor vehicles subject to and meeting all requirements of the state railroad commission and operated by carriers operating under the jurisdiction of the state railroad commission but not used exclusively for the transportation of public school pupils.

(2) SPECIFICATIONS.—Each school bus with a total seating space of more than fifteen lineal feet which is rented, leased, purchased, or contracted for purchase, and each and every school bus with a total seating space of more than fifteen lineal feet, shall meet the following requirements:

(a) All structural parts of the school bus body, including sides, top, frame, braces, and any section or member in which structural strength is necessary, shall be of steel or metal that is equivalent to steel.

(b) All windshield, window, and door glass shall be of shatterproof construction.

(c) The front, rear, and sides of the bus shall be painted a uniform color as approved by the state board of education.

(d) Each school bus shall be properly designated as such in black letters in accordance with requirements prescribed by the state board.

(e) Each school bus shall be equipped with adequate brakes, horn, lights, and such other equipment as may be required by regulations of the state board, all of which shall be maintained in good operating condition.

(f) Each school bus shall meet with such additional specifications and standards which are in accordance with law and which, upon recommendation of the state superintendent, are prescribed by the state board as essential for the safe, comfortable, and economical transportation of pupils.

History.—§808, ch. 19355, 1939; CGL 1940 Supp. 892(267); (2) §10, ch. 29754, 1955.

234.081 **School buses flashing signals.**—

(1) On and after July 1, 1963, every new school bus and on or before July 1, 1964, every school bus in service shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted laterally as high as practicable, which shall be capable of displaying on the traffic side to the front two alternately flashing lights, one red and one amber, located at the same level, and on the traffic side to the rear two alternately flashing lights, one red and one amber, at the same level, and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight. Each such light shall be a minimum of five and one fourth inches in diameter with a black background of one and one fourth inches to three inches wide with a minimum hood of two and one half inches, and such light shall meet or exceed the standards of the society of automotive engineers of New York.

(2) The state board of education after diligent studies may alter specifications of flashing lights to comply with the national school bus standards; provided that when changes are made, they shall be applicable to all school buses in service.

History.—§1, ch. 63-8.

234.09 **Withdrawal from use of buses not meeting requirements.**—The county superintendent shall notify the county board of any school bus owned, leased, rented, or operated by the county board which does not meet all requirements of law and regulations of the state board, and the county board shall, if such school bus is in an unsafe condition, withdraw it from use as a school bus until the bus meets said requirements. The state superintendent may inspect or have inspected any school bus to determine whether the bus meets requirements of law and regulations of the state board. The state superintendent may, after due notice to a county board that any school bus does not meet certain requirements of law and regulations of the state board, rule that such bus shall be withdrawn from use as a school bus, this ruling to be effective forthwith or upon a date to be specified therein, whereupon the county board which owns, leases, rents, or operates said bus shall withdraw same from use as a school bus until the bus meets requirements of law and regulations of the state board and until the state superintendent has officially revoked his said ruling.

History.—§809, ch. 19355, 1939; CGL 1940 Supp. 892(268).

234.10 **Designation of routes.**—Each county board, after considering recommendations from the county superintendent and suggestions which may have been submitted by the trustees, shall specifically designate the route to be traveled regularly by each school bus, and each route shall meet the following requirements:

(1) Each route shall be planned and adjusted to the capacity of the bus, and insofar as is practicable the normal capacity of each bus shall be used.

(2) Each route shall serve regularly only pupils whose homes are beyond a reasonable walking distance to the nearest appropriate school.

(3) Routes served by school buses as designated by county school boards shall be restricted to those areas where road conditions,

capacity of bridges and number of pupils to be served makes such service economically feasible and practicable. School bus service shall be established only after considering such other methods of providing educational opportunities as are authorized by law and regulations of the state board.

(4) A route shall not be extended for the purposes of accommodating pupils whose homes are within reasonable walking distance of a shorter or more economical route which is available to serve the pupils.

(5) District lines shall not interfere with the routing of any school bus.

(6) Where it is practicable to extend a school bus route to serve any territory which lies in more than one county so that pupils living in the extended area to be served by the bus may have improved educational facilities, county boards of the respective counties shall cooperate and make such mutual plans and agreements as necessary to make these improved facilities available to the pupils. Pupils shall not be transported at public expense from one county to or from the schools of another county, unless a valid agreement exists between the respective county boards. This agreement shall state the responsibility of each county board for operation of the bus and maintenance of the daily schedule. Whenever a bus crosses a county line, all rules and regulations of the county in which it is traveling shall be observed, unless otherwise provided in the agreement between the county boards.

History.—§810, ch. 19355, 1939; CGL 1940 Supp. 892(269); §63, ch. 29764, 1955; §17, ch. 63-376.

234.11 Zoning.—Each county board, after considering recommendations from the county superintendent, shall designate, by map or otherwise, nontransportation zones, which shall be composed of all areas in the county from which it is unnecessary or impracticable to furnish transportation. Nontransportation zones shall be designated annually prior to the opening of school and prior to the designation of bus routes for the succeeding school year.

History.—§811, ch. 19355, 1939; CGL 1940 Supp. 892(270).

234.12 Highway hazards.—County superintendents with the assistance of school principals, teachers, and bus drivers, shall report, or cause to be reported, those hazards on or near public sidewalks, streets, and highways which endanger the life or threaten the health or safety of pupils who walk or are transported regularly between their homes and the school in which they are enrolled, said reports to be submitted promptly in writing to the mayor or manager of the city or to the board of county commissioners, respectively, according to location of the hazard reported, and, until such hazards are corrected, the county superintendent shall take or cause to be taken such precautions as are necessary to safeguard pupils who are transported at public expense.

History.—§812, ch. 19355, 1939; CGL 1940 Supp. 892(271).

234.13 Municipal and county officials to investigate and report on hazards.—Upon receipt of information from the county superintendent concerning sidewalk, street, or highway hazards which threaten the safety of pupils, the board of county commissioners, or the municipal official having proper authority, shall investigate, or cause to be investigated, the place or situation reported, and with reasonable diligence and promptness shall take such steps as are practicable to correct the hazard reported or shall report to the county superintendent that it is impracticable to make corrections necessary to overcome the reported hazards.

History.—§813, ch. 19355, 1939; CGL 1940 Supp. 892(272).

234.14 General qualifications.—Each school bus driver shall:

(1) Be of good moral character, of good vision and hearing, able-bodied, free from communicable disease, mentally alert, sufficiently strong physically to handle the bus with ease and to make emergency repairs, and not a user of alcoholic beverages or narcotics, and shall possess such other qualifications as shall be prescribed by the state board, and

(2) Hold a school bus driver's license which is current and valid; provided, that persons less than twenty-one years of age, and who are seventeen years of age or more, shall be eligible for a chauffeur's license to drive a school bus when otherwise qualified, and shall be eligible to drive a school bus for transporting pupils to and from school or school functions when and only after the state board has adopted rules and regulations authorizing such persons to drive and governing the conditions under which they may be permitted to drive school buses; provided, further, that for the duration of a war emergency, persons who are between sixteen and seventeen years of age and who are otherwise qualified shall be eligible for an emergency chauffeur's license to drive a school bus for transporting pupils to and from school and school functions, but such emergency chauffeur's license shall be issued and used only after the state board of education has adopted rules and regulations authorizing such persons to drive and governing the conditions under which they may be permitted to drive school buses.

History.—§814, ch. 19355, 1939; CGL 1940 Supp. 892(273); §3, ch. 21989, 1943; (2) §64, ch. 29764, 1955.

cf.—§231.33 School bus driver's license.
§322.01(4) School bus defined.

234.15 Annual physical examination.—Each driver or applicant shall, not more than three months prior to employment each school year, pass a physical examination in accordance with procedure prescribed by the state superintendent, except that in emergency a driver may be employed upon condition that during the first two weeks of employment he shall pass said physical examination. A re-examination may be required by the county superintendent or the county board at any time.

History.—§815, ch. 19355, 1939; CGL 1940 Supp. 892(274).

234.16 Licensing requirements.—The state

superintendent shall designate such uniform procedures and prescribe such forms as are necessary to license each school bus driver who is duly qualified in accordance with law and regulation of the state board and shall issue said license when the prescribed procedure has been fulfilled and recorded on the prescribed forms and the following specific requirements have been met:

(1) APPLICANT.—Each applicant for a license to drive a school bus shall:

(a) Submit a written application on a form prescribed by the state superintendent, such form to include provision for information as to age, sex, race, criminal record if any, experience as driver of vehicles, and experience in school bus driving;

(b) Be examined by a physician designated by the county board as prescribed in §234.15;

(c) If required by state board regulations, pay a fee as prescribed by said regulations to cover cost of licensing.

(2) PHYSICIAN. — A physician, designated by the county board to examine bus driver applicants, shall report, on a form prescribed by the state superintendent, information concerning the physical condition of applicant, and shall certify that the applicant, at a time not more than three months prior to the date when the license becomes effective, is physically fit for the responsibilities of a school bus driver.

(3) COUNTY SUPERINTENDENT.—The county superintendent, not more than three months prior to the date when the license becomes effective, shall certify on a form prescribed by the state superintendent that the applicant fulfills all requirements for a school bus driver.

History.—§816, ch. 19355, 1939; CGL 1940 Supp. 892(275); (1) (c) §10, ch. 61-288.
cf.—§231.33 School bus drivers license, for distribution of fees.

234.17 Extension of license.—A valid school bus driver's license may be extended by the state superintendent for a period not to exceed two years; provided, (1) duly prescribed procedure has been observed by the driver and valid records and reports therein show the driver has continued to meet qualifications and requirements established by law and regulations of the state board; (2) the person to whom the extension is granted served as a school bus driver at least four school months during the school year preceding the extension; (3) the extension is recommended by the county board of the county in which the driver served during the year preceding the extension, said recommendation to be based on merit as a qualified and successful driver and issued not more than three months prior to the date when the license extension becomes effective.

History.—§817, ch. 19355, 1939; CGL 1940 Supp. 892(276).
cf.—§322.01 et seq. Drivers' licenses.

234.18 Revocation of license. — The state board, upon recommendation of the state superintendent, shall invalidate and revoke any bus driver's license upon sufficient evidence that the holder of the license does not fulfill all qualifications required by law and regulation of the state board for a school bus driver.

History.—§818, ch. 19355, 1939; CGL 1940 Supp. 892(277).

234.19 Posting of license.—Each school bus driver shall at all times keep his license to drive a school bus conspicuously posted in the bus he is driving.

History.—§819, ch. 19355, 1939; CGL 1940 Supp. 892(278).

234.20 School officials not to drive. — No school board member or school district trustee shall be a contractor for transporting school children or shall be a school bus driver in the county in which he holds office.

History.—§820, ch. 19355, 1939; CGL 1940 Supp. 892(279).

234.21 Responsibility of school bus drivers. —Each school bus driver shall keep such records and make such reports and shall perform such duties as are required by law or by regulations of the state board or the county board.

History.—§821, ch. 19355, 1939; CGL 1940 Supp. 892(280).

234.22 Maintenance of equipment. — All equipment maintained or operated from public school funds shall be in safe operating condition. Each county board shall designate and adopt a specific plan for adequate examination, maintenance, and repair of transportation equipment. Examination of the mechanical condition of each school bus shall be made by a capable mechanic at least once each month that the bus is in operation.

History.—§822, ch. 19355, 1939; CGL 1940 Supp. 892(281).

234.23 Report forms and procedure.—Each county board shall prescribe such forms and reporting procedure on the part of school bus drivers, school principals, and transportation supervisors as are necessary to supplement forms and procedure prescribed by the state board and state superintendent (1) to obtain an adequate accounting of transportation costs; (2) to determine adequate information concerning need for transportation; (3) to determine observance of law and regulations of the state board relating to transportation; (4) to properly map and designate all transportation routes and nontransportation zones. Each county board shall require to be kept records prescribed by the state board concerning transportation and shall submit such reports and maps to the state superintendent concerning transportation as are authorized by law or prescribed by the state board.

History.—§823, ch. 19355, 1939; CGL 1940 Supp. 892(282).

234.24 School buses to observe rules of the road.—Each school bus shall be operated in conformity with all rules of the road duly established by law and shall observe traffic requirements for the route over which it travels.

History.—§824, ch. 19355, 1939; CGL 1940 Supp. 892(283).

234.25 School buses to stop at crossings.—Each school bus shall be brought to a full stop before crossing any railroad track and before entering or crossing any arterial highway or dangerous thoroughfare and shall not proceed until the driver has clearly observed that it is safe to proceed.

History.—§825, ch. 19355, 1939; CGL 1940 Supp. 892(284).

CHAPTER 235

THE SCHOOL PLANT

235.01 Purpose.—The purpose of this chapter is to authorize state, county, and district school officials to cooperate in establishing and maintaining school plants that will meet public school needs throughout the state in promoting the health, comfort, and the moral and intellectual development of school children.

History.—§901, ch. 19355, 1939; CGL 1940 Supp. 892(285).

235.02 Use of school buildings and grounds.—Subject to law, the trustees of any district may provide for or permit the use of school buildings and grounds within the district, out of school hours during the school term, or during vacation, for any legal assembly, or as community play centers, or may permit the same to be used as voting places in any primary, regular, or special election. The county board shall adopt rules and regulations necessary to protect school plants when used for such purposes, and shall provide for the use of school property other than that under the supervision of trustees.

History.—§902, ch. 19355, 1939; CGL 1940 Supp. 892(286).

235.03 Persons using school property.—Any person making use of the school property for any such purposes shall see that the buildings and grounds are left in as good condition as existed before, and, in case of failure upon the part of all such persons to do this or to pay for any damage to the property, the ordinary wear and tear excepted, all further applications for the use of the property by such person shall be refused.

History.—§903, ch. 19355, 1939; CGL 1940 Supp. 892(287).

235.04 Disposal of school property.—The county board may dispose of any school land or property which is by a resolution of such county board determined to be unsuited for school purposes either because of location, condition, or other cause. The county board shall take diligent measures to dispose of school property only on the most advantageous terms by public or private sale. If, in the opinion of the county board, said school land or property to be disposed of is worth over five hundred dollars, then said county board shall have such property appraised by three qualified appraisers acting as a body and shall not accept a price less than the appraised value placed on such land or property by said appraisers; provided, that where trade-ins are involved in the replacement of worn-out equipment the dealers' bids, after at least three have been requested in accordance with law, would constitute a legal appraisal. The official minutes of the school board shall set forth the name of the purchaser, the sale price, and, if the same is over five hundred dollars, the appraised value, and the identity of the three appraisers in each such transaction.

Each deed conveying any school land under the provisions of this law shall have a certificate attached thereto signed by the county superintendent of public instruction of such county that all the provisions of this law have been complied with. Such certificate shall be proof of the validity of such deeds.

History.—§904, ch. 19355, 1939; CGL 1940 Supp. 892(288); §1, ch. 29797, 1955; §14, ch. 57-249.
cf.—§229.08 Control of school lands by state board.

235.05 Right of eminent domain.—There is

conferred upon the county board in each of the several counties in the state the authority and right to take private property for any public school purpose or use when, in the opinion of the county board, such property is needed in the operation of any or all of the public schools within the county, including property needed for any school purpose or use in any school district or districts within the county. The absolute fee simple title to all property so taken and acquired shall vest in the county board of such county unless the county board seeks to appropriate a particular right or estate in such property.

History.—§905, ch. 19355, 1939; CGL 1940 Supp. 892(289).

235.06 When school property condemned.—Any school building or any other part of any school plant or any premises found at any time to be in an unsafe or insanitary condition shall be condemned and prohibited from further use for school purposes until the objectionable conditions are removed or remedied. School property may be condemned in the following manner:

(1) CONDEMNATION BY COUNTY BOARD. — The county board may condemn school property, or if there is any doubt about the condition of any school building, the county board may request the county superintendent to have an inspection made by (a) the state department of education, (b) an architect or an engineer licensed to practice in Florida, (c) the state or local board of health if a sanitary condition is involved, or (d) local fire authorities. If any such inspection results in a recommendation for condemnation, the county board shall condemn and withdraw such school property from further school use until the condition resulting in condemnation has been corrected.

(2) CONDEMNATION BY STATE DEPARTMENT OR STATE BOARD OF HEALTH.—An inspection of any school property may be made by the state department or by the state board of health, either of which may order the property to be withdrawn from school use until undesirable conditions are corrected; provided, that the state board of health shall notify the state superintendent of any such action taken by it.

History.—§906, ch. 19355, 1939; CGL 1940 Supp. 892(290).

235.07 Insuring school property.—The county board shall keep all school buildings of every school plant insured against loss or damage by fire except those of three classrooms or less which are of frame construction and located in a tenth class public protection zone as defined by the Florida inspection and rating bureau. School property in the county may be insured in such amount and with such kinds of insurance as will give proper protection; provided, that it shall be the duty of each county board to arrange insurance on a five-year plan.

History.—§907, ch. 19355, 1939; CGL 1940 Supp. 892(291); §2, ch. 22839, 1945; §65, ch. 29764, 1955; §5, ch. 59-339.

235.08 Burning public school property. — Whoever willfully sets fire to or burns or causes to be burned or whoever aids, counsels, or procures the burning of any public school property shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years, or by fine of not exceeding one thousand dollars.

History.—§908, ch. 19355, 1939; CGL 1940 Supp. 8115(17).
cf.—§775.06 Alternative punishment.
§806.01 et seq. Arson.

235.09 Obscenity on school buildings or buses.—Whoever willfully cuts, paints, pastes, marks, or defaces by writing or in any other manner, any school building, furniture, apparatus, appliance, outbuilding, ground, fence, tree, post, school bus or other school property with obscene word, image, or device shall be punished by imprisonment in the county jail for a period not exceeding fifteen days, or by fine of not exceeding one hundred dollars. This section shall not apply to any pupil in and subject to the discipline of the school.

History.—§909, ch. 19355, 1939; CGL 1940 Supp. 8115(18); §66, ch. 29764, 1955.
cf.—§775.06 Alternative punishment.
§847.01 Punishment for distributing obscene literature.

235.10 Barbed wire prohibited.—No barbed wire shall be used in the construction of fences enclosing the grounds of any public school playground unless the lowest strand is six feet above grade level. Any person who shall violate any provision of this section shall be punished by imprisonment in the county jail for a period not exceeding fifteen days or by a fine of not exceeding one hundred dollars.

History.—§910, ch. 19355, 1939; CGL 1940 Supp. 892(292), 8115(19); §7, ch. 22858, 1945.
cf.—§775.06 Alternative punishment.

235.11 Cleaning and disinfecting buildings.—The county superintendent shall, not less than five days prior to the opening of any regular school year, have all buildings used for public school purposes thoroughly cleaned. Should any contagious or infectious disease be in the community or among the school children, the county superintendent shall, as long as the disease is prevalent in the community and the school building or buildings are being used, have any such school building regularly disinfected at such times and in such manner as may be prescribed by the county health officer, or, if there be no county health officer, by a physician, designated by the county board, who is licensed to practice in Florida.

History.—§911, ch. 19355, 1939; CGL 1940 Supp. 892(293).

235.12 Care and maintenance of school property. — All school buildings, toilets, and school property shall at all times be kept in clean and sanitary condition. The county board, in accordance with the provisions of §§230.34-230.43, shall see that proper provision is made for efficient care and maintenance of all school property.

History.—§912, ch. 19355, 1939; CGL 1940 Supp. 892(294).

235.13 Fire precaution. — A principal or teacher in charge of a school shall see that all teachers, janitors, and any and all school employees under his direction take proper pre-

cautions in handling or storing of waste papers, kerosene lamps, oiled dusting cloths, and any and all inflammable articles, and to endeavor to see that pupils exercise all necessary precautions. All closets, cabinets, attics, basements, storage spaces, and any places within or under the building where supplies are kept or where waste paper or other materials may accumulate shall be regularly checked by the principal and county superintendent and any improper conditions shall be remedied.

History.—§913, ch. 19355, 1939; CGL 1940 Supp. 892(295).

235.14 Fire drills.—The state superintendent shall formulate and prescribe regulations and instructions for fire drills for all the public schools of the state, and each principal or teacher in charge of each such school shall be provided with a copy of such regulations and instructions; and each such person shall see that fire drills for his school are held at least twice each semester and that all teachers and pupils of the school are properly instructed regarding such regulations and instructions.

History.—§914, ch. 19355, 1939; CGL 1940 Supp. 892(296). cf.—§231.09 Instructional personnel to hold fire drills.

235.15 Survey required.—As soon as practicable, unless a school survey has been made in the county within the past ten years, each county board shall arrange for a survey of the county school system to aid in formulating a long-time program for the schools of the county. The report based on the survey shall show the location and condition of all school buildings, the location of pupils and the transportation routes, the places where schools for the various grades should be maintained temporarily or permanently, and shall include such other information as may be required under regulations of the state board. The county board may request assistance from the state department in carrying on the survey or may utilize such other agency as may be approved under regulations of the state board. A copy of each such survey report with accompanying maps shall be filed with the state superintendent.

History.—§915, ch. 19355, 1939; CGL 1940 Supp. 892(297).

235.16 School plant program based on survey.—The county board of any county in which a survey has been made, as provided in this chapter, shall, within six months after the completion of the survey, adopt and submit to the state superintendent a proposed school plant program for the schools of that county. This school plant program of the county shall, insofar as practicable, be based upon the findings and recommendations of the survey report. The program shall take into consideration the school needs of the entire county. From time to time, as conditions and needs change, the program may be amended by resolutions adopted by the county board, provided copies of the resolutions with supporting evidence are filed with the state superintendent. The state superintendent shall cause a study to be made of the proposed program, or amendments thereto, for each county and shall submit to the county board his recommendations for improvements in the program.

History.—§916, ch. 19355, 1939; CGL 1940 Supp. 892(298).

235.18 Annual capital outlay program and budget.—Each county board shall, on or before the first day of July of each year, adopt a proposed capital outlay program and budget for the ensuing year in order that the capital outlay needs of the county school system for the entire year may be well understood and, insofar as possible, provisions made for same. This capital outlay program and budget shall be a part of the annual school budget and shall be based upon and in harmony with the long-range school plant program previously filed with the state superintendent. This program shall designate and locate the capital outlay projects for the year, including the new buildings, the alterations and additions to be made, and the consolidations to be effected, and no public school fund shall be expended on any such project not included in the budget as amended to date. If approved by the state superintendent, the program, as amended during the year with his approval, shall be executed as provided by law supplemented by rules and regulations of the state board.

History.—§918, ch. 19355, 1939; CGL 1940 Supp. 892(300); §67, ch. 29764, 1955.

235.19 Sites adapted to needs.—Before acquiring property for school sites, the county board of any county shall determine the location of proposed elementary, junior, and senior high school centers for the county. The county board shall also authorize the county superintendent to make a careful study to determine the school needs which should be met in any particular situation and to determine the most economical and practicable location for the school site so that the maximum number of children can walk to school and so that school buses can be routed most efficiently for the remainder of the children. In preparing recommendations regarding proposed school sites, the county superintendent may secure the services of representatives of the state department or such other assistance as he may find desirable to aid in making a proper selection.

History.—§919, ch. 19355, 1939; CGL 1940 Supp. 892(301); §68, ch. 29764, 1955.

235.20 Site must be adequate.—Each new site selected shall be adequate in size to meet the needs of the school to be served. As far as practicable, any present sites which are not adequate shall be increased to conform to minimum standards for new sites. Each school site shall contain a minimum of two acres for a one-teacher school. At least one acre shall be added to this minimum size of the site for each fifty pupils enrolled in the school after the first fifty pupils and until the enrollment reaches five hundred pupils; provided, that this requirement may be waived in the discretion of the state superintendent under regulations of the state board when any county board

files evidence showing that a school site of that size is impracticable in any given situation.

History.—§920, ch. 19355, 1939; CGL 1940 Supp. 892(302).

235.21 Other minimum standards to be met.—It shall be the responsibility of the county superintendent to recommend to the county board for purchase and of the county board to purchase school sites in accordance with the provisions of chapter 230 which meet standards prescribed below and such supplementary standards as may be prescribed by the state board to promote the educational interests of the children. Each site shall be well drained, reasonably free from mud, and the soil shall be adapted to landscaping as well as to playground purposes. Insofar as practicable, the school site shall not adjoin a right of way of any railway or of any through highway and shall not be adjacent to any factory or other property from which noise, odors, or other disturbances would be likely to interfere with the school program.

History.—§921, ch. 19355, 1939; CGL 1940 Supp. 892(303).

235.23 Sites to be improved.—It shall be the responsibility of the county board to see that each school site is arranged to provide adequate play areas, is attractively landscaped, and is maintained in such a manner that it is both useful and attractive.

History.—§923, ch. 19355, 1939; CGL 1940 Supp. 892(305).

235.24 New buildings must meet minimum standards.—Any building constructed for public school purposes in any county in this state shall meet all minimum standards prescribed by law or by rules and regulations of the state board of education, and, in addition, all minimum standards prescribed jointly by the state board of education and the state board of health as herein provided. It shall be the responsibility of the state board of education and of the state board of health to prescribe jointly necessary minimum standards relating to the sanitation of school buildings and the protection of public health as affected by the school plant.

History.—§924, ch. 19355, 1939; CGL 1940 Supp. 892(310); §69, ch. 29764, 1955.

235.25 Approval of plans required.—As a means of insuring that all school buildings constructed or materially altered or added to, hereafter conform to the minimum standards prescribed by law and by regulations of the state board, each county board which undertakes the construction, alteration of, or the addition to any school building, the cost of which exceeds fifteen hundred dollars, shall see that plans and specifications for the proposed construction are submitted to the state superintendent for analysis and recommendation. No public school funds may legally be expended for the construction or alteration of or the addition to any school building in any county in this state unless the provisions of this section are observed and until the county board of the county has received in writing a statement from the state superintendent that the plans and specifications for the proposed construction have been approved as hereinafter provided.

History.—§925, ch. 19355, 1939; CGL 1940 Supp. 892(311); §70, ch. 29764, §11, ch. 29754, 1955.

235.26 Minimum standards for school building construction.—No county superintendent shall recommend tentative approval, and no county board shall tentatively approve any plans for construction of any school building in the county, unless the following minimum requirements and any supplementary regulations of the state board of education and any regulations concerning the sanitation of schools jointly prescribed by the state board of education and the state board of health in conformity with the school code have been fully complied with. Furthermore, it shall be the responsibility of the architect concerned in proposing and preparing plans for the construction or alteration of or the addition to any such school building to see that these standards are observed. The state superintendent shall not approve any plans that fail to meet these minimum standards except as modifications of these standards are authorized under regulations of the state board.

(1) EXPANSIBILITY. — Each building shall be so planned that enlargements and additions can readily be made without unnecessary cost and without interfering with the natural light and ventilation of any of the rooms.

(2) ORIENTATION.—Any orientation of classrooms is acceptable provided provisions for control of light and glare are acceptable to the state superintendent.

(3) HEIGHT OF BUILDINGS. — No school building of frame construction or which has masonry walls, but otherwise has ordinary or joint construction and wood finish, shall be more than one story high. No school building constructed with fire-resistive corridors and stairways and with masonry walls, but with ordinary construction otherwise—that is, with combustible floors, roof, and finish—shall be constructed which is more than two stories in height.

(4) ENTRANCES AND EXITS.—There shall be as few steps as possible leading to entrances or exits of any school building. If steps are necessary, they shall be arranged in a straight run, or if a change in direction is necessary such change shall be provided by means of a platform at least the width of the stairs. All entrances shall be kept free from outside obstructions. There shall preferably be separate outside entrances to all rooms which are commonly used for community purposes. All exit doors shall be hung so as to swing outward and shall be provided with hardware that will permit opening by pressure from the inside at all times. No exit door shall open immediately upon a flight of stairs unless a landing of at least the width of the door is provided between such stairs and the door.

(5) CORRIDORS.—Corridors shall meet the following standards:

(a) *Construction.*—Corridors in buildings with two or more stories shall be of fireproof or fire-resistive construction.

(b) *Width.*—The minimum clear passageway of main corridors of any school building of four class rooms or more shall be not less than eight feet. The minimum clear passageway of secondary corridors shall vary with the length of such corridors and the number of class rooms leading to them, but such secondary corridors shall be not less than six feet in width. Each end of each corridor shall terminate on an egress or stairway, excepting that pockets not to exceed the length of one standard class room may be planned when conditions require.

(c) *Lighting.*—Corridors shall be well lighted by outside windows where practicable. Illumination of an intensity of at least three foot candles shall be provided by artificial lighting if the natural lighting is not sufficient to provide this amount of illumination on a clear day.

(6) STAIRS. — Stairways shall be arranged as follows:

(a) *Construction.*—All stairways from story to story shall be of fireproof or of fire-resistive construction.

(b) *Runs.*—Each main stairway from story to story shall be constructed in two straight runs, with not more than fourteen nor less than three risers to the run. Between the runs there shall be an intermediate platform or landing of at least the same clear width as the stairway. Risers to main stairways shall be uniform in height and shall not exceed seven inches, and treads excluding nosings shall be not less than ten inches in width.

(c) *Number.*—Every school building of two or more stories shall be provided with at least two main stairways, remote from each other; the number of stairways shall be determined by the exit formula of the national board of fire underwriters as found from time to time in their current building exits code. No stairway for pupil use may be constructed with winders, irrespective of whether stairways constitute required means of egress. No door shall open immediately upon a stairway and no door near a stairway shall swing across or into the required line of travel of such stairway. No closet or storage space may be placed under or over any stairway.

(d) *Ramps.*—To overcome any difference in floor levels which would require less than three risers, gradients shall be employed of not over one inch in twelve-inch run. Floors at all exits shall be so designed as to be level and flush with the adjacent floors.

(e) *Lighting.*—All stairways shall be provided with adequate natural lighting of not less than four foot candles over the entire area and in addition, so far as possible, shall be provided with artificial illumination of not less than four foot candles over the entire area.

(f) *Handrails.*—Stairways must be provided with a substantial handrail to each side of stairs throughout the entire length of stairway. Stairways shall be not less than forty-four inches from balustrade to balustrade or wall. If the width is greater than five feet, six inches, an intermediate handrail shall be provided. The same width shall be maintained throughout the entire length of the stairway.

(7) BASEMENT.—Insofar as practicable, buildings shall be constructed so that basement rooms are not necessary and only when special permission is granted by the state superintendent shall instructional rooms be placed in basements. Basement rooms designed as class rooms, laboratories, toilets, or for any purposes other than for heating plant or fuel room shall be at least twelve feet in height and shall in no case be more than two feet below the finished grade on the side where most of the natural light is received. The flooring used in any instructional rooms shall be of a type that will not subject pupils to cold and dampness.

(8) HEATING SYSTEM.—The provisions for heating shall be as follows:

(a) *Central heating.*—All school buildings containing ten class rooms or more shall be provided with a central heating system, or the equivalent as defined by regulations of the state board; provided, that the state superintendent may, subject to regulations of the state board, authorize exceptions to this provision for schools which are south of the twenty-seventh parallel of latitude.

(b) *Room for central heating plant.*—The room in which any central heating plant is housed and any fuel room for such heating plant shall be constructed of fire-resistive materials for walls, ceiling, and floors and shall be provided with an outside entrance. If there is inside connection with the building, it shall be provided with a self-closing fire door approved by the national fire underwriters association. Provision shall be made for easy removal of ashes from the heating plant by means of the outside entrance to the room or by an ash hoist.

(c) *Jacketed heaters.*—In all buildings not provided with a central heating plant and in those south of the twenty-seventh parallel of latitude for which exceptions are not granted under regulations of the state board, each class room shall be equipped with a ventilating jacketed heater or the equivalent as defined by regulation of the state board.

(9) VENTILATION.—The following provisions shall be made for ventilation:

(a) *Cross ventilation.*—Where mechanical ventilation is not provided, every school room used by students shall be provided with means of cross ventilation.

(b) *Windows.*—When windows are used for ventilation, they shall be of such design that at least fifty per cent of their area may be opened at one time.

(c) *Deflectors.*—When windows are used as the method of ventilation, two or more windows shall be provided with deflectors to protect pupils from currents of cold air.

(10) NATURAL LIGHTING. — The following provisions shall be made for natural lighting:

(a) *Admission of light.*—All instructional rooms shall provide for the admission of light from the left or, in special cases, from the left and rear of pupils unless exceptions are authorized under state board regulations

(b) *Glass area.*—The total net glass area in each instructional room north of the twenty-seventh parallel of latitude shall be not less than eighteen per cent of the total floor area, and not less than fifteen per cent south of that parallel. If trees, buildings, or other obstructions are located near the proposed buildings, the direct light from the sky shall be unobstructed above a line drawn from the window sill of windows on the first floor forming an angle with the horizon of forty-five degrees.

(c) *Wall space.*—At least four feet of wall space shall be provided between the front window and the front wall of any class room.

(11) ARTIFICIAL LIGHTING. — Artificial lighting shall be provided whenever practicable and when provided shall meet the following requirements: provided that where public power is available, the auditorium, corridors, and exits of any building shall be equipped for lighting.

(a) *Wiring.*—All wiring and other electrical work installed in any building shall be in accordance with regulations of the national board of fire underwriters and, in addition, shall meet all requirements of the southeastern underwriters association and of any other state or local official agencies.

(b) *Outlets.*—Class rooms wired for artificial lighting shall contain not less than four outlets, and the illumination on each desk shall be not less than ten foot candles.

(12) CLASS ROOMS.—

(a) *Width.*—The width of any standard class room used for instructional purposes shall be not more than twice the distance from the floor to the top of the window glass in the room. Other instructional rooms may vary from this ratio only when adequate artificial lighting has been provided.

(b) *Height.*—The ceiling of each class room shall be not less than twelve feet above the floor.

(c) *Mullions.*—Mullions shall be so arranged that the distance between glass in adjoining windows shall not exceed twenty inches.

(13) DOORS.—

(a) *Doors of school houses to swing outward.*—All the outer doors of any public school building shall be so hung that when they are opened, they will swing to the outside.

(b) *Door hardware.*—All class room doors, laboratory doors, library doors, pupil wardrobe doors, or doors to all spaces accommodating pupils shall be provided with hardware which can not be locked against pupils who are in such spaces.

(c) *Sizes.*—All doors to classrooms or instructional spaces shall be not less than three feet wide by six feet eight inches high.

(14) LIBRARY.—In every school building where elementary or high school, or combination elementary and high school, subjects are taught, there shall be provision for minimum library facilities to meet regulations that may from time to time be adopted by the state board.

(15) OTHER INSTRUCTIONAL ROOMS. —Provision shall be made for such other instructional rooms as are necessary to meet the needs of the educational program of the school.

(16) AUDITORIUM. — No auditorium which is arranged to accommodate more than five hundred persons shall be above the main floor of any building which is not of fire-resistive construction.

(17) OFFICE SPACE. — Any building having more than four class rooms shall be provided with office space for the principal.

(18) TOILETS AND LAVATORIES.—Each school plant shall be provided with a sufficient number of suitable water closets, earth closets, or privies adequately screened and ventilated, urinals, lavatories, and other conveniences as may be prescribed jointly by regulations of the state board of education and the state board of health for the use of the pupils attending school therein. No toilets for both sexes shall be constructed in a detached building under the same roof unless the plans for and location of the same have been approved by the state superintendent, and, in such case, they shall be constructed with a solid partition made of brick, stone, cement, concrete, or by a double wooden partition with at least six inches air-spaces between the two walls of such partition, so as to effectively separate the water closets designated for the use of boys from those designated for the use of girls.

(19) WATER SUPPLY. — Each school plant shall be provided with pure drinking water. Unless the water comes from a city or other community supply which is regularly tested, water provided for the school plant shall be tested at least twice each year and the source of supply shall be condemned at any time the water is found to be unsafe for drinking purposes. Facilities for washing shall be provided at each school building.

(20) FIRE PROTECTION.—In the construction and maintenance of any new school building and in the maintenance of any existing school building, special attention shall be given to protection and safeguards from fire hazards.

(a) *Fire escapes.*—Any and all school buildings two or more stories in height which do not have fireproof or fire-resistive stairways and corridors and adequate exits and in which the greatest elevation of the floor of any story used or occupied by pupils is ten or more feet above the ground at any accessible door, window, or suitable place of exit from that floor, shall be provided with at least one adequate and easily accessible fire escape for each two hundred and fifty pupils enrolled in the

school. Each such fire escape shall be constructed of fire-resistive material securely erected on the outside of the building and kept free from obstruction at all times: and shall meet all regulations prescribed by the national board of fire underwriters as supplemented by regulations of the governmental unit in which the building is located and by regulations of the state board. Any such building not properly equipped with fire escapes as prescribed herein shall be condemned and prohibited from further use for school purposes until so equipped.

(b) *Fire extinguishers.* — Any school plant not protected by the services of a public fire department must be provided with chemical fire extinguishers approved by the national board of fire underwriters and the number required per school plant shall be sufficient to obtain credit in fire rate. Fire extinguishers shall be prominently exposed to view and always accessible. The principal of each school shall see that each extinguisher is annually recharged and annually at the first teachers' meeting shall have the operation of an extinguisher demonstrated for the benefit of the teachers.

(c) *Fire alarms.*—There shall be placed in a hall or corridor of each school plant an alarm consisting of a bell or gong arranged or equipped so as to be sounded from at least one convenient station or place upon each floor and of sufficient size and volume of tone to be distinctly heard in each room when sounded. In the absence of such alarm, there shall be placed in each room an alarm consisting of a bell or gong of sufficient volume to be heard throughout the room where placed, all of which alarms shall be arranged or equipped so as to be sounded simultaneously from the same station or place. At least one of such stations or places shall be conveniently located in a hall or corridor upon each floor. Fire alarms shall be installed in accordance with regulations of the national board of fire underwriters.

History.—§926, ch. 19355, 1939; CGL 1940 Supp. 892(312); (2), (13) (c), (18), (22), (23) r. §12, ch. 29754, 1955, remaining subsection renumbered; (20) §10, ch. 59-371.

235.27 Approval required.—Before the contract has been let for the construction of any school building, the county board shall require the county superintendent to submit to the state superintendent two copies of each of the following as hereinafter prescribed: (a) preliminary drawings and proposals, (b) complete working drawings, and (c) specifications. The county board shall not proceed with the construction of any such proposed project until the approval of the state superintendent is received as prescribed below; provided, that the approval of the state superintendent shall include the desirability and needs for the new building, the educational and functional planning, the location on the site, the type of construction, sanitary provisions, conformity to minimum standards, and such other pertinent factors that should be considered in the educational planning of the school building. The approval of the state superintendent shall not include responsibility for the structural design or for the strength of materials proposed to be used or for the mechanical design and efficiency of any heating, plumbing, ventilating, or electrical system.

History.—§927, ch. 19355, 1939; CGL 1940 Supp. 892(313).

235.28 Preliminary drawings and proposals. —The preliminary drawings and proposals shall show the location of the site, the proposed location of the building on the site, the general arrangement of floor plans, front elevation, the educational program to be accommodated, and such other information as shall be prescribed under regulations of the state board. After examining or having examined these drawings and proposals, the state superintendent shall submit his recommendations to the county board, shall call attention to any laws or standards which are not observed, shall require changes to be made to provide for proper observance of these, and shall submit such recommendations as, in his opinion, should have the consideration of the county board. The county board shall then require such changes to be made as are necessary to make the proposals conform to law and minimum standards, and shall decide whether each of the recommendations submitted by the state superintendent shall be followed.

History.—§928, ch. 19355, 1939; CGL 1940 Supp. 892(314).

235.29 Complete working drawings and specifications. — Complete working drawings and specifications shall not be prepared in final form for any building until the county board has received the approval or recommendations of the state superintendent on the preliminary drawings as prescribed above. The county board shall then provide the state superintendent with two complete copies of working drawings and specifications showing all details and describing fully all construction materials, finish, and other pertinent matters. These are to be examined by the state superintendent to determine whether all laws or prescribed standards are observed and to determine what recommendations are pertinent in order to approve the proposed building or specifications.

Before giving final approval to such plans, the state superintendent, shall, when he has any doubt as to whether any regulations prescribed jointly by the state board of education and the state board of health are complied with, request written approval by the state health officer or the sanitary engineer of the state board of health of the plans and specifications regarding water supply to be used, plumbing, disposal of sewage and waste, and any other matters relating to sanitation. One copy of the final plans and specifications shall then be returned to the county board with the recommendations or approval of the state superintendent. The county board shall then require such changes as are necessary to make the drawings and specifications conform to requirements of law and of prescribed mini-

mum standards and such of the recommendations from the state superintendent as are approved by the county board shall be incorporated in the working drawings and specifications. Thereafter, no changes shall be made except minor changes, which are not in conflict with requirements and minimum standards without the approval of the state superintendent.

History.—§929, ch. 19355, 1939; CGL 1940 Supp. 892(815).

235.30 Supervision and inspection.—Before the construction or alteration of, or addition to, any building has been started, the county board shall provide for the proper supervision and necessary inspection of the work.

History.—§930, ch. 19355, 1939; CGL 1940 Supp. 892(316).

235.31 Advertising and awarding contracts for building or improvements.—As soon as practicable after any bond issue has been voted upon and authorized or funds have been made available for the construction, repair, alteration, or otherwise for the improvement of any school building; and after plans for the work have been approved by the state superintendent, the county board, after advertising the same in the manner prescribed by law, shall award the contract for such building or improvements to the lowest responsible bidder therefor; provided, that the county board may within its discretion reject any and all bids received if it deems the same expedient, and may readvertise, calling for new bids. For a project costing twenty thousand dollars or less, the county board may arrange for the building to be erected on a day labor basis. The provisions of this section shall be retroactive to July 1, 1956.

(1) As an option to the provisions prescribed above, county boards of public instruction may elect to come under the auspices of regulations for the prequalification of bidders on school construction as shall be prescribed by the state board of education. The state superintendent of public instruction after consulting with a technical committee including representatives from recognized contractors' associations shall recommend to the state board of education the regulations for statewide application governing the prequalification of bidders on school construction projects. Except as otherwise provided herein the procedure for the adoption of such regulations by said state board shall be as prescribed in existing law.

If any county board elects the above option, it shall publish for at least thirty days a notice of the board's intent to elect said option in a local newspaper having general circulation throughout said county after which a public hearing shall be held.

The county board of public instruction shall adopt such policies, procedures and practices as are necessary to implement the state board regulations with regard to the prequalification of bidders. The county superintendent shall submit a copy of the policies, procedures and practices as are to be adopted by the county board to the state superintendent and these shall be approved by him.

The state superintendent shall assure that a maximum degree of uniformity in requirements, procedures and practices are followed by those counties choosing to come under this option. Neither the county board shall adopt nor the state superintendent shall approve any procedure or requirement for the prequalification or the certification of contractors which may operate to restrict responsible competition to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the county wherein the work is to be performed. Such regulations shall operate only to limit competition to parties able to promptly perform the conditions of the contract and to respond in damages in case of default.

(2) The county board shall require all applicants to furnish the county superintendent of public instruction a statement under oath on such forms as the county board may prescribe, setting forth detailed information with respect to competence, past performance record, experience, financial resources and capability in conformity with state board regulations, together with such other information as the county board may deem necessary. The state board regulations may require that said application be accompanied by a current financial statement prepared by a public accountant certified in the state and prepared in accordance with standard reporting requirements prescribed by the said board. Financial information as may be required by such regulations shall remain confidential and shall not be disclosed to anyone except members of a local school board and its staff who may elect to adopt such regulations as hereinafter provided.

(3) Any person or firm desiring to bid for the performance of any contract which the county board proposes to let must first be certified by the county board of public instruction as qualified pursuant to law and regulations of the state board. The county board shall be required to act upon the application for qualification within thirty days after the same is presented. Upon receipt of such application the county superintendent acting on behalf of said board shall cause the same to be examined and the statements therein to be verified and after obtaining whatever technical assistance is needed shall determine whether the applicant shall be recommended for certification to the county board. If the applicant is found to possess the prescribed qualifications, the county superintendent shall recommend to the county board that a certificate of qualification be issued. The county board acting on the recommendation of the county superintendent may issue a certificate of qualification valid for such period of time as it shall prescribe but not to exceed one year, provided the county board may revoke such certificate of qualification for cause.

(4) The certificate of qualification shall

contain a statement fixing the actual amount of work, in terms of estimated cost, which the applicant will be permitted to have on contract with the board and not completed at any one time, and may contain a statement limiting such bidder to the submission of bids upon a certain class of work. Subject to the foregoing restrictions, the certificate of qualification shall authorize the holder to bid on all work on which bids are taken by the county board during the period of time therein specified.

(5) Any applicant for a certificate of qualification aggrieved by the action of the county board, may, within ten days after receiving notification of such action, request in writing a reconsideration by the board, of his application, and may submit additional evidence bearing on his qualifications. The board shall thereupon reconsider the application, and may adhere to, modify or reverse its original action. The board shall act upon any request for reconsideration within thirty days after the filing thereof, and shall immediately notify the applicant of the action taken.

(6) No contractor shall be qualified to bid when an investigation by the county superintendent acting for the county board discloses that such contractor is delinquent on a previously awarded contract by said board, and in such case his certificate of qualification may be suspended or revoked by the county board.

The board may suspend, for a specified period of time, or revoke for good cause any certificate of qualification.

Any person or firm found delinquent on a contract or whose certificate is revoked or suspended shall be given the same benefit of appeal and reconsideration as provided in the case of an applicant refused an original certificate.

(7) All general laws, population acts or special or local acts authorizing the exercise of power in conflict with the provisions of this section are hereby repealed.

History.—§931, ch. 19355, 1939; CGL 1940 Supp. 892(317). §§1, 2, ch. 57-396; §§1, 2, ch. 63-500.

235.32 Substance of contract; contractors to give bond; penalties.—Upon accepting a satisfactory bid, the county board shall enter into a contract with the party or parties whose bid has been accepted, and such contract shall contain the drawings and specifications of the work to be done or the material to be furnished, the time limit in which the construction is to be completed, the time and method by which payments are to be made upon said contract and the penalty to be paid by the contractor for any failure to comply with the terms of said contract. The contractor shall furnish the county board with a performance bond, issued by a surety company licensed to do business in Florida, for one hundred per cent of the contract price. The contractor shall also furnish a payment bond in accordance with §255.05 as a guaranty against the involvement of the county board in actions to obtain payment for materials, supplies or labor used directly or indirectly by contractor or subcontractors. Any and all persons, firms or corporations who shall construct any part of any school building or addition thereto on the basis of any unapproved plans or in violation of any plans approved in accordance with the provisions of this chapter and regulations of the state board relating to school building standards or specifications shall be subject to forfeiture of his bond and unpaid compensation in an amount sufficient to reimburse the county board for any costs which will need to be incurred in making any changes necessary to assure that all requirements are met, and shall also be guilty of a misdemeanor and upon conviction of any such violation shall be subject to a fine of not more than two hundred dollars or imprisonment in the county jail for not to exceed ninety days, or both, in the discretion of the court for each and every such separate violation. The contractor shall also comply with the requirements of §215.19 relating to the rate of payment for wages of laborers, mechanics and apprentices.

History.—§932, ch. 19355, 1939; CGL 1940 Supp. 892(318); §4, ch. 21989, 1943; §13, ch. 29754, 1955.

235.321 Changes in construction requirements after award of contract.—After the award of a construction contract no changes may be made other than those which result from conditions which were not foreseen at the time of the award of contract. Where any one change increases or decreases the scope of the original contract, the proposal to change shall be supported by accurate cost data, establishing the fair and current market value of the labor, materials, equipment and/or incidentals required to accomplish the change plus or minus a reasonable margin to represent the contractor's profit and overhead. Cost data shall be in sufficient detail as will enable any qualified architect and/or engineer to confirm the accuracy of such proposal. Before the board shall act on the proposal to change the contract, the accuracy of the supporting cost data shall be certified to the board by the architect or engineer in charge of the work, who shall also certify that in his considered professional opinion, the prices quoted are both fair and reasonable and in proper ratio to the cost of the original work contracted for under benefit of competitive bidding.

Except as hereinafter provided no change or changes shall be effected, the total of which involves costs in excess of (1) two thousand five hundred dollars or two and one-half per cent, whichever is the greater, of the contract cost of projects costing one hundred thousand dollars or less; (2) two thousand five hundred dollars plus two per cent of the excess of one hundred thousand dollars of projects costing between one hundred thousand dollars and two hundred thousand dollars; (3) four thousand five hundred dollars plus one and one-half per cent of the excess of two hundred thousand dollars of projects costing between two hundred thousand dollars and five hundred thousand dollars; (4) nine thousand dollars plus one per cent of the excess of five hundred thou-

sand dollars for all projects costing more than five hundred thousand dollars.

For the purpose of computing the limiting value of the change orders, all component parts of all change orders must be cumulatively totaled as though each item were a positive sum.

Where the cost of changes exceeds the maximum allowable as provided herein, the approval of the state board of education shall be required for the scope of the changes involved.

History.—§14, ch. 29754, 1955.

235.33 Payments.—At no time while a building is in the process of construction shall the county board authorize or make payments to the contractor in excess of ninety per cent of the amount due on the contract on the basis of the work completed and materials suitably stored on the site. The final payment shall not be made until the building has been inspected by the architect or other person designated for that purpose and until he has issued a written certificate that the building has been constructed in accordance with the approved plans and specifications and approved change orders and until the county board, acting on these recommendations, has accepted the building. After acceptance by the local board, a duplicate copy of this written certificate, duly certified as having been accepted by the local board, shall be filed with the state superintendent.

History.—§933, ch. 19355, 1939; CGL 1940 Supp. 892(319); §1, ch. 28207, 1953; §15, ch. 29754, 1955; §6, ch. 59-339.

235.34 Street, sidewalk, sanitary improvements; school plants, facilities of other state agencies; expenditures authorized.—

(1) It is hereby declared that the placing of sidewalks, the making of street improvements, sidewalk improvements, sanitary improvements and like special benefits are proper and necessary parts of school plants when such improvements are furnished to or in connection with such plants and that they are proper and necessary facilities for other state boards or agencies whenever they are lawfully constructed so as to bring such benefits within the provisions of laws governing special benefits in this state; that in the case of school plants and facilities such improvements are necessary for the safety and health of the students and others using such school plants and facilities.

(2) The county boards of public instruction of the state and other boards and agencies of the state which have the handling and disposition of public moneys derived through the collection of taxes, be, and each of them is hereby authorized, from the funds in their hands or control, and coming into their hands and control, to expend such portion thereof as may be necessary for the purpose of paying off and discharging lawfully imposed encumbrances upon school properties, or properties of other state agencies or boards, which encumbrances have been lawfully imposed thereon for special or local assessments for street improvements, sidewalk improvements, sanitary improvements and like special benefits.

History.—§§1, 2, ch. 28266, 1953.

cf.—§192.08 Exemption of state property from taxes.
§192.27 Taxes against state properties.
§153.05 Water system improvements and sanitary sewers; special assessments.

235.35 Acquisition of lands for use in farm demonstration work.—The county boards of public instruction of the several counties of this state may acquire by purchase, lease, or gift suitable lands for use in farm demonstration work in connection with any school in the county; provided, any tract so acquired shall not exceed forty acres in area for each school and shall be located convenient and accessible to the school in connection with which it is to be used.

History.—§1, ch. 7916, 1919; CGL 510.
Note.—Formerly §242.14.

235.36 County commissioners may improve roads and sidewalks.—The boards of county commissioners of the state may pave and maintain any road, byway, or sidewalk, adjacent to, or running through, the property belonging to any school district or other public free school of any county in the state, where the material and equipment is available for such paving, or maintenance; and it is declared that such paving, or maintenance, of such roads, byways or sidewalks, is a public county purpose; provided, that such action upon the part of the boards of county commissioners is not required by this section to be mandatory but discretionary.

History.—§1, ch. 19194, 1939; CGL 1940 Supp. 892(306).
Note.—Formerly §242.10.

235.37 County commissioners may beautify school sites.—The boards of county commissioners of the several counties of the state may plant and maintain trees, flowers, shrubbery, or other beautifying plants upon the school grounds of any school district, or other public free schools, in said counties where the plants, materials, etc., are available, and the planting and maintenance of such trees, flowers, shrubbery, or other beautifying plants are declared to be public county purposes.

History.—§2, ch. 19194, 1939; CGL 1940 Supp. 892(307).
Note.—Formerly §242.11.

235.38 County boards and county commissioners may effect agreements.—The boards of county commissioners, and the boards of public instruction of the several counties of the state may enter into and carry out such contracts, or agreements as may be made between them with reference to the above mentioned county public purposes described in §§235.36 and 235.37.

History.—§3, ch. 19194, 1939; CGL 1940 Supp. 892(308).
Note.—Formerly §242.12.

235.39 County boards to cooperate.—It is the legislative intent that county school boards and boards of county commissioners shall cooperate and do all things necessary in carrying out the purposes of §§235.36-235.38, to the end that the grounds of the public free schools

shall be of greater utility and more beautiful surroundings.

History.—§71, ch. 29764, 1955.
Note.—Formerly §242.13.

235.40 Radio and television facilities.—The county boards of public instruction of the several counties of this state may acquire by purchase, permanent easement, or gift, suitable lands and other facilities either within or without the boundaries of the county or counties for use in providing educational radio or television transmitting sites and may erect such buildings, antennas, transmission equipment and towers or other structures as are necessary to accomplish the purposes of this section.

History.—§3, ch. 63-221.

CHAPTER 236

FINANCE AND TAXATION; SCHOOLS

236.01 State minimum foundation program fund.—There is hereby established, as a part of the county school fund authorized by §9 of Art. XII of the constitution of the state, a state minimum foundation program fund for schools, to be known as "The Foundation Program Fund," which shall be used to assist county boards in maintaining the minimum

foundation program for all schools in the county as prescribed by law and in otherwise providing substantially equal public educational opportunities. This fund shall comprise all appropriations made by the legislature to the credit of the foundation program fund and shall be apportioned and distributed to the county school fund of the several counties of the state based upon the principles of classification and procedures declared by law. The minimum foundation program is the school program to be financed in each county with the assistance of the foundation program fund as hereinafter provided.

History.—§1001, ch. 19355, 1939; CGL 1940 Supp. 892(320); §26, ch. 23726, 1947.

236.02 Requirements for participation in foundation program fund.—Each county which participates in the foundation program fund, as hereinafter prescribed, shall provide evidence of its effort to maintain an adequate school program throughout the county and shall meet at least the following requirements:

(1) ACCOUNTS AND REPORTS.—Maintain adequate and accurate records including a system of internal accounts for individual schools, and file with the state superintendent in correct and proper form on or before the date due as fixed by law or regulation, and before receiving any apportionment, each annual or periodic report which is required by regulations of the state board.

(2) MINIMUM TERM.—Operate all schools for a term of at least nine months (one hundred eighty actual teaching days) each school year; provided, that the state board may prescribe procedures for altering and, upon written application, may alter this requirement during a national or local emergency as it may apply to an individual school or schools in any county or counties, and thereupon the apportionment shall be reduced for said county or counties in proportion to the decrease in the length of term in any such school or schools.

(3) EMPLOYMENT POLICIES FOR INSTRUCTIONAL PERSONNEL. — Notify in writing all instructional personnel concerning reemployment by the times prescribed by law; provide written continuing contracts for all personnel entitled to such contracts as prescribed by law; provide each other member of the instructional staff, at least one month before schools begin, or before assuming his position if he is not employed until after that date, with a written contract providing for the payment of a definite salary as prescribed by law; require twelve calendar months of service for such principals and other special instructional personnel as prescribed by regulations of the state board, and ten months to include not less than one hundred and ninety-six days of service, excluding Saturdays and holidays, for all other members of the instructional staff, any such service on a twelve-months basis to include reasonable allowance for vacation or further study as prescribed by the county board in accordance with regulations of the state board, and pay all instructional personnel according to a schedule adopted by the county board to include:

(a) Personnel employed for twelve months shall be paid in twelve equal installments.

(b) In the event the county board adopts a ten-payment schedule for personnel employed for ten months, one-tenth of the total annual salary shall be paid by the close of each calendar month of service.

(c) In the event that the county board adopts a twelve-payment schedule for personnel employed for ten months, one-twelfth of the annual salary shall be paid by the close of each calendar month of service for the first ten months, and the remaining two monthly installments shall be paid in equal amounts at the end of each of the said two months; provided, that the balance remaining unpaid thereon shall, upon demand of the person entitled thereto, become due and shall be payable at the end of the fiscal year of the county board.

(d) No salary payment shall be due or made until the end of the first month's period of service.

(4) SUPERVISORS.—Employ for the full calendar year a qualified supervisor or supervisors of instruction for the schools of the county in accordance with the provisions of law and regulations of the state board; provided, that no supervisor may be assigned work or responsibilities other than for supervision of instruction.

(5) CLASS LOAD.—Comply with the requirements of law and regulations of the state board prescribing minimum and maximum classroom teaching loads.

(6) SALARY SCHEDULE. — Expend funds for instructional salaries in accordance with a salary schedule or schedules adopted by the county board in accordance with the provisions of law and regulations of the state board.

(a) Such schedule or schedules shall make provision for the following:

1. A minimum annual salary of four thousand dollars for each member of the instructional staff to whom a continuing contract has been issued; and

2. Additional yearly increments to each such member under continuing contract, in recognition of experience and professional growth, assuring a minimum annual salary of five thousand dollars, commencing with the eleventh year of efficient teaching service in the public school system of this state, and including the services set forth in §238.01(4).

(b) In addition to factors of training and experience the county school board may adopt additional factors as incentives for the determination and recognition of superior teaching and service in the program of instruction.

(c) The state board may authorize the adoption by any county board of plans under which the yearly increments and minimum salaries prescribed in paragraph (a) may be withheld in special cases when such are found not to be warranted; and in case of special hardship the state board may exempt a county

or counties from the said minimum salary requirements if after full investigation it is found that such county or counties are financially unable to meet such requirements in any school year, but any such exemption shall not extend beyond the particular year authorized and in no event may exemption be authorized for more than two successive years.

(7) BUDGETS.—Observe fully at all times all requirements of law relating to the preparation, adoption and execution of budgets for the county school system.

(8) MINIMUM FINANCIAL EFFORT REQUIRED.—Make the minimum financial effort required for the support of the minimum foundation program as prescribed by law.

(9) COUNTY BOARD.—Nominate and elect by countywide vote from county board member residence districts, a five member county board which serves as a policy-determining body and which after July 1, 1951, shall receive only the compensation authorized by general law.

(10) ONE COUNTYWIDE DISTRICT.—By July 1, 1948, either eliminate all special tax school districts or consolidate all school districts in the county into one countywide district.

History.—§1002, ch. 19355, 1939; CGL Supp. 892(321); §27, ch. 23726, 1947; §3, ch. 25363, 1949; (3) §10, ch. 26484, 1951; (3) §27, ch. 29754, 1955; (6) §1, ch. 57-297; (6)(b) §7, ch. 59-339; (6) §4, ch. 61-263; (6)(a), (b) §1, ch. 63-401; (6)(b) §2, ch. 63-463.

236.021 Competence awards, repealer.—This section was repealed by §1, ch. 63-463 subject to the provision that teachers who qualified in the 1962-63 school fiscal year under the provisions of this law for competence awards payable in the 1963-64 school fiscal year and who continue teaching service in the public school system of the county shall receive such awards.

History.—§1, ch. 61-263; r. §1, ch. 63-463.

236.03 State superintendent to determine units.—The state superintendent shall determine from reports submitted as prescribed by regulations of the state board by county superintendents, principals of schools and presidents of junior colleges the average daily attendance of students, the instructional personnel employed, the area served by public school transportation and the number of pupils transported in grades one through twelve, inclusive, in the public schools of each county in Florida, and also in the kindergartens, and in the junior colleges in counties which meet the requirements of law for instruction for such groups. On the basis of said reports, the state superintendent shall calculate the number of instruction and transportation units in each county as hereinafter prescribed. The state board shall determine by regulation the basis for classifying small schools and special classes or courses for the purpose of computing instruction units. If, for any reason beyond the control of the county board of any county, the ratio between the total average daily attendance and the total average daily membership of students in the entire county for the year is below the ratio for the highest two of the preceding four years in that county, the state superintendent shall, in accordance with regulations prescribed by the state board, use the average ratio between the average daily attendance and the average daily membership in that county for the highest two of the preceding four years as the basis for calculating the total number of instruction units for instructional personnel for the county. The county superintendent in each county of the state shall be required to submit to the state superintendent of public instruction, not later than December 1 of each school year, a report of the average daily attendance for each school for the first two months of the current school year. If in any county the average daily attendance of all pupils in the county for the first two months of any school year is more than five per cent greater than the average daily attendance in the county during the first two months of the preceding school year, the state superintendent shall report the facts to the state board, which shall have authority to authorize an increase in the amount of funds allocated from the foundation program fund for that county by the percentage of increase which is in excess of five per cent.

History.—§1003, ch. 19355, 1939; CGL 1940 Supp. 892(322); §7, ch. 20970, 1941; §28, ch. 23726, 1947; §4, ch. 25363, 1949; §1, ch. 28017, 1953; §72, ch. 29764, 1955; §8, ch. 57-252; §3, ch. 63-495.

cf.—§229.17 State superintendent to apportion school funds.

236.031 Minimum foundation fund increase; allocation to county boards.—

(1) The increase in minimum foundation program fund as authorized by the state board of education pursuant to §236.03, shall be allocated and paid to the county boards of public instruction under regulations of the state board of education to the extent that funds are available for this purpose.

(2) Upon receipt of the funds distributed to a county under the provisions of §236.03, the county board may amend the annual school budget to reflect such increase.

(3) Provided that nothing contained in this section shall be considered as increasing the appropriations for the minimum foundation program fund as established by the legislature.

History.—§1, ch. 57-190.

236.04 Procedure for determining number of instruction units.—The number of instruction units for instructional personnel for elementary, junior and senior or four year high schools in each county, and for kindergartens in counties which meet the requirements of law for instruction for such groups, shall be determined from the average daily attendance in the public schools of the county for the preceding year and from reports on instructional personnel for the ensuing year in the manner prescribed below, provided the attendance of students may not be counted more than once in determining instruction units.

(1) UNITS FOR ISOLATED ELEMENTARY, JUNIOR, AND SENIOR OR FOUR-YEAR HIGH SCHOOLS.—An elementary, junior, senior, or four year high school with fewer than one hundred twenty pupils in average daily attendance during the preceding year shall be classified as isolated for purposes of computing instruction units when it has the characteristics

of isolated schools prescribed by the state board based on size, school population density, surrounding road conditions and distance from another school of the same type. Instruction units shall be computed for such isolated schools as follows:

(a) For each isolated one-teacher school: one unit.

(b) For the attendance in all isolated schools in the county, other than one-teacher schools, having an average daily attendance of fewer than sixty pupils: one unit for each seventeen pupils or major fraction thereof.

(c) For the attendance in all isolated schools in the county having an average daily attendance of sixty or more pupils but fewer than ninety pupils: one unit for each twenty pupils or major fraction thereof.

(d) For the attendance in all isolated schools in the county having an average daily attendance of ninety or more pupils but fewer than one hundred twenty pupils: one unit for each twenty-two pupils or major fraction thereof.

(2) UNITS FOR OTHER ELEMENTARY, JUNIOR, SENIOR, OR FOUR-YEAR HIGH SCHOOLS.—Instruction units shall be computed as prescribed below for all other elementary, junior, senior or four-year high schools:

(a) For the attendance in all schools in the county having an average daily attendance of one hundred and twenty or more pupils but fewer than two hundred pupils: one unit for each twenty-five pupils or major fraction thereof.

(b) For the attendance in all schools in the county having an average daily attendance of two hundred or more pupils but fewer than three hundred pupils: one unit for each twenty-six pupils or major fraction thereof.

(c) For the attendance in all schools in the county having an average daily attendance of three hundred or more pupils and for the attendance in all non-isolated schools in the county having fewer than one hundred and twenty pupils in average daily attendance: one unit for each twenty-seven pupils or major fraction thereof, except that not more than one unit shall be allowed for any one-teacher school.

(d) The state board of education is authorized to approve selected schools to operate an extended school term beyond the required one hundred eighty days of instruction and to authorize the state superintendent to compute a proportionate increase in instruction units based on average daily attendance in such approved schools pursuant to regulations adopted by the state board. Provided, however, every such school shall, during the extended term herein authorized, conduct an academic instructional program of the same or greater quality and intensity as that conducted during the required one hundred eighty days of instruction.

(3) UNITS FOR KINDERGARTENS.—Instruction units for kindergarten pupils in counties qualifying under law and regulations of the state board for such services shall be computed by allowing one such unit for each twenty-five pupils or major fraction thereof in average daily attendance in kindergartens in the county when teachers are employed on a full-time basis. The state board shall have authority to authorize one unit for each class of twenty or more pupils in isolated centers where fewer than twenty-five pupils of kindergarten age are available. When kindergartens are being organized in any county the state board shall have authority to authorize during any year one unit for each class of twenty or more pupils proposed by the county board to be organized in any new center in the county. If at any school the kindergarten and one or more elementary grades are taught by one teacher, instruction units shall be computed on the basis of all kindergarten and elementary pupils in attendance in schools of such classification.

(4) UNITS FOR EXCEPTIONAL CHILDREN.—Instruction units for exceptional children and youth for counties meeting requirements prescribed by §236.61, for the education of exceptional children and youth, shall be computed as follows:

(a) For each group of ten or more exceptional children to be taught by a properly qualified full time teacher as a special class, or taught individually as home-bound or hospitalized children unable to attend school for the major portion of a year; one instruction unit shall be allowed. The minimum number of pupils required for such unit may be reduced to not less than five, as authorized by regulations of the state board, for special situations where the instruction of a larger number would not be feasible or practicable. One-fifth of a unit may be authorized for each exceptional child taught in communities where fewer than five exceptional children are in need of special instruction as determined by the county board in accordance with the provisions of law.

(b) For each properly qualified member of the instructional staff devoting full time to the instruction or improvement of exceptional children from regular classes as prescribed by regulations of the state board: one instruction unit shall be allowed.

(c) For each group of ten or more exceptional children between three and five years of age who need special instruction for entrance into special classes or schools because of deafness or other similar handicaps, as prescribed by regulations of the state board, and for the instruction of which a full time qualified teacher is to be employed: one instruction unit shall be allowed.

(5) UNITS FOR VOCATIONAL EDUCATION.—Instruction units for vocational education shall be computed as follows for all students regardless of age in the schools of each county.

(a) For each qualified full time vocational teacher employed to teach courses approved under regulations of the state board, provided the average daily attendance in the classes taught by such teacher is not less than fifty per

cent (or such higher per cent for any type of school or work as may be prescribed by the state board) of the average daily attendance used for calculating the number of instruction units other than for vocational teachers in schools of such classification: one instruction unit shall be allowed.

(b) For each additional qualified vocational teacher employed to teach evening, part-time, or short-unit classes for less than a full school day or a full school year, and approved under regulations of the state board, provided the average daily attendance in any such class is not less than ten: a proportionate fraction of an instruction unit shall be allowed, the method of computing such fractional units to be prescribed by the state board.

(c) For each additional qualified vocational teacher employed to teach approved classes when the average daily attendance is less than the minimum prescribed under (a) and (b) above: a proportionate part of an instruction unit shall be allowed if and as authorized by regulations of the state board.

(6) UNITS FOR ADULT EDUCATION.—For classes or courses in adult education other than vocational education: one instruction unit shall be allowed for each additional qualified teacher employed for a full-time load, or the equivalent, as prescribed by regulations of the state board, provided the minimum class size for a full instruction unit shall be not less than fifteen students in average daily attendance; a proportionate fraction of a unit shall be allowed in accordance with regulations prescribed by the state board:

(a) Where a qualified teacher is employed to teach approved part-time or short-unit classes of less than a full school day or full school year;

(b) Where the average attendance in an approved class or course falls below that prescribed above for a full instruction unit.

(7) UNITS FOR ADMINISTRATIVE AND SPECIAL INSTRUCTIONAL SERVICES.—For each eight instruction units in a county, determined as prescribed in (1) to (6) inclusive of this section: one instruction unit or proportionate fraction of a unit shall be allowed for administrative and special instructional services when used in accordance with regulations prescribed by the state board.

(8) UNITS FOR SUPERVISORS OF INSTRUCTION.—Each county board which employs for the purpose of improving instruction in the county one or more qualified supervisors of instruction and which adopts and carries out a plan for improvement of instruction in the county, in accordance with regulations of the state board shall be entitled to additional instruction units for each supervisor of instruction employed in the county as prescribed below; provided, that any adjacent counties may propose a plan which may be approved in accordance with regulations of the state board for cooperative employment of a supervisor or supervisors of instruction. The number of instruction units for supervisors to which each county is entitled shall be determined as follows:

(a) For the first one hundred instruction units or fraction thereof, one instruction unit shall be allowed for the employment of a general supervisor of instruction.

(b) For each additional one hundred instruction units or fraction thereof, one additional instruction unit shall be allowed for an additional supervisor of instruction if employed; provided, that no county shall be entitled to more than six such additional instruction units for supervisors.

(9) TOTAL INSTRUCTION UNITS.—The total number of instruction units for each county for apportionment purposes shall be determined by adding together the number of instruction units for instructional personnel authorized in subsections (1) through (8) for kindergarten through grades twelve.

(10) INSTRUCTIONAL PERSONNEL PAID FROM MINIMUM FOUNDATION PROGRAM.—

(a) The total number of instructional personnel in any county employed and paid in whole or in part from funds used to support the minimum foundation program at any time shall not be more than five per cent greater than the total number of instruction units for instructional personnel calculated as prescribed above. Not less than ninety-five per cent of instruction units allocated to a county must be filled; provided that if any county board authorizes payments from funds used to support the minimum foundation program to instructional personnel employed in the county in excess of the maximum or less than the minimum as prescribed herein the state superintendent shall forthwith notify the state comptroller of the amount of such discrepancy and an equal amount shall be withheld from each monthly apportionment to said county until full correction has been made.

(b) For the first fiscal year after any county board of public instruction has ceased to operate a federally owned school facility located on federal property the computation of the allocations for the minimum foundation program fund shall include the number of teachers and the salaries paid said teachers who taught in the federally owned school during the preceding school year.

History.—§1004, ch. 19355, 1939; CGL 1940 Supp. 892(323); §§1, 4, ch. 22537, 1945; am. §29, ch. 23726, 1947; (10), §1, ch. 26933, 1951; (2) §1, ch. 28079, 1953; §73, ch. 29764, §§1, chs. 29844 and 29864, 1955; §9, ch. 57-252; (11)(a) §1, ch. 61-317; §1, ch. 63-370, §4, ch. 63-495.

236.05 Procedure for determining number of transportation units for kindergartens through grade twelve and for junior colleges.—The number of transportation units to be allowed each county board for transporting pupils for kindergartens through grade twelve shall be determined as set out in subsections (1) and (2) of this section and for junior colleges operated pursuant to §230.46 as set out in subsection (3) hereof.

(1) UNITS FOR TRANSPORTATION BASED ON NUMBER OF PUPILS TRANSPORTED.—One transportation unit shall be allowed for each eighty pupils in average daily

attendance during the preceding school year who were transported at public expense to public schools in the county approved for transportation under regulations of the state board and whose homes were two or more miles from the nearest appropriate school; provided, that this mileage limitation shall not apply to the transportation of physically handicapped pupils as authorized under regulations of the state board; and provided, further, that in event the county board reports that a school or department is to be discontinued the ensuing year and the pupils of said school or department are to be transported to another school, the instruction units which otherwise would have been allowed for instructional personnel may, for the ensuing year only, upon application of the county board, be allowed as units for transportation. In computing said units a proportionate part of one unit shall be allowed for any remaining number of such transported pupils in average daily attendance less than eighty.

(2) UNITS OF TRANSPORTATION BASED ON AREA.—One transportation unit shall be allowed for each fifty-six land sections of school transportation area computed as follows: Each regular government-survey land section, or the equivalent of such section where not established by government survey, shall be counted which is wholly or partially within one and one-half miles of the regular route of any school bus which has a combined passenger seating capacity in excess of eighteen linear feet, and each additional such land section shall be counted which is traversed by a regular route served by a smaller motor vehicle which transports pupils at public expense; provided, that no section shall be counted twice and no sections shall be added for a side route used to pick up children living within one and one-half miles of the trunk route except as prescribed by regulations of the state board; provided, further, that when authorized by regulations of the state board, a transportation unit shall be allowed for each bus used exclusively for the purpose of transporting ten or more physically handicapped pupils to a public school; and a proportionate fraction of a unit shall be allowed for a vehicle used exclusively for the transportation of a smaller number of exceptional children as prescribed by regulations of the state board; provided, further, that the number of units for transportation based on area allotted for any county shall not be in excess of two and one-half times the number of units allowed that county for transportation based on number of pupils transported; and provided, further, that the state board may prescribe regulations under which uniform adjustments may be authorized whereby one unit may be allowed for a smaller number of land sections which shall not be less than forty-eight in counties having more than thirty per cent of the total school bus route mileage over unpaved or unsurfaced roads. In computing said units, a proportionate part of one unit shall be allowed for any remaining sections of transportation area.

(3) NUMBER OF TRANSPORTATION UNITS FOR JUNIOR COLLEGES.—One transportation unit shall be allowed the county board furnishing the transportation for each thirty pupils in average daily attendance during the preceding school year who are transported at public expense to a junior college and whose homes were more than two miles from the junior college; provided that the mileage limitation shall not apply to transportation of physically handicapped students as authorized under regulations of the state board; provided further that in computing the units for a junior college a proportionate part of one unit shall be allowed for any remaining number of such transported pupils in average daily attendance less than thirty; and provided further that during each of the first two years of the operation of a junior college one transportation unit shall be allowed the county board furnishing the transportation for each thirty pupils in average daily attendance during the first month of each year of operation of the junior college.

History.—§1005, ch. 19355, 1939; CGL 1940 Supp. 892(324); §8, ch. 20970, 1941; §30, ch. 23726, 1947; (1) §15, ch. 57-249; §10, ch. 57-252; §11, ch. 59-371.

236.07 Procedure for determining annual apportionment to each county.—The procedure for determining the apportionment annually to each county from the foundation program fund shall be as follows:

(1) DETERMINING TRAINING RANKS OF INSTRUCTIONAL PERSONNEL. — The state superintendent in accordance with regulations prescribed by the state board, as provided by §231.16, shall determine for each county annually, as of a date prescribed by the state board, the percentage of instructional personnel employed within each of the following classifications, levels of training, and certification.

RANK I. Those under continuing contract and those not under continuing contract as prescribed by §231.36, holding certificates based on earned doctor's degree from a standard institution of higher learning and on such other qualifications as may be prescribed by the state board of education.

RANK II. Those under continuing contract and those not under continuing contract, as prescribed by §231.36, holding certificates based on an earned master's degree from a standard institution of higher learning and on such other qualifications as may be prescribed by the state board of education.

RANK III. Those under continuing contract and those not under continuing contract as prescribed by §231.36, holding certificates based on a four-year college degree from a standard institution of higher learning and on such other qualifications as may be prescribed by the state board of education.

RANK IV. Those holding certificates based on three to three and nine-tenths years of college training.

RANK V. Those holding certificates based on two to two and nine-tenths years of college training.

RANK VI. Those holding certificates based on less than two years of college training.

The rank of any certificate based on qualifications equivalent to a degree established as of October 1, 1953, shall not be affected; provided, that subsequent to October 1, 1953, ranks may be established for the post-graduate and advanced post-graduate certificates issued prior to October 1, 1955, based on programs of teacher education equivalent to the master's degree and the doctor's degree if such programs are approved by the state department of education prior to October 1, 1953; and provided, further, that subsequent to October 1, 1953, ranks for personnel engaged in trade and industrial education and adult education may be established on the basis of qualifications which are equivalent to a degree as prescribed by regulations of the state board of education.

(2) DETERMINING THE TRAINING LEVEL OF INSTRUCTION UNITS.—Multiply the number of instruction units determined for each county according to law by the percentage of instructional personnel in each training rank and classification, as determined in subsection (1) above, and the product for each rank shall be the number of instruction units to which that county is entitled in each rank.

(3) DETERMINING THE AMOUNT TO BE INCLUDED FOR INSTRUCTIONAL SALARIES.—

(a) Multiply the number of instruction units in Rank I by five thousand dollars, in Rank II by four thousand four hundred dollars, in Rank III by three thousand nine hundred fifty dollars, in Rank IV by three thousand dollars and in Rank V by two thousand eight hundred dollars.

(b) For each instruction unit sustained by instructional personnel under continuing contract in Ranks I, II, and III, there shall be added four hundred dollars; and for each instruction unit sustained by instructional personnel under continuing contract in Ranks I, II, and III who have completed ten years of efficient teaching service in Florida public schools as aforesaid there shall be added four hundred dollars in addition to the above; provided, for any county, which by local law a tenure program is provided in lieu of continuing contracts, the state board of education shall by regulations provide for the recognition and application of comparable tenure requirements in lieu of the requirements herein relating to continuing contracts.

(c) The amounts included for salaries for supervisors, administrative and special instructional personnel, and vocational teachers in each county shall be increased by up to twenty per cent when such money is used to pay the salaries of personnel who are employed, pursuant to regulations of the state board, for the two month period, or fractional part thereof, beyond the ten months of employment required in §236.02. Such regulations of the state board shall permit during such two month period, or fractional part thereof, employment of supervisors, administrative and special instruction services personnel, and vocational teachers, and shall likewise also permit use of salaries for administrative and special instruction services personnel for the employment of teachers to teach, during such two month period, or fractional part thereof, academic subjects or preschool orientation classes which such teachers are certified to teach and are regularly engaged in teaching in the county during the preceding or succeeding regular ten month school year. Classes in academic subjects during such two month period, or fractional part thereof, shall be of such minimum size as shall be prescribed by the state board, and may be composed of students taking advance work acceleration purposes, or of students repeating subjects previously taken either for make-up or remedial work, or of both, and such work shall be credited as work taken during the regular school year.

These amounts are to be used only for apportionment purposes and are not to be construed as a state salary schedule. No teacher shall be paid an amount less than ninety per cent of the salary allotment for the rank of such teacher. The sum of these products shall be the total amount included in the minimum foundation program for instructional salaries, which shall not exceed the amount paid as salaries in any case.

(d) Provision for adult education teachers under the minimum foundation program shall be the same as now provided for administrative and special service personnel, supervisors, and vocational education personnel when they are employed on a twelve-months basis.

(e) The state board of education shall promulgate and adopt necessary regulations for the determination of the classification of instructional personnel and instruction units with relation to continuing contracts and continuous efficient teaching service in Florida public schools.

(4) DETERMINING THE AMOUNT TO BE INCLUDED FOR TRANSPORTATION.—Multiply the number of units for transportation determined for each county according to law by one thousand two hundred fifty dollars and the product shall be the amount included in the minimum foundation program for transportation. The state board shall have authority to decrease the value of the transportation unit to not less than one thousand dollars during any year when studies show that transportation costs have decreased sufficiently to justify any proposed decrease in the value of the unit. No county shall be permitted to use foundation program funds to purchase buses, chassis or other transportation equipment at prices which exceed those found by the state department of education to be the lowest which can be obtained, as prescribed in §229.23. Any county which spends or proposes to spend for transportation, exclusive of the amount for purchase of buses, a sum which exceeds one hundred fifteen per cent of the amount included in the minimum foundation program for transportation for that county, shall submit all proposed expenditures for salaries of bus drivers, contract prices for transportation and prices for

purchase of buses and chassis to the state board for review in accordance with standards prescribed by it until such county reduces its annual expenditures for transportation exclusive of the amount spent for purchase of buses and chassis to not more than one hundred fifteen per cent of the amount included in the minimum foundation program for transportation, or provides the state board with evidence satisfactory to it that the cost cannot be further reduced, provided, that if the ratio of the total cost in the several counties of the state for public school transportation, as determined by regulations of the state board of education, to the total amount included in the minimum foundation program for transportation is greater than the one hundred fifteen per cent, then the computed percentage shall be used in that year in lieu of the one hundred fifteen per cent prescribed above.

(5) DETERMINING THE AMOUNT FOR CURRENT EXPENSES OTHER THAN INSTRUCTIONAL SALARIES AND TRANSPORTATION.—Multiply the number of instruction units, determined for each county according to law by three hundred twenty-five dollars and this product shall be the amount included for current expense other than instructional salaries and transportation; provided, that of this product twenty-five dollars per instruction unit shall be specifically designated for the purchase of instructional materials; and provided, further, that the state board shall establish minimum standards to be met by county boards in expending funds for other current expenses.

(6) DETERMINING THE AMOUNT TO BE INCLUDED FOR CAPITAL OUTLAY AND DEBT SERVICE.—The amount included in the minimum foundation program for capital outlay and debt service shall be as determined and provided in Art. XII, §18 of the constitution and state board of education regulations pertaining thereto. Any portion of the fund not needed during any fiscal year may be carried forward in ensuing budgets or temporarily invested as prescribed by law or regulations of the state board of education.

(7) DETERMINING THE TOTAL CALCULATED COST OF THE MINIMUM FOUNDATION PROGRAM.—The total calculated cost of the minimum foundation program in each county shall be the sum of the amounts included in the minimum foundation program for instructional salaries, transportation, current expenses other than instructional salaries and transportation and capital outlay and debt service as set forth above.

*(8) DETERMINING THE MINIMUM FINANCIAL EFFORT IN EACH FISCAL YEAR REQUIRED OF EACH COUNTY FOR THE MINIMUM FOUNDATION PROGRAM.—The amount which each county shall provide toward the cost of the minimum foundation program is that county's per cent of the financial ability of the state as determined by an index of relative taxpaying ability prescribed by law in §236.071, multiplied by twenty-five per cent of the total calculated cost of the minimum foundation program for kindergarten and grades 1 through 12 for all counties for the preceding fiscal year for instructional salaries, transportation, and current expenses other than instructional salaries and transportation, and recalculation funds provided in §§236.03 and 236.031, but exclusive of adjustments for prior years as provided in §236.07(9). Provided, however, that the combined required effort of all counties for grades 1 through 12 shall not increase more than five per cent in any year. The financial effort of any county toward meeting the cost of the minimum foundation program for that county shall consist of the proceeds of either county or district or of both the county and district current school taxes; provided, that when a county is levying the maximum mills permitted by law, race track, federal impact, and national forest funds may be included. If a county requests that instruction units for kindergartens be included in its minimum foundation program and is entitled to such units under the laws of the state, the financial effort required of that county as prescribed herein shall be increased by five per cent.

(9) DETERMINING THE ALLOCATION FROM STATE FUNDS.—The total allocation to each county from the foundation program fund shall be the total calculated cost of the minimum foundation program for that county as determined in subsection (7) above, less the minimum financial effort required of that county as determined in subsection (8) above; provided, however, from this amount shall be deducted in the succeeding fiscal year (a) any amount required to be deducted from the full apportionment for any school or schools that operated less than one hundred eighty teaching days during the preceding year; (b) in such counties as fail to pay instructional personnel at least the amount included in the minimum foundation program for instructional salaries, the difference between the amount included in the minimum foundation program for instructional salaries and the amount actually paid to teachers in such counties; (c) in such counties as fail to pay instructional personnel holding certificates of any rank salaries which total at least as much as the amount included in the minimum foundation program for such personnel, the difference between the amount actually paid and the amount included in the minimum foundation program; (d) any portion of the amount included in the minimum foundation program for capital outlay and debt service which a county board expends in violation of the state board regulations; (e) any unused portion of the amount included in the minimum foundation program for instruction units of any type or classification.

(10) Those teachers holding certificates in Rank III as of April 15, 1951, based on the establishment of ninety or more semester hours of college training and an examination type

of certificate issued prior to October 1, 1939, shall remain in Rank III.

History.—§1007, ch. 19355, 1939; CGL 1940 Supp. 892(326); §31, ch. 23726, 1947; §5, ch. 25363, 1949; (1) §1, ch. 28018, 1953; (3) §1, ch. 28139, 1953; (4), (5) §1, ch. 28178, 1953; (10) n. §1, ch. 28212, 1953; §2, ch. 29844, §§1, chs. 29623, 29698, 29897, §74, ch. 29764, §16, ch. 29754, 1955; (3), (5), (7), (8) §11, ch. 57-252; (1)-(3) §2, ch. 57-297; (3) (c) §1, ch. 59-366; (8) §8, ch. 59-339; (3) (a) §1, ch. 61-251; (3) (c) §6, ch. 61-459; §5A, ch. 61-530; (3) (f) n. §5A, ch. 61-530; (4) §11, ch. 61-288; (3)(a), (b) §1, ch. 63-413; (3)(f) and (5)(b) r., (3)(c), (5), (7), (8) §1, ch. 63-495; (8) §1, ch. 63-529.
cf.—§236.74(6) Junior college local effort.

*Note.—(8) was amended by chs. 63-495 (S. B. 430) and 63-529 (S. B. 314) ch. 495 contains a section which states the intent of the legislature which reads as follows:

Section 8. It is the intent of the legislature that the amendment contained herein to subsection (8) of §236.07, shall be construed as applying solely to exclusion of junior colleges from the provisions of that section and that the provisions of Senate Bill 314 shall prevail in regard to the required local effort for the foundation program for grades kindergarten through 12.

236.071 Foundation program fund; state supervisory service fund; formula for index of taxpaying ability.—

(1) There is hereby appropriated to the state minimum foundation program fund annually from the general revenue fund a sum equivalent to the difference between the total cost of the minimum foundation program for all counties as determined in §236.07(7) and the total financial effort required of the counties toward the cost of the minimum foundation program as determined in §236.07(8), less any deductions required by §236.07(9), that the total amount for the biennium not to exceed the sum biennially appropriated by the legislature. In addition thereto there is hereby appropriated from the general revenue fund annually a sum computed at the rate of five dollars for the total number of instruction units of the state as prescribed in §236.04, which shall be placed in the state supervisory service fund, which is hereby established and shall be used through the state department of education for state supervisory services for the instructional program for county schools as prescribed by regulations of the state board.

(2) The legislature finds and declares that substantially equal public educational advantages should obtain in all counties of the state; that such equality does not now exist. In order to provide in every county, from combined state and county sources, substantially equivalent educational advantages, the state minimum foundation program fund shall be, and it is hereby apportioned and distributed on the basis of educational needs and relative taxpaying ability as prescribed by law, in the ascertainment of which, the state board shall determine (a) the relative ability of the several counties to support the cost of the minimum foundation program by ad valorem taxation, such ability to be determined by an index of relative taxpaying ability established by law; (b) the cost of the minimum foundation program as determined in §236.07. In determining said index of the relative taxpaying ability of the several counties of Florida the state superintendent shall find each county's per cent of the state total of each of the following factors: sales tax returns, gainfully employed workers excluding government and farm workers, value of farm products, assessed value of railroad and telegraph, automobile tag registration. The Index of taxpaying ability for each county expressed in terms of its per cent of the state total taxpaying ability shall be determined as follows: Find the sum of the county's per cent of sales tax returns multiplied by .3654 plus its per cent of gainfully employed workers less government and farm workers multiplied by .2442 plus its per cent of the value of farm products multiplied by .0586 plus its per cent of the railroad and telegraph assessments multiplied by .0461 plus its per cent of automobile tag registrations multiplied by .2857; furthermore, if any county fails for any reason to make the minimum financial effort required for the minimum foundation program, the state's portion of the foundation program allocation to that county shall be decreased proportionately. The state superintendent shall obtain data for the factors included in the index from the most reliable published source as determined by the state board of education.

(3) The state board shall have full power and authority to prescribe rules and regulations necessary to carry out the intent, purpose and policies of the laws relating to the minimum foundation program, and all such rules and regulations shall be held to be prima facie reasonable, just and valid.

History.—§2, ch. 14892, 1931; §2, ch. 17247, 1935; CGL 1936 Supp. 499(2); am. §1, ch. 22518, 1945; §45, ch. 23726, 1947; §6, ch. 25363, 1949; (1), §1, ch. 26872, 1951; (2) §1, ch. 28182, 1953.
Note.—Formerly §242.05.

236.073 Foundation program fund; survey establishing need for facilities.—The need for facilities shall be established by a survey made under the supervision of the state department of education; the facilities recommended by such survey must be approved by the state board of education and the projects must be constructed according to the provisions of §§235.24-235.33, and state board of education regulations.

History.—§2, ch. 29638, 1955.

236.074 County school additional capital outlay trust fund created.—

(1) ADDITIONAL CAPITAL OUTLAY.—In addition to the capital outlay funds provided in Art. XII, §18 of the constitution and §236.07, there is provided hereby additional capital outlay funds in the amounts and upon the conditions hereinafter provided.

(2) AVERAGE DAILY ATTENDANCE.—The term average daily attendance as used in this section means average daily attendance for grades one through twelve.

(3) APPROPRIATION FOR ADDITIONAL CAPITAL OUTLAY.—There is created in the office of the state treasurer a county school additional capital outlay trust fund. There is hereby annually appropriated from the general revenue fund to the county school additional capital outlay trust fund of the several counties maintained in the office of the state treasurer the sum of thirteen million seven hundred

fifty thousand dollars to be distributed at the rate of an amount equal to two hundred dollars multiplied by the number of pupils in average daily attendance for the last completed school year commencing with the school year 1958-1959 which is in excess of the number of pupils in average daily attendance during the next preceding school year as determined by law; provided that the average daily attendance for the next preceding school year shall never be computed for the purposes of this section as less than the average daily attendance for any school year commencing with and subsequent to the 1955-1956 school year; provided further, that any undistributed balance of the appropriation herein made remaining at the end of the first year of the biennium may be carried forward and added to the amount available in the second year of the biennium.

(4) LIMITATIONS ON APPROPRIATION.—The annual appropriation made in subsection (3) of this section is subject to the following limitations:

(a) In order for a county board of public instruction to avail itself of the appropriation in subsection (3) of this section, it must create in its county school fund a separate fund known as the school construction fund, and place in the school construction fund from any source available to such board an amount equal to the amount it seeks to obtain from the appropriation under subsection (3) of this section, provided that no money received from capital outlay funds other than as provided in this section or proceeds from loans against state appropriations for capital outlay shall be included in the school construction fund. The school construction fund so placed in the county school fund shall be used solely for school construction or reconstruction.

(b) If, during the first year of any biennium, the school construction fund of any county school fund does not receive all or any part of the money to which it would be entitled under subsection (4)(c) of this section if the county board of public instruction had placed in the school construction fund the amount required to receive the full amount available under subsection (4)(c) of this section, the money not so received shall remain to the credit of such county in the county school additional capital outlay trust fund in the office of the state treasurer and may be received by the school construction fund of the county school fund of any county in the second year of such biennium by the county board of public instruction complying with the provisions of this subsection; provided if there has been a decrease in the average daily attendance under subsection (3) of this section, then the county board of public instruction of such county shall only be entitled to such amount as would have remained to the credit of the county board of public instruction if the appropriation under subsection (3) of this section had been calculated on the basis of the average daily attendance for the first year of the biennium. Nothing in this paragraph shall be construed to limit the rights of any county board of public instruction as to funds appropriated under this section for the second year of any biennium.

(c) Upon the funds referred to in paragraph (a) of this subsection being deposited in the school construction fund, the county board of public instruction shall furnish to the state superintendent of public instruction such evidence thereof as he may prescribe. Upon the receipt of such evidence, the state superintendent of public instruction shall certify to the comptroller the amount so deposited, who shall thereupon issue a warrant on the funds in the county school additional capital outlay trust fund in the state treasurer's office payable to the county board of public instruction in an amount equal to the amount certified to him by the state superintendent of public instruction and the county board of public instruction shall upon the receipt thereof place such funds in the school construction fund in the county school fund to be used for school construction or reconstruction and for no other purpose.

(d) The funds in the school construction fund in the county school fund of any county shall be used only for construction or reconstruction approved by the state board of education and in accordance with the findings of the state board of education as to priority of needs as shown by a survey or surveys; provided that essential classroom facilities shall in all cases be entitled to first priority.

(e) The funds in the school construction fund in the county school fund of any county may be invested as provided by law for the investment of other funds in the county school fund until they can be utilized for the construction or reconstruction as required under this section; provided that such funds and the interest accruing thereon shall be expended for no purpose other than the construction or reconstruction provided for under this section.

(5) FUNDS NOT MATCHED SHALL REVERT TO GENERAL REVENUE FUND.—All funds under subsection (3) of this section remaining in the county school additional capital outlay trust fund in the office of the state treasurer at the end of each biennium shall revert to the general revenue fund of the state and the several county boards of public instruction shall have no right or claim thereto.

(6) DECLARATION OF INTENTION.—It is the declared intent of the legislature that the appropriations provided by this section and the funds provided by the county boards of public instruction to qualify for the same shall be used for no purpose other than the construction and reconstruction of schools under the provisions of this section and facts arising which may make the duties imposed hereunder impossible of performance by a county board of public instruction shall not discharge such duties and thereby entitle such county board of public instruction to utilize the funds for any other purpose.

History.—§§1-6, ch. 57-334; (3) §1, ch. 59-253; (3)-(5) §2, ch. 61-119; (4) §18, ch. 63-572.

236.075 County school sales tax trust fund; creation and use of; appropriation.—

(1) There is created in the office of the state treasurer a county school sales tax trust fund. There is hereby annually appropriated from the sales tax receipts deposited in the general revenue fund to the aforesaid county school sales tax trust fund, for use as hereinafter described, the amount equal to the number of instruction units for kindergartens through grades twelve determined pursuant to §236.04, and the number of units for junior colleges as determined pursuant to §236.72, multiplied by five hundred fifty dollars. The amount herein annually appropriated shall be divided into twelve equal parts and each one twelfth part shall be deposited monthly to the aforesaid county school sales tax trust fund by the comptroller from the first sales tax receipts deposited in the general revenue fund each month.

(2) The moneys paid into the county school sales tax trust fund under the provisions of subsection (1) shall be paid out to the county school fund of the several counties as follows:

(a) On July 1 of each year commencing with July 1, 1961, the state superintendent of public instruction shall determine the total number of instruction units in the state as determined in this chapter, and the number of instruction units in each county.

(b) The state superintendent of public instruction shall multiply the number of instruction units in each of the several counties by the amount of five hundred fifty dollars and the resulting product shall be the amount to be disbursed that year to the board of public instruction of the several counties in twelve monthly payments.

(c) Upon the monthly determination of the amount due as to each county board of public instruction, the comptroller shall issue his warrants on the county school sales tax trust fund payable to the several county boards of public instruction in the amounts so determined.

(d) Upon the receipt of such warrants, the county board of public instruction shall deposit the same in the county school fund and such funds shall be utilized in the same manner as other money in the county school fund.

History.—§§2, 3, ch. 59-336; (1), (2), §2, ch. 61-119; §1, ch. 61-255; (1) §6, ch. 63-495; (2) §19, ch. 63-572.
cf.—§212.20 Funds collected, disposition; additional powers of comptroller; operational expense.

236.08 State superintendent to determine and certify allocation.—The state superintendent shall determine the allocation of foundation program funds to each county in accordance with the law and regulations of the state board. On or before July 1, the state superintendent shall tentatively compute and notify the comptroller of the estimated amount of the allotment to each county from the foundation program fund during the ensuing year and during each month of the ensuing year. On or before the first day of March, the state superintendent shall make a final computation and shall certify to the comptroller the actual amount to which each county is entitled from the foundation program fund for that fiscal year and the amount to be allocated monthly to each county for the remainder of the fiscal year.

History.—§1008, ch. 19355, 1939; CGL 1940 Supp. 892(327); §32, ch. 23726, 1947; §1, ch. 25405, 1949.

236.09 Apportionments made monthly for twelve months.—The estimated amount of the foundation program fund to be apportioned to each county during any year shall be divided by twelve to determine the monthly apportionments for the first nine months of the fiscal year and the monthly apportionment to each county for the remaining three months of the fiscal year shall be determined by dividing by three the remainder due on the basis of the final computation. This monthly apportionment shall be credited to and made available for the county general school fund of the respective counties beginning on the fifteenth day of July and continuing on the fifteenth day of each month thereafter to and including the month of June of each year. The comptroller on or before the fifteenth day of each month shall draw warrants on the foundation program fund, except county capital outlay and debt service school funds, to the respective county boards in the amounts prescribed herein for the monthly apportionment and shall transmit such warrants to the respective county boards.

History.—§1009, ch. 19355, 1939; CGL 1940 Supp. 892(328); §3, ch. 22839, 1945; §33, ch. 23726, 1947; §75, ch. 29764, 1955.

236.13 Expenditure of funds by county board.—The foundation program fund apportioned to the credit of any county is to constitute a part of the county general school fund of that county and shall be budgeted and expended under authority of the county board of that county subject to the provisions of law and regulations of the state board; provided, that any such foundation program funds allocated to any county for a public junior college organized under §230.47, shall be expended only for the purpose of supporting said college.

History.—§1013, ch. 19355, 1939; CGL 1940 Supp. 892(332); §34, ch. 23726, 1947; §4, ch. 28068, 1953.

236.15 State funds for vocational education and rehabilitation.—State funds for vocational education and vocational rehabilitation shall comprise all appropriations for vocational education and vocational rehabilitation by the legislature for the purpose of matching federal vocational education and vocational rehabilitation funds as well as any other appropriations for vocational education and vocational rehabilitation. Appropriations specifically for vocational education and vocational rehabilitation shall be expended on the basis of requisitions approved by the state superintendent in accordance with regulations of the state board.

History.—§1015, ch. 19355, 1939; CGL 1940 Supp. 892(334); §35, ch. 23726, 1947.

236.161 Vocational education defined.—Vocational education is defined as meaning that in-

struction, either graded or ungraded, which is given to persons who have the ability to benefit from the instruction provided for the purpose of developing occupational proficiency, and shall not be construed to mean any general or exploratory courses offered with any other objectives.

History.—§2, ch. 19203, 1939; CGL 892(216); §46, ch. 23726, 1947.
Note.—Formerly §242.17.

236.17 State treasurer custodian of funds.—The state treasurer shall be treasurer and custodian of all state funds for vocational education and rehabilitation, state textbook funds, and other state funds for the public school program. He shall receive and provide for the proper custody and disbursement of these funds in accordance with the provisions of law.

History.—§1017, ch. 19355, 1939; CGL 1940 Supp. 892(336).

236.171 Special school lunch program trust fund.—

(1) A special school lunch program trust fund is created in the state treasury. This fund shall be known as the "special school lunch program trust fund." Custody and disbursement of said fund shall be in accordance with §236.17.

(2) The department of education is authorized to deposit into the fund money received from persons or groups of persons for:

(a) Registration fees, tuition and other costs and expenses of training programs conducted, coordinated or arranged by the department of education in connection with the school lunch program;

(b) Purchase of books, magazines, pamphlets, and other printed matter sold by the United States government printing office, other governmental agencies or commercial publishers;

(c) The cost of preparing and issuing duplicate copies of such certificates and records as pertain to the school lunch program.

(3) Expenditures from the fund are authorized for:

(a) Payment of registration fees, tuition, and other costs and expenses of training programs conducted, coordinated or arranged by the department of education in connection with the school lunch program;

(b) Payment for the items mentioned in subsection (2)(b).

(c) Payment for the cost of preparing and issuing the duplicate copies mentioned in subsection (3) (b).

(4) All expenditures shall be certified by the superintendent of public instruction or his duly authorized agent and disbursement made by the comptroller by warrant on the state treasurer.

(5) The state board of education is authorized to adopt such regulations and policies consistent with this law as may be necessary to accomplish its purposes.

History.—§§1-5, ch. 59-121; (1) §2, ch. 61-119.

236.18 Federal funds.—Federal funds for education in the state shall comprise all funds appropriated by congress and apportioned to the state for special educational services and functions or for the public schools of the state. The state board shall have authority to prescribe plans and regulations for apportioning and expending such funds including funds for school lunches.

History.—§1018, ch. 19355, 1939; CGL 1940 Supp. 892(337); §36, ch. 23726, 1947.

236.19 State treasurer ex officio treasurer.—The state treasurer shall be the ex officio treasurer of any federal funds apportioned to the state for vocational education and vocational rehabilitation and of any and all other funds appropriated by congress and apportioned to the state for use in the public schools. The treasurer shall receive and provide for the proper custody and disbursement of each and all of these funds in accordance with requirements of acts of congress and with regulations of the state board.

History.—§1019, ch. 19355, 1939; CGL 1940 Supp. 892(338).
cf.—§229.082 Disbursement of federal funds by State board of education.

236.20 State accepts provisions of vocational education act.—The state accepts the provisions of the act of congress approved February 23, 1917, entitled "An Act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure" and any acts supplementary thereto or amendatory thereof. The good faith of the state is pledged to make available for the several purposes of said act funds sufficient at least to equal the sums allotted from time to time to this state from the appropriations made by said act and to meet all conditions necessary to entitle the state to the benefits of said act.

History.—§1020, ch. 19355, 1939; CGL 1940 Supp. 892(339).
cf.—§229.30 Cooperation with federal government.

236.22 Federal funds for vocational education and rehabilitation.—The federal funds for vocational education in elementary and high schools of the state and for vocational rehabilitation shall comprise all funds appropriated by congress for such purposes and apportioned to the state for such uses. These funds shall be apportioned and disbursed as required by acts of congress supplemented by regulations of the state board. They shall be made available to county boards for reimbursement of expenses incurred for vocational education in the same manner as prescribed for state funds for vocational education in §229.301 unless otherwise required by law.

History.—§1022, ch. 19355, 1939; CGL 1940 Supp. 892(341).
cf.—§229.301 Vocational rehabilitation funds.
§229.31 State appropriations for vocational rehabilitation.

236.24 Sources of county current school fund.—The county current school fund shall consist of funds derived from the county school tax levy, from capitation taxes, from appropri-

ations by county commissioners, from any and all other distinctly county sources for school purposes, from national forest trust funds, from gifts and other sources from which funds may be used for the general support of the county school system.

The board of public instruction shall have the power at all times to invest county current school funds in bonds of the United States government or any bonds fully and unconditionally guaranteed as to interest and principal by the United States government, in the bonds of special tax school district number 1 of the same county, state board of education bonds of any county, or in loans of the county board incurred under the provisions of §237.27.

History.—§1024, ch. 19355, 1939; CGL 1940 Supp. 892(343); §2, ch. 61-119; §12, ch. 61-288.
cf.—§9, Art. XII Florida constitution, county school fund.

236.25 County school tax. — The county school tax shall constitute the proceeds derived from the assessment and collection of a tax of not less than three mills or more than ten mills on the dollar of all taxable property in the county for the support of the public schools as provided in §8, Art. XII of the constitution. This tax shall be certified, assessed, and collected, as prescribed in §237.18 and shall be expended as provided by law.

History.—§1025, ch. 19355, 1939; CGL 1940 Supp. 892(344).

236.27 National forest trust fund.—All moneys received by any county board from the national forest trust fund shall become a part of the county current school fund of the county.

History.—§1027, ch. 19355, 1939; CGL 1940 Supp. 892(346); §2, ch. 61-119.
cf.—§254.01 et seq. Disposition of national forest trust fund.

236.28 Other revenues. — Any funds received for reimbursement of expenses incurred by the county current school fund for vocational education, funds from fees, gifts, donations, funds from philanthropic agencies, or any other funds whatever from sources which properly belong to the county current school fund shall be deposited to the credit of and become a part of that fund.

History.—§1028, ch. 19355, 1939; CGL 1940 Supp. 892(347).

236.29 Apportionment and use of county current school fund.—The county current school fund shall be apportioned, expanded and disbursed in the county for the support of the public schools of the county as prescribed by law; provided, however, that the county current school fund shall also be used to pay the principal and interest on bonds legally issued and payable from said fund, together with other proper items of debt service against such fund, including any necessary refunding expense as prescribed by regulations of the state board of education. The county board shall, before the maturity of such bonds or other indebtedness and before interest due dates, deposit with the paying agent or make available, as designated in the resolution authorizing the issuance of the bonds or other legal evidences of indebtedness, sufficient funds with which to pay all principal and interest when due; provided, that when such funds have been so deposited with the paying agent or made available, all interest on the indebtedness represented by the maturing bonds, coupons or other evidences of indebtedness shall cease as of their maturity dates; and provided, further, that if any such bonds, coupons or other evidences of indebtedness are not presented for payment within six months after the date on which they mature, the funds shall be returned to the county board and shall be placed by said board in the county current school fund and the county board shall pay said bonds, coupons or other evidences of indebtedness from said fund when presented for payment. Any holder of bonds, coupons or other indebtedness claiming interest after maturity on account of the fact that funds were not deposited with the paying agent or made available to pay such bonds, coupons or other indebtedness at maturity, shall be required to produce evidence in the form of a letter from the paying agent or the county board of the county, respectively, acknowledging that the bonds, coupons and other evidences of indebtedness upon which interest is claimed were presented for payment, that no funds were available for the payment thereof, that such bonds, coupons and other evidences of indebtedness were presented for payment at least annually thereafter and that no funds were available to pay such indebtedness. The paying agent or the county board of the county, whichever has the duty of holding the funds, shall, upon request of the holder of defaulted bonds, coupons or other evidences of indebtedness furnish to such holder the letter required herein. When such evidence is presented the county current school fund shall be liable for the payment of principal and interest on the bonds, coupons or other evidences of indebtedness from maturity until paid at the rate prescribed on the face thereof. If at any time any bonds, coupons or other evidences of indebtedness are reduced to judgment, the county current school fund shall be responsible for past due interest only at the rate prescribed by the bonds or other evidences of indebtedness and any rate of interest in excess of that amount shall be illegal and invalid. Such judgments shall bear interest at the rate of five per cent per annum until paid. When any proposal for refunding the indebtedness against said county current school fund has been prepared and approved by the state superintendent, as required by law, and when the holders of at least eighty per cent of the outstanding indebtedness against said fund have agreed in writing to the refunding plan, the county board shall be authorized to pay, out of the county current school fund, from and after that date, on the original and refunding bonds or other evidences of indebtedness only the rate of interest which has been agreed upon for the refunding bonds or other evidences of indebtedness and no owner or holder of a bond, coupon or other evidence of indebtedness shall be entitled to a higher rate of interest after that date; provided, that such owner or holder shall be given the option by the

county board of receiving payment in cash for all principal and interest due on the bonds and coupons or other evidence of indebtedness he holds at the same rate at which the remaining indebtedness has been refunded.

History.—§1029, ch. 19355, 1939; CGL 1940 Supp. 892(348); §6, ch. 22839, 1945.

cf.—§9, Art. XII, Florida constitution, distribution of county school fund.
§229.17 Apportionment of state school funds.

236.30 Sources and uses of district current school fund.—The district current school fund shall be comprised of those funds from district sources which are restricted by §10, Art. XII of the constitution to be used exclusively for the public schools within the district. There shall be a district current school fund which shall consist of proceeds from the school district tax.

The board of public instruction shall have the power at all times to invest district current school funds in bonds of the United States government or any bonds fully and unconditionally guaranteed as to interest and principal by the United States government, in the bonds of special tax school district number 1 of the same county, state board of education bonds of any county, or in loans of the county board incurred under the provisions of §237.27.

History.—§1030, ch. 19355, 1939; CGL 1940 Supp. 892(349); §77, ch. 29764, 1955; §13, ch. 61-288.

236.31 Election biennially.—Elections shall be held biennially in each school district in the state under the direction of the county board. These elections shall be held at the special school district election date on the first Tuesday after the first Monday in November of odd numbered years, as prescribed in chapter 230; provided, that if for any unavoidable cause the biennial election shall not be held on this date in any school district of any county, then the millage last approved in and by such school district shall remain and be in effect, and the trustees of the district shall continue to hold office until the next election shall be held.

History.—§1031, ch. 19355, 1939; CGL 1940 Supp. 892(350)

cf.—§230.38 Trustees election at time of biennial school election.

236.32 Procedure for holding and conducting school district elections.—The procedure for holding and conducting school district elections shall be:

(1) HOLDING ELECTIONS.—All school district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this chapter. The county board shall appoint inspectors and clerks for said election, whose duties shall be the same as those of similar officers in general elections, except as herein stated.

(2) LIST OF QUALIFIED ELECTORS.—The supervisor of registration of any county shall furnish, upon payment for such service to the county board, on demand, a certified list of the qualified electors, residing in a school district.

(3) FORM OF BALLOT.—The county board shall provide substantially the following form of ballot to be used for election of trustees and for voting the levy in each school district in the county:

SPECIAL TAX SCHOOL DISTRICT ELECTION FOR _____ COUNTY, FLORIDA, HELD _____, 19____

1. Ballot for election of trustees—

INSTRUCTIONS TO VOTERS: Indicate your choice by marking an "X" after the name of the person or persons of your choice for the office of trustee, or by writing in the name of the person or persons of your choice for the office and marking an "X" thereafter. Vote for three persons:

FOR TRUSTEE OF THE DISTRICT:

John Smith	_____	_____
Fred Brown	_____	_____
Henry Jones	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Ballot for school tax district millage levy.—

INSTRUCTIONS TO VOTERS: Indicate by marking an "X" in the space after line one whether you favor the proposed millage levy which is necessary for the approved school term. If you favor a different millage levy, write the levy you favor after line two:

1. Estimated millage levy required for regular term
(10 mills) _____ _____
2. Other millage levy _____ _____

On the ballot for approval of trustees for the district shall be printed the names of all persons who have been nominated by petition of five or more persons qualified to vote in the election, filed with the county board at least fifteen days prior to the holding of the election and requesting that the names of such persons be placed on the ballot to be voted upon as trustees of that school district; on the ballot for the proposed school district millage levy shall be printed the millage found necessary by the county board.

(4) QUALIFICATIONS OF ELECTORS.—All qualified electors residing within any school district in the state whose voting registration is in that district, who pay a tax on real or personal property within the district, shall be entitled to vote in this election.

(5) CANVASS OF RETURNS. — The county board shall canvass the returns of the election as made to it by the inspectors and clerks of the election and shall declare the results at the next regular meeting of said board or at a special meeting called for that purpose.

(6) RESULTS OF ELECTION.—The tax levy receiving the majority of all votes for tax levies cast by qualified electors, or, in case no one levy receives a majority, that levy for which, together with the votes cast for higher

levies, a majority of the votes are cast, shall become the levy for the district for the next ensuing two years. The three persons receiving the highest number of votes cast on the ballot for the election of trustees, as prescribed herein, shall serve for the ensuing two years as trustees of the district.

(7) EXPENSES OF ELECTION. — The cost of the publication of the notice of the election and all expenses of the election in the school district shall be included in the budget and paid by the county board out of any balances on hand which are placed to the credit of the district, or out of the first moneys collected from the school district.

History.—§1032, ch. 19355, 1939; CGL 1940 Supp. 892(351); §7, ch. 22858, 1945; §78, ch. 29764, 1955; (3) §14, ch. 61-288.

236.33 County board to certify levy and county commissioners to order assessment and collection.—The county board shall certify and spread upon its minutes a resolution stating the tax levy approved by the voters in each school district election in the county and such taxes shall be certified, assessed, and collected as prescribed in §237.18 and shall be expended as provided by law; provided, however, that the county board, with the consent of the state superintendent of public instruction, where it is plainly manifest from the county school budget that there are ample available funds from other school revenue sources to meet the requirements of the obligations of the tax school district, may reduce the tax levy approved by the voters in the school district election.

History.—§1033, ch. 19355, 1939; CGL 1940 Supp. 892(352); §1, ch. 26335, 1949.

236.34 Accounting for and disbursement of district current school funds.—The county superintendent, under the direction of the county board, shall keep a separate and distinct record of district current school funds received and placed to the credit of the school district in the county, and of the district current school fund expenditures to be charged against the school district. The county board may expend the district current school funds for the use of each of the public schools within that district as appropriated in the budget and as prescribed in chapter 237.

History.—§1034, ch. 19355, 1939; CGL 1940 Supp. 892(353); §79, ch. 29764, 1955.

236.35 Source and use of bond construction fund.—The bond construction fund shall consist of funds derived from the sale of school district bonds authorized in §17, Art. XII of the constitution, together with any other funds directed to be placed therein by regulations of the state board of education, and other similar funds which are to be used primarily for capital outlay purposes within any school district.

History.—§1035, ch. 19355, 1939; CGL 1940 Supp. 892(354); §18, ch. 29754, 1955; §16, ch. 57-249.

236.36 Proposals for issuing bonds.—Whenever the residents of a school district of any county in this state shall desire the issuance of bonds by such school district for the purpose of acquiring, building, enlarging, furnishing, or otherwise improving buildings or school grounds, or for any other exclusive use of the public schools within such school district, they shall present to the county board, a petition signed by not less than twenty-five per cent of the duly qualified electors residing within the school district, setting forth in general terms the amount of the bonds desired to be issued, the purpose thereof, and that the proceeds derived from the sale of such bonds shall be used for the purposes set forth in the petition. In counties of twenty-five thousand population or more, according to the latest federal census, the said petition may be dispensed with and the proposition of issuing bonds for the purposes as herein outlined may be initiated by the county board of the said county or by the trustees of said school district or by both bodies; provided, that nothing contained in this section shall repeal any of the provisions of §§100.201-100.351.

History.—§1036, ch. 19355, 1939; CGL 1940 Supp. 892(355); §80, ch. 29764, 1955.

236.37 Procedure of county boards with reference to proposals for issuing bonds.—It shall be the duty of the county boards of the several counties of Florida to plan the school financial program of the county so that, insofar as practicable, needed capital outlay expenditures can be made without the necessity of issuing bonds. Whenever the county board of any county proposes an issue of bonds or has received any petition proposing the issuance of bonds, as provided in §236.36, the said board shall forthwith proceed as follows:

(1) The county board, after considering recommendations submitted by the county superintendent, shall determine whether in its opinion the projects for which bonds are proposed to be issued are essential for the school program of the county. If in the opinion of the county board any of the projects are not necesary or desirable, the county superintendent shall notify the trustees of the district in writing within ten days of the adverse action of the county board giving the reasons therefor; provided, that if the trustees of the district decide that the reasons given by the county board for rejecting the proposal or any part of the proposal are not good and sufficient reasons, said trustees may then file with the county board in writing a request giving their reasons for reconsideration of the proposal, whereupon the county board shall, at its next ensuing meeting, proceed as set forth in subsection (2) below.

(2) If the proposed projects are deemed essential by the county board or if the proposed projects are rejected in whole or in part and have been resubmitted by the trustees of the district as set forth in subsection (1) above, the county board shall, if practicable, prepare a plan for carrying out the projects, or at least part of the projects, with current funds which have been or can be set aside for that purpose.

(3) If the county board determines that any portion of the projects cannot be carried out so that all costs can be met from the proceeds of

a special district millage voted for that purpose or from county current funds which are not needed for salaries of teachers or other necessary expenses of operating the schools or from such funds which can reasonably be expected to be available by the time the projects are completed, or cannot be completed on the basis of a loan against county or district current funds, approved in accordance with §237.27, the county board shall then determine the amount of bonds necessary to be issued to complete the projects as proposed for the district and shall adopt and transmit to the state superintendent a resolution setting forth the proposals with reference to the projects and the proposed plan for financing the projects, said resolution to be in such form and contain such information as may be prescribed by the state board of education; provided, that if the state superintendent shall determine that the issuance of bonds as proposed is unnecessary or is unnecessary in the amount and according to the plan proposed, and shall notify the county board accordingly, the county board shall then either amend its resolution to conform to the recommendation of the state superintendent or shall inform the trustees of the district in writing of the adverse recommendation of the state superintendent and no further action shall be taken for a period of at least one year on the proposal for a bond issue unless, within thirty days thereafter, a petition signed by at least thirty-five per cent of the qualified electors within the district is received by the county board requesting that an election be called to vote bonds for the purposes set forth and in an amount which shall not exceed the amount of bonds proposed by the county board. If such a petition is received by the county board, as provided herein, or if the resolution proposing a bond issue has been approved by the state superintendent, the county board shall then proceed at its next ensuing meeting to adopt a resolution authorizing that an election be held for the purpose of determining whether bonds shall be issued as proposed.

History.—§1037, ch. 19355, 1939; CGL 1940 Supp. 892(356); §5, ch. 21989, 1943; §81, ch. 29764, 1955.

236.38 Publication of resolution.—It shall be the duty of the county board, when the resolution proposing a bond issue has been approved by the state superintendent or when such a proposal has been rejected by the state superintendent and a new petition signed by thirty-five per cent of the qualified electors of the district has been presented, and when the resolution authorizing an election has been adopted as set forth above, to cause such resolution to be published once each week for four successive weeks in some newspaper published in the county. This resolution may also include a notice of election as prescribed in §236.39.

History.—§1038, ch. 19355, 1939; CGL 1940 Supp. 892(357); §6, ch. 21989, 1943; §82, ch. 29764, 1955.

236.39 Notice of election; qualifications of electors.—The said county board shall also at the meeting, at which is passed the resolution provided for in §236.37 order that an election shall be held in said school district to determine whether or not there shall be issued by said district the bonds provided for in said resolution, in which election only the duly qualified electors thereof who are freeholders shall vote, and prior to the time of holding said election the said county board shall cause to be published once each week for four successive weeks in a newspaper published in the county a notice of the holding of said election which shall specify the time and place or places of the holding thereof. The resolution, prescribed in §236.37, may be incorporated in and published as a part of the notice prescribed in this section.

History.—§1039, ch 19355, 1939; CGL 1940 Supp. 892(358); §83, ch. 29764, 1955; §12, ch. 59-371.
cf.—§6, Art. IX, Florida constitution, bond elections.

236.40 Conduct of election; form of ballot; appointment of inspectors; canvassing returns.—The election, provided for in §236.39, shall be held at the place or several places in said district where the last general election was held throughout said district, unless the county board shall otherwise order; and the county board shall appoint inspectors for the election and cause to be prepared and furnished to said inspectors the ballots to be used at said election; the form of ballots for such election shall be: "For bonds" or "Against bonds". The inspectors shall make returns to the said county board immediately after the said election, and the said county board shall hold a special meeting as soon thereafter as practicable for the purpose of canvassing said election returns and shall determine and certify to the result thereof.

History.—§1040, ch. 19355, 1939; CGL 1940 Supp. 892(359); §7, ch. 22858, 1945.

236.41 Result of election held.—If it shall appear by the result of said election that a majority of the votes cast shall be "For bonds", the county board shall be authorized and required to issue the bonds authorized by said election for the purposes specified in the resolution as published, not to exceed the amount therein named; but, if the majority of the votes cast shall have been "Against bonds", no bonds shall be issued.

History.—§1041, ch. 19355, 1939; CGL 1940 Supp. 892(360).
cf.—§6, Art. IX, Florida constitution, bond elections.

236.42 If election adverse, no second election within one year.—If the result of the said election shall be adverse to the issuance of said bonds, no election shall be held for such purpose within one year thereafter; except, however, in the event such election shall result or shall have resulted in an equal number of votes being cast for the issuance of said bonds as shall be cast adverse to issuance of bonds, the county board may call and order another or second election within said district to have determined the question of whether the bonds specified in the original petition and resolution shall be issued by said district, after

giving notice as provided for by §236.39, and it shall not be necessary to have presented to said county board further petitions to order said second election.

History.—§1042, ch. 19355, 1939; CGL 1940 Supp. 892(361).

236.43 Receiving bids and sale of bonds.—(1) In case the issuance of bonds shall be authorized at said election, or in case any bonds outstanding against the district are being refunded, the county board shall cause notice to be given by publication in some newspaper published in the county that said board will receive bids for the purchase of the bonds at the office of the county superintendent of said county. The notice shall be published twice and the first publication shall be given not less than thirty days prior to the date set for receiving the bids. Said notice shall specify the amount of the bonds offered for sale and shall state whether the bids shall be sealed bids or whether the bonds are to be sold at auction, shall give the schedule of maturities of the proposed bonds and such other pertinent information as may be prescribed by regulations of the state board. Bidders may be invited to name the rate of interest which the bonds are to bear or the county board may name rates of interest and invite bids thereon. In addition to publication of notice of the proposed sale as set forth above, the county board shall also notify in writing at least three recognized bond dealers in the state and shall also at the same time notify the state superintendent concerning the proposed sale, enclosing a copy of the advertisement.

(2) All bonds and refunding bonds issued as provided by law shall be sold to the highest and best bidder at such public sale unless sold at a better price or yield basis within thirty days after failure to receive an acceptable bid at a duly advertised public sale; provided, that at no time shall bonds or refunding bonds be sold or exchanged at less than par value except as specifically authorized by the state board; and provided, further, that the county board shall have the right to reject all bids and cause a new notice to be given in like manner inviting other bids for such bonds, or to sell all or any part of such bonds to the state board at a price and yield basis which shall not be less advantageous to the county board than that represented by the highest and best bid received. In the marketing of said bonds the county board shall be entitled to have such assistance as can be rendered by the governor, the state treasurer, the state superintendent, or any other public state officer or agency. In determining the highest and best bidder for bonds offered for sale, the net interest cost to the county board as shown in standard bond tables shall govern; provided, that the determination of the county board as to the highest and best bidder shall be final.

History.—§1043, ch. 19355, 1939; CGL 1940 Supp. 892(362); §7, ch. 21989, 1943; §5, ch. 22839, 1945.

236.44 Bidders to give security.—The county board may require of all bidders for said bonds that they give security by bond or by a deposit to said county board that the bidder shall comply with the terms of the bid, and any bidder whose bid shall be accepted shall be liable to the county board for all damages on account of the nonperformance of the terms of such bid or to a forfeiture of the deposit required by said county board.

History.—§1044, ch. 19355, 1939; CGL 1940 Supp. 892(363).

236.45 Form and denomination of bonds.—The county board may prescribe the denomination of the bonds to be issued and such bonds may be issued with or without interest coupons in the discretion of the board. The form of the bonds to be issued may be prescribed by the state board on the recommendation of the attorney general. The schedule of maturities of the proposed bonds shall be so arranged that the total payments required each year, including the payments on other bonds outstanding against the district, shall be as nearly equal as practicable. The schedule shall provide that all bonds are to be retired within a period of twenty years from the date of issuance unless a longer period is required and has been specifically approved by the state board of education. All bonds issued hereunder which bear interest in excess of two and ninety-nine one-hundredths per cent shall be callable on terms prescribed by the county board beginning not later than ten years from the date of issuance.

History.—§1045, ch. 19355, 1939; CGL 1940 Supp. 892(364); §8, ch. 21989, 1943.

236.46 Investment of fiduciary funds in bonds; security for deposit of public funds.—School district bonds authorized and issued under the provisions of this chapter shall be lawful investments for fiduciary and trust funds including all funds in the control of trustees, assignees, administrators, and executors, and may be acepted as security for all deposits of public funds.

History.—§1046, ch. 19355, 1939; CGL 1940 Supp. 892(365).

236.47 Records to be kept and reports to be made.—The county board shall maintain a complete record of all bonds issued under the provisions of this chapter, which record shall show upon what authority the bonds are issued, the amount for which issued, the persons to whom issued, the date of issuance, the purpose or purposes for which issued, the rate of interest to be paid, and the time and place of payment of each installment of principal and interest. This record shall be so arranged as to show the amount of principal and interest to be paid each year and shall also show the annual or semiannual payments which are made and the bonds which are canceled. In addition the county superintendent shall file with the state superintendent in accordance with regulations of the state board reports giving such information as may be required regarding any bonds which may be issued as provided herein.

History.—§1047, ch. 19355, 1939; CGL 1940 Supp. 892(366); §9, ch. 21989, 1943.

236.48 Bonds may be validated; validity of

bonds.—When an issue of bonds for any school district shall be authorized in the manner provided under the terms of this chapter, such bonds shall, in the discretion of the county board, be subject to validation in the manner provided for in chapter 75. In lieu of validation as set forth in that chapter, the county board may, in its discretion, submit to the attorney general all information relating to the issuance of bonds as provided in said chapter 75, and an approving opinion of the attorney general shall be sufficient evidence that the bonds are valid. Bonds reciting that they are issued pursuant to the terms of this chapter shall, in any action or proceeding involving their validity, be conclusively deemed to be fully authorized thereby, to have been issued, sold, executed, and delivered in conformity therewith, and with all other provisions of law applicable thereto, and shall be incontestible, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun before or within thirty days after the date upon which the bonds are sold, paid for and delivered.

History.—§1048, ch. 19355, 1939; CGL 1940 Supp. 892(367); §10, ch. 21989, 1943.

236.49 Proceeds; how expended.—The proceeds derived from the sale of said bonds shall be held by the county board and shall be expended by the board for the purpose for which said bonds were authorized for said school district, and shall be held and expended in the manner following:

(1) The county board shall deposit, or cause to be deposited, the proceeds arising from the sale of each issue of bonds in a separate bond construction fund account in the school depository.

(2) All or any part of the fund derived from the proceeds of any such bond issue that in the judgment of the county board is not immediately needed may be placed on time deposit in the school depository or invested in securities issued by or guaranteed by the United States government, or in the following securities of the county or district maturing not later than the time when the funds are reasonably expected to be needed:

(a) In bonds of the United States government or in any other bonds or obligations which shall then be fully and unconditionally guaranteed as to principal by the United States government, at the then current market price of such bonds or other obligations; provided, that any such bond or other obligation purchased under the authority hereof shall be surrenderable at par and accrued interest not later than one year next after the date of the purchase of the same.

(b) In any bonds issued by the district to which the bond construction fund belongs provided such bonds are not in default and can be obtained at a price which will result in a net saving to the taxpayers of the district.

(c) In any obligations of the county board approved by the state board of education in accordance with the provisions of §237.27.

(d) In any bonds or obligations of the county board for the payment of which the taxing power of the county board has been pledged; providing, such bonds or obligations are not in default.

(e) In any bonds of other special tax school districts of the county; provided, that such funds shall not be invested in any bonds which have been in default as to principal or interest at any time during the six-month period preceding the date of purchase.

(f) In any bonds issued by the state board of education for the county.

History.—§1049, ch. 19355, 1939; CGL 892(368); am. §1, ch. 21823, 1943; §19, ch. 29754, 1955.

236.50 Disposition of surplus of bond issue.—Should there remain any of the proceeds of the sale of school district bonds after the purpose and object for which the said bonds were issued shall have been carried out and performed by the county board, the surplus then shall be held by the county board and paid out by said board for the exclusive use of the public schools within such school bond district as said county board may deem reasonable and proper.

History.—§1050, ch. 19355, 1939; CGL 1940 Supp. 892(369); §20, ch. 29754, 1955; §17, ch. 57-249.

cf.—§230.43 Recommendation of trustees for disposal of surplus.

236.51 Additional bond issues. — After the issuance by any school district of bonds in the manner authorized in this chapter, the qualified electors of such school district may thereafter, from time to time, in the manner herein provided for, authorize one or more additional bond issues as they may determine upon.

History.—§1051, ch. 19355, 1939; CGL 1940 Supp. 892(370).

236.52 Source and use of district interest and sinking fund.—The district interest and sinking fund of any school district shall comprise the proceeds of the tax levied for the purpose of paying the principal and interest of bonds outstanding against the district as provided in this chapter and in addition such funds as may accrue to the credit of the district interest and sinking fund from interest on deposits, investments or other sources. The district interest and sinking fund in each district shall be used to pay the principal and interest on bonds legally issued against the district and other proper items of debt service against such district, including any necessary refunding expense as prescribed by regulations of the state board of education. The county board shall, before the maturity of bonds and before interest due dates, deposit with the paying agent or make available, as designated in the resolution authorizing the issuance of bonds, sufficient money of the district interest and sinking fund with which to pay all principal and interest when due; provided, that when such money has been so deposited with the paying agent or made available, all interest on the indebtedness represented by the maturing bonds or coupons shall cease as of their maturity dates; and provided, further, that if any such bonds or coupons are not pre-

sented for payment within six months after the date on which they mature, the money shall be returned to the county board and shall be held by said board as a reserve fund in the account of the district interest and sinking fund until the bonds and coupons are presented for payment. Any holder of bonds or coupons, claiming interest after maturity shall be required to produce evidence in the form of a letter from the paying agent or the county board of the county, respectively, acknowledging that the bonds or coupons upon which interest is claimed were presented for payment upon maturity, that no funds were available for the payment thereof, that such bonds or coupons were presented for payment at least annually thereafter and that no funds were available to pay such bonds or coupons. The paying agent or the county board of the county, whichever has the duty of holding the money shall, upon request of the holder of defaulted bonds or coupons, furnish to such holder the letter required herein. When such evidence is presented, the district interest and sinking fund shall be liable for the payment of principal and interest on the bonds and coupons from maturity until paid at the rate prescribed on the face of the bonds. If at any time any bonds or coupons are reduced to judgment, the district interest and sinking fund shall be responsible for past due interest only at the rate prescribed by the bonds and any rate of interest in excess of that amount shall be illegal and invalid. Such judgments shall bear interest at the rate of five per cent per annum until paid. When any proposal for refunding the indebtedness against any district has been prepared and approved by the state superintendent, as required by law, and when the holders of at least eighty per cent of the outstanding indebtedness represented by the bond issue have agreed in writing to the refunding plan, the county board shall be authorized to pay, from and after that date on the original and refunding bonds from the district interest and sinking fund, only the rate of interest which has been agreed upon for the refunding bonds and no owner or holder of a bond or coupon shall be entitled to a higher rate of interest after that date; provided, that such owner or holder shall be given the option by the county board of receiving payment in cash for all principal and interest due on the bonds and coupons he holds at the same rate at which the remaining bonds and coupons have been refunded.

History.—§1052, ch. 19355, 1939; CGL 1940 Supp. 892(371); §7, ch. 22839, 1945.

236.53 County commissioners to levy tax for bonds; sinking fund. — Whenever any school district bonds shall have been issued, the county board shall determine annually, by resolution, until all of such bonds shall be paid and retired, the amount necessary to be raised for each district bond interest and sinking fund, and the millage necessary to be levied for each such fund. A certified copy of said resolution shall annually be filed with the board of county commissioners and the board of county commissioners of the county in which such district is located shall order, annually, the assessor to assess and the collector to collect a tax upon all taxable property within said school district, sufficient to raise and pay the principal and interest on said school district bonds maturing during the year and sufficient to create a sinking fund for the payment of principal of said bonds at maturity of same, which sinking fund shall be provided for by resolution of the county board before the issuing of any bonds. All school district taxes for the payment of principal and interest and to create a sinking fund for the retirement of said bonds shall be assessed, equalized, and collected upon taxable property in the school district by the same officers and in the same manner as is provided by law for the assessment, equalization, and collection of other county taxes: provided, that all taxes authorized herein shall be assessed and collected on railroad, street railroad, sleeping car, parlor car, and telegraph company property in the manner now provided by law. The county tax collector shall turn over to the county school depository or depositories, as designated by the county board, all money collected for the interest and sinking fund of all bonds issued and outstanding against any such school district.

History.—§1053, ch. 19355, 1939; CGL 1940 Supp. 892(372).

236.55 Interest and sinking funds may be invested in certain bonds, warrants and notes. —The county board shall have the power at all times to invest the interest and sinking funds collected for the retirement of any bonds of any school district in bonds issued by the United States government or any bonds fully and unconditionally guaranteed as to interest and principal by the United States government, in the bonds of another school district of the same county, in loans of the county board or of any district in the county incurred under the provisions of §237.27, or in any county general school fund bonds, warrants or notes of said county as authorized by the state board of education. Said bonds, warrants or notes shall be of such date and maturity that they will mature on or before the date of maturity of the district's bonds with whose sinking fund they have been purchased. Such bonds, warrants or notes shall be purchased at par or less, except when purchase of any such bonds or warrants at a price above par is specifically approved on the basis of an application therefor submitted to the state superintendent. The county board shall have authority at any time to use the interest and sinking fund of any district for purchasing for the purpose of canceling and retiring bonds outstanding against the interest and sinking fund of said district at any price which will result in a net saving to the taxpayers of the district; provided, always, that the county board shall have the right to keep the interest and sinking fund on deposit earning the rate of interest agreed upon until such time as within its judgment it may be able to invest it in bonds, warrants or notes

to better advantage as herein provided for.

History.—§1055, ch. 19355, 1939; CGL 1940 Supp. 892(374); §11, ch. 21989, 1943; §85, ch. 29764, 1955.

236.56 Disposition of balance in interest and sinking fund.—If all principal and interest outstanding against any school district shall have been paid, and there shall still remain a balance in the interest and sinking fund to the credit of that district, the board shall, by resolution, authorize this balance to be transferred to the credit of the district current school fund of that district, and the balance so transferred shall be expended in the same manner and for the same purposes as the district current school funds are expended.

History.—§1056, ch. 19355, 1939; CGL 1940 Supp. 892(375).

236.57 Report required. — The county superintendent shall prepare, on or before August first, as a part of the annual financial report, a separate report for each district having issued bonds during the year and for each district having issued bonds at some prior time which issue of bonds has not yet been retired. Such report or reports shall include such facts regarding the amount of money received from the bonds, the amount of money expended from the proceeds, the amount on hand, the amount collected from the interest and sinking fund of the bonds, the amount expended, the amount invested, and the kind and amount of securities held therefor, as may be prescribed under regulations of the state board. This report shall be published in a newspaper of general circulation in the district, or of the county in which the district is located, and a copy of the report shall be sent to the state superintendent.

History.—§1057, ch. 19355, 1939; CGL 1940 Supp. 892(376).

236.58 Procedure used in apportioning state and county current school funds for use within the county.—The procedure to be used by the county board in determining the needs of each school in the county, and in determining the state and county current school funds needed to aid in maintaining each school in the county shall be as follows:

(1) COUNTY SUPERINTENDENT TO CALCULATE COST OF MAINTAINING SCHOOLS FOR ESTABLISHED TERM.—The county superintendent shall calculate for the county board the cost of maintaining each school in the county for a minimum term of one hundred eighty days, or for such longer term as shall be established by the county board for the minimum term of that county. This cost shall be determined on a uniform basis for all schools in the county.

(2) COUNTY SUPERINTENDENT TO CALCULATE MINIMUM DISTRICT TAX LEVY REQUIRED.—After calculating the cost of the program as prescribed above, the county board shall then determine the amount that will need to be raised from district taxes throughout the county, in addition to the amount that will be available from state funds and from county current school funds. On the basis of this amount and of the assessed values, the county board shall thereupon determine the minimum district tax levy that is necessary in order to provide the tax income from district sources which is needed to make possible the minimum term and program throughout the county as prescribed by the county board. This proposed levy shall be included on the ballot for the district.

(3) PROCEEDS FROM LEVY TO AID IN MAINTAINING MINIMUM TERM. — The proceeds from this tax levy, if approved by the electors of the district, shall be used to aid in maintaining the minimum term for the district as prescribed by the county board and shall be used in no other manner.

(4) PROCEDURE IF ELECTORS DO NOT APPROVE RECOMMENDED LEVY.—If the electors of the school district should fail to approve the district tax levy found necessary by the county board to aid in maintaining the minimum term as prescribed herein, the county board shall determine the district tax proceeds which should be available in the district from the levy which is approved by the electors, shall determine the difference between the proceeds from this levy and from the levy recommended for the minimum term, and shall calculate the length of time each year the schools of the district could operate were this difference in proceeds available for use in the district. The county board shall then prescribe as the term for the schools in the district for the ensuing two years the adopted length of term for the schools of the county minus the length of term schools in the district could operate if this difference in proceeds were available for use as prescribed in this section.

History.—§1058, ch. 19355, 1939; CGL 1940 Supp. 892(377); §86, ch. 29764, 1955; §15, ch. 61-288.

236.601 Board of administration to act as fiscal agent in issuance and sale of motor vehicle anticipation certificates.—

(1) In aid of the provisions of §18, Art. XII of the state constitution, the state board of administration may upon request of the state board of education, act as fiscal agent for the state board of education in the issuance and sale of any or all bonds or motor vehicle tax anticipation certificates, including any refunding of bonds, certificates or interest coupons thereon which may be issued pursuant to the provisions of §18, Art. XII of the state constitution and upon request of the state board of education the state board of administration may take over the management, control, bond trusteeship, administration, custody and payment of any or all debt service or other funds or assets now or hereafter available for any bonds or certificates issued for the purpose of obtaining funds for the use of any county board of public instruction or to pay, fund or refund any bonds or certificates theretofore issued for such purpose under the provisions of §18, Art. XII of the state constitution. The state

board of education may from time to time provide by its duly adopted resolution or resolutions the duties said fiscal agent shall perform as authorized by this section and such duties may be changed, modified or repealed by subsequent resolution or resolutions as the state board of education may deem appropriate, provided, however, that such changes shall only affect the duties of the state board of administration as fiscal agent and shall in nowise affect or modify the paramount constitutional authority of the state board of education under §18 of Art. XII of the state constitution nor affect, modify or impair the contract rights of persons holding or owning said obligations authorized to be issued pursuant to said §18 of Art. XII.

(2) No such bonds or motor vehicle tax anticipation certificates shall ever be issued by the state board of administration until after the adoption of a resolution requesting the issuance thereof by the state board of education for and on behalf of the county for which such obligations are to be issued.

(3) All such bonds or certificates issued pursuant to this act shall be issued in the name of the state board of education but shall be issued for and on behalf of the county board of public instruction requesting the issuance thereof and shall be issued pursuant to any rules or regulations adopted by the state board of education which are not in conflict with the provisions of §18 of Art. XII of the state constitution.

(4) The proceeds of any sale of original bonds or original certificates shall be deposited in the state treasury to the credit of the particular construction account for which said original bonds or original certificates were issued and shall be under the direct control and supervision of the state board of education and withdrawals from said construction accounts shall be made only upon warrants signed by the state comptroller, countersigned by the governor of the state, and drawn upon the state treasurer. Such warrants shall be issued by the comptroller only when the vouchers requesting such warrants are accompanied by the certificates of the state board of education to the effect that such withdrawals are proper expenditures for the cost of the particular construction account against which the requested warrant is to be drawn.

(5) The state board of administration shall annually determine the amounts necessary to meet the debt service requirements of all bonds or certificates administered by it pursuant to this section and shall certify to the state board of education said amounts needed. The state board of education, upon being satisfied that said amounts are correct, shall pay said amounts direct to the state board of administration for application by said state board of administration as provided under the terms of the resolutions authorizing the issuance of said bonds or certificates and as provided in §18 of Art. XII of the state constitution.

(6) The state board of administration may invest any sinking fund or funds administered pursuant to this section as provided in §18 of Art. XII of the state constitution upon request and in accord with the directions of the state board of education.

(7) The expenses of the state board of administration incident to the issuance and sale of any bonds or certificates issued under the provisions of §18 of Art. XII of the state constitution and under the provisions of this section shall be paid from the proceeds of the sale of the bonds or certificates or from the funds distributable to each county under the provisions of §18 (a) of Art. XII of the state constitution. All other expenses of the state board of administration for services rendered specifically for, or which are properly chargeable to the account of any bonds or certificates issued for and on behalf of any county board of public instruction under the provisions of §18 of Art. XII of the state constitution shall be paid from the funds distributable to each county under the provisions of §18 (a) of Art. XII of the state constitution; but general expenses of the state board of administration for services rendered all the counties alike shall be prorated among them and paid from the funds distributable to each county on the same basis as such funds are distributable under the provisions of §18 (a) of Art. XII of the state constitution.

(8) The provisions of this section contemplate that it will aid the state board of education and better serve the purposes contemplated by §18 of Art. XII of the state constitution and not be inconsistent therewith.

History.—§§1-8, ch. 28065, 1953.

236.602 Bonds payable from motor vehicle license tax funds; instruction units computed.—

(1) That whenever the state board of education shall issue bonds or certificates for and on behalf of any board of public instruction of any county, the aggregate number of instruction units in such county in any future school fiscal year, as authorized under the amendment contained in Art. XII, Sec. 18, of the state constitution, to the full extent necessary to pay all principal of and interest on, and reserves for, bonds or certificates issued for and on behalf of such county in any school fiscal year as the same shall become due and payable, shall be not less than the aggregate number of instruction units in such county for the school fiscal year preceding the school fiscal year in which such bonds or certificates are issued, computed in accordance with the statutes in force in the school fiscal year preceding the school fiscal year in which such bonds or certificates are issued.

(2) The provisions of this section are not intended to, and shall not, be applicable to or confer any rights on, any county to payments from said motor vehicle license taxes except to the full extent necessary to pay all principal of and interest on, and reserves for, bonds or certificates so issued by said state board of

education for and on behalf of such counties, in each future school fiscal year as the same shall mature and become due; and except for such purpose, all payments of the amounts of said motor vehicle license taxes distributable under the provisions of Sec. 18, Art. XII of the state constitution shall continue to be made and distributed to such counties in the manner provided by said amendment and the general laws of Florida in force and effect at the time of such distributions.

History.—§§1, 2, ch. 29626, 1955.

236.61 Exceptional children; definition; requirements for participation.—The term "exceptional child" shall mean any educable child or youth whose physical functions or members are so impaired, as certified by a competent physician, that he cannot be adequately educated in the regular classes of the public schools or that he cannot be adequately educated in such classes without the provision of special facilities or services; and any other educable child or youth who, because of a physical, emotional or mental condition, has been certified by a competent specialist qualified under regulations of the state board to examine exceptional children, as unsuitable for enrollment in a regular class of the public schools or as unable to be adequately educated in the regular classes of the public schools without the provision of special educational facilities or services. Instruction units for exceptional children shall be computed as prescribed in §236.04, when the following requirements for participation have been met:

(1) Each county board which participates in this program shall submit annually to the state superintendent a plan outlining its proposed procedure for the provision of special educational services for exceptional children and no funds authorized herein may be allotted to any county until such plan has been approved in writing by the state superintendent in accordance with regulations of the state board.

(2) No child shall be given special services under the terms of this law as an exceptional child until he is properly classified as an exceptional child in keeping with the definition given above. A copy of the report certifying to the child's condition shall be kept on file in the office of the principal of the school in which the child is enrolled.

(3) In providing for the education of exceptional children the county superintendent, principals and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional children wherever this is possible. No child shall be segregated and taught apart from normal children until a careful study of the child's case has been made and evidence obtained which indicates that segregation would be for the child's benefit or is necessary because of difficulties involved in teaching the child in a regular class.

(4) The principal of the school in which the child is taught shall keep a written record of the case history of each exceptional child showing the reason for the child's withdrawal from the regular class in the public school and his enrollment in or withdrawal from a special class for exceptional children and this record shall be available for inspection by school officials at any time.

History.—§4, ch. 20910, 1941; §37, ch. 23726, 1947.

236.62 Exceptional children; requirements for teachers.—No teacher shall be employed to teach exceptional children under the provisions of this law until such teacher has been duly certificated as a teacher of exceptional children under the regulations of the state board, which is hereby directed to develop plans for the proper education of teachers of exceptional children and to prescribe and issue such standards and regulations as may be necessary and reasonable for certificating teachers and supervisors for exceptional children.

History.—§5, ch. 20910, 1941, §38, ch. 23726, 1947.

236.70 State junior college minimum foundation program fund.—There is hereby established, as a part of the county school fund authorized by §9, Art. XII of the state constitution, a state junior college minimum foundation program fund to be known as the junior college minimum foundation program fund, which shall be used to assist county boards in maintaining the minimum foundation program for junior colleges in the county as authorized by law. This fund shall comprise all appropriations made by the legislature for the support of the junior college minimum foundation program and shall be apportioned and distributed to the county school fund of the several counties of the state based upon the principles of classification and procedures declared by law. The junior college minimum foundation program is the program to be financed in each junior college with the assistance of the minimum foundation program fund as hereinafter provided.

History.—§7, ch. 63-495.

236.71 Requirements for participation in junior college minimum foundation program fund.—Each county which participates in the junior college minimum foundation program fund, as hereinafter prescribed, shall provide evidence of its effort to maintain an adequate junior college program which shall meet the minimum standards prescribed by the state board in accordance with §230.47(5).

History.—§7, ch. 63-495.

236.72 State superintendent to determine units for junior colleges.—The state superintendent shall determine from reports submitted as prescribed by regulations of the state board by county superintendents and presidents of junior colleges the average daily attendance of students, and the instructional personnel employed, in the junior colleges in counties which meet the requirements of law for operating a junior college. On the basis of said reports the state superintendent shall determine the number of instruction units in each junior college as hereinafter prescribed. If in any junior college the average daily attendance of pupils for the first two months of any aca-

demic year is more than five per cent greater than the average daily attendance in the junior college during the first two months of the preceding academic year, the state superintendent shall report the facts to the state board which shall have the authority to authorize an increase in the amount of funds allocated from the junior college minimum foundation program fund for that junior college by the percentage of increase which is in excess of five per cent.

History.—§7, ch. 63-495.

236.73 Procedure for determining number of instruction units for junior colleges.—The number of instruction units for instructional personnel for junior colleges in counties which meet the requirements of law for operating a junior college, shall be determined from the average daily attendance in the junior college, provided that attendance may not be counted more than once in determining instruction units. Instruction units for junior colleges shall be computed separately from other units in the county as follows:

(1) One unit for each twelve students in average daily attendance at a junior college for the first four hundred twenty students, and one unit for each fifteen students in average daily attendance for all over four hundred twenty students. Average daily attendance at a junior college shall be defined by regulations of the state board.

(2) For each eight instruction units in a junior college: One instruction unit or proportionate fraction of a unit shall be allowed for administrative and special instructional services when used in accordance with regulations prescribed by the state board.

(3) For each twenty instruction units: One instruction unit or proportionate fraction of a unit shall be allowed for student personnel services when used in accordance with regulations prescribed by the state board.

(4) For the fiscal year 1963-64 only, each county in which a junior college is located shall be entitled to one junior college president unit for each junior college approved by the state board. For each president unit there shall be allocated as a part of the junior college foundation program the sum of seven thousand five hundred dollars.

History.—§7, ch. 63-495.

236.74 Procedure for determining annual apportionment to each county for junior colleges.—The procedure for determining the annual apportionment from the junior college minimum foundation program fund to each county authorized to operate a junior college under the provisions of §230.46 shall be as follows:

(1) DETERMINING TRAINING RANKS OF INSTRUCTIONAL PERSONNEL AND TRAINING LEVEL OF INSTRUCTION UNITS.—The training ranks of instructional personnel and the training level of instruction units of junior colleges shall be determined by the state superintendent in the manner provided in §236.07(1), (2), provided that ranks for personnel engaged in technical education may be established on the basis of qualifications which are equivalent to a degree as prescribed by regulations of the state board.

(2) DETERMINING THE AMOUNT TO BE INCLUDED FOR INSTRUCTIONAL SALARIES.—

(a) Multiply the number of instruction units in Rank I by five thousand two hundred dollars, in Rank II by four thousand six hundred dollars, in Rank III by four thousand one hundred fifty dollars, and in Rank IV by thirty-two hundred dollars.

(b) For each instruction unit sustained by instructional personnel under continuing contracts in Ranks I, II, and III there shall be added three hundred dollars; and for each instruction unit sustained by instructional personnel under continuing contract in Ranks I, II, and III who have completed ten years of continuous efficient teaching service in Florida public schools as aforesaid there shall be added three hundred dollars in addition to the above; provided, for any county, which by a local law a tenure program is provided in lieu of continuing contracts, the state board of education shall by regulations provide for the recognition and application of comparable tenure requirements in lieu of the requirements herein relating to continuing contracts.

(c) The amounts included for salaries for administrative and special instructional personnel and student personnel services in each junior college shall be increased by up to twenty per cent when such money is used to pay the salaries of personnel who are employed, pursuant to regulations of the state board, beyond a ten month contract period.

These amounts are to be used only for apportionment purposes and are not to be construed as a state salary schedule. The sum of these products shall be the total amount included in the junior college minimum foundation program for instructional salaries, which shall not exceed the amount paid as salaries in any case.

(3) DETERMINING THE AMOUNT FOR CURRENT EXPENSES OTHER THAN INSTRUCTIONAL SALARIES AND TRANSPORTATION.—Multiply the number of instruction units for junior colleges determined for each county according to law by eight hundred fifty dollars, and beginning in 1964-65 add seventeen thousand five hundred dollars for administrative expenses including salaries of the first approved junior college center in each county, and add ten thousand dollars for administrative expenses including salaries of each additional center approved by the state board of education; and the sum of these shall be the amount included for current expenses other than instructional salaries and transportation for the junior college program in each county where a junior college is operated; provided that all of the money provided hereunder is used exclusively for junior colleges; and, provided further, that the state board shall establish minimum standards to be met by county

boards in expending these funds for junior colleges.

(4) DETERMINING THE AMOUNT TO BE INCLUDED FOR CAPITAL OUTLAY AND DEBT SERVICE.—The amount included in the junior college minimum foundation program for capital outlay and debt service shall be as determined and provided in §18, Art. XII of the state constitution and state board of education regulations pertaining thereto.

(5) DETERMINING THE TOTAL CALCULATED COST OF THE JUNIOR COLLEGE MINIMUM FOUNDATION PROGRAM.—The total calculated cost of the minimum foundation program for each junior college shall be the sum of the amounts included in the junior college minimum foundation program for instructional salaries, current expenses other than instructional salaries and transportation, and capital outlay and debt service as set forth above.

(6) DETERMINING THE MINIMUM FINANCIAL EFFORT IN EACH FISCAL YEAR REQUIRED OF EACH PARTICIPATING COUNTY FOR THE JUNIOR COLLEGE MINIMUM FOUNDATION PROGRAM.—The amount which each county approved by the state board to operate a junior college or to participate in the support of a junior college shall provide toward the cost of the junior college minimum foundation program is that county's per cent of the financial ability of the state as determined by an index of relative taxpaying ability prescribed by law multiplied by five per cent of ninety-five per cent of the calculated yield of six mills of taxes levied on the nonexempt assessed valuation of the state subject to the provisions of §236.071; provided that the required amount shall be subject to the limitation in §230.48.

(7) DETERMINING THE ALLOCATION FROM STATE FUNDS.—The total allocation to each junior college from the junior college minimum foundation program fund shall be the total calculated cost of the minimum foundation program for that junior college as determined in subsection (5), less the minimum financial effort required as determined in subsection (6); provided, however, that from this amount shall be deducted in the succeeding fiscal year

(a) In such junior colleges as fail to pay instructional personnel at least the amount included in the minimum foundation program for instructional salaries, the difference between the amount included in the minimum foundation program for instructional salaries and the amount actually paid to instructors in such junior colleges; and

(b) Any unused portion of the amount included in the junior college minimum foundation program for instruction units of any type or classification.

History.—§7, ch. 63-495.

CHAPTER 237

FINANCIAL ACCOUNTS AND EXPENDITURES

237.01 Uniform records and accounts.—The financial records and accounts of each county board shall be kept by the county superintendent on the forms and under regulations prescribed by the state board for the uniform system of financial records and accounts for the schools of the state. This system shall require that all operating expenses be charged to the fiscal year in which they were incurred. These accounts shall be kept accurately and balanced, summarized, and reconciled with the accounts of the county school depository or depositories at least once each month by the time of the first regular board meeting of that month, a copy of the summary statement being sent to the state superintendent on forms prescribed by the state board. The county superintendent shall recommend to the county board such clerical assistants as are necessary for the proper keeping of the uniform system of financial records and accounts, and it shall be the duty of the county board to make adequate appropriation for such clerical assistance. If, in the judgment of the county superintendent, the clerical assistance provided, or the appropriation in the budget for clerical assistance, is inadequate, he shall certify the facts to the state superintendent, and the state superintendent, if investigation discloses the clerical assistance to be inadequate, may request the county board to incorporate in the budget the amount necessary to provide the services needed.

History.—§1059, ch. 19355, 1939; CGL 1940 Supp. 892(378).

237.02 Expenditures. — Expenditures shall be limited to the amount budgeted under the classification of accounts provided for each fund, and to the total amount of the budget, after the same have been amended as prescribed by law. Before the first meeting of the county board each month, the county superintendent shall check actual receipts and expenditures against budgeted receipts and expenditures, and recommend to the county board such action as may be necessary to keep expenditures within the budgeted income during the fiscal year. The county board shall endeavor to obtain maximum value for all expenditures and shall take such steps as are necessary to get the lowest prices for materials which are best adapted to the needs. The county board shall also assume responsibility for seeing that a balanced school program is maintained by budgeting and approving expenditures for functions in terms of relative importance and as prescribed by law. The following procedure shall be observed in incurring liabilities against the school funds.

(1) PURCHASES.—The plan for making purchases in any county shall be approved by the county board. Purchases of any item costing more than three hundred dollars must first be specifically authorized by the county board. The county superintendent may be authorized to make purchases or to approve purchases of a business assistant functioning under his direction of small items where the total amount of the purchase does not exceed an amount prescribed by the county board. No person, unless authorized to do so under regulations of the county board, may make any purchase involving the use of school funds; no expenditures for any such unauthorized purchase shall be approved by the county board. Before making any purchase which he is authorized by

the county board to make or before recommending any purchase to the board, the county superintendent shall, insofar as possible, propose standards and specifications which are to be prescribed for materials to be purchased. He shall see that all materials thus purchased conform to those standards and specifications, and shall take such other steps as are necessary to see that the maximum value is being received for any money expended.

(2) BIDS.—Bids shall be requested from three or more sources by the county board for any authorized purchase costing more than three hundred dollars. The county board shall have the authority to reject any or all bids and request new bids. In the acceptance of bids, the county board shall accept the lowest and best bid. Provided that the state board of education may, by regulation, provide for alternative procedures for bidding or purchasing in cases where the character of the item requested renders competitive bidding impractical.

(3) REQUISITIONS.—In so far as practicable, all purchases shall be based on requisitions. Within limits prescribed by the county board, the county superintendent shall be authorized to approve requisitions under regulations of the county board; provided, that in so doing he shall certify that funds to cover the expenditures which would be required by the requisitions are authorized by the budget and have not been encumbered.

(4) EXPENDITURES FROM DISTRICT CURRENT SCHOOL FUNDS. — Expenditures from district current school funds within the amount authorized in the budget shall be made by authority of the county board. Requisitions for expenditures against these funds may be filed by the supervising principal if there be such, or in case there be no supervising principal, then by the principals of the schools concerned. These requisitions may be approved by the county superintendent, subject to regulations of the county board, when district current school funds to cover the expenditures are authorized in the budget and have not been encumbered.

(5) EXPENDITURES FROM COUNTY AND OTHER FUNDS. — Expenditures from county and other funds available for the public school program of any county shall be authorized by the county board in accordance with procedures herein prescribed.

(6) VOUCHERS.—Each statement of an account for purchase of materials and supplies or services made under regulations of the county board shall be known as a voucher and shall be numbered and filed until paid. When a voucher has been approved by the county board, as provided herein, it shall be entered upon the records and charged against the proper account classification. When a voucher has been paid, the county superintendent shall mark it with the date, number and amount of the warrant, and the fund from which drawn, and shall make the proper entries in the records and thereafter file the voucher in numerical order. The records of the county board shall be held open, if necessary, for two weeks after June thirtieth of any year to permit the approving and recording of all expenditures incurred before the close of the school year. All vouchers not paid during the year in which they were incurred shall, when paid, be charged to the appropriation in the ensuing year's budget provided for indebtedness incurred during the previous year. No voucher shall be approved or paid nor any warrant drawn to pay any voucher unless a statement of the account shall bear the written or initialed approval of the county superintendent certifying that the purchase has been properly authorized by the board, that the account is correct, due, and unpaid, and that funds to cover the expenditure are authorized in the budget and have not been encumbered. The county superintendent shall recommend payments from school funds only after he has exercised due diligence in assuring himself that such payments are lawful, are provided for in the budget, are reasonable, and are for goods received in good order or for services properly rendered and for which payment has not been made.

(7) PAYROLL VOUCHERS.—Payroll vouchers may be made up, approved, and ordered paid by the county board during and before the end of the period for which they are made; provided, that if a less amount be due at the end of the period, only the amount due may be paid or an adjustment of the amount due shall be made on the next payroll.

(8) STATEMENT OF ACCOUNT APPROVED IN OPEN MEETING.—The county board shall authorize all expenditures and shall approve all vouchers. No voucher shall be approved for payment by the county board except in open meeting of the board. Warrants shall be drawn only in payment of vouchers approved as prescribed herein, and each warrant drawn shall be listed in a supplementary minute book with proper reference thereto in a summary form in the regular minute book. The county board may authorize the county superintendent and chairman of the county board to pay approved vouchers which become payable before the next meeting date. At the next meeting the county superintendent shall present a list of warrants paid since the last meeting signed by him and the chairman, giving all detailed and necessary information, to be entered in the minutes and in the supplementary minutes as herein prescribed.

(9) INTERNAL FUNDS.—The county board shall be responsible for the administration and control of all local school funds derived by any school, including junior colleges, from all activities including the school lunch program, or any other source, and shall prescribe the principles and procedures to be followed in administering these funds consistent with regulations adopted by the state board of education.

The state board of education shall adopt

regulations governing the procedures for the handling of the receipt, expenditure, deposit and disbursement of internal funds, which regulations do not necessarily have to comply with the requirements set forth in §237.02(1)-(8).

(10) POOL PURCHASES.—The counties may jointly pool their requirements and resources and designate one county board, or the state department of education, to act as agent for all in the requisitioning, bidding, and purchasing of materials or supplies. Each county participating in such a pool purchase shall pay its pro rata cost to the county designated as the agent county and each county shall show only the net cost of such purchases in its annual report. The agent county shall in each case furnish each cooperating county a statement signed by the superintendent and chairman of the county board certifying that the purchase complied with all applicable laws and regulations. If the state department of education is designated as the agent, purchases shall be made in accordance with the requirements of the state purchasing commission and such purchases shall be deemed to satisfy the legal requirements of each participating county.

(11) FINANCING COOPERATIVE PROJECTS OR ACTIVITIES.—When any county board or one or more county boards engage in any cooperative projects or activity, as authorized under §230.23(4)(m), each county board may provide its portion of the total financial cost by any one or more of the following methods as may be agreed upon by the cooperating counties:

(a) The assignment of personnel to perform duties in connection with the project or activity.

(b) The direct expenditure of funds for the purchase of supplies or equipment required by the project or activity.

(c) The making of payments under contract to any cooperating governmental agency or to a nonprofit corporation; such payments to be considered as payment for contractual services performed or to be performed by the receiving agency or nonprofit corporation. The receiving county shall budget the contract receipts as income and shall show the gross expenditures in the annual financial report. The title to any equipment purchased by the agency or nonprofit corporation shall be in the name of such receiving agency or nonprofit corporation.

History.—§1060, ch. 19355, 1939; CGL 1940 Supp. 892(379); §21, ch. 29754, 1955; (4) §18, ch. 57-249; (2), (4) §16, ch. 61-288; (9) n. §7, ch. 61-459; §18, ch. 63-376.
cf.—§230.43 Recommendation of expenditures by trustees.

237.03 Transfer of funds restricted.—No transfer from current funds for the maintenance and support of schools shall be made to any other fund without written permission of the state superintendent. No transfer shall be made from the district bond interest and sinking fund, or from the bond construction fund, except transfers of balances authorized by law.

History.—§1061, ch. 19355, 1939; CGL 1940 Supp. 892(380).

237.04 Petty cash funds.—The county superintendent may be allowed, not to exceed one hundred dollars, and the principal of the school, not to exceed fifty dollars as a petty cash fund from which to make needed expenditures for school purposes in emergencies. Each petty cash fund established shall be managed by and charged to a single designated person. The funds shall be kept separate from all other funds and itemized receipts shall be taken for each expenditure. A statement of expenditures shall be made, from time to time and at the end of each year, to the county board, and upon their approval, shall be entered in the records as other vouchers are entered. The county board shall reimburse the funds as often as it deems necessary. The funds shall be used for regular and legal expense of the schools, and no part of any such fund may be loaned or advanced against the salary of an employee.

History.—§1062, ch. 19355, 1939; CGL 1940 Supp. 892(381); §19, ch. 63-376.

237.05 Budget system established.—For the purpose of promoting economy and efficiency in the financial operations of the public schools and for the purpose of keeping all school expenditures within the estimated receipts and balances, as provided herein, there is established a budget system for the control of the finances of county boards.

History.—§1063, ch. 19355, 1939; CGL 1940 Supp. 892(382).

237.06 Form of annual budget required.—An annual budget is required to be prepared and approved by the county board of each county and submitted to the state superintendent for examination on or before August first of each year, as hereinafter provided. Such annual budget shall be prepared and submitted on forms and in accordance with regulations prescribed by the state board. The annual budget submitted by each county board shall, in so far as practicable, be consistent with and contribute to the development of a long-time planned school program for the county.

History.—§1064, ch. 19355, 1939; CGL 1940 Supp. 892(383).
cf.—§230.23 Duties of county board.

237.07 Estimate of allotment of state funds.—On or before June fifteenth of each year, the state superintendent shall certify to each county superintendent the estimated number of instruction units upon which the state funds shall be allotted to his county during the next year. When official reports on attendance and on salaries to be paid teachers have been received from all county superintendents, and the number of instruction units to be used for the ensuing year has been determined, any adjustments in the estimated allotment to any county shall promptly be reported to the county superintendent of that county by the state superintendent.

History.—§1065, ch. 19355, 1939; CGL 1940 Supp. 892(384).

237.08 Estimate of assessor of taxes.—On or before the first Monday in July the assessor of each county shall certify to the county superintendent his estimate of the total valuation

reasonably to be expected by him to be assessed on the current year's tax roll for nonexempt property, for homestead property, and for tax delinquent property on which certificates are held by the state, in each school district, separately, and in the entire county. If, after the certification of his estimates, and before equalization of the tax roll, it shall appear to the assessor of taxes that said estimates, or any of them, were in error by ten per cent or more, he shall immediately certify his revised estimate to the county superintendent, and such revised estimate shall be substituted for the original estimate at any time before the final adoption of the budget. Immediately upon the equalization of the tax roll as provided by law, the county assessor of taxes shall certify to the county board the actual assessed valuation of the property in the county as prescribed above.

History.—§1066, ch. 19355, 1939; CGL 1940 Supp. 892(385); §87, ch. 29764, 1955; §1, ch. 61-328.

237.09 County superintendent to prepare tentative budget.—On or before July fifteenth of each year, the county superintendent of each county, after tentatively ascertaining the policies of the county board regarding the school program and the budget for the ensuing year, and after consulting with the principals of the various schools or with supervising principals to determine needs, shall prepare as accurately as possible an estimate of the cost of the program including all obligations to be met and necessary reserves, the balances and income to be available, and the tax levies needed during the next ensuing fiscal year, which estimates shall be prepared in proper form to constitute the tentative budget for the county as prescribed below.

This tentative budget shall provide, in so far as practicable, for a uniform term for all schools in the county based on an equitable and equalizing apportionment of state and county school funds, and shall be balanced before it is submitted to the county board; that is, the estimate of expenditures to be made during the year, including obligations against the fund, plus reserves, shall not exceed the estimate of income plus the balance expected to be available at the beginning of the year. This tentative budget shall be prepared as follows:

(1) ESTIMATE OF EXPENDITURES AND RESERVES.—The county superintendent shall prepare an itemized list of the functions to be performed, the services to be rendered, and the obligations to be met by and for the county school system, and, on the basis of that list, shall prepare the following estimates of expenditures to be incurred during the next fiscal year; provided, that in the district current school fund budgets and in the general county budget for the support and maintenance of the schools, he may propose a reserve for contingencies which shall not exceed five per cent of the total budget; and, provided further, that in these same budgets he may propose a reserve of not exceeding twenty per cent of the taxes estimated for the budget, which reserve, if authorized, shall be set aside as a "cash balance to be carried over" for the purpose of paying expenses for the period in the next succeeding fiscal year between July first and November thirtieth of such year—the time when taxes to be levied for the succeeding year's expenses will begin to be available:

(a) *For district current school funds in each school district in the county.*—An estimate of the expenditures that will need to be incurred for the support and maintenance of the schools by the district current school fund, and for indebtedness of the district current school fund; also, of the reserve for contingencies and of the balance, as hereinbefore provided, which should be carried forward at the end of the year.

(b) *For the county general school fund.*—An estimate of the expenditures which will need to be incurred for the support and maintenance of the schools and for the legal indebtedness of the fund; also, of the reserve for contingencies and of the balance in the county current school fund which should be carried forward at the close of the year as hereinbefore provided.

(c) *For the district bond interest and sinking fund of each district.*—For each school district, the bond principal and interest maturing in the year for which the budget is made shall be determined and estimates shall be made for expenses connected with the payment of such bonds and coupons, commissions of the tax collector, and of the assessor of taxes, if such commissions are authorized by law, and expenses of refund operations, if any are contemplated. If any interest or serial bonds are payable between the end of the fiscal year for which the budget is made and November thirtieth of the succeeding year, or before the date on which a sufficient amount of the succeeding year's taxes may reasonably be expected to be available, a sufficient "cash balance to be carried over" shall be reserved as provided hereinabove, to pay such principal and interest. In any year, more than one year before the fiscal maturity of the bonds of a district, an additional reserve may be provided not to exceed the current year's principal and interest requirements. For serial bonds maturing at intervals greater than one year, reserves for "sinking funds" shall be calculated on a straight-line basis for such intervals. Sinking funds for bonds not maturing serially shall be provided by "reserve for sinking funds" calculated on a straight-line basis.

(d) *For the district bond construction fund.*—For each school district an estimate of the cost of each proposed project shall be made and of any other expenditures to be incurred by the district bond construction fund; provided, that a reserve of not exceeding ten per cent of the total budget of this fund may be proposed for contingencies.

(2) ESTIMATE OF BALANCES ON HAND, INCOME, AND TAX LEVIES NEEDED.—The county superintendent shall determine the balances on hand and shall

prepare an estimate of receipts reasonably to be expected by him to be available from all sources to meet the cost of the program for the county school system. These estimates shall not include estimated receipts from tax redemptions which are to be omitted to constitute a reserve for noncollection of taxes unless the receipts from tax redemptions can reasonably be expected to exceed the amount of uncollected taxes, in which case the estimated amount of excess only shall be included. The estimates of receipts from taxes are to be based on the estimate of the assessor, as hereinbefore prescribed, and on anticipated collection of ninety-five per cent of the taxes to be assessed. This estimate shall be prepared as follows:

(a) *For the district current school fund in each school district in the county.*—An estimate of the income anticipated from the tax levy necessary to aid in maintaining the minimum term adopted for the county, from such additional millage as shall have been authorized by the voters of any district, of the income from all other district sources, and of the balance on hand.

(b) *For the county general school fund.*—An estimate of the balance in the county general school fund which can reasonably be expected to be on hand, the estimate of the allotment of state and federal funds to which the county is entitled during the year as certified by the state superintendent, an estimate of the amount needed from county school taxes and of the amount to be available from all other county general school fund sources; also an estimate of the county school tax millage levy necessary to produce the amount needed.

(c) *For the district bond interest and sinking fund of each district.*—For each school district an estimate of the balance on hand, of the amount available from tax sources and from all other sources; also an estimate of the tax levy to be made to meet the obligations of the district bond interest and sinking fund and to provide for the reserve authorized.

(d) *For the district bond construction fund.*—An estimate of the proceeds from sale of bonds, insurance, sale of property, and other funds available or to be available in the district bond construction fund.

(3) TENTATIVE BUDGET FOR SCHOOL DISTRICT.—The estimates of expenditures, reserves, balances, and income of the district current school fund prepared as prescribed in subsections (1)(a) and (2)(a) above shall constitute the tentative budget. This tentative budget shall be submitted to the trustees by the county superintendent for review before it is submitted to the county board; provided, that changes involving expenditures in excess of the anticipated receipts for the district, or those in conflict with state board or county board regulations, may not be made.

(4) TENTATIVE CONSOLIDATED BUDGET FOR THE COUNTY.—After preparing the tentative budget for the district current school fund, the county superintendent shall add the estimates of expenditures and reserves in the district current school fund to the estimates of expenditures to be made from the county general school fund, and shall combine the estimate of income and balances from the district current school fund with the estimate of income from the county general school fund and the balance in that fund to arrive at the tentative budget for the maintenance and support of schools in the county. If, when a tentative budget has been prepared in this form, the proposed expenditures, plus reserves, exceed the estimated income, plus balances, the proposed tax levy for the general fund shall be increased, if that is possible without exceeding the maximum of ten mills, or, if such increase is not possible, the appropriations for expenditures or the reserves shall be reduced. This tentative budget for the county shall comprise and show, separately:

(a) *The budget for the support and maintenance of the schools.*—This budget shall include the estimate of the expenditures and of the income, classified under appropriate headings, for the current school program of the county; also, the estimates of reserves and balances and of the proposed county tax levy and of the district current tax. In counties organizing or operating a public junior college, under the provisions of §§230.46, 230.47 and 236.071, the estimates for such college shall be itemized separately from estimates for other schools and in accordance with the provisions of §237.06.

(b) *District bond interest and sinking fund budget.*—This budget shall include the obligations to be met and the cash balance to be carried over as a reserve at the end of the year, as provided above, the estimated balance on hand at the beginning of the year, also the estimated receipts and the tax levies proposed in the district bond interest and sinking fund of each school district. The tax levy proposed in each district shall be adequate, together with the cash balance in the fund, to provide receipts needed to meet all obligations of the fund during the year, as hereinabove provided.

(c) *District bond construction fund budget.*—This budget shall include the estimated cost of projects to be undertaken during the year; also, the estimates of the cash balance on hand and of the receipts from various sources as stated above.

(d) *Capital outlay program.*—This report shall include a list of the capital outlay projects to be undertaken during the year, giving the location, size, type, and cost of each project according to funds to be used in meeting the cost.

(e) *Other parts.*—The budget shall include such other parts or items as are prescribed under regulations of the state board.

History.—§1067, ch. 19355, 1939; CGL 1940 Supp. 892(386); (4)(a) §3, ch. 28068, 1953; (3), (4)(a) §88, ch. 29764, 1955; §19, ch. 57-249; (3) §17, ch. 61-288.

237.10 County superintendent to submit tentative consolidated budget to county board.—The county superintendent of each county shall prepare a tentative budget in such form and separate parts as prescribed above, and submit this budget to the county board on or before July fifteenth of each year. The county superintendent shall attach to the tentative budget his certificate that the budget has been properly prepared, that his estimates contained therein are made according to his best information, knowledge, judgment, and belief, and that the figures obtained from the estimates of other officers, as prescribed, are correctly represented according to such estimates.

History.—§1068, ch. 19355, 1939; CGL 1940 Supp. 892(387).

237.11 County board to approve budget.—On or before August first of each year, the county board of each county shall receive and examine the tentative budget prepared and submitted by the county superintendent, as prescribed above, and shall require such changes to be made in keeping with the purposes of the school code as may be to the best interest of the school program in the county; provided, that the county board may not require any changes in the county superintendent's estimates of receipts except as follows:

(1) When and if a revised statement shall have been received from the state superintendent, the estimate of state funds contained in the budget shall be changed accordingly.

(2) When and if a revised estimate of assessed valuation, or a certificate of the equalized assessed valuation shall be received from the assessor of taxes before the budget is finally adopted, the estimated receipts from taxes assessed shall be changed accordingly.

(3) The proposed levy of county school taxes may be changed to be not less than three mills or not more than ten mills on the dollar on taxable property in the county.

(4) Errors and omissions shall be corrected by the county board. When and if such change is made, the estimate of receipts shall be required to be changed accordingly.

The county board shall determine, within prescribed limits, the extent of the reserves to be allotted for contingencies, and the cash balance to be carried forward at the end of the year. If the county board shall require any changes to be made in receipts, in the reserves for contingencies, or in the cash balance to be carried forward at the end of the year, it shall also require necessary changes to be made in the appropriations for expenditures so that the budget, as changed, will not contain appropriations for expenditures and reserves in excess of, or less than, estimated receipts and balances.

History.—§1069, ch. 19355. 1939; CGL 1940 Supp. 892(388).

237.12 Public hearings; budgets to be submitted to state superintendent.—On or before August 1 of each year, the county board of each county having tentatively approved each separate part of the budget and the entire budget for the schools of the county, shall cause a summary of the tentative budgets, including the proposed millage levies as prescribed by the state board, to be advertised one time in a newspaper of general circulation published in the county, or by posting at the courthouse door if there be no such newspaper, and the advertisement shall state that the county board shall meet on a day fixed in the advertisement not earlier than one week and not later than two weeks from the date of the advertising but before August 1 for the purpose of a public hearing concerning the tentatively approved budgets. The county board shall meet upon the date fixed in the advertisement for the public hearing and from day to day thereafter if it deems it necessary for the purpose of holding further public hearings and making whatever revisions in the budget it may deem necessary. The county board shall then approve each separate part of the budget and the entire budget for the county for the current fiscal year and shall require the county superintendent to transmit forthwith two copies of the approved budget, prepared in such form and separate parts as required to the state superintendent for approval as prescribed by law. Each copy of each separate part of the budget so transmitted shall be certified by the chairman of the county board and by the county superintendent as a true and correct copy of the budget as adopted by the county board following the public hearing or hearings.

History.—§1070, ch. 19355, 1939; CGL 1940 Supp. 892(389); §8, ch. 22839, 1945.

237.13 State board to prescribe regulations and procedures for examining and approving budgets and for reserves.—It shall be the duty of the state board to prescribe such regulations as are necessary to guide the state superintendent in examining and preparing reports on all budgets submitted by county boards and to require that such budgets be examined and that a written report on the result of such an examination be submitted to each county superintendent for transmission to the county board of that county within thirty days of the receipt of the budget as prescribed below; provided, that the state board shall also have authority to prescribe regulations in accordance with which county boards may be authorized to provide in their budgets for school building and bus reserve funds, to invest such funds, and to carry forward such reserves in their budgets from year to year in such amounts and for such periods of time as are authorized by the state board regulations; such reserves as authorized shall be in addition to those authorized in §237.09.

History.—§1071, ch. 19355, 1939; CGL 1940 Supp. 892(390); §9, ch. 22839, 1945.

237.14 State superintendent to examine budgets and make reports.—The state superintendent shall examine or have examined and make a report, in accordance with the regulations of the state board. on the budget from each county in the state. This examination shall be made and the report completed within

thirty days of the receipt of the budget, and the report shall be transmitted to the county board of each county through the county superintendent. In this report, the state superintendent shall, as hereinafter prescribed, either (1) require certain changes to be made, (2) suggest that certain changes be made, or (3) certify that the budget is satisfactory and shall become official from the date of the report.

History.—§1072, ch. 19355, 1939: CGL 1940 Supp. 892(391).

237.15 State superintendent shall require changes if budget improperly prepared.—If the budget of any county has been improperly prepared or fails to meet conditions prescribed below, the state superintendent shall incorporate in his report the respects in which the budget is inadequate and shall require that the budget be changed in those respects. If any changes are required, as prescribed below, the county board shall authorize such changes to be made and shall resubmit the budget, with the corrections, within fifteen days of the date of the report from the state superintendent.

(1) BUDGET MUST BE PROPERLY PREPARED.—If it is found that the budget of any county has not been properly prepared, the county superintendent shall be required to prepare the budget in proper form, such revised budget to be approved by the county board and to be submitted to the state superintendent for examination.

(2) ESTIMATED RECEIPTS FROM STATE FUNDS MUST BE CORRECT.—If at any time before the budget becomes official, the estimated allotment of state funds to any county is revised more than five hundred dollars after the number of instruction units allotted the county has been officially determined, the budget shall be required to be revised to include the correct figure for the state allotment and to include any necessary corrections in the appropriations for instructional salaries or transportation.

(3) COUNTY TAX LEVY MUST BE ADEQUATE.—If the county tax levy as proposed is less than the maximum of ten mills of ad valorem tax, authorized under §8, Art. XII of the constitution, and is not adequate to assure the proper maintenance and support of the public schools of such county for a term of at least one hundred eighty days during the ensuing year, the state superintendent shall certify to the county board through the county superintendent the levy which is required; provided, such levy does not exceed ten mills, and the county board shall amend its proposed budget and require the proper levy to be made in accordance with the direction of the state superintendent.

(4) ESTIMATED INCOME PLUS BALANCES MUST EQUAL PROPOSED EXPENDITURES PLUS RESERVES.—If the proposed expenditures, plus reserves, do not equal the estimated income, plus balances, the budget shall be required to be revised and corrected.

(5) PROPOSED EXPENDITURES MUST BE LEGAL.—If the budget contains improper or illegal appropriations, or contains other than harmless improprieties in form of preparation, it shall be revised and corrected.

(6) INSTRUCTIONAL SALARIES MUST CONSTITUTE PROPER PROPORTION OF TOTAL BUDGET.—If, in any county, the amount budgeted for instructional salaries is less than the amount allotted to the county for instructional salaries from state funds, or than the amount allotted in the salary schedule adopted by the county board, the budget shall be required to be revised to provide for more adequate salaries.

History.—§1073, ch. 19355, 1939; CGL 1940 Supp. 892(392); (3) §89, ch. 29764, 1955.

237.16 State superintendent to recommend changes.—In addition to the foregoing, the state superintendent shall incorporate in his report on the budget for each county, recommendations concerning any changes which in his opinion should be made to improve the school program in the county. If the report of the state superintendent recommends any changes, it shall become the duty of the county board, either to revise and adopt the budget in accordance with recommendations of the state superintendent, or to adopt the budget without complying with any one or all of such recommendations and to transmit to the state superintendent, through the county superintendent, within thirty days of the receipt of the report, a written statement giving, for each suggested change which is not adopted, the reason for preferring to follow the budget as prepared rather than to make the change recommended, in which case such written statement shall be adopted in a meeting of the board and entered in the minutes of the board together with the recommendations of the state superintendent.

History.—§1074, ch. 19355, 1939; CGL 1940 Supp. 892(393).

237.17 When budget becomes official.—The budget of any county shall be considered as finally adopted and as official, and shall regulate the expenditures of the county board, when (1) such budget has been approved by the state superintendent as hereinabove prescribed, (2) when, within thirty days from the date the budget has been received by the state superintendent, no report or recommendations have been prepared by the state superintendent, or (3) when the county board has filed with the state superintendent a statement as hereinbefore prescribed explaining why any recommended changes can not be made. The state superintendent shall then make his certificate upon each copy of the budget, attesting his approval, or that the budget has become official without his approval, as hereinabove prescribed. The certificate of the state superintendent shall give the date upon which the budget became finally official and effective. One copy of the budget with such certificate shall be sent to the county superintendent, who shall thereupon record such certificate and budget in the minute book of the county board, and the other copy thereof shall be filed in

the office of the state superintendent. Upon the execution of the said certificate, either of the copies of the budget certified by the state superintendent shall be original evidence of the budget or of any of its provisions.

History.—§1075, ch. 19355, 1939; CGL 1940 Supp. 892(394); §90, ch. 29764, 1955.

237.18 Levying of taxes.—Upon the final adoption of the budget, and upon receipt of the certificate of the assessor of taxes giving the assessed valuation of the county and of each of the school districts, the county board shall determine by resolution the amounts necessary to be raised for the county current school fund, and for each district bond interest and sinking fund and the millage necessary to be levied for each such fund, and shall also show in said resolution the millage voted by each school district for the district current school fund. A certified copy of said resolution shall thereupon be filed with the board of county commissioners and the board of county commissioners shall thereupon order the assessor to assess the several millages certified by the county board against the taxable property in the county and the taxable property of the several school districts. The assessor shall then assess the taxes as ordered by the board of county commissioners and the collector shall collect said taxes and pay over the same promptly as collected to the county school depository or depositories to be used as provided by law; provided, that all taxes authorized herein shall be assessed and collected on railroad, street railroad, sleeping car, parlor car, and telegraph company property in the manner now provided by law.

The county board shall determine the millage to be levied for the county general school fund and the district bond interest and sinking funds by dividing the applicable assessed valuation, as finally certified by the assessor after equalization, into the amount budgeted to be received from taxes before five per cent is deducted, using the nearest one-quarter of a mill or other fraction or decimal ordinarily used in the county; provided, that if the assessed valuations are not equalized until after the final adoption of the budget, and it is thereupon determined that the legal millage will not be sufficient to produce the amount estimated from taxes for the budget of any fund, the budget will be valid, notwithstanding the deficiency of taxes; provided further, that not less than three mills, nor more than ten mills, may be levied for the county current school fund; and, provided further, that not more than ten mills may be levied for the district current school fund of any district.

History.—§1076, ch. 19355, 1939; CGL 1940 Supp. 892(395).
cf.—§193.32 Annual tax levies; limitations.
§236.33 County board to certify levy and county commissioners to order assessment and collection.

237.19 Result of final adoption of budget.—(1) The budget when finally adopted shall give the appropriations and reserves therein the force and effect of fixed appropriations and reserves and the same shall not be altered or amended or exceeded except as authorized herein; provided, that should the actual receipts during any year be less than budgeted receipts, and any obligations are thereby incurred which cannot be met before the close of the year, such obligations shall be included in the budget for the next year as an appropriation for the payment of indebtedness of the previous year and shall be payable out of the first funds available for that purpose; and provided, further, that in the event any suit is brought, wherein the relief sought would require any change or alteration in any part of the official budget, or if brought before the budget becomes official, would require a change in the expenditures as budgeted for the preceding year, the state superintendent shall be made a party to said suit; and if said suit be instituted without the state superintendent being named a party thereto, the same shall abate, and the court, of its own motion, or on motion of any interested party, shall enter an order staying the cause until such time as the state superintendent is made a party thereto; and if the state superintendent is not made a party thereto within a reasonable period, said suit shall be dismissed, either on the court's own motion or motion of any interested party.

(2) The estimates contained in the official budget prepared as required by the school code shall be ample lawful authority for the appropriation, reservation, and expenditure of the total amount of receipts estimated in the budget to be available; provided, that any part of the reserve adopted for contingencies, as provided above, may be appropriated at any time during the year for any lawful expense of the fund by amendment of the budget, with the approval of the state superintendent, thereby establishing an appropriation or increasing the original appropriation for such purposes. Any receipts to any fund in excess of the total budgeted for receipts shall be used to increase the reserve for contingencies and may be appropriated in like manner by amendment of the budget. No part of any reserve adopted by the county board and included in the budget of any fund except interest and sinking funds and funds for capital outlay as a reserve for "cash balance to be carried over" shall be spent during the year in which it is budgeted, but if received shall be carried over to provide funds for the early months of the succeeding school year before revenues for the year are actually available.

History.—§1077, ch. 19355, 1939; CGL 1940 Supp. 892(396); §12, ch. 21989, 1943; (2), §22, ch. 29754, 1955.

237.20 Amendment of budget.—The county superintendent shall not approve, and the county board shall not at any time authorize or approve, expenditures in excess of the amount budgeted for any item in any separate part of the budget or that will decrease the amount set aside for reserve for contingencies, except as the budget is properly amended as prescribed herein, and any such expenditure, if made, shall not be a lawful expenditure. The county superintendent may, however, recommend, and the county board may approve, by formal reso-

lution entered in its minutes in the form of an amendment to the budget, an increase in the amount appropriated in the budget for any item and a corresponding decrease in any item or in the reserve for contingencies which is found necessary by the board and which preserves the balance of the budget; provided, that if the proposed amendment involves an increase in any major item in the budget as defined by regulations of the state board or a decrease in the amount appropriated for instructional salaries or for payment of indebtedness of the preceding year, or in the reserve for contingencies, the proposed amendment shall not become effective until approved by the state superintendent. Any unexpected receipts, necessitating the setting up of a new fund, and budget therefor, may be adopted and become effective in the same manner as herein provided for amendments. Any amendment, involving the district current school fund may be effected by resolution of the county board, except that when the total for any major item in the school budget for the county is altered thereby, the procedure shall be as prescribed herein.

The county superintendent shall forward to the state superintendent two copies of the resolution proposing and giving the reasons for proposing such an amendment to the budget as prescribed herein, each copy to be certified by the chairman of the county board and by the county superintendent as a true and correct copy of the resolution as adopted by the county board. The state superintendent shall certify thereon his approval or disapproval, return one copy to the county board through the county superintendent, and the county superintendent shall thereupon record such certificate and amendment in the minute book of the county board. The other copy shall be filed with the budget for the year. Any amendment so adopted and approved shall have the same effect as if it had been originally incorporated in the budget for the year, but no proposed amendment disapproved by the state superintendent shall be of any force or effect.

History.—§1078, ch. 19355, 1939; CGL 1940 Supp. 892(397); §91, ch. 29764, 1955; §20, ch. 57-249.

237.21 Expenditures between July first and date budget becomes official.—In the period from July first to the date the budget is finally adopted and becomes official, ordinary expenses may be paid at the same rate as budgeted for the preceding year, but expenditures not budgeted for such preceding year, or made at a greater rate than contemplated by the preceding year's budget, may be made only on approval of the state superintendent.

History.—§1079, ch. 19355, 1939; CGL 1940 Supp. 892(398).

237.22 Procedure in counties having budget commissions.—In all counties in which school budgets are required to be made and adopted by county budget commissions, the county superintendent shall submit the tentative budget to the county board and the county board shall consider, revise if necessary, and approve the said budget, all as provided by law, and submit the budget, so approved, to the county budget commission as early as possible before July fifteenth, and the county budget commission shall thereupon immediately proceed to consider and adopt the budget by July thirty-first, and return two copies of the approved budget to the county superintendent for transmission to the state superintendent. Each copy of the budget so transmitted shall be certified by the chairman and secretary of the budget commission as true and correct copies of the budget as adopted by the budget commission; provided, that the budget adopted shall conform in every respect to the requirements of law. The reports and recommendations of the state superintendent shall be made to the county superintendent, and copies of all correspondence connected therewith shall be mailed simultaneously to the budget commission. Amendments to such budgets shall be made on application of the county board after having first been approved by the county budget commission; provided, that the approval of the budget commission shall not be required for any amendment which does not require the approval of the state superintendent; and provided, further, that the reserve for contingencies, or any part thereof, may be appropriated by the county board of any such county with the approval of the state superintendent, and no approval thereof shall be necessary by the county budget commission.

History.—§1080, ch. 19355, 1939; CGL 1940 Supp. 892(399); §13, ch. 21989, 1943.

237.23 Penalty.—

(1) Any member of a county board, any trustee or county superintendent, who shall violate the provisions of §§237.01-237.24, shall be guilty of malfeasance and misfeasance in office, and shall be subject to removal from office; and any contract or attempted contract entered into by any school officer or subordinate school officer, not within the purview or in violation of the provisions of said sections shall be void, and no such contract or attempted contract shall be enforceable in any court.

(2) Each and every member of any county board voting to incur an indebtedness against the county or district school funds in excess of the expenditure allowed by law, or in excess of any appropriation as adopted in the original budget or amendments thereto, or to approve or pay any illegal charge against the said funds, and any chairman of a county board or the county superintendent who shall sign a warrant for payment of any such claim or bill of indebtedness against any of the said funds shall be personally liable for the amount, and shall be guilty of malfeasance in office and subject to removal by the governor. It shall be the duty of the state auditor or other state official charged by law with the responsibility for auditing school accounts, upon discovering any such illegal expenditure or expenditures in excess of the appropriations in the budget as officially amended, to certify such fact to the state comptroller, who thereupon shall verify such fact and it shall be the duty of the state comptroller to advise the

attorney general thereof, and it shall be the duty of the attorney general to cause to be instituted and prosecuted, either through his office or through any state attorney proceedings at law or in equity against such member or members of a county board or the county superintendent; provided, that if either of the said officers do not institute proceedings within ninety days after the audit has been certified to them by the comptroller then any taxpayer may institute suit in his own name in behalf of the county.

History.—§1081, ch. 19355, 1939; CGL 1940 Supp. 892(400), 8115(20); §10, ch. 20970, 1941; am. §14, ch. 21989, 1943.
cf.—§775.06 Alternative punishment.

237.24 Certain provisions to be directory.— No irregularities of form or manner in the preparation or adoption of any budget, under the provisions of §§237.05-237.24, shall invalidate either the budget adopted or the taxes levied therefor; provided, that the budget and the taxes levied conform substantially to the principles and provisions of said sections.

History.—§1082, ch. 19355, 1939; CGL 1940 Supp. 892(401).

237.25 Purposes of and procedures in incurring school indebtedness. — Indebtedness for school purposes may be incurred only as follows:

(1) School districts may issue bonds creating a long-term indebtedness as prescribed by law.

(2) Notes may be issued for money borrowed in anticipation of the receipt of current school funds, included in the budget from the state, county, or districts, as authorized under §237.26.

(3) Indebtedness may be incurred for certain purposes as authorized under §237.27.

(4) Bonds or revenue certificates issued on behalf of the county by the state board of education as authorized by §18, Art. XII of the constitution.

History.—§1083, ch. 19355, 1939; CGL 1940 Supp. 892(402); §92, ch. 29764, 1955.

237.26 Current loans authorized under certain conditions.—At any time the current school funds on hand are insufficient to pay obligations created by the county board of any county, in accordance with the approved budget of the county, the county board is authorized to negotiate a current loan to pay these obligations, providing for the repayment of that loan from the proceeds of revenues reasonably to be anticipated during the fiscal year in which the loan is made as prescribed below; provided, that the county board shall, whenever possible, so arrange its expenditures as to make the incurring of current loans unnecessary; provided further, that when it is deemed necessary, for the benefit of the schools of the county, for a current loan to be negotiated, the county board shall arrange for a loan only in the amount actually needed and for the repayment of the loan at the earliest date practicable.

(1) CURRENT LOANS AGAINST COUNTY CURRENT SCHOOL FUND.—The county boards of the several counties in the state are hereby authorized and empowered to borrow money, to be retired from the county school tax at a rate of interest not to exceed six per cent per annum, for the purpose of paying all outstanding obligations and for the further purpose of paying any and all legitimate expenses incurred in operating the schools of said county; provided, however, that it shall be unlawful for any county board to borrow any sum of money in any one year in excess of eighty per cent of the amount as estimated by them in the official budget for the current fiscal year for the county to be available from the county school tax. The said sum so borrowed shall be paid in full before the county board shall be authorized to borrow money on the estimate for any succeeding year.

(2) CURRENT LOANS AGAINST DISTRICT CURRENT SCHOOL FUND.—The county boards of the several counties in the state are hereby authorized and empowered to borrow money, to be retired from the district current fund of any school district in the county at a rate of interest not to exceed six per cent per annum, for the purpose of paying all outstanding obligations and for the further purpose of paying any and all legitimate expenses incurred in operating the schools of said district; provided, however, that it shall be unlawful for any county board to borrow any sum of money in any one year in excess of eighty per cent of the amount as estimated by them in the official budget for the current fiscal year for the county to be available from the district current tax of said district. The said sum so borrowed shall be paid in full before the county board shall be authorized to borrow money on the estimate for said district for any succeeding year.

(3) OUTSTANDING INDEBTEDNESS NOT AFFECTED.—Nothing in subsections (1) and (2) above shall be construed to invalidate any outstanding debt of any county as now existing and now due, or to become due, or as requiring any county board to pay the same in full before being permitted to borrow eighty per cent on the estimate for the next ensuing year, or to prohibit any county board from funding or refunding at its maturity any debt created and existing at the time of the adoption of the school code, and being thereby prohibited from borrowing eighty per cent of its income for the ensuing year, as provided above; and, provided further, that no county board shall hereafter incur debts of any nature in excess of the estimated amount, except as herein provided.

(4) EVENTUALITY OF TAX LITIGATION; FINANCING OF OUTSTANDING BONDS.—In the event that the county tax roll is subjected to litigation and the tax collector is prevented from collecting taxes on that roll, the following shall apply:

(a) The restriction of eighty per cent in subsections (1) and (2) of this section shall not apply if the collection of taxes is delayed beyond May 1.

(b) The county boards of the several counties of the state are authorized and empowered to borrow money, to be repaid from the district interest and sinking fund, at a rate not to ex-

ceed six per cent per annum, for the purposes of paying any and all legitimate debt service necessary for the outstanding bond issues of such districts at the times that the funds are needed to prevent the bonds or interest payments from being in default; provided, however, that the amount of money so borrowed shall be limited to the amount of the district interest and sinking fund tax receipts included in the official school budget for that year or the amount necessary to be borrowed to meet such obligations, whichever amount is the lesser.

History.—§1084, ch. 19355, 1939; CGL 1940 Supp. 892(403); §11, ch. 20970, 1941; (1) r. §93, ch. 29764, 1955, remaining subsections renumbered; (4) n. §1, ch. 63-15.

237.27 Obligations for a period of one year.—The county board of any county is authorized only under the following conditions to create obligations by way of anticipation of budgeted revenues accruing on a current basis without pledging the credit of the county or requiring future levy of taxes for certain purposes for a period of one year; provided, however, that such obligations may be extended from year to year with the consent of the lender for a period not to exceed four years:

(1) PURPOSES MUST BE AUTHORIZED BY STATE BOARD.—The purposes for which such obligations may be incurred within the intent of this section shall include only the purchase of school buses for transportation of pupils, the purchase of land for school sites and the erection, alteration or addition to school plants, the purchase of school plant equipment and the adjustment of insurance of school property on a five-year plan in accordance with §235.07, as provided by regulations of the state board.

(2) OBLIGATIONS MAY NOT EXCEED ONE-FOURTH OF COUNTY OR OF DISTRICT CURRENT REVENUE FOR THE PRECEDING YEAR.—No obligation of the nature prescribed herein may be incurred by any county board when such proposed obligations exceed one-fourth of the revenue derived during the preceding year from county current school funds or from the district current school funds of the district for which the obligation is incurred.

(3) COUNTY BOARD TO SUBMIT PROPOSAL.—When the county board of any county proposes to incur obligations of the nature authorized in this section, the county board shall adopt and spread upon its minutes a resolution giving the nature of the obligations to be incurred, stating the plan of payment and providing that such funds will be budgeted during the period of the loan, from the current revenue to retire the obligations maturing during the year. This plan of payment shall not extend over a period longer than one year. The county board shall then cause a copy of the resolution to be prepared and sent to the state board for approval.

(4) STATE BOARD MAY APPROVE OR REJECT PROPOSAL.—The state board may approve the proposal for incurring obligations authorized under subsection (1) of this section, only when in its opinion the proposal is reasonable and just and the expenditure needed and when county finances will in its opinion permit the retirement when due of this indebtedness as proposed; provided that the state board shall not approve more than two such applications for any county during any one year. When in its opinion there is any doubt regarding the merit or justification of the proposal or regarding the ability of the county board to retire the obligations proposed, the state board shall reject the proposal and the county board shall not incur the obligation as proposed.

(5) INTEREST-BEARING NOTES AUTHORIZED.—The county board of any county for which the state board has authorized the incurring of the obligations as provided in this section, shall issue interest-bearing notes for the obligations. The notes shall provide the terms of payment and shall not bear interest in excess of six per cent per annum. No additional obligations of a similar nature may be incurred against the funds of any county or school district when notes authorized under this subsection are still outstanding and unpaid when such proposed obligations together with the unpaid notes outstanding exceed one-fourth of the revenue of the preceding year.

History.—§1085, ch. 19355, 1939; CGL 1940 Supp. 892(405); §12, ch. 20970, 1941; §7, ch. 22858, 1945; §94, ch. 29764 and §1, ch. 29865, 1955.

237.28 Provisions for retirement of existing indebtedness which is unfunded or in default.—In any county in which, at the time of the adoption of the school code, there is any indebtedness outstanding against the county current, or against the district current school fund which has not yet been funded, or at any time any such indebtedness is in default as to principal or interest, the county board shall proceed as follows:

(1) PLAN FOR RETIRING INDEBTEDNESS TO BE PROPOSED.—The county board shall prepare and propose a plan for retiring any unfunded indebtedness or any such indebtedness which is in default so that no creditor having a valid claim will be given a preferred status. This plan shall be so prepared as to show the funds needed for operating the schools on the most economical basis practicable, the amount of any other obligations which must be met each year, the total funds available each year for the entire school program, and the funds that can reasonably be spared for retirement of indebtedness without needlessly handicapping the school program and which can be budgeted each year for the retirement of such indebtedness.

(2) PROPOSAL TO BE SUBMITTED TO STATE SUPERINTENDENT.—The proposal for funding and retiring all such indebtedness, when approved by the county board, shall be submitted to the state superintendent for consideration. The county board shall not attempt to retire any such indebtedness until this procedure has been followed and until it has had the benefit of the recommendations of the state superintendent. Upon receiving the proposal, the state superintendent shall determine the minimum funds which are, in his opinion, neces-

sary for the operation of the school program in the county; shall determine what funds remain for retirement of indebtedness each year; shall determine whether the proposed plan is in accordance with these facts, and, if it is not, shall propose modifications in the plan in accordance with the facts. The recommendations of the state superintendent shall then be submitted to the county board for consideration.

(3) WHEN PLAN TO BE EFFECTIVE.—The plan for retiring indebtedness, herein prescribed, shall become effective when the county board and the state superintendent jointly agree upon the amount of funds necessary for operating the schools and the amount which can be budgeted each year for retiring indebtedness. When this plan has been agreed upon, it shall become the duty of the county board to see that the amount approved for retiring indebtedness is incorporated in the budget each year, and the state superintendent shall see that this amount has been incorporated before the budget is approved, or, if such an amount can not reasonably be incorporated in the budget, as shown by evidence submitted by the county board, determine the respects in which the plan should be modified, and to see that the budget includes the amount for retiring indebtedness which can reasonably be included.

(4) FUNDING OUTSTANDING INDEBTEDNESS.—The county board of each county in the state, having an outstanding indebtedness legally incurred and constituting an obligation or obligations payable from the county current school fund or constituting an obligation or obligations payable from the district current school fund is authorized to issue and sell interest-bearing coupon warrants in a sum or sums not to exceed the total amount of such indebtedness. Such coupon warrants shall bear interest at a rate not to exceed six per cent per annum, shall be payable either annually or semiannually, and shall be in such form and denomination as the county board issuing the same shall prescribe. None of such warrants shall be issued to run for a longer period of time than ten years from the date of issue. Such warrants shall be numbered consecutively, beginning with number one, and each warrant shall have attached thereto interest coupons, each coupon bearing the number of its warrant and representing or calling for an annual or semiannual, as the case may be, payment of interest on its warrant.

Each such warrant shall be signed by the chairman and attested by the secretary of the county board issuing the same, and shall have the seal of said county board affixed thereto, and the interest coupons attached thereto shall be signed by, or bear the printed or lithographed facsimile signature of said chairman and secretary. Each warrant and interest coupon shall be dated and shall bear the due date. Such warrants and interest coupons shall be issued upon, and payable from, the fund designated on the face thereof. The fund so designated shall be the county current school fund in warrants issued for payment of indebtedness originally incurred which was payable from such fund, and shall be the district current school fund in warrants issued for payment of indebtedness originally incurred which was payable from such fund. All funds derived from the sale of interest-bearing coupon warrants, as herein provided, shall be used for the purpose of retiring the indebtedness for payment of which said warrants were issued, and for no other purpose, and any funds remaining from the sale of such warrants shall be applied to retiring the interest-bearing coupon warrants from which such funds were derived.

(5) FUNDING OR REFUNDING OTHER TYPES OF INDEBTEDNESS.—Any proposed plan for refunding any type of outstanding and legally incurred school indebtedness, not covered by §237.28, shall be submitted to the state superintendent for approval under regulations of the state board. No such indebtedness may be refunded and no plan for refunding such indebtedness may be approved, unless the plan provides for retiring the indebtedness in reasonably equal annual installments over the period of years covered, unless other obligations to be retired during any of these years make adjustments necessary. No indebtedness of any type may be refunded on a sinking fund basis. The county board shall provide that all refunding warrants, notes or bonds shall be callable, upon proper notice, beginning not more than ten years following the date of refunding. If any indebtedness outstanding against the county or district current school funds cannot be retired over a period of ten years as prescribed in §237.28, or cannot be funded or refunded by issuing interest bearing coupon warrants, the state superintendent is authorized to cooperate with the school officials of the county in developing a practicable plan for refunding such indebtedness and, when such a plan has been developed, may approve an agreement with the county school officials for refunding such indebtedness to be retired over a period of time which shall not exceed a maximum of twenty years; and, if necessary, for refunding the indebtedness by issuing interest bearing notes. Any funding or refunding obligations issued, as prescribed herein, are not and shall not be deemed to be additional bonds within the meaning of the constitution and laws of Florida, and it shall not be necessary for such obligations to be submitted to, or approved by, a vote of the people of the county. In preparing and carrying out such a plan for funding or refunding the school indebtedness, the county board and county superintendent shall follow the procedures prescribed in §237.28, supplemented by regulations of the state board, except for the modifications which are herein authorized.

History.—§1086, ch. 19355, 1939; CGL 1940 Supp. 892(405); §13, ch. 20970, 1941; §7, ch. 24337, 1947; §95, ch. 29764, 1955.

237.29 Officials to safeguard funds; disposition of wages of deceased employees.—Each and every official and employee of the county board, who is in any way responsible for collecting, depositing, budgeting, or expending

school funds, or for purchasing materials or services for school usage, or is in any other manner responsible for school funds, shall see that these funds are fully and properly safeguarded at all times. Proper safeguards are to be evidenced not only by accurate and complete accounting, observance of all legal requirements, preparation of all required reports, but also by exercising every diligence to see that value has been received for any funds which are expended.

Wages of deceased employees shall be disposed of in accordance with §§222.15 and 222.16.

History.—§1087, ch. 19355, 1939; CGL 1940 Supp. 892(406); §7, ch. 22858, 1945; §8, ch. 61-459.

237.30 School funds to be paid to treasurer or into depository.—Every tax collector, or other person having moneys which by law go to any district or county school fund shall at least once each month pay the same over to the depository or depositories designated by the county board for such purpose, and shall provide the county board with a duplicate of the deposit slip. Every officer having moneys which by law go to any state school fund, shall pay the same to the state treasurer, and the treasurer shall see that these moneys are deposited to the credit of the proper state school fund.

History.—§1088, ch. 19355, 1939; CGL 1940 Supp. 892(407).

237.31 Bonds required for school officials.—Each and every official or other person who is responsible in any manner for handling or expending school funds or property shall be adequately bonded at all times. The officials who are to be bonded and the provisions for bonding such officials shall be as follows:

(1) COUNTY SUPERINTENDENT. — Before assuming office, being commissioned, or assuming responsibility for any school funds, property or records, the county superintendent shall execute with a surety company authorized to do business in Florida a bond conditioned upon the faithful performance of the duties of his office, including accounting for and turning over to the proper authority all school funds or properties over which he has supervision. The amount of the bond shall be determined in the same manner as the total bond for the chairman of the county board is determined as prescribed in subsection (2) below, except the bond of the county superintendent in each county shall be one thousand dollars in excess of the bond of the chairman of the county board.

(2) MEMBERS, CHAIRMAN AND VICE-CHAIRMAN OF THE COUNTY BOARD.—Each and every member of the county board of the several counties in the state, elected or appointed to such office, before he is commissioned or assumes office, shall be required to execute a sufficient bond with a surety company authorized to do business in Florida, the bond to be conditioned upon the faithful performance of the duties of his office, including the proper safeguarding of all funds for which the county board has supervision. The bond shall be in the amount of two thousand dollars for each member of the county board. The chairman and vice-chairman of the board shall be required to give bond in the additional amount of one thousand dollars in counties in which the annual revenue receipts for school purposes during the year preceding his election as chairman and vice-chairman were more than one hundred thousand dollars and were less than two hundred thousand dollars, and the bond for the chairman and vice-chairman shall be increased an additional one thousand dollars for each additional one hundred thousand dollars or fraction thereof of receipts in the county; provided, that the maximum additional amount for which bond shall be required of the chairman and vice-chairman of the county board of any county shall be eight thousand dollars.

(3) SCHOOL EMPLOYEES.—It shall be the responsibility of the county board to provide for the bonding of any school employee who is responsible for school moneys or property. The amount of the bond (individual, schedule or blanket) shall be prescribed by the county board of the county in which the person is employed. The bond may be with a surety company authorized to do business in Florida, or with two good and sufficient sureties.

(4) SCHOOL CONTRACTORS.—All contractors paid from school funds shall give bond for the faithful performance of their contracts in such amount and for such purposes as prescribed by law or by regulations of the county board or of the state board relating to the type of contract involved; provided, that it shall be the duty of the county board to require from every contractor a bond adequate to protect the school and school funds involved.

(5) PREMIUM ON BONDS.—The premium on the bond of each and every county school official and of any employee of the county board shall be paid out of the county current school funds of the county; provided, that premiums for bonds of employees in district schools may be paid from the district current school fund or other funds.

(6) FILING BONDS.—All bonds required of school officials under this section shall be filed with the secretary of state in the amount certified by the state superintendent. All bonds required of school employees shall be approved by the county superintendent under regulations of the county board and shall be filed with the county board. Bonds of school officials or school employees shall not be required to be approved by the county commissioners.

History.—§1089, ch. 19355, 1939; CGL 1940 Supp. 892(408); §14, ch. 20970, 1941; §10, ch. 22839, 1945; (2) §23, ch. 29754, 1955; §13, ch. 59-371.
cf.—§113.04 Fidelity bond premiums.

237.32 School depositories; payments into and withdrawals from depositories.—

(1) SCHOOL FUNDS TO BE PAID INTO DEPOSITORIES; TRIPLICATE RECEIPTS TO BE ISSUED.—The tax collector, the clerk of

the circuit court, the county superintendent, and all other persons having or receiving, or collecting any money payable to the several school funds of the county or of the districts, shall pay the same to the bank or banks selected by the county board of public instruction to receive funds for that purpose. No bank or banks shall be so selected unless it is qualified as a county depository as provided by §136.02. Each bank receiving any school money, as provided herein, shall make a receipt for same in triplicate; one copy of which the said bank will carefully preserve and keep; one copy shall be given to the person from whom money was received; and one copy shall be given to the county board.

(2) SEPARATE ACCOUNTS FOR FUNDS ON DEPOSIT WITH EACH DEPOSITORY; OVERDRAWING ACCOUNTS PROHIBITED. — The county board shall require the county superintendent to keep and the county superintendent shall keep, as prescribed in this chapter, an accurate and complete set of accounts for each fund on deposit in each county school depository. This account shall show the amount in each fund subject to withdrawal, amount deposited, amount expended, and the balance thereof, as shown by the books at the end of each month for each and every fund (or deposit) carried by the said county board, and no check, or warrant or warrants, shall ever be drawn in excess of the balance to the credit of the fund as kept under direction of the county board; provided, however, that nothing in this chapter shall be construed as prohibiting the county board from borrowing money, as now, or as may hereafter be, provided by law.

(3) HOW FUNDS DRAWN FROM DEPOSITORIES.—All money drawn from any county school depository, holding same as prescribed herein, shall be upon a check or warrant drawn on authority of the county board, as prescribed in the school code. Each check or warrant so drawn shall be signed by the chairman of the county board and countersigned by the county superintendent with corporate seal of the county board affixed; provided, however, that as a matter of convenience the corporate seal of the county board may be printed upon the warrant and a record of such warrant, both as to date, number, and amount, and person to whom drawn, shall be kept by the county superintendent in a supplementary minute book, with proper reference thereto in the regular minute book of the county board; and provided further that the county board may by resolution, a copy of which must be delivered to the depository, provide for internal funds to be withdrawn from any county depository, by a check duly signed by at least two bonded school employees designated by the board to be responsible for such account or accounts.

(4) PAYMENT OF SCHOOL WARRANTS.—The county school depository, upon presentation to it of the county school warrants, shall pay the same, if there are any funds in its custody applicable thereto.

History.—§1090, ch. 19355, 1939; CGL 892(409); (4) §24, ch. 29754, 1955; §8, ch. 59-23; (1), (3) §20, ch. 63-376.

cf.—§136.01 et seq. County depositories.

CHAPTER 238

RETIREMENT SYSTEM FOR SCHOOL TEACHERS

238.01 Definitions.—The following words and phrases as used in this chapter shall have the following meanings unless a different meaning is plainly required by the context:

(1) "Retirement system" shall mean the teachers' retirement system of Florida provided for in §238.02.

(2) "Board of trustees" shall mean the board provided by §238.03 to administer the retirement system.

(3) "Medical board" shall mean the board of physicians provided for in §238.04.

(4) "Teacher" shall mean any member of the teaching or professional staff and any certificated employee of any public free school, of any county school system and vocational school, any member of the teaching or professional staff of the Florida industrial school for boys, Florida industrial school for girls, Florida school for the deaf and the blind, Florida division of corrections and any tax-supported institution of higher learning of the state, and any member and any certified employee of the state department of education, any certified employee of the retirement system, any full-time employee of any nonprofit professional association or corporation of teachers functioning in Florida on a state-wide basis, which seeks to protect and improve public school opportunities for children and advance the professional and welfare status of its members, any person now serving as county superintendent of public instruction, or who was serving as county superintendent of public instruction on July 1, 1939 and any hereafter duly elected or appointed county superintendent of public instruction, who holds a valid Florida teachers' certificate. In all cases of doubt the board of trustees shall determine whether any person is a teacher as defined herein.

(5) "Member" shall mean any person included in the membership of the retirement system as provided in §238.05.

(6) "Employer" shall mean the state, or the boards of public instruction of all the counties of the state employing teachers, subject to the provisions of this chapter or other agency of and within the state by which the teacher is paid, or any nonprofit professional association or corporation of teachers as referred to in (4).

(7) "Service" shall mean service as a teacher as described in (4) rendered while a member of the retirement system.

(8) "Prior service" shall mean service as a teacher rendered prior to the date of establishment of the retirement system and for which credit is allowable under §238.06.

(9) "Membership service" shall mean service as a teacher as described in §238.06.

(10) "Creditable service" shall mean prior service plus membership service for which credit is allowable under §238.06.

(11) "Beneficiary" shall mean any person in receipt of a retirement allowance, or other benefit as provided by this chapter.

(12) "Regular interest" shall mean interest at such rate as may be set from time to time by the board of trustees.

(13) "Accumulated contributions" shall mean the sum of all the amounts deducted from the salary of a member and credited to his individual account in the annuity savings fund provided in §238.09(1), together with regular interest on such accounts.

(14) "Earnable compensation" shall mean the full compensation payable to a teacher working the full working time for his position. In respect to plans A, B, C and D only, in cases where compensation includes maintenance the board of trustees shall fix the value of that part of the compensation not paid in money; provided that all members shall from July 1, 1955 make contributions to the retirement system on the basis of "earnable compensation" as defined herein and all persons who are members on July 1, 1955 may, upon application, have their "earnable compensation" for the time during which they have been members prior to that date determined on the basis of "earnable compensation" as defined in this law, upon paying to the retirement system on or before the date of retirement, a sum equal to the additional contribution with accumulated regular interest thereon they would have made if "earnable compensation" had been defined at the time they became members, as it is now defined.

(15) "Average final compensation," with re-

spect to plans A, B, C and D of §238.07, shall mean the average annual earnable compensation of a member for the ten years of his service as a teacher during which he received his highest salary; and with respect to plan E of §238.07, average final compensation shall mean the average annual earnable compensation of a member for ten years during the last fifteen years prior to retirement during which he contributed and in which his annual earnable compensation was highest or the average of his annual earnable compensation since July 1, 1945, if greater.

(16) "Annuity" shall mean annual payments for life derived as provided in this chapter from the accumulated contributions of a member. All annuities shall be paid in equal monthly installments.

(17) "Pension" shall mean annual payments for life derived as provided in this chapter, from money provided by the state and shall mean, when used in conjunction with plan E, the excess of the retirement allowance as provided by plan E over the annuity as defined above. All pensions shall be paid in equal monthly installments.

(18) "Retirement allowance" shall mean annual payments for life and shall be the sum of the annuity plus the pension except that when used in conjunction with plan E of §238.07, retirement allowance shall mean the total retirement allowance payable under plan E.

(19) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the board of trustees.

(20) The masculine pronoun whenever used shall include the feminine.

History.—§1, ch. 19014, 1939; CGL 1940 Supp. 892(156); §1, ch. 20749, 1941; §1, ch. 22062, 1943; §1, ch. 22693, 1945; §1, ch. 23864, 1947; §1, ch. 25398, 1949; §1, ch. 29942, 1955; (4) §1, ch. 61-362; (15), (18) §1, ch. 61-301; (15), (18) §1, ch. 63-554.

238.02 Name and date of establishment.—A retirement system is established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits for teachers of the state. The retirement system shall begin operations as July 1, 1939. It has such powers and privileges of a corporation as may be necessary to carry out effectively the provisions of this chapter and shall be known as the "Teachers' retirement system of the state," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

History.—§2, ch. 19014, 1939; CGL 1940 Supp. 892(157).

238.021 Teachers' retirement system; plans.—The teachers' retirement system shall be deemed to be divided into five plans, to be designated plans A, B, C, D, and E and §§238.01 to 238.181, inclusive, shall control with respect to plans A through E and membership therein, except as provided for under §238.31.

History.—§4, ch. 61-301; §2, ch. 63-554.

238.03 Administration. — (1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this chapter are vested in the board of trustees. Subject to the limitation of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration and transaction of the business of the retirement system and shall perform such other functions as are required for the execution of this chapter.

(2) The membership of the board of trustees shall consist of the state board of education and two members who shall be known as teacher members and who shall be appointed by the governor for terms of three years each. These appointees shall be teachers of distinction who shall have taught school for at least five years.

The initial terms of the first two teacher members of the board of trustees shall be two and three years, respectively. Following the completion of the initial terms, the terms of office of such members shall be three years.

(3) Until the appointment and qualifying of the two teacher members to be appointed, the other five members are empowered to perform the duties of the board of trustees.

(4) Any vacancy in the board of trustees shall be filled for the unexpired term in the same manner as the office was previously filled.

(5) A majority of the members of the board of trustees shall constitute a quorum.

(6) The members of the board of trustees shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061 from the expense fund provided under §238.09(4).

(7) The board of trustees shall elect from its membership a chairman and vice chairman, and shall appoint a secretary who may be, but need not be, one of its members. The secretary shall give bond in such amount and with such sureties as the board may require. The compensation of all employees of the board of trustees shall be fixed by the board, and all other expenses of the board, necessary for the proper operation of the retirement system, shall be paid at such rates and in such amounts as the board of trustees shall approve.

(8) The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds created by this chapter and for checking the experience of the retirement system.

(9) The attorney general of the state shall be the legal adviser of the board of trustees.

(10) The board of trustees shall employ such agents, servants and employees as in its judgment may be necessary to carry out the terms and provisions of this chapter and shall provide for their compensation. Among the employees of the board shall be an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and who shall perform such

other duties as are required in connection therewith.

(11) In the year 1943 and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation of the mortality, service and salary experience of the members and beneficiaries as defined in this chapter, and shall make a valuation of the various funds created by the chapter, and having regard to such investigation and valuation, the board of trustees shall adopt such mortality and service tables as shall be deemed necessary, and shall certify the rates of contribution payable under the provisions of this chapter.

(12) The actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system on the basis of the tables adopted by the board of trustees in accordance with the requirements of this section, and shall prepare an annual statement of the amounts to be contributed by the state in accordance with §238.09.

(13) The board of trustees shall publish annually the valuation, as certified by the actuary, of the assets and liabilities of the various funds created by this chapter, a statement as to the receipts and disbursements of the funds, and a statement as to the accumulated cash and securities of the funds.

(14) The board of trustees shall keep a record of all of its proceedings and such record shall be open to inspection by the public.

(15) The board of trustees is authorized to photograph and reduce to microfilm as a permanent record, its ledger sheets showing the salary and contributions of members of the retirement system, also the records of deceased members of the system and thereupon to destroy the documents from which such films are photographed.

History.—§3, ch. 19014, 1939; CGL 1940 Supp. 892(158); (15) n. §1, ch. 28109, 1953; (6), (12) §2, ch. 29942, 1955; (6) §19, ch. 63-400.

238.04 Medical board.—The board of trustees shall employ a medical board of three physicians, not eligible to participate in the retirement system.

The medical board shall arrange for, and shall pass upon, all medical examinations required under the provisions of this chapter, shall investigate all essential health or medical statements, and certificates by or in behalf of a member in connection with his application for disability retirement, and shall report in writing to the board of trustees its conclusions and recommendations upon all the matters referred to it, and perform such other duties as may be required of them by the board of trustees.

History.—§4, ch. 19014, 1939; CGL 1940 Supp. 892(159).

238.05 Membership.—

(1) The membership of the retirement system shall consist of the following:

(a) All persons who were teachers at any time during the school years 1936-1937 through 1938-1939, shall become members as of July 1, 1939, unless, prior to December 1, 1939, any such teacher shall file with the board of trustees on a form prescribed by such board a notice of his election not to be covered in the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the retirement system; provided, that all persons who were not eligible for membership in the retirement system at the time the system became effective and who are now eligible to membership by reason of the redefinition of the word "teacher," and by reason of having served in any of the capacities included in the redefinition of the term during any of the school year 1936-1937 through 1942-1943 shall become members as of July 1, 1943, unless prior to December 1, 1943, any such person shall file with the board of trustees a notice of his election not to be covered in the membership of the retirement system as prescribed above; provided, that all persons who become eligible for membership in the retirement system by reason of the redefinition in §238.01, of the word "teacher," and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1944-1945, shall become members as of July 1, 1945, unless prior to December 1, 1945, any such person shall file with the board of trustees a notice of his election not to be covered in the membership of the retirement system as prescribed above; provided also that all persons who become eligible for membership in the retirement system by reason of the redefinition in subsection (4) of §238.01, of the word "teacher" and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1946-1947 shall become members as of July 1, 1947, unless prior to December 1, 1947, any such person shall file with the board of trustees a notice of his election not to be kept in the membership of the retirement system as prescribed above; provided, however, that any person who has heretofore filed a nonelection waiver blank shall not be required to make another such election; provided, further, that any person who heretofore has elected not to become a member shall until July 1, 1949, have the option of becoming a member.

(b) All persons who became or who become teachers on or after July 1, 1939, except as provided in paragraph (a) hereof, shall become members of the retirement system by virtue of their appointment as teachers; provided that employees who are not members of the teaching or professional staff shall only become members of the retirement system by filing a notice with the board of trustees of their election to become members.

(2) A teacher whose membership in the retirement system is contingent on his own election and who has elected not to become a member, may thereafter apply for and be admitted to membership and receive credit for

prior service; provided no such teacher shall receive credit for service prior to such election unless he is admitted to membership as of a date before May 1, 1959. Credit for service rendered prior to July 1, 1939, shall be for continuous employment only except that one period of absence of not more than five years will be allowed in computing such prior service credit, provided, however, that a teacher admitted to membership prior to January 1, 1955, shall receive credit for all prior service and if he has retired, his retirement allowance shall be increased effective July 1, 1961. A teacher admitted to membership under this provision must pay into the annuity savings trust fund prior to his retirement contributions plus regular interest thereon based upon all salary received as a teacher prior to and after July 1, 1939.

(3) Except as otherwise provided in §238.07 (9) membership of any person in the retirement system shall cease if he shall be continuously unemployed as a teacher for a period of more than five consecutive years; or upon the withdrawal by a member of his accumulated contributions as provided in §238.07(13), or upon retirement; or upon death; provided that the adjustments prescribed below are to be made for persons who enter military, naval or other armed services of the nation during a period of war, or national emergency, and for persons who are granted leaves of absence. Any member of the retirement system who within one year before the time of entering the military, naval or other armed services of the nation was a teacher, as defined in §238.01, or was engaged in other public educational work within the state, and member of the teachers' retirement system at the time of induction, or who has been or is granted leave of absence, shall be permitted to elect to continue his membership in the teachers' retirement system and membership service shall be allowed for the period covered by service in the armed forces of the nation or by leave of absence under the following conditions:

(a) A person who has been granted leave of absence shall file with the board of trustees before his next contribution is due an application to continue his membership during the period covered by his leave of absence, and if such application is filed, shall make his contribution to the retirement system on the basis of his last previous annual salary as a teacher, and shall, prior to retirement, pay in full to the system such contributions with accumulated regular interest and such contributions with interest may be paid at one time or in monthly, quarterly, semi-annual or annual payments in his discretion.

(b) A person who enters or who has entered the armed services of the nation may either continue his membership according to the plan outlined under paragraph (a) above or, in lieu thereof, may file with the board of trustees at any time following the close of his military service an application that his membership be continued and that membership service be allowed for not more than five years of his period service in the armed forces of the nation during any period of war or national emergency; provided that any such person shall, prior to retirement, pay in full his contributions with accumulated regular interest to the retirement system for the period for which he is entitled to membership service on the basis of his last previous annual salary as a teacher, such contributions with interest to be paid to the trustees of the retirement system at one time or in monthly, quarterly, semiannual or annual payments in his discretion.

(c) Any person who served in the armed forces of the United States in world war I, or who served as a registered nurse or nurse's aide in service connected with the armed forces of the United States during the period of world war I, who is now a member of the teachers' retirement system and who, at or before the time of entering the armed forces or the service of the care and nursing of members of the armed forces of the United States, was a teacher as defined in §238.01, shall be entitled to prior service and out-of-state prior service credit in the teachers' retirement system for his period of such service.

(4) The board of trustees may in its discretion deny the right to become members to any class of teachers who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.

History.—§5, ch. 19014, 1939; CGL 1940 Supp. 892(160); §2, ch. 20749, 1941; §1, ch. 21971, §2, ch. 22062, 1943; §2, ch. 22693, 1945; §2, ch. 23864, 1947; §7, ch. 24337, 1947; §11, ch. 25035, 1949; §2, ch. 25398, 1949; (3) §1, ch. 28196, 1953; (1)(b), (2), (3) §3, ch. 29942, 1955; (2) §1, ch. 57-357; (2) §1, ch. 61-303; (2) §1, ch. 61-458.

238.06 Membership application, creditable service and time for making contributions.—

(1) Under such rules and regulations as the board of trustees shall adopt, each teacher upon becoming a member shall file with the board of trustees an application showing date of birth and such other necessary information as the board of trustees may require for the proper operation of the retirement system. Until such application is filed no teacher nor his beneficiary shall be eligible to receive any benefits under this chapter. If a member has been a teacher in Florida, he shall itemize on such application all service as a teacher rendered prior to the date of establishment of the retirement system, including service in a similar capacity in other states rendered by him prior to the first day of July, 1939, for which he claims credit; provided, that persons not eligible to membership in the retirement system as of July 1, 1939, and now eligible to membership shall file with the board of trustees an application and shall meet with all other requirements prescribed above; and provided, further, that all such persons shall be entitled to prior service credit for the years prior to July 1, 1939, as prescribed in Subsection (4) of this Section; and provided, further, that any person made eligible to membership in the re-

tirement system by provisions of this law may elect:

(a) To make no contributions for the school years between 1939-1940 and 1952-1953, inclusive, and if he so elects, shall be entitled to no membership credit for those years except as otherwise provided in this chapter.

(b) To make contributions with accumulated regular interest to the retirement system on or before the time of retirement of such member for such years after July 1, 1939, as he served as a teacher, at the prescribed rate on the basis of his salary for those years, and if such contributions are made, he shall be entitled to membership service credit for such years.

(2) With respect to plans A, B, C, or D as set forth in §238.07, any member of the retirement system may elect to contribute to the retirement system an amount which shall be equivalent to the difference between the amount such member has contributed and the amount he would have contributed had the provisions of §238.01(14) been in effect July 1, 1939, and such election must be made and the amount paid into the retirement system on or before the time of the retirement of such member.

(3) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow any credit for a period of absence without pay of more than a month's duration nor shall it allow credit for more than one year of service for all service in any school year.

(4) Subject to the above restriction and to such other rules and regulations as the board of trustees shall adopt, the board of trustees shall verify, as soon as practicable after the filing of the application, the statement of service therein claimed and shall issue to each person who becomes a member or any person with prior teaching service in the state who becomes a member of the retirement system, a prior service certificate certifying the length of service with which he is credited on the basis of his statement of service. Such prior service credit shall include credit for service rendered prior to date of establishment as a teacher within the state or in a similar capacity outside the state but not more than ten years of credit for service outside the state shall be included. Credit for prior service outside the state may be claimed only by a person employed as a teacher in the state prior to July 1, 1939; provided that any person who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for ten years shall be entitled to receive out-of-state prior service credit for a period not exceeding ten years; provided that any person with out-of-state service who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for ten years shall be entitled to receive membership service credit for a period of not exceeding ten years, including credit for the period covered by service in the armed forces of the nation during world war II; provided such member was a public school teacher within one year before entering the armed services; and provided he resumed teaching, if such member shall, prior to retirement, make contribution to the retirement system with accumulated regular interest thereon in an amount equal to the contribution he would have made if such service had been rendered in the state subsequent to July 1, 1939; provided that no member who receives, or who is entitled to receive, a pension or annuity from any other state or county or municipality or other taxing district shall receive out-of-state prior service credit or membership service credit as set forth above; provided, however, that the change in this subsection shall not affect the rights of persons who have retired when this amendment to the law takes effect; provided, however, that any person who becomes a member of the system on or after July 1, 1955 and who has moved from another state to Florida, and becoming employed in a category covered by the teachers' retirement system, must teach in the state for five years before being entitled to receive any out-of-state service credit. After having been employed within the state for a period of five years, a teacher may establish and receive credit for one year of out-of-state service for each additional year of service credit within the state, with a maximum of ten years out-of-state credit allowed. In order to establish and receive this out-of-state credit, a teacher, who became a member of the system on or after July 1, 1955, but prior to October 1, 1963, must pay into the retirement system prior to retirement total contributions equal to eight per cent (plus accumulated regular interest thereon), of such out-of-state compensation as the teacher received during those years of out-of-state service for which the teacher receives out-of-state credit. In order to establish and receive this out-of-state credit, a teacher who becomes a member of the retirement system on or after October 1, 1963, must pay into the retirement system prior to retirement, total contributions which are in addition to the regular membership contributions and which, when accumulated with regular interest thereon, are equal to the actuarial equivalent at the time of retirement of the monthly benefit which becomes payable at retirement on account of out-of-state credit. In the event that such accumulated additional contributions at time of retirement are less than the actuarial equivalent at time of retirement of the monthly benefit attributable to out-of-state credit, the monthly benefit attributable to out-of-state credit shall be reduced by an amount equal to the product of:

(a) The monthly benefit attributable to out-of-state credit, and

(b) The ratio that such deficiency bears to the actuarial equivalent of the monthly benefit attributable to the out-of-state credit.

If such accumulated additional contributions are in excess of the actuarial equivalent at time of retirement of the monthly benefit at-

tributable to out-of-state credit, such excess shall be paid in a lump sum to the member at time of retirement. No person may receive retirement benefits for less than ten years of service credit earned in Florida.

(5) Any person who is a member of the teachers' retirement system, and who has been employed as an employee of any county in Florida or any county board of public instruction of Florida or the state or the United States department of agriculture at Welaka, Florida, shall upon payment of accumulated contributions for the years subsequent to July 1, 1939, receive credit for both prior and membership service for all years in which such person was employed by any county in Florida or any county board of public instruction of Florida or the state or the United States department of agriculture at Welaka, Florida, toward retirement in the teachers' retirement system; provided, such contributions shall be paid on or before the date of the retirement of such member.

(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such prior service credit, unless modified by the board of trustees upon application made by the member within one year after the date of issuance or modification of a prior service certificate or upon the discovery by the board of trustees of error or fraud.

(7) When membership ceases such certificate shall become void; should the teacher again become a member, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided in §238.07(12)(c); and provided further that if the teacher should so become a member following the first occurrence of cessation of membership, such certificate shall be valid until the membership next ceases.

(8) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership services rendered by him since he last became a member, and also, if he has a prior service certificate which is in full force and effect, the service certified on his prior service certificate.

(9) A public school librarian with credit for less than ten years of public school service in Florida may be permitted to work after age seventy with the approval of his employer and shall be permitted to earn retirement credit for such service in the teachers' retirement system.

(10) Subject to the provisions of subsection (4) of this section, out-of-state service credit shall be allowed for service rendered as a teacher in American overseas dependent schools conducted by the armed forces of the United States for children of citizens of the United States residing in areas outside the continental United States.

History.—§6, ch. 19014, 1939; CGL 1940 Supp. 892(161); §3, ch. 20749, 1941; §3, ch. 22062, 1943; §3, ch. 22693, 1945; §3, ch. 23864; §7, ch. 24337, 1947; §3, ch. 25398, 1949; (1)-(4), (6) §2, ch. 28196, 1953; (1) (b), (2), (4) §4, (5) r. (8) subseq. subsections renum. and former (8) renum. as (7) §5, ch. 29942, §1, ch. 29913, 1955; (10)n. §1, ch. 59-481; (4) §3, ch. 63-554.

238.07 Regular benefits; survivor benefits.—

(1) Any member who attains seventy years of age shall be retired forthwith; provided, however, that with the approval of his employer he may remain in service until the end of the school year following the date on which he attains seventy years of age. If any member retires under the provisions of this subsection, who before his death fails to select one of the optional benefits set forth in §238.08, his executors or administrators shall receive the excess of his accumulated contributions at retirement over the total of all annuity payments made to the member.

(2) The provisions for the retirement of a member are as follows:

(a) To retire at the age of sixty upon the basis of a standard of service of thirty-five years (this provision shall be known and referred to throughout this chapter as plan A); or

(b) To retire at the age of fifty-five upon the basis of a standard of service of thirty-five years (this provision shall be known and referred to throughout this chapter as plan B); or

(c) To retire at the age of fifty-five upon the basis of a standard of service of thirty years (this provision shall be known and referred to throughout this chapter as plan C); or

(d) To retire after twenty-five years of service upon the basis of a standard of service of twenty-five years provided the member has reached age fifty; provided, further, however, that a member electing to retire under this provision shall not be eligible to receive the benefits allowed by (8) and (11) (f) (this provision shall be known and referred to throughout this chapter as plan D); or

(e) To retire (1) at the age of sixty which shall be the normal retirement age; or (2) prior thereto but at or subsequent to age fifty-five, provided that upon such date the teacher has completed ten years of creditable service, which shall be the early retirement age; or (3) subsequent to age sixty, which shall be the delayed retirement age (this provision shall be known and referred to throughout this chapter as plan E); provided that the manner and time of selecting a plan of retirement are set out elsewhere in this chapter.

(3) Any member who, prior to July 1, 1955, elected to retire under one of plans A, B, C, or D may elect, prior to retirement, to retire under plan E in accordance with the terms hereof. Any person who became a member on or after July 1, 1955, shall retire under plan E, except as provided for under §238.31. With respect to plans A, B, C, or D, any member shall have the right at any time to change to a plan of retirement requiring a lower rate of contribution. The board of trustees shall also notify the member of the rate of contribution such member must make from and after selecting such plan of retirement; provided that any member in service may retire upon reaching the age of retirement formerly selected by him, upon

his written application to the board of trustees setting forth at what time, not more than ninety days subsequent to the execution and filing of such application, it is his desire to retire notwithstanding that during such period of notification he may have separated from service. Upon receipt of such application for retirement the board of trustees shall retire such member not more than ninety days thereafter; and provided further that before such member may retire he must file with the board of trustees his written selection of one of the optional benefits provided in §238.08.

(4) Upon service retirement under plans A and B a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to this annuity, of one one-hundred-fortieth of his average final compensation, multiplied by the number of his years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-seventieth of his average final compensation, multiplied by the number of years of service certified on his prior service certificate.

(5) Upon service retirement under plan C a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to his annuity of one one-hundred-twentieth of his average final compensation, multiplied by the number of years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-sixtieth of his average final compensation, multiplied by the number of years of service certified on his prior service certificate.

(6) Upon service retirement under plan D, a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to his annuity, of one one-hundredth of his average final compensation multiplied by the number of his years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-fiftieth of his average final compensation multiplied by the number of years of service certified on his prior service certificate.

(7) Upon service retirement under plan E, a member shall receive a service retirement allowance which shall be determined as follows:

(a) At normal retirement age: two per cent of his average final compensation multiplied by the number of years of creditable service.

(b) At early retirement age: Two per cent of his average final compensation multiplied by the number of years of creditable service and adjusted for actuarial equivalents based on completed months by which early retirement precedes normal retirement.

(c) At delayed retirement age: Two per cent of his average final compensation multiplied by the number of years of creditable service.

(8) Any member who has heretofore, or who hereafter, retires after thirty years of creditable service shall receive a retirement allowance of not less than one hundred dollars per month, provided, however that with respect to plans A, B or C, any person with less than thirty but with ten or more years of service shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of twenty-four hundred dollars per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his creditable service; provided that in no event shall such a member receive a retirement allowance greater than one hundred dollars per month.

(9) Any member who has taught, or who teaches in the public free schools of Florida for not less than an aggregate of ten years and withdraws or has withdrawn from the system, may elect to leave his accumulated contributions in the system or to repay his withdrawn accumulations to the system, and upon reaching retirement age, he shall receive a retirement allowance based on the number of years of service which he taught in the public schools of Florida before retirement, provided, that a person who has lost his membership and later returns to service shall be allowed the privilege of having credit restored for previous service if he returns to full time teaching service and renders three additional years of continuous service.

(10) Any member in service, who has ten or more years of creditable service, may upon the application of his employer or upon his own application, be retired by the board of trustees not less than thirty nor more than ninety days next following the date of filing such application, on a disability retirement allowance; provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(11) Upon retirement on account of disability, a member shall be paid his service retirement allowance if he is eligible for a service retirement allowance; otherwise, he shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) If he is making contributions for retirement under plan A or B, he shall receive a pension which, together with his annuity shall provide a total retirement allowance equal to one-seventieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds twenty-five per cent of his average final compensation; or if such retirement allowance does not exceed twenty-five per cent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a total retirement allowance of twenty-five per cent of his average final compensation; provided, however that no retirement allowance shall exceed one-seventieth of his average final compensation, multiplied by the number of years of total service which would be credited to the member were his service continued to the minimum age for service retirement.

(c) If he is making contributions for retirement under plan C, he shall receive a pension which, together with his annuity, shall provide a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds twenty-five per cent of his average final compensation; or if such retirement allowance does not exceed twenty-five per cent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a total retirement allowance of twenty-five per cent of his average final compensation; provided, however that no retirement allowance shall exceed one-sixtieth of his average final compensation multiplied by the number of years of total service which would be credited to the member were his service continued to the minimum age for service retirement.

(d) If he is making contributions for retirement under plan D, he shall receive a pension, which together with his annuity shall provide a total retirement allowance equal to one-fiftieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds twenty-five per cent of his average final compensation; or if such retirement allowance does not exceed twenty-five per cent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a total retirement allowance of twenty-five per cent of his average final compensation, provided, however that no retirement allowance shall exceed one-fiftieth of his average final compensation multiplied by the number of years of total service which would be creditable to the member were his service continued to the minimum age of service retirement; provided, however that when a member has taught the standard number of years required for retirement under any of the several retirement plans provided by this section and elected by such member, and such member shall retire on account of disability prior to attainment of the minimum required age under the plan elected, then such member so retired shall receive the same benefits as if he had retired on service retirement under the plan elected.

(e) If he is making contributions for retirement under plan E, he shall receive a retirement allowance which shall consist of one hundred per cent of the retirement allowance to which he would be entitled if his date of disability retirement were his otherwise normal retirement date; provided, however that the retirement allowance payable upon disability retirement shall not be less than the twenty-five per cent of average final compensation nor, if disability retirement occurs prior to the date on which the member is first eligible for service retirement, shall it be greater than the service retirement allowance to which the member would be entitled if he continued in active service to such date at the same rate of compensation effective on the date of disability retirement.

(f) With respect to plans A, B or C, the average final compensation under this subsection shall be computed on the actual average final compensation, or upon the basis of an average final compensation of twenty-four hundred dollars per year, whichever is the greater.

(g) Notwithstanding the minimum disability retirement allowance set out in paragraphs (a) through (f) of this subsection any member who retired prior to July 1, 1957 on account of disability, shall, on and after July 1, 1957, receive as a minimum disability retirement allowance seventy-five dollars per month, or an annual sum equal to forty multiplied by the number of years of his creditable service whichever is the greater, and any person who retires on and after July 1, 1957, shall, from the date of his retirement, receive as a minimum disability retirement allowance seventy-five dollars per month, or an annual sum equal to forty multiplied by the number of years of creditable service, whichever is the greater.

(12) (a) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may require any disability beneficiary who has not yet attained his minimum service retirement age to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should a disability beneficiary, who has not yet attained his minimum service retirement age, refuse to submit to any such medical examination, his retirement allowance shall be discontinued until his withdrawal of such refusal, and should such refusal continue for one year, all his rights in and to his pension shall be forfeited.

(b) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his disability retirement allowance and his average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity later be changed, the amount of his pension may be further modified; provided that the pension so modified shall not exceed the amount of the pension allowable under (11) of this section, at the time of retirement, nor an amount which, when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system at that time.

(c) Should a disability beneficiary under his minimum service retirement age be at any time in service at a salary equal to or greater than his average final compensation upon the basis of which he was retired, his disability retirement allowance shall cease and he shall again become a member of the retirement system and shall contribute thereafter at the same rate at which he paid prior to disability. Any prior service certificate, on the basis of which his allowance was computed at the time of his disability retirement, shall be restored to full force and effect; and, in addition, upon his subsequent retirement he shall be credited with all his membership service on the basis of which his allowance was computed at the time of his disability retirement.

(13) Should a member cease to be a teacher except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his accumulated contributions. Should a member die before retirement, the amount of his accumulated contributions shall be paid to such person, if any, as he shall have nominated by written designation duly executed and filed with the board of trustees; otherwise, to his executors or administrators.

(14) Any member who retires on or after July 1, 1954, who at the time of his retirement has not served as a teacher in Florida for ten years shall not be eligible to receive and shall not be paid any service retirement allowance.

(15) Any member of the teachers' retirement system who has heretofore, or who hereafter, retires and who has passed his sixty-fifth birthday and whose retirement allowance is less than one hundred fifty dollars shall have his retirement allowance redetermined and shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of twenty-four hundred dollars per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his creditable service; provided, that in no event shall such redetermination entitle the member to receive a retirement allowance greater than one hundred fifty dollars.

(15A) (a) Any member of the teachers' retirement system who has heretofore, or who hereafter, retires with no less than ten years of creditable service and who has passed his sixty-fifth birthday, may, upon application to the board of trustees, have his retirement allowance redetermined and thereupon shall be entitled to a monthly service retirement allowance which shall be equal to four dollars multiplied by the number of years of his creditable service which shall be payable monthly during his retirement; provided, that the amount of retirement allowance as determined hereunder, shall be reduced by an amount equal to

1. Any social security benefits received by the member, and

2. Any social security benefits that the member is eligible to receive by reason of his own right or through his spouse.

(b) No payment shall be made to a member of the teachers' retirement system under this act, until the board of trustees has determined the social security status of such member.

(c) Eligibility of a member of the teachers' retirement system shall be determined under the social security laws and regulations, provided however, that a member shall be considered eligible if he or his spouse has reached sixty-five years of age and would draw social security if he or his spouse were not engaged in activity that results in his or his spouse receiving income that would make him or her ineligible to receive social security benefits. A member of the teachers' retirement system shall be deemed to be eligible for social security benefits if he has this eligibility in his own right or through his spouse.

(d) The board of trustees shall review, at least annually, the social security status of all members of the teachers' retirement system receiving payment under this act and shall increase or decrease payments to such members as shall be necessary to carry out the intent of this act.

(e) No member of the teachers' retirement system shall have his retirement allowance reduced or any of his rights impaired by reason of this act.

(f) This subsection shall take effect on January 1, 1962.

(16) (a) Definitions under survivor benefits are:

1. A dependent is a child, widow, widower or parent of the deceased member who was receiving not less than one half of his support from the deceased member at the time of the death of such member.

2. A child is a natural or legally adopted child of a member, under eighteen years of age, or eighteen years of age or older who is physically or mentally incapable of self-support,

and such mental and physical incapacity occurred prior to such child obtaining the age of eighteen years; provided, that such person shall cease to be regarded as a child upon the termination of such physical or mental disability, and provided, further, that the determination as to such physical or mental incapability shall be vested in the board of trustees. No person shall be considered a child whenever such child has married; such child has been legally adopted by someone other than the widow or widower of a deceased member; or such child becomes eighteen years of age except as to a child who is physically or mentally incapable of self-support as hereinbefore set forth.

3. A parent is a natural parent of a member and includes a lawful spouse of a natural parent.

4. A beneficiary is a person who is entitled to benefits under this subsection by reason of his relation to a deceased member during the lifetime of such member.

(b) In addition to all other benefits to which a member in service on or after July 1, 1957, shall, subject to the conditions set out below, be entitled, the beneficiary of such member shall, upon the death of such member, receive the following benefits:

Minimum number of years of service of member in Florida	Beneficiaries of deceased member	Benefits
1. Three years	Widow or dependent widower who has care of dependent child or children of deceased member	$165.00 per month for one child; $200.00 per month if more than one child; maximum benefits $200.00 per month
2. Three years	One or more dependent children	$165.00 per month for one child; $200.00 per month if more than one child; maximum benefits $200.00 per month
3. Three years	Dependent parents 65 years or older	For each parent, $100.00 per month for life
4. Three years	Designated beneficiary and if no designated beneficiary, then the executor, or administrator of deceased member	$500.00 lump sum death benefits payable only once
5. Ten years	Dependent widow or widower 50 years of age and less than 65 years of age	$100.00 per month for life
6. Ten years	Widow or widower 65 years of age or older	$100.00 per month for life

(c) The payment of survivor benefits shall begin as of the month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b) hereof, in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age.

(d) Limitations on rights of beneficiary are:

1. The person named as beneficiary in paragraph (b) shall, in no event, be entitled to receive the benefits set out in such paragraph unless the death of the member under whom such beneficiary claims occurs within the period of time after the member has served in Florida as follows:

Minimum number of years of service in Florida	*Period after serving in Florida in which death of member occurs*
Three to five	Two years
Six to nine	Five years
Ten or more	Ten years

2. Upon the death of a member, the board shall make a determination of the beneficiary or beneficiaries of the deceased member and shall pay survivor benefits to such beneficiary or beneficiaries beginning one month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b) hereof, in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. When required by the board of trustees, the beneficiary or beneficiaries shall file an application for survivor benefits upon forms prescribed by the board.

3. The beneficiaries of a member to receive survivor benefits are fixed by this subsection, and a member may not buy or otherwise change such benefits. He may, however, designate the beneficiary to receive the five hundred dollars death benefits. If a member fails to make this designation, the five hundred dollars death benefits shall be paid to his executor or administrator.

4. The beneficiary or beneficiaries of a member whose death occurs while he is in service or while he is receiving a disability allowance under §238.07 (11), shall receive survivor benefits under this subsection determined by the years of service in Florida of the deceased member as set out in paragraph (b) of this subsection. The requirement that the death of a member must occur within a certain period of time after service in Florida as set out in subparagraph 1. of paragraph (d) shall not apply to a member receiving a disability benefit at the time of his death.

(17) Any person who hereafter elects to receive retirement benefits under §112.05, shall not be entitled to the retirement benefits of this chapter except for the refund of his accumulated contributions as provided in subsection (13) of this section; likewise any person who elects to receive retirement benefits under this chapter shall thereby become ineligible to receive retirement benefits under §112.05.

History.—§7, ch. 19014, 1939; CGL 1940 Supp. 892(162); §4, ch. 22693, 1945; §4, ch. 23864, 1947; §11, ch. 25035, 1949; §4, ch. 25398, 1949; (3) §1, ch. 28110, (13) n. §3, ch. 28196, 1953; §6, ch. 29942, 1955; (3), (7) §2, (11)(g) n. §4, (16) n. §5, ch. 57-357; (3) §2, ch. 61-458; (7) §2, ch. 61-301; (9) §3, ch. 61-458; (15A) n. §§1-6, ch. 61-333; (16)(a) 2. §4, (16)(b) §5, ch. 61-458; (3), §4, (3)(a) r. §5, (16)(e) r. §7, (17) n. §12, ch. 63-554.

238.08 Optional benefits.—A member may elect to receive his benefits under the terms of this chapter according to the provisions of any one of the following options:

(1) Option one. He may elect to receive his benefits in a retirement allowance payable throughout his life, or

(2) Option two. He may elect to receive on retirement the actuarial equivalent (at that time) of his retirement allowance in a reduced retirement allowance payable throughout life, with the provisions that if he dies before he has received in payment of his annuity the amount of his accumulated contributions, as they were at the time of his retirement, the balance shall be paid to such person, if any, as he shall nominate by written designation duly acknowledged and filed with the board of trustees; otherwise, to his executors or administrators.

(3) Option three. He may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(4) Option four. He may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw one half of such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(5) If a member continues in service beyond the date he is first eligible for service retirement and does not, prior to his death, elect options three or four, his spouse may, at the option of the spouse, receive either the accumulated contributions of the member at date of death or the reduced retirement compensation to which the beneficiary would have been entitled under option three, calculated on the assumption that the member retired on his date of death and died immediately subsequent thereto provided that the spouse of any member who died between July 1, 1955 and June 30, 1957, both dates inclusive, is entitled to full benefits under this subsection and further provided that for all persons who become members of the system on or after July 1, 1963, the amount of such retirement allowance otherwise payable to the member at his date of death shall be determined on the basis of a normal retirement age of sixty-five.

History.—§8, ch. 19014, 1939; CGL 1940 Supp. 892(163); §7, ch. 22858, 1945; (3),(4) n. §4, ch. 28196, 1953; §7, ch. 29942, 1955; (5) §3, ch. 57-357; (5) §8, ch. 63-554.

238.09 Method of financing.—All of the assets of the retirement system shall be credited, according to the purposes for which they are held, to one of four funds; namely: the annuity savings trust fund, the pension accumulation trust fund, the expense trust fund and the survivors' benefit trust fund.

(1) The annuity savings trust fund shall be a fund in which shall be accumulated contributions made from the salaries of members under the provisions of (c) or (f).

Contribution to, payments from, the annuity savings trust fund shall be made as follows:

(a) With respect to plan A, B, C or D, upon the basis of such tables as the board of trustees shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation which, when deducted from each payment of his prospective earnable annual compensation prior to his minimum service retirement age, and accumulated at regular interest until such age, shall be computed to provide at such age (i) an annuity equal to one one-hundred-fortieth of his average final compensation multiplied by the number of his years of membership in the case of each member electing to retire under the provisions of plan A or B; (ii) an annuity equal to one one-hundred-twentieth of his average final compensation multiplied by the number of his years of membership service in the case of each member electing to retire under the provisions of plan C; (iii) an annuity equal to one one-hundredth of his average final compensation multiplied by the number of his years of membership service in the case of each member electing to retire under the provisions of plan D. In the case of any member who has attained his minimum service retirement age prior to becoming a member, the proportion of salary applicable to such member, with respect to plan A, B, C or D, shall be the proportion computed for the age one year younger than his minimum service retirement age.

(b) A member under plan E shall make contribution to the fund of six per cent of his earnable compensation.

(c) The board of trustees shall certify to each employer the proportion of the earnable compensation of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to the proportion of the member's earnable compensation so computed. With respect to plan A, B, C or D, the employer shall not make any deduction for annuity purposes from the compensation of a member who has attained the age of sixty years, if such member elects not to contribute.

(d) In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify any deduction required of any member by such an amount as shall not exceed one-

tenth of one per cent of the annual salary from which said deduction is to be made.

(e) The deductions provided for herein shall be made, notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein, and shall receipt in full for his salary or compensation; and payment of salary or compensation, less said deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided by this chapter.

(f) In addition to the deduction from salary, as hereinbefore required, any member may, with respect to plan A, B, C or D, subject to the approval of the board of trustees, redeposit in the annuity savings trust fund, by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom, as provided in this chapter, or any part thereof; or any member may deposit in the annuity savings trust fund, by a single payment or by an increased rate of contribution, amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amounts computed to provide, with his prospective retirement allowance, a total retirement allowance of one half of his prospective average final compensation at his minimum service retirement age. Such additional amounts so deposited shall become a part of his accumulated contributions, except that in the case of disability retirement they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension.

(g) A member who elects to retire under plan E shall pay to the annuity savings trust fund prior to retirement or receive from the annuity savings trust fund, as the case may be, the difference between what his contributions, with accumulated interest, would have been under plan E and the actual contributions of the member with accumulated interest.

(h) The accumulated contributions of a member returned to him upon withdrawal, or paid as provided in this chapter to his designated beneficiary, or to his executors or administrators in the event of his death, shall be paid from the annuity savings trust fund.

(i) Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings trust fund to the pension accumulation trust fund.

(2) Should a beneficiary, retired on account of disability, again become a member of the retirement system, his accumulated contributions as of the date of retirement not paid as an annuity, shall be transferred from the pension accumulation trust fund to the annuity savings trust fund and credited to his individual account in the annuity savings trust fund.

(3) The pension accumulation trust fund shall be the fund in which shall be accumulated all reserves for the payment of all annuities or benefits in lieu of annuities on retired members and all pensions and other benefits payable from contributions made by the members and by the employers, from which annuities, pensions and benefits in lieu thereof shall be paid.

Contributions to, and payments from, the pension accumulation trust fund, other than as set forth in subsections (2) and (3) herein, shall be made as follows:

(a) On account of each member there shall be paid annually into the pension accumulation trust fund, as provided for in §238.11, on account of the preceding year a certain percentage of his earnable compensation, to be known as the normal contribution, and an additional percentage of his earnable compensation, to be known as the accrued liability contribution. The rates per cent of earnable compensation of such contributions shall be fixed on the basis of the liabilities of the retirement system, as shown by actuarial valuation.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board of trustees to make each valuation required by this chapter shall, during the period over which the accrued liability contribution is payable, determine, immediately after making such valuation, the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed on the basis of his compensation throughout his entire period of service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate per cent so determined shall be known as the normal contribution rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per cent of the earnable compensation of all members, obtained by deducting from the total liabilities of the pension accumulation trust fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per cent of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and on the basis of regular interest. The normal rate of contribution shall be determined and certified to the board of trustees by the actuary after each valuation and shall continue in force until a new valuation and certification are made.

(c) Immediately succeeding the first valuation, the actuary engaged by the board of trustees shall compute the rate per cent of the total earnable compensation of all members which is equivalent to four per cent of the amount of the total liability for pensions on account of all members and beneficiaries and not dischargeable by the present assets of the pension accumulation trust fund and by the aforesaid normal contribution if made on account of such members during the remainder of

their active service. The rate per cent, originally so determined, shall be known as the accrued liability contribution rate.

(d) The total amount payable in each year into the pension accumulation trust fund shall be not less than the sum of the rates per cent known as the normal contribution rate and the accrued liability contribution rate, of the total earnable compensation of all members during the preceding year; provided, however that the amount of each annual accrued liability contribution shall be at least three per cent greater than the preceding annual accrued liability contribution; and provided that the aggregate payment into the pension accumulation trust fund shall be sufficient, when combined with the amount then held in the fund, to provide the benefits payable from the fund during the current year.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation trust fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate, then in force of the prospective normal contributions to be received on account of persons who are at that time members.

(4) The expense trust fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which shall be paid all expenses incurred in connection with the administration and operation of the retirement system. Contribution to the expense trust fund shall be made by transfer from interest earnings on investments in the annuity savings trust fund, such transfers shall be regulated by the legislature pursuant to budgets filed in accordance with the provisions of chapter 216.

(5) (a) The survivors' benefit fund shall be the fund in which shall be accumulated all reserves for the payment of all survivor benefits provided for in §238.07 (16), except refund of accumulated contributions. There shall be paid into this fund:

1. All contributions by members based on the rate of twenty-five hundredths per cent of their salary as set out in paragraph (b) of this subsection.

2. All contributions by the state to the survivors' benefit trust fund.

3. All transfers from other funds as required by this subsection.

(b) The board of trustees shall annually certify to each employer, at the time it makes the certification to the employer under paragraph (c) of subsection (1) of §238.09, the rate of twenty-five hundredths per cent to be applied by the employer to the salary of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to twenty-five hundredths per cent of the member's salary paid by the employer and the employer shall remit monthly such deducted amounts to the board of trustees who shall place the same in the survivors' benefit trust fund of the teachers' retirement system of the state. The amount of contributions by a member to the survivors' benefit trust fund shall, in no event, be refundable to the member or his beneficiaries.

(c) Beginning July 1, 1959, there shall be paid annually into the survivor's benefit trust fund by the state on account of the preceding year a sum equal to the total amount paid into such fund by the members of the teachers' retirement system of the state.

(d) A member who makes contributions to the survivors' benefit trust fund shall not thereby obtain, prior to July 1, 1959, any vested interest or right to the benefits under §238.07 (16), and these benefits may be altered, changed or repealed by the legislature at its 1959 session, provided that the beneficiaries of members whose deaths occur prior to July 1, 1959 shall have a vested interest in the benefits accruing to such beneficiaries under §238.07(16), and these rights may not be altered, changed nor repealed by the legislature.

(e) If there is not sufficient money to promptly pay all benefits which become due to each beneficiary during the biennium beginning July 1, 1957 under §238.07(16), the board of trustees shall, from time to time, prorate among all beneficiaries the money available to pay benefits.

History.—§9, ch. 19014, 1939; CGL 1940 Supp. 892(164); §5, ch. 22693, 1945; §7, ch. 22858, 1945; §5, ch. 23864, 1947; §11, ch. 25035, 1949; §8, ch. 29942, 1955; §6, ch. 57-357; (4) §1, ch. 59-330; §2, ch. 61-119; (1)(b) §3, ch. 61-301; (4) §6, ch. 63-554.

238.10 Management of funds.—The board of trustees, annually, shall allow regular interest on the amount for the preceding year to the credit of each of the funds of the retirement system, and to the credit of the individual account therein, if any, with the exception of the expense fund, from the interest and dividends earned from investments.

History.—§10, ch. 19014, 1939; CGL 1940 Supp. 892(165); §4, ch. 20749, 1941; §15, ch. 21989, 1943; §1, ch. 26963, 1951; §9, ch. 29942, 1955; §6, ch. 61-458.

cf.—§340.21 Bonds eligible for investment.
§665.45 Authorized investments for insurance companies.

238.11 Collection of contributions.—

(1) The collection of contributions shall be as follows:

(a) Each employer shall cause to be deducted from each and every payment of salary of a member, for each and every pay roll period, the contribution payable by such member as provided in this chapter. Commencing July 1, 1967, each employer shall also budget and set aside an amount equal to such deductions, which shall be the employer contribution, except with respect to any nonprofit professional association or corporation of teachers for which the employer contribution shall be at least that amount specified in §238.09(3)(a); provided that such amount shall be set aside only if the state makes available to the em-

ployer, except for any nonprofit professional association or corporation, the additional funds necessary for such employer contributions.

(b) Each employer shall transmit monthly to the secretary of the board of trustees a warrant for the total amount of such deductions. Commencing July 1, 1967, each employer shall also transmit monthly to the secretary of the board of trustees a warrant for such employer contribution set aside as provided for in paragraph (a) of this subsection. The secretary of the board of trustees, after making records of all such warrants, shall transmit them to the comptroller who shall deliver them to the treasurer of the state who shall collect them.

(c) The state contribution shall be equal to the excess of the contributions specified under §238.09, over the amounts the state makes available for employer contributions under paragraphs (a) and (b) of this subsection.

(2) The collection of the state contribution shall be made as follows:

(a) The amounts required to be paid by the state into the teachers' retirement system in this chapter shall be provided therefor in the biennial general appropriations act; provided, however, that in the event a sufficient amount is not included in the biennial general appropriations act to meet the full amount needed to pay the retirement compensation provided for in this chapter, the additional amount needed for such retirement compensation is hereby appropriated from the general revenue fund as approved by the budget commission.

(b) The board of trustees shall certify one-fourth of the amount so ascertained for each year to the state comptroller on or before the last day of July, October, January and April of each year. The comptroller shall, on or before the first day of August, November, February and May of each year, draw his warrant or warrants, which shall be countersigned by the governor, on the treasurer of the state for the respective amounts due the several funds of the retirement system. On the receipt of the warrant or warrants of the comptroller, the treasurer shall immediately transfer to the several funds of the retirement system the amounts due.

(3) All collection of contributions of nonprofit professional association or corporation of teachers as referred to in §238.01, (4),(6), shall be made by such association or corporation in the following manner:

(a) On April 1 of each year the board of trustees shall certify to any such nonprofit professional association or corporation of teachers the amounts which will become due and payable during the ensuing fiscal year to each of the funds of the retirement system to which such contributions are payable as set forth in this law.

(b) The board of trustees shall certify one-fourth of the amount so ascertained for each year to the nonprofit professional association or corporation of teachers on or before the last day of July, October, January and April of each year. The nonprofit professional association or corporation of teachers shall on or before the first day of August, November, February and May of each year draw its check payable to the secretary of the board of trustees of the teachers' retirement system for the respective amounts due the several funds of the retirement system. Upon receipt of the check the secretary shall immediately transfer to the several funds of the retirement system the amounts due, provided, however that the amounts due the several funds of the retirement system from any such association or corporation for creditable service accruing to any such member before July 1, 1947 shall be paid prior to the retirement of any such member.

History.—§11, ch. 19014, 1939; CGL 1940 Supp. 892(166); §6, ch. 23864, 1947; §10, ch. 29942, 1955; (1) §9, ch. 63-554.

238.12 Duties of employers.—(1) Each employer shall keep such records and, from time to time, shall furnish such information as the board of trustees may require in the discharge of its duties. Upon the employment of any teacher to whom this chapter may apply, he shall be informed by his employer of his duties and obligations in connection with the retirement system as a condition of his employment. Every teacher accepting employment shall be deemed to consent and agree to any deductions from his compensation required in this chapter and to all other provisions of this chapter.

(2) During September of each year, or at such other time as the board of trustees shall approve, each employer shall certify to the board of trustees the names of all teachers to whom this chapter applies.

(3) Each employer shall, on the first day of each calendar month, or at such less frequent intervals as the board of trustees may approve, notify the board of trustees of the employment of new teachers, removals, withdrawals and changes in salary of members that have occurred during the preceding month, or the period covered since the last notification.

History.—§12, ch. 19014, 1939; CGL 1940 Supp. 892(167).

238.13 Limitation on membership.—

(1) No other provision of law in any other statute which provides wholly or partly at the expense of the state for pensions or for retirement benefits for teachers of the said state, their widows, or other dependents, shall apply to members or beneficiaries of the retirement system established by this chapter, their widows or other dependents. No person who shall become a teacher, as defined herein, after the first day of July, nineteen hundred and thirty-nine, shall be eligible to a pension under any statute heretofore enacted.

(2) No person who is fully covered by a compulsory civil service retirement plan shall be a member of the retirement system under this chapter; provided, however, that any person who is presently a member of the retirement system and is also fully covered by a compulsory civil service retirement plan may continue to be a member of the retirement system or at his option may withdraw from such

retirement system and thereupon be entitled to receive all of his accumulation in the annuity savings trust fund together with the interest thereon.

History.—§13, ch. 19014, 1939; CGL 1940 Supp. 892(168); (2) n. §7, ch. 61-458.
cf.—§231.50 Monthly allowance for incapacitated teachers.

238.14 Protection against fraud.—Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor and shall be punishable therefor under the laws of the state. Should any change or error in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error the board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.

History.—§14, ch. 19014, 1939; CGL 1940 Supp. 892(169), 8115(6).
cf.—§775.07 Punishment for misdemeanor.

238.15 Exemption of funds from taxation, execution and assignment.—The pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and cash securities in the funds created under this chapter are exempted from any state, county or municipal tax of the state, and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable, except (1) that any teacher who has retired shall have the right and power to authorize in writing the board of trustees to deduct from his monthly retirement allowance money for the payment of the premiums on group insurance for hospital, medical and surgical benefits, under a plan or plans for such benefits approved in writing by the insurance commissioner of the state, and upon receipt of such request the board of trustees shall make the monthly payments as directed, and (2) as may be otherwise specifically provided for in this chapter.

History.—§15, ch. 19014, 1939; CGL 1940 Supp. 892(170); §11, ch. 29942, 1955.

238.16 Penalties. — Any person subject to the terms and provisions of this chapter, including the individual members of all boards, who shall violate any of the provisions of this chapter or any valid rule or regulation promulgated under authority of the chapter, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding one thousand dollars or by imprisonment in the county jail for not exceeding six months for each such offense, and each day of such violation shall constitute a separate offense.

History.—§16, ch. 19014, 1939; CGL 1940 Supp. 8115(7).
cf.—§775.06 Alternative punishment.

238.17 Employees of nonprofit professional association or corporation of teachers functioning on a statewide basis; intent.—It is the intent of this section to grant to employees of nonprofit professional association or corporation of teachers who are or become members of the teachers' retirement system all the rights, privileges and benefits therefrom as are or may be granted to all other members of the teachers' retirement system, provided, however, that for other than creditable service as a teacher as defined in §238.01(4) rendered to a state, county, municipality or other taxing district by any such employee, the state shall not make any contributions on account of such service.

History.—§7, ch. 23864, 1947.

238.181 Retired member may be substitute teacher; conditions.—

(1) Any member who has retired may be employed, on a substitute basis only, as a substitute teacher in any of the public free schools of this state, and such employment shall not affect the rights of such retired member under the retirement system, including, without limiting the general terms hereof, his right to receive his retirement allowance; provided that a county board of public instruction may employ as a substitute teacher a member who has retired only if the county board is unable to employ for such substitute teaching position, a qualified teacher who has not retired.

(2) A retired teacher may be employed on a part-time basis and receive compensation for services rendered without reducing or in any way affecting his retirement or pension status but in no case shall the part-time employment exceed two hundred hours in any single calendar year.

(3) Any member who hereafter retires and receives a retirement allowance under the provisions of this chapter shall have his retirement allowance suspended during any period of re-employment in any capacity whatsoever by the state or any political subdivision, department, branch, or agency thereof, except as in this chapter specifically provided.

History.—§2, ch. 28110, 1953; §12, ch. 29942, 1955; §1, ch. 57-189.

238.31 Provision for modification of plan E.—Notwithstanding any provision contained herein to the contrary the provisions relating to retirement under §238.07(2)(e) shall be subject to amendment or modification by subsequent legislation and all other provisions of this chapter relating to the administration of plan E, or to the duties, rights, privileges, requirements and benefits of the members of plan E shall be subject to amendment, modification, deletion, or substitution by act of the 1965 legislature of this state and all such legislation shall be applicable retroactively to July 1, 1963, with respect to all those persons who become members of plan E on or after July 1, 1963; provided, however, that such legislation shall not provide for a normal retirement age of members to exceed the age of sixty-five years, nor shall such legislation be applicable to any benefits which become payable to, or with respect to, such members prior to July 1, 1965.

History.—§11, ch. 63-554.

CHAPTER 239

UNIVERSITIES, SCHOLARSHIPS, ETC.; EXTENSION INSTITUTE

PART I UNIVERSITIES, SCHOLARSHIPS, ETC.

PART II EDUCATIONAL EXTENSION ACT OF 1963

PART I

UNIVERSITIES, SCHOLARSHIPS, ETC.

239.01 University system defined.—

(1) The system of higher education of this state shall consist of the following institutions, to-wit: One university to be known as the university of Florida located at Gainesville, to which shall be admitted both white male and white female students; one university to be known as the Florida state university located at Tallahassee, to which shall be admitted both white male and white female students; and one university to be known as the Florida agricultural and mechanical university located at Tallahassee, to which shall be admitted negro male and negro female students. Requirements for admission of students to each institution in the system shall be prescribed by the board of control, subject to the provisions of law.

(2) The Florida state university shall be the successor to the Florida state college for women and all provisions of existing law applicable to the Florida state college for women shall henceforth apply to the Florida state university, except insofar as such existing law may prohibit or restrict the matriculation of male students in such institution, which said restrictions or prohibitions are hereby expressly re-

pealed. Further, all prohibitions or restrictions under existing law against the matriculation of female students in the university of Florida are hereby expressly repealed.

(3) No college, school, department, or division now existing at either of said universities shall be moved to the other university, and all unreasonable duplications shall be avoided.

History.—§12, ch. 5384, 1905; §1, ch. 5924, 1909; §1, ch. 5926, 1909; RGS 611; CGL 767; §1, ch. 23669, 1947; §96, ch. 29764, 1955.

239.011 East central Florida; authorization for establishment of university, engineering college extension.—

(1) The state board of education is hereby authorized to establish a state university and/or a branch of an existing state university to be located in the east central section of Florida. The board of control and the state board of education are authorized to determine the exact location of said university.

The term east central Florida shall include the counties of Flagler, Orange, Seminole, Lake, Brevard, Volusia, Osceola, Indian River, and St. Lucie.

(2) The board of control is hereby authorized and directed to establish an extension of the university of Florida engineering college to provide graduate studies at the masters and doctorate level and research facilities in order that proper instruction and research can be carried on in the field of sciences and engineering. Such facilities shall be located in east central Florida, and such location shall be determined by the board of control and the state board of education.

History.—§§1, 2, ch. 63-347; §1, ch. 63-348.

239.02 Admission of students from other states; admission of students from Florida.— In case of the admission of students to state universities from other states, the same may be admitted by and with the consent and upon the certificate of the board of control upon such terms as to tuition, board, etc., as the said board may, from time to time, establish.

The several departments of the said universities shall be open to applicants for admission who are citizens of this state at the lowest rate and expense, consistent with the welfare and efficiency of the respective institutions, and as may be established, from time to time, by the said board; provided, however, that in all applications for admission by students as citizens of the state, the applicant, if twenty-one years of age, or if a minor, his parents or guardian, shall make and file, with such application, in writing a statement under oath that such applicant is a bona fide citizen and resident of the state and entitled, as such, to admission upon the terms and conditions prescribed for citizens and residents of the state. Each county shall have the right to send one student annually, or so often as vacancies may occur to each of the said institutions and normal department, such students to be selected by the boards of public instruction of the several counties possessing the qualifications required for admission thereto; and such students so selected shall be received into said respective institutions and entitled to receive the benefits of a full course of instruction at either said college or university, or normal department, or other institution aforesaid, without any charge for instruction, but subject to such rules and regulations as may be established by the said board for the governance and direction of the same; and the board may make such requisite as to previous instruction for entries into the normal departments as it shall deem best. Any boy or girl born in Florida and who resides in this state, shall be entitled to admission to the respective state institutions in the same manner as other citizens and residents of this state, notwithstanding the fact that either the mother or father of such boy or girl, or both, may be aliens.

History.—§24, ch. 5384, 1905; RGS 612; CGL 768; §1, ch. 20913, 1941; §97, ch. 29764, 1955.

239.022 Approval by legislature of certain fees and the disposition thereof.—The board of control shall each biennium recommend to the legislature the types and amounts of registration fees, tuition fees, and course fees which shall be charged and collected from all students as provided in §239.02, in the respective state universities, and the board of control shall recommend to the legislature the disposition and use of said fees. The legislature shall consider the recommendations and shall approve, alter, amend or change in any manner it determines to the best interests of the state the types and amounts of said fees and the disposition and use of said fees for the ensuing biennial period or periods.

History.—§1, ch. 59-470; (2), (3) r. §1, ch. 61-516.

239.03 Property held which may be applied to higher education to be apportioned for support of certain institutions.—All funds, appropriations and property of every nature and description which may come to the state, or the hands or control of the state board of education, for such purpose, or which may lawfully be applied to the promotion and advancement of schools of higher education in this state, shall be held and appropriated by the state board of education in conjunction with the board of control for the maintenance and support of the university of Florida; Florida state university; Florida school for the deaf and the blind; and Florida agricultural and mechanical university equally and ratably, in proportion as the needs of the said respective institutions may, from time to time, require the same, in the judgment of the said boards; provided, that what is known as the seminary trust fund shall be subject to the control, management and investment of the state board of education as a fund for the benefit of the Florida state university and the university of Florida, the interest arising from which shall be used and appropriated for the maintenance and support of said two institutions, in equal proportion.

History.—§28, ch. 5384, 1905; RGS 608; CGL 764; §2, ch. 61-119.

239.04 Funds provided by the United States.— The state board of education, through its

president, may sign all vouchers for all moneys coming to the university of Florida; Florida state university; Florida school for the deaf and the blind; and Florida agricultural and mechanical university; from the United States, or any fund provided by the United States and which shall be paid by it to the state for the benefit of the said institutions, and shall deposit the same with the treasurer of the state of Florida.

History.—§29, ch. 5384, 1905; RGS 609; CGL 765.

239.05 State treasurer to receive and disburse certain funds.—The treasurer of the state shall receive and pay out all moneys and funds provided for in this chapter, or which shall come to the hands or control of the state board of education in any way or manner, for the purposes thereof, and he shall keep all moneys so received in a separate fund, and classify the same as provided herein, or by any law of the United States relative to any portion thereof, of which he shall render an annual report to the governor of the state; and no moneys shall be paid out by him, except upon a warrant drawn by the comptroller upon funds in his hands.

History.—§32, ch. 5384, 1905; RGS 610; §1, ch. 9317, 1923; CGL 766.

239.06 Chair of Americanism and southern history.—The board of control and the president of the university of Florida, and the president of the Florida state university, are authorized and directed to provide for a chair of Americanism and southern history at the university of Florida, and at the Florida state university; and to establish and maintain a professorship in each of said colleges for courses of lectures on American ideals, American government, American institutions, and American citizenship.

History.—§1, ch. 10030, 1925; §1, ch. 12442, 1927; CGL 801.

239.07 Endowment funds.—The board of control and the state board of education may accept, on behalf of the state, any endowment fund that may be raised by the American Legion or other patriotic and civic organizations, and hold such endowment fund in trust for the use and benefit of maintaining a chair of Americanism and southern history at the university of Florida.

History.—§2, ch. 10030, 1925; CGL 802.

239.08 Annual appropriation.—To supplement the income from any such endowment fund provided for in §239.07, should the same be necessary, an amount shall be included in the general appropriations act to be used only in carrying out the provisions of §§239.06 and 239.07.

History.—§3, ch. 10030, 1925; §2, ch. 12442, 1927; CGL 803; §19, ch. 26869, 1951.

239.09 University of Florida and Florida state university designated for vocational training.—The state vocational board shall designate the university of Florida, at Gainesville, and the Florida state university, at Tallahassee as the schools for the training of teachers of agricultural, trade, industrial and home economics subjects, the one for men and the other for women.

History.—§4, ch. 7376, 1917; RGS 663; CGL 843.

239.10 Salaries of instructional personnel, employees.—The board of control shall have the power to fix and determine the salaries of instructional personnel and other employees of institutions of higher education.

History.—§§1, 2, ch. 15859, 1933; am. §7, ch. 22858, 1945; §2, ch. 23669, 1947; §2, ch. 57-401.

239.191 Senatorial and representative state scholarships.—All vested rights of students in senatorial and representative state scholarships as well as obligations and notes entered into pursuant to former §§239.19-239.24, shall remain in full force and effect and shall not be affected by the repeal of these sections.

History.—§99, ch. 29764, 1955.

239.25 Scholarships in agricultural department of university.—The board of county commissioners of each county in this state may offer and create one scholarship to the agricultural department of the university of Florida.

History.—§1, ch. 6837, 1915; RGS 1482; CGL 2187.

239.26 Method of awarding.—The said scholarship shall be awarded by competitive examination under the rules and authority prescribed by the board of county commissioners, and shall entitle the holder thereof to a full course of instruction at the university of Florida, and shall subject the holder thereof to the same rules and regulations as other students at the university of Florida.

History.—§2, ch. 6837, 1915; RGS 1483; CGL 2188.

239.27 Eligibility of applicant.—All applicants for the said scholarship shall be eligible for admission to the university of Florida, and anyone so appointed shall sign a certificate agreeing, if capable and otherwise qualified, to engage in agricultural pursuits in this state. Nothing in §§239.25-239.28, shall be construed to interfere with their receiving compensation for services rendered while engaged in such pursuits.

History.—§3, ch. 6837, 1915; RGS 1484; CGL 2189.

239.28 County commissioners authorized to appropriate money; "board" defined.—For the purpose of maintaining the scholarships provided for in §239.25 the board of county commissioners of each county in this state may appropriate from any funds at their disposal a sum sufficient to pay the board of the person receiving the said scholarship.

The term "board," herein named, shall be construed to mean the regular dormitory rate and shall be paid monthly while the holder of the said scholarship is in attendance at the university of Florida.

History.—§§4, 5, ch. 6837, 1915; RGS 1485; CGL 2190.

239.34 Ex-confederate soldiers' and sailors' home endowment trust fund.—Any funds which have been or may hereafter be covered into the state treasury under chapter 8505, acts 1921, shall be known as the ex-confederate soldiers' and sailors' home endowment trust fund and the same shall be invested by the state treasurer;

and the proceeds thereof shall be used for the endowment of a scholarship or scholarships in the university of Florida, and the Florida state university. The said scholarship or scholarships shall be awarded upon competitive examination under such rules and regulations as the board of education may make; provided, that no one shall be eligible to compete in said examination for said scholarship or scholarships except a lineal descendent of a confederate soldier or sailor; provided further, that whenever it shall appear that no one can qualify for said competitive examination as a lineal descendent of a confederate soldier or sailor, the said board of commissioners of state institutions shall use said endowment trust fund to erect a permanent memorial to the confederate soldiers and sailors in the form of a building upon the campus of the university of Florida, or the Florida state university, in the discretion of the said board of commissioners of state institutions, and suitably mark said building as a memorial to the confederate soldiers and sailors.

History.—§1, ch. 8505, 1921; CGL 2126; §2, ch. 61-119.

239.35 Instruction in U. S. constitution.—All colleges and universities in this state that are sustained or in any manner supported by public funds shall give instruction in the essentials of the United States constitution, including the study of, and devotion to, American institutions and ideals, and no student in colleges or universities shall receive a certificate of graduation without previously passing a satisfactory examination upon the provisions and principles of the United States constitution, and shall also satisfy the examining power of his loyalty thereto. The instruction herein provided shall be given for at least one year in the college and university grades, respectively.

Willful neglect or failure on the part of any president, teacher or other officer of any university or college to observe and carry out the requirements of this section shall be sufficient cause for the dismissal or removal of such party from his position.

History.—§§1, 2, 5, ch. 10256, 1925; CGL 616, 617, 620.

239.371 Scholarships for teachers for special training in exceptional child education.—

(1) The state board of education is authorized to make training grants to teachers who seek special training in exceptional children education to qualify said teachers to meet professional requirements and shall be responsible for the administration of said program.

(2) These grants are limited to teachers who are under contract to teach in the exceptional child program in this state, the sunland training centers, and at the Florida school for the deaf and the blind.

(3) Each grant shall cover the cost of tuition, housing and food, to a maximum of two hundred dollars for residence enrollment in specific courses approved by the state superintendent under the regulations of the state board of education for certification in exceptional child education. Said courses to be offered on the campuses of the institutions of higher learning in this state and through the Florida institute for continuing university studies.

(4) Where courses are not available in this state in the areas requiring certification in exceptional child education, the recipient may receive said grant for attending an out-of-state institution of higher learning approved by the state board of education to meet the professional requirements of the state of Florida.

History.—§1, ch. 63-561.
cf.—282.011 Miscellaneous appropriations.

239.38 General scholarship loans; value; appropriation; authority for collection of notes.—For the purpose of attracting the state's most capable youth to the teaching profession, there shall be established one thousand fifty general scholarship loans for the preparation of teachers, each scholarship loan having a value of four hundred dollars each year; providing, however, that where a recipient wishes to accelerate his or her training by attending three trimesters during a regular school term the scholarship shall have an annual value of six hundred dollars. In addition to the amount included in the general appropriations bill, there is appropriated from the general revenue fund the sum of one hundred twenty thousand dollars per year for the payment of scholarships to students who elect to attend the third trimester. These funds shall be expended only for attendance during the third trimester and any unused funds shall revert to the general revenue fund of the state. Fifty of said scholarships are designated Stonewall Jackson memorial scholarships and the state board is directed to so denominate and publicize said scholarships as such. For the purpose of making such scholarship loans effective there shall be included in the biennial general appropriations act sufficient funds for the administration of such scholarship loans.

The state board is authorized to enforce the collection of and otherwise settle any delinquent scholarship notes, and is also authorized to make such rules and regulations as it shall deem necessary in connection with the methods to be used in enforcing collection and expenses incident thereto.

History.—§2, ch. 22944, 1945; §22, ch. 26869, 1951; §5, ch. 28102, 1953; §1, ch. 29726, 1955; §1, ch. 59-255; §14, ch. 59-371; §1, ch. 63-543.

239.41 Allocation of scholarship loans; method of awarding; eligibility.—Scholarship loans for the preparation of teachers shall be allocated to the counties proportionate to the enrollment in grades one through twelve of the county to the enrollment in grades one through twelve of the state as determined by the state's annual report on school attendance for the school year 1958-1959; provided, however, that no county shall have less than two scholarships. Reallocation shall be determined each four years in terms of enrollment in grades one through twelve. If after March 1 of any year the number of scholarship loans allocated to any county have not been awarded to successful applicants from that county, the state

board shall redistribute the remaining scholarship loans on a state-wide basis as prescribed by regulations of the state board.

General scholarship loans shall be awarded on the basis of competitive examinations held at times and places and by such school officials or citizens of the state as are designated by the regulations of the state board. The awarding of the scholarship loans shall be made by the state board under rules and regulations prescribed by that board. Should vacancies occur for any reason such vacancies shall be filled as prescribed in regulations of the state board. The state board shall determine in which educational field or fields there exists a shortage of teachers and may award scholarship loans in that field or fields. A specific number of scholarship loan vacancies each year may, at the discretion of the state board, be declared open to applicants who are in the third or fourth year of their college curriculum.

In accordance with law and state board regulations, the principals and county superintendents in each county shall select and recommend, on the basis of merit, a number of high school graduates who are bona fide residents of the state, as defined in §97.041, who are interested in teaching and whose work and qualifications are such as to indicate that they possess the qualities which should be possessed by a successful teacher, to take the examinations as prescribed above.

Each such person shall be a graduate of a high school and shall sign a pledge to teach in a Florida public elementary school, kindergarten, secondary school, junior college, or a combination thereof as defined in §§228.13 and 228.14, for at least the number of years for which the scholarship loan is approved.

Each such person awarded a general scholarship loan shall attend an institution of higher learning in Florida approved for teacher education, or a junior college in Florida (for a period not to exceed two years), approved by the state board under regulations of that board.

Each person who becomes a scholarship holder shall enroll in a college or university in Florida approved for teacher education or in an approved junior college in Florida not later than the beginning of the first regular school year subsequent to the notification of the scholarship loan. The scholarship holder may register in any college, school, department, or division of the institution he may desire, and may pursue a course of studies leading toward any type of degree he may desire; provided, however, that at all times such scholarship holder shall be pursuing such courses of study, professional and otherwise, offered in the college, school, department, or division of education as shall insure that, upon graduation, the scholarship holder will be fully eligible for certification as a teacher in Florida. To that end the scholarship holder shall have his program of studies approved by the dean or head of the college, school, department, or division of education in accordance with the requirements for the graduate certificate as contained in Florida state board regulations relative to teacher education and certification; and must complete to the satisfaction of the institution the work he is undertaking each year, except that this shall not be construed to prohibit a scholarship recipient from following an approved program of studies leading to a certificate to teach in a public junior college of the state as provided by state board of education regulations. Accordingly, it shall be the responsibility of the scholarship holder and of the college, university or junior college to insure that such scholarship holder will be eligible for a certificate as a teacher in Florida upon graduation.

History.—§5, ch. 22944, 1945; §2, ch. 26615, 1951; am. §6, ch. 28102, §1, ch. 28176, 1953; §2, ch. 29726, 1955; §1, ch. 59-358; §1, ch. 59-475; §1, ch. 59-161; §9, ch. 61-459; §21, ch. 63-376; §2, ch. 63-543.

239.42 Disbursement of scholarship fund for preparation of teachers.—At the beginning of each quarter of the academic year one third or at the beginning of each trimester or semester one half of the four hundred dollars allocated for each person awarded a scholarship loan and in actual attendance at an approved Florida institution of higher learning or an approved junior college as certified by the president of that institution based on a list of eligible applicants submitted to him by the state superintendent of public instruction, shall be paid by the comptroller to the respective state institutions for the benefit of the scholarship holders and in the case of private institutions to the scholarship holders. The state board shall prescribe regulations for the payment of scholarship funds to the institutions and to individual scholarship holders in private institutions for the benefit of such scholarship holders who take additional work during the summer terms in order to complete their college training at an earlier date. To be eligible to continue to participate in scholarship funds each person receiving a scholarship loan shall meet the requirements set forth in §239.41 and the regulations of the state board.

History.—§6, ch. 22944, 1945; am. §51, ch. 28726, 1947; §7, ch. 28102, §2, ch. 28176, 1953; §3, ch. 29726, 1955; §22, ch. 63-376; §3, ch. 63-543.

239.43 Promissory notes.—Each person who receives a scholarship loan for the preparation of teachers shall execute, as principal, a promissory note under seal, which shall be endorsed by his parent or guardian, or by some other responsible citizen, as surety, and shall deliver said note to the president of the institution he is attending, or to his representative. Each note shall be made payable to the state for the amount of the quarter, trimester, or semester payment and shall bear interest at the rate of five per cent per annum from the date of July 1 following graduation with the bachelor's degree or termination of full time college attendance. The president shall transmit said note to the state board along with his requisition for funds. Each person awarded a scholarship loan under the terms of this law shall be eligible, upon the completion of satisfactory work each year and compliance with

the provisions of §239.41, and regulations of the state board, to have his scholarship loan renewed from year to year for a period not to exceed four years or until he has received his bachelor's degree whichever comes the earlier.

History.—§7, ch. 22944, 1945; am. §52, ch. 23726, 1947; §8, ch. 28102, 1953; §4, ch. 29726, 1955; §2, ch. 59-161; §23, ch. 63-376.

239.44 Credit for teaching; satisfaction of notes.—The scholarship holder shall begin teaching not later than the opening of the regular public school term following his graduation. At the expiration of each school year of service as a teacher in the public schools of Florida (§239.41) by a person who has benefited from a scholarship loan for the preparation of teachers, such person shall submit to the state board a statement of service on a form provided for that purpose and certified by the county superintendent of the county in which he taught. Upon receipt of such statement in proper form, the state board shall forthwith cancel the oldest notes given by such person covering a scholarship loan for one year and the interest accrued thereon. If, for any reason, a person ceases to teach in the public schools of Florida as defined in §239.41, except for military service, death, or total disability, or fails to file with the state board by July 1 of each year a statement concerning his previous year's employment and his address ıor the ensuing year, all notes and the interest thereon shall become due and payable. Any moneys collected by the state board shall be forwarded to the state treasurer to be deposited in the general revenue fund of the state. If it becomes necessary, the state board shall make every effort to enforce the collection of the principal and the interest on all uncancelled and unpaid notes and shall deposit said sum to the credit of the general revenue fund of the state. Any expense incurred by the state board in enforcing collection of any such scholarship notes shall be borne by the signer of the note and the endorsers thereof and shall be added to the amount of the principal of said note or notes.

History.—§8, ch. 22944, 1945; am. §53, ch. 23726, 1947; §9, ch. 28102, 1953; §5, ch. 29726, 1955; §3, ch. 59-161.

239.441 Scholarships, repayment by recipients after entering military service.—Any person who has been awarded a scholarship loan under the provisions of §§239.38 and 239.41, or under the provisions of former §§239.19 through 239.24, now repealed, and who subsequently enters any branch of the armed forces and upon his discharge or release from active duty from the armed forces continued his studies toward acquiring a teaching certificate as provided by law, under the benefits of United States public law 550, shall not be required to pay or discharge any promissory note as provided for in §§239.43 and 239.44, or in former §239.24, now repealed, that has become due or may become due prior to said person completing the necessary requirements for a teaching certificate, until ninety days after receiving his degree or terminating his studies for any reason. Provided, however, said person may discharge his obligations by teaching in compliance with §239.44, or former §239.24, now repealed, in lieu of payment of said promissory note.

History.—§1, ch. 57-329.

239.47 Professional and practical nursing education; scholarships; value.—

(1) There are established and provided one hundred ninety scholarships in nursing education to be awarded to students for attendance at approved professional diploma schools of nursing or approved junior college schools of nursing in Florida in the amount of three hundred dollars per school year for a period not exceeding three years.

(2) There are established one hundred twenty scholarships in nursing education to be awarded to students for attendance at approved basic collegiate schools of nursing in Florida, in the amount of five hundred dollars per school year for a period not exceeding four years; provided, however, that where the recipient wishes to accelerate his or her training by attending three trimesters during a regular school term, the scholarship shall have an annual value of seven hundred fifty dollars.

(3) There are hereby established one hundred scholarships in practical nursing education to be awarded to students for attendance at approved practical schools of nursing in Florida, in the amount of three hundred dollars, for a period not exceeding one year.

(4) There is hereby established a sum of eleven thousand dollars in scholarship funds for additional education leading to a baccalaureate degree in nursing, nursing education or nursing administration, to be awarded to licensed Florida resident professional nurses. The amount of such scholarship shall be one thousand dollars for educational pursuit within the state per school year, not to exceed two years or receipt of a baccalaureate degree, whichever shall come earlier, or in the sum of two thousand dollars per school year and not to exceed one year or receipt of a baccalaureate degree, whichever shall come earlier, for educational pursuit outside the state in instances where educational facilities are not available in the state.

(5) The foregoing scholarships shall be interchangeable at the discretion of the state board of education.

(6) From the nursing scholarship loans available to be awarded in any year, the state board of education shall have authority to designate on the basis of existing and projected need a specific number of such scholarships to be awarded only to recipients who pledge their services to a state institution or agency; provided, however, that if at the time of graduation or completion of training it is determined that the services of recipients of such scholarship loans shall not be needed by a state institution or agency, the state board of education may accept in lieu thereof service rendered to a county or municipal institution or agency.

Recipients of such scholarship funds who pledge their services to a state institution or agency shall do so at the regular rate of pay and periods of time to be comparable to those set forth in §239.52.

History.—§2, ch. 29819, 1955; §2, ch. 57-789; (1) §1, (2) §2, (4) §3, ch. 61-367; (1), (2), (4) §24, (6) §25, ch. 63-376.

239.48 Award of scholarships; disbursement of funds; administration. — The award of scholarships provided for by §239.47 et seq., shall be made by the state board of education hereinafter referred to as the board, and the state department of education, hereinafter referred to as the department, shall handle the administration of the scholarship program provided for in §§239.47-239.52. The board shall prescribe regulations governing the payment of scholarship funds to the school, college, or university for the benefit of the scholarship holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated under the provisions of §§239.47-239.52 and shall be paid upon vouchers approved by the state superintendent of public instruction and properly certified to the comptroller.

History.—§3, ch. 29819, 1955.

239.49 Requisite of holding scholarship; examination, etc.—Scholarships are to be awarded only to such residents of the state that intend to make nursing in this state their occupation. Among other essential requisites for holding a scholarship hereunder are citizenship, residence in Florida for a period of one year, good moral character, good health, capacity, willingness to make a success of nursing and shall have met the entrance requirements of a school of nursing approved by the Florida state board of nurse registration and nursing education. In addition to the foregoing, scholarships shall be awarded only upon a competitive examination given at such times and places and by such citizens of the state as are designated by the state department of education and the awards of scholarships shall be made under rules and regulations prescribed by the state board of education.

History.—§4, ch. 29819, 1955.

239.50 Termination of scholarships.—Upon recommendation of the school, college or university, the scholarships provided for herein may be terminated at any time by the board in the event the study or behavior of the recipient of a scholarship is not satisfactory.

History.—§5, ch. 29819, 1955.

239.51 Professional and practical nursing education; notes required of scholarship holders.—Each person who receives a scholarship as provided for in §§239.47-239.52, shall execute a promissory note under seal which shall be endorsed by his or her parent or guardian, or if he or she is over twenty-one years of age, by some responsible citizen and shall deliver said note to the state department of education. Each note shall be payable to the state and shall bear interest at the rate of five per cent per annum from the date of July 1 following graduation or termination of full time attendance in nursing training; said note shall provide for any and all cost of collection to be assessed against and paid by the maker of the note.

History.—§6, ch. 29819, 1955; §26, ch. 63-376.

239.52 Professional and practical nursing education; payment of notes.—Prior to the award of a scholarship provided herein for practical nurses, the recipient thereof must agree in writing to practice nursing in the state for at least one year immediately after graduation or in lieu thereof, to repay the full amount of the scholarship together with interest at the rate of five per cent per annum; prior to the award of a scholarship provided for students of diploma schools or approved junior college schools of nursing, the recipient thereof must agree in writing to practice nursing in the state for six months for each year of scholarship assistance immediately after graduation or completion of course of study, or in lieu thereof, to repay the full amount of the scholarship, together with interest at the rate of five per cent per annum; prior to the award of a scholarship provided for students of basic collegiate schools, the recipient thereof must agree in writing to practice nursing in the state for one year, immediately after graduation, for each year of scholarship assistance, or in lieu thereof, to repay the full amount of scholarship together with interest at the rate of five per cent per annum. Prior to the award of a scholarship provided for licensed Florida resident professional nurses, the recipient thereof must agree in writing to practice nursing in the state for one year for each one thousand dollar scholarship assistance; or two years for the two thousand dollar scholarship assistance, or in lieu thereof, to repay the full amount of the scholarship together with interest at the rate of five per cent per annum. All such repayments, including interest, shall be deposited in the state treasury to the credit of the general revenue fund.

History.—§7, ch. 29819, 1955; §3, ch. 57-789; §27, ch. 63-376.

239.53 Regulation of traffic at universities; definitions.—In construing §§239.53-239.58, "traffic," when used as a noun, shall mean the use or occupancy of, and the movement in, on or over, streets, ways, walks, roads, alleys and parking areas, by vehicles, pedestrians or ridden or herded animals; "adjacent municipality" means a municipality which is contiguous or adjacent to, or which contains within its boundaries all or part of the grounds of a state institution of higher learning; "grounds" shall include all of the campus and grounds of the institution of higher learning, whether it be the campus proper or outlying on noncontiguous land of the institution within the county; "law enforcement officer" shall include municipal police, patrolmen, and traffic officers, sheriffs, deputies, and county traffic officers, assigned to duty on the grounds of the institution of higher learning, as well as campus police,

guards or traffic officers appointed for that purpose by the board of control; a traffic rule or regulation shall be deemed promulgated when adopted by the board of control and posted at the institution of higher learning on public bulletin boards where notices are customarily posted, and copies made available to the public.

History.—§1, ch. 29723, 1955.

239.54 Rules and regulations of board of control; municipal ordinances.—The board of control shall adopt and promulgate rules and regulations which it finds necessary, convenient or advisable for the safety, welfare, and health of the students, faculty members, and all other persons, governing traffic on the grounds of each institution of higher learning under its management. Copies of said rules and regulations shall be posted at the institution of higher learning on public bulletin boards where notices are customarily posted, filed with the city clerk or corresponding municipal officer and with the municipal judge of the adjacent municipality, and shall be made available to any person requesting same. When promulgated, said rules and regulations shall have the force and effect of municipal ordinances of the adjacent municipality and shall be enforceable as such, as herein provided. All ordinances of the adjacent municipality relating to traffic which are not in conflict or inconsistent with the traffic rules and regulations adopted by the board of control shall extend and be applicable to the grounds of the institution of higher learning.

History.—§2, ch. 29723, 1955.

239.55 Violations; penalties.—Any person who violates any of said rules or regulations or applicable municipal ordinances, or who fails or refuses to obey the direction or order of any law enforcement officer directing or regulating traffic on the grounds of an institution of higher learning, shall be guilty of a misdemeanor and, upon conviction, be punished by the same fines and penalties as may be provided and limited by the charter of the adjacent municipality for punishment of offenses against its laws and ordinances.

History.—§3, ch. 29723, 1955.

239.56 Jurisdiction of municipal courts; cash bonds.—The municipal court of the adjacent municipality is hereby vested with and granted jurisdiction for the trial of all persons violating said traffic rules and regulations of the board of control or the traffic ordinances of said adjacent municipality made applicable by §§239.53-239.58 to the grounds of the institution of higher learning. The judge of the municipal court of the adjacent municipality may designate a suitable person to accept and receive on behalf of the court, at a convenient office on the grounds of the institution of higher learning, cash bonds required in cases of violation of traffic regulations or ordinances, in accordance with a schedule of such bonds established by the board of control with the approval of said municipal judge. Said cash bonds, if and when forfeited, shall be immediately transmitted to said adjacent municipality to become a part of its fine fund.

History.—§4, ch. 29723, 1955.

239.57 Costs, fines and penalties.—No costs shall be allowed to any officer for his services in the enforcement of said traffic rules, regulations or applicable municipal ordinances in said municipal court. Fines and penalties collected for violation of said rules, regulations, and applicable municipal ordinances shall be paid into and become a part of the fine fund of the adjacent municipality.

History.—§5, ch. 29723, 1955.

239.58 Enforcement of ordinances, rules and regulations.—In the enforcement of said rules and regulations and applicable municipal ordinances, arrests may be made and process and notices served by any law enforcement officer authorized to make arrests or to serve process or notices within the corporate limits of the adjacent municipality or within the county wherein said institution of higher learning is located, as well as by campus police or guards or traffic officers duly appointed as such by the board of control; but in the enforcement of §§239.53-239.57, campus police or guards or traffic officers appointed by the board of control shall make arrests, serve process and notices and direct traffic only on the grounds of said institution of higher learning, except that arrests may be made off-campus when hot pursuit originates on campus. Campus traffic courts shall be permitted to continue to function.

History.—§6, ch. 29723, 1955; §1, ch. 63-22.

239.59 Medical scholarships; eligibility requirements.—

(1) There shall be awarded each fiscal year, beginning with the fiscal year commencing July 1, 1955, to persons selected by the state board of health in consultation with the dean or deans of each fully accredited and operating four-year medical college in the state, ten scholarships for the study of medicine leading to the attainment of the degree of doctor of medicine; provided, however, the state board of health may award one of these ten scholarships to a qualified person selected by said board in consultation with the state board of osteopathic medical examiners for the study of osteopathic medicine in a fully accredited and approved college of osteopathy conferring the degree of doctor of osteopathy and accredited and approved both by the American osteopathic association and the state board of osteopathic medical examiners. It is declared to be the legislative intent that the amendment to this subsection by ch. 59-235 shall be supplementary to chapter 57-406, acts of 1957, now §§239.59(5), 239.61; that those portions of chapter 57-406, which refer to medical college and doctor of medicine shall not apply so as to defeat the purpose of this amendment, but shall operate to permit the state board of health to

send one deserving person each year to study osteopathic medicine, and to require that such student when graduated shall return to practice osteopathic medicine in some community in Florida to be selected by the state board of health for at least fifteen months for each year of scholarship aid he has received.

(2) To be eligible to receive a scholarship under §§239.59-239.64, an applicant must:

(a) Have been a citizen and resident of this state for not less than five years prior to the date of his application; and

(b) Be able to meet the requirements and academic standards for admission to a fully accredited four-year medical college approved by the state board of medical examiners.

(c) Shall furnish evidence satisfactory to the board of health that he does not otherwise have available to him sufficient financial resources to enable him to pursue such a course of study.

(3) A recipient of a scholarship under §§239.59-239.64 shall attend a fully accredited four-year medical college approved by the state board of medical examiners and selected by the state board of health in consultation with the dean or deans of each fully accredited and operating four-year medical college in the state.

(4) Preference in the granting of the scholarships provided for herein shall be given to those applicants with the highest weighted scholastic averages in approved undergraduate colleges, provided they are persons of high integrity and character; and provided further that such applicants shall be found to have such qualities and attributes as shall give reasonable assurance of pursuing to completion the course of study for the attainment of the degree of doctor of medicine. For the purpose of selecting the recipients of such scholarships, the state board of health is authorized to consult with an advisory committee of five medical doctors practicing in this state selected by the president of the Florida medical association.

(5) If in any one year there are not ten qualified applicants for the ten scholarships authorized for said year or if any application is made and granted for less than a four year scholarship, then the scholarships or any portions thereof authorized but not utilized during said year may be granted to any qualified applicants who have completed only a portion of their medical training; and if not utilized for this purpose then said scholarships or any portion thereof shall be carried over and added to the scholarships which are authorized in succeeding years.

(6) Not more than five scholarships provided for herein shall be awarded in any one year to applicants who are residents of the same county of this state.

History.—§1, ch. 29807, 1955; (5) by §1, ch. 57-406; (1) §§1, 2, ch. 59-235; §13, ch. 61-243.
Note.—Formerly §458.081.

239.60 Maximum amount of scholarship.—The scholarships provided for herein shall cover the students' tuition, books, laboratory fees and equipment and other fees, supplies, board, room rent and other necessary and reasonable expenses of attending medical school. In no event, however, shall a scholarship amount to more than one thousand dollars in value in any one year, nor more than four thousand dollars in value in its entirety.

History.—§2, ch. 29807, 1955; §13, ch. 61-243.
Note.—Formerly §458.082.

239.61 Recipient's agreement to practice in community designated by board of health.—Each recipient of a scholarship under §§239.59-239.64 shall enter into an agreement with the state board of health that he will, after the completion of his medical training, enter upon the practice of medicine in a community or locality in this state designated by the state board of health and to continue in such practice for a period of fifteen months for each year of scholarship granted and utilized, or else to forfeit and become immediately liable to the state for the amount granted him under his scholarship. If a recipient of a scholarship provided for herein practices medicine in a community or locality designated by the state board of health for only a part of the total period of practice agreed upon, he shall forfeit and be liable to the state only for the amount granted him under such scholarship reduced by a credit at the rate of eight hundred dollars, per year for the time he shall have actually practiced in such locality or area. The attorney general shall institute proceedings in the name of the state for the purpose of recovering any amount due the state under §§239.59-239.64 from any scholarship recipient.

History.—§3, ch. 29807, 1955; §2, ch. 57-406; §13, ch. 61-243.
Note.—Formerly §458.083.

239.62 Compilation of list of designated communities.—The state board of health shall determine the localities and communities within the state which do not have practicing therein a doctor of medicine, or a sufficient number of doctors of medicine, to meet the minimum needs of the inhabitants of such locality or community for the necessary services of a doctor of medicine; and shall compile a list of such communities and localities. However, every such community or locality shall have at least one thousand inhabitants, according to the latest and best information as to such numbers. From such list, the state board of health shall designate three communities or localities from which a scholarship recipient shall select one within which he shall agree to practice medicine pursuant to the provisions of §§239.59-239.64.

History.—§4, ch. 29807, 1955; §13, ch. 61-243.
Note.—Formerly §458.084.

239.63 Violation of agreement, penalty.—The failure of a recipient of a scholarship provided for herein to perform his agreement with the state board of health and to pay the amount he is liable for hereunder shall constitute a ground for the revocation of his license to practice medicine in this state, provided, however,

such failure shall not be due to causes or conditions beyond the control of the recipient.

History.—§5, ch. 29807, 1955; §13, ch. 61-243.
Note.—Formerly §458.085.

239.64 Rules and regulations.—The state board of health shall have the authority to make reasonable rules and regulations, not inconsistent with this law for the carrying out of the provisions of §§239.59-239.64.

History.—§6, ch. 29807, 1955; §13, ch. 61-243.
Note.—Formerly §458.086.

239.65 Contracts of institutions for supplies, etc., exempt from operation of county or municipal ordinance or charter.—

(1) The institutions under the board of control are authorized to contract for supplies, utility services, and building construction without regulation or restriction by municipal or county charter or ordinance. Contractual arrangements shall be in the best interests of the state and shall give consideration to rates, adequacy of service, and the dependability of the contractor.

(2) Any municipal or county charter, ordinance, or regulation that serves to restrict or prohibit the intent of sub-section (1) shall be inoperative.

History.—§§1, 2, ch. 61-507.

239.66 Seminole Indian scholarships.—

(1) AWARD.—There shall be awarded by the state board of education each fiscal year, beginning with the fiscal year commencing July 1, 1963, one scholarship each to a Seminole Indian girl and boy recommended by the state department of education.

(2) ELIGIBILITY.—To be eligible to receive a scholarship an applicant must:

(a) Reside within the boundaries of a Seminole Indian reservation in the state;

(b) Have graduated from high school or be enrolled in the final year of high school study;

(c) Meet the admission requirements of an accredited junior college, college or university in Florida.

(3) AWARDING SCHOLARSHIPS.—The state department of education shall recommend to receive a scholarship the Seminole Indian girl and boy who earn the highest scores on a standardized examination conducted by the state department of education each year and who meet the requirements of subsection (2). Each scholarship recipient shall be eligible to have the scholarship renewed from year to year for a period of four years or until graduation with a bachelor's degree whichever comes earlier; provided, however, that all academic and other requirements of the college attended and rules and regulations as may be prescribed by the state board of education as provided for hereinafter shall be met.

(4) VALUE OF SCHOLARSHIPS, DISBURSEMENT OF FUNDS.—Each scholarship shall have a value of two hundred dollars each trimester or semester. At the beginning of each trimester or semester the state superintendent of public instruction shall certify the name of each scholarship holder eligible to receive funds for that registration period to the comptroller, who shall draw a warrant in favor of each scholarship holder.

(5) APPROPRIATION.—There is hereby appropriated from the general revenue fund of the state to the state board of education for the payment of scholarships provided in this act, $1,200.00 for the 1963-64 fiscal year and $2,400.00 for the 1964-65 fiscal year. For each subsequent biennium, the state board of education shall include in its legislative budget request, sufficient funds for the payment of two additional scholarships each year until a total of eight scholarships are available each and every year. Any funds not disbursed to scholarship holders shall at the end of the biennium revert to the general revenue fund of the state.

(6) RULES AND REGULATIONS.—The state board of education shall have authority to make rules and regulations, not inconsistent with law for carrying out the provisions of this law.

History.—§§1-6, ch. 63-404.

239.67 Student financial aid fund; administration.—

(1) There is hereby created a student financial aid fund to be administered by the state department of education in accordance with policies and regulations to be established by the Florida student scholarship and loan commission as hereinafter established.

(2) The Florida student scholarship and loan commission is hereby created. Said commission shall be composed of nine members who shall be appointed by the governor. The membership of the commission shall be as follows:

(a) Three representatives of the private institutions of higher learning in Florida.

(b) Three representatives of the tax-supported institutions of higher learning in Florida, one of whom shall be a representative of the junior colleges.

(c) Three representative citizens of the state at large.

(d) At no time shall more than one person serve as a member of the commission from the same institution.

(e) The terms of members shall be four years, but the terms of the first members shall be fixed by the governor in such manner as will provide for the expiration each year of the terms of at least two of the members.

(f) Any vacancy shall be filled by the appointment of a person of the same classification or status as his predecessor, and such appointee shall hold office only for the balance of the unexpired term.

(g) The commission shall elect a chairman from its membership who shall be its principal officer. The commission shall meet at least once each year, and at such other times as the chairman may designate.

(h) The members of the commission shall receive no compensation for their services, but they shall be entitled to per diem and travel

expenses, as provided in §112.061, when actually engaged in discharging their duties as members of the commission.

(3) There is hereby appropriated to the use of the said commission the sum of $500,000.00 for carrying out the purposes of this act during the 1963-65 biennium. Said sum shall be maintained by the state treasurer in a permanent, special trust fund, to be expended upon vouchers approved by the superintendent of public instruction and submitted to the comptroller, for payment. Any unexpended balance therein at the end of any biennium shall remain therein and be available for carrying out the purposes of this law.

(4) Scholarship loans from said fund as determined by the commission, shall be made only to students of demonstrated ability and need, who have been bona fide residents of Florida for not less than three years. Such loans shall be used only for tuition or registration fees and shall not exceed an aggregate of one thousand dollars per annum to any one individual applicant. Recipients of such loans may attend any institution of higher learning in Florida, either private or public, which is a member of the southern association of colleges and secondary schools, or whose credits are acceptable for transfer to state universities in Florida.

(5) The criteria and procedure for establishing standards of eligibility shall be as the same are determined by the commission, but no person shall be eligible who has not demonstrated high moral character, good citizenship and dedication to American ideals. The commission is directed to establish a rating system upon which to base the approval of loans, and such system shall include standardized examinations, and a certification of acceptability by the university or college of the applicant's choice. The individual recipient shall be selected by the commission and certified to the state department of education, on the basis of criteria established by the commission as provided by this act. No interest shall accrue on the student loans referred to in this subsection and subsection (4) of this section prior to the recipient's graduation or termination of enrollment as a full-time student; interest shall begin with the recipient's graduation or termination of enrollment as a full-time student and repayment of the loan shall begin on July 1 of the year following the recipient's graduation or termination of enrollment as a full-time student.

(6) The commission shall be authorized to receive and administer grants and donations from any source and in its discretion to establish criteria, select recipients and award scholarships and loans from such funds and to fix the interest rates and terms of repayment thereof.

(7) The Florida student scholarship and loan commission shall adopt rules and regulations to insure that the amount of each scholarship loan shall be repaid to the loan trust fund. Such rules and regulations shall include, but not be limited to, the requirement that all loans shall be secured by a promissory note endorsed by the recipient and his parents, guardians, or other responsible persons.

History.—§§1-7, ch. 63-452.

PART II

EDUCATIONAL EXTENSION ACT OF 1963

239.0100 Short title.—This law may be known and cited as the educational extension act of 1963.

History.—§1, ch. 63-415.

239.0101 Purpose.—The purpose of this law is to extend academic courses for credit taught on campus at state degree granting institutions of higher learning to off-campus locations as needed and as educationally sound and feasible; and to provide noncredit instructional activities such as workshops, institutes, conferences, seminars and short courses on campus and at various off-campus locations throughout Florida as requested and as educationally and economically sound and feasible.

History.—§2, ch. 63-415.

239.0102 Florida institute for continuing university studies.—The Florida institute for continuing university studies is hereby created and directed to serve as the system-wide coordinating agency through which Florida degree granting institutions of higher learning shall extend selected academic courses and programs for credit to off-campus locations; and to serve as the system-wide coordinating agency through which Florida degree granting

institutions of higher learning shall extend selected noncredit instructional services and activities such as workshops, institutes, conferences, seminars and short courses to off-campus locations; provided however, that the instructional and other services of the cooperative extension services in agriculture and home economics shall be exempt and excluded from the provisions of this law.

History.—§3, ch. 63-415.

239.0103 Jurisdiction; assistance to institutions of higher learning; cost.—All on-campus instructional programs, services and activities with credit or without credit of each and all of the degree granting institutions of higher learning shall be under the sole and exclusive jurisdiction of said institutions subject only to policies established by law and to rules and regulations of the state board of education and the governing board for degree granting institutions of higher learning for the general operation of said institutions; provided, however that each and all of the said institutions may request assistance from the Florida institute for continuing university studies in the conduct of any and all of the noncredit instructional programs, services and activities held on the campus of any and all of the said institutions, such assistance to be provided by the said institute at cost to the institution requesting said assistance; provided further that the state board of education and the governing board for the degree granting institutions of higher learning shall adopt a specific policy and cost schedule for assistance rendered by the institute to said institutions.

History.—§4, ch. 63-415.

239.0104 Institute director, compensation.—The chief executive officer of the Florida institute for continuing university studies who shall be known as the director of the Florida institute for continuing university studies shall be elected by the governing board for the degree granting institutions of higher learning with the concurrence of the state board of education and he shall hold office at the pleasure of the governing board of the degree granting institutions of higher learning. He shall be paid a salary not to exceed eighteen thousand five hundred dollars for twelve months. He shall be responsible to said governing board for the effective and efficient coordination under the policies of said governing board of off-campus instructional services, programs and activities of the degree granting institutions of higher learning.

History.—§5, ch. 63-415.

239.0105 Institute divisions, division directors.—The organization of the Florida institute for continuing university studies shall be comprised solely and exclusively of the following divisions: division of administrative services, division of noncredit instructional services, division of credit instructional services, and division of radio and television services. In addition to the director of the Florida institute for continuing university studies, there may be an administrative officer to be known as a director for each of the said divisions. The total staff of said institute including the director, division directors, professional, administrative and clerical personnel and all other personnel of whatever category, full-time and part-time, shall not exceed the total number of positions approved by the legislature in its general appropriations act; provided however that this provision does not include personnel employed by any state degree granting institution of higher learning performing extension services of any type through the said institute.

History.—§6, ch. 63-415.

239.0106 Powers and duties, general.—The Florida institute for continuing university studies shall be responsible for recommending priorities to guide the allocation of the resources available to meet off-campus needs; receiving and administering all state appropriations for off-campus instructional programs, services and activities including appropriations for correspondence study instruction which may be provided through the said institute; approving off-campus institutional programs, services and activities made available by each and all of the state degree granting institutions of higher learning which may be provided through the said institute; reimbursing state degree granting institutions of higher learning for salaries of instructional personnel participating through the institute in off-campus instructional programs including correspondence study instruction; paying all necessary expenses incurred in connection with such services for off-campus instructional purposes including funds for correspondence study instruction, and including but not restricted to travel and per diem required by the institute; receiving and administering fees charged for off-campus instructional services, programs and activities provided through the institute, such fees to be set at a level at least sufficient to cover the total cost of travel, per diem and incidental miscellaneous expense incurred in rendering said instructional services, programs and activities; recommending policies for the effective coordination of off-campus instructional services of the state degree granting institutions of higher learning and for the operations of the said institute for consideration by the governing board of said institutions and the state board of education; working cooperatively with all colleges and universities, public and private in Florida for the effective and efficient provision of off-campus instructional services, programs and activities throughout the state; working cooperatively with business, industry, labor, the professions, various units of government and community leadership in an effort to meet educational needs through educational extension to various groups and locations throughout the state; and, maintaining liaison with all other public and private educational authorities, agencies and organizations in Florida which are concerned with adult education. Provided, however, that the governing

board of the degree granting institutions of higher learning with the approval of the state board of education shall be responsible for identifying and appraising the needs and demands of the state for off-campus instructional services.

History.—§7, ch. 63-415.

239.0107 To provide compensation for off-campus instructional activities.—

(1) In addition to its number of full-time equivalent positions for on-campus instructional purposes, each institution shall include in its budget a number of full-time equivalent positions for off-campus instructional purposes. Salaries made available through appropriations to the institute for such positions shall be paid by the institutions from reimbursements which shall be made to the institutions from the institute.

(2) Positions designated in part or in whole for correspondence study instruction shall be in addition to any and all positions set forth in subsection (1) of this section.

Funds provided for positions for correspondence study instruction shall be appropriated for use by and administered by the Florida institute for continuing university studies; provided, however, that the said institute shall release funds to each and all of the said institutions for personnel services provided for correspondence study instruction through said institute.

(3) Funds received by the said institute from gifts and grants received by the institute may be used to support off-campus instructional purposes at the discretion of said institute; provided, however, that the institute shall release said funds to participating institutions for personnel services rendered including but not limited to instructional salaries, travel and per diem provided by said institutions for the purpose of assisting the institute to make effective use of the said gifts and grants; provided further, that personnel services requested by the said institute for purposes of assisting the institute to make effective use of funds received through gifts or grants to said institute shall be in addition to the number of positions designated in subsections (1) and (2) of this section.

History.—§8, ch. 63-415.

239.0108 Gifts and grants.—Any of the state degree granting institutions of higher learning and the Florida institute for continuing university studies may seek and conduct negotiations for gifts and grants which may be used in off-campus as well as on-campus instructional programs, services and activities rendered by each, subject to the policies governing gifts and grants as adopted and approved by the governing board of degree granting institutions of higher learning and the state board of education.

History.—§9, ch. 63-415.

239.0109 Instructional personnel.—Each and every person teaching credit courses through the Florida institute for continuing university studies shall hold faculty rank in at least one of the state degree granting institutions on a permanent, temporary or courtesy basis and shall be approved by the institution involved and the said institute prior to teaching each and every credit course provided through said institute.

History.—§10, ch. 63-415.

239.0110 Instruction courses, size, etc.—Off-campus instructional programs, services, and activities for credit shall not be taught except in sections of such size as is appropriate for the instruction being given and in no case for sections smaller than the minimum for on-campus instruction; provided however, that the director of the Florida institute for continuing university studies shall report the following information to the state board of control and to the state board of education within thirty days of the first class meeting of each and every off-campus course for credit:

(1) The number of the course;

(2) The title of the course;

(3) The institution offering the course;

(4) The location where the course is offered; and

(5) The paid enrollment in the course.

History.—§11, ch. 63-415.

239.0111 University system-wide council.—There shall be a system-wide council on continuing university studies composed of two academic officers representing and selected by the presidents of each of the state degree granting institutions of higher learning. The council shall meet during the second week of each trimester and at any other time on the call of the director of the Florida institute for continuing university studies or on the call of a majority of the members of the council. The director of said institute shall serve as chairman. The council shall elect one of its members as vice-chairman to conduct meetings in the absence of the chairman. The council shall elect one of its members as secretary to record and distribute minutes of its meetings. All meetings shall be open to the public. Notice of meetings and proposed agendas for meetings shall be distributed by the chairman or by the vice-chairman or secretary to all members at least seventy-two hours prior to the time of the meeting. The council shall advise the director of said institute on any and all matters brought before it by the director or any member of the council and it shall consider all proposed policies which may govern the participation of the state degree granting institutions of higher learning in the operations of the said institute. The director shall submit such policy proposals, together with the reactions of the said council, to the respective presidents of the state degree granting institutions of higher learning prior to submitting his policy recommendations to the governing board of said institutions.

History.—§12, ch. 63-415.

239.0112 State-wide advisory committee.—The director of the Florida institute for continuing university studies with the concurrence of the governing board of the state degree granting institutions of higher learning shall organize a state-wide advisory committee involving educational agencies which are concerned with educational services for adults; provided that such committee shall be appointed and organized not later than September 15, 1963; and, provided further, that such committee shall meet at least once a year.

History.—§13, ch. 63-415.

239.0113 Advisory committees, other.—The director of the Florida institute for continuing university studies with the concurrence of the governing board of the state degree granting institutions of higher learning may organize such other advisory committees as will facilitate the effective relationship between said institute and the constituents it serves.

History.—§14, ch. 63-415.

239.0114 Offices.—The offices of the director of the Florida institute for continuing university studies shall be located in Tallahassee to facilitate effective liaison and coordination with the state department of education, the Florida educational television commission, the Florida nuclear and space commission, the governing board of the state degree granting institutions of higher learning, the state board of education, and such other state agencies and offices as are concerned with the operations of the said institute. The activities of the said institute or its several divisions may require offices and facilities in locations other than Tallahassee; however, neither the institute nor any of its divisions shall purchase, own or hold title to any buildings or land; provided, however, the said institute may accept any free and clear gift of buildings or land subject to the prior approval of the state board of education, title to such buildings or land to vest in the state board of education.

History.—§15, ch. 63-415.

239.0115 Off-campus instructional centers.—Under policies adopted and approved by the governing board of the state degree granting institutions of higher learning and the state board of education, and only where there is a justified demand for off-campus instructional services which can be met in no other educationally and economically sound and feasible manner, the Florida institute for continuing university studies may organize off-campus instructional centers in which there shall be such facilities as may be required for instruction for credit which is fully creditable as residence work; provided further, that such centers shall be under the supervision of an officer responsible to the director of said institute; and, provided further, that such centers shall avail themselves of appropriately qualified personnel and shall utilize classrooms, laboratories, offices and library facilities available in the communities in which the center may be located. Where sufficient and adequate facilities are not available to the said institute without cost to the institute, provisions for leasing, renting or otherwise acquiring sufficient and adequate facilities shall require prior approval of the governing board for the state degree granting institutions of higher learning and the state board of education.

History.—§16, ch. 63-415.

239.0116 Off-campus instructional services; academic standards; credits.—Under policies established by the governing board of the state degree granting institutions of higher learning said institutions and the Florida institute for continuing university studies shall cooperate to provide the off-campus instructional services required to meet the needs of Florida; and, through the said governing board, they shall represent the needs for such services to the legislature so that the off-campus instructional needs can be met without the impairment of the on-campus programs and services. Under policies adopted by said governing board it shall be the responsibility of each and all of the said institutions to determine which of its programs and services will be available off-campus; and no off-campus instructional services, other than those of the cooperative extension services in agriculture and home economics, may be provided by any of the said institutions except as approved by the institute. Under policies adopted by said governing board it shall be the responsibility of each and all of the said institutions to fix its academic standards for programs made available through the institute. This institutional responsibility shall include the setting of standards for the admission of students, course organization and content, teaching personnel, teaching method, and degree requirements. Credit received by students shall be granted by said institutions. Degrees, if any, shall be awarded by said institutions. No personnel shall be assigned to the off-campus instructional programs participated in by said institutions without the prior approval of the institution concerned and of the institute. The director of the institute may not waive any of the academic requirements of any of the said institutions for its programs conducted through the institute.

History.—§17, ch. 63-415.

239.0117 Director, negotiations with other educational institutions.—The director of the institute shall conduct all negotiations with each and all of the said institutions through the respective presidents or through such other officials as the presidents shall designate; and negotiations for off-campus instructional programs, services and activities, excluding negotiations for gifts and grants, to be rendered by the said institutions shall be conducted through the director of the institute or with the approval of the director of the institute from the inception by institutional personnel.

History.—§18, ch. 63-415.

CHAPTER 240

BOARD OF CONTROL

(This entire chapter repealed by §1, ch. 63-204, however, is dependent upon ratification of constitutional amendment at 1964 general election and will take effect January 1, 1965. Upon ratification of this constitutional amendment proposed ch. 240 which appears immediately after this chapter will prevail.)

240.01 Board of control; appointment of members; qualifications and terms of office of members, etc.—The board of control shall consist of seven citizens of this state, no two of which shall reside in any one county. One of each such members shall be appointed from each of the six congressional districts of the state as of January 1, 1951, and one from the state at large. Each member so appointed shall have been residents and citizens thereof for a period of ten years prior to their appointment and shall be appointed by the governor. The term of office of said members shall be for four years or until their successors are appointed or qualified, except in case of appointment to fill a vacancy, in which case the appointment shall be for the unexpired term. The governor may remove any member of such board for cause, and shall fill all vacancies that may occur.

Provided further that nothing herein shall affect the terms of office of the present members of the board of control, and the increased membership shall be accomplished in the following manner: Two members shall be appointed for terms of four years each, beginning July 1, 1951; one shall be appointed for a term of one year, beginning July 1, 1951; one shall be appointed for a term of three years, beginning July 1, 1951; one shall be appointed for a term of four years, beginning July 1, 1952; one shall be appointed for a term of one year, beginning July 1, 1953; two shall be appointed for terms of four years each, beginning July 1, 1953; and two shall be appointed for terms of four years each, beginning July 1, 1954.

History.—§13, ch. 5384, 1905; RGS 613; CGL 775; §1, ch. 26887, 1951; §1, ch. 63-23.

240.02 Chairman of board; actual expenses of board paid by state.—The board of control shall elect a chairman as often as that office shall become vacant. The members of said board shall be reimbursed for traveling expenses as provided in §112.061.

History.—§14, ch. 5384, 1905; RGS 614; CGL 776; §19, ch. 63-400.

240.03 Board of control subject to supervision of state board of education.—The board of control, except as provided in this chapter, shall act in conjunction with, but at all times under and subject to, the control and supervision of the state board of education.

History.—§15, ch. 5384, 1905; RGS 615; CGL 777.

240.04 Powers and duties of board of control.—The board of control has jurisdiction over and complete management and control of all the said several institutions, and each and every of them, to-wit: The university of Florida, the Florida state university, Florida agricultural and mechanical university for negroes, and Florida school for the deaf and the blind, and is invested with full power and authority to make all rules and regulations necessary for their governance, not inconsistent with the general rules and regulations made or which may be made at any joint meeting of the said board with the state board of education; to appoint all the managers, faculty, teachers, servants, and employees, and to remove the same as in their judgment and discretion may be best; fix their compensation and provide for their payment; to have full management, possession and control of each and every of the said institutions and every department thereof, and the lands, buildings, structures and property belonging thereto; to provide for the course of instruction and the different branches and grades to be kept and maintained thereat, and to alter and change the same; to visit and inspect the said institutions and each and every department, and to provide for the proper keeping

of accounts, registers and records thereof; to make and prepare all necessary budgets of expenditures for the enlargement, proper furnishing, maintenance, support and conduct of the same; to audit and approve all the accounts and expenditures, supervise the employment and removal of all teachers and instructors; select and purchase all property, furniture, fixtures, and paraphernalia necessary for the same, from time to time; to build, construct, change, enlarge, repair and maintain any and all the buildings or structures now in existence, or that may hereafter be necessary for each and every one of said institutions created and maintained by law; to purchase and acquire all lands and property necessary for same of every nature and description whatsoever; to care for and maintain the same, and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of each and every of the said institutions necessary or requisite to carry out fully the purposes of this chapter; and for raising to, and maintaining them at, the proper efficiency and standard as required in and by the provisions of law, but at all times subject to the supervision and control of the state board of education.

History.—§19, ch. 5384, 1905; RGS 616; CGL 778.

cf.—§231.11 Power of state board of education to prescribe minimum curricula.

240.041 Board of control to prescribe uniform minimum standards.—

(1) The board of control may prescribe uniform minimum standards for admission of students to all college-grade institutions which are supervised by said board.

(2) The minimum standards prescribed pursuant to subsection (1) above may be waived only in exceptional cases at the discretion of the state board of education upon the recommendation of the board of control.

History.—§1, ch. 61-238.

240.05 Extension work authorized. — The state board of control shall extend the outside work of the educational institutions under its direction into all fields of human endeavor which, in its judgment, will best accomplish the objects expressed in §§240.05-240.08.

History.—§1, ch. 7915, 1919; CGL 779.

240.06 Board to gather information. — The board of control shall gather information on all subjects useful to the people of Florida, and carry it to them in ways that will help them most in the shortest time; spread knowledge among them by taking it to them in an attractive way; stimulate thought and encourage every movement among the people for their mutual improvement.

History.—§2, ch. 7915, 1919; CGL 780.

240.07 Board authorized to enlarge work of extension divisions.—The board of control may enlarge the work done by the extension division of university of Florida, and Florida state university, as it may, from time to time, deem advisable, and employ all needful persons and appliances to carry on the work in the most efficient manner.

History.—§3, ch. 7915, 1919; CGL 781.

240.08 Duty of board as to students.—The board of control shall seek out, among all the schools of Florida, every student who may, by nature, have a special aptitude and genius for some one branch of learning, and encourage him in the prosecution of the study of that branch, to the end that he may become an expert and a leader in that subject.

History.—§4, ch. 7915, 1919; CGL 782.

240.092 Deposit of funds received by institutions of higher learning.—

(1) All funds received by the university of Florida, the Florida state university and the Florida agricultural and mechanical university, from whatever source received and for whatever purpose, shall be deposited in the state treasury subject to disbursement in such manner and for such purposes as the legislature may by law provide.

(2) Funds contemplated by this section shall include all funds delivered or transmitted to, received or collected by any officer, official, representative or employee of any such university in his official or representative capacity, the accounting for which is incorporated in the records of the university or in the records of the board of control, or both. The following funds shall be exempt from the provisions of this section:

(a) Student deposits.
(b) Student activity funds.
(c) Scholarship funds.
(d) Loan funds.
(e) Deposit funds.
(f) Contractor's bid deposits.
(g) Campus concession.
(h) Federal point IV program.
(i) Athletic fees.
(j) All funds received from gifts, grants, research contracts, bequests or donations by said universities or by any college, branch, department or division thereof, or by any officer, faculty member or committee thereof, from any source other than the state.
(k) All alumni funds of whatever nature or description and however acquired.

(3) No such funds received by any of the institutions herein named or by the board of control on behalf of any such universities and accounted for in the records of such institutions or in the records of the board of control may be maintained in any account in any bank or banking institution of the state subject to disbursement from such account. An account may be established in any bank or banking institution designated by the board of control for the safekeeping of such funds prior to the transmittal of same to the comptroller for deposit with the state treasurer.

(4) No money may be withdrawn from any such account except by check, draft, warrant or other order payable to the state treasurer

for deposit in the state treasury to the credit of the proper fund of the institution transmitting same; except that necessary refunds may be made direct from such funds. No money may be maintained in such account for a period of more than forty days prior to its transmittal to the state treasurer as above provided.

(5) Any officer, official, representative or employee of any of the designated universities or of the board of control who accepts money on behalf of any such institution and fails to transmit the same to the comptroller as above provided, or who fails to transmit any money in any authorized bank account as above provided shall be guilty of misfeasance or nonfeasance and shall be subject to suspension without notice by the head of such institution or by the board of control.

(6) The provisions of this section shall not apply to the funds authorized under §240.10, provided the total amount authorized for the several revolving funds of the agricultural experiment stations and the agricultural extension service set forth below shall not exceed $40,000: Main experiment station, citrus experiment station, Everglades experiment station, north Florida experiment station, range cattle station, sub-tropical experiment station, central Florida experiment station, pecan investigations laboratory, potato investigations laboratory, strawberry investigations laboratory, gulf coast experiment station, watermelon and grape investigations laboratory, west Florida experiment station, Immokalee laboratory, agricultural extension service, Florida national egg laying test.

History.—§§1-6, ch. 28315, 1953; (4) §1, ch. 29809, (6) §1, ch. 29912, 1955.

240.093 Delinquent accounts.—

(1) The board of control is directed to exert every effort to collect all delinquent accounts.

(2) The board of control is authorized to charge off such accounts as may prove uncollectible.

(3) The board is authorized to employ the service of a collection agency when deemed advisable in collecting delinquent accounts.

History.—§1, ch. 57-56.

240.094 Security for bank deposits.—All funds of the state board of control deposited in banks shall be secured by collateral pledged to the state treasurer as provided by §§18.10 through 18.13 relating to the securing of state funds. Such funds so to be secured shall include student deposits, student activity funds, scholarship funds, loan funds, deposit funds, contractor's bid deposits, campus concession funds, athletic fees and all other funds of any nature of the board of control or any agency or institution under the supervision thereof.

History.—§1, ch. 57-43.

240.10 Approval and payment of vouchers of the institutions under the board of commissioners of state institutions and the board of control, and by the division of plant industry and the state soil conservation board.—No money shall be disbursed for or on behalf of any institution under the management of the board of commissioners of state institutions or the board of control, and no money shall be disbursed by the division of plant industry or the state soil conservation board, except upon a written voucher stating the nature of the expenditure and the name of the individual, firm, or corporation to whom such voucher shall be payable; which voucher shall be prepared and approved in accordance with the rules and regulations adopted by the board of commissioners of state institutions, or the board of control, or the division of plant industry, or the state soil conservation board, as the case may be, and shall be submitted promptly to the comptroller of the state, audited and approved by him; and upon such approval the comptroller shall promptly draw a warrant upon the state treasurer for the payment thereof, as provided by law, and file the original voucher in his office; except that the board of commissioners of the state institutions, the board of control, the division of plant industry, or the state soil conservation board shall be authorized, upon the adoption of an appropriate resolution, to establish a revolving fund for themselves or for any particular institution, branch, or department under their respective supervision and control, in an amount to be determined by the respective board in charge of said institution, branch, or department from any fund or funds then available for such purpose, which revolving fund may be used to pay any legitimate expenses of the said agencies, determined by rules and regulations of the said board of commissioners of state institutions, board of control, division of plant industry, or state soil conservation board to be payable therefrom; provided that the expense paid from such revolving fund shall be paid on a written voucher prepared and approved as provided herein, which said voucher shall then be presented to the state comptroller, audited and approved by him, and a warrant drawn for the reimbursement of the amount thus paid out of such revolving fund or funds as herein provided. The revolving fund or funds authorized to be provided in this section shall be deposited in a bank or banks in the name of the respective institution, branch, or department thereof, and shall be protected one hundred per cent at all times by ample security. Each and every person handling any part of such revolving fund or funds shall be placed under fidelity bond in such amount as the board in charge of the respective institution, branch, or department thereof shall in its judgment require.

History.—§34, ch. 5384, 1905; RGS 617; §§1, 2, ch. 11857, 1927; CGL 784; §1, ch. 20622, 1941; §1, ch. 23807, §5, ch. 23669, 1947.

cf.—§18.101 Deposits of public money by boards, agencies, etc., not located in Tallahassee.

§241.094 Disbursement of funds for Dept. of Real Estate of U. of F.

240.101 Appropriation for revolving funds of institutions of higher learning.—For the pur-

pose of properly financing the revolving funds established by the board of control as authorized by §240.10, which funds are now borrowed from student activity and other agency funds, there is hereby appropriated from any surplus accruing in the incidental trust fund of the respective institutions named below the following amounts to be paid into said funds for the respective institutions: University of Florida revolving fund, two hundred thousand dollars; Florida state university revolving fund, seventy-five thousand dollars; Florida agricultural and mechanical university revolving fund, forty thousand dollars; and university of south Florida revolving fund, twenty thousand dollars.

History.—§1, ch. 29798, 1955; §3, ch. 57-400; §1, ch. 59-245; §2, ch. 61-119.

240.102 State university system of buildings; approval of construction.—

(1) No buildings except as hereinafter provided shall be constructed, altered, remodeled or added to by the state university system without express approval of each such project having first been granted by the legislature.

(2) This section shall not be construed to prohibit construction of any new buildings from non-state sources such as federal grant funds, private gifts or grants, nor to prohibit the replacement of any building destroyed by fire or other calamity; nor to prohibit construction of dormitories or other auxiliary accommodations financed as provided in §243.131; nor to prohibit construction of new buildings or alterations or remodeling to meet needs as determined by the board of control, provided that the amount of state funds included in the total cost of the completed building or completed alterations or completed remodeling shall not exceed thirty-five thousand dollars; provided however that state funds in excess of fifteen thousand dollars shall not be used unless approved by the budget commission.

History.—§§1, 2, ch. 29701, 1955; (2) §4, ch. 57-400; (2) §2, ch. 61-500.

240.11 Board of control incorporated; powers, etc.—

(1) The state board of control is a body corporate, and shall have a corporate seal; shall elect an executive secretary, and remove him at will; have and employ all necessary clerks and servants; have power to contract and be contracted with; to delegate such power to the presidents with respect to research contracts, student activities, and such other matters as would be customary in routine operations; to sue and be sued; plead and be impleaded in all courts of law and equity; to receive donations; to make purchases of lands and tenements and to contract for the sale and disposal of the same; but the title to all such donations and property, however acquired, shall be vested in the state board of education, and shall only be transferred and conveyed by it; and has all the powers of a body corporate for all the purposes created by, or that may exist under, the provisions of this chapter or laws amendatory thereof.

(2) The board may elect an educational consultant who shall be an advisor on all educational problems to the board and remove him at will. He shall conduct a continuous study to determine for their guidance: (a) the immediate and future needs of the state in higher education, including research and public service; (b) what institutional facilities are required to meet these needs, and at which institution they can best be served; (c) educational policies under which the institutions shall operate; and (d) whether educational policies prescribed by the board of control for the several institutions are being followed.

History.—§35, ch. 5384, 1905; RGS 618; CGL 785; §1, ch. 28219, 1953; (1) §1, ch. 57-768.

240.13 Board empowered to exercise right of eminent domain.—Whenever it becomes necessary for the welfare and convenience of the Florida state university, the university of Florida, the Florida school for the deaf and the blind, the Florida agricultural and mechanical university for negroes, the Florida Atlantic university or the south Florida university, to acquire private property for the use of said institutions, and the same cannot be acquired by agreement satisfactory to the board of control and the parties interested in, or the owners of, said private property, the board of control may exercise the right of eminent domain, and proceed to condemn the property in the manner provided by chapter 73.

History.—§1, ch. 6174, 1911; RGS 620; CGL 787; §21, ch. 63-572.

240.14 Attorney general to represent board in condemnation proceedings. — Any suits or actions brought by the board of control to condemn property, as provided in §240.13 shall be brought in the name of the board of control, and the attorney general of the state, shall conduct the proceedings for, and act as the counsel of, the board of control.

History.—§2, ch. 6174, 1911; RGS 621; CGL 788.

240.27 Board of control empowered to act as trustee.—

(1) Whenever appointed by any competent court of the state, or by any statute, or in any will, deed or other instrument, or in any manner whatever, as trustee of any funds or real or personal property in which any of the institutions or agencies under its management, control or supervision, or their departments or branches, or their students, faculty members, officers or employees may be interested as beneficiaries, or otherwise, or for any educational purpose, the board of control is hereby authorized to act as trustee with full legal capacity as trustee to administer such trust property, and the title thereto shall vest in said board as trustee. In all such cases the board of control shall have the power and capacity to do and perform all things as fully as any individual trustee or other competent trustee might do or perform, and with the same rights, privileges

and duties, including the power, capacity and authority to convey, transfer, mortgage or pledge such property held in trust and to contract and execute all other documents relating to said trust property which may be required for, or appropriate to, the administration of such trust or to accomplish the purposes of any such trust.

(2) Deeds, mortgages, leases and other contracts of the board of control relating to real property of any such trust or any interest therein may be executed by the board of control, as trustee, in the same manner as is provided by the laws of the state for the execution of similar documents by other corporations, or may be executed by the signatures of a majority of the members of the board; provided, however, that to be effective, any such deed, mortgage, or lease contract for more than ten years of any trust property, executed hereafter by the board of control, shall be approved by a resolution of the state board of education; and such approving resolution may be evidenced by the signature of either the president or the secretary of the state board of education to an endorsement on the instrument approved, reciting the date of such approval, and bearing the seal of the state board of education; and such signed and sealed endorsement shall be a part of the instrument and entitled to record without further proof.

(3) Any and all such appointments of, and acts by, the board of control as trustee of any estate, fund or property prior to May 18, 1949 are hereby validated, and said board's capacity and authority to act as trustee in all of such cases ratified and confirmed; and all deeds, conveyances, lease contracts and other contracts heretofore executed by the board of control, either by the signatures of a majority of the members of the board, or in the board's name by its chairman or chief executive officer, are hereby approved, ratified, confirmed and validated.

(4) Nothing herein shall be construed to authorize the board of control to contract a debt on behalf of, or in any way to obligate, the state; and the satisfaction of any debt or obligation incurred by the board of control as trustee under the provisions of this section shall be exclusively from the trust property, mortgaged or encumbered; and nothing herein shall in any manner affect or relate to the provision of the educational institutions law of 1935.

History.—§§1-4, ch. 25107, 1949.
Note.—Formerly §243.021.

240.28 Board authorized to secure public liability insurance.—

(1) The board of control is authorized, in its discretion, to secure and provide public liability insurance for the board or any of the institutions under its management, control or supervision, and to pay premiums therefor.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of the insurance contract between the insurer and the board of control that the insurer shall not be entitled to the benefit of the defense of governmental immunity of the board of control in any suit brought against the insured. Immunity of the board of control against any liability described in subsection (1) hereof is waived to the extent of liability insurance carried by the board of control.

History.—§§1, 2, ch. 25147, 1949; (1) §2, ch. 59-470.
Note.—Formerly §243.022.

CHAPTER 240

BOARD OF REGENTS

(This chapter becomes effective upon ratification of constitutional amendment at 1964 general election.)

240.011 Board of regents; appointment of members; qualifications and terms of office of members, etc.—The board of regents shall consist of nine citizens of this state selected from the state at large, representative of the geographical areas of the state, who shall have been residents and citizens thereof for a period of at least ten years prior to their appointment, and who shall be appointed by the governor, concurred in by the state board of education, confirmed by the senate, and their terms of office shall be nine years and until their successors are appointed and qualified, except, in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as in this section otherwise provided; provided, however, that no member shall be selected from any county to serve with any other member from the same county. The governor shall fill all vacancies, subject to the above approval and confirmation, that may at any time occur therein, provided, however, the terms of the initial membership of the board of regents shall be as follows: One member shall be appointed for one year beginning January 1, 1965; one member shall be appointed for two years beginning January 1, 1965; one member shall be appointed for three years beginning January 1, 1965; one member shall be appointed for four years beginning January 1, 1965; one member shall be appointed for five years beginning January 1, 1965; one member shall be appointed for six years beginning January 1, 1965; one member shall be appointed for seven years beginning January 1, 1965; one member shall be appointed for eight years beginning January 1, 1965; one member shall be appointed for nine years beginning January 1, 1965; provided, however, if the proposed constitutional amendment permitting nine year terms for members of the board of regents shall have been ratified by the people prior to December 31, 1963, the terms of the initial membership of the board shall begin January 1, 1964.

Members may be removed for cause at any time upon the concurrence of a majority of the members of the state board of education.

History.—§2, ch. 63-204.

240.021 Chairman of board; expenses of board paid by state.—The board of regents shall elect a chairman every four years. The members of said board shall be paid travel and per diem as provided in §112.061, while in the performance of their duties, and in traveling to, from, or upon the same.

History.—§2, ch. 63-204.

240.031 Board of regents subject to supervision of state board of education.—The board of regents, except as provided in this chapter, shall act in conjunction with, but at all times under and subject to, the control and supervision of the state board of education.

History.—§2, ch. 63-204.

240.042 Powers and duties of board of regents.—The board of regents has jurisdiction over and complete management and control of all the several institutions of higher learning and each and every of them, to wit: all baccalaureate, masters, and doctoral degree granting state institutions of higher learning, and the Florida institute for continuing university studies; are invested with full power and authority to make all rules and regulations necessary for their governance, not inconsistent with the general rules and regulations made or which may be made at any joint meeting of the said board with the state board of education; to appoint all the managers, faculty, teachers, servants, and employees, and to remove the same as in their judgment and discretion may be best; fix their compensation and provide for their payment; to have full management, possession and control of each and every of the said institutions and every department thereof, and the

lands, buildings, structures and property belonging thereto; to provide for the course of instruction and the different branches to be kept and maintained thereat, and to alter and change the same; to visit and inspect the said institutions and each and every department, and to provide for the proper keeping of accounts, registers and records thereof; to make and prepare all necessary budgets of expenditures for the enlargement, proper furnishing, maintenance, support and conduct of the same; to audit and approve all the accounts and expenditures, supervise the employment and removal of all teachers and instructors; select and purchase all property, furniture, fixtures, and paraphernalia necessary for the same, from time to time; to build, construct, change, enlarge, repair and maintain any and all buildings or structures now in existence, or that may hereafter be necessary for each and every one of said institutions created and maintained by law; to purchase and acquire all lands and property necessary for same of every nature and description whatsoever; to care for and maintain the same, and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of each and every of the said institutions necessary or requisite to carry out fully the purposes of this chapter; and for raising to, and maintaining them at, the proper efficiency and standard as required in and by the provisions of law, but at all times subject to the supervision and control of the state board of education.

History.—§2, ch. 63-204.

240.051 Board of regents to prescribe uniform minimum standards.—

(1) The board of regents may prescribe uniform minimum standards for admission of students to all institutions which are supervised by said board.

(2) The minimum standards prescribed pursuant to subsection (1) of this section may be waived only in exceptional cases at the discretion of the state board of education upon the recommendation of the board of regents.

History.—§2, ch. 63-204.

240.061 Extension work authorized.—The board of regents shall extend the outside work of the educational institutions under its direction into all fields of human endeavor which, in its judgment, will best accomplish the objects of taking credit and noncredit instruction to the people of Florida.

History.—§2, ch. 63-204.

240.072 Board to gather information.—The board of regents shall gather information on all subjects useful to the people of Florida, and carry it to them in ways that will help them most in the shortest time; spread knowledge among them by taking it to them in an attractive way; stimulate thought and encourage every movement among the people for their mutual improvement.

History.—§2, ch. 63-204.

240.081 Duty of board as to students.—The board of regents shall seek out, among all the schools of Florida, every student who may, by nature, have a special aptitude and genius for some one branch of learning, and encourage him in the prosecution of the study of that branch, to the end that he may become an expert and a leader in that subject.

History.—§2, ch. 63-204.

240.095 Deposit of funds received by institutions of higher learning.—

(1) All funds received by any of the institutions or divisions under the board of regents, from whatever source received and for whatever purpose, shall be deposited in the state treasury subject to disbursement in such manner and for such purposes as the legislature may by law provide.

(2) Funds contemplated by this section shall include all funds delivered or transmitted to, received or collected by any officer, official, representative or employee of any such university or agency in his official or representative capacity, the accounting for which is incorporated in the records of the university or agency or in the records of the board of regents, or any of them. The following funds shall be exempt from the provisions of this section:

(a) Student deposits.
(b) Student activity funds.
(c) Scholarship funds.
(d) Loan funds.
(e) Deposit funds.
(f) Contractor's bid deposits.
(g) Campus concession.
(h) Federal point IV program.
(i) Athletic fees.
(j) All funds received from gifts, grants, research contracts, bequests or donations by said universities or by any college, branch, department or division thereof, or by an officer, faculty member or committee thereof, from any source other than the state.
(k) All alumni funds of whatever nature or description and however acquired.

(3) No such funds received by any of the institutions herein named or by the board of regents on behalf of any such universities or divisions and accounted for in the records of such institutions or in the records of the board of regents may be maintained in any account in any bank or banking institution of the state subject to disbursement from such account. An account may be established in any bank or banking institution designated by the board of regents for the safekeeping of such funds prior to the transmittal of same to the comptroller for deposit with the state treasurer.

(4) No money may be withdrawn from any such account except by check, draft, warrant or other order payable to the state treasurer for deposit in the state treasury to the credit of the proper fund of the institution transmitting same; except that necessary refunds may be made direct from such funds. No money may be maintained in such account for a period of more than forty days prior to its transmittal to the state treasurer as above provided.

(5) Any officer, official, representative or employee of any of the designated universities or colleges or of the board of regents who accepts money on behalf of any such institution and fails to transmit the same to the comptroller as above provided, or who fails to transmit any money in any authorized bank account as above provided shall be guilty of misfeasance or nonfeasance and shall be subject to suspension without notice by the head of such institution or by the board of regents.

(6) The provisions of this section shall not apply to the funds authorized under §240.121, provided the total amount authorized for the several revolving funds of the agricultural experiment stations and the agricultural extension service set forth below shall not exceed forty thousand dollars: Main experiment station, citrus experiment station, Everglades experiment station, north Florida experiment station, range cattle station, subtropical experiment station, central Florida experiment station, pecan investigations laboratory, potato investigations laboratory, strawberry investigations laboratory, gulf coast experiment station, watermelon and grape investigations laboratory, west Florida experiment station, Immokalee laboratory, agricultural extension service, Florida national egg laying test.

History.—§2, ch. 63-204.

240.103 Delinquent accounts.—

(1) The board of regents is directed to exert every effort to collect all delinquent accounts.

(2) The board of regents is authorized to charge off such accounts as may prove uncollectible.

(3) The board is authorized to employ the service of a collection agency when deemed advisable in collecting delinquent accounts.

History.—§2, ch. 63-204.

240.111 Security for bank deposits.—All funds of the state board of regents deposited in banks shall be secured by collateral pledged to the state treasurer as provided by §§18.10-18.13, relating to the securing of state funds. Such funds so to be secured shall include student deposits, student activity funds, scholarship funds, loan funds, deposit funds, contractor's bid deposits, campus concession funds, athletic fees and all other funds of any nature of the board of regents or any agency or institution under the supervision thereof.

History.—§2, ch. 63-204.

240.121 Approval and payment of vouchers of the institutions under the board of commissioners of state institutions and the board of regents.—No money shall be disbursed for or on behalf of any institution under the management of the board of commissioners of state institutions or the board of regents; and except upon a written voucher stating the nature of the expenditure and the name of the individual, firm, or corporation to whom such voucher shall be payable; which voucher shall be prepared and approved in accordance with the rules and regulations adopted by the board of commissioners of state institutions, or the board of regents, as the case shall be, and shall be submitted promptly to the comptroller of the state, audited and approved by him; and upon such approval the comptroller shall promptly draw a warrant upon the state treasurer for the payment thereof, as provided by law, and file the original voucher in his office; except that the board of commissioners of state institutions and the board of regents shall be authorized, upon the adoption of an appropriate resolution, to establish a revolving fund for themselves or for any particular institution, branch, or department under their respective supervision and control, in an amount to be determined by the respective board in charge of said institution, branch, or department from any fund or funds then available for such purpose, which revolving fund may be used to pay any legitimate expenses of the said agencies, determined by rules and regulations of the said board of commissioners of state institutions and board of regents to be payable therefrom; provided that the expense paid from such revolving fund shall be paid on a written voucher and approved as provided herein, which said voucher shall then be presented to the state comptroller, audited and approved by him, and a warrant drawn for the reimbursement of the amount thus paid out of such revolving fund or funds as herein provided. The revolving fund or funds authorized to be provided in this section shall be deposited in a bank or banks in the name of the respective institution, branch, or department thereof, and shall be protected one hundred per cent at all times by ample security. Each and every person handling any part of such revolving fund or funds shall be placed under fidelity bond in such amount as the board in charge of the respective institution, branch, or department thereof shall in its judgment require.

History.—§2, ch. 63-204.

240.131 Appropriation for revolving funds of institutions of higher learning.—For the purpose of properly financing the revolving funds established by the board of regents as authorized by §240.121, which funds are now borrowed from student activity and other agency funds, there is hereby appropriated from any surplus accruing in the incidental trust fund of the respective institutions named below the following amounts to be paid into said funds for the respective institutions: University of Florida revolving fund, two hundred fifty thousand dollars; Florida state university revolving fund, one hundred fifty thousand dollars; Florida agricultural and mechanical university revolving fund, seventy-five thousand dollars; and university of south Florida revolving fund, seventy-five thousand dollars.

History.—§2, ch. 63-204.

240.141 State higher education system of buildings; approval of construction.—

(1) No buildings except as hereinafter provided shall be constructed, altered, remodeled or added to by the state university system without express approval of each such project having first been granted by the legislature.

(2) This section shall not be construed to prohibit construction of any new buildings from nonstate sources such as federal grant funds, private gifts or grants, nor to prohibit the replacement of any building destroyed by fire or other calamity; nor to prohibit construction of dormitories or other auxiliary accommodations financed as provided in §243.131; nor to prohibit construction of new buildings or alterations or remodeling to meet needs as determined by the board of regents, provided that the amount of state funds included in the total cost of the completed building or completed alterations or completed remodeling shall not exceed thirty-five thousand dollars.

History.—§2, ch. 63-204.

240.151 Board of regents incorporated; powers, etc.—

(1) The board of regents is a body corporate, and shall have a corporate seal; shall elect an executive secretary, and remove him at will; shall have and employ all necessary clerks and servants; shall have power to contract and be contracted with; shall delegate such power to the presidents with respect to research contracts, student activities, and such other matters as would be customary in routine operations; shall sue and be sued; shall plead and be impleaded in all courts of law and equity; shall receive donations; shall make purchases of lands and tenements and shall contract for the sale and disposal of the same; but the title to all such donations and property, however acquired, shall be vested in the state board of education and shall only be transferred and conveyed by it; and shall have all the powers of a body corporate for all the purposes created by, or that may exist under, the provisions of this chapter or laws amendatory thereof.

(2) The board may elect an executive officer or director for higher education who shall be an advisor on all educational problems to the board and who shall perform such other duties as the board shall designate; said board may remove such executive officer at will. The executive officer shall in the judgment of the board be so qualified as to carry out the duties and responsibilities assigned to him and to conduct a continuous study to determine for their guidance:

(a) The immediate and future needs of the state in higher education, including research and public service;

(b) What institutional facilities are required to meet these needs, and at which institution they can be best served;

(c) Educational policies under which the institutions shall operate; and

(d) Whether educational policies prescribed by the board of regents for higher education for the several institutions are being followed. The board may employ in addition to its executive officer such staff as is necessary to perform its duties.

History.—§2, ch. 63-204.

240.161 Board empowered to exercise right of eminent domain.—Whenever it becomes necessary for the welfare and convenience of any of its institutions or divisions to acquire private property for the use of said institutions, and the same cannot be acquired by agreement satisfactory to the board of regents and the parties interested in, or the owners of, said private property, the board of regents may exercise the right of eminent domain, and proceed to condemn the property in the manner provided by chapter 73.

History.—§2, ch. 63-204.

240.171 Attorney general to represent board in condemnation proceedings.—Any suits or actions brought by the board of trustees for higher education to condemn property, as provided in §240.161, shall be brought in the name of the board of regents, and the attorney general of the state shall conduct the proceedings for, and act as the counsel of, the board of regents.

History.—§2, ch. 63-204.

240.181 Board of regents empowered to act as trustee.—

(1) Whenever appointed by any competent court of the state, or by any statute, or in any will, deed or other instrument, or in any manner whatever, as trustee of any funds or real or personal property in which any of the institutions or agencies under its management, control or supervision, or their departments or branches, or their students, faculty members, officers or employees may be interested as beneficiaries, or otherwise, or for any educational purpose, the board of regents is hereby authorized to act as trustee with full legal capacity as trustee to administer such trust property, and the title thereto shall vest in said board as trustee. In all such cases the board of regents shall have the power and capacity to do and perform all things as fully as any individual trustee or other competent trustee might do or perform, and with the same rights, privileges and duties, including the power, capacity and authority to convey, transfer, mortgage or pledge such property held in trust and to contract and execute all other documents relating to said trust property which may be required for, or appropriate to, the administration of such trust or to accomplish the purposes of any such trust.

(2) Deeds, mortgages, leases and other contracts of the board of regents relating to real property of any such trust or any interest therein may be executed by the board of regents, as trustee, in the same manner as is provided by the laws of the state for the execution of similar documents by other corporations, or may be executed by the signatures of a majority of the members of the board; provided, however, that to be effective, any such deed, mortgage, or lease contract for more than ten years of any trust property, executed hereafter by the board of regents, shall be approved by a resolution of the state board of education; and such approving resolution may be evidenced by the signature of either the president or the secretary of the state board of education to an endorsement on the instrument approved, reciting the date

of such approval, and bearing the seal of the state board of education; and such signed and sealed endorsement shall be a part of the instrument and entitled to record without further proof.

(3) Any and all such appointments of, and acts by, the board of regents as trustee of any estate, fund or property prior to May 18, 1949, are hereby validated, and said board's capacity and authority to act as trustee in all of such cases ratified and confirmed; and all deeds, conveyances, lease contracts and other contracts heretofore executed by the board of regents, either by the signatures of a majority of the members of the board, or in the board's name by its chairman or chief executive officer, are hereby approved, ratified, confirmed and validated.

(4) Nothing herein shall be construed to authorize the board of regents to contract a debt on behalf of, or in any way to obligate, the state; and the satisfaction of any debt or obligation incurred by the board of regents as trustee under the provisions of this section shall be exclusively from the trust property, mortgaged or encumbered; and nothing herein shall in any manner affect or relate to the provision of the educational institutions law of 1935.

History.—§2, ch. 63-204.

240.191 Board authorized to secure public liability insurance.—

(1) The board of regents is authorized, in its discretion, to secure and provide public liability insurance for the board or any of the institutions under its management, control or supervision, and to pay premiums therefor.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of the insurance contract between the insurer and the board of regents that the insurer shall not be entitled to the benefit of the defense of governmental immunity of the board of regents in any suit brought against the insured. Immunity of the board of regents against any liability described in subsection (1) of this section is waived to the extent of liability insurance carried by the board of regents.

History.—§2, ch. 63-204.

240.211 Other laws applicable to the board of regents.—All laws applicable to the board of control at the time this act becomes effective except those in conflict herewith shall apply to the board of regents.

History.—§2, ch. 63-204.

CHAPTER 241

INSTITUTIONS OF HIGHER LEARNING

241.01 Departments of university of Florida.—The University of Florida shall have and contain the following departments and such other departments as may, from time to time, be determined upon and added at any joint meeting of the state board of education with the said state board of control, to-wit:

A department of agriculture, mechanical and industrial arts; scientific and classical department; normal department for the training and instruction of white teachers; it being intended that the design and scope of this institute shall be to teach such branches of learning as are related to agriculture and the mechanical and industrial arts, scientific and classical studies and instruction in all the various higher branches of education, the fundamental laws, and in what regards the rights and duties of citizens, and shall include military tactics, if the said joint boards deem the same requisite and proper.

History.—§21, ch. 5384, 1905; RGS 622; CGL 789.

241.02 Bureau of vocational guidance at university of Florida.—The board of control of the state shall establish and maintain a bureau of vocational guidance and mental hygiene under the department of psychology at

the university of Florida for the purpose of conducting such suitable tests in vocational guidance as will be necessary to aid the individual students at the university of Florida to select vocations and professions for which they are best fitted, and guide and direct students and graduates of the university of Florida in regard thereto.

History.—§1, ch. 15069, 1933; CGL 1936 Supp. 789(1).

241.03 Qualifications of students for admission; board may change requirements.—No student shall be admitted to the university of Florida who has not passed a satisfactory examination at some high school and through the twelfth grade as now established, or some other institution of learning having an equivalent of instruction to the twelfth grade. The state board of control may change the grade at any time they may see fit as a prerequisite to such entrance. No person shall be admitted to said university, except white male students having the prerequisite qualifications to which the board of control may add others in their judgment and discretion, except to the normal department thereof, for the instruction and education of teachers, when both male and female students may be admitted to that department.

History.—§23, ch. 5384, 1905; RGS 623; CGL 790.

241.08 College of forestry established at university of Florida.—A "college of forestry" in the university of Florida for the teaching of forestry, is established and created.

History.—§1, ch. 19357, 1939; CGL 1940 Supp. 789(3).

241.09 Teaching of forestry; appropriation.—There shall be biennially appropriated out of the general revenue fund and made available to the board of control, a sum sufficient for the purpose of establishing and maintaining either a forestry department, a school of forestry, or a college of forestry in the university of Florida for the teaching of forestry.

History.—§1, ch. 17028, 1935; §1, ch. 18403, 1937; CGL 1940 Supp. 789(2); §23, ch. 26869, 1951.

241.091 Department of real estate, etc., established in university of Florida.—A department of real estate, including real estate, insurance and finance, and community planning is hereby established in and for the university of Florida at Gainesville. Provided, however, that the time for beginning the operation of such department shall be left to the discretion of the board of control.

History.—§1, ch. 22994, 1945.

241.092 Courses of study; teachers; salaries, equipment, etc.—The courses of study to be given in said department, the employment and salaries of teachers therefor, the equipment and facilities for such courses and the budgets for the maintenance thereof shall be worked out and determined by the authorities of said university, subject to the control and management of the state board of control as now defined by *§240.04.

History.—§2, ch. 22994, 1945.

*Note.—§240.04 repealed by §1, ch. 63-204, however, dependent upon ratification of constitutional amendment, and if ratified will be §240.042.

241.094 Disbursement of funds, etc.—All funds hereby made available for said department, and all disbursements for the maintenance of said department, shall be handled in the same manner now provided by *§240.10 applicable to other funds for the maintenance of said university.

History.—§4, ch. 22994, 1945.

*Note.—§240.10 repealed by §1, ch. 63-204, however, dependent upon ratification of constitutional amendment, and if ratified will be §240.121.

241.095 Effect of law on real estate commission, etc.—Nothing in this law shall affect, limit or restrict any authority or power of the Florida real estate commission now vested by law except as herein otherwise expressly provided.

History.—§5, ch. 22994, 1945.

241.096 School of dentistry, university of Florida.—The university of Florida in Gainesville is hereby designated as the site of any school of dentistry hereafter created by the Florida legislature.

History.—§1, ch. 57-161.

241.10 Certain books furnished by clerk of supreme court.—The clerk of the supreme court of the state shall furnish the board of control three bound copies of each volume of the Florida supreme court reports as the same are issued and published, for the use of the school of law of the university of Florida, and two bound copies of each volume of such reports to the Florida agricultural and mechanical university school of law.

The clerk of the supreme court shall transmit to the board of control for distribution to said schools of law any law books coming into his possession for the supreme court which are not necessary for said court. The clerk of said court shall furnish said supreme court reports, and said surplus law books, without cost to the board of control, or said law schools.

History.—§2, ch. 6170, 1911; RGS 624; CGL 793; §1, ch. 29687, 1955.

241.12 State museum established at university of Florida.—There is established at the university of Florida, at Gainesville, a department of said university known as the Florida state museum.

History.—§1, ch. 7368, 1917; RGS 626; CGL 795.

241.13 Functions.—The functions of the Florida state museum are to make scientific investigations towards the further development of the natural resources of the state and maintain a depository and exhibitions of the collections acquired by the surveys provided for in §§241.12-241.17 and of collections and specimens otherwise coming into its possession, and of a library of publications pertaining to the work as herein provided. The col-

lections and library of said museum shall be open, free to the public, under suitable rules and regulations to be promulgated by the director of said museum, and approved by the state board of control.

History.—§2, ch. 7368, 1917; RGS 627; CGL 796.

241.14 State museum under control of director; compensation.—The state museum is under the control of a director who shall be nominated by the president of the university of Florida and elected by the state board of control. He shall receive such compensation as may be fixed by the state board of control.

History.—§3, ch. 7368, 1917; RGS 628; CGL 797.

241.15 Duty of director; collection of specimens and data.—The director shall conduct surveys of the state and collect specimens and data of scientific and economic nature in the three kingdoms, mineral, vegetable and animal, in such numbers and quantities as may be needful for the purpose of said museum. Said collections and acquisitions may be made at any season of the year and upon all properties owned by the state, and no provision of any existing law shall be construed so as to prohibit the taking of necessary specimens for said museum. The permission of the owner or agent shall be first secured before taking any specimens from the lands of any person. The director shall collect specimens and data of a civic nature pertaining to the early history of the state, locate and chart historic sites, prehistoric earthworks, shell heaps, and collect specimens relative to the prehistoric and aboriginal tribes of the state, as represented in its mineral, vegetable and animal industries. He shall, as may be practicable, prepare such duplicate specimens as may accrue into traveling exhibits and circulate them as loans to the public schools of the state.

History.—§4, ch. 7368, 1917; RGS 629; CGL 798.

241.16 Annual report of director.—The director shall make an annual report of the expenditure and general work of the department to the state board of control; which said board shall publish, and the director shall, from time to time, publish and distribute bulletins and monographs recording data and exploiting the work of the museum.

History.—§5, ch. 7368, 1917; RGS 630; CGL 799.

241.17 Assistant.—The director may, subject to the approval of the state board of control, authorize persons in writing to assist him in procuring specimens in any section of the state.

History.—§6, ch. 7368, 1917; RGS 631; CGL 800.

241.18 Assent to provisions of act of congress approved May 8, 1914; board of control authorized to receive grants, etc.—The legislature, in behalf of and for the state, assents to, and gives its assent to, the provisions and requirements of a certain act of congress approved by the president May 8, 1914, being entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress, approved July 2, 1862, and of acts supplementary thereto, and the United States department of agriculture;" and the board of control, having supervision over and control of the university of Florida, located at Gainesville, may receive the grants of money appropriated under said act of congress, and organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the university of Florida, in accordance with the terms and conditions expressed in said act of congress.

History.—§1, ch. 6839, 1915; RGS 656; CGL 836.

241.19 Assent to act of congress approved May 22, 1928; board of control authorized to receive grants, etc.—The assent of the legislature is given to the provisions and requirements of the act of congress approved May 22, 1928, being entitled "An act to provide for the further development of agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act entitled 'An act donating public lands of the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts' approved July 2, 1862, and all acts supplementary thereto, and the United States department of agriculture;" and the board of control of the university of Florida may receive grants of money appropriated under said act, and organize and conduct agricultural extension work which shall be carried on in connection with the college of agriculture of said university of Florida, in accordance with the terms and conditions expressed in the act of congress aforesaid.

History.—§1, ch. 13567, 1929; CGL 1936 Supp. 836(1).

241.21 Florida agricultural experiment station part of university of Florida.—The Florida agricultural experiment station, heretofore established as a department of the university of Florida, shall remain a department of the university of Florida, together with all the rents, benefits, donations and emoluments that may accrue therefrom, or under the act of congress commonly known as the "Hatch act," or under the act of congress commonly known as the "Morrill act" insofar as the same, or so much thereof, can be used and appropriated for the benefits of said institution by the provisions of said acts; and that the provisions of chapter 3564, acts of 1885, and §7 of chapter 1776, acts of 1870, are made applicable hereto insofar as the same are or can be made effective; and all estate, right, property claim, emoluments, and the rents and issues thereof, or any substitutions thereof, and all claims and demands arising or that may or can arise thereunder, or any act of congress in that regard, are hereby preserved, maintained and transferred to the state board of education for the use and benefit of the university of Florida.

History.—§26, ch. 5384, 1905; RGS 607; CGL 763.

241.22 Agricultural experiment stations;

assent to act of congress; federal appropriation.—The objects and purposes contained in the act of congress entitled "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof" are assented to; and the state board of education of the state is authorized to accept and receive the annual appropriations for the use and benefit of the agricultural experiment station fund of the agricultural department of the university of Florida, located at Gainesville, upon the terms and conditions contained in said act of congress.

History.—§1, ch. 5704, 1907; RGS 653; CGL 823.

241.23 Annual appropriation for use under provisions of Morrill land-grant act; repayment. — A continuing annual appropriation from the general revenue fund in the sum of seven thousand seven hundred fifty dollars is made to the agricultural college trust fund to be used, as the interest thereon would be used, for instruction in agricultural and mechanic arts under the provisions of the Morrill land-grant act approved July 2, 1862, and acts supplemental thereto.

The interest annually received on the bonds constituting the agricultural college trust fund shall be transferred, in a sum not to exceed seven thousand seven hundred fifty dollars annually, to the general revenue fund for the purposes thereof.

History.—§§1, 2, ch. 19137, 1939; §2, ch. 61-119.

241.24 Branch experiment station near Winter Haven.—The board of control shall locate, establish and maintain a branch experiment station, in or near Winter Haven, Polk county, in the citrus growing section of the state, where insect pests, diseases and other agencies affecting the production of citrus fruits and citrus trees shall be studied. The supervision and direction of the research work of such a laboratory is vested in the board of control.

History.—§§1, 2, ch. 7379, 1917; RGS 654; CGL 824.

241.25 Board of control may accept donations under §241.24.—The board of control may accept donations of land, groves, moneys, or other things of value that may be utilized in conducting the investigations required in §241.24.

History.—§3, ch. 7379, 1917; RGS 655; CGL 825.

241.26 Experiment station for tobacco near Quincy; supervision and direction.—The board of control shall locate, establish and maintain a branch experiment station in or near Quincy, Gadsden county, in the tobacco growing section of the state, where insect pests, diseases and other agencies affecting the production of tobacco, may be studied and experiments shall be made. The supervision and direction of such laboratory and experiments shall be vested in the board of control.

History.—§§1, 2, ch. 8424, 1921; CGL 826.

241.27 Board of control may accept donations under §241.26.—The board of control may accept donations of land, houses, money, or other things of value, that may be necessary to carry out the purpose of §241.26.

History.—§4, ch. 8424, 1921; CGL 827.

241.28 Everglades experiment station. — There is provided for and created on such land or lands of the state in the everglades of Florida as the trustees of the internal improvement trust fund may direct, an agricultural experiment station for the purpose of collecting information on, and studying agricultural, horticultural and livestock conditions and possibilities, and the best means of fostering and promulgating the same on the muck lands of Florida.

History.—§1, ch. 8442, 1921; CGL 828; §2, ch. 61-119.

241.29 Supervision.—The said agricultural experiment station is subsidiary to the experiment station at Gainesville, and is under the direction of the state board of education and the board of control, which boards shall at all times advise with the trustees of the internal improvement trust fund in the management and conduct of the same.

History.—§2, ch. 8442, 1921; CGL 829; §2, ch. 61-119.

241.30 Land and drainage.—The trustees of the internal improvement trust fund shall set aside and withdraw from sale, any lands now or hereafter owned by the state, necessary for the use and conduct of the said agricultural experiment station, provided for in §241.28, and provide and construct all canals, drains and other reclamation works that may be required to completely protect and secure the said lands from overflow. The said lands shall be as suitably and conveniently located as possible and shall not be less than one hundred sixty acres, which may be added to as the needs demand.

History.—§3, ch. 8442, 1921; CGL 830; §2, ch. 61-119.

241.31 Donations; branch stations. — The trustees of the internal improvement trust fund may accept donations of lands, moneys, or other things of value, that may be utilized to effectively carry out the purposes of §241.28, and if, in the judgment of the said trustees and the board of control, conditions warrant, in addition to the main station they may establish such branch or cooperative stations as they deem advisable.

History.—§4, ch. 8442, 1921; CGL 831; §2, ch. 61-119.

241.32 Co-operation with federal government.—The state board of education and the board of control may co-operate with the federal government, through the experiment station at Gainesville, in collaborating the work of the experiment station, or stations, as provided for in §§241.28 and 241.31, with that at Gainesville; and should congress at any time pass an act making an appropriation of money, or other thing of value, for the establishment of, or for the benefit of, an experimental station in the Everglades, or elsewhere in Florida, the board of control and the state board of education may co-operate with the proper federal

authorities in establishing said station, or receiving and properly appropriating any funds so appropriated.

History.—§5, ch. 8442, 1921; CGL 832.

241.33 **Appropriations.**—The board of commissioners of Everglades drainage district shall appropriate the sum of five thousand dollars annually; all of said appropriations being from any funds in the hands of the said board, and to be used exclusively for the establishment and conduct of the said agricultural experiment station, or stations. There is further appropriated from any funds in the state treasury, not otherwise appropriated, the sum of five thousand dollars annually, all of which funds shall be supplemental to the funds appropriated by the board of commissioners of Everglades drainage district, and shall be used for the same purpose. All moneys appropriated by this section shall be paid out in the same manner that other funds are disbursed by the state treasurer and the board of commissioners of Everglades drainage district.

History.—§6, ch. 8442, 1921; CGL 833.

241.34 **Construction and equipment.** — The state board of education and the board of control shall, with the advice of the trustees of the internal improvement trust fund, purchase all material, farming implements, livestock, and other accessories necessary and needful to fully install and equip the agricultural experiment station, or stations, provided for in §§241.28 and 241.31. The said boards, or either of them, may construct all the necessary buildings and out-houses, and employ all labor and such other expert help as may be needful to properly conduct the same.

History.—§7, ch. 8442, 1921; CGL 834; §2, ch. 61-119.

241.35 **Rules and regulations.** — The state board of education and the board of control may prescribe and promulgate all rules and regulations necessary to carry out the purpose of §§241.28-241.34, and when so prescribed such rules and regulations shall have the force and effect of law.

History.—§8, ch. 8442, 1921; CGL 835.

241.36 **Branch experiment station for livestock in Hardee county.**—The board of control shall locate, establish and maintain a branch experiment station in Hardee county, where study and experiment may be made affecting the production of livestock and the feed therefor.

The board of control may accept donations of land, houses, moneys, or other things of value that may be necessary to carry out the purposes of this section.

History.—§§1, 2, 3, ch. 18562, 1937; §1, ch. 19489, 1939.

241.37 **"Livestock" defined.**—The word "livestock," as used in §241.36, includes cattle, hogs, horses, mules, goats, sheep and fowl, where experiments and disease treatments are necessary to promote such industry.

History.—§1a, ch. 18562, 1937; §1, ch. 19489, 1939.
cf.—§1.01 General definitions.

241.38 **Radio broadcasting station; operation and maintenance.**—There is established at the university of Florida in Gainesville a radio broadcasting station to be operated under the supervision of the engineering college of the university.

The board of control may enter into contracts for the operation and maintenance of the station.

The station shall be of a power not to exceed 5 K. W. maximum, and shall be so designed and constructed that, by the use of suitable pickup apparatus, broadcasts may be made over a leased wire from the state capitol at Tallahassee, the Florida state university at Tallahassee, and the Florida state marketing bureau at Jacksonville. The time for broadcasting from the station shall be divided among the state capitol, the Florida state university, the Florida state marketing bureau and the university of Florida in such manner as the board of control may prescribe.

The commissioner of agriculture shall cause to be broadcasted such useful information concerning marketing conditions, crops and weather, as he may deem necessary for the best interests of the state.

History.—§§1-5, ch. 10241, 1925; §§1-4, ch. 12217, 1927.

241.39 **Florida state university; objects; students admitted; normal department.** — The purpose of the Florida state university is to teach and instruct in all the higher branches of education and in all the useful arts and sciences that may be necessary or appropriate to be taught in like institutions, and as may be deemed requisite and necessary from time to time by the state board of education and the board of control for its governance and control.

None but white students may be admitted to this institution, and no students may be admitted therein unless and until they have passed a satisfactory examination in some high school of this or some other state having like standing and through or beyond the tenth grade as now established for the high schools in this state, or such other grade not lower than the tenth grade as may be hereafter established, and no student from any other state may be admitted to such institution, except by the consent and upon the certificate of the state board of control.

The state board of education jointly with the board of control may, at any time it may deem the same requisite or necessary, establish and maintain a normal department for the instruction of white teachers in the Florida state university, and when established the same shall be under the charge and control of the state board of control, with all the powers and duties in relation thereto as provided herein, and under such rules and regulations as it shall prescribe.

History.—§22, ch. 5384, 1905; §1, ch. 5924, 1909; RGS 632; CGL 894; §1, ch. 26764, 1951.

241.40 Property set apart for Florida state university.—The bonds, property, assets and effects, of every nature and description whatsoever, including all the donations belonging to or donated to the west Florida seminary or the Florida state college, its successor, and the rents, revenues, issues and profits thereof, is appropriated and set apart for the establishment maintenance and support of the Florida state university.

History.—§27, ch. 5384, 1905; RGS 633; CGL 805.

241.401 Florida state symphony and opera.—

(1) There is hereby created a Florida state symphony and Florida state opera to be administered by the Florida state university school of music through a committee consisting of the dean of said school and a symphony conductor and opera director to be appointed by him, with the approval of the president of said university.

(2) The services of the Florida state symphony and Florida state opera herein created shall be made available to such political subdivisions of the state, civic organizations, public schools or other groups as the committee may deem advisable and at such costs as they, in their discretion, may determine, provided, however, that if any admission fee shall be charged for any performance then the net proceeds received by the organization sponsoring a performance shall be divided equally between the sponsoring body or organization and the said school of music. Any funds so received by the school of music shall be deposited for future use of the committee in providing graduate assistant fellowships.

History.—§§1, 2, ch. 63-566.

241.41 The Florida agricultural and mechanical university.—The Florida agricultural and mechanical university is established at Tallahassee, Florida, under the supervision and control of the state board of education and the board of control. The state board of education may change the location of said institution if said board may deem it of benefit or advantage to said institution, or the purposes for which it was created; provided, that one-half of the Morrill fund, coming, or that may come, to the state for the purpose provided in such law, is set apart and appropriated to the support and maintenance of said institution.

History.—§11, ch. 5384, 1905; §1, ch. 5925, 1909; RGS 642, 643; CGL 814, 815.

241.411 Change of name.—

(1) After September 1, 1953, the institution of higher learning located at Tallahassee, Florida, and known as the Florida agricultural and mechanical college for negroes or Florida agricultural and mechanical college, shall be named, and known as Florida agricultural and mechanical university.

(2) Wherever the name Florida agricultural and mechanical college for negroes or Florida agricultural and mechanical college appears in the statutes of this state it shall be changed to Florida agricultural and mechanical university.

(3) All laws applicable to said institution of higher learning, its officers, faculty members, students and employees, now in effect, shall remain unchanged and shall be applicable in all respects to said institution, its officers, faculty members, students and employees, notwithstanding the change of the name of said institution.

History.—§§1-3, ch. 27995, 1953.

241.412 Hospital; board of trustees.—

(1) There is hereby created a board of trustees of the Florida agricultural and mechanical university hospital, which shall consist of seven members who shall have been residents and citizens of the state for a period of at least ten years prior to their appointment, and their terms of office shall be for four years and until their successors are appointed and qualified, except, in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as in this section otherwise provided. The appointment of the trustees shall be by the governor and recommendations for such appointment shall be made by the board of control. The governor may remove any member for cause and shall fill all vacancies that occur. Provided further that nothing herein shall affect the terms of office of the present members of the board of trustees, and the increased membership shall be accomplished in the following manner: Two members shall be appointed for terms of four years each, beginning July 1, 1961; one shall be appointed for a term of one year beginning July 1, 1961; one shall be appointed for a term of two years beginning July 1, 1961; two shall be appointed for terms of four years each beginning July 1, 1962; two shall be appointed for terms of four years each, beginning July 1, 1963; and one shall be appointed for a term of four years beginning July 1, 1964.

(2) The board of trustees shall elect a chairman annually. The trustees shall be reimbursed for traveling expenses as provided in §112.061.

(3) The board of trustees shall act at all times in conjunction with and under the supervision and general policies adopted by the state board of control. All appropriations and operating budgets of the board of trustees shall be directly the responsibility of the board of control.

(4) The board of trustees shall have complete jurisdiction over the management of the Florida agricultural and mechanical university hospital, and is invested with full power and authority to appoint resident physicians, an administrator, and other employees of the hospital, and to remove the same as in their judgment may be best; fix their compensation; provide for the proper keeping of accounts and records; adopt regulations for admission of patients; budgeting of funds of the hospital; adopt regulations for admission of medical personnel to use the facilities of the hospital and attend patients therein; and to do and perform every other matter or thing requisite to the proper management, maintenance, support and

control of the Florida agricultural and mechanical university hospital at the highest efficiency economically possible taking into consideration the humanitarian purposes of the establishment.

(5) The board of trustees is vested with the authority and duty to assume full responsibility for the retirement of all indebtedness of the hospital and to work out long range plans for the financing thereof.

(6) All presently existing obligations, contracts and other commitments of the Florida agricultural and mechanical university hospital shall be honored by the board of trustees, including all pledges for health and hospital services to the students of Florida agricultural and mechanical university.

(7) Any authority assumed or vested by law in the president or other officer or employee of the Florida agricultural and mechanical university in the Florida agricultural and mechanical university hospital is vested in the board of trustees; provided the trustees shall cooperate wherever possible and for the best interest of the hospital with the university personnel.

History.—§§1-7, ch. 57-142; (1) §1, ch. 61-14; (2) §19, ch. 63-400.

241.42 Florida national egg laying contest. —The state board of control of the state shall operate the Florida national egg laying contest of Chipley, Florida, under the supervision of the agricultural extension division of the university of Florida and may acquire donations of land, houses, or other things of value that may be useful in carrying out the provisions of this section.

History.—§§1-3, ch. 12100, 1927.

241.44 Industrial engineering experiment station.—

(1) There is hereby created a Florida engineering and industrial experiment station which shall be a division of the college of engineering of the university of Florida, under the board of control of the state institutions of higher learning of the state. The functions of the engineering experiment station shall be to organize and promote the prosecution of research projects of engineering and related sciences, with special reference to such of these problems as are important to the development of industries of Florida.

(2) The station may employ full time or part time research workers, or may utilize part time services from members of the teaching staff of the university of Florida, or any other state agency. The executive head of the station shall be a director, who shall be the dean of the college of engineering of the university of Florida, or a person nominated by such dean, approved by the president of the university of Florida and appointed by the board of control. His relationship to the dean of the college of engineering shall be the same as that of a head of department in the college of engineering.

(3) All monies received by the Florida engineering experiment station, under the management of the state board of control, other than those from state or federal sources, are hereby appropriated to the use of the state board of control for the Florida engineering experiment station.

(4) The state board of control is hereby empowered to fix and collect fees from materials, tests, and research work carried on in cooperation with state, county, municipal and private agencies; and it is expressly provided, that all such fees so collected by the said board of control shall not affect the state appropriations or be deducted therefrom, and they shall be used only for the purpose for which they are collected. These fees shall be deposited with the comptroller of the state, who, under the order of the board of control, shall draw his warrant or warrants on the state treasury in payment for the said materials, tests, and research work, and expenses incident thereto. In its biennial report, the board of control shall make a report in detail of the expenditures of said funds together with a report of the work done.

(5) Any sum or sums herein appropriated, if not required for any specific appropriation, may be applied by approval of the board of control to other necessary and regular expenses of the Florida engineering experiment station.

(6) Any money appropriated for a designated period, which at the end of such period remains unexpended or not contracted to be expended, the said unexpended balance may be used for like purposes in any succeeding year. The engineering experiment station is further authorized to receive and expend, in accordance with state laws, any subsequent sums appropriated to it for specific purposes.

(7) Federal money appropriated by the congress to be used for state purposes in connection with the Florida engineering experiment station, whether by itself or in conjunction with moneys appropriated by the legislature of this state, is hereby reappropriated, as far as may be necessary to the purpose for which the same was made available, as far as the same is permitted by the federal statutes.

(8) In order to obtain future appropriations, it shall be necessary at the usual time and in the usual manner, or when required by the budget commission, for the director of the engineering experiment station to prepare an itemized statement of expenditures, making up the total of the appropriations expended and of additional appropriations needed; and to advise the budget commission of the sum total of amount for salaries and for necessary and regular expenses needed for succeeding bienniums, and said budget commission shall transmit to the state legislature the report of the director of the engineering experiment station with his recommendations.

History.—§§1-8, ch. 20982, 1941; (3) r. §28, ch. 26869, 1951.

241.441 Atomic research; appropriation.—

(1) The engineering and industrial experiment station at the university of Florida is authorized to obtain, acquire, procure, estab-

lish, construct, equip and develop an atomic research project, and obtain therefor an engineering and industrial research nuclear reactor. In connection therewith the engineering and industrial experiment station is fully empowered to do any and all things necessary to effect the complete intent of this law including, but not limited to, the acquisition or construction of buildings to house the nuclear reactor and associated laboratory equipment, and to expend therefor any and all funds acquired from any source whatsoever, including the funds hereinafter appropriated.

(2) There is hereby appropriated to the engineering and industrial experiment station at the university of Florida the sum of five hundred thousand dollars out of the general revenue fund of the state to effect the purposes of subsection (1) hereof. This appropriation shall be made immediately available for use upon request of the engineering and industrial station of the university of Florida.

(3) Subject to contractual rights of the federal government, all discoveries made and patents or other rights developed, acquired or accruing from the atomic research project hereby authorized shall be and remain the property of the state.

History.—§§1-3, ch. 29692, 1955.

241.45 Northwest Florida branch experiment station.—

(1) The board of control of the state be and it is hereby authorized to locate, establish and maintain a branch experiment station in the northern part of either Santa Rosa county or Okaloosa county near the county line dividing said counties in the state for the purpose of carrying on experiments in general farm and vegetable crops, the raising of livestock and in pastures for livestock and the best methods adapted to said industries.

(2) For the purpose of carrying out the intent of this section the board of control may accept donations of land, houses, money and other things of value suited thereto.

History.—§§1, 2, ch. 21987, 1943.

241.471 University of Florida; schools of medicine and nursing established; medical center.—

(1) There is created a school of medicine and nursing at the university of Florida to be located on university of Florida campus at Gainesville and to be a component part of the university.

(2) The university of Florida schools of medicine and nursing shall be coeducational and shall be so maintained and operated as to comply with the standards approved by nationally recognized medical and nursing associations for accredited schools of medicine and nursing.

(3) No monies shall be expended out of any state funds including any incidental trust funds of the state board of control for the purposes of this section nor any facilities constructed unless such monies have been first specifically appropriated for such purpose by statute.

(4) It is hereby declared a state policy that hospital operations of the medical center are to be financed from patient fees and payments from charity, welfare and county agencies referring part-pay and nonpay patients to the center under an equitable county quota patient system, so that the hospital will be as nearly self sustaining as possible.

History.—§§1-3, ch. 25249, 1949; (3) §2, ch. 61-119; (4) n. §1, ch. 63-537.

241.48 Branch agricultural experiment station established near Sanford.—

(1) The board of control is hereby authorized and directed to locate, establish, and maintain a branch agricultural experiment station in or near Sanford, Seminole county, being a point in close proximity to the principal perishable producing sections of the counties of Seminole, Orange, Lake, Volusia, and Marion; the primary purpose of such station to conduct experiments for the betterment of growing of perishables in these sections of the state; these studies to include insect pests, diseases, soil conditions, climatic factors; and to determine what varieties of perishables will thrive best in each section, of old or new and improved strains, and/or originate improved varieties suitable for varying types of soil and other conditions, embraced in these areas.

(2) The supervision and direction of such laboratory and experiments shall be vested in the board of control.

(3) Upon establishment of such branch agricultural experiment station, the present celery investigations laboratory, now maintained at Sanford, be consolidated with such branch agricultural experiment station; and any appropriation for such celery investigations laboratory prior to such merger be consolidated with the appropriation of the branch agricultural experiment station.

(4) The board of control is hereby authorized to accept donations of lands, groves, moneys or other things of value that may be utilized in conducting the aforesaid investigations; provided, that no branch agricultural experimental station shall be established if such donation be of less than thirty acres of tilled farming land, suitable for such investigations.

History.—§§1-4, ch. 22998, 1945.

241.49 Branch agricultural experiment station to be located near Live Oak.—The board of control shall locate, establish and maintain in or near Live Oak, a branch experiment station of the Florida agricultural experiment station for the purpose of experimenting in methods to combat and eliminate tobacco blue mold and all parasites, fungi, larvae and insects that are, or hereafter may be, destructive to tobacco, vegetables or general farm crops, and for the further purpose of experimenting in methods to control and eradicate the screw worm fly and all parasites, larvae, insects and diseases that are, or hereafter may be, harmful to cattle, swine and other livestock; and the experiments for the purposes herein provided shall be focused

primarily upon the needs and requirements of the northeastern section of the state.

History.—§§1-3, ch. 26616, 1951.

241.491 Branch agricultural experiment station for Indian river section.—

(1) The board of control is hereby authorized and directed to locate, establish and maintain a branch of the university of Florida agricultural experiment station in or near Fort Pierce, St. Lucie county, which shall have for its main purpose the investigation of citrus fruits, vegetables and livestock. That the main location of the branch be on lands already in experimental use and under the control of the state board of education. That the operation of said branch shall be continued for the purpose of conducting experiments and developing procedures for the betterment of growing citrus fruits, horticultural crops, vegetables, flowers, pasture grasses, cattle feeds and/or other agricultural products in the Indian river section of the state; said experiments to include (but not to be limited to) work with cattle and cattle feeds, insect pests, diseases, soil conditions, climatic factors, and to determine what varieties of citrus fruits, horticultural products, vegetables and/or pasture grasses, cattle feeds and cattle will thrive best in said Indian river section, of old or new and improved strains, and/or originate improved varieties suitable for varying types of soil and other conditions, embraced in said area.

(2) While the intent of this section is to create a branch of the university of Florida experiment station for the Indian river section, the creation of same is not intended to limit or prevent full cooperation between said branch and other branches or departments of the agricultural experiment station on appropriate experimental projects whether initiated locally or elsewhere.

(3) The board of control is hereby authorized to accept donations, of lands, groves, monies, or other things of value which may be utilized in conducting the aforesaid studies and experiments.

History.—Comp. §§1-3, ch. 26616, 1951.

241.60 Tobacco insect research laboratory; established.—

(1) There is hereby created in the state, a tobacco insect research laboratory of the Florida experiment station to be located at Quincy.

(2) The director of the Florida experiment station is hereby instructed to make all efforts to obtain the re-establishment by the U. S. department of agriculture of its tobacco insect laboratory at Quincy and in the event that the U. S. department of agriculture does not re-establish its tobacco insect laboratory by the first day of September, 1947 then the director of the Florida agricultural experiment stations is authorized and directed to establish such tobacco insect research laboratory as provided herein for the purpose of conducting such research.

(3) The director of the Florida experiment station is hereby given the express power of borrowing or procuring skilled scientists and other facilities for the purpose of carrying out the research work and other provisions of this section.

(4) This section shall take effect immediately upon its becoming a law and shall continue in effect so long as needed or until the re-establishment of the tobacco insect laboratory by the U. S. department of agriculture.

History.—§§1, 2, 3, 4, ch. 23936, 1947.

241.62 University research contracts trust funds.—

(1) There is hereby appropriated from any surplus in the incidental trust fund of the university of Florida which may accrue the sum of one hundred thousand dollars to be paid into the university of Florida research contracts trust fund, which fund is hereby created in the state treasury, to be expended for purposes of financing research contracts with governmental and private agencies, under which the university of Florida shall be reimbursed for such expenditures, which said funds, when reimbursed shall be paid into the said university of Florida research contracts trust fund.

(2) There is hereby appropriated from any surplus in the incidental trust fund of the Florida state university which may accrue the sum of one hundred thousand dollars to be paid into the Florida state university research contracts trust fund, which fund is hereby created in the state treasury, to be expended for purposes of financing research contracts with governmental and private agencies, under which the Florida state university shall be reimbursed for such expenditures, which said funds, when reimbursed shall be paid into the said Florida state university research contracts trust fund.

(3) All earnings from overhead expenses, and all other sources of earnings relating to research contracts shall be deemed as general income of the institution and shall be paid into the incidental trust fund of the institution concerned, and as a part of the incidental trust funds shall be subject to appropriation by the legislature the same as all other receipts in the incidental trust funds. The intent of the legislature is that the assets of the research contracts trust funds after deducting all contract liabilities shall at no time exceed the sum of one hundred thousand dollars.

(4) At such time as the state budget director determines that the said funds have become inactive or no longer are serving the purpose for which created, then the said funds shall be closed out and the sums appropriated in this section shall be returned by deposit into the general revenue fund unallocated.

History.—§§1-4, ch. 29799, 1955; (1) §5, (2) §6, ch. 57-400; (1)-(3) §2, ch. 61-119.

241.621 Divisions of sponsored research at state universities.—

(1) The board of control with the approval of the board of education is hereby authorized

to create, as it deems advisable, in the several institutions of the Florida university system, divisions of sponsored research which will serve the function of administration and promotion of the programs of research of the institutions at which they are located.

(2) The board of control shall set such policies to regulate the activities of the divisions of sponsored research as it may consider necessary to effectuate the purposes of this act and to administer the research programs of the several institutions of the Florida university system in a manner which assures efficiency and effectiveness, producing the maximum benefit for the educational programs and maximum service to the state.

(3) A division of sponsored research created under the provisions of this act shall be under the supervision of the president of that institution who is hereby authorized, subject to the policies of the board of control, to appoint a director; to employ full-time and part-time staff, research personnel, and professional services; to employ on a part-time basis personnel of the institution; to employ temporary employees whose salaries are paid entirely from the permanent sponsored research development fund or in combination from that fund and other nonstate sources with such positions being exempt from the requirements of the Florida Statutes relating to salaries, provided that no such appointment shall be made for a total period of longer than one year.

(4) The president of the institution where a division of sponsored research is created is hereby authorized, subject to the policies of the board of control and acting in its behalf, to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; to fix and collect fees, other payments and donations that may accrue by reason thereof.

(5) A division of sponsored research shall be financed from the moneys of an institution which are on deposit or received for use in the research or related programs of that particular institution. Such moneys shall be deposited by the institution in a permanent sponsored research development fund in a depository or depositories approved for the deposit of state funds and shall be accounted for and disbursed subject to regular audit by the state auditor.

(6) The fund balance on hand in any existing research trust fund in the respective institution, at the time a division of sponsored research is created, shall be transferred to a permanent sponsored research development fund established for the institution and thereafter the fund balance of said sponsored research development fund at the end of any fiscal period may be used during any succeeding period for the purposes and in the manner authorized by this act.

(7) Moneys deposited in the permanent sponsored research development fund of an institution shall be disbursed in accordance with the terms of the contract, grant, or donation under which they are received. Moneys received for overhead or indirect costs and other moneys not required for the payment of direct costs shall be applied to the cost of operating the division of sponsored research. Any surplus moneys shall be used, subject to the policies of the board of control, to support other research programs in any area of the institution. Moneys allocated for the salaries of regular institutional employees shall be transferred to the appropriate fund of an institution and shall be paid out by the state comptroller in the same manner as salaries for other institutional employees. Transportation and per diem expense allowances shall be the same as those provided by law for state employees, §112.061.

(8) During the 1963-65 biennium, there shall be paid from the permanent sponsored research development fund into the incidental trust fund of the institution sufficient moneys to pay expenditures budgeted to be paid from sponsored research overhead income during that biennium. Not less than thirty days prior to the convening of each regular session of the legislature, the board of control shall cause to be prepared and submitted to the chairman of the appropriations committee of each house of the legislature a comprehensive report of the activities of each division of sponsored research at institutions under its supervision, together with an estimated budget for the next ensuing biennium. A copy of such report and budget shall be furnished to the state board of education and to the state budget commission.

(9) All purchases of a division of sponsored research shall be made in accordance with the policies and procedures of the board of control; provided, however, that in compliance with policies and procedures established by the board of control and concurred in by the board of education, whenever a director of sponsored research shall certify to the board of control that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project, the purchase of material, supplies, equipment or services for research purposes shall be exempt from the general purchasing requirement of the Florida Statutes.

(10) The board of control may authorize the construction, alteration, or remodeling of buildings when the funds used are derived entirely from the sponsored research development fund of an institution or in combination from that fund and other nonstate sources provided that such construction, alteration, or remodeling is for use exclusively in the area of research; it also may authorize the acquisition of real property when the cost is entirely from said funds. Title to all real property shall vest in the state board of education and shall only be transferred or conveyed by it.

(11) The sponsored research programs of the agricultural experiment station and the engineering and industrial experiment station at the university of Florida shall continue to be conducted as heretofore provided by law until such time, as the board of control shall de-

termine that such programs shall be conducted as provided in this act.

(12) The operation of the divisions of sponsored research and the conduct of the sponsored research program are hereby expressly exempted from the provisions of any other laws or portions of laws in conflict herewith and are, subject to the requirements of subsection (9) of this act, exempted from the provisions of chapters 215, 216, 282, and 283, *§§ 240.102 and 241.62.

History.—§§1-12, ch. 63-534.
*Note.—§240.102 is repealed by §1, ch. 63-204, however dependent upon ratification of constitutional amendment, and if ratified will be §240.141.

241.63 Working capital trust funds established.—

(1) There is hereby established in the state treasury a working capital trust fund at the university of Florida and a working capital trust fund at Florida state university, for the purpose of providing central financing and cost controls for certain general services necessary to the operation of all departments of the respective universities including the auxiliary enterprises.

(2) All costs of work performed and services rendered in providing the said services shall be paid from the working capital trust fund. The departments and enterprises shall be billed periodically, at least once each month or as nearly so as is reasonably practical, for services rendered at actual cost including reasonable overhead and depreciation charges, and payments by the departments and enterprises shall be deposited into the working capital trust fund to be available for financing other work and services as required.

(3) There is hereby appropriated from any surplus in the incidental trust fund of the Florida state university the sum of two hundred thousand dollars and from any surplus in the incidental trust fund of the university of Florida the sum of three hundred and fifty thousand dollars which may accrue in these funds, for transfer to the working capital trust fund of the respective institutions in order to provide the initial cash working capital.

(4) The said working capital trust funds shall consist of the amounts appropriated in subsection (3), the equipment and materials on hand at June 30, 1955, and such accounts receivable and payable as may be outstanding on June 30, 1955, in the present general services operation; provided, however, that the amount of equipment, materials, and the accounts receivable and payable shall be determined by the state auditor as of the close of business on June 30, 1955; provided further that the board of control is authorized to add such general service operations, as may be approved by the state budget commission, to the working capital trust funds; and the assets, as determined by the state auditor, of the activities so added shall be transferred to the working capital trust funds. The sum total of the assets in the respective working capital trust funds shall not exceed the maximum sum total approved by the state auditor as of the close of business on June 30, 1955, plus the additional assets provided in this subsection.

(5) The state auditor shall audit these funds in conjunction with his regular audits of the respective institutions. Upon a determination by the state auditor that a surplus exists in the working capital trust fund, over and above the maximum total approved as provided in subsection (4) above, he shall require an immediate transfer of the said surplus from the working capital trust fund of the institution affected to the general revenue fund as unallocated receipts.

History.—§§1-5, ch. 29800, 1955; (3) §7, ch. 57-400; (4) §1, ch. 59-254; §2, ch. 61-119.

241.66 Nuclear studies and research programs in state universities; appropriations.—

(1) There is hereby appropriated from the general revenue fund of the state to the board of control for use at the university of Florida the sum of two million eight hundred thousand dollars to construct and equip a nuclear service building and for payment of salaries and expenses necessary to a program of nuclear studies and research in said institution.

(2) There is hereby appropriated from the general revenue fund of the state to the board of control for use at the Florida state university the sum of two million three hundred thousand dollars to construct and equip a structure to house nuclear equipment and laboratories, for the purchase and construction of basic nuclear equipment, and for the payment of salaries and expenses necessary to the operation of programs of nuclear studies and research in said institution.

(3) There is hereby appropriated from the general revenue fund of the state to the board of control for use at the Florida agricultural and mechanical university the sum of sixty-five thousand dollars to equip a nuclear laboratory, and to pay necessary salaries and expenses in carrying out a program of nuclear study.

(4) Expenditure of funds appropriated in this section shall be pursuant to budgets approved by the state board of control and the state budget commission.

(5) The board of control shall exercise effective controls over the development of programs of nuclear studies and research so that the program of each university shall contribute to a coordinated and complementary program of the state university system, and so that unnecessary duplication will be avoided.

(6) It is the will of the legislature that: the controlling objective of the program of basic nuclear studies and research in the state university system be the training of scientists; basic nuclear research be developed to a point that is reasonably necessary for appropriate advanced instructional programs; the areas of strength developed in one institution be complemented rather than duplicated by areas of strength in the other institutions; the controlling objectives of applied programs be the

development of industry and welfare of Florida and the advancement of necessary and appropriate instructional programs; while it is recognized that basic research must of necessity be carried on at both universities, it is the intent of the legislature that the nuclear program at the Florida state university concentrate in basic research and at the university of Florida in applied research; provided however, that the board of control may permit such applied research programs at Florida state university as may not necessitate additional equipment and will not constitute unnecessary duplication of applied research conducted at the university of Florida, and that the program of nuclear studies and research in the state university system of Florida contribute to a regional program consistent with the resources available.

History.—§§1-7, ch. 57-379; (4) r. §1, ch. 61-516; subsequent subsections renumbered.

241.67 Infirmary, Florida state university.—The board of control is hereby authorized to construct and equip an infirmary at the Florida state university at a cost not to exceed seven hundred thousand dollars to be financed from surplus hospital funds and the proceeds of self-liquidating revenue certificates issued for this purpose.

History.—§1, ch. 61-160.

CHAPTER 242

SPECIALIZED STATE EDUCATIONAL INSTITUTIONS

242.331 Florida school for the deaf and the blind; board of trustees.—

(1) There is hereby created a board of trustees for the Florida school for the deaf and the blind, which shall consist of seven members. Each member shall have been a resident of the state for a period of at least ten years. Their terms of office shall be four years except the first members, one of whom shall be for a term of one year, two for a term of two years, two for a term of three years and two for a term of four years. The appointment of the trustees shall be by the governor. The governor may remove any member for cause, and shall fill all vacancies which occur.

(2) The board of trustees shall elect a chairman annually. The trustees shall be reimbursed for traveling expenses as provided in §112.061, the accounts of which shall be paid by the state treasurer upon itemized vouchers duly approved by the chairman.

(3) The board of trustees shall act at all times in conjunction with and under the supervision and general policies adopted by the state board of education.

(4) The board of trustees for the Florida school for the deaf and the blind is a body corporate and shall have a corporate seal. Title to all property and other assets of the Florida school for the deaf and the blind shall vest in the state board of education; but the board of trustees shall have complete jurisdiction over the management of the school and is invested with full power and authority to appoint a president, faculty, teachers, servants, and other employees, and to remove the same as in their judgment may be best; fix their compensation; determine eligibility of students and procedure for admission; provided for the students of the Florida school for the deaf and the blind necessary bedding, clothing, food and medical attendance, and such other things as may be proper for the health and comfort of said students without cost to their parents or guardians; provide for the proper keeping of accounts and records; budgeting of funds; to enter into contracts; to sue and be sued; to secure public liability insurance; and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of the Florida school for the deaf and the blind at the highest efficiency economically possible taking into consideration the purposes of the establishment.

History.—§§1-4, ch. 63-231; (2) §19, ch. 63-400.

242.391 Construction of state school in St. Johns county.—If and when the state school for deaf and blind as provided for by law is separated and there is created a special state school for the blind and a state school for the deaf, such schools shall both be located in St. Johns county.

History.—§1, ch. 63-164.

242.52 Board of trustees; Florida fire college.—

(1) There is hereby created a board of trustees of the Florida state fire college. Such board of trustees shall consist of three persons, who at the time of their appointment, are regularly employed firemen; and who have been citizens of the state for at least five years next previous to their appointment; and who have been regularly employed as firemen in the state for the five years next previous to the time of their appointment, except when on active duty with the armed forces of the United States. The board of trustees of the Florida state fire college shall be appointed by the governor, and their terms of office shall be for four years, or until their successors are appointed and qualified; except in the case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term; and except for the appointment of the first three members of such board of trustees, whose appointments shall be for terms of one, two and three years respectively. The governor may remove any member of such board of trustees for cause and shall fill all vacancies that may at any time occur therein.

(2) The board of trustees shall elect from its members a chairman and a secretary as often as those offices shall be vacant. The members of said board shall be reimbursed for traveling expenses as provided in §112.061.

History.—§§1, 2, ch. 25097, 1949; (2) §19, ch. 63-400.

242.53 Florida state fire college established.—There is hereby established a state institution to be known as the Florida state fire college, to be located at or near Ocala, Marion county. The institution shall be under the supervision and control of the board of trustees of the Florida state fire college, but at all times subject to the supervision and control of the board of commissioners of state institutions.

History.—§3, ch. 25097, 1949.

242.54 Purpose of fire college.—The purposes of §§242.52-242.61 and of the Florida state fire college shall be:

(1) To provide professional and volunteer firemen with needful professional instruction and training at a minimum of cost to them and to their employers.

(2) To develop new methods and practices of fire fighting and fire prevention.

(3) To assist the state and county, municipal, and other local governments of this state and their agencies and officers in their investigation and determination of the causes of fires.

(4) To provide testing facilities for testing fire fighting equipment.

(5) To disseminate useful information on fires, fire fighting and fire prevention and other related subjects, to fire departments and others interested in such information.

(6) To do such other needful or useful things necessary to the promotion of public safety in the field of fire hazards and fire prevention work.

It is hereby declared by the legislature that the above purposes are legitimate state functions and are designed to promote public safety.

History.—§4, ch. 25097, 1949.

242.55 Board of trustees; powers, duties.—(1) The board of trustees shall have complete jurisdiction over and complete management and control of the Florida state fire college and is invested with full power and authority to make all rules and regulations necessary for the governance of said institution, subject, however, to the approval of the board of commissioners of state institutions; to appoint a superintendent and such other instructors, experimental helpers and laborers as may be necessary, and to remove the same as in their judgment and discretion may be best; fix their compensation and provide for their payment; to have full management, possession and control of the lands, buildings, structures and property belonging thereto; to provide for the courses of study and curriculum of the institution; to make rules and regulations for the admission of trainees to said institution; to visit and inspect said institution and every department thereof, and to provide for the proper keeping of accounts and records thereof; to make and prepare all necessary budgets of expenditures for the enlargement, proper furnishing, maintenance, support and conduct of said institution; select and purchase all property, furniture, fixtures and paraphernalia necessary for said institution from time to time; to build, construct, change, enlarge, repair and maintain any and all buildings or structures of said institution that may at any time be necessary for said institution; to purchase and acquire all lands and property necessary for same, of every nature and description whatsoever; to care for and maintain the same and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of said institution necessary or requisite to carry out fully the purpose of this act; and for raising it to, and maintaining it at, the proper efficiency and standard as required in and by the provisions of §§242.52-242.61, but at all times subject to the supervision, approval and control of the board of commissioners of state institutions.

(2) The board of trustees of the Florida state fire college, subject to the limitations and restrictions elsewhere herein imposed, may:

(a) Adopt a seal and alter the same at its pleasure;

(b) Sue and be sued;

(c) Acquire any real or personal property by purchase, gift, or donation, and have water rights;

(d) Exercise the right of eminent domain to acquire any property and lands necessary to the establishment, operation and expansion of said institution.

(e) Make contracts and execute instruments necessary or convenient;

(f) Undertake by contract or contracts, or by its own agent and employees, and otherwise than by contract, any project or projects, and operate and maintain such projects;

(g) Accept grants of money or materials, or property of any kind from a Federal agency, private agency, county, city, town, corporation, partnership, or individual, upon such terms and conditions as the grantor may impose;

(h) Perform all acts and do all things necessary or convenient to carry out the power granted herein and the purposes of §§242.52-242.61;

Provided, however, that the title to all property referred to in §§242.52-242.61, however, acquired, shall be vested in the board of commissioners of state institutions, and shall only be transferred and conveyed by it.

History.—§§5, 9, ch. 25097, 1949.

242.56 Board of trustees; fixing fees.—The board of trustees may fix and collect admission fees and other fees that it may deem necessary to be charged for training given. All fees so collected shall be deposited in the general revenue fund unallocated.

History.—§6, ch. 25097, 1949; §1, ch. 61-515.

242.57 Procedure for making expenditures.—No moneys shall be spent for and on behalf of said institution except upon a written voucher drawn by the board of trustees, on approval of the board of commissioners of state institutions, stating the nature of said expenditures and the person to whom the same shall be made payable, which voucher shall be submitted to the comptroller of the state, and audited for approval by him, and upon such approval, the comptroller shall draw a warrant upon the state treasurer for the payment thereof, filing the original voucher in his office; and such warrant or warrants shall be countersigned by the governor.

History.—§7, ch. 25097, 1949.

242.58 Legal proceedings.—Any suits or actions brought by the board of trustees to condemn property as provided for in §242.55(2), shall be brought in the name of the board of commissioners of state institutions, and the attorney general of the state shall conduct the

proceedings for, and act as counsel of, the board of trustees.

History.—§8, ch. 25097, 1949.

242.59 Superintendent of college.—The board of trustees of the Florida state fire college may employ a superintendent for the Florida state fire college, who shall be especially trained and qualified in fire fighting, fire prevention and fire experimental work, and may employ on the recommendations of said superintendent such other instructors, experimental helpers and laborers as may be necessary to the proper conduct of said institution; and may proceed with the erection and detailed operation of said institution under §§242.52-242.61, but subject always to the supervision and control of the board of commissioners of state institutions.

History.—§10, ch. 25097, 1949; §3, ch. 57-401.

242.60 Buildings, equipment, etc.; use.—The board of trustees of the Florida state fire college shall have the power to prescribe and shall make the necessary rules and regulations for the use of buildings, equipment and other facilities of the institution when they are not in use for the purposes set forth in §§242.52-242.61.

History.—§11, ch. 25097, 1949.

242.61 Attorney general, legal adviser.—The attorney general of the state shall be the legal adviser and representative of the board of trustees of the Florida state fire college.

History.—§12, ch. 25097, 1949.

242.62 Appropriation to first accredited medical school.—

(1) The state, as hereinafter provided, shall pay the first accredited and approved medical school established in the state the sum of three thousand five hundred dollars per year for each student admitted and enrolled in such institution, subject to the provisions hereinafter set forth.

(2) In order for a medical school to qualify under the provisions of this section, and to be entitled to the benefits herein, said medical school:

(a) Shall be primarily operated and established to offer, afford and render a medical education to residents of the state qualifying for admission to said institution;

(b) Shall at no time have more than ten percent of its total enrollment of students who are residents of states or countries other than this state;

(c) Shall be operated by a municipality or county of this state, or by a non-profit organization heretofore or hereafter established exclusively for educational purposes;

(d) Upon the formation and establishment of an accredited medical school, said school shall, through its duly constituted officers, transmit and file with the board of control of this state documentary proof evidencing the facts such institution has been certified and approved by the council on medical education and hospitals of the American medical association; and has adequately met the requirements of said council in regard to its administrative facilities, administrative plant, clinical facilities, curriculum and all other such requirements as may be necessary to qualify with said council as a recognized, approved and accredited medical school;

(e) Shall certify to the board of control of this state sixty days prior to the commencement of any school year the name, address and educational history of each student approved and accepted for enrollment in said institution for the ensuing school year.

(3) The board of control shall, within sixty days of the receipt of the student enrollment of said medical school, pay to said school each year, the sum provided in subsection (1) of this section for each student accepted and approved for enrollment in said medical institution provided said medical student is a legal resident of the state, or if said student is not of legal age, his parents or legal guardian are residents of the state at the time of said student's acceptance and approval as a medical student; and provided further that in the event any student shall resign or be dismissed from said medical institution for any reason whatsoever before the end of a school year, then such medical institution shall, within thirty days from said dismissal or resignation, remit to the state, through the board of control, a pro rata amount of the sum before paid by the state to said medical institution, said amount to be computed by dividing the total number of days in the school year into the sum paid for that student and multiplying the result by the total number of days remaining in such school year after such resignation or dismissal.

(4) For the purpose of ensuring enrollment to medical students from all parts of the state in said medical institution, such institution is herewith and hereby prohibited from enrolling or admitting in any first-year medical class more than fifteen Florida residents, as above defined, from any single county in this state except that a number of students above fifteen may be enrolled and admitted from any one county to the extent that there may be insufficient qualified applicants from other counties to complete the first year medical class of not more than seventy-five students.

(5) Such institution is herewith and hereby prohibited from expending any of said sums received under the terms of this section for any purposes whatsoever, except the operation and maintenance of a medical school and for medical research. Said institution is further prohibited from expending any sums received under the terms of this section for the construction or erection of any buildings of any kind, nature or description, or for the maintenance and operation of any hospital in any form or manner whatsoever.

History.—§§1-5, ch. 26763, 1951; (4) §8, ch. 57-400; (3) §1, ch. 59-484; (1), (3) §1, ch. 63-52.

cf.—§282.01 General appropriations.

Note.—Subsection (6) expired 6-30-53.

CHAPTER 243

EDUCATIONAL INSTITUTIONS LAW; REVENUE CERTIFICATES

243.01 Definitions.—The following terms, wherever used or referred to in this law, shall have the following meanings unless a different meaning clearly appears in the context:

(1) The term "institution" shall mean any institution under the jurisdiction of the state board of control;

(2) The term "board" shall mean the state board of control;

(3) The term "revenue certificate" shall mean certificates with respect to the repayment of any loans or borrowed money, issued by the state board of control pursuant to this law;

(4) The term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, and to improve a project;

(5) The term "project" shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purpose of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, watertowers, fire prevention and fire fighting systems, gymnasia, stadia, dwellings, greenhouses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof, acquired pursuant to this law.

(6) The term "recovery act" shall mean the national industrial recovery act, approved June 16, 1933, and the emergency relief appropriation act of 1935, approved April 8, 1935, and any acts or joint resolutions amendatory thereof and any acts or joint resolutions supplemental thereto, and revisions thereof, and any further acts or resolutions of the congress of the United States to encourage public works, to provide relief, work relief, or to increase employment by providing for useful projects and providing for the making of loans or grants or both.

(7) The term "federal agency" shall mean the United States, the president of the United States, the federal emergency administrator of public works, or such other agency or agencies as may be designated or created to make loans or grants or both pursuant to the recovery act.

(8) The term "private agency, corporation or individual" shall mean any private corporation, trust company, firm or individual doing business as such.

History.—§2, ch. 16981, 1935; CGL 1936 Supp. 788(2); §2, ch. 20920, 1941; §2, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.16.

243.02 Powers.—The board, subject to the limitations and restrictions appearing in this law, shall have power and is hereby authorized:

(1) To have a corporate seal and alter the same at pleasure;

(2) To sue and be sued;

(3) To acquire by purchase, gift or the exercise of the right of eminent domain and hold real or personal property or rights or interests therein and water rights;

(4) To make contracts and to execute all instruments necessary or convenient;

(5) To acquire by contract or contracts or by its own agents and employees, or otherwise than by contract any project or projects, and to operate and maintain such project;

(6) To accept grants of money or materials or property of any kind from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose;

(7) To borrow money and issue revenue certificates and to provide for the payment of the same and for the rights of the holders thereof as herein provided;

(8) To perform all acts and do all things necessary or convenient to carry out the powers granted herein, to obtain loans or grants or both from any federal agency, private agency, corporation or individual, and to accomplish the purposes of this law and secure the benefits of the recovery act.

History.—§3, ch. 16981, 1935; CGL 1936 Supp. 788(3); §3, ch. 20920, 1941; §3, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.17.

243.03 Resolution for issuance of revenue certificates.—Revenue certificates issued under the provisions of this law shall be authorized by resolution of the board. Said revenue certificates shall bear interest at such rate or rates not ex-

ceeding five per cent per annum, payable semi-annually, may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding forty years from their respective dates, may be in such form, either coupon or registered, may carry such registration privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, may contain such terms, covenants, and conditions, and may be declared or become due before the maturity date thereof, as such resolution or other resolutions may provide. The revenue certificate may be sold at public or private sale at not less than par. Pending the preparation of the definitive certificates, interim receipts or certificates in such form and with such provisions as said board may determine may be issued to the purchaser or purchasers of certificates sold pursuant to this law. Said certificates and interim receipts shall be fully negotiable within the meaning and for all the purposes of the negotiable instruments law.

History.—§4, ch. 16981, 1935; CGL 1936 Supp. 788(4); §5, ch. 20920, 1941; §4, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.18.

243.04 Powers to secure revenue certificates. —The board, in connection with the issuance of revenue certificates to acquire any projects for an institution or in order to secure the payment of such revenue certificates and interest thereon, shall have power by resolution:

(1) To fix and maintain fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by such projects;

(2) To provide that such revenue certificates shall be secured by a first, exclusive and closed lien on the income and revenue (but not the real property of such institution) derived from, and shall be payable from, fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by such project;

(3) To pledge and assign to, or in trust for the benefit of, the holder or holders of such revenue certificates an amount of the income and revenue derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project;

(4) To covenant with or for the benefit of the holder or holders of such revenue certificates that so long as any of such revenue certificates shall remain outstanding and unpaid, such institution will fix, maintain, and collect in such installments as may be agreed upon an amount of the fees, rentals, and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project, which shall be sufficient to pay when due such revenue certificates and interest thereon, and to create and maintain reasonable reserves therefor, and to pay the cost of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance, which costs of operation and maintenance shall be determined by the board in its absolute discretion.

(5) To make and enforce and agree to make and enforce parietal rules that shall insure the use of such project by all students in attendance at such institutions to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby;

(6) To covenant that so long as any of such revenue certificates shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined,

(a) voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of such revenue certificates upon any of the income and revenues derived from fees, rentals, and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project, or

(b) convey or otherwise alienate such project or the real estate upon which such project shall be located, except at a price sufficient to pay all such revenue certificates then outstanding and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such revenue certificates, or

(c) mortgage or otherwise voluntarily create or cause to be created any encumbrance on such project or the real estate upon which it shall be located.

(7) To covenant as to the procedure by which the terms of any contract with a holder or holders of such revenue certificates may be amended or abrogated, the amount of percentage of revenue certificates the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(8) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of such revenue certificates and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to such revenue certificates; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of revenue certificates of any specified amount or percentage

of such revenue certificate may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(9) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of revenue certificates the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such revenue certificates, which receiver or receivers may have and be granted such powers and duties as such court may order or decree for the protection of the revenue certificate holders.

(10) To make covenants with any federal agency, private agency, corporation or individual to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure such revenue certificates, or as may in the judgment of the board tend to make the revenue certificates more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give the board power to make all covenants, including any covenants or agreements giving a lien upon any project constructed, to the agency lending the money for the construction of such project, as security for such loan; and including the power to make any conveyance which may be necessary, of any lot or parcel of land, to any federal agency, private agency, corporation or individual as the means of security for any loan made by such agency for the construction or improvement of a building or structure thereon, and also the right to lease any structure constructed upon the lands of the state for a fair rental; and to perform all acts and to do all things, not inconsistent with the constitution of the state, in the issuance of such revenue certificates and for their security, which a private business corporation might do.

History.—§5, ch. 16981, 1935; CGL 1936 Supp. 788(5); §5, ch. 20920, 1941; §5, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.19.

243.05 Approval of state board of education.—Any resolution of the board under this law, authorizing the issuance of revenue certificates or containing or authorizing any agreement or covenant shall, before becoming effective, be approved by resolution of the state board of education, and when so approved by said state board of education, such resolution or agreement or covenant of the board shall be binding upon the state board of education as though such resolution or agreement or covenant were its own resolution or agreement or covenant.

History.—§6, ch. 16981, 1935; CGL 1936 Supp. 788(6); §6, ch. 20920, 1941; §6, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.20.

243.06 Remedies of any holder of revenue certificates.—Any holder or holders of revenue certificates, including a trustee, or trustees for holders of such revenue certificates, shall have the right, in addition to all other rights:

(1) By mandamus or other suit, action or proceeding in any court of competent jurisdiction to enforce his or their rights against the board and the state board of education and any officer, agent or employee of such boards to fix and collect such rentals and other charges adequate to carry out any agreement as to or pledge of such fees, rentals or other charges, and require the said state board of education and the board and any of their officers, agents or employees to carry out any other covenants and agreements and to perform their duties under this law.

(2) By action to enjoin any acts or things which may be unlawful or a violation of the rights of such holders of revenue certificates.

History.—§7, ch. 16981, 1935; CGL 1936 Supp. 788(7); §7, ch. 20920, 1941; §7, ch. 21788, 1943; §7, ch. 22858, 1945; (2) §10, ch. 26484, 1951.
Note.—Formerly §240.21.

243.07 Moneys of institutions.—No moneys derived from the sale of revenue certificates or otherwise borrowed under the provisions of this law, or received as a grant, shall be required to be paid into the state treasury, but shall be deposited by the treasurer or other fiscal officer of the board in a separate bank account or accounts in such bank or banks or trust company or trust companies as may be designated by the board. Each such separate bank account or accounts shall be designated with the name of the institution where such project is acquired. All deposits of such moneys shall, if required by the board, be secured by obligations of the United States, of a market value equal at all times to the amount of the deposit; and all banks and trust companies are hereby authorized to give such security. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any revenue certificates. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its revenue certificates, or the receipt of any grant, as to the custody and disposition of the moneys received from the sale of such revenue certificates or as payment of any such grant or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof.

History.—§8, ch. 16981, 1935; CGL 1936 Supp. 788(8); §8, ch. 20920, 1941; §8, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.22.

243.08 Validity of revenue certificates.—The revenue certificates bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the board. The validity of the revenue certificates shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the revenue certificates or taken in connection therewith.

History.—§9, ch. 16981, 1935; CGL 1936 Supp. 788(9); §9, ch. 20920, 1941; §9, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.23.

243.09 Prohibitions against obligating State of Florida.—Nothing in this law contained shall be construed to authorize the board to contract a debt on behalf of, or in any way to obligate, the state, or to pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of, appropriations made by the legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by legislative enactments of the United States, for the use and benefit of the respective state educational institutions.

History.—§10, ch. 16981, 1935; CGL 1936 Supp. 788(10); §10, ch. 20920, 1941; §10, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.24.

243.10 Revenue certificate obligations of board of control.—All revenue certificates issued pursuant to this law shall be obligations of the board, payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state. Such revenue certificates shall not be a bond or debt of the state, and shall not be enforceable against the state, nor shall payment thereof be enforceable out of any funds of the board other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of such revenue certificates.

History.—§11, ch. 16981, 1935; CGL 1936 Supp. 788(11); §11, ch. 20920, 1941; §11, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.25.

243.11 Supplemental nature of law; construction and purpose.—The powers conferred by this law shall be in addition to and supplemental to, and the limitations imposed by this law shall not affect, the powers conferred by any other law, general or special, and revenue certificates may be issued hereunder without any referendum, notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the law are inconsistent with the provisions of any other law, general or special, the provisions of this law shall be controlling, except in pursuance of any contract or agreement theretofore entered into by and between any institution and any federal agency.

History.—§13, ch. 16981, 1935; §1, ch. 17729, 1937; CGL 1936 Supp. 788(12); §1, ch. 19347, 1939; §13, ch. 20920, 1941; §13, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.26.

243.12 Short title.—Sections 243.01-243.11 may be cited as the "educational institutions law of 1935."

History.—§1, ch. 16981, 1935; §1, ch. 20920, 1941; CGL 788(1); §1, ch. 21788, 1943; §7, ch. 22858, 1945.
Note.—Formerly §240.15.

243.131 Federal aid; dormitories; institutions of higher learning.—

(1) The state board of education through the state board of control is authorized to negotiate with the federal housing and home finance agency, or other appropriate governmental agency, for funds to construct dormitories and other auxiliary accommodations including student unions, food and health service facilities, book stores, and recreational facilities necessary and desirable to serve the needs of the students and faculty, at the state institutions of higher learning, such loans to be secured through the issuance of revenue certificates by the said board of control. Income derived from the rental of said dormitories and other auxiliary accommodations shall be used to retire said revenue certificates so issued and for such other purposes as may be provided in the agreement with the governmental agency.

(2) In order to furnish said facilities, authority is hereby given for the use of surplus auxiliary money for the purpose of equipping and furnishing said dormitories and other auxiliary accommodations.

(3) Authority is further granted for the pledging of any trust funds available and not otherwise obligated for the purpose of securing said loans. Trust funds described herein shall be restricted to the auxiliary trust funds and such student fee building trust funds as established by the board of control July 25, 1958.

(4) The state board of education is authorized to accept such funds as may be obtained under this section for the use of the board of control. The board of control is authorized to use the funds for the construction of dormitories and other auxiliary accommodations under the terms of the agreements with the appropriate governmental agency.

History.—§§1-4, ch. 29879, 1955; §2, ch. 57-400; (3) §3, ch. 59-470; (1) §1, ch. 61-143; (3) §2, ch. 61-119.
Note.—Formerly §229.41.

243.141 Board of administration to act as fiscal agent.—In furtherance of the provisions of chapter 243, the state board of administration may upon request of the board of control act as fiscal agent for the board of control in the issuance and sale of any revenue certificates which may be issued pursuant to this chapter, and may upon request of the board of control take over the management, control, administration, custody and payment of any or all debt services or funds or assets now or hereafter available for any revenue certificates issued pursuant to this chapter. The board of control may from time to time provide by its duly adopted resolution the duties said fiscal agent shall perform and such duties may be changed, modified, or repealed by subsequent resolution as the board of control may deem appropriate.

History.—§1, ch. 63-427.

CHAPTER 244

REGIONAL EDUCATION

244.01 Regional education; state policy.—It is hereby declared to be the policy of the state to promote the development and maintenance of regional education services and facilities in the Southern States in the professional, technological, scientific, literary and other fields so as to provide greater educational advantages for the citizens of the state and the citizens in the several states in said region; and it is found and determined by the legislature of the state that greater educational advantages and facilities for the citizens of the state in certain phases of the professional, technological, scientific, literary and other fields in education can best be accomplished by the development and maintenance of regional educational services and facilities, under the plan embodied in "The Regional Pact" hereinafter adopted; and this law shall be liberally construed to accomplish such purposes.

History.—§1, ch. 25017, 1949.

244.02 Regional compact.—The compact entered into by the state and other Southern States by and through their respective governors on February 8, 1948, as amended, relative to the development and maintenance of regional education services and schools in the Southern States in the professional, technological, scientific, literary and other fields so as to promote greater educational facilities for the citizens of the several states who reside in said region, a copy of said compact, as amended, being as follows:

THE REGIONAL COMPACT
(as amended)

WHEREAS, The States who are parties hereto have during the past several years conducted careful investigation looking toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary, and other fields, so as to provide greater educational advantages and facilities for the citizens of the several states who reside within such region; and

WHEREAS, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College, which proposal, because of the present financial condition of the institution, has been approved by the said states who are parties hereto; and

WHEREAS, the said states desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and obligations assumed by the respective states who are parties hereto (hereinafter referred to as "states"), the said several states do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting states which, for the purposes of this compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent states and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions for the benefit of citizens of the respective states residing within the region so established as may be determined from time to time in accordance with the terms and provisions of this compact.

The states do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the "board"), the members of which board shall consist of the governor of each state, **ex officio,** and four additional citizens of each state to be appointed by the governor thereof, at least one of whom shall be selected from the field of education, and at least one of whom shall be a member of the legislature of that state. The governor shall continue as a member of the board during his tenure of office as governor of the state, but the members of the board appointed by the governor shall hold office for a period of four years except that in the original appointments one board member so appointed by the governor shall be designated at the time of his appointment to serve an initial term of two years, one board member to serve an initial term of three years, and the remaining board member to serve the full term of four years, but thereafter the successor of each appointed board member shall serve the full term of four years. Vacancies on the board caused by death, resignation, refusal or inability to serve, shall be filled by appointment by the governor for the unexpired portion of the term. The officers of the board shall be a chairman, a vice-chairman, a secretary, a treasurer, and such additional officers as may be created by the board from time to time. The board shall meet annually and officers shall be elected to hold office until the next annual meeting. The board shall have the right to formulate and establish by-laws not inconsistent with the provisions of this compact to govern its own actions in the performance of the duties delegated to it including the right to create and appoint an executive committee and a finance committee with such powers and authority as the board may delegate to them from time to time. The board may, within its discretion, elect as its chairman a person who is not

a member of the board, provided such person resides within a signatory state, and upon such election such person shall become a member of the board with all the rights and privileges of such membership. This paragraph as amended in 1957 shall be effective when eight or more of the states party to the compact have given legislative approval to the amendment.

It shall be the duty of the board to submit plans and recommendations to the states from time to time for their approval and adoption by appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institutions within the geographical limits of the regional area of the states, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the states and to all properties and facilities used in connection therewith shall be vested in said board as the agency of and for the use and benefit of the said states and the citizens thereof, and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative acts of the states authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the board shall have the power to enter into such agreements or arrangements with any of the states and with educational institutions or agencies, as may be required in the judgment of the board, to provide adequate services and facilities for the graduate, professional, and technical education for the benefit of the citizens of the respective states residing within the region, and such additional and general power and authority as may be vested in the board from time to time by legislative enactment of the said states.

Any two or more states who are parties of this compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such states and to be controlled exclusively by the members of the board representing such states provided such agreement is submitted to and approved by the board prior to the establishment of such institutions.

Each state agrees that, when authorized by the legislature, it will from time to time make available and pay over to said board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the states under the terms of this compact, the contribution of each state at all times to be in the proportion that its population bears to the total combined population of the states who are parties hereto as shown from time to time by the most recent official published report of the bureau of the census of the United States of America; or upon such other basis as may be agreed upon.

This compact shall not take effect or be binding upon any state unless and until it shall be approved by proper legislative action of as many as six or more of the states whose governors have subscribed hereto within a period of eighteen months from the date hereof. When and if six or more states shall have given legislative approval to this compact within said eighteen months period, it shall be and become binding upon such six or more states sixty days after the date of legislative approval by the sixth state and the governors of such six or more states shall forthwith name the members of the board from their states as hereinabove set out, and the board shall then meet on call of the governor of any state approving this compact, at which time the board shall elect officers, adopt by-laws, appoint committees and otherwise fully organize. Other states whose names are subscribed hereto shall thereafter become parties hereto upon approval of this compact by legislative action within two years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however, that with respect to any state whose constitution may require amendment in order to permit legislative approval of the compact, such state or states shall become parties hereto upon approval of this compact by legislative action within seven years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this compact shall thereafter continue without limitation of time; provided, however, that it may be terminated at any time by unanimous action of the states and provided further that any state may withdraw from this compact if such withdrawal is approved by its legislature, such withdrawal to become effective two years after written notice thereof to the board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing state from its obligations hereunder accruing up to the effective date of such withdrawal. Any state so withdrawing shall ipso facto cease to have any claim to or ownership of any of the property held or vested in the board or to any of the funds of the board held under the terms of this compact.

If any state shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said state as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting state, its members on the board and its citizens shall ipso facto be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this compact may be

terminated with respect to such defaulting state by an affirmative vote of three-fourths of the members of the board (exclusive of the members representing the state in default). from and after which time such state shall cease to be a party to this compact and shall have no further claim to or ownership of any of the property held by or vested in the board or to any of the funds of the board held under the terms of this compact, but such termination shall in no manner release such defaulting state from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining states thereunder.

IN WITNESS WHEREOF this compact has been approved and signed by governors of the several states, subject to the approval of their respective legislatures in the manner hereinabove set out, as of the 8th day of February, 1948.

STATE OF FLORIDA BY Millard F. Caldwell, Governor. STATE OF MARYLAND BY Wm. Preston Lane, Jr., Governor. STATE OF GEORGIA BY M. E. Thompson, Governor. STATE OF LOUSIANA BY J. H. Davis, Governor. STATE OF ALABAMA BY James E. Folsom, Governor. STATE OF MISSISSIPPI BY F. L. Wright, Governor. STATE OF TENNESSEE BY Jim McCord, Governor. STATE OF ARKANSAS BY Ben Laney, Governor. COMMONWEALTH OF VIRGINIA BY Wm. M. Tuck, Governor. STATE OF NORTH CAROLINA BY R. Gregg Cherry, Governor. STATE OF SOUTH CAROLINA BY J. Strom Thurmond, Governor. STATE OF TEXAS BY Beauford H. Jester, Governor. STATE OF OKLAHOMA BY Roy J. Turner, Governor. STATE OF WEST VIRGINIA BY Clarence W. Meadows, Governor.

be and the same is hereby approved and the State of Florida is hereby declared to be a party to said compact and the agreements, covenants and obligations contained therein are hereby declared to be binding upon the State of Florida.

History.—§2, ch. 25017, 1949; §§1, 2, ch. 57-177.

244.03 Copies to other states approving.—After the effective date of this law (May 4, 1949) the secretary of state of Florida shall furnish to each of the states approving the said compact an engrossed copy of this bill.

History.—§3, ch. 25017, 1949.

CHAPTER 245

STATE ANATOMICAL BOARD

245.01 Anatomical board established; composition.—A board is established known by the name and style of the anatomical board of the state; said board shall be composed of the heads of the departments of anatomy, pathology and surgery of the medical schools now existing and to be created in the future in the state, whether the same are public or private institutions; the secretary of the state board of health shall also be a member of said board; said board shall perform such duties and possess and exercise such powers as are prescribed and conferred upon it in this act.

History.—§1, ch. 28163, 1953.

245.02 Compensation of members. — The members of the board shall serve without salary and shall be reimbursed only for expenses incurred directly relating to the functions of this board out of the funds collected by said board as provided in this chapter. Provided however, nothing in this chapter shall prevent the secretary of the state board of health from receiving any salary provided for his services to the state board of health.

History.—§3, ch. 28163, 1953.

245.03 Personnel, office of board. — The board may establish an office and employ such personnel as is necessary for its maintenance, the same to be paid out of the funds collected by said board.

History.—§3, ch. 28163, 1953.

245.04 Rules and regulations. — The board shall from time to time adopt such rules and regulations as it may deem necessary for the performance of its duties.

History.—§4, ch. 28163, 1953.

245.05 Records.—The board shall keep full and complete minutes of each meeting of the said board and a complete record of all dead human bodies received and distributed by it and of the persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of the said board and of any state's attorney of any county within the state; a report of the activities of such board shall be made annually to the secretary of the state board of health and to the deans of the medical colleges represented on said board.

History.—§5, ch. 28163, 1953.

245.06 Unclaimed dead bodies, disposition, procedure.—All public officers, agents or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor or mortuary and all other persons coming into possession, charge or control of any dead human body which is unclaimed or which is required to be buried at public expense are hereby required to notify, immediately, the anatomical board of the state, or such person or persons as may from time to time be designated by the said board, whenever any such body or bodies come into his possession, charge or control; should the person coming into possession, charge or control of such dead human body be other than a licensed embalmer or licensed funeral director, the board shall cause said body to be embalmed either by a licensed embalmer or funeral director, or by the institution to which such body is distributed; the board shall cause the finger prints to be taken and such finger print records shall be sent to the federal bureau of investigation in Washington, D. C. and a copy thereof retained by the board; the board shall make reasonable effort to determine the identity of the body and shall further make reasonable effort to contact any relatives of such deceased person; upon the receipt by a licensed embalmer or funeral director of an unclaimed body or one which must be buried at public expense, such embalmer or funeral director shall embalm said body by the most acceptable procedure; such dead human bodies as described in this chapter shall be delivered to the board through its duly authorized agents as soon as possible after death, provided that nothing herein shall affect the right of a coroner or a justice of the peace to hold such dead body for the purpose of investigating the cause of death, nor shall this chapter affect the right of any court of competent jurisdiction from entering an order affecting the disposition of such body.

History.—§6, ch. 28163, 1953.

245.07 Bodies to be kept 90 days before use; unfit, excess number of bodies, procedure.—All bodies received by the board shall be retained in receiving vaults for a period of not less than ninety days before allowing its use for medical science; if at any time more bodies are made

available to the board than can be used for medical science under its jurisdiction, or a body shall be deemed by the board to be unfit for anatomical purposes, the board may, notify, in writing, the county commissioners of the county where such person died, who shall direct some person to take charge of such body and cause it to be buried in accordance with the already existing rules, laws and practices for disposing of such unclaimed bodies within the confines of the said county.

History.—§8, ch. 28163, 1953.

245.08 Death of indigents; notice; delivery to board when unclaimed; exceptions.—Notice of death shall be given to the board in all cases of indigent persons, but no such body shall be delivered to the board if any relative, by blood or marriage, shall claim the body for burial at the expense of such relative, but the body shall be surrendered to said claimant for interment; nor shall any such body be delivered to the board if any friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization shall claim the body for burial at his or their expense; no body shall be delivered to the board if the deceased person was an honorably discharged member of the armed forces of the United States or the state, in which case said body shall be buried in accordance with the provisions of the existing laws.

History.—§7, ch. 28163, 1953.

245.09 Bodies may be claimed after delivery to board. — Any dead human body which has been delivered to the anatomical board of the state may be claimed by any friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization. Upon receipt of such claim, the body shall be surrendered to the claimant by the board after the payment to the board for the expenses incurred in obtaining and handling such body.

History.—§8, ch. 28163, 1953.

245.10 Contracts for delivery of body after death prohibited.—The anatomical board of the state is specifically prohibited from entering into any contract, oral or written, whereby any sum of money shall be paid to any living person in exchange for which the body of said person shall be delivered to the board when such living person dies.

History.—§9, ch. 28163, 1953.

245.11 Acceptance of bodies under will.—If any person being of sound mind shall execute a will leaving his or her body to the anatomical board for the advancement of medical science and such person dies within the geographical limits of the state, the board is hereby empowered to accept and receive such body.

History.—§10, ch. 28163, 1953.

245.12 Distribution of dead bodies. — The board or its duly authorized agent shall take and receive the bodies delivered to them under the provisions of this chapter and shall distribute them, proportionately and equitably to and among the medical and dental schools and to those teaching hospitals wherein the resident training program requires cadaveric material for study or the same may be loaned for examination or study purposes to recognized associations of licensed embalmers or funeral directors, or medical or dental examining boards at the discretion of the board.

History.—§11, ch. 28163, 1953.

cf.—§125.44 County commissioner's authority to dispose of dead bodies.

§470.18 Use of bodies in embalming schools.

245.13 Fees; authority to accept additional funds; annual audit.—

(1) The board is empowered to prescribe a schedule of fees to be collected from the institution or association to which the bodies, as described in this chapter, are distributed or loaned to defray the costs of obtaining and preparing such bodies.

(2) The board is hereby empowered to receive money from public or private sources in addition to the fees collected from the institution or association to which the bodies are distributed to be used to defray the costs of embalming, handling, shipping, storage, cremation and other costs relating to the obtaining and use of such bodies as described in this chapter; the board is empowered to pay the reasonable expenses incurred by any person delivering the bodies as described in this chapter to the board and is further empowered to enter into contracts and perform such other acts as are necessary to the proper performance of its duties; a complete record of all fees and other financial transactions of said board shall be kept and audited annually by the comptroller of the state and a report of such audit shall be made annually to the secretary of the state board of health and to the deans of the medical colleges represented on the board.

History.—§§12, 15, ch. 28163, 1953.

245.14 Bonds; institutions receiving bodies.—No university, school, college, teaching hospital or association shall be allowed or permitted to receive any such body or bodies as described in this chapter until a bond, approved as to form by the attorney general shall have been given to the board which bond shall be in the penal sum of one thousand dollars conditioned that all such bodies received by such university, school, college, teaching hospital or association shall be used for no other purpose than the promotion of medical science within this state.

History.—§13, ch. 28163, 1953.

245.15 Disposition of bodies after use.—At any time when any body or bodies or part or parts of any body or bodies, as described in this chapter, shall have been used and deemed of no further value to medical or dental science, then the person or persons having charge of said body or parts of said body may dispose of the remains by cremation.

History.—§14, ch. 28163, 1953.

245.16 Selling, buying, shipping bodies outside of state regulated; penalty.—Any person who shall sell or buy any body or parts of bodies as described in this chapter or shall transmit or convey or cause to be transmitted or conveyed such body or parts of bodies to any place outside this state except as provided in this chapter shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not to exceed one thousand dollars and imprisonment in the county jail in the county wherein such offense was committed for a period not to exceed one year, or both such fine and imprisonment, however, nothing in this chapter shall be construed as prohibiting the members of the anatomical board of the state from transporting human specimens outside of the state for the temporary use at scientific meetings or exhibits.

History.—§16, ch. 28163, 1953.

CHAPTER 246

FLORIDA EDUCATIONAL TELEVISION COMMISSION

246.01 Definitions.—When appearing in this chapter the following words shall mean:

(1) "Commission."—the Florida educational television commission created and established by this chapter.

(2) "Board."—the state board of education.

History.—§1, ch. 57-312.

246.02 Purpose.—The purpose of this law is to provide through educational television a means of extending the powers of teaching in public education and of raising living and educational standards of the citizens and residents of the state.

History.—§2, ch. 57-312.

246.03 Florida educational television commission.—There is hereby created the Florida educational television commission which shall consist of seven members, all of whom shall be citizens of this state and shall be appointed by the governor, and which shall include one member from the office of the state superintendent of public instruction who shall represent junior colleges; one member of the board of control or an employee thereof; one county superintendent of public instruction, and four members from the public at large, all of whose terms shall be for four years and until their successors are appointed and qualified. The governor may remove any member of the commission for cause and shall fill all vacancies which may occur at any time. A member appointed to fill a vacancy shall be appointed for the unexpired term only.

History.—§3, ch. 57-312.

246.04 Office, organization and compensation.—The commission shall maintain an office at the state capitol. As soon as practicable after appointment, the commission shall hold an organizational meeting at which a chairman shall be elected. The chairman shall serve in such capacity for one year, however, he may succeed himself. Members of the commission shall serve without compensation, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 57-312; §19, ch. 63-400.

246.05 Board of education to supervise.—The commission shall operate under the control and supervision of the board. Subject to the approval of the board, the commission may adopt and promulgate reasonable rules and regulations consistent with law and necessary for carrying out the purpose and intent of this law.

History.—§5, ch. 57-312.

246.06 Corporate powers.—The commission shall be a body corporate and shall adopt a corporate seal. The commission may contract and be contracted with, sue and be sued, plead and be impleaded in all courts of law and equity and shall have and possess all powers of a body corporate for all the purposes created by or that may exist under the provisions of this chapter. It may seek and receive donations and bequests.

History.—§6, ch. 57-312.

246.07 Executive secretary.—The commission may employ an executive secretary whose duty it shall be to administer the policies of the commission and to perform such other duties as the commission may direct and shall act as the agent of the commission in the employment of clerks and other personnel necessary to carry out the purpose and intent of this chapter. The commission is authorized to pay such salaries to the executive secretary and other personnel employed by the commission as are deemed necessary to obtain competent employees.

History.—§7, ch. 57-312.

246.08 Establishment of network.—The commission is authorized and empowered to establish a television network connecting such communities or stations as may be designated by the board. For this purpose it may lease from communications common carriers and use such transmission channels as may be necessary; provided, however, that should the commission decide, upon investigation, that it could more economically construct and maintain such transmission channels, it is authorized and empowered to design, construct, operate and maintain the same, including a television microwave network. Said network shall be utilized primarily for the instruction of students at existing and future colleges and universities, including community or junior colleges, of the state or so many thereof as may prove practical. The origination and transmission of all programs over such network shall be as directed and authorized by the commission under plans approved by the board and by the board of control

as such pertain to the operations of the institutions under supervision of the board of control.
History.—§8, ch. 57-312.

246.09 Promotion of television educational activities generally.—The commission is authorized to encourage:
(1) The activation of unused reserved educational television channels;
(2) The extension of educational television network facilities;
(3) The coordination of Florida's educational television system with those of other states; and
(4) The further development of educational television within the state.
History.—§9, ch. 57-312.

246.10 Commission as advisor and consultant.—The commission is authorized to act as advisor and consultant to educational television stations and programs whether supported by state, county, city, or private funds.
History.—§10, ch. 57-312.

246.11 Commission to cooperate with and assist other agencies.—The commission may cooperate with and assist all local and state educational agencies in making surveys pertaining to the use and economics of educational television in the fields of primary, elementary, secondary or college level education and in the field of adult education. The commission may also assist all public agencies in the planning of programs calculated to further the education of the citizens of the state. The commission shall review and approve all expenditures of public funds by state agencies for the preparation or dissemination of educational television programs as provided for herein.
History.—§11, ch. 57-312.

246.12 Expenditures; donations.—The treasurer of the state shall pay out all monies and funds provided for in this chapter upon proper warrant issued by the comptroller drawn upon vouchers approved by the commission and the commission shall make annual reports to the governor showing in detail amounts received and all expenditures, when paid and to whom. All donations or other receipts of money by the commission shall be paid into the state treasury and the same is re-appropriated for the purpose of this chapter. Said commission shall include in its annual report to the governor a statement of major activities during the period covered by such report.
History.—§12, ch. 57-312.

246.13 Promotion of political and governmental activities prohibited.—None of the facilities, plant or personnel of any educational television system which is supported in whole or in part by state funds shall be used directly or indirectly for the promotion, advertisement or advancement of any political candidate for any municipal, county or state office; or for the purpose of advocating or opposing any specific program, existing or proposed, of governmental action which shall include, but shall not be limited to, constitutional amendments; tax referendums; or bond issues. Conviction upon violation of any provision of this section shall be punishable by not more than 1 year in prison or $5,000.00 fine, or both such fine and imprisonment.
History.—§13A, ch. 57-312.

246.14 Construction.—The provisions of this chapter shall be liberally construed in order to effectively carry out the provisions of this chapter in the interest of public education.
History.—§14, ch. 57-312.

246.15 Appropriation.—The legislature shall appropriate such amounts as it may determine to be sufficient for the purpose of carrying out the provisions of this chapter.
History.—§13, ch. 57-312; §1, ch. 61-28.

CHAPTER 247

PRIVATE SCHOOLS, MINIMUM STANDARDS

247.01 Purposes.—This chapter is enacted for the promotion of the health, education, and welfare of the citizens of Florida, and is intended to facilitate and promote the acquisition of a minimum satisfactory education by all the citizens of this state. While in this state there presently exist many fine private schools, there are, on the other hand, some private schools which offer sub-standard education, and do not generally offer those educational opportunities which the citizens of Florida deem essential to our youth and to the ultimate health, education, and welfare of the people of Florida. It is declared to be in the interest of and essential to the public health, education, and welfare that the state create the means whereby minimum satisfactory educational standards may be established so that schools desiring to meet these standards may be identified. The purpose of this identification is to enable the selection of such schools by the citizens of this state, thereby assuring themselves of a minimum satisfactory education. The provisions of this law are intended to establish those minimum standards necessary to insure that any school meeting such standards offers a minimum satisfactory education. Nothing contained herein is intended in any way to regulate the operations of or admissions to any school in this state. No provision of this law shall apply to any school except upon request for a certificate of approval, which shall be on a purely voluntary basis.

History.—§1, ch. 59-471.
cf.—Ch. 623 Private corporation law.

247.02 Definitions.—The following terms, when used in this law, shall have the meaning as hereinafter set out, unless a contrary meaning clearly appears therein:

(1) "Private school" shall mean any school devoted solely to academic, vocational, or business instruction as defined in this law, or any combination of same in grades one through twelve or in any of these grades, which is supported in whole or in part by tuition or by endowments or gifts and which does not come within any of the classifications set forth in §247.04 of this law.

(2) "Approved private school" shall mean a private school which has an enrollment of not less than ten pupils and maintains an average daily attendance of not less than eighty per cent of its enrollment, and which has received from the board of private education a certificate of approval pursuant to this law.

(3) "Academic instruction" shall mean instruction of or pertaining to literary, scientific, humanities, classical or liberal studies as distinguished from business, technical and vocational instruction.

(4) "Vocational instruction" shall mean instruction in grades ten through twelve which is primarily directed toward training for a particular trade or vocation, as distinguished from training for a career in business, but which includes academic instructions and which culminates in graduation from secondary school. Vocational instruction would not be designed to prepare the student for college.

(5) "Business instruction" shall mean instruction in grades ten through twelve which is primarily directed toward training for a career in business, whether business generally or a particular phase of business or a particular job in business, as distinguished from training for a particular trade or vocation, but which includes academic instruction and which culminates in graduation from secondary school. Business instruction would not be designed to prepare the student for college.

(6) "Board" shall mean the board of private education created by this law for the purpose of determining standards of approval of private schools, voluntarily operating under the provisions of this law.

(7) "Teacher" shall mean a person engaged in the instruction of others in any private school, voluntarily operating under the provisions of this law.

(8) "Other schools" shall mean trade school, business school, dance school, art school, driver training school, and other schools operated for a special purpose, and which do not come under the provisions of this law, or any private school which does not voluntarily

elect to operate under the provisions of this chapter.

(9) "Person" shall mean any person, firm, association, or corporation.

(10) "Certificate of approval" shall be the certificate issued by the board to a teacher or to a school, pursuant to the provisions of this law.

History.—§2, ch. 59-471.

247.03 Application of this law.—The provisions of this law shall apply only to the private academic, business, and/or vocational schools, as defined in this law, within this state; provided, that only those schools making application as provided herein shall be affected by the provisions of this law.

History.—§3, ch. 59-471.

247.04 Exclusions of schools from application of this law.—The following schools shall be excluded from the terms of this law:

(1) PUBLIC SCHOOLS.—Any school owned and operated by this state or any political subdivision thereof.

(2) KINDERGARTENS.—Any schools owned and operated for children who have not yet reached grade one.

(3) COLLEGES.—Any junior college, college or university.

(4) SECTARIAN SCHOOLS.—Any parochial, denominational, or sectarian school owned or operated by or under the authority of a religious sect or institution.

(5) SCHOOLS FOR BLIND RECEIVING PUBLIC FUNDS.—Any school operated for the blind, or deaf, receiving appropriations from the state or any political subdivision thereof.

(6) SCHOOLS FOR EMPLOYEES.—Any school maintained or classes conducted by employers for their own employees.

(7) OTHER SCHOOLS.—Any trade school, business school, dance school, art school, driver training school, or other type of school which is vocational in character and which does not culminate in the awarding of a high school diploma.

History.—§4, ch. 59-471.

247.05 Private schools not requesting certificates.—No private school shall be affected by this law unless and until such school shall submit a request for a certificate of approval under the provisions of this law, and the decision to make application for said certificate by the school shall always be dependent upon the free, unbridled, unrestricted exercise of the discretion and choice of each private school, that such choice shall be completely and purely voluntary, and shall always remain so.

History.—§5, ch. 59-471.

247.06 Board created, method of appointment.—

(1) CREATION OF THE BOARD AND ITS MEMBERSHIP.—There is hereby created the board of private education which shall consist of seven members, to be appointed by the governor, each of whom shall be a citizen of the United States and a resident of Florida. Four of such members shall be appointed from among persons who are engaged in administrative or teaching work in an approved private school, and three of such members shall be appointed from among persons who by their efforts have evidenced an interest in the growth and development of approved private schools; provided that for purposes of the appointments to the first board, those schools shall be deemed approved that are eligible for approval under §247.14.

(2) NOMINATIONS.—Appointments to the board may be made from nominations submitted by recognized state-wide organizations representing approved private schools in Florida, pursuant to procedures adopted and made a part of the bylaws of each such organization. Each such nominating organization shall submit not less than two nor more than three candidates for each position to be filled as they may occur.

(3) RECOMMENDATIONS.—Appointments to the board may also be made from a list of persons recommended by approved private schools as defined in this law. Each such recommending school shall submit not less than two nor more than three candidates for each position to be filled as they may occur; provided, however, that for purposes of appointing the first board, recommendations as set forth above may be submitted by those private schools eligible for approval under §247.13.

(4) ABSENCE OF NOMINATIONS AND RECOMMENDATIONS.—Should nominations and recommendations fail to be made as provided in the preceding subsections, appointments to the board shall be made, for each vacancy as they may occur, from among qualified persons, as referred to in subsection (1) above; provided, that if any nominations or recommendations are made under subsections (2) and/or (3) above, appointments shall be from among the persons on those lists.

History.—§6, ch. 59-471.

247.07 Terms of office.—The term of office of the members of the board shall be for four years; provided that the first appointments shall be for terms as follows: Two members shall be appointed for two years, two members shall be appointed for three years, and three members shall be appointed for four years. Thereafter the term of office for each person so appointed shall be for four years.

History.—§7, ch. 59-471.

247.08 Reimbursement for travel authorized.—The members and employees of the board shall receive reimbursement for travel as provided in §112.061.

History.—§8, ch. 59-471.

247.09 Legal status and powers; a body corporate.—The board of private education is hereby declared to be a body corporate, public in nature, and may sue and be sued, plead and be interpleaded, in all courts of law and equity,

and may contract and be contracted with. The board shall employ an executive secretary who shall be a person well qualified to carry out the mandates of the law, and other necessary executives, clerks, employees, and servants and shall have the power to remove them at will, and shall have all of the powers of a body corporate for all of the purposes created by or which may exist under the provisions of the law or any amendments hereto.

History.—§9, ch. 59-471.

247.10 General powers of board.—In carrying out the provisions and purposes of this law, the board shall have the authority and shall exercise the following general powers:

(1) ADOPT RULES AND REGULATIONS; FORCE OF LAW.—Adopt and prescribe rules and regulations for the proper carrying out and enforcement of this law. All rules and regulations and minimum standards adopted by the board in carrying out the provisions of this law shall have the full force and effect of law if not in conflict therewith; provided, that no rules or regulations may be adopted affecting any school enumerated in §247.04 above or any private school which does not apply for a certificate hereunder.

(2) PRESCRIBE MINIMUM STANDARDS.—Adopt such minimum standards for curricula, instructional personnel and other phases of education as are considered necessary to carry out the provisions of this law.

(3) ACCEPT DONATIONS.—Accept donations, gifts, and grants of money, material, or property.

(4) ADMINISTER FUNDS.—Accept and administer funds from any person, foundation, association, or the state, or any agency thereof, in carrying out the provisions of this law and in conducting research projects, surveys, studies and experiments for the improvement of private education.

History.—§10, ch. 59-471.

247.11 Duties and responsibilities of the board.—In carrying out the purposes and objectives of this law, the board shall perform the duties prescribed below:

(1) HOLD MEETINGS.—Hold regular and special meetings for the transaction of business relating to its duties under this law; provided that the board shall hold regular quarterly meetings and may hold such other regular meetings as it may determine by resolution.

(2) KEEP RECORDS.—Require to be kept by the secretary such records as are necessary to set forth clearly all of its actions and proceedings.

(3) ADOPT SEAL.—Adopt a corporate seal.

(4) ESTABLISH MINIMUM STANDARDS.—Establish minimum standards of approval of private schools voluntarily operating under the provisions of this law which shall insure a minimum satisfactory education.

(5) ISSUE CERTIFICATES TO SCHOOLS.

(a) *Issuance mandatory if conditions precedent met.*—Issue a certificate of approval to any private school which meets the following conditions precedent:

1. Makes application therefor in writing on forms prescribed,
2. Submits satisfactory evidence that it has complied with the minimum standards of approval as set forth in this law,
3. Pays the required fee,
4. Meets such other conditions as the board may prescribe. Provided, the board shall first satisfy itself by investigation that each applicant school has complied with the minimum standards of approval before issuing the certificate of approval.

(b) *Provisional certificates.*—The board may upon good cause shown issue a provisional certificate of approval to an applicant school which does not meet the minimum standards of approval. Such provisional certificate shall be valid for one year but may be renewed by the board for an additional year. Provided, however, the board shall before issuing such a certificate satisfy itself by investigation that the applicant is making adequate effort to meet the minimum standards of approval and said provisional certificate may be revoked at any time it becomes apparent to the board that such effort to meet the minimum standards is not being continued by the applicant.

(c) *Cost of investigation.*—Each applicant school shall pay all costs actually incurred by the board in making the investigation referred to in this paragraph. Provided, however, the application fee submitted by the applicant shall be credited toward said costs and in the event the application fee exceeds the costs, the excess shall be refunded to the applicant. Provided, further, no certificate of approval shall be delivered to any school until the costs set forth herein have been paid to the board.

(d) *Renewal of certificate.*—Every approved school desiring to maintain its approved status shall submit to the board on or before May 1 of each year an application for renewal on forms to be prescribed by the board, which application shall be accompanied by a fee of $10.00. If, upon investigation, it is determined that the standards of §247.16 have been met, the board shall issue a certificate of renewal to said school.

(e) *Effective date of certificate; separate certificate for each school.*—Each original certificate shall be effective from date of issuance to July 1 of the certificate year and all renewals shall be issued for one year from July 1 to June 30 of the next succeeding year and shall be renewed annually thereafter. Each school shall have a separate certificate which shall not be transferable.

(6) ISSUE CERTIFICATES TO TEACHERS.—

(a) *Issuance mandatory if conditions precedent met.*—It shall be a duty of the board to issue a certificate of approval of the proper type, class or rank to any person who

1. Makes application therefor in writing on the form prescribed,

2. Submits satisfactory evidence that he possesses the qualifications for such a certificate as prescribed by §247.17 of this law and the rules and regulations of the board,

3. Pays the required fee,

4. Submits with the application a written statement under oath that he subscribed to and will uphold the principles incorporated in the constitution of Florida and,

5. Meets such other conditions as the board may prescribe.

(b) *Types, classes, and ranks of certificates to be issued.*—The board shall also prescribe the types, classes, and ranks of certificates to be issued to teachers, the subjects or fields of instruction which these certificates shall cover, any requirements for such certificates not covered herein, the length of time of the certificates, and the manner of the renewal or extension of such certificates. Such regulations shall specify as prerequisite for each type, class, and rank of certificate to be granted, a definite amount of college credits in prescribed professional courses and subject fields, and may specify the period of time prior to the application for the certificate within which time a specified portion of such college work shall have been completed, and may require a definite period of time during which the applicant shall have served under supervision in the private schools or public schools of this state or of other states; provided, that, without limiting the foregoing general terms, the board may, upon good cause shown, issue a temporary certificate approving a person for teaching in an approved private school who does not meet the requirements for a permanent teacher's certificate, which temporary certificate shall be for one year but may be renewed by the board for an additional year.

(c) *Effect of issuance.*—Said certificate shall certify that the standard of preparation of said teacher is of such sufficient quality that it has received the approval of the board, and that the approved status of a school will not be jeopardized by engaging the services of such person.

(7) HEAR AND DETERMINE CONTROVERSIES.—To advise and counsel with approved private schools and teachers therein concerning the interpretation and meaning of this law and the rules and regulations adopted by the board pursuant hereto; and whenever practicable to adjust amicably and settle such controversies arising hereunder as may be submitted to it.

(8) PROVIDE REGISTRATION SERVICE.—Maintain in its office a record of teachers approved by the board as an aid to teachers and private schools which record shall show the position or positions he is approved to fill and such other information as may be helpful to teachers and private schools seeking qualified teachers.

(9) MAINTAIN OFFICE.—Maintain its official office in Tallahassee.

(10) ENTER WRITTEN ORDERS.—In every case appropriate, enter a written order:

(a) Granting or refusing to grant a certificate of approval;

(b) Revoking a certificate of approval.

(11) REVOCATION OF CERTIFICATE OF APPROVAL.—The certificate of approval shall be subject to revocation if the holder thereof fails to comply with requisites for approval set out in §247.16, provided that before any certificate of approval is revoked, the holder thereof shall have received, at least thirty days prior thereto, notice from the board of its intention to revoke said certificate. Such notice shall specify the particular failure of the holder of the certificate to a sufficient degree to enable him to prepare his defense thereto. No certificate shall be revoked except upon notice and hearing. Upon receipt of notice that his certificate of approval has been revoked by the board, any holder shall promptly return same to the board.

History.—§11, ch. 59-471.

247.12 Standards to be comparable to level of public schools.—The standards of approval shall be so designed as to permit easy transfer of students at all grade levels from approved private schools to public schools without demoting the student, and so as to insure that graduates of approved private schools have attained at least the same basic level of educational attainment as graduates of public school systems and are at least as eligible, qualified, and admissible to institutions of higher learning in Florida and throughout the United States.

History.—§12, ch. 59-471.

247.13 Temporary approval standards.—Until such time as the board has prescribed and is adequately administering its standards of approval, those private schools shall be approved which are accredited by the southern association of secondary schools (as to grades ten through twelve) or by regulations of other accepted accrediting agencies (as to grades one through nine).

History.—§13, ch. 59-471.

247.14 Standards of approval to permit various pursuits.—In prescribing its standards of approval, the board shall permit approved private schools to establish, and students thereof to pursue, curricula including academic instruction, vocational instruction, and/or business instruction, as herein defined. Procedures shall be established to advise parents and guardians of students attending approved private schools of the curriculum being pursued by such students.

History.—§14, ch. 59-471.

247.15 Attendance; records and reports.—(1) REGULAR ATTENDANCE.—Regular attendance at an approved private school shall be considered regular attendance at a school as required by the Florida compulsory school law as set out in §232.01; provided, however, all rules and regulations necessary to implement compulsory attendance at an approved private

school shall be promulgated exclusively by the board.

(2) RECORDS AND REPORTS.—Headmasters, principals, executive officers, and teachers in charge of each approved private school shall keep a register of enrollment and attendance and make such reports therefrom as may be required under regulations of the board, which said register shall show the attendance or absence of each enrolled child for each school day of the year and shall be open for inspection by the board.

History.—§15, ch. 59-471.

247.16 Requisites for approval.—No school shall be approved or be permitted to continue its approved status which does not meet the following minimum requirements, and such other requirements as the board shall, from time to time, promulgate:

(1) REQUIRED MINIMUM TERM.—No school shall be approved or permitted to continue its approved status which does not provide a program of instruction for a term of at least nine months (180 actual teaching days) each calendar year.

(2) REQUIRED SUBJECTS TO BE TAUGHT.—No school shall be approved or permitted to continue its approved status which does not include in its curricula of instruction: English, sciences, history, reading, writing, arithmetic, civics, humanities and related subjects and such other subjects as the board may prescribe.

(3) REQUIRED DUTIES OF TEACHERS.—No school shall be approved, or permitted to continue its approved status, unless each and every teacher thereof shall:

(a) *Bible reading.*—Have the opportunity once every day of reading from the Holy Bible in the presence of the pupils; and

(b) *Example for pupils.*—Labor faithfully and earnestly for the advancement of the pupils under his direction in their studies, deportment, and morals, and embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty, and patriotism, and the practice of every moral virtue; and

(c) *Objective for pupils.*—Require the pupils to observe personal cleanliness, neatness, order, promptness, and gentility of manners, avoid vulgarity and profanity and cultivate in them habits of industry and economy, a regard for the rights and feelings of others and their own responsibilities and duties as citizens; and

(d) *Other duties.*—Perform such other duties as the board shall prescribe.

(4) REQUIRED QUALIFICATIONS OF TEACHERS; CERTIFICATES OF APPROVAL.—On and after January 1, 1960, no school shall be approved or allowed to retain its approved status if such school shall employ any person as a teacher who is not eligible to hold a certificate of approval issued by the board pursuant to this law. To be eligible for a certificate of approval, the applicant must meet the following requirements:

(a) *Citizens of United States; exception.*—Be a citizen of the United States; provided, that the board shall have authority to prescribe regulations under which a certificate may be issued to a person who is not a citizen of the United States and who is not antagonistic to democratic forms of government and who may be needed to teach in the private schools, or who may be assigned to teach in the state on an exchange basis.

(b) *Meet academic professional requirements.*—Meet such academic and professional requirements as to prior education and experience as the board may prescribe.

(c) *Be free of named diseases.*—Be free from malignant, communicable, or mental diseases.

(d) *Pass physical examination.*—Pass such physical examination as may be prescribed jointly by regulations of the board and the state board of health.

(e) *Moral character.*—Be of good moral character.

(f) *Age.*—Be at least twenty years of age.

(g) *Other requirements.*—Meet such other requirements as may be prescribed by the board.

(5) HEALTH, SAFETY AND SANITARY REQUIREMENTS.—No school shall be approved or permitted to continue its approved status unless it shall conform to the general laws of Florida, concerning health, safety and sanitary requirements and such other reasonable regulations in these areas as the board may from time to time promulgate.

(6) LOSS OF APPROVAL.—Failure of any school or any person employed therein to comply with provisions set out above shall be grounds for loss or denial of the approved status of said school.

History.—§16, ch. 59-471.

247.17 Revocation of teacher's certificate of approval.—The board shall have authority to revoke the certificate of any person holding a teacher's certificate of approval issued by the board for the grounds listed herein, and for any other grounds prescribed by the board:

(1) GROUNDS FOR REVOCATION.—

(a) *Obtained by fraud.*—The certificate was obtained by fraud or mistake.

(b) *Incompetent.*—The holder is incompetent as a teacher, and therefore fails to furnish the students with a minimum satisfactory education.

(c) *Gross immorality.*—The holder is guilty of gross immorality, and thus would possibly have an undesirable influence on students.

(d) *Convicted of certain crimes.*—Has been convicted of a crime involving moral turpitude by a court of competent jurisdiction.

(2) PROCEDURE FOR REVOCATION OF TEACHER'S CERTIFICATE.—Before the board may revoke a teacher's certificate, it shall notify the teacher by registered mail of the charges against him and the teacher shall have thirty days within which to file an answer to such charges. The board shall fix a time for hearing at its office in Tallahassee, on the charges and give the accused not less than

fifteen days notice of the hearing. Such person may appear at the hearing in person and/or by counsel and defend against such charges.

(3) EFFECT OF REVOCATION OF TEACHER'S CERTIFICATE.—The revocation by the board of the certificate of any teacher may cause the revocation of the certificate of approval of any approved private school thereafter employing such person in a teaching capacity.

History.—§17, ch. 59-471.

247.18 Fees to be paid by applicants for teacher's certificates.—Each applicant for a certificate of approval for teaching in an approved private school of this state shall pay a fee of $10.00 and each applicant for renewal of such certificate shall pay a fee of $5.00, and each applicant for an extension thereof shall pay a fee of $3.00. The fee shall be retained whether the certificate, renewal, or extension is granted or not; provided, that incomplete applications, including fees and overpayments, may be returned. An applicant for a duplicate certificate shall pay a fee of $3.00 and shall present evidence establishing his identity as the holder of the original certificate.

History.—§18, ch. 59-471.

247.19 Disposition of fees.—All money collected by the board under this law shall be remitted by the board to the state treasurer to be deposited in a special account to be known as the "private education trust fund," to be disbursed as provided by law.

History.—§19, ch. 59-471; §2, ch. 61-119.

247.20 Procedure for review from orders of board.—Any person, firm or corporation aggrieved by any order of the board entered pursuant to this law may have the order reviewed by the circuit court upon filing a petition for certiorari in the manner and within the time provided by the Florida appellate rules.

History.—§20, ch. 59-471; §9, ch. 63-512.

TITLE XVI

MILITARY CODE AND RELATED MATTERS

CHAPTER 250

MILITARY CODE

250.01 Definitions.—

(1) For the purpose of this chapter the words "national defense act" shall be taken to mean an act of the congress entitled "An act for making further and more effectual provisions for the national defense, and for other purposes," approved by the president June 3, 1916, and any and all acts that have been enacted or may hereafter be enacted by the congress amendatory thereof and supplementary thereto.

(2) The designations of all military units shall be the same as similar units are designated in the tables of organization of federal military establishments.

History.—§3, ch. 8502, 1921; CGL 2014; §1, ch. 25112, 1949.
Note.—Formerly §250.03.

250.02 Militia.—

(1) The militia shall consist of all able-bodied male citizens of this state, and all other able-bodied males who shall have declared their intention to become citizens, who shall be more than eighteen years of age and residents of this state, and except as hereinafter provided, not more than forty-five years of age.

(2) The organized militia shall be composed of the national guard and such other organized military forces as are now or may be authorized by law.

(3) The unorganized militia shall be composed of all male persons subject to military duty but who are not members of units of the organized militia.

(4) Only persons exempt from military duty by the terms of the national defense act shall be exempt from military duty in this state.

History.—§4, ch. 8502 1921; CGL 2015; §1, ch. 25112, 1949.
Note.—Formerly §250.04.

250.03 National defense act.—All provisions of the national defense act and all laws amendatory thereof and supplemental thereto insofar as they relate to the Florida national guard, and are not inconsistent with the state constitution, are declared to be a part of the military laws of the state and the governor of Florida, as commander in chief, may do and perform all acts and make and publish such rules and regulations to raise and keep the Florida national guard in every respect up to the standard required by the laws of the United States and the rules and regulations of the secretary of defense governing the national guard, now existing or which may hereafter be enacted or promulgated for the national guard.

History.—§16, ch. 8502, 1921; CGL 2028; §1, ch. 25112, 1949.
Note.—Formerly §250.18.

250.031 Military reserve liaison office; officer.—

(1) There is hereby created and established a military reserve liaison office in the state of Florida, which office shall be operated by a member of the armed forces reserve who shall be appointed by the governor for a term of four years and to serve in said capacity without pay.

(2) The person appointed shall be selected from the armed forces reserve and shall have the rank of brigadier general, or its equivalent. It shall be his duty to act as liaison officer between the governor of this state and the armed forces reserve of all military branches of government. The first appointment under this section shall expire on the first Monday after the first Tuesday in January, 1961, and all subsequent appointments shall be for terms of four years.

History.—§§1, 2, ch. 57-312.

250.04 Naval militia; marine corps.—The governor is authorized in his discretion to organize a naval militia and a marine corps in accordance with the laws now existing or which may hereafter be enacted by the congress governing the naval militia or marine corps of the United States, and regulations issued by the secretary of the navy for the government of the United States navy, naval militia and marine corps.

History.—§17, ch. 8502, 1921; CGL 2029; §1, ch. 25112, 1949.
Note.—Formerly §250.19.

250.05 Military department.—

(1) There is hereby created an agency of the state government to be known as the military department of the state, which shall be composed of the military forces as provided in the laws of this state.

(2) The general current expenses of the military department not otherwise specially appropriated and provided for shall be paid from the fund for current expenses of the military department, by whatever name or title such fund shall be known and designated, upon requisition of the adjutant general, and no payment shall be made from such fund except upon such requisition so presented and signed by the adjutant general.

History.—§§5, 40, ch. 8502, 1921; CGL 2016, 2052; §1, ch. 25112, 1949; (2) §1, ch. 57-82.
Note.—(2) formerly §250.46.

250.06 Commander in chief.—

(1) The governor of Florida, or other person lawfully administering the government of the state, shall be the commander in chief of all the militia of the state, but he shall not command personally in the field unless advised to do so by a resolution of the legislature.

(2) The governor of Florida, as commander in chief, may alter, increase, divide, annex, consolidate, disband, organize or reorganize an organization, department, corps or staff, so as to conform as far as practicable to any organization, system, drill, instruction, corps or staff, uniform or equipment, or period of enlistment, now or hereafter prescribed by the laws of the United States, and the rules and regulations promulgated thereunder by the department of defense, for the organization, armament, training and discipline of the organized militia.

(3) The governor, as commander in chief, shall have the power, in case of war, invasion or insurrection, disaster, riot or imminent danger thereof, or the calling of all or any portion of the militia of Florida into the services of the United States, to increase the organized militia of this state, and organize the same in accordance with the existing rules and regulations governing the armed forces of the United States, or in accordance with such other system as the governor may consider the exigency to require; and such organization and increase may be either pursuant to or in advance of any call made by the president. The governor shall have the power, in case of war, insurrection, invasion, disaster, tumult or breach of peace, or imminent danger thereof, to order into active service of the state all or any part of the militia that he may deem proper. During the absence of any organization in the service of the United States, its state designation shall not be given to any new organization.

(4) The governor may authorize all or any part of the organized militia to participate in

any parade, review or other public exercise, or to serve for escort duty, and such expenses incidental thereto as he may authorize may be paid as hereinafter provided for active service.

History.—§§7, 8, ch. 8502, 1921; CGL 2018, 2019; §1, ch. 25112, 1949.
Note.—Formerly §§250.07 and 250.08.

250.07 Composition of Florida national guard; organization of departments for army and air.—The Florida national guard shall consist of members of the militia enlisted therein and of commissioned officers and warrant officers who are citizens of the United States, organized, armed, equipped, and federally recognized, in accordance with the laws of the state and the laws and regulations of the department of the army and the department of the air force. The state headquarters of the Florida national guard shall be organized so as to establish a department for army and a department for air. The state headquarters will be under the administration of the state adjutant general, who shall hold the rank of major general or such higher rank as may be authorized by applicable tables of organization of the department of the army. There shall be an assistant adjutant general for army who shall hold rank, not higher than brigadier general, and who shall assist and advise the adjutant general in the supervision and operation of the Florida army national guard, and an assistant adjutant general for air who shall hold rank, not higher than brigadier general, and who shall assist and advise the adjutant general in the supervision and operation of the Florida air national guard. Each of the three aforementioned officers shall be a federally recognized officer of the Florida national guard, who shall have served therein as such for at least five years and has attained the rank of major or higher.

History —§6, ch. 8502, 1921; §1, ch. 10185, 1925; §1, ch. 12089, 1927; CGL 2017; §1, ch. 25112, 1949; §1, ch. 59-67.
Note.—Formerly §250.06.

250.08 Florida national guard organized.—The governor of Florida may perform any and all acts, and make and publish all such rules and regulations, as he may deem necessary to effect the organization or reorganization of the Florida national guard, in conformity to the terms of the national defense act, and the rules, regulations, and proclamations promulgated by the president or the department of defense, relating to the national guard of this or the several states.

History.—§1, ch. 8502, 1921; CGL 2012; §1, ch. 25112, 1949.
Note.—Formerly §250.01.

250.09 Appropriations, property and equipment.—The governor of Florida may take all necessary steps to obtain all appropriations, property and equipment, now or hereafter provided by the United States or authorized by law for the use, aid, equipment, benefit, or instruction of the national guard.

History.—§2, ch. 8502, 1921; CGL 2013; §1, ch. 25112, 1949.
Note.—Formerly §250.02.

250.10 Appointment and duties of the adjutant general.—

(1) In case of a vacancy, the governor shall, with the advice and consent of the senate, appoint a federally recognized officer of the Florida national guard who shall have served therein as such for at least five years and has attained the rank of major or higher, to be the adjutant general of the state with the rank of not less than brigadier general or such higher rank as may be authorized by applicable tables of organization of the department of the army. The adjutant general and all other officers of the Florida national guard on permanent duty with the military department and who are paid from state funds shall receive the pay and allowances of their respective grade as prescribed by applicable pay tables of the national military establishment for similar grade and period of service of personnel, unless a different rate of pay and allowances be specified in the appropriation bill, in which event such pay shall be the amount therein specified. An officer, with his consent, may be ordered to active state service for administrative duty with the military department at a grade lower than he currently holds. The adjutant general of the state shall be the chief of the military department. He shall:

(a) supervise the receipt, preservation, repair, distribution, issue and collection of all arms and military stores of the state;

(b) supervise all troops, arms and branches of the militia, such supervisory powers covering primarily all duties pertaining to their organization, armament, discipline, training, recruiting, inspection, instruction, pay, subsistence, and supplies;

(c) maintain records of all officers and men of the organized militia, and keep on file in his office, copies of all orders, reports, and communications received and issued by him;

(d) cause the law and orders relating to the militia of Florida to be indexed, printed and bound, and prepare and publish blank books, forms and stationery when necessary, and furnish them at the expense of the state;

(e) prepare and publish, by order of the governor, such orders, rules and regulations, consistent with law, as are necessary to bring the organization, armament, equipment, training and discipline of the Florida national guard to a state of efficiency as nearly as possible to that of the regular United States army and air force, and he shall attest all orders of the commander in chief relating to the militia;

(f) prepare such reports and returns as the secretary of defense may prescribe and require;

(g) perform such other duties as may be required of him by the commander in chief;

(h) the adjutant general may employ such clerical help as is necessary for the proper conduct of the military department, and he is authorized to accept such clerical, technical or other assistants as may be provided by the federal government;

(i) he shall establish and maintain as part of his office a bureau of records of the services of Florida troops, including Florida officers and enlisted men, during all wars, and shall be the custodian of all records, relics, trophies, colors and histories relating to such wars, now in possession of or which may be acquired by the state.

(j) the adjutant general shall have a seal of office, to be approved by the commander in chief, and all copies or papers in his office, duly certified and authenticated under the said seal, shall be in evidence in all cases in like manner as if the original were produced;

(k) the adjutant general shall, not less than ten days before each session of the legislature, report to the governor the number and condition of the organized militia, and the number and condition of the arms and accoutrements in the custody of the state, and shall transmit to the governor at said time a detailed report of all funds and moneys received and disbursed by the military department. He shall also make such recommendations as to needed legislation as he may deem proper.

(2) There shall be furnished suitable buildings for conducting the business of the military department and for the proper storage, repair and issuance of military property.

(3) The adjutant general shall employ a federally recognized officer of the Florida national guard who shall have served therein as such for at least five years and have obtained the rank of major or higher, to be the assistant adjutant general who shall perform such duties as the adjutant general may require, and who shall in the absence of the adjutant general be the acting adjutant general and perform the duties required of the adjutant general.

(4) The adjutant general shall employ a federally recognized officer of the Florida national guard as the state quartermaster who under the direction of the adjutant general shall be accountable for all funds accruing to the military department, receive, preserve, repair, issue, distribute and account for all state military department property to include real estate pertaining to the armory board, state; construct, maintain, improve and repair facilities pertaining to the military department and the armory board; he will be the recorder of the armory board, and will perform such other duties as may be required of him by the adjutant general; he shall give a surety bond in a surety company approved by the adjutant general in such amount as the adjutant general may determine.

History.—§ § 10, 10½, 12, 13, ch. 8502, 1921; §2, ch. 10185, 1925; CGL 2021, 2022, 2024, 2025; §4, ch. 20849, 1941; §1, ch. 25112, 1949.
Note.—Formerly §§250.10, 250.11, 250.12, 250.14 and 250.15.

250.11 Audit of books, accounts and vouchers.—The books, accounts and vouchers of the adjutant general and all other officers of the Florida national guard handling state or government property shall be audited upon the direction of the governor, in the same manner as the accounts of other state officers are audited.

History.—§14, ch. 8502, 1921; CGL 2026; §1, ch. 25112, 1949.
Note.—Formerly §250.16.

250.12 Appointment of commissioned and warrant officers.—The appointment of commissioned officers and warrant officers shall conform in number, rank and designation, and shall be based upon and made in conformity with tables of organization for the national guard as prescribed in national guard regulations published by the national guard bureau. The appointees shall hold their appointments subject to continuance of federal recognition, or attainment of age sixty-four years, unless relieved by reason of resignation, disability, or for a cause to be determined by a court-martial or efficiency board, legally convened for that purpose. Vacancies shall, when practicable, be filled by appointment from personnel of the national guard of this state.

History.—§11, ch. 8502, 1921; §1, ch. 14761, 1931; §7, ch. 20849, 1941; CGL 2023; §1, ch. 25112, 1949.
Note.—Formerly §250.13.

250.13 General officers.—All general officers of the Florida national guard shall be appointed by the governor, with the advice and consent of the senate.

History.—§18, ch. 8503, 1921; CGL 2030; §1, ch. 25112, 1949.
Note.—Formerly §250.20.

250.14 Unit of national guard may incorporate.—

(1) When any unit of the national guard has been organized under this chapter, it may become a body corporate, with power to sue and be sued in its corporate name; to acquire, own and hold property, real and personal and mixed, and to dispose of the same by virtue of certificate of incorporation, which shall be issued by the secretary of state upon application of those who by the terms of this chapter will constitute the board of directors of the unit so to be incorporated. The three senior commissioned and/or warrant officers of any such unit of the Florida national guard, and the three senior non-commissioned officers of such unit, shall constitute the board of directors of the said corporation.

(2) Any company, battery, or similar type unit of the Florida national guard may adopt such bylaws for its government and discipline, not inconsistent with this chapter and the regulations prescribed by the adjutant general, as a majority of the members of such organization may deem proper, and such by-laws, when approved by the adjutant general, shall have the force and effect of regulations.

History.—§ § 21, 22, ch. 8502, 1921; §3, ch. 9337, 1923; CGL 2033, 2034; §1, ch. 25112, 1949.
Note.—Formerly §§250.23 and 250.24.

250.15 Honorary members.—Not more than ten honorary contributing members may be enrolled in each company, battery, or similar type unit of the Florida national guard, each of whom shall upon payment to such organization annually on or before the fifteenth day of December, of not less than twenty-five dollars, become exempt from jury duty for the next following calendar year. The commanding officer of each such unit shall certify a roll of all honorary members of his command to the clerk of the circuit court of his county on or before the 31st day of December of each year. Such certificate shall be transmitted by the clerk of the circuit court to the county commissioners, or to the jury commissioners of the county, as the case may be, and no further affidavit or claim of exemption shall be required of such honorary members.

History.—§23, ch. 8502, 1921; CGL 2035; §1, ch. 25112, 1949.
Note.—Formerly §250.25.

250.16 Authority to incur charge against state.—No officer of the militia or national guard shall make any purchases or enter into any contract or agreement for purchases or services as a charge against the state without the authority of the adjutant general.

History.—§29, ch. 8502, 1921; §3, ch. 10185, 1925; CGL 2041; §1, ch. 25112, 1949.
Note.—Formerly §250.32.

250.17 Biennial appropriations.—The legislature shall appropriate at each of its biennial sessions a sufficient sum of money, based upon estimates and recommendations made by the adjutant general and approved by the governor and covering the last six months of the calendar year in which the appropriation is made, the calendar year following, and the first six months of the next succeeding calendar year; for the purpose of paying the expenses incident to carrying out the provisions authorized by this chapter. The disbursement of all funds, so appropriated, shall be with the approval of the governor. In order to facilitate the execution of the purposes of this chapter and the necessary movement of troops and property, the adjutant general shall have the authority to use a cash fund not to exceed four thousand dollars to be advanced to the state quartermaster under the authority of the governor, to maintain and use as a revolving fund, out of which expense, authorized by this chapter, may be paid, said revolving fund to be advanced out of any appropriation made by this chapter, and to be reimbursed from time to time out of the fund against which the expenditure is properly chargeable, upon presentation to the comptroller of accounts, receipts, and vouchers approved by the governor, showing the legal expenditure of the amount sought to be reimbursed.

History.—§65, ch. 8502, 1921; CGL 2074; §1, ch. 25112, 1949.
Note.—Formerly §250.72.

250.18 Commissioned officers and warrant officers, clothing and uniform allowance.—

(1) Acceptance of appointment as a commissioned or warrant officer in the national guard of Florida shall involve an obligation upon the part of the appointee to immediately supply himself with such arms, uniform and articles of personal military equipment as are prescribed under department of the army and department of the air force regulations for commissioned or warrant officers of the national guard or officers of the army or air force of the United States, of like grade and office.

(2) There shall be paid to each federally recognized commissioned and warrant officer in the Florida national guard, upon his requisition, approved by the adjutant general, the sum of seventy-five dollars as a uniform allowance for the first year of service, and annually thereafter an allowance of twenty-five dollars.

History.—§41, ch. 8502, 1921; §6, ch. 9337, 1923; §4(e), ch. 12089, 1927; CGL 2053(e); §4, ch. 14761, 1931; CGL 1936 supp. 2039(1); §1, ch. 25112, 1949.
Note.—(2) formerly §250.30.

250.19 Expenses for travel on military business.—Any officer or enlisted man of the Florida national guard, traveling on military business not with troops, in obedience to the orders of the governor, shall be reimbursed for expenses incurred in the performance of such duties as prescribed by law for state officers and employees.

History.—§28, ch. 8502, 1921; CGL 2040; §1, ch. 25112, 1949.
Note.—Formerly §250.31.

250.20 Maintenance allowances.—

(1) There shall be paid quarterly to the post commander of each national guard armory, upon their requisition, approved by the adjutant general, sums of money for the operation, maintenance and repair of the armory facilities, and for necessary expenses of the units located thereat as follows:

(a) A basic allowance of ninety-five dollars per month;

(b) In addition to the basic allowance, there shall be paid the sum of one dollar per month for each active national guardsman stationed at the armory in excess of the strength of one hundred persons, the computation throughout the fiscal year to be based on the strength returns as of May 31, of the preceding fiscal year.

(2) There shall be paid quarterly to each of the hereinafter named commanders, upon their requisition, approved by the adjutant general, sums for the necessary expenses of their headquarters as follows:

(a) Commander of each national guard division in Florida one hundred dollars per month.

(b) Commander of headquarters nondivisional troops fifty dollars per month.

(3) Payment of all allowances authorized under this section shall be subject to such rules and regulations as may be prescribed by the adjutant general and all monies so paid shall be treated as public moneys and accounted for as prescribed by regulations.

(4) In the event an insufficient appropriation be made to the military department to pay the allowances hereinabove set forth in subsections (1) and (2), or if for other sufficient reason said amounts are not required, then the amount to be paid shall be reduced as may be administratively determined by the adjutant general.

History.—§41, ch. 8502, 1921; §6, ch. 9337, 1923; §4, ch. 12089, 1927; CGL 2053; §1, ch. 13639, 1929; CGL 1936 Supp. 2053; §1, ch. 25112, 1949; §1, ch. 59-271.
Note.—Formerly §250.47.

250.21 Retired list of the Florida national guard.—

(1) When any commissioned officer, warrant officer or enlisted man has served twenty years in the active elements of the Florida national guard, he may, upon his own application, be placed upon the retired list.

(2) A place on the retired list being a distinction only given in recognition of long and meritorious service, no officer or enlisted man will ever be retired whose service has not been honest and faithful; nor will any officer or enlisted man be retired as a means of punishment.

(3) Individuals making application for re-

tirement may be retired with rank next above that held by him at the time of making such application or with highest rank attained while serving in the Florida national guard or the federal forces.

(4) The names of officers and enlisted men on the retired list shall be kept on a separate roster under the supervision of the adjutant general. They shall report to the adjutant general once a year by letter, during the month of December, and failing to do so, their names may be dropped from the rolls of the retired list of the Florida national guard. They shall also report to the adjutant general any change in their place of residence and address.

(5) Individuals now carried on the retired list roster of the state adjutant general are hereby placed on the retired list of the Florida national guard.

History.—§44½, ch. 8502, 1921; § § 7, 8, ch. 12089, 1927; CGL 2056; §2, ch. 13639, 1929; §1, ch. 25112, 1949.
Note.—(1)-(4) formerly §250.50.

250.22 Retirement.—

(1) Any person who shall have reached the age of sixty-four years, and shall have completed not less than thirty years of service as an officer or enlisted man in the organized militia of Florida (exclusive of time served on the inactive or retired lists) on, before or subsequent to the passage of this section shall be eligible upon his own application, whether on the active or retired list of said organized militia, to be retired under the provisions of this section with the rank or rating held by him at the time of such retirement, and shall receive pay in an amount equal to one-half of the base pay as is now or hereafter may be prescribed in the applicable pay tables for similar grades and periods of service of personnel in the United States army or air force; provided that in computing service in the organized militia of Florida, service in federal military forces during a period of war or upon order of the president of the United States, in any military duty, where the applicant has been inducted from the organized militia of Florida shall be included; and provided further that in computing such service performed after July 1, 1955, only federally recognized service shall be included. Eligibility for retirement under this section shall be in addition to any other retirement that such person is eligible to receive except that any person who elects to retire and is retired under the provisions of this section and who is eligible to receive retirement pay from the state under any other provision of law may not include, in determining eligibility and benefits for such other retirement, service performed or contribution made while employed by the military department of the state; provided, however, that retirement pay under this section shall be reduced by any amount of retirement pay, pension or compensation which such person is eligible to receive from the federal government for military service.

(2) Any person who shall have reached the age of sixty years (but less than sixty-four) and is otherwise qualified to receive the retirement pay provided in subsection (1) above may elect to retire and thereafter receive a reduced benefit which would be the actuarial equivalent of his benefit under subsection (1).

(3) Sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the state treasury not otherwise appropriated and payments under this section will be made to those eligible to receive the same on the first day of each calendar month from the general revenue fund by the state comptroller upon prescribed pay vouchers certified to by the adjutant general of the state.

(4) In computing time of service of an officer or enlisted man in the organized militia of the state for purposes of retirement under this section, service in federal military forces during the period from the 27th day of August, 1940, to the 31st day of December, 1946, both dates inclusive, when inducted into such federal service from the organized militia of Florida, shall be included at double the time of actual service.

History.—§§1, 2, ch. 20848, 1941; §1, ch. 23018, 1945; §1, ch. 25112, 1949; §§1, 2 ch. 29725, 1955.
Note.—(1), (2) formerly §§250.76 and 250.78.

250.23 Pay for active service in state.—Officers and enlisted men, when ordered to active service by the state, as now defined by law, shall receive the pay and allowance as prescribed in the applicable pay tables for similar grades and periods of service of personnel in the United States army or air force. Enlisted men shall be provided subsistence in kind, or commutation therefor in such amount as may be prescribed by the adjutant general.

History.—§30, ch. 8502, 1921; §4, ch. 9337, 1923; §3, ch. 12089, 1927; CGL 2042(a); §2, ch. 14761, 1931; CGL 1936 Supp. 2042(1); §1, ch. 22038, 1943; §1, ch. 25112, 1949.
Note.—Formerly §250.33.

250.24 Pay and expenses; appropriation and rate.—The pay and expenses of troops called out in active service shall be paid from any appropriation for preserving the public peace, or from the pay and expenses of troops called out in aid of civil authorities. Payments shall be made upon prescribed forms of pay rolls and vouchers, accompanied by copies or the order under which troops were acting, certified by the adjutant general and approved by the governor. The rate of pay per day shall be reckoned upon the basis of each twenty-four hours of continuous service, from time of the assembly of the troops at their home stations; provided, however, that when less than twenty-four hours of continuous service is performed payment shall be made for one day.

History.—§30, ch. 8502, 1921; §4, ch. 9337, 1923; §3(b), ch. 12089, 1927; CGL 2042; §1, ch. 25112, 1949.
cf.—§250.25 Governor and comptroller authorized to borrow.
§250.26 Transfer of funds.
Note.—Formerly §250.34.

250.25 Governor and comptroller authorized to borrow money.—When there is no state appropriation available for the pay and expenses of troops called out in active service to preserve

the peace or in aid of civil authorities, and funds are not immediately available for this purpose, the governor and comptroller may borrow money to make such payments, in such sum or sums as may from time to time be required, and any such loans, so obtained, shall be promptly repaid out of the first funds that become available for such use.

History.—§30, ch. 8502, 1921; §4, ch. 9337, 1923; §3(c), ch. 12089, 1927; CGL 2042; §1, ch. 25112, 1949.
Note.—Formerly §250.35.

250.26 Transfer of funds.—Where the available funds are not sufficient for the purposes specified in §§250.23, 250.24, and 250.34, the governor and comptroller may transfer from any available fund in the state treasury, such sum as may be necessary to meet such emergency, and the said moneys, so transferred, shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

History.—§30, ch. 8502, 1921; §4, ch. 9337, 1923; §3(d), ch. 12089, 1927; CGL 2042; §1, ch. 25112, 1949.
Note.—Formerly §250.36.

250.27 Active service defined; orders to specify allowance of pay, travel, or expenses.—The troops ordered into the service of the state for the enforcement of the law, the preservation of the peace, or for the security of the rights or lives of citizens, protection of property, or ceremonies shall be deemed to be in active service. Officers and enlisted men employed under orders of the governor in recruiting, making tours of instruction, inspection of troops, armories, storehouses, camp sites, rifle ranges, and military property, sitting on general or special courts-martial, boards of examination, courts of inquiry or boards of officers or making and assisting in the physical examinations, shall be deemed to be in active service when it is so specified in orders. Orders shall specify in every case if pay and travel or expenses are allowed.

History.—§31, ch. 8502, 1921; CGL 2043; §1, ch. 25112, 1949.
Note.—Formerly §250.37.

250.28 Order for troops to aid civil authorities.—When an invasion or insurrection in the state is made or threatened, or whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the state, or there is imminent danger thereof, and the civil authorities are unable to suppress the same, the governor, or in case he cannot be reached and the emergency will not permit of awaiting his orders, the adjutant general, shall issue an order to the officer in command of the body of troops best suited for the duty for which a military force is required, directing him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same.

History.—§32, ch. 8502, 1921; §5, ch. 9337, 1923; CGL 2044; §1, ch. 25112, 1949.
Note.—Formerly §250.38.

250.29 Duty of officer receiving order to aid civil authority; penalty for failure to comply.—Any officer receiving such orders shall immediately notify the officers and enlisted men under his command, and as soon as his troops can be assembled, proceed to the place where such mob or body of riotous persons assembled to break the law may be, and he or the sheriff of the county or other peace officer accompanying him, shall warn all such persons to desist and disperse, and use such force as may be necessary to restore peace and overcome resistance. Any officer failing to comply with the provisions of this section and any officer or enlisted man so notified by his commanding officer, who shall fail to obey such order, unless prevented by physical disability, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding six months, either or both, at the discretion of the court, and may also be dismissed or dishonorably discharged by sentence of court-martial.

History.—§33, ch. 8502, 1921; CGL 2045, 8124; §1, ch. 25112, 1949.
Note.—Formerly §250.39.

250.30 Orders of civil authorities; tactical direction of troops; efforts to disperse before attack.—When an armed force is called out in aid of the civil authorities, the orders of the civil officer or officers may extend to a direction of the general or specific objects to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the objects specified by the civil officers, are left solely to the officers of the active militia. Every endeavor consistent with the preservation of life and property must be made, both by the civil officers and officers commanding the troops, to induce rioters or persons lawlessly assembled to disperse before an attack is made upon them by which their lives may be endangered.

History.—§34, ch. 8502, 1921; CGL 2046; §1, ch. 25112, 1949.
Note.—Formerly §250.40.

250.31 Liability of members of militia.—Members of the militia ordered into the active service of the state by any proper authority shall not be liable, civilly or criminally, for any lawful act or acts done by them in the performance of their duty.

History.—§35, ch. 8502, 1921; CGL 2047; §1, ch. 25112, 1949.
Note.—Formerly §250.41.

250.32 Commanding officer's control of arms sales.—When any part of the militia of Florida is in active service by the order of the governor to aid in the enforcement of the laws, the commanding officer of such troops may order the closing of any places where arms, ammunition, dynamite, explosives, or intoxicating liquors, are sold, and forbid the selling, bartering, lending or giving away of any of said commodities in the city, town or village where the troops are on duty, or in the vicinity of such place, for so long as any of the troops remain on duty in said vicinity. Such orders shall take effect whether any civil officer has issued a similar order; and

the commanding officer of such troops may continue said prohibition in force until the departure of the troops, although the sheriff, mayor or intendant of the county, city, town or village may have prescribed an earlier or different date after which such selling, bartering, lending or giving away shall be carried on.

History.—§36, ch. 8052, 1921; CGL 2048; §1, ch. 25112, 1949.
Note.—Formerly §250.42.

250.33 Powers of commanding officer in active service.—The commanding officer of troops in camp, garrison, or other active service may incarcerate and detain until such person can be turned over to the civil authorities, any person guilty of drunkenness, breach of the peace or disorderly conduct, within one mile of such camp, garrison, or station. Such commanding officer may also abate any menace to the health or safety of his command, camp, garrison or station.

History.—§38, ch. 8502, 1921; CGL 2050; §1, ch. 25112, 1949.
Note.—Formerly §250.44.

250.34 Injured in active service.—Every member of the militia who shall be injured or disabled while in the active military service of the state under competent orders, or while engaged in actual attendance at armory drill in line of duty, shall be furnished medical attention and necessary hospitalization at the expense of the state, and shall be continued in a pay status in the active service of the state until such time as a board of inquiry, appointed by the adjutant general, may determine that the disability no longer justified such pay, hospitalization or medical attention; provided that in no instance will such pay, hospitalization or medical attention be provided for a period extending more than one year from the date that such injury or disability was incurred; and provided further, that such injury or disability was incurred in line of duty and not due to the misconduct of such individual so injured or disabled, as determined by a line of duty board appointed by the adjutant general.

History.—§39, ch. 8502, 1921; §3, ch. 14761, 1931; CGL 1936 Supp. 2051, 2053(1); §8, ch. 20849, 1941; §1, ch. 25112, 1949.
cf.—§250.26 Transfer of funds.
Note.—Formerly §250.45.

250.35 Courts-martial. — Courts-martial in the state shall be of three kinds, namely: general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws of the United States for the national guard. The proceedings of courts-martial shall be assimilated to the forms and modes of procedure prescribed for like courts organized under the articles of war and the federal rules and regulations for the government of the national guard.

(1) General courts-martial in the Florida national guard may be convened by order of the governor, and such courts, shall have the power to impose fines not exceeding two hundred dollars; to sentence to confinement, provided that such sentence of confinement shall not exceed one day for each dollar of fine authorized; to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to a reduction of noncommissioned officers to the ranks; provided, however, that any two or more of such punishments may be combined in the sentence herein authorized to be imposed by such courts.

(2) When not in the active service of the United States, the commanding officer of each garrison, fort, post, camp or other place; division, brigade, group, regiment or separate battalion may appoint special courts-martial for his command; but such special courts-martial may in any case, be appointed by superior authority when by the latter deemed advisable. Special courts-martial may try any person subject to military law, for any crime or offense made punishable by the military laws of the United States or of the state; and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such special courts-martial shall not exceed one hundred dollars.

(3) When not in active service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, group, separate battalion, company or similar type unit, may appoint for such place or command a summary court to consist of one officer who may administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of the laws governing such organizations; and said court when satisfied of the guilt of such soldier or soldiers may impose a fine not to exceed twenty-five dollars for any single offense; to sentence to confinement, provided that such sentence to confinement shall not exceed one day for each dollar of fine authorized to be imposed; or may sentence to forfeiture of pay and allowance. The proceedings of such summary court shall be informal; the minutes thereof shall be made and preserved, and in all respects shall be as far as practicable, identical with proceedings of similar courts of the army of the United States.

(4) When the Florida national guard is not in the service of the United States, sentence of dismissal from the service or dishonorable discharge from same, imposed by court-martial, shall not be executed until approved by the governor.

History.—§ § 44-47, 49, ch. 8502, 1921; §7, ch. 9337, 1923;§ § 5, 6, ch. 10185, 1925; CGL 2057-2060, 2062; §1, ch. 25112, 1949.
Note.—Formerly §§250.51, 250.52, 250.53, 250.54 and 250.56.

250.36 Mandates and process.—

(1) Military courts may issue all process and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such mandates and process may be directed to the sheriff of any county, and shall be in such form as may, from time to time, be prescribed and published by the adjutant general in the rules and regulations issued by him under this chapter. All officers to whom such mandates and process

are directed shall execute the same and make returns of their acts thereunder, according to the requirements of the form of process. Any sheriff or other officer who shall neglect or refuse to perform the duty enjoined upon him by this chapter shall be subject to the same liabilities, penalties and punishments as are prescribed by the law for neglect or refusal to perform any other duty of his office.

(2) When not in the active service of the United States, presidents of courts-martial and summary court officers of the Florida national guard may issue warrants, directed to the sheriff of any county or any constable in the state, directing them to arrest accused persons and to bring them before the court for trial, whenever any such accused shall have disobeyed an order in writing delivered to him in person or mailed to his last known address from the convening authority to appear before such courts; a copy of the charge or charges having been delivered to the accused with such order; issue subpoena duces tecum and enforce by attachment attendance of witnesses and the production of books and papers, and sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

(3) When a sentence of confinement is imposed by any court-martial of the Florida national guard, the reviewing authority whose approval makes effective the sentence imposed by the court-martial, shall issue his warrant directing the sheriff of the appropriate county to take the delinquent into custody and confine him in the jail of such county for the period specified in the sentence of the court. Any sheriff receiving such warrant shall promptly execute the same by taking the delinquent into custody and causing him to be confined in said jail. The sheriff or jailor in charge of any county jail shall receive any person committed for confinement in such jail under proper process from a court-martial, and provide for the care, subsistence, and safe-keeping of such prisoner just as he would a prisoner properly committed for custody under the sentence of any civil court.

(4) All sums of money collected through fines imposed by a general, or special, or summary court of the Florida national guard shall at once be paid over by the officer collecting the fine to the commanding officer of the organization to which the delinquent belongs, and will be taken up by the latter upon his account current and treated as public moneys.

History.—§ § 50, 52, ch. 8502, 1921; § § 9, 11, ch. 9337, 1923; §8, ch. 10185, 1925; CGL 2063, 2065; §1, ch. 25112, 1949.
Note.—Formerly §§250.57 and 250.59.

250.37 Expenses of courts-martial.—

(1) All expenses incurred in court-martial proceeding, including the payment of one stenographer, sheriff's fees for service of warrants, summons, subpoenas and all other necessary and lawful fees to civil officers for service, and witness fees at the same rate allowed by law in criminal cases, together with the pay, subsistence, and necessary expenses of the members of the court, shall, except as provided in subsection (4) below, be paid by the state in the usual manner upon the approval of the governor. Members of the court shall be reimbursed for traveling expenses as provided in §112.061. Courts-martial may subpoena any witness residing within one hundred miles of the place where the court is sitting, to appear and testify before it, and the sheriff of any county upon receiving any subpoena issued by direction of a court-martial, and signed by the judge advocate thereof or summary court officer, shall make service and return of service as provided by law in criminal cases.

(2) The employment of a reporter may be authorized by the convening authority for all general courts-martial. When a reporter is employed, he shall be paid upon the certificate of the judge advocate upon the approval of the governor from the military appropriation, such fees as are provided for official reporters.

(3) Fees for sheriffs for the service of all process issuing out of military courts, and for the attendance of deputy sheriffs upon such courts, shall be the same as provided by law for the service of similar process issued by the civil courts of the state. In courts-martial trials, the fees and pay of sheriffs and deputy sheriffs shall be upon an account certified as correct by the judge advocate of the court and approved by the adjutant general. The fees and costs in cases tried by general and special courts-martial shall be paid by the state, as provided in subsection (1) above.

(4) In trials by summary court, the sheriff's costs and fees, including costs of subsistence of the soldier or soldiers, if sentenced to confinement, shall be paid by the county in which the summary court convenes and exercises its jurisdiction and powers. Such costs, fees and subsistence charges to be made from the fine and forfeiture fund of any such county.

History.—§ § 48, 51, 54, 55, ch. 8502, 1921; § § 8, 10, ch. 9337, 1923; §§7, 9, ch. 10185, 1925; CGL 2061, 2064, 2067, 2068; §1, ch. 25112, 1949; (4) §10, ch. 26484, 1951; §19, ch. 63-400.
Note.—Formerly §§250.55, 250.58, 250.61 and 250.62.

250.38 Liability.—No action or proceeding shall be prosecuted or maintained against a member of the military court or officer or person acting under its authority or reviewing its proceeding, on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process or mandate of any military court. The jurisdiction of the courts and boards established by the code shall be presumed, and the burden of proof will rest upon any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

History.—§56, ch. 8502, 1921; CGL 2069; §1, ch. 25112, 1949.
Note.—Formerly §250.63.

250.39 Penalty for contempt.—Any person who shall be guilty of disorderly, contemptuous or indecorous language or expression to or before any military court, or any member of such court, in open court, tending to interrupt its proceedings, or to impair the respect due

its authority, or who shall commit any breach of the peace, or make any noises or other disturbances, directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court to the jail of the county in which said court shall sit, there to remain without bail in confinement for a time to be limited, not exceeding three days.

Hisotry.—§53, ch. 8502, 1921; §12, ch. 9337, 1923, CGL 2066; §1, ch. 25112, 1949.

Note.—Formerly §250.60.

250.40 Armory board; armories, how obtained.—

(1) The armory board of the state shall consist of the governor, the adjutant general, the state quartermaster, the general officers of the line, regimental commanders, group commander, and senior air commander in the active national guard of the state. This board is charged with the supervision and control of all military buildings and real property within the state applied to military uses.

(2) The term of each member of the armory board shall be the period during which he possesses the qualifications for such membership under the provisions of subsection (1) of this section.

(3) The members of the armory board shall perform the duties imposed upon them by the provisions of this chapter without any special compensation for their services; members of the armory board shall be reimbursed for traveling expenses as provided in §112.061, and be paid from the appropriation for the expenses of the Florida national guard.

(4) It shall be the duty of the armory board to consider and approve the plans for or of all armories and other buildings before such buildings shall be rented, constructed or otherwise acquired for military uses by the state.

(5) Since our national military policy as enunciated in the national defense act recognized the national guard as an important and necessary component of the army of the United States, and as the defense of the country is a joint responsibility of all political divisions and sub-divisions thereof, and since the national guard is a citizen force by reason of its militia status, it is considered equitable that the expense of the maintenance of the national guard be not only shared by the state with the federal government, but that it should properly be shared also by the counties, cities and other sub-divisions of the state. As the federal government is providing liberally for the equipment and training of the national guard and the state for its administration and management, an equitable division of the responsibility of maintenance would leave with the communities in which units of the national guard are established the duty of supplying the necessary personnel and adequate housing for the organization.

(6) In order to provide for the cooperative support of the national guard, and that armories may be provided which will furnish suitable training facilities and adequate storage accommodations for all arms, equipment and other military property, the armory board shall have authority to receive from counties, municipalities and other sources, donations of land and contributions of money to aid in providing, improving and maintaining an arsenal, armories, camp site, target ranges, and other facilities, throughout the state, and any property so donated, shall be held as other property for the use of the state and such counties and municipalities are hereby authorized and empowered to make such donations of lands by deed or long term leases and contributions of moneys for the purposes herein set forth, and to issue bonds or certificates of indebtedness to provide funds for such purposes; and boards of county commissioners are hereby authorized to levy taxes, not to exceed one mill, to provide funds for the construction of armories or for the retirement of such bonds or certificates of indebtedness issued to provide funds for the construction of armories.

(7) Counties and municipalities are hereby authorized to construct armories upon state owned land which may be made available for such purpose by action of the armory board.

(8) Counties and municipalities are also authorized to grant to the state armory board, for military uses, by deed or long-term leases, property that may have been acquired, or buildings that may have been constructed by them, for use as armories and rifle ranges.

(9) Whenever it may become necessary in the public interest to acquire private property in order to provide necessary land for camp grounds, rifle ranges or armories for the organized militia of the state, and the same cannot be acquired by agreement satisfactory to the armory board and the parties interested in, or the owners of such private property, the armory board is hereby authorized and empowered to exercise the right of eminent domain, and to proceed to condemn such property in the manner provided by law. Any suit or action brought by the armory board to condemn property, as provided for under this section, shall be brought in the name of the armory board, and it shall be the duty of the attorney general of the state to conduct the proceedings for and to act as the counsel of the said board in such matters.

(10) The county commissioners, or municipal authorities, may, in their discretion, appropriate a sufficient sum not otherwise appropriated, to pay the necessary expenses of any unit of the organized militia of the state located in their respective counties or municipalities, to be accounted for to the adjutant general by the organization receiving such appropriation as other military funds.

History.—§ § 42, 63, ch. 8502, 1921; §4, ch. 10183, 1925; §5, ch. 12089, 1927; CGL 2054, 2073; §6, ch. 20849, 1941; §1, ch. 25112, 1949; §19, ch. 63-400.

Note.—Formerly §§250.48 and 250.70.

250.41 Armory defined; control and management of state military properties; annual report of armory board.—

(1) The term "armory," as used in this chapter, shall be understood to mean a building

used primarily for the housing and training of troops, and no building will be used for those purposes, or for storing of arms and other military property, that is not under full control and supervision of the properly constituted military authorities.

(2) The armory board shall also constitute a board for the general management and control of all armories when established, and may adopt and prescribe rules for their government and management. All United States and state military property must be kept therein, and the commanders of troops using the armories will be held responsible for the safe keeping and proper care of such property and its protection against misappropriation or loss. Armories, while occupied and in use by troops, shall be considered military posts, and be under exclusive control and jurisdiction of the officer commanding the post.

(3) The armory board shall also be charged with the supervision and management of any permanent camp site, target range or ranges, which are now or may hereafter become the property of the state; or which, being the property of the United States, may be provided to the state to be used for military purposes; such board may provide for the maintenance and proper equipment of the same from any funds which may be available for that purpose. Any and all moneys accruing to the armory board from the operation and management of properties hereinabove mentioned are hereby appropriated for the maintenance of state properties under control of the armory board.

(4) The armory board shall make a report annually of the proceedings incident to the location and management of armories, respectively, and also as to the management of other property entrusted to its care, and with a detailed account of all disbursements; which report shall be filed in the office of the adjutant general, and shall be printed in the report of his department.

History.—§43. ch. 8502, 1921; §6, ch. 12089, 1927; CGL 2055; §1, ch. 25112, 1949.
Note.—Formerly §250.49.

250.42 State armory board authorized to convey, etc., certain lands.—The state armory board is hereby authorized to convey, lease or release any lands under its ownership, supervision or control which are in the opinion of said board not required for military uses.

History.—§§1, 2, ch. 20717, 1941; §1, ch. 25112, 1949.
Note.—Formerly §250.75.

250.421 Payments to Clay county in lieu of taxes.—

(1) In lieu of paying taxes on lands owned by it in Clay county, the state armory board shall pay to the Clay county development authority on or before August 15 of each year the sum of twenty thousand dollars.

(2) This section shall not be construed as affecting in any way the vesting of said property or any portion thereof in the United States in the event of a national emergency as provided by public law 493, 83d congress or any other provision or condition of said public law.

(3) The first payment under this section shall be due and payable on or before August 15, 1957.

(4) This section shall not be effective during any period in which camp Blanding is not under the control of the armory board of Florida.

History.—§§1-4, ch. 57-304.

250.43 Wearing of uniform and insignia of rank; penalty.—

(1) The uniform or insignia of rank worn by officers of the Florida national guard shall be worn only by persons entitled thereto by commission under the laws of the state or the United States. Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars.

(2) Every person other than an officer or enlisted man of the national guard, naval militia, or marine corps of this state or any other state, or of the United States army, navy, marine corps, air force, or revenue service, who wears the uniform of the United States army, navy, marine corps, air forces, or revenue service, or national guard, air national guard, naval militia or marine corps or any part of such uniform, or a uniform or part of uniform similar thereto, or in imitation thereof, within the bounds of the state, except in cases where the wearing of such uniform is permitted by the laws of the United States and the regulations of the secretary of defense, is guilty of a misdemeanor and if found guilty of such offense shall be punished by a fine of not less than ten dollars, nor more than two hundred fifty dollars; or by imprisonment in the county jail not exceeding sixty days; provided, that nothing in this chapter shall be construed as prohibiting persons in the theatrical profession from wearing such uniforms while actually engaged in such profession, in any play house or theatre, in a production in no way reflecting upon such uniform; and provided, that nothing in this chapter shall prohibit the uniform rank of civic societies parading or traveling in a body or assembling in a lodge room; and provided further, that this section shall not apply to cadets of any military school or to the boy scouts.

History.—§§58, 59, ch. 8502, 1921; CGL 2071, 8125, 8126; §1, ch. 25112, 1949.
Note.—Formerly §§250.65 and 250.66.

250.44 Military equipment regulations; penalties.—

(1) Any person who shall sell, or offer for sale, barter or exchange, pledge, loan or give away, secrete, or retain after demand made by civil or military officers of the state, any clothing, arms, military outfits or accoutrements, furnished by or through the state to any member of the militia, or who shall receive by purchase, barter, exchange, pledge. loan or gift, any such clothing, arms, military outfits or accoutrements, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars, or by punishment not exceeding six months.

(2) All men in the military service of the Florida national guard, to whom shall have been entrusted any military property by reason of their being in such military service, shall account for the same to the proper military authority in accordance with the rules and regulations or special orders made by superior authority in reference to the same, and such military property shall not be removed beyond the limits of the county in which the post is located without authority of the adjutant general, and any person, whether in the military service or not, or whether his enlistment or appointment shall have expired or not, who shall fail to account for or return to proper military authority any property which shall have come into his possession to which the state military authorities may be entitled, or who shall conceal or convert the same to his own use, or remove the same from the county in which the same came into his possession, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months. Any prosecution had under the provisions of this section may be abated upon full satisfaction being made for such property to the military authorities of the state and the payment of all court costs accruing by reason of the institution of any such prosecution.

(3) The clothing, arms, military outfits and accoutrements, furnished by or through the state to any member of the militia, shall not be sold, bartered, loaned, exchanged, pledged or given away, and no person not a member of the military forces of this state or the United States, or duly authorized agent of this state or the United States, who has possession of such clothing, arms, military outfits, or accoutrements so furnished, and which have been subject to any such unlawful disposition, shall have any right, title or interest therein, but the same shall be seized and taken wherever found by any civil or military officer of the state, and shall thereupon be delivered to any commanding officer, or other officer authorized to receive the same, who shall make an immediate report to the adjutant general. The possession of any such clothing, arms, military outfits or accoutrements by any person not a member of the military forces of this state, or any other state, or of the United States, shall be presumptive evidence of such sale, barter, loan, exchange, pledge or gift.

History.—§ § 61, 62, ch. 8502, 1921; §9, ch. 12089, 1927; CGL 2072, 8128; §1, ch. 25112, 1949.
Note.—Formerly §§250.68 and 250.69.

250.45 Military uniform discriminated against; penalty.—Any proprietor, manager or employee of any theatre or other public place of entertainment or amusement within this state, who shall discriminate against any person lawfully wearing the uniform of any branch of the military or naval service of the United States or of the state, because of that uniform, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed fifty dollars.

History.—§60, ch. 8502, 1921; CGL 8127; §1, ch. 25112, 1949.
Note.—Formerly §250.67.

250.46 Salaried employees not entitled to additional pay.—Officers and enlisted men of the militia employed by the military department of the state, who receive monthly salaries from the state for military duties, shall not be entitled to any other pay from the state for military service of any character; provided, that the provisions of this section shall not prohibit any officer or enlisted man from receiving pay from the United States for participation in maneuvers, camps, field service or other service or duty.

History.—§15, ch. 8502, 1921, CGL 2027; §1, ch. 25112, 1949.
Note.—Formerly §250.17.

250.47 Governor's permission for unit to leave state.—No unit of the national guard shall go out of the state without first securing permission of the governor.

History.—§24, ch. 8502, 1921; CGL 2036; §1, ch. 25112, 1949.
Note.—Formerly §250.26.

250.48 Leaves of absence.—All officers and employees of the state and of the several counties and municipalities within the state, who are members of the Florida national guard, shall be entitled to leave of absence from their respective duties, without loss of pay, time or efficiency rating, on all days during which they shall be engaged in active state duty, field exercises or other training ordered under the provisions of this chapter, provided the leaves of absence without loss of pay, granted under the provisions of this section, shall not exceed seventeen days at any one time.

History.—§26, ch. 8502, 1921; §2, ch. 12089, 1927; CGL 2038; §5, ch. 20849, 1941; §1, ch. 25112, 1949.
Note.—Formerly §250.28.

250.49 Annual encampment.—Subject to the restrictions of the national defense act, the governor may annually order into service the whole, or such portion of the Florida national guard as he may deem proper; the period of such service to be fixed by the governor, subject to the restrictions mentioned above. When so ordered into the service of the state, and such rations are not furnished by the United States government, the state shall furnish rations for the officers and men of the same quality as the rations furnished by the regular army, and pay such expenses of said encampment as the governor may deem proper, including the traveling expenses of officers and men incurred in obeying such orders, when such expenses are not paid by the government of the United States.

History.—§37, ch. 8502, 1921; CGL 2049; §1, ch. 25112, 1949.
Note.—Formerly §250.43.

250.50 Tax exemption; certificate of membership.—Every officer and enlisted man of the Florida national guard shall be exempt from poll tax, road duty, street tax and jury duty while on active duty, any local or special laws to the contrary notwithstanding. The commanding officer of each company, troop,

battery or other similar organization shall furnish each member of his command applying for the same, such certificate of active duty as may be prescribed by the adjutant general, signed by such commanding officer, which certificate shall be accepted by any court as proof of exemption as provided by this section. The certificate shall be good only for the calendar month within which it bears date. The commanding officer of a division, brigade, regiment, group, squadron, or separate battalion shall issue a similar certificate to each of his staff officers and enlisted staff.

History.—§57, ch. 8502, 1921; CGL 2070; §1, ch. 25112, 1949; §1, ch. 29684, 1955.
cf.—§193.75 Poll tax abolished.
Note.—Formerly §250.64.

250.51 Insult to troops; penalty. — When troops of the organized militia of the state are at drill in their respective armories, on the streets, public roads or other places, where such drills are conducted or when they are performing other duties required of them by the state or the United States, it is unlawful for any person to make any disloyal or insulting remark either to or about said troops or to make any sign, motion or gesture calculated to insult or humiliate said troops, and any person found guilty of making any such disloyal or insulting remark, or of making any such sign, motion or gesture, for the purpose and in the manner as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment not exceeding three months.

History.—§64, ch. 8502, 1921; CGL 8128; §1, ch. 25112, 1949.
Note.—Formerly §250.71.

250.52 Unlawful to persuade citizens not to enlist; penalty.—Whenever the United States is at war, or our foreign relations tend to indicate an impending war or state of war, it is unlawful for any person or persons to solicit or persuade a citizen or citizens of the United States not to enlist in the army, air force, or navy thereof, or in the national guard or active militia of the state, or to publicly attempt to dissuade any such citizen or citizens from so enlisting; the provisions of this chapter shall not apply to such soliciting or persuading done by any person related by affinity or consanguinity to the person solicited or persuaded. Any person adjudged guilty of a violation of this section shall be punished as for a misdemeanor.

History.—§ § 1. 2. ch. 7392, 1917; RGS 1422, 1423, CGL 2076, 2077; §1, ch. 25112, 1949.
Note.—Formerly §250.73.

250.53 When state of war exists governor may require aliens to register; penalty.—Whenever a state of war shall exist or be imminent between the United States and a foreign country, the governor may, by proclamation, direct and require every subject or citizen of such foreign country in this state, within twenty-four hours, to appear before such public authorities as the governor may direct in such proclamation and personally register his name, residence, business, length of stay and such other information as the governor shall prescribe. Upon the proclamation, the owner, lessee or proprietor of every hotel, inn, boarding or rooming house and private residence shall, within twenty-four hours, notify such public authorities of the presence therein of every such subject or citizen, and shall, each day thereafter, notify such public authorities of the arrival thereat or departure therefrom of every such subject or citizen. A wilful failure to comply with such proclamation or to do or perform any of the acts herein provided shall be a misdemeanor, punishable as provided by law.

History.—§1, ch. 7394, 1917; RGS 1424; CGL 2078; §1, ch. 25112, 1949.
Note.—Formerly §250.74.

CHAPTER 251

FLORIDA STATE GUARD

251.01 Authority and name.—Whenever any part of the national guard of this state is in active federal service, the governor is hereby authorized to organize and maintain, within this state during such period, under such regulations as the secretary of war of the United States may prescribe for discipline in training, such military forces as the governor may deem necessary to assist the civil authorities in maintaining law and order. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the state militia enrolled by draft or otherwise, as provided by law. Such forces shall be additional to and distinct from the national guard and shall be known as the Florida state guard. Such force shall be uniformed.

History.—§1, ch. 20214, 1941.

251.02 Organization; rules and regulations.—The governor is hereby authorized to prescribe rules and regulations, not inconsistent with the provisions of this chapter, governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such guard; provided, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder; and prohibit the acceptance of gifts, donations, gratuities, or anything of value, by such guard, or by any member of such guard, from any individual, firm, association, or corporation, by reason of such membership.

History.—§2, ch. 20214, 1941.

251.03 Pay and allowances.—The members of the Florida state guard shall receive no pay and allowances, except when called out on active duty, during which time they shall receive the same base pay and allowances as are now provided by law for the national guard when on similar duty.

History.—§3, ch. 20214, 1941.
cf.—§250.23, Pay for active service of National Guard.

251.04 Requisitions; armories; other buildings.—For the use of such guard, the governor is hereby authorized to requisition from the secretary of war such arms and equipment as may be in possession of, and can be spared by, the war department; and to make available to such guard the facilities of state armories and their equipment and such other state premises and property as may be available.

History.—§4, ch. 20214, 1941.
cf.—§§250.28, 250.29, Calling out in aid of civil authorities.

251.05 Calling out of guard.—The Florida state guard may be called out to aid the civil authorities as now provided by the law for calling out the national guard; except whenever the adjutant general would be authorized to call out the Florida state guard, but is unable to do so for any reason, his assistant shall have such authority.

History.—§5, ch. 20214, 1941.
cf.—§§250.28, 250.29, Calling out in aid of civil authorities.

251.06 Use without this state.—Such guard shall not be required to serve outside the boundaries of this state, except that any organization, unit or detachment of such guard, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment, or until the military or police forces of the other state, or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such guards of this state. Any such person, who shall be apprehended or captured in such other state by an organization, unit or detachment of the guard of this state, shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he is taken or to the United States; but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

History.—§6, ch. 20214, 1941.

251.07 Permission to forces of other states.—Any military forces or organization, unit or detachment thereof, of another state, who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit into this state until the military or police forces of this state or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; and they are hereby authorized to arrest or capture such persons within this

state while in fresh pursuit. Any such person, who shall be captured or arrested by the military forces of such other state while in this state, shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

History.—§7, ch. 20214, 1941.

251.08 Federal service. — Nothing in this chapter shall be construed as authorizing such guard, or any part thereof, to be called, ordered or in any manner drafted, as such, into the military service of the United States; but, no person shall, by reason of his enlistment or commission in any such guard, be exempted from military service under any law of the United States.

History.—§8, ch. 20214, 1941.

251.09 Civil groups.—No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons, or civil groups, shall be enlisted in such guard as an organization or unit.

History.—§9, ch. 20214, 1941.

251.10 Disqualifications. — No person shall be commissioned or enlisted in such guard who is not a citizen of the United States, or who has been expelled or dishonorably discharged from any military or naval organization of this state, or of another state, or of the United States.

History.—§10, ch. 20214, 1941.

251.11 Commissioned officers.—The term of commission in the Florida state guard shall be for three years, subject to termination at the pleasure of the governor prior to the expiration of such period. The oath to be taken by officers commissioned in such guard shall be substantially in the form prescribed for officers of the national guard, substituting the words Florida state guard where necessary, and omitting the reference to the president of the United States.

History.—§11, ch. 20214, 1941.

251.12 Enlisted men.—The term of enlistment in the Florida state guard shall be for three years, subject to termination at the pleasure of the governor prior to the expiration of such period. The oath to be taken upon enlistment in such guard shall be substantially in the form prescribed for enlisted men of the national guard, substituting the words Florida state guard where necessary, and omitting the reference to the president of the United States.

History.—§12, ch. 20214, 1941.

251.13 Articles of war; freedom from arrest; jury duty.—

(1) Whenever such guard, or any part thereof, shall be ordered out for active service the articles of war of the United States, applicable to members of the national guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment, and the rules and regulations prescribed thereunder, shall be in full force and effect with respect to the Florida state guard.

(2) No officer or enlisted man of such guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty. Every officer and enlisted man of such guard shall, during his service therein, be exempt from service upon any posse comitatus, and from jury duty.

History.—§13, ch. 20214, 1941.

251.14 Discharge of guard.—The Florida state guard shall be discharged by the governor upon the return of the national guard to state control, or within thirty days thereafter.

History.—§14, ch. 20214, 1941.

251.15 Expenses.—The expenses incurred in carrying out the provisions of this chapter shall be paid from the fund for current expenses of the military department, by whatever name or title such fund shall be known and designated, upon requisition of the adjutant general, approved by the governor.

History.—§15, ch. 20214, 1941.

251.16 Short title. — This chapter may be cited as the Florida state guard.

History.—§18, ch. 20214, 1941.

251.17 Awards to officers and enlisted men. —The adjutant general of the state be and he is hereby authorized and directed to cause to be prepared suitable medals, service bars, ribbons, awards or other indicia of service in Florida state guard (formerly Florida defense force); to prescribe regulations for awarding such medals, service bars, ribbons, awards or other indicia of service in Florida state guard to the officers and enlisted men of said Florida state guard and from time to time to make such awards to the officers and enlisted men of said Florida state guard entitled to receive the same.

History.—§1, ch. 21877, 1943.

CHAPTER 252

CIVIL DEFENSE

252.01 Short title.—This chapter shall be the "Florida civil defense act."

History.—§1, ch. 26875, 1951.

cf.—Ch. 22 Emergency continuity of government.

252.02 Policy and purpose.—

(1) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action or from natural causes, and in order to insure that preparations of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary

(a) To create a state civil defense agency, and to authorize the creation of local organizations for civil defense in the political subdivisions of the state;

(b) to confer upon the governor, the state cabinet and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided herein; and

(c) to provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to the carrying out of civil defense functions; and

(d) to authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out the provisions of this chapter.

(2) It is further declared to be the purpose of this chapter and the policy of the state that all civil defense functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur.

History.—§2, ch. 26875, 1951.

252.03 Definitions.—

(1) As used in this chapter the term "civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, or other causes, as provided herein. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2) Political subdivision shall mean any county, or incorporated municipality.

(3) Highway includes any private or public street, road, way or other place used for travel to and from property.

(4) Road department means any individual, board, or other body having authority under then existing law to control or regulate the highway, which it is desired to restrict or close to public use and travel.

(5) Defense areas means areas used or proposed to be used in the preparation of the state and nation for defense, including, among other areas not herein listed, airports, cantonments, military reservations, and naval bases.

History.—§§3, 23, ch. 26875, 1951.

252.04 State civil defense agency.—

(1) There is hereby created a department of civil defense (hereinafter called the civil defense agency) with a director of civil defense (hereinafter called the director) who shall be the head thereof. The director shall be appointed by the state civil defense council; he shall not hold any other state office, he shall hold office during the pleasure of the council and the council shall fix his annual salary.

(2) The director may employ such technical, clerical, stenographic and other personnel, and fix their compensation when they are to be compensated, and may make such expenditures within the appropriation therefor, or from other funds made available to him for purposes of civil defense, as may be necessary to carry out the purpose of this chapter.

(3) The director and other personnel of the civil defense agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for personnel of other state agencies.

(4) The director, subject to the direction and control of the state civil defense council, shall be the executive head of the civil defense agency and shall be responsible to the state civil defense council for carrying out the program for civil defense of this state. He shall coordinate the activities of all organizations for civil defense within the state, and shall maintain liaison with and cooperate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the state civil defense council.

History.—§4, ch. 26875, 1951.

252.05 State civil defense council.—There is hereby created a state civil defense council. The state civil defense council shall consist of: the governor, who shall be the chairman of the council; secretary of state, who shall be vice chairman of the council; attorney general; comptroller; treasurer; superintendent of public instruction, and commissioner of agriculture. The adjutant general shall be ex-officio member of the state civil defense council without vote. The state civil defense council shall advise the director on all matters and shall approve all policies, rules and regulations pertaining to civil defense.

History.—§5, ch. 26875, 1951.

252.06 Civil defense powers of the defense council.—

(1) The defense council shall have general direction and control of the civil defense agency, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster or emergency beyond local control, resulting from enemy attack or imminent threat of attack, may assume direct operational control over all or any part of the civil defense functions within this state.

(2) In performing its duties under this chapter, the defense council is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter with due consideration of the plans of the federal government.

(b) To prepare a comprehensive plan and program for the civil defense of this state, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparations of plans and programs for civil defense by the political subdivisions of this state, such plans to be integrated into and coordinated with the civil defense plan and program of this state to the fullest possible extent.

(c) In accordance with such plan and program for the civil defense of this state, to ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state, for the purposes of this chapter; to make surveys of the industries, resources, and facilities within the state as are necessary to carry out the purpose of this chapter; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(d) To cooperate with the president and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation and the incidents thereof; and in connection therewith, to take any measures which it may deem proper to carry into effect any request of the president and the appropriate federal officers and agencies, for any action looking to civil defense, including the direction or control of 1. black-outs and practice black-outs, air-raid drills, mobilization of civil defense forces, and other tests and exercises, 2. warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, 3. the effective screening or extinguishing of all lights and lighting devices and appliances, 4. shutting off water mains, gas mains, electric power connections and the suspension of all other utility services, 5. the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent

to drills or attack, 6. public meetings or gatherings; and 7. the evacuation and reception of the civilian population.

(e) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules, and regulations made pursuant thereto.

(f) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(g) To utilize the services and facilities of existing officers, and agencies of the state and of the political subdivisions thereof, and all such officers and agencies shall cooperate with and extend their services and facilities to the state civil defense council, as it may request.

(h) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this chapter including, with due consideration to the recommendation of the local authorities, full-time state and regional area directors.

(i) To delegate any authority vested in him under this chapter, and to provide for the subdelegation of any such authority.

(j) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state-wide or local political subdivision basis or with a neighboring state or foreign country or province of a foreign country. Such mutual aid arrangements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical and related services; fire fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, fire fighting, and police units and health units; and on such terms and conditions as are deemed necessary.

(k) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

History.—§6, ch. 26875, 1951.

252.07 **Emergency powers.**—In the event of actual enemy attack against the United States or if a state of emergency contemplating imminent attack, is declared to exist by the congress or president, the state civil defense council, may declare that a state of emergency exists, and thereafter the state civil defense council shall have and may exercise for such period as such state of emergency exists or continues, the following additional emergency powers:

(1) To enforce all laws, rules and regulations relating to civil defense and to assume direct operational control of all civil forces and helpers in the state.

(2) At the request of the president, the armed forces or the civil defense agency of the United States, to seize, take or condemn property for the protection of the public, including:

(a) All means of transportation and communication; provided that such powers shall not extend to any interference with the free dissemination of news by newspapers, radio and television by the state or any political subdivision thereof;

(b) all stocks of fuel of whatever nature;

(c) food, clothing, equipment, materials, medicines, and all supplies; and

(d) facilities including buildings and plants.

(3) To sell, lend, give, or distribute all or any such personal property among the inhabitants of the state and to account to the state treasurer for any funds received for such property.

(4) To make compensation for the property so seized, taken, or condemned on the following basis:

(a) In case property is taken for temporary use, the state civil defense council within ten days of the taking, shall fix the amount of compensation to be paid therefor; and in case such property shall be returned to the owner in a damaged condition or shall not be returned to the owner immediately after its use becomes unnecessary, the civil defense council shall fix within ten days from the time of said return or failure to return upon demand of the owner, the amount of compensation to be paid for such damage or failure to return. Whenever the defense council shall deem it advisable for the state to take title to property taken under this section, it shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, and forthwith cause to be filed a copy of said notice with the secretary of state.

(b) If the owner refuses to accept the amount of compensation fixed by the state civil defense council, condemnation proceedings may be instituted as in any other case. Statutes governing condemnation proceedings shall apply.

(5) To perform and exercise such other functions, powers, and duties as may be deemed

necessary to promote and secure the safety and protection of the civilian population.

History.—§7, ch. 26875, 1951.

252.08 Mutual aid arrangements.—The director of each local organization for civil defense may develop or cause to be developed mutual-aid arrangements with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the state civil defense plan and program, and in time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual-aid arrangements.

History.—§8, ch. 26875, 1951.

252.09 Local organization for civil defense.—

(1) Each county of this state is hereby authorized and directed to establish a county civil defense council and organization for civil defense in accordance with the state civil defense plan and program. The members of county civil defense councils shall consist of the county commissioners and such other elective public officials including municipal officials within the county, as may be designated by the county commissioners. Any incorporated city or town may organize a local civil defense council to assist the county and state civil defense councils. The members of municipal civil defense councils which may be organized shall consist of the city commissioners or other governing body of such municipality and such other elective public officials of the municipality or of the county in which the municipality is located as may be designated by the governing body of the municipality. Each local civil defense council, whether county or municipal, is authorized to appoint a director who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of the local civil defense council. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) Each political subdivision shall have the power and authority:

(a) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack; and to direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal and state civil defense agencies.

(b) To appoint, employ, remove, or provide, with or without compensation, air-raid wardens, rescue teams, auxiliary fire and police personnel, and other civil-defense workers.

(c) To establish a primary and one or more secondary control centers to serve as command posts during an emergency.

(d) Subject to the order of the state civil defense council, or the local civil defense council of the political subdivision, to assign and make available for duty, the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil-defense purposes and within or outside of the physical limits of the subdivision.

(e) In the event of enemy attack or state of emergency as provided in §252.07 to waive procedures and formalities otherwise required by law pertaining to: the performance of public work, entering into contracts, the incurring of obligations, the employment of permanent and temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

History.—§9, ch. 26875, 1951.

252.10 Local services.—

(1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in §252.09 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(2) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim under oath is served by mail or otherwise upon the chief fiscal officer of such political subdivision where the equipment was used. The political subdivision which is aided pursuant to this section shall also pay and reimburse the political subdivision furnishing such aid for the compensation paid to employees furnished under this section during the time of the rendition of such aid and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. The term "employee" as used

in this section shall mean, and the provisions of this section shall apply with equal effect to, paid, volunteer, auxiliary employees, and civil-defense workers.

(3) The foregoing rights, privileges, and obligations shall also apply in the event such aid is rendered outside the state, provided that payment or reimbursement in such case shall or may be made by the state or political subdivision receiving such aid pursuant to a reciprocal mutual-aid agreement or compact with such state or by the federal government.

History.—§10, ch. 26875, 1951.

252.11 Mobile support units.—

(1) The state civil defense council, or the director at the request of the state civil defense council, is authorized to create and establish such number of mobile support units as may be necessary to reinforce civil-defense organizations in stricken areas and with due consideration of the plans of the federal government and of other states. The director, subject to the approval of the state civil defense council, shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration, and operation of such unit. Mobile support units shall be called to duty upon orders of the state defense council through the director and shall perform their functions in any part of the state or, upon the conditions specified in this section, in other states.

(2) Personnel of mobile support units while on duty, whether within or without the state, shall:

(a) if they are employees of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment;

(b) if they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; and

(c) if they are not employees of the state or a political subdivision thereof, they shall be entitled to the same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by the state civil defense council. All personnel of mobile support units shall, while on duty, be subject to the operational control of the authority in charge of civil defense activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(3) Whenever a mobile support unit of another state shall render aid in this state pursuant to the orders of the properly constituted authority of its home state and upon the request of the state civil defense council of this state, this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of the personnel of such mobile support unit while rendering such aid, and for all payments for death, disability, or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid: Provided, that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual-aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for such mutual aid as above provided.

History.—§11, ch. 26875, 1951.

252.12 Disasters resulting from natural causes.—In the event of any disaster resulting from natural causes, the state civil defense council may make available any equipment, services or facilities owned or organized by the state civil defense council or any local civil defense council; for use in the affected area upon request of any recognized and accredited relief agency or the duly constituted authorities of the area affected.

History.—§12, ch. 26875, 1951.

252.13 Investigations and surveys.—For the purpose of making surveys and investigations and obtaining information, which may be necessary to successfully carry out the purpose of this chapter except the investigation of subversive activities that are the responsibility of the federal bureau of investigation, the state civil defense council may compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations; and all officers, boards, commissions, and departments of the state, and the political subdivisions thereof, having information with respect thereto, shall cooperate with and assist it in making such investigations and surveys.

History.—§13, ch. 26875, 1951.

252.14 Traffic control.—The state civil defense council may formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement of evacuation over public highways and streets of people, troops, or vehicles and materials for national defense or for use in any defense industry, and may coordinate the activities of the departments or agencies of the state and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will best effectuate such plans.

History.—§14, ch. 26875, 1951.

252.15 Lease or loan of state property; transfer of state personnel.—Notwithstanding any inconsistent provision of law:

(1) Whenever the state civil defense council deems it to be in the public interest, it may:

(a) Authorize any department or agency of the state to lease or lend, on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the president, the heads of the armed forces, or to the civil defense agency of the United States.

(b) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government, or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state.

(2) Each political subdivision of the state may:

(a) Enter into such contract or lease with the state, or accept any such loan, or employ such personnel, and such political subdivision may equip, maintain, utilize, and operate any such property and employ necessary personnel therefor in accordance with the purposes for which such contract is executed.

(b) Do all things and perform any and all acts which it may deem necessary to effectuate the purpose for which such contract was entered into.

History.—§15, ch. 26875, 1951.

252.16 Orders, rules and regulations.—

(1) The political subdivisions of the state (as herein defined) and other agencies designated or appointed by the governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for civil defense purposes and to supplement the carrying out of the provisions of this chapter, but not inconsistent with any orders, rules, or regulations promulgated by the state civil defense council or by any state agency exercising a power delegated to it by the state civil defense council.

(2) All orders, rules and regulations promulgated by the state civil defense council, or by any political subdivision or other agency authorized by this chapter to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the state civil defense council, or any state agency, a copy thereof is filed in the office of the secretary of state, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules, and regulations inconsistent with the provisions of this chapter, or of any order, rule, or regulation issued under the authority of this chapter, shall be suspended during the period of time and to the extent that such conflict exists.

(3) In order to attain uniformity so far as practicable throughout the country in measures taken to aid civil defense, all action taken under this chapter and all orders, rules, and regulations made pursuant thereto, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

History.—§16, ch. 26875, 1951.

252.17 Enforcement.—The law enforcing authorities of the state and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to this chapter.

History.—§17, ch. 26875, 1951.

252.18 Immunity.—

(1) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law or §252.10 or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of wilful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in any civilian defense activity, complying with or reasonably attempting to comply with this chapter, or any order, rule, or regulation promulgated pursuant to the provisions of this chapter, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

History.—§18, ch. 26875, 1951.

252.19 Authority to accept services, gifts, grants, and loans.—

(1) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state, acting through the state civil defense council, or such political subdivision, actng with the consent of the state civil officer or council and through its executive officer or governing body, may accept such offer and upon such acceptance the state civil defense

council of the state or executive officer or governing body of such political subdivision may authorize any officer of the state or of the poltical subdivision, as the case may be to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(2) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, material, or funds by way of gift, grant, or loan, for purpose of civil defense, the state, acting through the state civil defense council, or such political subdivision, acting through its local civil defense council, executive officer or governing body may accept such offer and upon such acceptance the state civil defense council or local civil defense council, or executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer.

History.—§19, ch. 26875, 1951.

252.20 Political activity prohibited.—No organization for civil defense established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

History.—§20, ch. 26875, 1951.

252.21 Civil defense personnel.—No person shall be employed or associated in any capacity in any civil defense organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, or, for the purposes of this law only, before a state, county, or municipal civil defense director, which oath shall be substantially as follows:

"I, ----------, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Florida, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear that I do not advocate, nor am I a member of a political party or organization that advocates, the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the (name of civil defense organization) I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

History.—§21, ch. 26875, 1951; §1, ch. 61-351.

252.22 Penalties.—Any person violating any provision of this chapter or any rule, order, or regulation made pursuant to this chapter shall, upon conviction thereof, be punishable by a fine not exceeding five hundred dollars or imprisonment in a county jail for not exceeding six months, or both.

History.—§22, ch. 26875, 1951.

252.221 Liability.—Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice attack, together with his successors in interest, if any, shall not be liable for the death of, or injury to, any person on or about such real estate or premises during an actual, impending, mock or practice attack and solely by reason or as a result of such license, privilege, designation, or use, or for loss of, or damage to, the property of such person, unless gross negligence or willful and wanton misconduct of such person owning or controlling such real estate or premises or his successor in interest shall be the proximate cause of such death, injury, loss, or damage.

History.—§1, ch. 63-544.

252.23 Closing of highways, etc.; powers of road department.—The members of the road department are hereby authorized and required to close, vacate, and abandon the portion of any highway or right-of-way, within their jurisdictions, that traverses a defense area, and to dedicate such portion of such highway or right-of-way for defense area purposes, whenever the state defense council shall determine and certify in writing to the road department, that such action is expedient to promote state and national defense.

History.—§24, ch. 26875, 1951.

252.24 Certificate of state defense council.—The certificate of the state civil defense council shall contain a recital that said council has determined that the defense area described therein is expedient to promote state and national defense, and shall describe the portion of the highway or right-of-way traversing such defense area that is to be closed, vacated, and abandoned as a highway or right-of-way, and dedicated for defense area purposes, and the said certificate shall be signed by the chairman, or vice-chairman, and the executive director of said council.

History.—§25, ch. 26875, 1951.

252.25 Procedure by state road department. —The members of the road department, at their first meeting after receipt of such certificate from the state defense council, shall enter the certificate among the records of their meeting, and shall adopt a resolution reciting the contents of such certificate, and declaring that the portion of the highway or right-of-way described in such certificate is closed, for such period as may be necessary, as a highway or right-of-way, and is temporarily or permanently dedicated for defense area purposes to the use of, and as an appurtenance to, the defense area that it traversed, which resolution shall be entered upon the minutes of said meeting, and shall be effective for such purposes; provided, however, that if there is no alternative route of connection between the highway or right-of-way so breached, the road department shall so declare in said resolution, and therein reserve the continued use of said portion of the highway or right-of-way until, and make such resolution revocable by its affirmative action unless, an alternative route of connection of similar specification as said portion of the highway or right-of-way, is provided and dedicated as a highway by the owner or owners of the defense area, and accepted by the road department within such reasonable time as shall be fixed in said resolution.

History.—§26, ch. 26875, 1951.

252.26 Recording of copy of resolution.— Any copy of such resolution of the road department, certified to by the proper authority under his hand and seal as being a true and correct copy of such resolution as it appears in the minutes of the meeting of the road department, may be recorded among the public records of deeds of the proper county, and shall be admissible in evidence in the courts.

History.—§28, ch. 26875, 1951.

252.27 Outstanding obligations. — No outstanding obligation previously incurred, and which constitutes a lien upon the lands constituting said defense area, shall be affected by the provisions of this chapter.

History.—§27, ch. 26875, 1951.

252.28 Liberality of construction. — This chapter shall be construed liberally in order to effectuate its purposes.

History.—§29, ch. 26875, 1951.

TITLE XVII

PUBLIC LANDS AND PROPERTY

CHAPTER 253

INTERNAL IMPROVEMENT TRUST FUND

253.01 Internal improvement trust fund established.—So much of the five hundred thousand acres of land granted to this state for internal improvement purposes, by an act of congress passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also, all the swamp land or lands subject to overflow, granted this state by an act of congress approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the state from the sale of such lands, are set apart, and declared a separate and distinct fund, called the internal improvement trust fund of the state, and are to be strictly applied according to the provisions of this chapter.

History.—§1, ch. 610, 1854; RS 428; GS 616; RGS 1054; CGL 1384; §2, ch. 61-119.

cf.—§270.08 et seq., Sale of public lands, disposal of proceeds.

253.02 Trustees; powers and duties.—For the purpose of assuring the proper application of the internal improvement trust fund for the purposes of this chapter, the lands provided for in §253.01, and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably vested in five trustees, to-wit: In the governor of the state, the comptroller, the state treasurer, the attorney general and the commissioner of agriculture, and their successors in office, to hold the same in trust for the uses and purposes provided in this chapter with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the internal improvement bonds issued under the provisions of law, and drawing not less than six per cent annual interest; also, the surplus interest accruing from such investments. Said trustees have all the rights, powers, property, claims, remedies, actions, suits and things whatsoever belonging to them, or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust, existing at the time of the enactment hereof, or provided in this chapter.

History.—§2, ch. 610, 1854; RS 429; GS 617; RGS 1055; CGL 1385; §2, ch. 61-119.

253.03 Trustees to administer state lands not vested in some other state agency; lands enumerated.—The trustees of the internal improvement trust fund of the state are vested and charged with the administration, management, control, supervision, conservation and protection of all land and products on, under, or growing out of, or connected with, lands owned by, or which may hereafter inure to, the state, not vested in some other state agency. Such lands shall be deemed to be:

All swamp and overflowed lands held by the state, or which may hereafter inure to said state.

All lands owned by the state by right of its sovereignty.

All internal improvement lands proper.

All tidal lands.

All lands covered by shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water.

All parks, reservations, or lands or bottoms set aside in the name of the state not under the supervision and control of some other agency of said state, or of the United States, or other governmental agency.

All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, unless or until vested in some other state agency.

History.—§1, ch. 15642, 1931; CGL 1936 Supp. 1446(13); §2, ch. 61-119.

***253.031 Land office; custody of documents, etc., concerning land; moneys; plats, etc.—**

(1) The trustees of the internal improvement trust fund, hereinafter called the trustees, shall establish and maintain a public land office to be located at the seat of government of the state; in which office shall be deposited and preserved all records, surveys, plats, maps, field notes and patents, and all other evidence touching the title and description of the public domain, and all lands granted by congress to this state, or which may hereafter be granted, for whatever purpose the same may be given.

(2) The trustees of the internal improvement trust fund shall have custody of all the records, surveys, plats, maps, field notes, patents and all other evidence touching the title and description of the public domain.

(3) The trustees shall draw all deeds and conveyances and deliver the same for all sales and transfers, and other disposition of the public domain, that may from time to time be ordered and made by authority of law, and keep a true and faithful record of the same. The trustees shall keep accounts of the several grants or donations for fixing the seat of government, for seminaries of learning, for common schools, for internal improvements, or for any other purpose, in separate books, accounts, and reports, so that the rights and interests of one shall not be blended or mixed with the rights and interests of another, and each class of land shall pay the expenses of locating the same.

(4) The trustees shall, in behalf of this state, receive from the treasury of the United States the five per cent on sales of the public lands, or any other sums accruing from the general government to the seminary, common school, or internal improvement funds; and shall pay the same into the treasury of this state, or, if they shall belong to a fund, to the treasurer of such fund keeping the same separate and distinct under their respective proper heads. The trustees shall hold all needful correspondence with the several land offices of the United States in this state, or with the general land office at Washington, and shall attend the public land sales in this state, and visit the said land offices whenever, in their opinion, the interest of the state shall require it, and do and perform all things needful and proper to advance and promote the interests of the same.

(5) The trustees shall make selections of and secure all swamp and overflowed lands and any other lands enuring to the state under the several acts of congress providing therefor, and shall provide plats or maps of all lands selected and secured, and append thereto an accurate description of the quality, situation and location of the same, and whatever else may affect the value of each tract or body of land selected and secured, taking care to keep in separate books, and maps or plats, the lands belonging to each separate fund, which books and maps and plats, with the description thereof, shall be kept and preserved in the office of the trustees.

(6) Upon the discontinuance by the federal authorities of the office of surveyor-general for the state, the trustees shall receive all of the field notes, surveys, maps, plats, papers and records heretofore kept in the office of said surveyor-general as part of the public records of their office, and shall at all times allow any duly accredited authority of the United States

full and free access to any and all of such field notes, surveys, maps, plats, papers and records; and may make and furnish under their hands and seal certified copies of any or all of the same to any person making application therefor.

(7) The trustees shall receive all of the tract books, plats and such records and papers heretofore kept in the United States land office at Gainesville, Alachua county, as may be surrendered by the secretary of the interior, and the trustees shall carefully and safely keep and preserve, all of said tract books, plats, records and papers as part of the public records of their office, and at any time allow any duly accredited authority of the United States, full and free access to any and all of such tract books, plats, records and papers, and shall furnish any duly accredited authority of the United States with copies of any such records without charge.

(8) The trustees shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the board of education and by the board of trustees of the internal improvement trust fund of this state, and all such deeds signed by the officers or trustees making the same and impressed with said seal shall be operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds shall entitle the same to record and to be received in evidence in all courts.

(9) The fees of the trustees in the following matters shall be as follows: certification under seal of copies of maps or records in the office will be performed for a fee of one dollar fifty cents minimum. The charges for copying, making record searches and compiling reports and statistical data shall be commensurate with the work involved and cost of material used.

History.—§1, ch. 63-294.

Note.—This section and §253.032 created by ch. 63-294 together with amendments to §§92.16, 92.17, 253.41, and repeal of §§19.13, 19.15-19.18, 19.20, 19.24, shall take effect upon ratification of constitutional amendment to amend §6, Art. IV, by the electors of this state at the 1964 general election.

*253.032 Land office; commissioner of agriculture transfer of powers and duties.—The powers and duties of the commissioner of agriculture in relation to the state land office, field notes, plats, and to any other public lands are hereby transferred to the trustees of the internal improvement trust fund. All records, files, supplies, papers and equipment of any nature pertaining to the commissioner's functions as set forth in chapter 19, pertaining to public lands, shall be transferred to the trustees of the internal improvement fund.

History.—§2, ch. 63-294.

*Note.—This section created by ch. 63-294. See note under §253.031.

253.04 Duty of trustees to protect, etc., state lands; state may join in any action brought.—The trustees of the internal improvement trust fund may police, protect, conserve, improve, prevent trespass, damage, or depredation upon the lands and the products thereof, on or under the same, owned by the state as set forth in §253.03. Said trustees may bring in the name of the said trustees all suits in ejectment, suits for damage, and suits in trespass, which in the judgment of the said trustees may be necessary to the full protection and conservation of the said lands, or take such other action or do such other things as may in the judgment of the said trustees be necessary for the full protection and conservation of the said lands, and the state may join with the said trustees in any action or suit, or take part in any proceeding, when it may deem necessary, in the name of the said state through the attorney general.

History.—§2, ch. 15642, 1931; CGL 1936 Supp. 1446(14); §11, ch. 25035, 1949; §2, ch. 61-119.

253.05 Prosecuting officers to assist in protecting state lands.—State attorneys, or other prosecuting officers of the state or county, and sheriffs and their deputies of the several counties of this state, shall see that the lands owned by the state, as described in §253.01, shall not be the object of damage, trespass, depredation or unlawful use by any person; and the said officers and their deputies shall, upon information that unlawful use is being made of the lands of the said state, report the same, together with the information in their possession relating thereto, to the trustees of the internal improvement trust fund and shall cooperate with the said trustees in carrying out the purposes of §§253.01-253.05; and the state attorneys and other prosecuting officers of the state or any county, upon request of the governor or trustees of the internal improvement trust fund, shall institute and maintain such legal proceedings as may be necessary to carry out the purpose of said sections.

History.—§3, ch. 15642, 1931; CGL 1936 Supp. 1446(15); §2, ch. 61-119.

cf.—§27.01 et seq., Duties of state attorneys.
§30.15 et seq., Duties of sheriffs.
§34.12, Prosecuting officers, duties in general.

253.12 Title to tidal lands vested in state.—(1) Except submerged lands heretofore conveyed by deed or statute, and submerged lands in navigable fresh water lakes, rivers and streams, the title to all sovereignty tidal and submerged bottom lands, including all islands, sandbars, shallow banks and small islands made by the process of dredging of any channel by the United States government and similar or other islands, sandbars and shallow banks located in the navigable waters, which shall include all coastal and intracoastal waters, of the state, is vested in the trustees of the internal improvement trust fund. The trustees of the internal improvement trust fund may sell and convey such islands and submerged lands if not determined by the trustees to be contrary to the public interest upon such prices, terms and conditions as they see fit. After receiving application in compliance with such form as they may require to show clearly what is intended to be accomplished in any proposed development of said lands and after giving notice by publication in a newspaper published in the county in which islands or submerged lands are located not less than once a week for three consecutive weeks and mailing copies of such notice by certified or registered mail to each riparian owner of upland lying within one thousand feet of the island or submerged land proposed to be conveyed addressed to such owner as his name and address appears upon the latest county tax assessment roll, in order that any persons who have objections to the sale may have opportunity to present the same; and if no objections are filed within thirty days after the date of the first publication of the aforesaid notice, the trustees have authority to consummate such sale, provided, however, that failure to mail the notice herein provided to such riparian upland owners within one thousand feet or any of them shall not invalidate such sale nor the title conveyed by the trustees pursuant thereto. If objections are filed, the trustees shall hear and consider the same, and if it appears that the sale of such islands and submerged lands and their ownership by private persons would interfere with the lawful rights granted riparian owners, the conservation of natural resources, or would be a serious impediment to navigation, or for other reasons would be contrary to the public interest, the trustees shall withdraw the said lands

from sale; provided, however, anything in this section to the contrary notwithstanding, lands defined herein lying between the ordinary high water line and any bulkhead line, established hereunder shall be sold only to the upland riparian owner and to no other person, firm or corporation; and such sale to said upland riparian owner shall be made pursuant to the provisions herein.

When any state agency, county, city or other political subdivision extends or adds to existing lands or islands bordering on or being in the navigable waters as defined in this section of the state by filling in or causing to be filled in or by draining or causing to be drained such waters the trustees of the internal improvement trust fund may, upon application therefor, convey to the riparian owner or owners of the upland so extended or added to, without consideration, so much of such extended or added land as is not required exclusively for a municipal, county, state or public purpose. The trustees may, however, require a deposit to accompany such application of a sum sufficient to cover the actual cost and expenses of processing such application and preparing instruments of conveyance.

When any person, state agency, county, city or other political subdivision has heretofore extended or added to existing lands or islands bordering on or being in the navigable waters as defined in this section by filling in or causing to be filled in such lands the trustees of the internal improvement trust fund shall upon application therefor convey said land so filled to the riparian owner or owners of the upland so extended or added to. The consideration for such conveyance shall be the appraised value of said lands as they existed prior to such filling.

(2) All conveyances of sovereignty lands heretofore made by the trustees of the internal improvement trust fund of Florida subsequent to the enactment of chapter 6451, acts of 1913, and chapter 7304, acts of 1917, are hereby ratified, confirmed, and validated in all respects.

History.—§1, ch. 7304, 1917; RGS 1061; CGL 1391. §§1, 2, ch. 26776, 1951; (1) §1, ch. 57-362; §2, ch. 61-119.

253.121 Conveyances of such lands heretofore made, ratified, confirmed and validated.— All conveyances of sovereignty lands heretofore made by the trustees of the internal improvement trust fund subsequent to the enactment of chapter 6451 (June 5, 1913), 6960 (June 2, 1915) and 7304 (May 21, 1917), acts of 1913, 1915 and 1917, respectively, where advertisement therefor was published in the county of sale but not in the county seat, are hereby ratified, confirmed and validated in all respects, including all defects subject to ratification, confirmance and validation by the legislature. Said conveyances shall be deemed valid notwithstanding defects in the publication of newspaper notices and the publication of such newspaper notices in newspapers not published at the county seat of the county in which the lands are located.

History.—§1, ch. 29763, 1955; §2, ch. 61-119.

253.122 Power to fix bulkheads.—

(1) Subject to the formal approval of the trustees of the internal improvement trust fund, the board of county commissioners of each county or governing body of any municipality, after public hearing of which at least thirty days prior notice has been given by publication of such hearing for three consecutive weeks in a newspaper having general circulation in the county, are hereby authorized on their own initiative to locate and fix a bulkhead line or lines offshore from any existing lands or islands bordering on or being in the navigable waters of the county, as defined in §253.12, within all or part of the territorial area of the county as the board of county commissioners in its discretion may determine, provided however that where any bulkhead line has been located and fixed by any municipality pursuant to statutory authority, such bulkhead line shall be accepted and adopted by the county commissioners of the county wherein such municipality is located as its bulkhead line within the territorial area of such municipality subject to the provisions of this chapter. Any bulkhead line when so fixed or ascertained and established shall represent the line beyond which a further extension creating or filling of land or islands outward into the waters of the county shall be deemed an interference with the servitude in favor of commerce and navigation with which the navigable waters of this state are inalienably impressed.

(2) Upon the written application of any riparian owner addressed either to the board of county commissioners or the governing body of any municipality wherein the land lies, the board or governing body is directed to locate and fix a bulkhead line or lines within the area and vicinity of the land owned by such applicant in the event a bulkhead line or lines has not been established by the board pursuant to subsection (1) above.

(3) In the event the board of county commissioners and the governing body of any municipality, for a period of sixty days next and after the receipt of the written application by such upland owner, fails, neglects or refuses to locate and fix a bulkhead line or lines pursuant to subsection (2) above, for the area and in vicinity of the land of any such riparian upland owner, then and in that event such upland and riparian owner of land may file his application for the establishment of a bulkhead line with the trustees of the internal improvement trust fund, who are hereby authorized and directed to proceed to locate and fix a bulkhead line or lines within the area or vicinity of the riparian uplands of such owner and when such bulkhead line or lines shall have been located and fixed by the said trustees of the internal improvement trust fund, the same shall have the force and effect as though such line or lines had been located and fixed by the board of county commissioners or governing body of any municipality, to whom such original application had first been made.

(4) Upon the establishment and approval of any bulkhead line or lines in the manner herein provided for, a drawing showing the location of such bulkhead line or lines shall be promptly filed in the public records of the county where the same may be located and recorded in the book of plats of said county. Upon the establishment of any bulkhead line or lines as herein contemplated, any proposal thereafter made to change said line or lines shall be published once each week for three consecutive weeks in a newspaper of general circulation published in the county where such change in said bulkhead line or lines is proposed, copies of such notice by certified or registered mail shall be sent to each riparian owner of upland lying within one thousand feet of the island or submerged land proposed to be conveyed addressed to such owner as his name and address appears upon the latest county tax assessment roll, and the publication of such proposal shall, for all purposes, be deemed to be a public notice of a hearing before the authority initially establishing said bulkhead line or lines and the publication of such proposal shall include therein the time, date and place for such hearing. Any change in such bulkhead line or lines when made and approved shall be evidenced as provided by this chapter.

(5) Any person, natural or artificial (including riparian owners), aggrieved by any decision of the board of county commissioners or governing body of any municipality or trustees of internal improvement trust fund establishing a bulkhead line may, within the time provided by the Florida appellate rules, have the decision reviewed by the appropriate circuit court by filing therewith a petition for issuance of a writ of certiorari and it shall be the duty of such board or the trustees, as the case may be, to cause to be prepared and certified, at the cost of appellant, a transcript of all proceedings including the evidence introduced at such hearing, and the court shall hear and determine the cause on the record without indulging any presumption in favor of the decision of such board or the trustees. In event the decision is not sustained the court shall tax the cost of preparing the transcript against the agency making the decision. The right of review hereunder is not exclusive, and any person asserting any rights adversely affected may institute and prosecute any proceeding authorized by law (including without limitation extraordinary remedies and writs) or in equity. However, any appellant shall not be required to pay more than two hundred dollars for or toward the cost of a transcript that may be desired if an appeal is taken as in this section provided for.

History.—§2, ch. 57-362; (1), (3), (5) a. by. §2, ch. 61-119; (5) §10, ch. 63-512.

253.123 Restriction of filling land.—No private person, firm or corporation shall construct islands or add to or extend existing lands or islands bordering on or being in the navigable water of the state as defined in §253.12(1) by pumping sand, rock or earth from such waters or by any other means without first complying with §253.122 provided nothing herein contained shall relate to artificially created navigable waters. This section shall not apply to lands the owners of which have heretofore purchased or are purchasing under contract from the trustees of internal improvement trust fund and who, on June 11, 1957, have permits issued by the United States corps of engineers, and approved by the trustees of internal improvement trust fund to fill said lands.

History.—§3, ch. 57-362; §2, ch. 61-119.

253.124 Application for filling land.—Any private person, firm or corporation desiring to construct islands or add to or extend existing lands or islands located in the unincorporated area of any county bordering on or in the navigable waters of the state as defined in §253.12, by pumping sand, rock or earth from such waters or by any other means, shall make application in writing to the board of county commissioners of the county wherein such construction is designed, for a permit authorizing such person, firm or corporation to engage in such construction, provided that where it is desired to construct islands or add to or extend existing lands or islands within the territory of any municipality such application for a construction or fill permit shall be made to the governing body of such municipality. In each instance the written application herein provided for shall be accompanied by a plan or drawing showing the proposed construction and shall also show the area from which any fill material is to be dredged if the proposed construction is intended to be created from dredged material. In the event such application be found by the board of county commissioners or other authorized body not to be violative of any statute, zoning law, ordinance, or other restriction which may be applicable thereto, or that no harmful obstruction to or alteration of the natural flow of the navigable water as defined in §253.12, within such area will arise from the proposed construction, or that no harmful or increased erosion, shoaling of channels or stagnant areas of water will be created thereby, or that no material injury or monetary damage to adjoining land will accrue therefrom, the same shall be granted to the applicant, subject to the formal approval of the trustees of the internal improvement trust fund. No construction permit shall be issued unless the proposed work is to be completed within two years next after the date of issuance of such permit. Such time may be extended for good cause, upon showing that all due efforts and diligence toward completion of said work have been made. The construction permit hereby provided for may be revoked for a noncompliance with or for a violation of its terms after notice of intention so to do has been furnished to the holder thereof by the board of county commissioners or other authorized body and an opportunity for a hearing afforded the holder. In the event a permit

is refused the applicant therefor may have the order refusing the permit reviewed upon filing a petition for the issuance of a writ of certiorari with the appropriate circuit court in the manner and within the time prescribed by the Florida appellate rules.

History.—§4, ch. 57-362; §2, ch. 61-119; §7, ch. 61-530; §10, ch. 63-512.

253.125 Permit; filing fee and cost.—The board of county commissioners or governing body of any municipality shall assess such filing fees and costs as may be necessary for the filing, processing and issuance of such construction permit as provided for herein.

History.—§5, ch. 57-362.

253.126 Exceptions; municipal, state, county or public purpose.—The limitations and restrictions imposed upon the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters as defined in §253.12 shall not apply if such construction or extension is by any state, county or city or other political subdivision exclusively in a governmental or proprietary capacity for a municipal, county, state or public purpose, of lands of which it is the riparian upland owner or holds the consent in writing of the riparian upland owner consenting to such construction or extension; nor shall the provisions of this law apply to any submerged lands heretofore conveyed by deed or statutes to any county, city, public corporate body or other political subdivision of the state.

History.—§6, ch. 57-362.

253.127 Enforcement.—The trustees of the internal improvement trust fund, the board of county commissioners or governing body of any municipality, or any aggrieved person, shall have the power to enforce the provisions of this law by appropriate suit in equity.

History.—§7, ch. 57-362; §2, ch. 61-119.

253.128 Enforcement; board or agency under special law.—In any county where the legislature by special law or general law with local application has heretofore or hereafter transferred or delegated to any county board or agency other than the board of county commissioners or the governing body of any municipality powers and duties over the establishment of bulkhead line or lines, dredging permits, fill permits, sea wall construction or any other powers of a like nature such agency shall have jurisdiction under this law in lieu of the board of county commissioners or the governing body of any municipality as the case may be.

History.—§8, ch. 57-362.

253.129 Confirmation of title in upland owners.—The title to all lands heretofore filled or developed is herewith confirmed in the upland owners and the trustees shall on request issue a disclaimer to each such owner.

History.—§9, ch. 57-362; §13, ch. 59-1.

253.0013 Construction of §§253.12, 253.122-253.129.—

(1) This law shall not be construed to be in conflict with any general or special law whereby the state has divested itself of title to submerged land or has granted such title to another.

(2) The provisions of §§253.12, 253.122-253.129 shall not affect or apply to the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters as defined in §253.12 of the state which was commenced or application for permit to fill which was filed with the United States corps of engineers prior to June 11, 1957, as to lands or bottoms lying between ordinary high water mark and a bulkhead line heretofore established by any county, city or other political subdivision of the state by official action of its governing body.

(3) The provisions of §§253.122 through 253.128, inclusive, shall not apply to any county in this state having a meandered shore line, including mainland and islands, greater in length than eight hundred and fifty statute miles, and having within its boundaries meandered islands greater in number than two hundred.

History.—§§10-12, ch. 57-362.

253.14 Rights of riparian owners; trustees to defend suit.—It is expressly provided that nothing contained in this chapter shall be so construed as to deprive any private riparian owner from bringing an injunction suit in equity against the sale provided for in §253.12 on the ground that he would be thereby deprived of his riparian rights granted to him by law; provided, that such suit must be commenced within thirty days after the trustees shall have overruled the objections of such owner to such proposed sale.

In case suit is brought by any private owner to enjoin such sale, it shall be in the discretion of the trustees to defend such suit or to withdraw said lands from sale.

History.—§§3, 4, ch. 7304, 1917; RGS 1063; CGL 1393.

253.16 Details of construction of railroads.—No railroad company shall have any aid, benefit, land or property, of, or from, said internal improvement trust fund, unless its details of construction be recommended by a competent engineer and approved by the trustees of the internal improvement trust fund.

History.—§1, ch. 734, 1855; RS 430; GS 618; RGS 1068; CGL 1399; §2, ch. 61-119.

cf.—A9S7 no tax for benefit of chartered company.
A9S10 Credit of state not to be pledged or loaned.

253.17 Trustees may designate engineer for certain purposes.—The trustees of the internal improvement trust fund may designate any competent civil engineer to examine any railroad or canal, or any portion thereof, on account of which lands shall be claimed of said fund, and to report whether the same is properly completed; and to perform such other duties as said trustees in the administration of said fund may require.

History.—§2, ch. 734, 1855; RS 431; GS 619; RGS 1069; CGL 1400; §2, ch. 61-119.

253.18 Trustees to fix price of lands.—The trustees of the internal improvement trust fund shall fix the price of the public lands included in the trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands as in their judgment may be most advantageous to the internal improvement trust fund, and the settlement and cultivation of the lands; and the said trustees shall encourage actual settlement and cultivation of the said lands by allowing preemptions, under such rules and regulations as they may deem advisable; provided, that in no case shall preemption for more than one section of land be granted to any one settler.

History.—§16, ch. 610, 1855; RS 432; GS 620; RGS 1070; CGL 1401; §2, ch. 61-119.

253.19 Alternate sections may be granted.—The alternate sections of the swamp and overflowed lands, for six miles on each side, may be granted by the legislature to such railroad companies as it may deem proper.

History.—§29, ch. 610, 1855; RS 433; GS 621; RGS 1071; CGL 1402.

cf.—A9S7 No tax for benefit of chartered company.
A9S10 Credit of state not to be pledged or loaned.

253.20 Trustees may recover lands forfeited.—The trustees of the internal improvement trust fund may take the proper legal steps to recover from any railroad company any lands granted, which may have been forfeited by a breach of the terms and conditions on which said lands were granted.

History.—§7, ch. 1138, 1861; RS 435; GS 623; RGS 1072; CGL 1403; §2, ch. 61-119.

253.21 Trustees may surrender certain lands to the United States and receive indemnity.—Whenever it may appear that any of the swamp lands, granted by the United States to this state by act of congress approved on the 28th of September, 1850, entitled "An act to enable the State of Arkansas and other states to reclaim the swamp lands within their limits," have been sold or located, the trustees of the internal improvement trust fund may surrender to the United States the right, title and claim of the state to said lands, and receive from the United States, in lieu thereof, such reclamation as may be due.

History.—Ch. 631, 1855; RS 439; GS 627; RGS 1076; CGL 1407; §2, ch. 61-119.

253.22 Grants subject to trusts.—Any and all grants of lands other than the alternate sections within the usual six-mile limit made, or that may be made, by any act, shall be subject to the rights of all creditors of the internal improvement trust fund, and to the trusts to which said fund is applicable and subject under the act approved January 6, 1855, and entitled "An act to provide for and encourage a liberal system of internal improvements in this state," and subject to control, management and sale and application of said fund and the lands constituting the same, by the trustees of the internal improvement trust fund, for the purposes of said trust under said act.

History.—Ch. 3326, 1881; RS 440; GS 628; RGS 1077; CGL 1408; §2, ch. 61-119.

253.23 Trustees to report to legislature.—The trustees of the internal improvement trust fund shall report to the legislature of the state upon the several matters committed to their charge, and such other matters as may be deemed proper in connection therewith.

History.—§1, ch. 1320, 1862; RS 441; GS 629; RGS 1078; CGL 1409; §2, ch. 61-119.

253.24 Certain land grants forfeited.—All lands heretofore granted by the state to any corporation to aid in the construction of a railroad, or a railroad and telegraph line, or to aid in cutting a canal, where any such railroad has not been constructed or canal cut, within the time specified in the act making the grant, are declared forfeited to the state, and the state resumes title thereto, and all such lands are restored to the public domain and declared to be a portion thereof: provided, the forfeiture hereby declared shall not extend to lands adjacent to, and coterminous with, any portion of said railroad or canal which is now completed; provided, further, that the provisions of this chapter shall not apply to any of the internal improvement lands granted to the state by an act of congress, approved September 4, 1841.

History.—§1, ch. 3911, 1889; RS 442; GS 630; RGS 1079; CGL 1410.

253.25 Homestead of forfeited lands. — Every bona fide settler upon any of the lands forfeited by §253.24, may acquire a title to not exceeding one hundred and sixty acres in each case as a homestead, under and pursuant to sections relating thereto, and if such settler is not entitled to the benefit of the homestead law, as provided for by said sections, he shall have the prior right to enter the tract settled on, not exceeding one hundred and sixty acres, at one dollar per acre.

History.—§2, ch. 3911, 1889; RS 443; GS 631; RGS 1080; CGL 1411.

253.26 Forfeited lands not to enure to other corporations.—No lands declared forfeited to the state, under the provisions of this chapter, shall enure to the benefit of any other corporation to which lands may have been granted by the state, nor shall this chapter be construed to enlarge the area of lands originally covered by any such grant.

History.—§3, ch. 3911, 1889; RS 444; GS 632; RGS 1081; CGL 1412.

253.27 Reservations, etc., vacated.—All lists of lands heretofore certified to, or reservations made by the trustees of the internal improvement trust fund, for the benefit of any corporation contrary to the provisions of this chapter, are declared inoperative and void.

History.—§4, ch. 3911, 1889; RS 445; GS 633; RGS 1082; CGL 1413; §2, ch. 61-119.

253.28 Extended grant not forfeited.—The provisions of §§253.24-253.27, shall not be applicable to, and shall not affect, any company

whose grant has been extended by special act of the legislature, where the time to which any such extension has been made has not yet expired at the time of the passage thereof, but shall apply at the expiration of such extension.

History.—§6, ch. 3911, 1889; RS 446; GS 634; RGS 1083; CGL 1414.

253.29 Trustees to refund money paid where title to land fails.—Any person having heretofore, or who may hereafter purchase in good faith and for value, any lands in the state from the trustees of the internal improvement trust fund of the state, and which title has failed by reason of the fact that the trustees of the internal improvement trust fund had no title or right to convey the same, the trustees of the internal improvement trust fund shall refund to said party the sums of money so paid for said lands without interest thereon upon due proof being made.

History.—§1, ch. 5175, 1903; GS 635; RGS 1084; CGL 1415; §2, ch. 61-119.

253.30 Trustees may borrow money for drainage.—The trustees of the internal improvement trust fund of the state may borrow money and incur obligations, from time to time, on such terms and at such rates of interest as they may deem proper for the purpose of raising funds to build, or to aid in the building of, such canals, drains, dikes, dams, locks and reservoirs as, in the judgment of the trustees of the internal improvement trust fund, may be necessary to drain and reclaim the swamp and overflowed land acquired by the state under the act of congress, approved September 28th, 1850, that may now be in said fund.

History.—§1, ch. 6453, 1913; RGS 1085; CGL 1416; §2, ch. 61-119.

253.31 How borrowed money applied.—Any money that may be borrowed by the trustees of the internal improvement trust fund, under the provisions of §253.30, may be applied by the said trustees to the expenses incident to the building and construction of such canals, drains, dikes, dams, locks and reservoirs as the said trustees may deem necessary for the purposes set out in said section, and the management and administration of the said internal improvement trust fund, but the party or parties making such loans shall not be bound to see to, or to be affected by, the application of such loans.

History.—§2, ch. 6453, 1913; RGS 1086; CGL 1417; §2, ch. 61-119.

253.32 Trustees may issue promissory notes for repayment of loans; suit by holder.—The trustees of the internal improvement trust fund may issue their promissory notes or other written obligations, or evidences of indebtedness, for the repayment of the loans authorized in §253.30, at such times and upon such terms and at such rates of interest as they may deem most advantageous to the said fund; and, if upon the maturity of such promissory notes, or written obligations or other evidences of indebtedness, the same are not redeemed or paid, the said trustees may be sued by the holder thereof, and any judgment obtained thereon shall be a lien upon said fund, and enforced as any other judgment at law, but there shall be no judgment against the state, nor against the trustees, personally, in any such proceeding.

History.—§3, ch. 6453, 1913; RGS 1087; CGL 1418; §2, ch. 61-119.

253.33 Loans to board of drainage commissioners.—The trustees of the internal improvement trust fund, for the purpose of carrying out the provisions of law, may make such loans or advances to the board of drainage commissioners as the said trustees shall deem advisable, to aid the said board of drainage commissioners in the work of building and constructing any canals, drains, dikes, dams, locks and reservoirs as may be constructed by the said board of drainage commissioners in any drainage district established in this state.

History.—§4, ch. 6453, 1913; RGS 1088; CGL 1419; §2, ch. 61-119.

253.34 Trustees may transfer notes owned by them.—The trustees of the internal improvement trust fund may endorse and transfer to any person, with or without recourse, any bills, notes or other obligations which the said trustees may now own, or may hereafter acquire.

History.—§5, ch. 6453, 1913; RGS 1089; CGL 1420; §2, ch. 61-119.

253.35 Trustees may contract with federal government for purpose of locating returned soldiers.—The trustees of the internal improvement trust fund of Florida may enter into any contract, stipulations, or agreement, with any agency or department of the federal government which is now, or may be created by act of congress, for the purpose of locating returned soldiers, sailors and marines and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in the allied armies against the central powers and who have been repatriated and who have been honorably discharged; and the trustees of the internal improvement trust fund of Florida may utilize or convey in such manner as they deem advisable therefor, such state lands as in their judgment may be necessary to carry out the purposes of this section.

History.—§1, ch. 7746, 1918; RGS 1093; CGL 1424; §2, ch. 61-119.

253.351 Homesteading wild and vacant lands; discharged veterans entitled to.—Any honorably discharged veterans of the armed services of the United States during world war II, shall be entitled to homestead and receive a deed to not more than forty acres of public land of this state other than sovereignty lands and school lands in the manner hereinafter provided. Public lands shall include swamp and overflow lands, internal improvement lands, and tax forfeited lands, title to which is now or hereafter vested in the state or any of its departments or agencies; provided, only such lands as are wild and vacant and are not presently devoted to any public use shall be subject to the homestead privileges; provided, further, nothing herein shall disturb any petroleum, oil or gas interests

of the state leased or reserved in such lands, and any lands homesteaded hereunder shall be made subject to the petroleum, oil and mineral reservation provisions of §270.11. Any county, by resolution of its board of county commissioners, may open up any wild and vacant lands owned by the county for homestead purposes in the manner provided by this law.

History.—§1, ch. 22860, 1945.

253.352 Procedure to claim homestead.—Any such honorably discharged veteran, hereinafter referred to as the "homesteader," may file with the trustees of the internal improvement trust fund application of notice of intention to homestead a tract of not more than forty acres of state land. Copy of such notice shall be filed and recorded with the clerk of the court in the county in which the tract is situated. Forms for such notice shall be prescribed by the trustees of the internal improvement trust fund and shall be placed in the custody of the clerk of the circuit court of each county of the state. The notice shall show that the party intending to homestead the tract of land is an honorably discharged member of the armed services and a citizen and resident of the state and of the United States. Said notice shall accurately describe the lands to be homesteaded by metes and bounds or other good and sufficient legal description of the land to be homesteaded. Said notice shall be sworn to. Provided, however, no veteran entitled to the benefits of this law shall file more than one application or notice for homestead, unless said trustees for good cause shall permit him to withdraw such application prior to issuance of deed and file another application.

History.—§2, ch. 22860, 1945; §2, ch. 61-119.

253.353 Homesteader to reside on lands.—Beginning within ninety days after such notice is filed, the homesteader shall bona fide and in good faith continuously reside upon, assert dominion over, improve and make the said tract described in the notice, his place of abode for a period of three years.

History.—§3, ch. 22860, 1945.

253.354 Execution of deed.—If, at the end of the said three-year period, such homesteader shall have faithfully complied with the provisions of §253.353, and the trustees of the internal improvement trust fund shall so find, a deed in the name of the state or county as grantor shall issue to said homesteader. The deed shall be executed by the department or agency of the state holding title or by the trustees of the internal improvement trust fund if the title is in the name of the state itself. If the title is in the name of the county the deed shall be executed by the board of county commissioners thereof.

History.—§4, ch. 22860, 1945; §2, ch. 61-119.

253.355 Certificate as to nature of soil.—Prior to the filing of any application or notice of intention to homestead any particular land, the applicant shall secure a certificate from the commissioner of agriculture or from the county farm agent of the county in which land is situated relative to the land sought to be homesteaded, which shall set forth the type of soil contained in said land and whether it is arable and satisfactory for ordinary cultivation. Unless said certificate states that the land is arable and satisfactory for ordinary cultivation the application shall not be granted. Said certificate shall be attached to and filed with the application or notice of intention to homestead the land.

History.—§5, ch. 22860, 1945.

253.356 Rules and regulations.—The trustees of the internal improvement trust fund shall adopt appropriate rules and regulations to carry out the provisions of this law.

History.—§6, ch. 22860, 1945; §2, ch. 61-119.

253.36 Title to reclaimed marsh, etc., lands in trustees.—The title to all marsh, wet or low lands as have become permanently reclaimed, title to which is in the state, is vested in the trustees of the internal improvement trust fund to be held by the state and disposed of, as provided in this chapter.

History.—§1, ch. 7891, 1919; CGL 1425; §2, ch. 61-119.

253.37 Survey to be made; sale of lands; preference to buyers.—When it shall be brought to the attention of the trustees of the internal improvement trust fund that such lands exist, as are defined in §253.36, the trustees may cause a survey of the same to be made, which survey shall be connected with the surveys of the United States government, or other surveys adjoining such lands, as far as may be practicable, and shall be made in conformity with the rules and regulations prescribed by the department of the interior for making federal surveys. When such surveys have been completed and, with the plats thereof, have been filed in the office of the secretary of the said trustees, the trustees may proceed to sell and convey the said lands so surveyed in the same manner that other swamp and overflowed lands are sold and disposed of; provided, that in making sales of such land the trustees shall give first right to purchase to any adjacent owner thereof who desires to complete or square up any fractional section now owned by him or to any person who has settled on, or preempted the same, in amounts not exceeding eighty acres; and, provided further, that any and all other such lands as are covered hereby shall be sold by the trustees to bona fide settlers in amounts not exceeding eighty acres to each settler.

History.—§2, ch. 7891, 1919; CGL 1426; §2, ch. 61-119.

253.38 Riparian rights not affected.—Nothing in §§253.36 and 253.37 shall be construed as in any wise affecting the riparian rights now or heretofore existing under the laws of this state; but it is expressly provided, that the provisions of said sections shall apply only to such lands as the department of the interior has declined to convey to the state, or which have become permanently reclaimed; and in

making sales thereof, the trustees may provide for a complete system of reclamation as part of the consideration thereof, or contract for such permanent reclamation in the manner they deem advisable.

History.—§3, ch. 7891, 1919; CGL 1427.

253.381 Unsurveyed marsh lands; sale to upland owners.—The trustees of the internal improvement trust fund of the state and the state board of education are hereby authorized to make sales of unsurveyed marsh lands to record owners of uplands which have been surveyed by the United States, and to make equitable divisions of unsurveyed marsh areas and allocations of the same for sales with due respect to upland ownership, sales heretofore made, natural divisions of the unsurveyed marshes which are indicated by the general courses of water channels within or across the unsurveyed marshes and to other topographical features of the affected areas.

History.—§1, ch. 59-497; §2, ch. 61-119.

253.39 Surveys, etc., approved by chief cadastral surveyor validated.—All surveys of lands into townships, sections or other regular land divisions, heretofore or hereafter made in this state, and which have or may hereafter be approved by the chief cadastral surveyor for the trustees of the internal improvement trust fund, together with the field notes, plats, or other accessories pertaining thereto, are validated and confirmed and are official public surveys of this state of equal force, tenor and effect as surveys made by or under the direction of the United States government.

History.—§1, ch. 7892, 1919; CGL 1428; §1, ch. 61-187; §2, ch. 61-119.

253.40 To what lands applicable.—The provisions for land surveys in §§253.39 and 253.41 shall only apply to such lands as have not heretofore been surveyed by the federal government; and all acts of the trustees of the internal improvement trust fund, together with any and all contracts, resolutions and instructions relating to such surveys, are approved, validated and confirmed.

History.—§2, ch. 7892, 1919; CGL 1429; §2, ch. 61-119.

***253.41 Plats and field notes filed in office of commissioner of agriculture.**—When such surveys, as provided for in §§253.39 and 253.40, shall have been made and approved by the chief cadastral surveyor, the plats and field notes thereof shall be filed in the office of the commissioner of agriculture of this state, who shall be the custodian of such plats and field notes for the use of the public, under such regulations as may apply to the use of plats and field notes of the public land surveys of the United States, and a duly certified copy of the same shall be admissible as evidence in any court in this state.

History.—§3, ch. 7892, 1919; CGL 1430.

***253.41 Plats and field notes filed in office of trustees of internal improvement trust fund.**—When such surveys, as provided for in §§253.39 and 253.40, shall have been made and approved by the chief cadastral surveyor, the plats and field notes thereof shall be filed in the office of the trustees of the internal improvement trust fund of this state, who shall be the custodian of such plats and field notes for the use of the public, under such regulations as may apply to the use of plats and field notes of the public land surveys of the United States, and a duly certified copy of the same shall be admissible as evidence in any court of this state.

History.—§5, ch. 63-294.

*Note.—This section amended by ch. 63-294. See Note under §253.031.

253.42 Trustees may exchange lands.—The trustees of the internal improvement trust fund of the state may exchange lands held or owned by, or vested in, said trustees of the internal improvement trust fund, for other lands in the state owned by private individuals or corporations; and fix the terms and conditions of any such exchange, and select and agree upon the lands to be so conveyed by said trustees of the internal improvement trust fund; and the lands to be conveyed to said trustees in exchange therefor; and agree upon and pay or receive, as the case may in the judgment of said trustees require, any sum or sums of money deemed necessary by said trustees for the purpose of equalizing the values of such exchanged property, and make and enter into contracts or agreements for such purpose or purposes.

History.—§1, ch. 8525, 1921; CGL 1432; §2, ch. 61-119.

253.43 Convey by deed.—The trustees of the internal improvement trust fund may execute and deliver a deed of conveyance, in their discretion necessary or proper, for the purpose of carrying into effect any such exchange or any contract or agreement therefor, made by said trustees under or pursuant to the power vested in them by this chapter, or otherwise; and any such deed shall fully convey to and vest in the purchaser or grantee the property so conveyed.

History.—§2, ch. 8525, 1921; CGL 1433; §2, ch. 61-119.

253.44 Disposal of lands received. — All lands conveyed to the trustees of the internal improvement trust fund, pursuant to §§253.42-253.44, or ratified by §253.43, shall be held and disposed of by said trustees, pursuant to the laws of the state affecting said trustees of the internal improvement trust fund, and acts amendatory thereto.

History.—§3, ch. 8525, 1921; CGL 1434; §2, ch. 61-119.

253.45 Sale or lease of phosphate, clay, minerals, etc., in, on or under, certain lands.—The trustees of the internal improvement trust fund, the board of commissioners of state institutions, the state board of conservation, the state board of education, and all and every state board, state department, or state agency, having the title to any lands, or the title being in the state, control and management of which are in such boards, departments, or agencies, may sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on, or under, any of the described lands other than hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low water depth of three feet and landward to the nearest paved public road, upon such terms and conditions as may

seem most advisable to the said trustees, boards, departments or agencies and to the best interest of the state; the proceeds of such sales or leases to be credited to the trustees, boards, departments or agency concerned.

History.—§1, ch. 9289, 1923; §§1, 2, ch. 9315, 1923; §1, ch. 13670, 1929; CGL 1936 Supp. 1438(1); §1, ch. 59-178; §2, ch. 61-119.

cf.—§270.13 Disposition of money derived from sale, lease or rental of products in, on, or under, state lands.
§370.16(32) Disposition of funds from sale of dead shells and lease bottoms.

253.46 Sale of moss authorized.—The trustees of the internal improvement trust fund of the state may sell the moss from any lands belonging to the state, including sovereignty lands, at such price and on such terms as in their judgment shall be for the best interest of the state. All moneys arising from the sale of such moss shall be paid into the state school trust fund, and shall become a part of such fund.

History.—§1, ch. 10161, 1925; CGL 1444; §2, ch. 61-119.

253.47 Trustees may lease, sell, etc., bottoms of bays, lagoons, straits, etc., owned by state, for petroleum purposes.—The trustees of the internal improvement trust fund of the state may lease for royalties or for other agreed compensation, or sell and otherwise dispose of the right to drill wells for the discovery and the production of petroleum and natural gas in the bottoms, owned by the state in its sovereign capacity, of the bays, lagoons, straits, sounds, gulf, streams, and lakes within the state; provided, that such leases or sales shall not confer, upon the person acquiring the same, the right to enter upon any private property of another, nor the right to drill any well or otherwise place permanent or stationary obstruction in such waters or upon such bottoms within one-quarter of one mile of the shore-line of the lands of any up-land owner, without first having the written consent of such up-land owner so to do. The leases and sales so made shall convey to the lessee or vendee the rights of ingress and egress to, from, and over the bottoms leased or acquired, and the right to construct and maintain on and over such leased or acquired bottoms, in such manner as not to obstruct transportation, any structures, tanks, docks, stations and other equipment, as may be required for the proper development of such leases and the purposes for which the same are made.

History.—§1, ch. 12429, 1927; CGL 1445; §7, ch. 22858, 1945; §2, ch. 61-119.
cf.—§270.13 Disposition of money derived from leases.

253.50 Conveyances between state agencies authorized.—

(1) It shall be lawful for the trustees of the internal improvement trust fund to convey to the Florida board of forestry and parks title to lands for state forest, state park, and recreational purposes.

(2) It shall be lawful for the trustees of the internal improvement trust fund to convey to the Florida board of forestry and parks title to all lands now owned by the trustees of the internal improvement trust fund that are now dedicated for state forest, state park, and recreational purposes.

(3) It shall be lawful for the trustees of the internal improvement trust fund to convey to the Florida board of forestry and parks title to such Murphy lands as may be requested by the Florida board of forestry and parks and approved for state forest, state park and recreational purposes by the trustees of the internal improvement trust fund.

History.—§§1-3, 21998, 1943; §2, ch. 61-119.

253.51 Oil and gas leases on state lands; authority of state boards.—From and after the passage of this law the board of trustees of the internal improvement trust fund of Florida, the board of commissioners of state institutions of Florida, the state board of conservation of Florida, the state board of education of Florida, and all and every state board, state department, or state agency of the state, having the title to any lands, submerged or unsubmerged, in the state, or the title being in the state, control and management of which are in such boards, departments, or agencies, are hereby, authorized and empowered to negotiate, sell and convey lease-hold estates in and to such lands, for the purpose of the development thereof, and the production therefrom, of oil and gas, to any person, firm, corporation or association authorized to do business in the state, upon such terms and conditions as may be agreed upon by the contracting parties, not inconsistent with law and the provisions of this law.

History.—§1, ch. 22824, 1945; §2, ch. 61-119.
Note.—Similar provisions in former §270.28.

253.52 Placing oil and gas leases on market by board.—Whenever in the opinion of any of such boards, departments, or agencies, there shall be a demand for the purchase of oil and gas leases on any area, tract, or parcel of the land so owned, controlled, or managed, by any thereof, then such board, department or agency, shall place such oil and gas lease, or leases, on the market in such blocks, tracts, or parcels as such board, department, or agency may designate. The lease, or leases, shall only be made after notice by publication thereof has been made not less than once a week for four consecutive weeks in a newspaper of general circulation published in Leon county, and in a similar newspaper for a similar period of time published in the vicinity of the lands offered to be leased, the last publication in both newspapers to be not less than five days in advance of the sale date. Such notice shall be to the effect that a lease, or leases, will be offered for sale at such date and time as may be named in said notice and shall describe the land upon which such lease, or leases, will be offered. Before any lease of any block, tract, or parcel of land, submerged, or unsubmerged, within a radius of three miles of the boundaries of any incorporated city, or town, or within such radius of any bathing beach, or beaches, outside thereof, such board, department, or agency, shall through one, or more, of its members hold a public hearing, after notice thereof by publica-

tion once in a newspaper of general circulation published at least one week prior to said hearing in the vicinity of the land, or lands, offered to be leased, of the offer to lease the same, calling upon all interested persons to attend said hearing where they would be given the opportunity to be heard, all of which shall be considered by such board, department, or agency, prior to the execution of any lease, or leases, to said land, and such board, department or agency, may withdraw said land, or any part thereof, from the market, and refuse to execute such lease, or leases, if after such hearing, or otherwise, it considers such execution contrary to the public welfare. Before advertising any land for lease the form of the lease, or leases, to be offered for sale, not inconsistent with law, or the provisions of this section, shall be prescribed by the board, department, or agency, offering the land for sale and a copy, or copies, thereof, shall be available to the general public at the office of such board, department, and agency, and the advertisements of such sale shall so state.

History.—§2, ch. 22824, 1945; §1, ch. 24339, 1947; §11, ch. 25035, 1949; §10, ch. 26484, 1951.

253.53 **Sealed bids required.**—All lands subject to this law shall be leased upon sealed bids. All bids shall be directed to the board, department or agency offering the lands for lease. The board, department or agency shall determine in advance the amount of royalty, never less than one-eighth in kind, or in value, and a definite rental, increasing annually after the first two years, upon lands not developed for oil or gas, or upon which no well has been commenced in good faith to secure production in paying quantities of gas or oil. In addition to such fixed charges for said lease there shall be a cash consideration. The bids shall be for this cash consideration, offered for said lease, in addition to such fixed charges for royalty and rent and shall be payable upon acceptance of said bid. All bids shall be accompanied by a cashier's check, or certified check, for the amount of such cash consideration and shall be payable to the board, department or agency offering the land for lease. No bid filed subsequent to the date and hour of sale specified in the advertisement of sale shall be considered.

History.—§3, ch. 22824, 1945.

253.54 **Competitive bidding.**—On the date and at the hour specified in the advertisement of sale, the board, department or agency, offering the land, or lands, for lease, shall at a public meeting, open and consider any and all bids submitted prior to such date and hour for the leasing of the land, or lands, so advertised, and, in the discretion of such board, department or agency, award the lease to the highest and best bidder submitting a bid therefor; provided, that if, in the judgment of such board, department or agency, the bids submitted do not represent the fair value of such lease, or leases, or the execution of same is contrary to the public welfare, or the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may, in its discretion reject said bids, give notice and call for new or other bids, or withdraw said land from the market. If several distinct blocks, parcels, or tracts of land can be separately considered, then, and in that event, such board, department or agency, may so consider them, but, if they cannot be so considered, then the rejection for any cause of the highest and best bid shall result in the rejection of all bids.

History.—§4, ch. 22824, 1945.

253.55 **Limitation on term of lease.**—

(1) Subject to the further provisions hereof, each lease shall be for a primary term prescribed by such board, department or agency, not to exceed ten years from the date of the lease, and shall provide that such lease, upon which operations are being carried on in good faith and in a workmanlike and diligent manner, with no cessation of more than thirty consecutive days, or oil or gas is being produced therefrom in paying quantities, shall remain in force and effect. The lease shall provide that, if after production is obtained therefrom, such production should cease, the lease may be maintained, if it be within the primary term by commencing or resuming the payment of rentals, or commencing operations for drilling or reworking said land, in good faith, and in a workmanlike and diligent manner, on, or before, the rental payment date next ensuing after the expiration of sixty days, or, if it be after the expiration of the primary term, the lease may be maintained in force and effect by commencing and continuing operations for drilling or reworking said land for the development and production of oil or gas on, or before sixty days after the cessation of production, and prosecuting same with diligence and in a workmanlike manner with no cessation for more than thirty consecutive days, and if such operation within a reasonable time thereafter result in the production of oil or gas from such leased land in paying quantities the lease shall remain in effect thereafter as long as oil or gas is produced therefrom in paying quantities.

(2) Each lease shall provide for its termination in the absence of drilling or reworking operations or production of oil or gas therefrom in paying quantities.

(3) Every such lease executed by any of such boards, departments or agencies, shall require the lessee and his assigns to commence and complete operations for the drilling of at least one test well on the lands leased within the first two and one-half year period of the term of such lease and to commence and complete operations for the drilling of at least one additional well in each succeeding two and one-half year period of the term of said lease, until the total number of wells drilled shall equal one-half the number of sections of land embraced in the lease, and, after commencing such operations, to prosecute same in good faith, and with reasonable diligence and in a workmanlike manner, to

discover, and to develop said land for the production of oil and gas, until such well is completed, or abandoned. The lessee and his assigns, at the time the drilling of each well is commenced shall file with the lessor a written declaration describing the two sections of land to which such well shall apply. If no well shall be commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop said land for the production of oil and gas, until such well is completed or abandoned, within the first two and one-half year period of the term of such lease the entire lease shall be void. If no additional well shall be commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop said land for the production of oil and gas, until such well is completed, or abandoned, then such lease at the end of such applicable two and one-half year period of the term of such lease shall become forfeited and void as to all of the land covered by said lease except that upon which wells have been drilled in accordance with the provisions of this law.

History.—§5, ch. 22824, 1945.

253.56 Responsibility of bidder.—Before the acceptance of any bid for such lease the board, department or agency, to execute the same shall establish to its satisfaction the responsibility of the bidder. And no lease shall be assigned in whole, or in part, nor any land covered thereby, until and except such board, department or agency shall approve and consent to such assignment.

History.—§6, ch. 22824, 1945.

253.57 Royalties.—The state's royalties, a part of the consideration of every lease, shall be computed after deducting any oil or gas, reasonably used for the production hereof.

History.—§7, ch. 22824, 1945.

253.58 Manner of drilling.—All wells in this law referred to required in the several periods of said lease to be drilled, shall be drilled in an efficient, diligent, and workmanlike manner, and in accordance with the best practice, to a depth of six thousand feet before the abandonment thereof, unless oil or gas has been found in paying quantities at a lesser depth.

History.—§8, ch. 22824, 1945.

253.60 Conflicting laws. — The development of the lands leased by any of such boards, departments or agencies, for the production of oil and gas therefrom, shall be in accord with the laws of Florida relating to conservation and control and, if herein is found any conflict with those laws, such laws relating to conservation and control shall prevail.

History.—§10, ch. 22824, 1945.

253.601 Extension of oil leases.—

(1) Whenever the board of trustees of the internal improvement trust fund of Florida, the board of commissioners of state institutions of the state, the state board of conservation of Florida, and the state board of education of Florida, and any and every state board, state department, or state agency of the state has or hereafter shall enter into any oil and gas lease in which the cash consideration for same is in excess of one million dollars and where the acreage purported to be covered by said lease is in excess of five hundred thousand acres and where, after said lease has been executed, the United States has, acting by and through the department of the interior, notified any of said boards, departments, or agencies of the state that the United States asserts it has exclusive right to issue oil and gas leases for all or any portion of the lands described in said lease, granted by any of the state boards, departments, or agencies of the state, and that said department of the interior of the United States also at some time has notified any of said boards, departments, or agencies that it will recommend the attorney general of the United States take appropriate action if it appears that operations are being conducted on any portion of the outer continental shelf under the purported authority of any such leases which may have been or may hereafter be issued by any such boards, departments, or agencies of the state for such areas, then, in that event, the period or periods of time within which any and all wells shall be commenced and completed under the terms of such lease, or any statute, be and the same are hereby extended for a period of two years from the time the lease or leases or any statute requires any and all wells therein mentioned or contemplated to be commenced and completed.

(2) All resolutions heretofore adopted by any of such boards, departments, or agencies of the state, extending such lease or leases, be and the same are hereby ratified, confirmed, approved and validated in all respects.

(3) Nothing herein shall be construed to recognize any claims of the federal government or its agencies to said oil and gas or other mineral rights in the areas covered by said leases.

History.—§§1, 2, ch. 57-221; (1) §2, ch. 61-119.

253.61 Lands not subject to lease.—

(1) Regardless of anything to the contrary contained in this law in any previous section or part thereof, no board or agency mentioned therein or the state shall have the power or authority to sell, execute or enter into any lease of the type covered by this law relating to any of the following lands, submerged or unsubmerged, except under the circumstances and conditions as hereinafter set out in this section, to wit:

(a) No lease of the type covered by this law shall be granted, sold or executed covering such lands within the corporate limits of any municipality unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(b) No lease of the type covered by this law shall be granted, sold or executed covering any

such lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within three miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(c) No lease of the type covered by this law shall be granted, sold or executed covering such lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within three miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

(2) For the purposes of this section and law an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given miles of such beach.

History.—§11, ch. 22824, 1945.

253.62 Trustees authorized to convey certain lands without reservation.—

(1) The trustees of the internal improvement trust fund in making exchanges of land under §§253.42 and 253.43, are hereby authorized in their discretion to convey said land without reservations of oil and gas or of phosphate and other minerals required by §270.11, where deeds to lands received in exchange convey title in fee simple without such reservations or to determine the part or parts to be reserved and the part or parts to be conveyed, so as to facilitate exchange on a basis as nearly equal as may be.

(2) The trustees of the internal improvement trust fund are further authorized in their discretion to convey land to the United States free from reservations for oil, gas, phosphate and other minerals, provided agreement satisfactory to the trustees be effectuated with the United States whereby, in the event oil, gas, phosphate or other minerals are ever produced from said land, said trustees shall receive the customary royalty therefrom. In any conveyance heretofore made to the United States for national park or related purpose subsequent to June 30, 1943, which contained such reservations, said trustees shall have authority to convey said reservations subject to the conditions hereof in respect to customary royalty.

History.—§§1, 2, ch. 23617, 1947; §11, ch. 25035, 1949; §2, ch. 61-119.

253.64 Trustees investment of funds.—

(1) The trustees of the internal improvement trust fund are hereby authorized in their discretion to invest moneys of the internal improvement trust fund to such extent and at such rates of interest as said trustees may determine, in bonds or other negotiable securities of the United States, or of any governmental agency of this state where such bonds or other securities are supported out of moneys collected by the state or its agencies and pledged to the support of said bonds or other securities, or of any county of this state where such bonds or other securities are supported out of money collected by the state and distributed to the county and pledged to the payment of such bonds or other securities, or where the full faith and credit of said county shall have been pledged to the repayment thereof.

(2) Bonds or other securities held by the trustees of the internal improvement trust fund and the proceeds therefrom shall be subject to disposition by said trustees for purposes of the internal improvement trust fund as provided by law.

(3) The state treasurer on behalf of the trustees of the internal improvement trust fund shall be custodian of said bonds or other securities and shall have authority to collect the interest thereon and the principal thereof as the same shall fall due, and to deposit the same to the account of said trustees.

(4) Acquisition heretofore by said trustees of any bonds or other securities meeting the specifications prescribed by this section is hereby confirmed and validated.

History.—§§1-4, ch. 25416, 1949; (1)-(3) §2, ch. 61-119.

253.65 Beach and shore erosion.—

(1) RULES AND REGULATIONS.—The trustees of the internal improvement trust fund shall act as the erosion agency of the state for the purpose of making all rules and regulations necessary to carry out studies and investigations of present erosion conditions along the beaches and shores of the Atlantic ocean, gulf of Mexico and of the bays and projections therefrom and of the lakes, rivers, streams and other bodies of water within the territorial limits of the state and to provide, in conjunction with special erosion districts, counties, municipalities, state or federal agencies, for the necessary action through special erosion districts, counties, municipalities, state or federal agencies, to prevent, correct, control and arrest such erosion and the damages therefrom.

(2) DEPARTMENT OF BEACH AND SHORE EROSION.—The trustees of the internal improvement trust fund may establish and maintain a department of beach and shore erosion for accomplishing the functions and duties prescribed by this section and may employ and compensate such assistants as are needed to operate this department.

(3) DUTIES AND AUTHORITY OF DEPARTMENT.—The department of beach and shore erosion shall have the following duties and authority:

(a) To call to its assistance any engineers or other employees in any state department or in the state universities or other educational institutions financed wholly or in part by the state for the purposes of making surveys,

studies, maps and plans for erosion projects for the purpose of devising the most effective and economical method of controlling, arresting, correcting and preventing erosion along the beaches or shores of the state.

(b) To coordinate the efforts of any special erosion district, municipal, county, state or federal organizations which are concerned with the prevention, control, correction and arrest of erosion along the beaches or shores of the state.

(c) To compile, study and digest any requests, recommendations or suggestions made by any special erosion district, municipal, county, state or federal organizations concerning erosion of the beaches or shores of the state and to determine what action, if any, should be taken to prevent, correct, control and arrest such erosion.

(d) To make reports and inform the trustees of the most efficient and economic method of preventing, correcting, controlling and arresting erosion along the beaches or shores of the state.

(e) To perform any other duties which the trustees find necessary to further carry out the purposes of this act.

(4) DUTIES AND AUTHORITY OF TRUSTEES IF NO DEPARTMENT ESTABLISHED.—In the event the trustees of the internal improvement trust fund do not establish a department of beach and shore erosion, said trustees shall perform all duties and have all the authority granted said department and to further the purposes of this section the trustees shall be guided by the duties and authority of said department as enumerated by subsection (3) of this section.

(5) EXPENDITURE FROM SURPLUS I. I. TRUST FUNDS.—The trustees of the internal improvement trust fund are authorized and empowered to expend on any project recommended and approved by the department of beach and shore erosion or if no department is established, any project recommended and approved by the said trustees for prevention, correction, control and arrest of erosion along the beaches or shores of the state any surplus funds of the internal improvement trust fund; provided, however, any surplus funds so expended or used shall not exceed fifty per cent of the total cost of the project to which they are applied and the amount to be so expended shall be based on public need and interest in said project. Provided, however, that the amount of surplus funds to be expended hereunder shall not exceed three hundred thousand dollars.

History.—§§1-5, ch. 57-791; (1), (2), (4), (5) §2, ch. 61-119.
cf.—Ch. 161 Shore and beach preservation.

253.66 Change in bulkhead lines, Pinellas county.—

(1) As soon as a county bulkhead line as provided in §253.122, has been fixed by the water and navigation control authority of Pinellas county around the mainland of the county and the offshore islands therein, and the bulkhead line has been formally approved by the trustees of the internal improvement trust fund of the state, all in accordance with the provisions of §253.122, no further change in said bulkhead line shall be made notwithstanding the provisions of §253.122(4).

(2) It is hereby declared to be the intent of the legislature that subsection (1) is necessary for the protection of navigable waters in Pinellas county and the fish, wildlife and natural resources therein.

History.—§§1-5, ch. 59-522; (1) §2, ch. 61-119; §1, ch. 61-264.

CHAPTER 254

NATIONAL FOREST TRUST FUND

254.01 Comptroller may distribute national forest trust fund.—The comptroller may make distribution of the national forest trust fund, when so requested by the counties in interest, of such amounts as may be accumulated in said fund.

History.—§3, ch. 7405, 1917; RGS 1096; CGL 1449; §2, ch. 61-119.

254.02 Comptroller to apportion funds; method of distribution.—The comptroller shall ascertain, from the records of the general land office, or other departments in Washington, D. C., the number of acres of land situated in the several counties in which the Choctawhatchee and the Ocala forest reserves are located, and the number of acres of land of such forest reserve embraced in each of the counties in each of said reserves, and also, the amount of money received by the United States government from each of said reserves, respectively; and the comptroller shall apportion the money on hand to each county in each reserve, respectively and separately; said distribution to be based upon the number of acres of land embraced in the Choctawhatchee forest and Ocala forest, respectively, in each county; and to be further based upon the amount collected by the United States from each of said forests, so that such distribution, when made, will include for each county the amount due each county, based upon the receipts for the particular forest, and the acreage in the particular county in which such forest is located; and said comptroller shall issue a warrant on the state treasurer in each case, payable to each of said counties, and the amount so apportioned to each county shall be applied by such counties, equally divided between the county current school fund and the general road fund of said counties.

History.—§§1, 2, ch. 6966, 1915; §§2, 3, ch. 7405, 1917; RGS 1094, 1095; CGL 1447, 1448; §7, ch. 22858, 1945.

cf.—§§236.27-236.29 Disposition of portion of funds going to schools.

254.03 Comptroller to adjust apportionment when actual figures not obtainable. — In the event that actual figures of receipts from different reserves cannot be obtained by counties, so as to fully comply with §§254.01 and 254.02, the comptroller may adjust the matter according to the United States statutes, or as may appear to him to be just and fair, and with the approval of all counties in interest.

History.—§§1, 2, ch. 6966, 1915; §§2, 3, ch. 7405, 1917; RGS 1094, 1095; CGL 1447, 1448.

254.05 Fund appropriated for payment of warrants.—The moneys that may be received and credited to the national forest trust fund are appropriated for the payment of the warrants of the comptroller drawn on the state treasurer in pursuance of this chapter.

History.—§4, ch. 7405, 1917; RGS 1097; CGL 1450; §2, ch. 61-119.

CHAPTER 255

PUBLIC PROPERTY AND PUBLIC BUILDINGS

255.01 Proceeds of insurance may be used to replace property destroyed. — When any state, county, municipal, or other public property of this state, is destroyed or partially destroyed, by fire or otherwise, upon which there is insurance, the proceeds of such insurance, when collected, may be used by the officer having the supervision of the property destroyed, for the purpose of construction to replace such property, or for the repair thereof.

History.—§1, ch. 6184, 1911; RGS 1203; CGL 1680.

255.02 Boards authorized to replace buildings destroyed by fire.—The board of commissioners of state institutions, the board of control, or any other board or person having the direct supervision and control of any state building or state property, may have rebuilt or replaced, out of the proceeds from the fire insurance on such buildings or property, any buildings or property owned by the state, which may be destroyed in whole or in part by fire.

History.—§1, ch. 6518, 1913; RGS 1204; CGL 1681.
cf.—§284.02 State fire insurance trust fund.

255.03 Proceeds of insurance to be paid into state treasury; disbursement of funds.—

(1) The proceeds from the insurance of any state building or state property covered by insurance which may be destroyed in whole or in part by fire, or other damage, shall be paid into the state treasury and constitute a fund for the rebuilding or replacing of such property; and the comptroller may draw his warrant on the state treasurer for such amounts, not to exceed the proceeds so paid in, as may be approved by the board or persons having the direct supervision and control of such buildings or property for the purpose of rebuilding or replacing the same.

(2) The provisions of this section shall not apply to proceeds received from insurance carried by a lessee of a donated building which was under lease at the time of donation and is not to be replaced. Such proceeds received by a board or agency of the state may be used by that board or agency for any purpose or function authorized by law.

History.—§2, ch. 6518, 1913; RGS 1205; CGL 1682.
§1, ch. 61-140.

255.04 Preference to home industries in building public buildings. — Every official board in the state, whether of the state, a county or municipality, which may be charged with the duty of erecting or constructing any public administrative or institutional building, shall give preference, in the purchase of material and in letting contracts for the construction of such building, to material men, contractors, builders, architects and laborers, who reside within the state, whenever such material can be purchased or the services of such material men, contractors, builders, architects and laborers, can be employed, at no greater expense than that which would obtain if such purchase was made, or contract let, or such employment given, to a person residing beyond the limits of the state; provided, however, that this section in no way prohibits the right of the said official boards to compare quality of materials proposed for purchase and to compare qualifications, character, responsibility and fitness of material men, contractors, builders and architects proposed for employment in their consideration of the purchase of materials or employment of persons.

History.—§1, ch. 9146, 1923; CGL 1686.

255.041 Separate specifications for building contracts.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the state, when the entire cost of such work shall exceed ten thousand dollars, may have prepared separate specifications for each of the following branches of work to be performed: (1) Heating and ventilating and accessories. (2) Plumbing and gas fitting and accessories. (3) Electrical installations. (4) Air conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories. All such specifications may be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, may award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work; provided, however, that all or any part of the work specified in the above subdivisions may be awarded to the same contractor.

History.—§1, ch. 25397, 1949.

255.05 Bond of contractor constructing public buildings; suit by materialmen, etc.—

(1) Any person entering into a formal contract with the state, any county of said state, or any city in said state, or any political subdivision thereof, or other public authority, for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building, or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor shall promptly make payments to all persons supplying him labor, material and supplies, used directly or indirectly by the said contractor, or subcontractors, in the prosecution of the work provided for in said contract; and any person, making application therefor, and furnishing affidavit to the treasurer of the state, or any city, county, political subdivision, or other public authority, having charge of said work, that labor, material or supplies for the prosecution of such work has been supplied by him, and payment for which has not been made, shall be furnished with certified copy of said contract and bond, upon which, said person, supplying such labor, material or supplies shall have a right of action, and may bring suit in the name of the state, or the city, county, or political subdivision, prosecuting said work, for his use and benefit, against said contractor, and sureties, and to prosecute the same to final judgment and execution; provided, that such action, and its prosecution, shall not involve the state, any county, city or other political subdivisions, in any expense.

(2) Any person supplying labor, material or supplies used directly or indirectly in the prosecution of the work to any subcontractor and who has not received payment therefor, shall, within ninety days after performance of the labor or after complete delivery of materials and supplies, deliver to the contractor written notice of the performance of such labor or delivery of such materials and supplies and the nonpayment therefor, and no action or suit for such labor or for such materials and supplies may be instituted or prosecuted against the contractor unless such notice has been given. No action or suit shall be instituted or prosecuted against the contractor or against the surety on the bond required in this section after one year from the performance of the labor or completion of delivery of the materials and supplies.

History.—§1, ch. 6867, 1915; RGS 3533; §1, ch. 10035, 1925; CGL 5397; §1, ch. 59-491; §1, ch. 63-437.
cf.—§337.18 Surety bonds required; defaults; drainage assessment.

255.051 Public bids; check or draft as good faith deposit.—Whenever any form of bid of the state or any county or municipality thereof or any department or agency of the state, county or municipality or any other public body or institution shall specify that a good faith deposit shall be made by way of a certified check accompanying such bid, such requirement shall be satisfied by the bidder depositing in lieu of such certified check a cashier's check, treasurer's check or bank draft of any national or state bank.

History.—§1, ch. 27999, 1953.

255.17 General information clerk for the state capitol building.—The board of commissioners of state institutions of the state is hereby authorized to select and employ some suitable person as general information clerk for the state capitol building and to fix the duties and regulate the services of such clerk; provided, however, such person shall not be paid more than eighteen hundred dollars per annum.

History.—§1, ch. 20984, 1941.

255.20 Contracts for public construction works; specification of Florida produced lumber.—All county officials, boards of county commissioners, school boards, city councils, city commissioners and all other public officers of state boards or commissions which are charged with the letting of contracts for public work, for the construction of public bridges, buildings and other structures shall always, price, fitness and quality being equal, specify lumber, timber and other forest products produced and manufactured in Florida whenever such products are available. This act shall not apply when plywood is specified for monolithic concrete forms. Whenever the structural or service requirements for timber for a particular job cannot be supplied by native species, this act shall not apply. When construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture, this act shall not apply.

History.—§1, ch. 61-495.

CHAPTER 256

STATE, UNITED STATES AND CONFEDERATE FLAGS

256.01 Flag of United States to be displayed.—The flag of the United States shall be displayed daily when the weather permits, from a staff upon the state capitol and upon each county courthouse.

History.—§1, ch. 7369, 1917; RGS 1206; CGL 1683.
cf.—§228.06 Display of flag on school buildings.

256.011 Display of flag on election day.—(1) The board of county commissioners of each county in this state shall provide a flag of the United States for each polling place in the county. The flag shall be displayed properly and prominently at all designated polling places on all days when an election is being held.

(2) The board of county commissioners of each county in the state shall make the flags available to each municipality or governmental body holding an election within such county for each election held for any such municipality or governmental body within such county. The municipality or governmental body shall have the responsibility of properly and prominently displaying the flag at each such polling place on all days when an election is being held and shall bear the expense of displaying the flag of the United States.

(3) Each board of county commissioners is authorized to purchase a sufficient number of flags to carry out the purpose of this act out of the general revenue fund of each such county.

History.—§1, ch. 63-227.

256.02 Certain officers to provide flag.—The officer charged with the maintenance or upkeep of the buildings mentioned in §256.01 shall provide suitable flags and cause them to be displayed, the expense to be borne out of the funds provided for the upkeep and maintenance of said buildings.

History.—§2, ch. 7369, 1917; RGS 1207; CGL 1684.
cf.—§15.04 Secretary of state—property custodian.

256.031 Secretary of state custodian of state flag.—The secretary of state is the custodian of the official state flag.

History.—§1, ch. 29747, 1955.
Note.—Similar provisions in former §256.03.

256.05 Improper use of state or United States flag, or other symbol of authority.—No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or this state; or

(2) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement.

History.—§§1-3, ch. 7819, 1919; §1, ch. 9325, 1923; CGL 8117, 8118; (3) r. §1, ch. 57-74.

REVISION NOTE.
Ch. 7819, 1919, (CGL 8117) provided against desecration of the flag of the United States and ch. 9325, 1923, (CGL 8118) provided against the improper use, mutilation, defilement of the flag of the United States or of this state. These two acts duplicate the law and everything contained therein is covered by the uniform flag law, with the exception that the uniform law permits the use of the flag on stationery, jewelry, etc., with no design or words thereon, and disconnected with any advertisement. The uniform act has been adopted by ten states; therefore, in view of the fact that the language is simpler and yet covers the same territory, the uniform flag act has been substituted in this revision for the above mentioned chapters.

256.051 Improper use or mutilation of state or confederate flag or emblem prohibited.—(1) From and after July 1, 1961, it shall be unlawful for any person, firm or corporation to copy, print, publish or otherwise use the flag or state emblem of Florida, or the flag or emblem of the confederate states, or any flag or emblem used by the confederate states or the military or naval forces of the confederate states at any time within the years 1860 to 1865, both inclusive, for the purpose of advertising, selling or promoting the sale of any article of merchandise whatever within this state.

(2) It shall also be unlawful for any person, firm or corporation to mutilate, deface, defile or contemptuously abuse the flag or emblem of Florida or the flag or emblem of the confederate states by any act whatever.

(3) Nothing in this section shall be construed to prevent the use of any flag, standard, color, shield, ensign or other insignia of Florida or of the confederate states for decorative or patriotic purposes.

History.—§§1-3, ch. 61-375.

256.06 Mutilation or disrespect.—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield.

History.—§§1-3, ch. 7819, 1919; §1, ch. 9325, 1923; CGL 8117, 8118.

256.07 Exceptions. — Sections 256.05 and 256.06 shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States army and navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon.

History.—New in Florida statutes, 1941; §7, ch. 22858, 1945; §2, ch. 57-74.

256.08 Definition.—The words flag, standard, color, ensign or shield, as used in §§256.05-256.07, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof.

History.—New in Florida statutes, 1941.

256.09 Penalty.—Any person violating the provisions of §§256.05 or 256.06, shall be guilty of a misdemeanor and, on conviction, punishable as for a misdemeanor.

History.—§§1-3, ch. 7819, 1919; §1, ch. 9325, 1923; CGL 8117, 8118.
cf.—§775.07 Punishment for a misdemeanor.

256.10 Mutilation of or disrespect for confederate flags or replicas.—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon the flags of the confederacy, or replicas thereof, for crass or commercial purposes; provided however nothing contained herein shall be construed to prevent or prohibit the use of such flags for decorative or patriotic purposes.

History.—§1, ch. 61-115.

CHAPTER 257

STATE LIBRARY

257.01 State library and historical commission.—There is created and established the state library and historical archives which shall be located at the capital. The state library and historical archives shall be administered by a board of seven members to be known as the Florida library and historical commission.

History.—§1, ch. 10278, 1925; CGL 1687; §1, ch. 63-39.

257.02 Members of the commission; their appointment.—The members of the commission shall be appointed by the governor. Of the members first appointed, two shall be appointed for terms of two years, two for terms of three years, and three for terms of four years. Subsequent appointments, except for filling vacancies, shall be for the full term of four years. Vacancies shall be for the period of the unexpired term.

Members of the commission shall serve without compensation but shall be entitled to receive reimbursement for traveling expenses as provided in §112.061. The commission shall meet a minimum of four times a year.

The governor may, in making appointments, consult the Florida library association, the Florida historical society, and related organizations, for suggestions as to persons having special knowledge and interest in the fields of libraries and Florida history.

History.—§2, ch. 10278, 1925; CGL 1688; §2, ch. 63-39; §19, ch. 63-400.

257.03 Organization of commission; duties of secretary.—The officers of the state library and historical commission shall be a chairman, elected from the members thereof, for a term of one year, and a secretary, who shall act as librarian of the state library and who shall be a person trained in modern library methods, not a member of the commission. The secretary shall be appointed by the commission and shall serve at the will of the commission under conditions and for such compensation as shall seem adequate.

*Chapter 63-175, creating commission, effective Jan. 1, 1964.

Said secretary shall keep a record of the proceedings of the commission; keep accurate account of its financial transactions; have charge of its work in organizing and conducting the state library; in organizing new libraries and improving those already established; and in general, perform such duties as may, from time to time, be assigned to him by the commission.

The commission may employ such other clerical and expert assistance as may be necessary.

History.—§3, ch. 10278, 1925; CGL 1689; §4, ch. 63-39.

257.04 Publications, etc., received to constitute part of state library; powers and duties of commission.—All books, pictures, documents, publications, and manuscripts received through gifts, purchase, or exchange, or on deposit from any source for the use of the state, shall constitute a part of the state library, and shall be placed therein for the use of the public, under the control of the state library and historical commission. The commission may receive gifts of money, books or other property which may be used or held for the purpose or purposes given; and may purchase books, periodicals, furniture and equipment as it deems necessary to promote the efficient operation of the service it is expected to render the public.

The commission may, upon request, give assistance, advice and counsel to all school, state institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management.

The commission may issue printed material, such as lists and circulars of information, and in the publication thereof may co-operate with other state library commissions and libraries in order to secure the more economical administration of the work for which it is formed.

It may conduct courses of library instruction and hold librarians' institutes in various parts of the state.

Said commission shall perform such other services in behalf of the state public libraries as it may consider for the best interest of the state.

History.—§4, ch. 10278, 1925; CGL 1690; §4, ch. 63-39.

257.05 Copies of reports of state departments furnished commission.—

(1) Each and every state official, state department, state board, state court or state agency of any kind, issuing annual, biennial or special reports, bulletins, circulars or other material shall furnish the state library and historical commission two copies of each and all of those publications, as issued, for deposit in the Florida state library; provided, however, that if said state library and historical commission shall so request, giving satisfactory explanation that it wants them for exchange purposes, as many as twenty-five copies of each and every state publication (except for state supreme court publications which shall in no case be more than two), as hereinbefore enumerated shall be supplied to it.

(2) The state library and historical commission shall also be furnished by any state official, department or agency having charge of their distribution, as issued, bound journals of each house of the legislature; biennial or other acts of the legislature, both local or special and general; annotated acts of the legislature, revisions and/or compilations of the laws of Florida, the number furnished to be determined by requests of the state library and historical commission, which number in no case shall exceed twenty-five copies of the particular publication, and in the case of legislative acts, annotated legislative acts and revisions and compilations of the laws not more than two copies.

(3) In any case where any state official, state department, state board, state court or state agency of any class or kind has more than ten copies of any one kind of publication from time to time heretofore issued, he or it shall, upon request of the state library and historical commission or its chairman supply said commission with one copy of each such publication for deposit in the state.

History.—§5, ch. 10278, 1925; CGL 1691; §1, ch. 22064; §1, ch. 21758, 1943; §4, ch. 63-39.
cf.—§283.15 Journals of the legislature.

257.06 Biennial report of commission.—The state library and historical commission shall, prior to March first of each year during which shall be held a regular session of the legislature, make a biennial report to the governor, which report shall show the condition of the state library and library conditions and progress in Florida and shall contain a detailed statement of the expenses of the commission. This report, when printed, shall be presented to the legislature and distributed by the commission. This report and other printing and binding for the commission shall be printed under the same regulations as other reports of the executive officers of the state.

History.—§6, ch. 10278, 1925; CGL 1692; §4, ch. 63-39.

257.07 Disbursements by commission.—All disbursements by the state library and historical commission shall be paid by the comptroller by warrants on the state treasurer, after being approved by the commission, and signed by the chairman and countersigned by the secretary of the commission.

History.—§7, ch. 10278, 1925; CGL 1693; §4, ch. 63-39.

257.08 Commission to submit budget to legislature for appropriations.—To carry out the provisions of this chapter, the state library and historical commission shall submit to each legislature its budget for maintenance as a basis for appropriations.

History.—§8, ch. 10278, 1925; CGL 1694; §4, ch. 63-39.

257.10 State library and historical commission to receive and preserve certain public records.—

(1) The state library and historical commission is hereby authorized to negotiate for the transfer to it of any public records of any official department or agency of the state and the said state library and historical commission is hereby given authority to receive any public records of the state transferred to or turned over to it under this section.

(2) The state library and historical commission is hereby made the legal custodian of all public records of any and every agency of the state which transfers such records to said state library and historical commission.

(3) Any public officer of the state is hereby authorized to turn over to the state library and historical commission all public records of his office no longer needed for the transaction of the business of his office, when said state library and historical commission is ready and willing to receive them and care for them properly.

(4) Whenever any records are transferred or turned over to the state library and historical commission under this section, the secretary of said commission, who is also librarian of the Florida state library, is required to receive them for deposit in said Florida state library, making all provision he is able for their care and protection. Said secretary of the state library and historical commission shall give for said state library and historical commission a receipt for each and every record turned over to it under this section by any agency or public officer of the state. Provided, however, that one receipt shall be sufficient to describe any single record or group of records turned over at one time to the state library and historical commission for deposit in the Florida state library.

History.—§§1-4, ch. 21730, 1943; §4, ch. 63-39.

257.11 Distribution of publication; "Florida Becomes a State."—

(1) All unsold and undistributed copies of the publication, "Florida Becomes a State," prepared in 1945 by employees of the state library and historical commission and pub-

lished subsequently by the Florida centennial commission, and all the proceeds of sales such publication heretofore made or hereafter to be made are hereby donated to the state library and historical commission, created by chapter 257, subject to the terms and conditions of this section.

(2) Receipts from sales of this publication shall be used by the state library and historical commission for a permanent publications fund to be used solely and entirely to pay expenses incident to the publishing of works relating to Florida and considered beneficial to students seeking information concerning the state. Receipts from all sales of these works—books, pamphlets or publications of lesser degree—shall be added to the permanent publication fund herein mentioned. Provided, however that the biennial reports of the state library and historical commission required by the law establishing the commission shall not be paid for from this fund.

(3) The state library and historical commission is hereby allowed to distribute without charge not to exceed three hundred copies of "Florida Becomes a State," which free distribution shall include one copy each for each member of the 1947 legislature who has not heretofore received a copy.

History.—§§1, 2, 3, ch. 24354, 1947; §4, ch. 63-39.

257.12 Library and historical commission authorized to accept, etc., federal funds.—

(1) The state library and historical commission is authorized to accept, receive, administer and expend any moneys, materials or any other aid granted, appropriated, or made available by the United States, or any of its agencies for the purpose of giving aid to libraries and providing educational library service in the state.

(2) The state library and historical commission is authorized to file any accounts required by federal law or regulation with reference to receiving and administering all such moneys, materials and other aid for said purposes, provided, however, that the acceptance of such moneys, materials, and other aid shall not deprive the state from complete control and supervision of its library.

History.—§§1, 2, ch. 26976, 1951; §4, ch. 63-39.

257.13 Definitions.—For the purpose of this act, the following terms, when used in this act or the rules, regulations and orders made pursuant hereto, shall be construed, respectively:

(1) Population means the latest reliable annual estimate of midyear population made by some state agency which is approved by the state library and historical commission and the board of commissioners of state institutions.

(2) Library unit means all libraries operating under a single administration in any given area of the state wherein there is county participation.

History.—§1, ch. 61-402; §4, ch. 63-39.

257.14 State library and historical commission; rules and regulations.—The state library and historical commission may make all necessary and reasonable rules and regulations to carry out the provisions of this act.

History.—§2, ch. 61-402; §4, ch. 63-39.

257.15 State library and historical commission; standards.—The state library and historical commission shall establish reasonable and pertinent operating standards for public libraries under which counties maintaining a free library or free library service by contract shall be eligible to receive state moneys.

History.—§3, ch. 61-402; §4, ch. 63-39.

257.16 Reports.—All library units receiving grants under this act shall file with the state library and historical commission on or before December 1 of each year a financial report on its operations and furnish the said commission with such other information as said commission may require.

History.—§4, ch. 61-402; §4, ch. 63-39.

257.17 Operating grants.—Any county which establishes or maintains a free library, or which gives or receives free library service by contract with a municipality or nonprofit library corporation or association within said county, shall be eligible to receive an annual operating grant of not more than twenty-five per cent of all funds appropriated for the same fiscal year by said county, or by said county and municipality or nonprofit library corporation or association, for the operation and maintenance of a library unit; any county which joins with one or more counties to maintain a free library or contracts with another county or with a municipality in another county to receive free library service, shall be eligible to receive an annual operating grant of not more than twenty-five per cent of the funds which said county appropriates for the operation and maintenance of a jointly maintained free library unit or free library service; provided, that no county shall be eligible to receive a grant unless the total operating budget of the library unit is at least twenty thousand dollars; and provided further, that no grant shall exceed twenty-five cents per capita of said county's population. Every county shall be limited to receive a total of fifty thousand dollars of state funds for operating grants during any one year.

History.—§5, ch. 61-402.

257.18 Equalization grants.—Any county qualifying for an operating grant in which the appropriation for the library unit from all local sources is equivalent to the yield of a one mill county tax or one dollar per capita, whichever is less, and whose relative per capita index of taxpaying ability based on one dollar per capita is less than one dollar, shall be eligible to receive an equalization grant computed by multiplying the population of the county by the difference between one dollar and the relative per capita index of taxpaying ability. The relative per capita index of taxpaying ability shall be computed annually for each county by multiplying the county index of taxpaying ability determined under §236.071, by the popu-

lation of the state and by one dollar and dividing the result by the population of the county.

History.—§6, ch. 61-402.

257.19 Establishment grants.—Grants for the establishment or extension of library service may be paid for one year only to any county joining a regional library or to two or more counties forming a regional library or to any county contracting with a municipal library having a municipal budget of over twenty thousand dollars. An establishment grant shall equal, and be in addition to, the total grant (operating and equalization) to which a county is otherwise entitled, provided that no establishment grant shall exceed twenty thousand dollars.

History.—§7, ch. 61-402.

257.20 Determination of municipal fiscal year.—Where county and municipal fiscal years do not coincide, the municipal appropriation for the municipal fiscal year ending during the county fiscal year for which grants are given shall be used for calculating the grant.

History.—§8, ch. 61-402.

257.21 Maximum grants allowable.—Any reduction in grants because of insufficient funds shall be prorated on the basis of maximum grants allowable.

History.—§9, ch. 61-402.

257.22 State library and historical commission; allocation of funds.—The moneys herein appropriated, and any moneys that may be hereafter appropriated for use by counties maintaining a free library or free library service shall be administered and allocated by the state library and historical commission in the manner prescribed by law. On or before November 1, for the current year, and on or before November 1 of each year thereafter, the state library and historical commission shall certify to the comptroller the amount to be paid to each county and the comptroller shall issue warrants to the respective boards of county commissioners for the amount so allocated.

History.—§10, ch. 61-402; §4, ch. 63-39.

257.23 Application for grant.—The board of county commissioners of any county desiring to receive a grant under the provisions of this act shall apply therefor to the state library and historical commission on or before October 1, for the current year, and on or before October 1, of each year thereafter, on a form to be provided by said state library and historical commission. In said application, which shall be signed by the chairman of the board of county commissioners and attested by the clerk of the circuit court, the board of county commissioners shall agree to observe the standards established by the state library and historical commission as authorized in §257.16, shall certify the annual tax income and the rate of tax or the annual appropriation for the free library or free library service, and shall furnish such other pertinent information as the state library and historical commission may require.

History.—§11, ch. 61-402; §4, ch. 63-39.

257.24 Use of funds.—State funds allocated to any county for a free library or free library service shall be expended only for library purposes in the manner prescribed in chapter 150, provided that such funds shall not be expended for the purchase or construction of a library building or library quarters.

History.—§12, ch. 61-402.
cf.—Ch. 150 County Free Public Libraries.

257.25 Free library service.—The service of books in libraries receiving state funds shall be free and shall be made available to all persons living in areas taxed for library purposes.

History.—§13, ch. 61-402.

257.26 To exercise authority previously vested in the Florida civil war centennial commission.—The Florida library and historical commission shall perform all of the powers and duties and exercise all of the authority prescribed by §13.75, relating to the Florida civil war centennial commission, which commission is abolished.

Any and all assets of the Florida civil war centennial commission (including unexpended funds or appropriations) are transferred and vested in the Florida library and historical commission, and this commission is authorized and empowered to close out the affairs of the Florida civil war centennial commission.

In addition to the purposes heretofore described, the Florida library and historical commission shall give leadership to the collection, recording, and dissemination of information about Florida history. The commission shall give parity to the historical and the library functions in its own endeavors, and shall cooperate with other agencies, groups, and individuals in bringing events in Florida history to the attention of the public.

History.—§3, ch. 63-39.

CHAPTER 258

STATE PARKS

258.08 Guide meridian and base parallel park located.—Guide meridian and base parallel park, a park for the perpetuation and preservation of the point or place from which the state was surveyed, is established and located in Tallahassee, Leon county, on a parcel of land one-half acre square, having for its center the intersection of the guide meridian and the base parallel of Florida, more particularly described as follows, to-wit:

One-eighth of an acre in the form of a square, in the northwest corner of section six in township one south, range one east; one-eighth of an acre in the form of a square, in the southwest corner of section thirty-one in township one north, range one east; one-eighth of an acre in the form of a square, in the southeast corner of section thirty-six in township one north, range one west; and one-eighth of an acre in the form of a square in the northeast corner of section one in township one south, range one west.

History.—§1, ch. 10188, 1925; §§1, 2, ch. 11902, 1927; CGL 1740, 1742, 1743.

258.09 Rauscher park designated.—There is designated and established as a state park to be known as Rauscher park, in Escambia county, the lands lying between the Big Lagoon and the Gulf of Mexico, now owned by Escambia county, or hereafter acquired by Escambia county, adjacent or contiguous thereto, from private owners or from the United States government; and the board of county commissioners of Escambia county, may execute proper conveyance to the board of commissioners of state institutions covering the property now owned by Escambia county, as aforesaid, and said board of county commismissioners of Escambia county, may acquire in the name of the board of commissioners of state institutions any property adjacent or contiguous thereto, from private owners or from the United States government; and said board of commissioners of state institutions may accept in the name of the state the title to any such lands, whether from said Escambia county, or whether same be property acquired from private owners or the United States government.

History.—§1, ch. 19345, 1939.

258.10 State park service to supervise and maintain Rauscher park. — After the conveyance of said lands and such additional land as may, from time to time, be acquired, under the provisions of §258.09, said lands shall be deemed and held to be a state park, under the supervision of the state park service, and the Florida board of parks and historic memorials is charged with the duty of providing for the development, care, upkeep, maintenance and beautification of said Rauscher park.

History.—§2, ch. 19345, 1939; §24, ch. 57-1.

258.11 Land ceded for Royal Palm state park; proviso.—Section fifteen, and the north half of section twenty-two of township fifty-eight south, range thirty-seven east, situated in Dade county, is ceded to the Florida federation of women's clubs and designated as the "Royal Palm state park," to be cared for, protected, and to remain in the full possession and enjoyment, with all the possessory rights and privileges thereunto, belonging to the Florida federation of women's clubs, for the purpose of a state park, for the benefit and use of all the people of Florida, perpetually; provided, that the Florida federation of women's clubs shall procure a deed to nine hundred sixty acres of land in Dade county, in the vicinity of said state park, suitable for agricultural purposes, conveying to said Florida federation of women's clubs fee simple title thereto, said land to be used as an endowment for the perpetual use and benefit of the said park, its protection, improvement and the beautifying thereof, including the construction of roads and other improvements, either in kind or by the use of the rents and profits accruing therefrom, or the proceeds of sale thereof or any part of said endowment tract.

History.—§1, ch. 6949, 1915; RGS 1210; CGL 1701.

258.12 Additional lands ceded for Royal Palm state park.—For the use and benefit of all the people of the state, the state cedes to the Florida federation of women's clubs the south half of section ten, southwest quarter of section eleven, west half of section fourteen, west half of section twenty-three, south half of section twenty-two, northwest quarter of section twenty-seven, north half of section twenty-eight, and northeast quarter of section twenty-nine, township fifty-eight south, range thirty-seven east, situated in Dade county, as additional acreage to "Royal Palm state park," to be cared for and remain in the full possession and enjoyment of said Florida federation of women's clubs, with all the possessory rights and privileges to the same belonging or in any wise appertaining; provided, that said land is granted to the said Florida federation of women's clubs upon the express condition that said land and every

part thereof shall be used as a state park for the use and benefit of all the people of Florida, and for no other purpose; and in the event said grantee shall permit or suffer the use of said land for any other purpose, or shall discontinue the use thereof for such purpose, such misuse or discontinuance shall operate as a defeasance and said land and every part thereof shall revert to the state.

History.—§1, ch. 8577, 1921; CGL 1705.

258.14 Royal Palm state park and endowment lands exempt from taxation.—The lands described in §§258.11 and 258.12 as the Royal Palm state park, and the lands conveyed, and to be conveyed to the Florida federation of women's clubs as an endowment for the use and benefit of said state property, are exempt from the payment of state, county, municipal, or any special assessment or any assessment of taxes.

History.—§3, ch. 6949, 1915; RGS 1212; §2, ch. 8577, 1921; CGL 1704, 1706.

258.15 St. Michael's cemetery designated a state park.—

(1) St. Michael's cemetery in Pensacola, upon the acceptance by the state board of parks and historic memorials of the conveyances, transfers and assignments hereinafter provided, be and the same is designated and declared to be a state park.

(2) The state board of parks and historic memorials be and it is hereby authorized to accept and require, prior to assuming any duties in connection with said St. Michael's cemetery, such conveyances, transfers and assignments as the state board of parks and historic memorials shall deem necessary in order to exercise dominion and control of the said cemetery; provided, however, the state board of parks and historic memorials shall pay no consideration for any such conveyances, transfers and assignments, but may accept such conveyances, transfers and assignments subject to such reasonable conditions that the board determines do not interfere with the operation of the said cemetery as a state park.

(3) After the state board of parks and historic memorials has received transfers, conveyances and assignments satisfactory to it, the said state board of parks and historic memorials shall take charge of, manage and operate the said cemetery and shall be authorized to make such reasonable rules and regulations with respect to the said cemetery as the said board shall deem necessary for the orderly operation, protection and preservation of said cemetery; provided, however, this section shall not be construed to prevent, and no rule and regulation shall be made which will prevent, the continued interment of bodies in the cemetery lots which are privately owned.

History.—§§1-3, ch. 25464, 1949

cf.—See ch. 592, State board of parks and historic memorials.

CHAPTER 265

MEMORIALS

265.13 Stephen Foster memorial commission created; terms and compensation; state treasurer ex officio treasurer.—A commission composed of five members, citizens and residents of the state, known and designated as "The Stephen Foster memorial commission" is created, the members of which shall be appointed by the governor for respective terms of four years, and whose only compensation shall be the honor of such service. Members shall be reimbursed for traveling expenses as provided in §112.061. The state treasurer is ex officio treasurer of the Stephen Foster memorial commission, and shall have custody of all its funds, to be kept in a special fund or account for the use of the commission.

History.—§2, ch. 15028, 1931; §1, ch. 19243, 1939; CGL 1940 Supp. 1748(2); §19, ch. 63-400.
cf.—§592.13 Exemption of Stephen Foster Memorial.

265.14 Commission may accept donations and borrow money; appropriation.—The Stephen Foster memorial commission may accept, receive and hold in trust, for the state, gifts, gratuities, and donations of money and other property, to be used, if and when a sufficient amount is received, to erect a suitable memorial to the memory of Stephen Collins Foster, at White Springs, Florida, on the banks of the Suwannee river, and the same are appropriated for the purposes herein expressed.

The sum of twenty-five thousand dollars is appropriated out of the general revenue fund of the state to be used in defraying the cost, either entirely or in part, of the said memorial.

The Stephen Foster memorial commission may do whatever is necessary to build, construct, and erect said memorial. It may enter into such contracts and acquire such property as may be necessary to erect and maintain said memorial.

The Stephen Foster memorial commission may cooperate with the United States government, or any agency thereof, on any project or projects leading to the erection and maintenance of said memorial. The Stephen Foster memorial commission may borrow money in accordance with any self liquidating plan that it may deem feasible and advantageous, and may issue mortgage revenue certificates or debentures therefor, and sell the same for the purpose of carrying out the intention of §§265.13-265.15, and may pledge as security for the payment thereof any and all revenues and income to be derived and obtained from the operation of such memorial, or such portion thereof as may be deemed sufficient, after all operating costs have been paid, and shall set aside, annually, a sinking fund for the payment of interest on said certificates or debentures and the principal thereof at the maturity of same.

Said certificates shall bear interest at a rate not to exceed five per cent per annum, and shall be a lien, only upon the property of the said Stephen Foster memorial commission, and shall in no wise be held, deemed nor considered to be an obligation of the state. The said Stephen Foster memorial commission is further authorized to accept grants and loans from the public works administration or any other agency of the United States government authorized to make such grants and loans for the purposes hereinabove mentioned and described.

History.—§2, ch. 19243, 1939; CGL 1940 Supp. 1748(2); §7, ch. 22858, 1945.

265.15 Commission to keep permanent records; powers and duties.—The Stephen Foster memorial commission shall keep permanent records of its acts and doings and may provide, by resolution or other appropriate action, for the carrying out and performing of the duties and powers granted it by the terms of §§265.13-265.15.

The Stephen Foster memorial commission may build, erect, and construct said memorial in accordance with the plans and specifications to be made, selected and approved by it; improve, landscape, beautify, and plant parks, lots and grounds which they may acquire for the site of said memorial and enclose the same; maintain, keep, beautify and improve said memorial and grounds; and provide for the maintenance and up-keep of said memorial and grounds, and do any other act and thing necessary or convenient toward the building, erecting, beautifying and protecting said memorial and grounds; employ caretakers and such other persons as they deem necessary or convenient for said purposes; charge fees and admissions to the public for the privilege of visiting and viewing the memorial and grounds and use such fees and admission charges for the purposes of said sections.

History.—§3, ch. 19243, 1939; CGL 1940 Supp. 1748(2a); §7, ch. 22858, 1945.

265.18 Acceptance of deed authorized.—The commissioners of state institutions of the state may accept a deed from the City of Tampa to the forty-five acre site on Davis Island in the City of Tampa.

History.—§3, ch. 18145, 1937; CGL 1940 Supp. 1748(5).

CHAPTER 266

ST. AUGUSTINE HISTORICAL RESTORATION AND PRESERVATION COMMISSION

266.01 St. Augustine historical restoration and preservation commission; creation.—There is hereby created the St. Augustine historical restoration and preservation commission, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce and operate for the use, benefit, education, recreation, enjoyment and general welfare of the people of this state and nation, certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings and other objects of historical or antiquarian interest of the city of St. Augustine, Florida, and surrounding territory.

History.—§1, ch. 59-521.

266.02 Definitions.—Unless otherwise clearly indicated, the following words when used in this law shall mean:

(1) "Commission"—the St. Augustine historical restoration and preservation commission;

(2) "Facilities"—historic sites, objects and facilities for exhibition owned, rented, leased, managed or operated by the commission;

(3) "Slum"—any area where dwellings predominate, which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to health, safety or morals.

History.—§2, ch. 59-521.

266.03 Membership, terms of office, etc. — The commission shall consist of five members to be appointed by the governor not later than thirty days after July 1, 1959. Members of the original board shall be appointed for terms as follows: One for two years, two for three years and two for four years, and thereafter members shall be appointed for four year terms except appointments to fill vacancies for unexpired terms in which event the appointment shall be for the unexpired term only. The members of the commission, including the chairman, shall receive no compensation for their services but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the commission, subject to the provisions and limitations of §112.061. Each member shall give a surety bond in the sum of ten thousand dollars, executed by a surety company authorized to do business in this state, payable to the governor and his successors in office, and conditioned upon the faithful performance of his duties.

History.—§3, ch. 59-521.

266.04 Organization, meetings, records.—Not later than fifteen days after the appointment of its membership and annually thereafter the committee shall hold an organizational meeting at which it shall elect from its membership a chairman, a vice-chairman and a secretary-treasurer. No business shall be transacted by the commission except at a regularly called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the commission.

History.—§4, ch. 59-521.

266.05 Treasurer. — The state treasurer shall be the ex officio treasurer of the commission and shall have the custody of all of its funds to be kept in a special account. All receipts and disbursements of the commission shall be handled subject to the same laws, rules and regulations as other state funds are handled.

History.—§5, ch. 59-521.

266.06 Powers.—The commission shall be the governing body and have power:

(1) To adopt a seal and alter the same at pleasure;

(2) To contract and be contracted with, to sue and be sued, to plead and be impleaded in all courts of law and equity;

(3) To exercise any power not in conflict with the constitution and laws of the state or the United States which is usually possessed by private corporations or public agencies performing comparable functions;

(4) To establish an office at or near the city of St. Augustine for the conduct of its affairs;

(5) To acquire, hold, rent, lease, and dispose of real and personal property or any interest therein for its authorized purpose;

(6) To own, operate, maintain, repair and improve its facilities wherever located;

(7) To acquire in its own name by purchase, grant, devise, gift or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation, except as otherwise herein provided, in accordance with and subject to state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes and to use the same so long as its existence shall continue and to lease or make contracts with respect to the use or disposal of same, or any part thereof, in any manner deemed by the commission to be in its best interest but only for the purposes for which it is created. No property shall be acquired under the provisions of this law upon

which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church, a cemetery association, or is presently used as a historical attraction;

(8) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water services, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes; or to accomplish a combination of the foregoing. To plan buildings and improvements, to acquire property, to demolish existing structures, to construct, reconstruct, alter and repair improvements and all other work in connection therewith;

(9) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors and attorneys and such other employees as may be deemed necessary and to prescribe their powers and duties and to fix their compensation;

(10) To acquire from the city of St. Augustine or St. Johns county, the State of Florida, the United States or any state thereof, or any foreign country or colony, any existing property, real or personal by it now owned or hereafter acquired, suitable for the uses of the commission, and to improve, operate and maintain the same for the purpose herein stated, or to act as trustee for any such property under such terms and conditions as the owner may prescribe;

(11) To enter into contracts with the city of St. Augustine or St. Johns county for the purpose of providing police and fire protection, water, sanitation and other public services deemed necessary or expedient and said municipality and county are authorized to enter into such contracts;

(12) To contract with any agency of the State of Florida or federal government and any firm or corporation, the city of St. Augustine or the county of St. Johns, upon such terms and conditions as the commission finds its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the commission in or near the city of St. Augustine, St. Johns county;

(13) To make and enter into all contracts or agreements with or without competitive bidding, as the commission may determine, which are necessary, expedient or incidental to the performance of its duties or the execution of its powers under this law;

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this law, including the renting or leasing for revenue of any land, improved or restored real estate or personal property directly related to carrying out the purposes for which the commission is created;

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the commission under the provisions of this law and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public;

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration and construction prior to the operation of the facilities of the commission and to issue negotiable revenue certificates payable solely from revenue accruing from the operation of such facilities and from authorized activities incidental thereto;

(17) To perform all lawful acts necessary and convenient and incident to effectuating its function and purpose.

History.—§6, ch. 59-521.

266.07 Appropriation.—There is hereby appropriated the sum of one hundred fifty thousand dollars out of the general revenue fund of the state to be used by the commission in defraying part of the cost incurred by it in carrying out the purposes of this law. The board of county commissioners of St. Johns county and the city of St. Augustine are hereby authorized to appropriate from such funds as may be available an aggregate amount of fifty thousand dollars to be used by said commission.

History.—§7, ch. 59-521.

CHAPTER 270

PUBLIC LANDS

270.01 Grant to aid construction of certain railroads accepted. — The lands, rights and privileges granted to, and conferred upon, the state by the act of congress entitled "An act granting public lands in alternate sections to the States of Florida and Alabama, to aid in the construction of certain railroads in said states," approved May 17, 1856, are accepted upon the terms, conditions and restrictions in said act of congress.

History.—§1, ch. 776, 1856; RS 447; GS 636; RGS 1215; CGL 1760.

270.02 Titles of purchasers and transferees of railroad companies confirmed.—To remove all doubt as to the title, of the purchasers and transferees, and their assigns, from the several railroad companies, of the land granted by the United States to the state, to aid in the construction of certain railroads in this state, by act of congress, approved May 17, 1856, the state has granted and confirmed to the purchasers and transferees from the several railroad companies which accepted the provisions of the act entitled, "An act to provide for and encourage a liberal system of internal improvements in this state," approved January 6, 1855, and their assigns, the lands and titles thereto, which were granted to the state by the United States to aid in the construction of certain railroads in this state by act of congress, approved May 17, 1856; which said lands were afterwards selected and located for the several railroad companies accepting the provisions of this act as aforesaid, along the line of their respective roads, to the extent and in the proportion to which they severally became entitled under the said act to provide for and encourage a liberal system of internal improvements in this state, and the said act of congress granted the same.

History.—Ch. 3152, 1879; RS 448; GS 637; RGS 1216; CGL 1761.

270.03 Preemption of public lands.—Actual settlers, on any of the public lands belonging to this state subject to entry, are permitted to enter the lands on which they reside or have in cultivation, not to exceed one hundred and sixty acres, to be taken in a compact form according to the legal subdivisions, at the prices now or hereafter established for such lands, by paying one-third of the purchase money at the time of making entry, one-third of the same within two years thereafter, and the remaining one-third within three years after the date of entry; provided, that no person shall be entitled to make more than one entry under the provisions of this section.

History.—§§1, 3, ch. 3324, 1881; RS 449, 451; GS 638, 640; RGS 1217, 1219; CGL 1762, 1764.

270.04 Application and proof for entry.—The person applying for the benefit of §270.03 shall make affidavit before some officer authorized to administer oaths, that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement or cultivation, and not, either directly or indirectly, for the benefit of any other person, and that the lands applied for do not embrace the residence, cultivated lands or improvements of any other person, and shall prove, by the affidavits of two credible witnesses, that he is residing upon the land applied for,

or has part of the same in actual cultivation.

History.—§2, ch. 3324, 1881; RS 450; GS 639; RGS 1218; CGL 1763.

cf.—§1.01(2) Definition — masculine pronoun includes feminine.

270.05 Failure to pay installments.—Upon failure to pay installments on any entry made under the provisions of this chapter for ninety days after the same shall become due, the entry shall become null and void, and that portion of the purchase money already paid shall be forfeited.

History.—§4, ch. 3324, 1881; RS 452; GS 641; RGS 1220; CGL 1765.

270.06 Taxes on lands entered. — All persons entering lands under the provisions of this chapter shall be assessed for, and pay taxes on, the land so entered, from and after the date of entry and first payment thereon, and a failure to pay the taxes assessed thereon shall cause a forfeiture of all the benefits of this chapter and the part of the purchase money paid in.

History.—§5, ch. 3324, 1881; RS 453; GS 642; RGS 1221; CGL 1766.

270.07 Certain public lands not to be sold without advertisement.—No lands in the state that are now, or may hereafter be, vested in the trustees of the internal improvement trust fund of the state, or the state board of education, shall be sold, conveyed or disposed of by the said trustees or by the said board of education until notice by publication shall have been given for the full term of thirty days prior to such sale; provided, that this section shall not apply to homestead, railroad or canal grants, as now provided for by law.

History.—§1, ch. 5943, 1909; RGS 1222; CGL 1767; §1091, ch. 19355, 1939; CGL 1940 Supp. 892(410); §2, ch. 61-119.

270.08 Notice of sale of public lands by advertisement.—When the trustees of the internal improvement trust fund, or the state board of education, shall decide or regard it expedient to sell any of the lands that are now, or may hereafter be, vested in the trustees of the internal improvement trust fund of the state, or in the state board of education, they shall give thirty days' notice of such sale, by publication in some newspaper published in the county or counties where such lands to be sold are situated, and also such other papers as may be deemed advisable, once each week; which said notice shall contain a description of the lands, state the terms of sale, the time and place where such lands shall be sold, and notify the people that they will receive bids therefor at Tallahassee, from the time of giving such notice until the day of sale. In case said trustees are making the sale, they shall require the persons publishing said notice to file with them immediately after the expiration of the time of such sale, proof of said publication, which shall, at all times, be subject to inspection, by any person desiring to see same. And in case the said state board of education is proceeding to make such sale, it shall likewise require such persons publishing said notice to file with it, immediately after the expiration of the time of said sale, proof of said publication, which shall at all times be subject to inspection by any person desiring to see same.

History.—§2, ch. 5943, 1909; §1, ch. 6452, 1913; RGS 1223; CGL 1768; §1092, ch. 19355, 1939; CGL 1940 Supp. 892(411); §2, ch. 61-119.

cf.—§1.01(3) Definition—person.
ch. 49 Legal and official advertisements.

270.09 Bids to purchase public lands; sale to highest bidder; proviso, etc. — After the notice referred to in §270.07 shall have been issued, any person shall have the privilege of filing with the trustees of the internal improvement trust fund, if they be making the sale, or with the state board of education, if it be making the sale, a bid or written proposition to purchase said lands; and same shall not be opened until the day of sale provided in said notice, at which time all bids shall be opened in the presence of the said trustees, if they be making the sale, or in the presence of the state board of education, if it be making the sale, at the office of the said trustees or the board of education making the sale, as the case may be, in Tallahassee, at which time any person so desiring may be present. And the said trustees, if they be making the sale, or the said state board of education, if it be making the sale, shall sell to the highest bidder, upon satisfactory terms, for cash or otherwise, as they may determine, the lands advertised as prescribed in §270.07, and shall make, execute and deliver a deed or deeds to the purchaser or purchasers of such lands, in the manner now provided by law and in accordance with the terms agreed upon.

A record of all such sales and proceedings shall be kept by the said trustees, if they be making the sale, or by the said state board of education, if it be making the sale, which shall at all times be subject to inspection by any and all persons; provided, that all bids may be rejected if the price offered is not satisfactory to those making the sale; and provided further, that §§270.06-270.08 and this section shall not apply where the quantity of land sought to be sold does not exceed a half section of land.

History.—§3, ch. 5943, 1909; §1, ch. 6160, 1911; RGS 1224; CGL 1769; §1093, ch. 19355, 1939; CGL 1940 Supp. 892(412); §2, ch. 61-119.

270.10 Sections not to impair law relative to homesteads, etc. — Sections 270.07-270.09, shall in no wise impair the law of the state relative to homesteads or preemptions, or the law relative to the granting of lands for the construction of highways, public roads and canals.

History.—§4, ch. 5943, 1909; RGS 1225; CGL 1770; §1094, ch. 19355, 1939; CGL 1940 Supp. 892(413).

270.11 Contracts for sale of public lands to reserve certain mineral rights in state.—In all contracts and deeds for the sale of lands executed by the trustees of the internal improvement trust fund of Florida and by the state board of education of Florida, there shall be re-

served for the trustees of the internal improvement trust fund and their successors and the state board of education an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on, or under the said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same. Provided, however, that the said trustees and state board of education may in their discretion sell or release said reserved interest in or as to any particular parcel of land when such parcel has a building thereon or on which a building is proposed to be erected. Such sale or release to be made on application of the owner of the title to the particular parcel of land with statement of reason justifying such sale or release.

History.—§§1, 2, ch. 6159, 1911; RGS 1226; CGL 1771; §1095, ch. 19355, 1939; CGL 1940 Supp. 892(414); §1, ch. 26849, 1951; §1, ch. 59-220; §2, ch. 61-119.
cf.—§229.241 State board authorized to exchange land.

270.12 State school trust fund to receive twenty-five per cent of proceeds of sale of state lands.—The trustees of the internal improvement trust fund shall, pursuant to constitutional provision, set aside and pay into the state school trust fund twenty-five per cent of the proceeds derived from the sale of all state lands vested in said trustees.

History.—§1, ch. 15638, 1931; CGL 1936 Supp. 1771(1); §2, ch. 61-119.
cf.—A12 S4 Derivation of state school funds.

270.13 State school trust fund to receive twenty-five per cent of proceeds of lease of state lands, and sale, etc., of products in, on or under same.—The trustees of the internal improvement trust fund shall pay into the state school trust fund twenty-five per cent of the proceeds derived from the lease or rental of said lands and from the sale, lease or rental of any products in, on, or under all state lands vested in said trustees.

History.—§2, ch. 15638, 1931; CGL 1936 Supp. 1771(2); §2, ch. 61-119.
cf.—§253.45 Authority of trustees to sell, etc.
§4, Art. XII, const., school fund.

270.14 Method of ascertaining twenty-five per cent due state school trust fund.—In determining the twenty-five per cent to be paid to the state school trust fund, said amount shall be ascertained after all costs of improvements placed on the lands sold by said trustees and all current expenses have been allowed in connection with such sale, lease or rent, including taxes, if any, for the current year.

History.—§3, ch. 15638, 1931; CGL 1936 Supp. 1771(3); §2, ch. 61-119.

270.15 Sections 270.12-270.14 not applicable to certain tax foreclosure lands.—The provisions of §§270.12-270.14, shall not apply to tax foreclosure lands, title to which vested in the trustees of the internal improvement trust fund, under chapter 14572, laws of Florida, approved June 20th, 1929, until all costs required to be satisfied by law have been paid.

History.—§5, ch. 15638, 1931; CGL 1936 Supp. 1771(5); §2, ch. 61-119.

270.16 Preservation of equity of state in lands sold; trustees may compromise unpaid balance.—In the sale of state lands or other state property, whether made in the name of the state or in the name of any state agency, when such sale is or has been made upon the basis of partial payment or payments upon said lands or other property and the remainder or balance of payment or payments is or was secured by note or notes, in turn secured by mortgage or mortgages, or other paper or instrument obligating the lands or property, or any part thereof, to the payment of any remaining or balance of payment or payments, the equity and interest of the state or any state agency making such sale as represented by said notes, mortgages, or other such instruments, shall never be extinguished, canceled or impaired so long as the obligation to the state or state agency shall remain unpaid or unfulfilled; provided, the trustees of internal improvement trust fund may, in their discretion, compromise, or compound, any unpaid balance on any contract to purchase any lands over which said trustees have jurisdiction and control, where such contract to purchase is secured by a mortgage, if no less than twenty-five per cent of the agreed purchase price has been theretofore paid.

History.—§1, ch. 15641, 1931; CGL 1936 Supp. 1771(6); §2, ch. 61-119.
cf.—§95.021 Limitation of actions.

270.17 Foreclosure of mortgage for balance of purchase price on state lands.—The state, or any agency of the state in which was vested the primary title to said land or other property, may in case of nonpayment of the full purchase price upon said lands or other property sold by the state or its agency and subject to mortgage or other instrument of indebtedness held by the state or its agency, foreclose upon said mortgage or mortgages or other instrument of indebtedness, and recover said lands or other property subject to the liens for any taxes imposed upon said lands or other property; and upon the completion of said foreclosure and reinvestment of title to such lands or other property in the state or its agency, the state or its agency may pay all unpaid taxes or special assessments, not including interest, penalties, and costs, upon said lands and other property, which were legally assessable and collectible as if held and owned by the state or its agency.

History.—§2, ch. 15641, 1931; CGL 1936 Supp. 1771(7).

270.18 Tax liens extinguished when land reverts to state; exception.—Reinstatement of title in the state or its agency shall, by foreclosure or otherwise, operate to extinguish all liens for all taxes or assessments to which the lands would not have been subject had the title been in the state or its agency; provided, however, that any tax certificate or tax deed issued upon such lands or other property in the hands of a person, private firm or private corporation, shall represent a valid obligation against the said lands, and said certificate may be redeemed and paid for by the said state

or its agency as provided by law in other cases for the purchase or redemption of tax certificates, and in case of deed, by paying to the holder the amount paid by him, plus interest at six per cent per annum since the date of the said deed.

History.—§3, ch. 15641, 1931; CGL 1936 Supp. 1771(8).

270.19 Reconveyance to state; extinguishes tax liens.—Reinstatement of title by reconveyance or by forfeiture covering land or other property for which the state or its agency holds mortgage, or other instrument of indebtedness, or the vesting of title to lands or other property in the state or in its agency in any other manner, shall have the same effect as to tax or assessment liens as set forth in §270.18.

History.—§4, ch. 15641, 1931; CGL 1936 Supp. 1771(9).

270.20 When title reverts to state; lands, etc., go back to department from which it originated.—When title to lands or other property becomes vested in the state or its agency under §§270.16-270.19, such lands or other property shall be covered into that state fund or state department from which they originated or to which they may be conveyed. When title to lands or other property becomes so vested in the state or its agency, the title which may hereafter issue, from the state or its agency, will be a complete, new, independent title originating in the sovereign.

History.—§5, ch. 15641, 1931; CGL 1936 Supp. 1771(10).

270.21 Transactions to which sections applicable.—The provisions of §§270.16-270.18 shall apply to all transactions of the state, or any agency thereof, of the kind described in said sections in which the state or its agency has an equity.

History.—§6, ch. 15641, 1931; CGL 1936 Supp. 1771(11).

270.22 Proceeds from sale, etc., of state lands, to go into internal improvement trust fund.—The proceeds of state land, whether from sale, lease, rental, or the sale, lease or rental of products in, on, or under said land, title to which has been or may be vested in the trustees of the internal improvement trust fund by the legislature of this state, or of land which has been or may be received by said trustees from other sources, shall be paid into the internal improvement trust fund to become a part of said fund, subject to disposition as is provided by the laws of Florida relating thereto.

History.—§1, ch. 17272, 1935; CGL 1936 Supp. 1771(12); §2, ch. 61-119.

cf.—§253.01 Internal improvement trust fund established.
§253.02 Trustees powers and duties.

270.23 Disposition of proceeds of sale, etc., of state land.—After payments have been made to the state school trust fund, as provided by the constitution and by law, any balance shall be and remain a part of the internal improvement trust fund to be applied by the trustees of said fund to the payment of the expenses and the administration of said fund, including the lands thereof, and to such other purposes as prescribed by law.

History.—§2, ch. 17272, 1935; CGL 1936 Supp. 1771(13); §2, ch. 61-119.

cf.—253.02 Trustees powers and duties.

270.24 Payment of special assessments, etc., upon state lands.—Where the lands of the state, title to which is vested in the trustees of the internal improvement trust fund, are subject to special assessments or special levies of taxes imposed by authority of the legislature, the trustees may pay such special assessments or special levies out of moneys received from the sale of lands so taxed, and said special assessments or special levies which shall include accumulated amounts, if any, shall be due and payable on the next due date for the collection of such special assessments or special levies after the sale of said land. And land conveyed into other ownership by legislative grant or by the trustees of the internal improvement trust fund, without monetary consideration or its equivalent, shall pass the obligation against the land for the payment of such special assessments or special levies to the grantee.

History.—§3, ch. 17272, 1935; CGL 1936 Supp. 1771(14); §2, ch. 61-119.

270.25 Special assessments, etc., shall remain liens subject to payment.—Special assessments or special levies heretofore imposed by legislative authority, which are now a lien upon the lands, title to which is in the trustees of the internal improvement trust fund, shall continue as a lien subject to payment as provided for in §270.24; provided, however, that the provisions of this section shall not operate to extinguish or impair any obligation heretofore imposed upon said lands to pay special assessments or special taxes heretofore levied.

History.—§4, ch. 17272, 1935; CGL 1936 Supp. 1771(15); §2, ch. 61-119.

270.26 Lands to which sections do not apply.—The provisions of §§270.22-270.25 shall not apply to any lands, title to which has vested or which may vest in the trustees of the internal improvement trust fund through any law foreclosing the lien for taxes until all such liens shall have been satisfied as provided by law.

History.—§5, ch. 17272, 1935; CGL 1936 Supp. 1771(16); §2, ch. 61-119.

270.27 Board of commissioners of state institutions may sell certain public lands.—

(1) The board of commissioners of state institutions is hereby authorized to sell, to the best possible advantage, any or all detached pieces or parcels of land held by the state for the use of any institution under the supervision and control of said board, whenever, in the judgment of said board, such detached pieces or parcels of land are not suitable for, or necessary and useful in, the operation and maintenance of such institution, and the proceeds from the sale of such land could be used to better advantage than said land in the operation and maintenance of such institution.

(2) The proceeds derived from the sale of any land, as authorized in this section, shall be deposited in the state treasury to the account of the board of commissioners of state institutions for the use of the particular institution from the sale of whose lands said funds were derived. Such funds may be used, from time to time, by said board, for the purpose of acquir-

ing additional lands that may be needed for the particular institution credited with such funds, or for needed buildings or repairs for such institution, in the discretion of said board, and such funds, when obtained, are hereby appropriated for such purposes.

(3) The board of commissioners of state institutions is authorized to sell and convey, to the best possible advantage, any piece or parcel of land held by the state or by said board and located north of Pensacola street in the city of Tallahassee and to receive as payment or part payment therefor any piece or parcel, or pieces or parcels, of land located within what is known as the capitol center at the state capital. The board, prior to the sale of any such piece or parcel of land, shall cause the same to be appraised by two or more competent appraisers and shall likewise have any piece or parcel, or pieces or parcels, of land which the said board proposes to acquire as payment or part payment for any piece or parcel of land proposed to be sold to be appraised in like manner.

History.—§§1, 2, ch. 20524, 1941; (3) n. by §1, ch. 57-88.

CHAPTER 271

GRANTS TO RIPARIAN OWNERS

271.02 Chapter not to extend to swamp lands.—Nothing in this chapter contained shall be so construed as to release the title of the state or any of its grantees to any of the swamp or overflowed lands within the limits of the same, but the grant herein contained shall be limited to those persons and bodies corporate owning lands actually bounded by, and extending to, high water mark on such navigable streams, bays and harbors.

History.—§2, ch. 791, 1856; RS 455; GS 644; RGS 1228; §2, ch. 8537, 1921; CGL 1773, 1775.

271.03 Effective date of chapter. — This chapter shall take effect as of the day, to-wit. December 27th, 1856, when the act entitled "An act to benefit commerce," was adopted by the legislature, and shall be continuously effective thenceforward and hereafter; and vests in the riparian proprietors and their grantees and successors in right, the title, right and interest given under the provisions of this chapter.

History.—§3, ch. 8537, 1921; CGL 1776.

271.04 Oyster beds, minerals, oils, etc., reserved to state.—The state saves, reserves and excepts all natural oyster beds upon and all minerals and oils in or under the submerged lands until the same shall be filled in and improved by the riparian owner.

History.—§4, ch. 8537, 1921; CGL 1777.
cf.—§370.16(10) Rights of riparian owners.

271.05 Chapter 4802 not affected.—Nothing in this chapter shall affect or repeal chapter 4802, laws of Florida, approved June 2, 1899, entitled, "An act to grant the water front of the City of Pensacola," which is confirmed; and all grants and conveyances made by the commissioners provided for in said act are confirmed and validated, and the state vests in the grantees of said commissioners, and the persons and corporations mentioned in the said act, all the rights, title and interests granted by the said commissioners and by the provisions of said act.

History.—§5, ch. 8537, 1921; CGL 1778.

271.06 Chapter not applicable to lakes. — Nothing in §§271.02-271.08 shall be construed to apply to lakes, except tide water lakes.

History.—§6, ch. 8537, 1921; CGL 1779.

271.07 Chapter not applicable to bathing beaches.—Nothing in §§271.02-271.08 shall be construed to apply to beaches customarily used by the public as bathing beaches.

History.—§7, ch. 8537, 1921; CGL 1780.

271.08 Boating, bathing and fishing privileges not affected. — Nothing in this chapter shall be construed to prohibit any person from boating, bathing or fishing in water covering the submerged lands of this state or from exercising any of the privileges heretofore allowed by law as to such submerged land and water covering the same, until such submerged lands shall be filled in or improved by the riparian owner as herein authorized.

History.—§8, ch. 8537, 1921; CGL 1781.

271.09 Riparian rights defined; certain submerged bottoms subject to private ownership; taxation.—

(1) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high water mark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.

(2) Navigable waters in this state shall not be held to extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps or overflowed lands, lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters.

(3) The submerged lands of any nonmeandered lake shall be deemed subject to private ownership where the trustees of the internal improvement trust fund of Florida conveyed the same more than fifty years ago without any deductions for water and without any reservation for public use and when taxes have been levied and collected on said submerged lands since conveyance by the state.

(4) Where private ownership of submerged bottoms outward from the shore has originated in a Spanish or other land grant approved by the congress specifically describing an area in which was included navigable water, or by patent out of the United States prior to the date on which Florida became a state likewise containing a description including navigable water,

or upon a valid conveyance out of the state, the submerged land included in such grant, patent or conveyance shall be subject to taxes lawfully imposed.

History.—§§1, 2, ch. 28262, 1953; §2, ch. 61-119.
cf.—§194.63 Cancellation of certificates on riparian rights separate from land.
§192.61 Assessment of riparian rights.
Note.—Formerly §192.61(1)-(4).

271.10 Grant of easements, licenses, leases, etc.—

(1) The trustees of the internal improvement trust fund of this state be and they are hereby authorized and empowered to grant unto riparian owners as herein defined, their heirs, successors and assigns, perpetual easements and easements, licenses and leases for specified terms of years, permitting such riparian owners, their heirs, successors and assigns, to construct, maintain and operate structures and facilities on, in and under the bed of any navigable stream or any river owned in whole or in part by the state, for the purpose of providing water of a suitable quality for industrial, domestic or other use; provided, however, any instrument granting such easement, lease or license may contain provisions to the effect that such structures and facilities shall be so constructed as not to obstruct the channel of the stream or river or unreasonably interfere with navigation, commerce or fishing thereon.

(2) For the purposes of this section, the term "riparian owners" shall include the owners of uplands bounded by either the high or low water mark of any stream or river and shall include lessees and licensees of any such owners or grantees in easements from such owners of such uplands or river bottoms. The term "channel" shall mean the marked, buoyed, or artificially dredged channel, if any, and if none, shall mean a space equal to twenty per cent of the average width of the river or stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at mean low water.

(3) This section is cumulative and shall not restrict or limit any title, right, interest or privilege of any riparian owner under the common law or under §271.01**.

History.—§§1-3, ch. 57-325; §2, ch. 61-119.
**§271.01 repealed by §9, ch. 57-362.

CHAPTER 272

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

272.01 Board to hold title to patents, trade-marks, copyrights, etc.—The legal title and every right, interest, claim or demand of any kind in and to any patent, trade-mark or copyright, or application for the same, now owned or held, or as may hereafter be acquired, owned and held by the state, or any of its boards, commissions or agencies, is hereby granted to and vested in the board of commissioners of state institutions for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of said board of commissioners of state institutions.

History.—§1, ch. 21959, 1943.

272.02 Authority of board in connection with patents, trade-marks, copyrights, etc.—Said board of commissioners of state institutions is hereby authorized to do and perform any and all things necessary to secure letters patent, copyright and trade-mark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said board shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state and said board of commissioners of state institutions for the manufacture or use thereof by any other party; to sell any of the same and to execute any and all instruments on behalf of the state necessary to consummate any such sale; and to do any and all other acts necessary and proper for the execution of powers and duties herein conferred upon said board of commissioners of state institutions for the benefit of the state.

History.—§2, ch. 21959, 1943.

272.03 Board to supervise capitol center buildings; title in state.—

(1) All state buildings now or hereafter constructed included in the capitol center at the state capital and the grounds and squares contiguous thereto, except the state capitol building and the square on which it is situated, shall be under the general control, custodianship and supervision of the board of commissioners of state institutions. These state buildings shall include the Martin building, the old supreme court building, the new supreme court building, the Florida industrial commission building, chemistry building, and the state road department building; and other state buildings in said center not enumerated or excepted and those which may hereafter be constructed in said center.

(2) Title to said buildings shall vest in the state.

(3) Nothing herein is intended to disturb or impair the contractual obligations for the discharge of the indebtedness incurred for the construction of the Florida industrial commission building.

History.—§§1-3, ch. 25032, 1949.

cf.—§15.04 Secretary of state in charge of capitol.
§15.05 Repairs and assignment of rooms in capitol.

272.04 Board to allocate space.—The board of commissioners of state institutions shall have authority to allocate space to house the various departments, agencies, boards and commissions in said buildings, excepting, however, the new supreme court building which authority shall be vested in the justices of the supreme court.

History.—§4, ch. 25032, 1949.

272.05 Budgets for repair, etc.; board and budget commission to review.—The board of commissioners of state institutions and the state budget commission shall be empowered to review, change and modify the budgets of the departments, agencies, boards and commissions relating to the repair, upkeep and maintenance of said buildings.

History.—§5, ch. 25032, 1949.

272.06 Board may provide for heating, lighting, etc., of buildings.—The board of commissioners of state institutions may provide or enter into contracts to provide heating, power, lighting, cooling systems and other necessary services or facilities for any or all of said buildings, and may authorize or contract with the Florida state improvement commission for the performance of any functions or services authorized under §§272.03-272.08.

History.—§6, ch. 25032, 1949.

272.07 Board may provide for parks, etc.—The board of commissioners of state institutions may provide for the establishment of parks and drives and walkways and parkways on said grounds and squares and for the supervision, regulation and maintenance of the same including traffic and parking thereon.

History.—§7, ch. 25032, 1949.

272.08 Duty of repair, maintenance, etc.—Except when otherwise directed by the board of commissioners of state institutions, the official or officials now having the duty of repair, care, maintenance and supervision of any of said buildings shall continue to exercise such authority.

History.—§8, ch. 25032, 1949.

272.09 Management, maintenance and upkeep of capitol center.—The management, maintenance and upkeep of the capitol center as defined in §272.03, is hereby vested in and made the direct obligation of the board of commissioners of state institutions, who shall have authority to do all things necessary to satisfactorily accomplish these functions including the employment of a superintendent of grounds and buildings and other employees; the establishment of central repair and maintenance shops; and the designation or appointment of nonsalaried advisory committees to advise with them.

History.—§1, ch. 29843, 1955; §1, ch. 57-60.
cf.—§272.18 Governor's mansion commission.

272.10 Management, maintenance and upkeep of capitol building.—The board of commissioners of state institutions may, upon the request of the secretary of state and under his direction and supervision, also assume the management, maintenance and upkeep of the capitol building and grounds.

History.—§2, ch. 29843, 1955.

272.11 Capitol information center.—The board of commissioners of state institutions may establish, maintain and operate a capitol information center somewhere within the area of the capitol center and employ personnel to maintain same.

History.—§3, ch. 29843, 1955.

272.12 Florida capitol center.—

(1) When used in this statute the terms "Florida capitol center," "capitol center area," or "capitol center," or words of similar purport, shall be taken and understood to extend to and include lands owned, including lands hereafter acquired, by the state or any of its agencies, or for the state and any of its agencies, within the boundaries of the city of Tallahassee, for governmental use or occupancy, present or future.

(2) The Capitol square, Wayne square, Jackson square, Green square, the Mayo building and grounds, the Curtis L. Waller park, the R. A. Gray park, the Knott building and grounds, the Holland building and grounds, the Caldwell building and grounds, the supreme court building and grounds, and the area bounded by Duval, St. Augustine, Adams and Pensacola streets, including the buildings and improvements thereon, shall be taken and understood as constituting the present capitol center area.

(3) The board of commissioners of state institutions is hereby authorized to purchase at fair market value any lands or buildings owned by the state road department within the capitol center. The board of commissioners of state institutions may use for this purpose any funds which are available to the board at the time of the purchase.

History.—§1, ch. 29840, 1955; (3) n. §1, ch. 63-28.

272.13 Capitol center police.—The governor, by and with the consent of the board of commissioners of state institutions, shall appoint a captain of the capitol center police and such number of policemen as in the opinion of the said board of commissioners of state institutions shall be required to police and protect the buildings and state property located or being upon the capitol center area. The said policemen shall be under the immediate supervision and direction of the captain of the capitol center police, who shall be under the direct supervision of the board of commissioners of state institutions or such member or group of members of said board as it may by resolution designate. Their powers and jurisdiction to make arrests shall be coextensive with that of police officers of the city of Tallahassee, for violations of municipal ordinances or state statutes, upon said capitol center area.

History.—§2, ch. 29840, 1955.

272.14 Tallahassee police officers; powers, authority, etc.—

(1) Police officers of the city of Tallahassee, shall be ex officio police officers of the capitol center area and may enforce rules, regulations, ordinances and statutes applicable to the said capitol center area.

(2) The board of commissioners of state institutions may contract with the city of Tallahassee, for the policing of the said capitol center area or any part or parcel thereof and upon such terms as they may deem to the best interest of the state, in which case the capitol center police force mentioned in §272.13 may be dispensed with.

History.—§3, ch. 29840, 1955.

272.15 Ordinances, rules and regulations.—

(1) The board of commissioners of state institutions, with the approval of the city commission of the city of Tallahassee, shall have power and authority to enact all such ordinances, rules and regulations, not inconsistent with the constitutions, statutes and laws of the United States and of this state, as may be expedient and necessary for the preservation of public peace and order, the regulation of traffic within the said capitol center area, and the protection and preservation of the property of the state and its agencies, and to impose such pains, penalties and forfeitures as may be needed to carry the same into effect; provided,

that for no offense made punishable under such ordinances, rules and regulations shall a fine of more than $500 or imprisonment for a period of time longer than sixty days, be imposed.

(2) All ordinances of the city of Tallahassee, which may be made applicable to the said capitol center area are hereby made applicable thereto, unless and until otherwise provided by resolution of the board of commissioners of state institutions, or superseded or repealed by ordinances, rules or regulations enacted pursuant to subsection (1) above.

(3) For the purpose of the enforcement of the ordinances, rules and regulations herein provided for, the capitol center area shall be taken and understood to be a part of the city of Tallahassee, and the municipal court shall have full jurisdiction to enforce such ordinances, rules and regulations as ordinances of the city of Tallahassee. All fines and forfeitures imposed by the said municipal court shall be collected by the city of Tallahassee and shall become funds and property of the said city.

History.—§4, ch. 29840, 1955.

272.16 Parking areas within capitol center area.—

(1) The board of commissioners of state institutions may assign parking areas within the capitol center area, not to exceed sixty per cent of said areas, to state officers and employees employed in Tallahassee; provided, however, that parking areas must be provided for members of the legislature during session of the legislature, regular and extraordinary. Not more than fifteen per cent of said parking areas may be set aside for the use of persons temporarily visiting or attending to business in the capitol center area, and which persons reside beyond the territorial limits of the city of Tallahassee. Any remaining portion of the parking areas not assigned as aforesaid may be limited in period of time for use.

(2) The parking areas so assigned, or so limited in use, shall be clearly marked and any violation of the same shall constitute a violation of this chapter and may be punished as if it constituted a violation of a municipal ordinance of the city of Tallahassee.

History.—§5, ch. 29840, 1955.

272.18 Governor's mansion commission.—

(1) MANSION COMMISSION; MEMBERS; TENURE OF OFFICE; COMPENSATION.—

(a) There is hereby created a governor's mansion commission, composed of five members appointed by and to serve as an adjunct of the board of commissioners of state institutions.

(b) Three members of the commission shall be appointed for terms ending June 30, 1959; their successors shall be appointed for four-year terms thereafter. Two members of the commission shall be appointed for terms ending June 30, 1961 and for four-year terms thereafter.

(c) Members of the commission shall not be paid any compensation but shall be reimbursed for their traveling expenses incurred in connection with the performance of their duties as provided in §112.061. All expenses of the commission shall be paid from appropriations to be made by the legislature for that purpose, pursuant to subsection (3).

(2) POWERS; DUTIES; PERSONNEL.—

(a) The commission shall supervise and maintain all structures, furnishings, equipment and grounds of the governor's residence.

(b) The board of commissioners of state institutions shall from its regular staff and upon the request of the commission furnish it such administrative and technical assistance as may be required adequately to perform its duties.

(c) The commission is specifically charged with the duty of maintaining the governor's mansion structure, style and character consistent with its original plan of construction and furnishing, and insure the same with the state fire insurance fund as provided in §284.01.

(d) With the approval of the board of commissioners of state institutions the commission shall have authority to contract and be contracted with for work and materials required.

(e) The commission shall keep a continuing and accurate inventory of all equipment and furnishings.

(3) FINANCING; BUDGETS. — The commission shall submit its budgetary requirements to the board of commissioners of state institutions for its approval and inclusion in its legislative budget requests. The commission shall expend only such amounts of money as may be specifically appropriated by the legislature for the use of the commission. All vouchers shall be approved by the board of commissioners of state institutions before submittal to the comptroller for payment.

History.—§§1-3, ch. 57-61; (1)(c), (3) §1, ch. 61-30; (1)(c) §10, ch. 63-400.

272.19 Trustees of Ringling museum of art.—

(1) There is hereby created a board of trustees of the John and Mable Ringling museum of art, which shall consist of five members, one of whom shall be a resident of Sarasota county and one of whom shall be a resident of Manatee county. Each member shall have been a resident and citizen of the state for a period of at least ten years. Their terms of office shall be four years, except the first members, one of whom shall be appointed for a term of one year, one for a term of two years, one for a term of three years and two for terms of four years. The appointment of the trustees shall be by the governor. The governor may remove any member for cause, and shall fill all vacancies that occur.

(2) The board of trustees shall elect a chairman annually. The trustees shall be reimbursed for traveling expenses as provided in §112.061, while in the performance of their

duties, the accounts of which shall be paid by the state treasurer upon itemized vouchers duly approved by the chairman.

(3) The board of trustees shall act at all times in conjunction with and under the supervision and general policies adopted by the board of commissioners of state institutions.

(4) The board of trustees shall have complete jurisdiction over the management of the museum, and is invested with full power and authority to appoint a director, and other employees, and to remove the same as in their judgment may be best; fix their compensation, provide for the proper keeping of accounts and records; budgeting of funds; to enter into contracts; to secure public liability insurance; and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of the John and Mable Ringling museum of art at the highest efficiency economically possible taking into consideration the purposes of the establishment.

(5) All presently existing obligations, contracts, and other commitments of the John and Mable Ringling museum of art shall be honored by the board of trustees.

(6) Any authority assumed or vested by law in the director or other officer or employee of the John and Mable Ringling museum of art is vested in the board of trustees. The director upon approval of the trustees is authorized to expend not to exceed one thousand dollars annually from funds derived from admissions for public relations deemed by the trustees to be necessary and in the best interest of the museum in addition to publicity and advertising expenditures.

History.—§§1-6, ch. 59-60; (2) §19, ch. 63-400; (6) §1, ch. 63-150.

272.20 Loan of objects of art.—The board of trustees of the John and Mable Ringling museum of art is hereby given authority to make temporary loans not to exceed six months' duration of paintings and other objects of art belonging to the John and Mable Ringling museum of art for the purpose of public exhibition in art museums, institutions of higher learning and the executive mansion in Tallahassee, where such exhibition will benefit the general public as in the judgment of the board of trustees is deemed wise and for the best interest of the John and Mable Ringling museum of art, and under policies established by the board of trustees and approved by the board of commissioners of state institutions for the protection of the paintings and other objects of art; provided that in making such temporary loans the board of trustees shall give first preference to art museums and institutions of higher learning.

History.—§1, ch. 59-61.

272.21 Florida arts commission.—

(1) A Florida arts commission is created and established and is hereafter referred to as the commission.

(2) The commission shall consist of nine members who shall be appointed by the governor upon recommendations submitted by the board of commissioners of state institutions for terms of four years. The four year terms shall run concurrently with the four years term prescribed by the constitution for the governor and until their successors are appointed and qualified; provided, that the first nine members of the commission shall be appointed by the governor for terms that shall expire at the time of the expiration of the term of the present governor and until their successors are appointed and qualified. The governor shall appoint as members of the commission citizens and residents of Florida representative of various professional organizations and governmental institutions concerned with the orderly development of the artistic and cultural resources of Florida in the fine arts area and qualified to advise and assist in capturing and symbolizing the spirit and great natural beauty of Florida in permanent structures of the state. The governor shall designate one of the members to be the chairman of the commission. The commissioners shall select from their number a secretary. Upon being appointed, each member of the commission shall execute the oath of office prescribed by §2 of Art. XVI of the state constitution and file the same with the secretary of state. The members of the commission shall serve without compensation for their services but shall be entitled to be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in §112.061.

(3) The powers and duties of the commission shall be:

(a) To promote the decoration and beautification of interiors of the capitol and other public buildings, and advise and assist appropriate state officers and agencies in this regard, particularly the board of commissioners of state institutions and the secretary of state.

(b) To seek and help assure a uniformity of art work within state buildings and review all art content of existing public buildings or buildings of state ownership for the purpose of making recommendations to the governor and board of commissioners of state institutions as to matters of installation, relocation, restoration, removal or any other disposition of such works of art.

(c) To consult and advise on request, or at its own initiative, with other individuals, groups, organizations or state agencies and officials, particularly the governor, the cabinet, the mansion committee, the Foster memorial commission, the state museum, and the Ringling museum officials, concerning the acquisition by gift or purchase of fine art works, the appropriate use and display of state-owned art treasures for maximum public benefit, and the suitability of any structures or fixtures primarily intended for ornamental or decorative purposes in public buildings.

(d) To foster the development of a receptive climate for the fine arts to culturally enrich and benefit the citizens of Florida in their

daily lives, to make Florida visits and vacations all the more appealing to the world and to attract to Florida residency additional outstanding creators in the field of fine arts through appropriate programs of publicity, education, coordination and direct activities such as sponsorship of art lectures and exhibitions and central compilation and dissemination of information on the progress of the fine arts in Florida.

(e) To expend all funds appropriated by this section in accordance with general state laws and the judgment of the commission as to an effective program.

(f) To accept on behalf of Florida such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic and cultural resources of Florida. Such donations of money and any cash income which may be received by the commission from the disposal of any donations of property, art objects or historical relics previously accepted by the commission shall be deposited in a separate trust fund in the state treasury and are hereby appropriated to the use of the commission.

(g) To file regular reports of progress and activities with the governor and the board of commissioners of state institutions.

(4) The commission shall submit its budgets to the board of commissioners of state institutions for approval before said budgets may be submitted to the state budget commission as required by chapter 216. The commission may expend only such amounts of money as are appropriated in this section or which may hereafter be specifically appropriated by the legislature for the use of the commission.

History.—§§1-4, ch. 59-275; (3)(f), (4) §§1, 2, ch. 61-20.

CHAPTER 273

STATE-OWNED TANGIBLE PERSONAL PROPERTY

273.01 Definitions.—The following words as used in this act have the meanings set forth in the below subsections, unless a different meaning is required by the context.

(1) "Custodian" means any elected or appointed state officer, board, commission, or authority, and any other person or agency entitled to lawful custody of property owned by the state.

(2) "Property" means all tangible personal property owned by the state.

History.—§1, ch. 57-277.

273.02 Record and inventory of certain property.—The word "property" as used in this section means fixtures and other tangible personal property of a nonconsumable nature the value of which is twenty-five dollars or more, and the normal expected life of which is one year or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the state auditor. Each custodian shall maintain an adequate record of property in his custody, which record shall contain such information as shall be required by the state auditor. Once each year, on July 1 or as soon thereafter as shall be practicable, and whenever there is a change of custodians, each custodian shall take an inventory of property in his custody. The inventory shall be compared with the property record and all discrepancies shall be traced and reconciled.

History.—§2, ch. 57-277; §1, ch. 59-430.

273.03 Property supervision and control.—The custodian shall be primarily responsible for the supervision and control of the property in his custody but may delegate its use and immediate control to a person under his supervision and may require custody receipts.

History.—§3, ch. 57-277.

273.04 Property acquisition.—Whenever acquiring property, the custodian may pay the purchase price in full or may exchange property with the seller as a trade-in and may apply the exchange allowance to the cost of the property acquired. If whenever acquiring property, the custodian may best serve the interests of the state by outright sale of property rather than by exchange as a trade-in, he may make the sale in the manner prescribed in this act for the disposal of surplus property, and the receipts from the sale are hereby appropriated and may be applied to the cost of the property acquired, except that the value of the property sold shall not exceed the approximate value of the property acquired, and the property to be acquired shall be contracted for within the same biennium in which the property sold is disposed of.

History.—§4, ch. 57-277.

273.05 Surplus property. — The custodian shall have discretion to classify as surplus any property in his custody that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function as to any activity or location under his supervision. The fact that property is surplus shall be certified to the state purchasing council or its successor, together with information indicating the value and condition of the property.

History.—§5, ch. 57-277.

273.06 Transfers between custodians.—From time to time the state purchasing council or its successor shall offer surplus property to custodians. Any custodian may make a bid. If the bid is accepted by the state purchasing council or its successor, the cost of transferring the property shall be paid from the appropriation of the custodian who made the bid.

History.—§6, ch. 57-277.

273.07 Other disposal of surplus property.—Having consideration for the best interests of the state, property which its custodian has certified as surplus and which is not otherwise lawfully disposed of may be disposed of for value to any person, or the property may be disposed of for value without bids to any custodian or political subdivision as defined in §1.01(10), or if the property is without commercial value it may be donated, destroyed, or abandoned. Prior approval of the state budget commission shall be required for the disposal of property the estimated value of which is five thousand dollars or more. Property the value of which is estimated to be between one hundred dollars and two hundred dollars shall be sold only to the highest responsible bidder after a request for at least three bids, or by public auction. Any sale of property the value of which is estimated to be two hundred dollars or more shall be sold only to the highest responsible bidder, or by public auction, after publication of notice not less than one week nor more than three weeks prior to sale in a newspaper having a general circulation in the county where the property is to be sold, and in additional newspapers if the custodian thinks the best interests of the state will better be served by the additional notices.

History.—§7, ch. 57-277.

273.08 Property proceeds.—If property is disposed of during the biennium in which it is acquired the proceeds are hereby reappropriated during the biennium to the custodian making the disposal.

History.—§8, ch. 57-277.

273.09 Penalty.—Any custodian who violates any provision of this act or any rule prescribed pursuant to its authority shall be guilty of a misdemeanor and upon conviction shall be punished in the manner prescribed by law.

History.—§9, ch. 57-277.

273.10 Repeal.—This act shall not repeal existing law relating to property but shall be interpreted to be supplementary in nature and shall be applicable to the extent that existing law is not in conflict.

History.—§11, ch. 57-277.

CHAPTER 274

TANGIBLE PERSONAL PROPERTY OWNED BY COUNTIES, DISTRICTS, ETC.

274.01 Definitions.—The following words as used in this act have the meanings set forth in the below subsections, unless a different meaning is required by the context:

(1) "Governmental unit" means the governing board, commission or authority of a county or taxing district of the state or the sheriff of the county.

(2) "Custodian" means the person to whom the custody of county or district property has been delegated by the governmental unit.

(3) "Property" means all tangible personal property, owned by a governmental unit, of a nonconsumable nature.

(4) "Fiscal year" means the governmental unit's fiscal year established pursuant to law; otherwise, it means the calendar year.

History.—§1, ch. 59-163; (1) a. §1, ch. 61-102.

274.02 Record and inventory of certain property.—The word "property" as used in this section means fixtures and other tangible personal property of a nonconsumable nature the value of which is twenty-five dollars or more, and the normal expected life of which is one year or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the state auditor. Each governmental unit shall maintain an adequate record of its property, which record shall contain such information as shall be required by the state auditor. Each governmental unit shall take an inventory of its property in the custody of a custodian whenever there is a change in such custodian. A complete physical inventory of all property shall be taken annually, and the date inventoried shall be entered on the property record. The inventory shall be compared with the property record and all discrepancies shall be traced and reconciled.

History.—§2, ch. 59-163.

274.03 Property supervision and control.—A governmental unit shall be primarily responsible for the supervision and control of its property but may delegate to a custodian its use and immediate control and may require custody receipts. A governmental unit may assign to or withdraw from a custodian the custody of any of its property at any time; provided, that if the custodian is an officer elected by the people or appointed by the governor, the property may not be withdrawn from his custody without his consent. Each custodian shall be responsible to the governmental unit for the safekeeping and proper use of the property entrusted to his care. If the custodian is not a bonded officer, the governmental unit may require from the custodian a bond conditioned upon such safekeeping and proper use. In each county the sheriff shall be the custodian of the property of the office of sheriff.

History.—§3, ch. 59-163; §2, ch. 61-102.

274.04 Property acquisition.—Whenever acquiring property, the governmental unit may pay the purchase price in full or may exchange property with the seller as a trade-in and apply the exchange allowance to the cost of the property acquired. If whenever acquiring property, the governmental unit may best serve the interests of the county or district by outright sale of the property to be replaced, rather than by exchange as a trade-in, it may make the sale in a manner otherwise prescribed in this act for the disposal of property. The receipts from the sale may be treated as a current refund if the property to be acquired shall be contracted for within the same fiscal year of the governmental unit in which the property sold is disposed of.

History.—§4, ch. 59-163.

274.05 Surplus property.—A governmental unit shall have discretion to classify as surplus any of its property, which property is not otherwise lawfully disposed of, that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function. Within the reasonable exercise of its discretion and having consideration for the best interests of the county or district, the value and condition of property classified as surplus, and the probability of such property's being desired by the prospective bidder to whom offered, the governmental unit first shall offer surplus property to other governmental units in the county or district; and, second, if no acceptable bid is received within a reasonable time, shall offer such property to such other governmental units as shall be determined by the governmental unit on the basis of the foregoing criteria. Such offer shall disclose the value and condition of the property. The best bid shall be accepted by the governmental unit offering such surplus property. The cost of transferring the property shall be paid by the governmental unit that made the successful bid.

History.—§5, ch. 59-163.

274.06 Alternative procedure.—Having consideration for the best interests of the county or district, a governmental unit's property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, which property is not other-

wise lawfully disposed of, may be disposed of for value to any person, or may be disposed of for value without bids to the state, to any governmental unit, or to any political subdivision as defined in §1.01(10), or if the property is without commercial value it may be donated, destroyed, or abandoned. The determination of property to be disposed of by a governmental unit pursuant to this section instead of pursuant to other provisions of law shall be at the election of such governmental unit in the reasonable exercise of its discretion. Property, the value of which the governmental unit estimates to be between one hundred dollars and two hundred dollars, shall be sold only to the highest responsible bidder after a request for at least three bids, or by public auction. Any sale of property the value of which the governmental unit estimates to be two hundred dollars or more shall be sold only to the highest responsible bidder, or by public auction, after publication of notice not less than one week nor more than two weeks prior to sale in a newspaper having a general circulation in the county or district in which is located the official office of the governmental unit, and in additional newspapers if in the judgment of the governmental unit the best interests of the county or district will better be served by the additional notices; provided that nothing herein contained shall be construed to require the sheriff of a county to advertise the sale of miscellaneous contraband of an estimated value of less than two hundred dollars.

History.—§6, ch. 59-163.

274.07 **Authorizing and recording the disposal of property.**—Authority for the disposal of property shall be recorded in the minutes of the governmental unit. The disposal of property within the purview of §274.02 shall be recorded in the records required by that section.

History.—§7, ch. 59-163.

274.08 **Penalty.**—Any person who violates any provision of this act or any rule prescribed pursuant to its authority shall be guilty of a misdemeanor and upon conviction shall be punished in the manner prescribed by law.

History.—§8, ch. 59-163.

274.09 **Construction.**—The provisions of this act shall be liberally interpreted to be cumulative and supplementary to any general, special or local law, heretofore or hereafter enacted.

History.—§10, ch. 59-163.

274.10 **Initiation of act.**—This act shall govern the administration of the property of each governmental unit from the beginning of such governmental unit's fiscal year next succeeding May 28, 1959.

History.—§11, ch. 59-163.

274.11 **County health department property.**—Title to property purchased by county health departments established pursuant to the provisions of chapter 154, whether purchased with federal, state or county funds, or any combination thereof, shall be vested in the board of county commissioners of the county where said county health department is located and shall be accounted for in accordance with the provisions of this chapter.

History.—§1, ch. 61-46.

TITLE XVIII

PUBLIC BUSINESS

CHAPTER 282

GENERAL AND MISCELLANEOUS APPROPRIATIONS

(20) Part-time position.
(21) Class of positions.
(22) Series.
(23) Common class.
(24) Single-agency class.
(25) Title of position, class of position.
(26) Pay plan.
(27) Salary schedule.
(28) Salary range.
(29) Budgeted position.
(30) Authorized position.
(31) Established position.
(32) Position number.
(33) Reclassification.
(34) Promotion.
(35) Demotion.
(36) Transfer.

282.001 Continuing appropriations repealed. (1) All continuing appropriations and all unobligated lump sum appropriations heretofore made by the legislature of the state which extend beyond June 30, 1949, without regard to the source from which the funds appropriated are derived, including funds derived from taxes, licenses and fees of all kinds, except as provided in §282.002, be and the same are hereby repealed.

(2) Funds derived from all continuing appropriations on hand in any fund on July 1, 1949, except those referred to in §282.002, be and the same are hereby appropriated and transferred to the general revenue fund of the state to be used as directed by law.

(3) Except as otherwise provided by §282.002 all funds collected by the institutions under the management of the state board of control and the board of commissioners of state institutions to the extent as now required by law, and all funds collected by all other officials, officers, commissions, departments, boards, bureaus, divisions or other agencies of the state government from taxes, licenses, fees and every other source whatsoever, shall be promptly deposited in the general revenue fund, except that funds now collected that are deposited in the funds as enumerated in §282.002, shall be deposited in state treasury as provided by law.

History.—§§1, 3, 4, ch. 25068, 1949.

282.002 Exceptions.—The provisions of §282.001(1) shall not apply to the appropriations made for the following:

(1) Legislative expense under chapter 11.

(2) Section 16, Article IX, of the constitution of the state, relating to the second gas tax and other fuel oil used to propel motor vehicles or to any appropriation made by any statute for the purpose of carrying into effect this provision of the constitution.

(3) Any appropriation relating to refund of taxes or licenses.

(4) All taxes on gasoline and other like products of petroleum and motor vehicle fuel other than gasoline and any other taxes or funds which are now required by law to be deposited and disbursed in the state road fund.

(5) All funds collected from hunting and fishing licenses or other funds collected by the game and fresh water fish commission created by constitutional provision.

(6) All funds collected by the Florida industrial commission for the purpose of administering the provisions of the workmen's compensation law.

(7) All funds collected under the provisions of the laws of this state for the purpose of advertising citrus fruit.

(8) All funds received and appropriated for the purposes of each and every retirement system established by law.

(9) All funds received by the state from race track taxes as provided for in §550.13 and the appropriation under §550.30.

(10) All intangible taxes as provided for in §§199.06, 199.16 and 199.31.

(11) All funds collected as inspection fees or from other sources and deposited in the general inspection fund.

(12) All federal funds allocated for the use of any state function.

(13) All funds collected from landowners, counties, and the federal government by the Florida board of forestry and parks for cooperative forest fire control and other forestry purposes.

(14) All funds collected by the board of control as trustees of the estate of James D. Westcott, deceased, or any other trust fund now on hand or hereafter acquired.

(15) All funds received by the trustees of the internal improvement fund under chapter 253.

(16) All funds received from insurance under §255.02 and chapter 284.

(17) All national forest funds received under chapter 254.

(18) All county health unit funds received by the state board of health under chapter 154.

(19) All funds received by the state from auto transportation mileage tax for distribution to cities and towns.

(20) All funds received by the department of education or the board of control in the fund known as John and Mable Ringling museum trust fund.

(21) All funds received by the board of control in the interest and principal of seminary fund.

(22) All funds received by the board of control for the special American legion fund.

(23) All funds received by the Stephen Foster memorial commission under §265.14.

(24) All funds collected and received by the state for the principal of state school fund under Art. XII of the Florida constitution.

(25) All funds collected or received by the state in the principal of agricultural college fund.

(26) All funds received by the state which are classified by the constitution of the state or by federal laws as trust funds. Provided same are itemized and maintained as separate accounts until disbursed as provided by law, and provided that the budget commission shall have power and authority to set up any other trust funds deemed necessary to carry out the provisions of §§282.001 and 282.002 or preserve the integrity of any funds received or collected for any specific use or purpose.

(27) The deductions authorized by §§215.20-215.25.

(28) All funds received by the state tuberculosis board from: The several counties of Florida; pay patients; any agency of the federal government; and the legislature for acquiring sites, constructing, equipping, enlarging, remodeling and improving tuberculosis sanatoria and all funds in the sanatoria maintenance account and in the state tuberculosis sanatoria interest and sinking fund account.

(29) All funds collected by institutions under the control and supervision of the board of control which are now classified as auxiliary funds and incidental funds.

History.—§2, ch. 25068, 1949.

282.01* Appropriations, biennium 1963-1965.—

(1) SALARIES; SPECIFIED POSITIONS. —The moneys in the following items are appropriated from the named funds for the indicated fiscal years of the biennium to the state agency indicated as the only appropriation of moneys to be used to pay the total salary of each position indicated in the item as provided in §282.051(1):

ITEM	1963-64	1964-65
From General Revenue Fund:		
ATTORNEY GENERAL		
1. Attorney General (See §29, Art. IV)	$ 19,500	$ 19,500
AUDITING DEPARTMENT, STATE		
2. State Auditor	13,800	13,800
BEVERAGE DEPARTMENT, STATE		
3. Director	14,300	14,300
BLIND, FLORIDA COUNCIL FOR THE		
4. Executive Director	11,500	11,500
BUDGET COMMISSION		
5. Budget Director (See §216.09)	15,500	15,500
6. Deleted		
CIVIL DEFENSE, DEPARTMENT OF		
7. Director	9,200	9,200
COMMISSIONERS OF STATE INSTITUTIONS, BOARD OF General Office		
8. Coordinating Secretary	12,500	12,500
Child Training Schools, Division of		
9. Director (See §§955.05 and 965.03)	14,900	14,900
Corrections, Division of		
10. Director (See §§945.23(4) and 965.03)	14,500	14,500
Mental Health, Division of		
11. Director (See §§394.05 and 965.03)	22,000	22,000
Fire College, Board of Trustees of the Florida State		
12. Superintendent (See §242.55)	8,000	8,000
Ringling Museum of Art, Board of Trustees of the John and Mabel		
13. Director	13,200	13,200
COMPTROLLER		
14. Comptroller (See §29, Art. IV)	19,500	19,500
CONSERVATION, BOARD OF		
15. Director (See §370.02(3))	13,500	13,500
CONTROL, BOARD OF (See §§239.10 and 240.04) General Office		
16. Executive Secretary or Director	19,300	19,300
University, Florida Agricultural and Mechanical		
17. President	14,300	14,300
University, Florida Atlantic		
18. President	18,200	18,200
University, Florida State		
19. President	19,300	19,300
University of Florida		
20. President	19,300	19,300
University of South Florida		
21. President	18,200	18,200
University Studies, Florida Institute for Continuing		
22. Director	17,500	17,500
CRIPPLED CHILDREN'S COMMISSION, FLORIDA		
23. Director	16,000	16,000
DEVELOPMENT COMMISSION, FLORIDA		
24. Director (See §288.04)	14,000	14,000
EDUCATIONAL TELEVISION COMMISSION, FLORIDA		
25. Executive Director	11,000	11,000
EDUCATION, DEPARTMENT OF		
26. Superintendent of Public Instruction (See §29, Art. IV)	19,500	19,500
EDUCATION, STATE BOARD OF Deaf and Blind, Florida School for the		
27. President	14,300	14,300
EVERGLADES FIRE CONTROL DISTRICT, BOARD OF COMMISSIONERS OF		
28. Chief	9,000	9,000
FORESTRY, FLORIDA BOARD OF		
29. State Forester	13,000	13,000
GOVERNOR		
30. Governor (See §29, Art. IV)	25,000	25,000
HEALTH, STATE BOARD OF		
31. State Health Officer (See §381.041)	17,680	17,680
HOTEL AND RESTAURANT COMMISSION		
32. Commissioner (See §509.022)	11,000	11,000
33. Director, Industry Education	12,000	12,000
JUDICIAL DEPARTMENT District Courts of Appeal (See §§35.19, 35.22, and 35.27)		
First District		
34. Four Judges at $18,500 each per annum, as provided in subsection (10) of this section	74,000	74,000
35. Clerk	8,800	8,800
36. Marshal	6,600	6,600
Second District		
37. Five Judges at $18,500 each per annum, as provided in subsection (10) of this section	92,500	92,500
38. Clerk	8,800	8,800
39. Marshal	6,600	6,600
Third District		
40. Five Judges at $18,500 each per annum, as provided in subsection (10) of this section	92,500	92,500
41. Clerk	8,800	8,800
42. Marshal	6,600	6,600
Supreme Court (See §§25.091, 25.241 and 25.281, and §19, Art. V)		
43. Seven Justices at $19,500 each per annum	136,500	136,500
44. Clerk	11,000	11,000
45. Marshal	7,700	7,700

*Note.—See §§282.021-282.091 for definitions and construction of words and terms, state spending philosophy, etc.

ITEM	1963-64	1964-65
LIBRARY BOARD, STATE		
46. State Librarian	9,600	9,600
MEDIATION AND CONCILIATION SERVICE		
47. Director	12,000	12,000
48. Deleted		
MOTOR VEHICLE COMMISSIONER, STATE		
49. Commissioner (See §318.01)	11,600	11,600
NUCLEAR COMMISSION, FLORIDA		
50. Director	10,500	10,500
PARKS AND HISTORIC MEMORIALS, FLORIDA BOARD OF		
51. Director (See §592.06)	9,900	9,900
PAROLE COMMISSION		
52. Three Commissioners at $13,500 each per annum (See §947.12)	40,500	40,500
PUBLIC SAFETY, DEPARTMENT OF		
53. Director (in lieu of salary provided in §321.07)	14,800	14,800
PURCHASING COMMISSION OF FLORIDA, STATE		
54. Executive Director	12,500	12,500
PUBLIC WELFARE, STATE DEPARTMENT OF		
55. Director (See §409.111)	13,000	13,000
RAILROAD AND PUBLIC UTILITIES COMMISSION, FLORIDA		
56. Three Commissioners at $14,000 each per annum	42,000	42,000
RAILROAD ASSESSMENT BOARD		
57. Director	11,000	11,000
SECRETARY OF STATE		
58. Secretary of State (See §29, Art. IV)	19,500	19,500
SECURITIES COMMISSION, FLORIDA		
59. Director	12,200	12,200
SHERIFFS' BUREAU, FLORIDA		
60. Executive Secretary or Director (See §30.38)	11,500	11,500
SOIL CONSERVATION BOARD		
61. Administrator	8,300	8,300
STEPHEN FOSTER MEMORIAL COMMISSION		
62. Director	8,700	8,700
TREASURER		
63. Treasurer (See §29, Art. IV)	19,500	19,500
TUBERCULOSIS BOARD, STATE		
64. Director	17,600	17,600
VETERANS' COMMISSION, STATE		
65. Director	10,300	10,300
From the Following Trust Funds:		
AGRICULTURE, STATE DEPARTMENT OF From the General Inspection Trust Fund		
66. Commissioner of Agriculture (See §29, Art. IV, and §570.13)	19,500	19,500
ALCOHOLIC REHABILITATION PROGRAM From the Alcoholic Rehabilitation Trust Fund		
67. Director	11,500	11,500
CITRUS COMMISSION, FLORIDA From the Citrus Commission Trust Fund		
68. General Manager	25,000	25,000
INDUSTRIAL COMMISSION, FLORIDA From the Employment Security Administration Trust Fund		
69. Chairman (See §§440.44(2) and 443.11(1))	15,000	15,000
INTERNAL IMPROVEMENT FUND, TRUSTEES OF THE From the Trustees of the Internal Improvement Fund Operating Trust Fund		
70. Director-Secretary	13,500	13,500
PERSONNEL BOARD, STATE From the Merit System Trust Fund		
71. Director	12,000	12,000
MILK COMMISSION From the Milk Commission Operating Trust Fund		
72. Administrator	10,800	10,800
RACING COMMISSION, STATE From the Racing Commission Operating Trust Fund		
73. Director	11,500	11,500
REAL ESTATE COMMISSION, FLORIDA From the Real Estate Commission Operating Trust Fund		
74. Executive Director	13,000	13,000
ST. AUGUSTINE HISTORICAL RESTORATION AND PRESERVATION COMMISSION From the St. Augustine Historical Restoration and Preservation Commission Operating Trust Fund		
75. Director	14,000	14,000
76. Deleted		
BOARD OF MEDICAL EXAMINERS From the Board of Medical Examiners Operating Trust Fund		
77. Director	12,000	12,000
TOTAL OF SUBSECTION (1) FROM GENERAL REVENUE FUND	$ 1,245,880	$ 1,245,880
TOTAL OF SUBSECTION (1) FROM TRUST FUNDS	$ 157,800	$ 157,800

(2) SALARIES; OTHER EXPENSES; STATE AGENCIES.—The moneys in the following items are appropriated from the named funds for the indicated fiscal years of the biennium to the state agency indicated, as the amounts to be used to pay the salaries and other expenses of the named agencies, and are in lieu of all moneys appropriated for these purposes in the indicated sections of the Florida Statutes, except that if additional moneys are needed to meet the requirements of a continuing appropriation of a trust fund and additional moneys are available in the named fund, the budget commission, upon affirmative vote of five members of said commission, is authorized to approve the expenditure of additional, available moneys in such fund in such amounts as may be necessary to meet such deficiency. Appropriations made in items 120 to 141, 155 to 174, and 176 to 191, to the board of commissioners of state institutions may be transferred notwithstanding the provisions of §282.061, to another institution within the same division with the approval of the budget commission upon its determination that such transfers are necessary because of transfers of inmates from one institution to another, and for other justifiable reasons, in order to adequately provide for the necessary custodial care of inmates at each institution which the budget commission determines to be in the best interest of the state; provided, however, the total annual appropriation in this subsection to any such institution may not be increased or decreased by more than twenty per cent as a result of such transfers.

ITEM	1963-64	1964-65
AGRICULTURE, STATE DEPARTMENT OF Administration, Chemistry, Dairy Industry, Fruit and Vegetable Inspection, Inspection, Marketing, and		

ITEM	1963-64	1964-65
Standards, Divisions of From General Inspection Trust Fund		
1. Salaries of 1434 Positions	$ 5,824,830	$ 5,965,870
2. Other Personal Services	52,300	52,300
3. Expenses	2,113,650	2,177,770
4. Operating Capital Outlay	97,150	60,710
5. Relief of John P. Sullivan (See Chap. 57-488)	600	600
6. Service Charge to General Revenue Fund	177,190	180,640
Animal Industry, Division of		
7. Salaries of 250 Positions From General Revenue Fund	1,334,088	1,397,358
From National Institute of Health Trust Fund	13,850	13,470
8. Other Personal Services From General Revenue Fund	31,730	31,730
9. Expenses From General Revenue Fund	434,680	436,340
From National Institute of Health Trust Fund	13,850	14,470
10. Operating Capital Outlay From General Revenue Fund	72,270	9,260
11. Livestock Indemnities From General Revenue Fund	25,000	25,000
12. Purchase of Vaccines, Serums, and Viruses From General Revenue Fund	125,000	125,000
Hog Cholera Eradication From General Revenue Fund		
13. Salaries of 11 Positions	61,710	64,890
14. Expenses	131,850	131,860
Marketing Expansion and Promotion, Division of From General Revenue Fund		
15. Salaries of 11 Positions	73,800	77,370
16. Other Personal Services	4,000	4,000
17. Expenses	117,485	117,485
18. Operating Capital Outlay	4,715	1,145
Plant Industry, Division of		
19. Salaries of 159 Positions From General Revenue Fund	829,146	865,964
From Nursery Inspection Trust Fund	32,100	34,100
20. Other Personal Services From General Revenue Fund	8,500	8,500
21. Expenses From General Revenue Fund	125,600	204,470
From Nursery Inspection Trust Fund	134,980	56,610
22. Operating Capital Outlay From General Revenue Fund	21,860	23,160
From Nursery Inspection Trust Fund	9,870	6,010
23. Apiarian Indemnities From General Revenue Fund	7,500	7,500
Fire Ant Control Program From General Revenue Fund		
24. Lump Sum	148,000	102,000
25. Deleted		
26. Deleted		
27. Deleted		
Spreading Decline From General Revenue Fund		
28. Salaries of 13 Positions	48,470	49,920
29. Other Personal Services	2,000	2,000
30. Expenses	241,420	241,420
31. Operating Capital Outlay	8,250	5,500
ANATOMICAL BOARD OF THE STATE From Trust Fund		
32. Salary of 1 Position	900	1,000
33. Other Personal Services	800	800
34. Expenses	1,000	1,000
35. Operating Capital Outlay	100	100
ATTORNEY GENERAL From General Revenue Fund		
General Office		
36. Salaries of 65 Positions	479,335	497,113
37. Other Personal Services	7,600	7,600
38. Expenses	52,500	72,500
39. Operating Capital Outlay	15,000	15,000
Regulation of Private Wire Service		
40. Salaries of 9 Positions	75,461	78,481
41. Other Personal Services	1,000	1,000
42. Expenses	22,400	22,400
43. Operating Capital Outlay	2,500	2,500
Statutory Revision Department		
44. Salaries of 17 Positions	99,526	103,548
45. Other Personal Services	4,000	3,600
46. Expenses	6,000	4,000
47. Operating Capital Outlay	1,128	300
48. Transfer to Statutes Revolving Trust Fund (in lieu of appropriation in §16.46(5))	75,000	
49. Lump Sum for Bill Drafting and Daily Legislative Services		19,000
AUDITING DEPARTMENT, STATE From General Revenue Fund		
50. Salaries of 131 Positions	885,870	918,790
51. Other Personal Services	9,000	9,000
52. Expenses	111,920	114,320
53. Operating Capital Outlay	9,750	1,840
BEVERAGE DEPARTMENT, STATE From General Revenue Fund		
54. Salaries of 247 Positions	1,224,720	1,266,350
55. Other Personal Services	49,390	48,900
56. Expenses	714,920	716,920
57. Operating Capital Outlay	81,940	72,660
BLIND, FLORIDA COUNCIL FOR THE		
58. Salaries of 118 Positions From General Revenue Fund	290,290	310,380
From following Trust Funds:		
United States	219,416	230,217
Training and Operating Vending Stand	13,774	14,343
59. Other Personal Services From General Revenue Fund	6,000	6,000
60. Expenses From General Revenue Fund	317,830	311,240
From following Trust Funds:		
United States	333,505	321,705
State	3,500	3,500
Training and Operating Vending Stand	29,445	30,645
61. Operating Capital Outlay From General Revenue Fund	14,030	3,310
From following Trust Funds:		
United States	9,440	2,210
State	1,500	500
BUDGET COMMISSION From General Revenue Fund		
62. Salaries of 12 Positions	115,400	120,900
63. Other Personal Services	500	4,000
64. Expenses	7,190	18,615
65. Operating Capital Outlay	1,500	2,000
66. Deleted		
67. Deleted		
68. Deleted		
CITRUS COMMISSION, FLORIDA From Trust Fund		
69. Administrative Salaries of 10 Positions	58,680	59,480
70. Advertising Salaries of 159 Positions	1,019,275	1,031,285
71. Other Personal Services	80,000	95,000
72. Expenses	4,992,045	4,524,235
73. Operating Capital Outlay	95,000	95,000
74. Service charge to General Revenue Fund	150,000	160,000
CIVIL DEFENSE, DEPARTMENT OF		
75. Salaries of 24 positions From General Revenue Fund	42,898	48,439
From Personnel and Administrative Trust Fund	51,298	56,839
76. Other Personal Services From General Revenue Fund	575	575
From Personnel and Administrative Trust Fund	575	575
77. Expenses From General Revenue Fund	19,084	19,085
From following Trust Funds: Personnel and Administrative	415,224	415,224
United States Contribution	25,000	25,000
78. Operating Capital Outlay From General Revenue Fund	1,604	
From Personnel and Administrative Trust Fund	1,604	

ITEM	1963-64	1964-65
CIVIL WAR CENTENNIAL COMMISSION		
From General Revenue Fund		
79. Salary of 1 Position	2,100	2,100
80. Other Personal Services	1,500	1,500
81. Expenses	7,800	7,800
COMMISSIONERS FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES, BOARD OF		
From General Revenue Fund		
82. Expenses	1,700	1,700
COMMISSIONERS OF STATE INSTITUTIONS, BOARD OF		
General Office		
From General Revenue Fund		
83. Salaries of 13 Positions	91,705	94,021
84. Expenses	12,300	12,510
85. Operating Capital Outlay	4,860	1,390
State Fire Insurance		
From General Revenue Fund		
86. Deleted		
87. Payment of Commercial Fire Insurance Premiums (See §284.08)	50,000	50,000
Capitol Center Grounds, Care of		
From General Revenue Fund		
88. Salaries of 5 Positions	9,610	9,970
89. Other Personal Services	350	350
90. Expenses	2,400	2,400
91. Operating Capital Outlay	250	250
Capitol Center, Heating and Electrical Distribution System		
From General Revenue Fund		
92. Salaries of 15 Positions	79,800	81,270
93. Expenses	169,490	169,535
94. Operating Capital Outlay	1,000	
Capitol Center Parking and Policing		
From General Revenue Fund		
95. Expenses	9,000	9,000
State Office Building Projects Lease-purchase Payments on State Office Buildings		
From General Revenue Fund		
96. Tallahassee Building	360,000	360,000
97. Lakeland Building	35,000	35,000
Miami State Office Building		
From Trust Fund		
98. Salaries of 21 Positions	52,290	54,620
99. Other Personal Services	1,800	1,800
100. Expenses	79,030	82,130
101. Operating Capital Outlay	1,400	3,000
102. Principal and Interest Payments	267,000	267,000
Tallahassee State Office Building		
From General Revenue Fund		
103. Salaries of 26 Positions	61,705	63,560
104. Other Personal Services	1,800	1,800
105. Expenses	22,200	23,100
106. Operating Capital Outlay	1,600	
Tampa State Office Building		
From Trust Fund		
107. Salaries of 12 Positions	31,010	32,500
108. Other Personal Services	1,000	1,000
109. Expenses	34,030	34,970
110. Operating Capital Outlay	1,500	1,500
111. Principal and Interest Payments	126,000	126,000
Winter Park State Office Building		
From Trust Fund		
112. Salaries of 9 Positions	21,790	22,440
113. Other Personal Services	1,800	1,800
114. Expenses	42,900	45,420
115. Operating Capital Outlay	1,100	1,400
116. Principal and Interest Payments	100,000	100,000
Aircraft Operation		
From Trust Fund		
117. Salaries	1,200	1,200
118. Expenses	21,260	21,260
Child Training Schools, Division of General Office		
From General Revenue Fund		
119. Lump Sum	59,500	59,500
School for Boys at Marianna, Florida		
120. Salaries of 176 Positions	744,700	765,900
From General Revenue Fund		
121. Other Personal Services		
From General Revenue Fund	6,800	6,800
122. Expenses		
From General Revenue Fund	381,900	381,900
From Cattle and Swine Trust Fund	100	100
123. Food Products		
From General Revenue Fund	103,950	103,280
From Cattle and Swine Trust Fund	7,930	7,920
124. Operating Capital Outlay		
From General Revenue Fund	45,530	45,520
From Cattle and Swine Trust Fund	470	480
School for Boys at Okeechobee, Florida		
From General Revenue Fund		
125. Salaries of 116 Positions	511,070	532,880
126. Other Personal Services	800	800
127. Expenses	182,300	181,800
128. Food Products	77,330	75,000
129. Operating Capital Outlay	7,800	4,700
School for Girls at Ocala and Forest Hills, Florida		
From General Revenue Fund		
130. Salaries of 124 Positions	432,860	460,170
131. Other Personal Services	8,800	8,800
132. Expenses	115,910	115,620
133. Food Products	80,760	80,600
134. Operating Capital Outlay	13,000	4,130
Corrections, Division of Operation of Correctional System		
From General Revenue Fund		
135. Salaries of 1042 Positions	4,696,288	4,884,979
136. Other Personal Services	13,000	13,000
137. Expenses	1,711,090	1,771,320
138. Food Products	1,302,240	1,405,500
139. Operating Capital Outlay	285,000	145,000
140. Return of Parole Violators	12,000	12,000
141. Discharge and Travel Pay	78,080	82,720
Correctional Industries		
From Trust Fund		
142. Salaries of 149 Positions	708,556	738,058
143. Other Personal Services	11,600	11,800
144. Expenses	2,670,000	2,979,000
145. Food Products	15,600	15,600
146. Operating Capital Outlay	225,000	225,000
Road Prison Camps		
From Trust Fund		
147. Salaries of 535 Positions	1,909,470	2,091,760
148. Other Personal Services	37,000	46,000
149. Expenses	657,520	654,430
150. Food Products	772,000	779,000
151. Operating Capital Outlay	107,000	90,000
Mental Health, Division of Administrative		
From General Revenue Fund		
152. Salaries of 14 Positions	58,160	70,515
153. Expenses	21,730	23,190
154. Operating Capital Outlay	8,655	1,250
Florida State Hospital		
From General Revenue Fund		
155. Salaries of 2269 Positions	6,800,450	7,339,250
156. Other Personal Services	2,500	2,500
157. Expenses	1,308,500	1,330,700
158. Food Products	1,467,800	1,500,500
159. Operating Capital Outlay	110,000	110,000
G. Pierce Wood Memorial Hospital		
From General Revenue Fund		
160. Salaries of 900 Positions	2,759,000	3,019,000
161. Other Personal Services	12,400	13,000
162. Expenses	528,000	542,000
163. Food Products	460,000	481,000
164. Operating Capital Outlay	60,000	55,000
Northeast Florida Hospital		
From General Revenue Fund		
165. Salaries of 700 Positions	1,980,100	2,191,200
166. Other Personal Services	17,450	20,750
167. Expenses	381,400	411,400
168. Food Products	229,900	255,470
169. Operating Capital Outlay	4,120	4,860
South Florida Hospital		
170. Salaries of 787 Positions		
From General Revenue Fund	2,710,100	2,818,880
171. Other Personal Services		
From General Revenue Fund	39,950	42,000
From Grants and Donations Trust Fund	6,000	6,000
172. Expenses		
From General Revenue Fund	417,000	425,000
From Grants and Donations Trust Fund	500	500
173. Food Products		
From General Revenue Fund	385,060	385,060
174. Operating Capital Outlay		
From General Revenue Fund	48,470	44,664
From Grants and Donations Trust Fund	500	500
Sunland Training Centers, Division of Administrative		
From General Revenue Fund		
175. Lump Sum	73,100	66,600
Sunland Training Center at Gainesville		
From General Revenue Fund		

ITEM		1963-64	1964-65
176.	Salaries of 1158 Positions	3,554,520	3,738,120
177.	Other Personal Services	6,000	6,000
178.	Expenses	656,290	660,910
179.	Food Products	441,800	450,100
180.	Operating Capital Outlay	39,540	44,410
	Sunland Training Center in Lee County From General Revenue Fund		
181.	Salaries of 479 Positions	1,511,500	1,583,300
182.	Other Personal Services	10,000	10,000
183.	Expenses	325,490	325,490
184.	Food Products	258,500	257,790
185.	Operating Capital Outlay	18,800	21,600
	Sunland Training Center at Marianna From General Revenue Fund		
186.	Salaries of 190 Positions	629,000	651,700
187.	Other Personal Services	7,130	6,530
188.	Expenses	177,970	159,240
189.	Food Products	79,000	79,000
190.	Operating Capital Outlay	64,400	16,900
191.	Contingent for Staffing and operations of facilities authorized by the 1963 Legislature		500,000
	Sunland Training Center at Orlando		
192.	Salaries of 820 Positions From General Revenue Fund	1,986,900	2,219,100
	From Grants and Donations Trust Fund	16,260	17,040
193.	Other Personal Services From General Revenue Fund	17,000	17,000
194.	Expenses From General Revenue Fund	321,890	337,190
195.	Food Products From General Revenue Fund	139,110	163,150
196.	Operating Capital Outlay From General Revenue Fund	38,050	3,230
	Alcoholic Rehabilitation Program		
197.	Salaries of 98 Positions From following Trust Funds:		
	Alcoholic Rehabilitation	412,397	437,638
	Grants and Donations	26,350	
198.	Other Personal Services From following Trust Funds:		
	Alcoholic Rehabilitation	36,090	35,290
	Grants and Donations	2,000	
199.	Expenses From following Trust Funds:		
	Alcoholic Rehabilitation	144,453	142,914
	Grants and Donations	9,560	
200.	Operating Capital Outlay From Alcoholic Rehabilitation Trust Fund	20,120	7,340
201.	Food Products From Alcoholic Rehabilitation Trust Fund	26,175	26,175
202.	Miami Court Project—Matching From Alcoholic Rehabilitation Trust Fund	5,000	5,000
203.	Palm Beach County Clinic From Alcoholic Rehabilitation Trust Fund	17,500	17,500
	Fire College, Board of Trustees of the Florida State From General Revenue Fund		
204.	Salaries of 12 Positions	68,120	70,170
205.	Other Personal Services	800	800
206.	Expenses	39,450	39,850
207.	Operating Capital Outlay	14,240	6,450
	Governor's Mansion Commission From General Revenue Fund		
208.	Lump Sum—Expenses and Operating Capital Outlay	2,500	2,500
	Ringling Museum of Art, Board of Trustees of the John and Mable		
209.	Salaries of 58 Positions From General Revenue Fund	74,650	78,000
	From Incidental Trust Fund	124,000	126,970
210.	Other Personal Services From Incidental Trust Fund	8,200	8,200
211.	Expenses From General Revenue Fund	70,200	68,230
	From Incidental Trust Fund	78,930	83,090
212.	Operating Capital Outlay From General Revenue Fund	20,180	7,760
	From following Trust Funds: Incidental	3,030	6,930
	Investment	47,000	31,000
	COMPTROLLER General Office From General Revenue Fund		
213.	Salaries of 654 Positions	3,097,734	3,233,653
214.	Other Personal Services	15,000	17,500
215.	Expenses	1,328,478	1,362,881
216.	Operating Capital Outlay	56,100	25,000
217.	National Federation of Tax Administrators	1,000	1,000
	Carlton Building, Maintenance of From General Revenue Fund		
218.	Salaries of 28 Positions	78,600	82,692
219.	Expenses	30,000	30,000
220.	Operating Capital Outlay	1,000	1,000
	Carlton Building Vending Machines From Trust Fund		
221.	Expenses	200	200
	Intangible Tax, Administration of From Trust Fund		
222.	Salaries of 26 Positions	130,750	135,030
223.	Other Personal Services	5,500	5,500
224.	Expenses	97,100	99,720
225.	Operating Capital Outlay	10,000	9,000
226.	Special County Expenses	210,000	220,000
227.	Commissions	1,300,000	1,350,000
	Mortgage Brokers Licenses From Trust Fund		
228.	Salaries of 5 Positions	23,410	27,300
229.	Other Personal Services	1,800	2,000
230.	Expenses	15,770	17,270
231.	Operating Capital Outlay	1,750	500
	Motor Vehicle Sales Finance From Trust Fund		
232.	Salaries of 6 Positions	30,612	32,340
233.	Expenses	15,904	15,904
234.	Operating Capital Outlay	1,750	500
	Retail Installment Sales From Trust Fund		
235.	Salaries of 7 Positions	26,020	27,360
236.	Other Personal Services	150	150
237.	Expenses	13,650	13,650
238.	Operating Capital Outlay	2,500	1,500
	Sales Tax Special Revolving Trust Fund From Trust Fund		
239.	Expenses	55,000	57,500
	Commissions to Tax Collectors and Others From General Revenue Fund		
240.	Commissions	280,000	290,000
	Confederate Pensions From General Revenue Fund		
241.	Pensions	85,200	81,600
	Special Pensions and Relief Acts From General Revenue Fund		
242.	Benefits	14,460	14,460
	Retirement of Justices and Judges From General Revenue Fund		
243.	Benefits (in lieu of §§25.131, 38.19, and 123.21)	104,046	104,046
	Judicial Retirement System		
244.	Transfer to Judicial Retirement Trust Fund From General Revenue Fund	133,000	133,000
245.	Benefits From Judicial Retirement Trust Fund	113,977	113,977
	Retirement of State Officials and Employees From General Revenue Fund		
246.	Benefits (in lieu of §112.05)	200,000	225,000
	State and County Officers and Employees Retirement System From Trust Fund		
247.	Benefits	5,100,000	5,700,000
	CONSERVATION, BOARD OF Administration, Division of From General Revenue Fund		
248.	Salaries of 17 Positions	96,280	98,470
249.	Other Personal Services	2,700	2,700
250.	Expenses	51,650	51,650
251.	Operating Capital Outlay	8,270	1,220
252.	Interstate Oil Compact Commission	500	500
	Waterways Development, Division of From General Revenue Fund		
253.	Salaries of 2 Positions	15,100	15,900
254.	Other Personal Services	12,500	
255.	Expenses	6,150	6,800
256.	Operating Capital Outlay	2,950	200
257.	Contribution to Florida Canal Authority	5,000	5,000
	Salt Water Fisheries, Division of Administration, Licensing, and Law Enforcement From General Revenue Fund		
258.	Salaries of 113 Positions	478,790	517,380
259.	Other Personal Services	5,200	5,200

ITEM	1963-64	1964-65
260. Expenses	332,400	337,400
261. Operating Capital Outlay	93,860	78,290
262. Atlantic States Marine Fisheries	1,500	1,500
263. Gulf States Marine Fisheries	4,500	4,500
Oyster Culture From Internal Improvement Trust Fund		
264. Salaries of 8 Positions	32,480	32,960
265. Other Personal Services	5,500	5,500
266. Expenses	7,000	7,000
267. Operating Capital Outlay	3,660	6,420
Marine Biological Research From Trust Fund		
268. Salaries of 32 Positions	143,949	154,930
269. Other Personal Services	5,000	5,000
270. Expenses	47,450	47,450
271. Operating Capital Outlay	30,138	16,814
272. Service Charge to General Revenue	6,000	6,000
Motor Boat Registration and Safety From Trust Fund		
273. Salaries of 27 Positions	108,875	114,770
274. Other Personal Services	6,705	1,575
275. Expenses	111,927	101,367
276. Operating Capital Outlay	32,780	1,800
277. Service Charge to General Revenue Fund	10,800	3,450
Geology, Division of From General Revenue Fund		
278. Salaries of 27 Positions	148,220	153,350
279. Other Personal Services	12,400	12,400
280. Expenses	66,350	70,250
281. Operating Capital Outlay	32,610	4,840
282. U. S. Geological Survey Cooperative Agreements	135,000	135,000
Water Resources and Conservation, Division of From General Revenue Fund		
283. Salaries of 12 Positions	71,870	73,880
284. Other Personal Services	2,000	2,000
285. Expenses	27,620	27,620
286. Operating Capital Outlay	5,130	880
287. Contribution to Flood Control Account	4,000,000	6,000,000
287a. Suwannee River Channel —West Pass	50,000	
CONSTITUTIONAL GOVERNMENT, COMMISSION ON From General Revenue Fund		
288. Expenses	10,000	10,000
CONTROL, BOARD OF General Office		
289. Salaries of 23 Positions From General Revenue Fund	162,590	167,750
From Educational Survey Trust Fund	7,760	7,990
290. Other Personal Services From General Revenue Fund	4,700	4,700
291. Expenses From General Revenue Fund	41,050	41,050
From following Trust Funds:		
Educational Survey	1,200	1,200
Westcott	100	100
292. Operating Capital Outlay From General Revenue Fund	17,030	3,600
Establishment of the West Florida University, a degree-granting institution in Escambia county, as authorized in chapter 30297, General Laws, 1955, to begin operations at the junior class level of the undergraduate program not later than September, 1967, and at the junior and senior class levels not later than 1968.		
293. West Florida University From General Revenue Scholarships Fund	2,100,000	
294. Children of Deceased Veterans From General Revenue Fund	5,000	5,000
295. Out-of-State Scholarship Aid—Negroes From General Revenue Fund	40,000	40,000
296. From Racing Scholarship Trust Fund	382,000	382,000
297. From Ex-Confederate Soldiers and Sailors Trust Fund	3,000	3,000
Special		
298. Regional Education From General Revenue Fund	450,000	475,000
299. First Accredited Medical School-University of Miami -at the rate of $3500 per year for each student admitted and enrolled in such institution, subject to the provisions of §242.62(3) From the General Revenue Fund	990,500	990,500
300. Southern Regional Council on Mental Health-Training and Research From General Revenue Fund	8,000	8,000
Architect's Office From Incidental Trust Fund		
301. Salaries of 53 Positions	360,330	371,202
302. Other Personal Services	412,000	294,100
303. Expenses	103,300	112,100
304. Operating Capital Outlay	8,500	11,000
University Hospital, Board of Trustees of the Florida Agricultural and Mechanical		
305. Salaries of 126 Positions From General Revenue Fund	129,088	123,104
From Hospital Operation and Maintenance Trust Fund	240,478	246,462
306. Other Personal Services From Hospital Operation and Maintenance Trust Fund	51,274	50,820
307. Expenses From Hospital Operation and Maintenance Trust Fund	189,770	195,425
308. Operating Capital Outlay From Hospital Operation and Maintenance Trust Fund	18,500	18,000
309. Payment of Debt Service From Hospital Interest and Sinking Trust Fund	21,503	21,126
University, Florida Agricultural and Mechanical Educational and General		
310. Salaries of 619 Positions From General Revenue Fund	2,989,311	3,187,619
From Grants and Donations Trust Fund	74,532	74,532
311. Other Personal Services From General Revenue Fund	149,376	149,684
312. Expenses From General Revenue Fund	89,476	108,972
From Incidental Trust Fund	502,908	502,620
313. Operating Capital Outlay From General Revenue Fund	233,072	221,713
Auxiliary Enterprises		
314. Salaries of 178 Positions From following Trust Funds: Auxiliary	268,823	291,812
Dormitory Revenue Certificates, 1938 Issue Operation and Maintenance	19,468	20,052
Dormitory Revenue Certificates of 1952, Operation and Maintenance	21,000	21,630
Laundry Revenue Certificates, Operation and Maintenance	69,139	71,213
Dormitory Revenue Certificates of 1963		37,403
315. Other Personal Services From following Trust Funds: Auxiliary	36,494	39,645
Dormitory Revenue Certificates, 1938 Issue, Operation and Maintenance	2,000	2,000
Dormitory Revenue Certificates of 1952, Operation and Maintenance	3,000	3,000
Laundry Revenue Certificates, Operation and Maintenance	1,000	1,000
Dormitory Revenue Certificates of 1963		6,050

ITEM	1963-64	1964-65
316. Expenses		
From following Trust Funds:		
Auxiliary	657,100	698,900
Dormitory Revenue Certificates, 1938 Issue, Operation and Maintenance	18,670	19,000
Dormitory Revenue Certificates of 1952, Operation and Maintenance	22,660	22,700
Laundry Revenue Certificates, Operation and Maintenance	17,000	17,000
Dormitory Revenue Certificates of 1963		22,000
317. Operating Capital Outlay		
From following Trust Funds:		
Auxiliary	55,800	57,474
Dormitory Revenue Certificates, 1938 Issue, Operation and Maintenance	3,750	3,800
Dormitory Revenue Certificates of 1952, Operation and Maintenance	3,960	4,000
Laundry Revenue Certificates, Operation and Maintenance	11,200	11,200
Dormitory Revenue Certificates of 1963		3,000
Debt Service		
318. Expenses		
From Dormitory Revenue Certificates of 1952, Repairs and Replacements Trust Fund	5,000	5,000
319. Payment of Debt Service		
From following Trust Funds:		
Dormitory Revenue Certificates, 1938 Issue, Interest and Sinking	10,950	10,560
Dormitory Revenue Certificates of 1952, Interest and Sinking	37,250	37,250
Laundry Revenue Certificates, Interest and Sinking	4,570	4,570
Dormitory Revenue Certificates of 1963		27,450
320. Operating Capital Outlay		
From Dormitory Revenue Certificates of 1952, Repairs and Replacements Trust Fund	7,000	7,000
University, Florida Atlantic Educational and General		
321. Salaries of 362 Positions		
From General Revenue Fund	797,890	2,395,710
From Incidental Trust Fund		110,000
322. Other Personal Services		
From General Revenue Fund	29,000	103,230
From Incidental Trust Fund		8,150
323. Expenses		
From General Revenue Fund	264,596	544,422
From Incidental Trust Fund	10,404	186,700
324. Operating Capital Outlay		
From General Revenue Fund	1,950,000	381,900
From Incidental Trust Fund	10,000	268,100
Auxiliary Enterprises—Provided that amounts herein appropriated from the General Revenue Fund shall be a loan and shall be repaid from auxiliary income when deemed advisable by the Budget Commission		
325. Salaries of 52 Positions		
From General Revenue Fund		26,000
From following Trust Funds:		
Auxiliary		142,600
Dormitory Revenue Certificates of 1963		36,500
326. Expenses		
From General Revenue Fund		124,000
From following Trust Funds:		
Public Airport Auxiliary	1,300	
Auxiliary		372,300
Dormitory Revenue Certificates of 1963		36,450
327. Operating Capital Outlay		
From following Trust Funds:		
Public Airport Auxiliary	1,400	1,800
Auxiliary		15,750
Dormitory Revenue Certificates of 1963		2,450
University, Florida State Educational and General		
328. Salaries of 1590 Positions		
From General Revenue Fund	8,919,352	9,978,776
From following Trust Funds:		
Incidental	930,000	1,030,000
Extension Incidental	183,800	197,500
Westcott Estate	40,000	40,000
Seminary Interest	3,000	3,000
329. Other Personal Services		
From General Revenue Fund	1,224,747	1,295,594
From following Trust Funds:		
Extension Incidental	124,430	123,151
330. Expenses		
From General Revenue Fund	313,910	335,807
From following Trust Funds:		
Incidental	1,543,915	1,647,496
Extension Incidental	21,400	22,898
Visual Education	5,000	5,000
331. Operating Capital Outlay		
From General Revenue Fund	634,940	739,230
From following Trust Funds:		
Incidental	220,000	220,000
Extension Incidental	8,300	10,081
Visual Education	40,000	55,000
Research Contracts and Grants From Trust Fund		
332. Salaries of 509 Positions	3,271,020	3,378,610
333. Other Personal Services	715,000	786,500
334. Expenses	1,300,000	1,430,000
335. Operating Capital Outlay	1,040,000	1,140,000
Auxiliary Enterprises		
336. Salaries of 469 Positions		
From following Trust Funds:		
Auxiliary	563,789	588,241
Dormitory Revenue Certificates of 1958, Operation and Maintenance	57,949	59,687
Apartment Revenue Certificates of 1959, Operation and Maintenance	13,562	13,969
Apartment Revenue Certificates of 1961, Operation and Maintenance	6,527	6,723
Senior Hall Revenue Certificates, Operation and Maintenance	15,797	16,271
Bryan Hall Revenue Certificates, operation and Maintenance	16,074	16,556
Revenue Certificates of 1950, Operation and Maintenance	115,057	118,509
Landis Hall Revenue Certificates, Operation and Maintenance	31,146	32,080
University Hospital Revenue Certificates, Operation and Maintenance	242,486	249,761
Dining Hall Operation and Maintenance	7,704	7,935
Working Capital	431,299	444,238
Apartment Revenue Certificates of 1964		2,418
Apartment Revenue Certificates of 1963		3,868
Dormitory Revenue Certificates of 1963		42,434
337. Other Personal Services		
From following Trust Funds:		
Auxiliary	67,982	66,637
Dormitory Revenue Certificates of 1958, Operation and Maintenance	22,375	22,375
Apartment Revenue Certificates of 1959, Operation and Maintenance	9,500	9,500
Apartment Revenue Certificates of 1961, Operation and Maintenance	6,700	6,700
Senior Hall Revenue Certificates, Operation and Maintenance	4,475	4,475
Bryan Hall Revenue Certificates, Operation and		

ITEM	1963-64	1964-65
Maintenance	1,250	1,250
Revenue Certificates of 1950, Operation and Maintenance	27,000	27,000
Landis Hall Revenue Certificates, Operation and Maintenance	2,400	2,400
University Hospital Revenue Certificates, Operation and Maintenance	7,800	8,172
Dining Hall Operation and Maintenance	1,350	1,550
Working Capital	40,000	40,000
Apartment Revenue Certificates of 1964		11,400
Apartment Revenue Certificates of 1963		2,500
Dormitory Revenue Certificates of 1963		8,800
338. Expenses From following Trust Funds:		
Auxiliary	1,087,700	1,203,521
Dormitory Revenue Certificates of 1958, Operation and Maintenance	80,205	84,215
Apartment Revenue Certificates of 1959, Operation and Maintenance	20,800	21,840
Apartment Revenue Certificates of 1961, Operation and Maintenance	11,100	11,655
Senior Hall Revenue Certificates, Operation and Maintenance	13,800	14,490
Bryan Hall Revenue Certificates, Operation and Maintenance	10,350	10,867
Revenue Certificates of 1950, Operation and Maintenance	195,750	136,787
Landis Hall Revenue Certificates, Operation and Maintenance	33,231	34,492
University Hospital Revenue Certificates, Operation and Maintenance	70,000	75,000
Dining Hall Operation and Maintenance	15,000	17,000
Working Capital	41,439	482,600
Apartment Revenue Certificates of 1964		10,800
Apartment Revenue Certificates of 1963		25,500
Dormitory Revenue Certificates of 1963		56,500
339. Operating Capital Outlay From following Trust Funds:		
Auxiliary	96,770	104,000
Dormitory Revenue Certificates of 1958, Operation and Maintenance	4,500	3,500
Apartment Revenue Certificates of 1959, Operation and Maintenance	3,000	3,000
Apartment Revenue Certificates of 1961, Operation and Maintenance	5,000	2,000
Senior Hall Revenue Certificates, Operation and Maintenance	3,000	2,500
Bryan Hall Revenue Certificates, Operation and Maintenance	1,000	1,200
Revenue Certificates of 1950, Operation and Maintenance	12,000	10,000
Landis Hall Revenue Certificates, Operation and Maintenance	8,000	8,000
University Hospital Revenue Certificates, Operation and Maintenance	7,500	7,500
Dining Hall Operation and Maintenance	10,000	15,000
Working Capital	24,624	23,780
Apartment Revenue Certificates of 1964		4,000
Apartment Revenue Certificates of 1963		4,000
Dormitory Revenue Certificates of 1963		4,000
Debt Service		
340. Expenses From following Trust Funds:		
Revenue Certificates, Series 1950, Repairs and Replacements	30,000	35,000
Demonstration School Revenue Certificates, Repairs and Replacements	4,000	4,000
Dormitory Revenue Certificates, Series 1954, Repairs and Replacements	1,000	1,000
Dormitory Revenue Certificates, Series 1956, Repairs and Replacements	500	600
Dormitory Revenue Certificates of 1958, Repairs and Replacements	5,000	5,000
Apartment Revenue Certificates of 1959, Repairs and Replacements	5,000	4,000
Apartment Revenue Certificates of 1961, Repairs and Replacements	3,000	5,000
341. Payment of Debt Service From following Trust Funds:		
Senior Hall Interest and Sinking	9,930	10,735
Bryan Hall Interest and Sinking	6,860	6,710
Revenue Certificates, Series 1950, Interest and Sinking	228,950	224,756
Dining Hall and Landis Hall, Interest and Sinking	22,390	23,630
University Hospital Revenue Certificates, Interest and Sinking	4,240	4,080
Demonstration School Revenue Certificates, Interest and Sinking	38,742	38,268
Dormitory Revenue Certificates, Series 1954, Interest and Sinking	12,905	13,758
Dormitory Revenue Certificates, Series 1956, Interest and Sinking	5,820	5,780
Dormitory Revenue Certificates of 1958, Interest and Sinking	92,283	92,224
Apartment Revenue Certificates of 1959, Interest and Sinking	84,195	85,325
Apartment Revenue Certificates of 1961, Interest and Sinking	72,035	71,335
Stadium Revenue Certificates of 1960, Interest and Sinking	50,291	49,815
342. Operating Capital Outlay From following Trust Funds:		
Revenue Certificates, Series 1950, Repairs and Replacements	10,000	10,000
Demonstration School Revenue Certificates, Repairs and Replacements	1,000	1,000
Dormitory Revenue Certificates, Series 1954, Repairs and Replacements	200	200
Dormitory Revenue Certificates of 1958, Repairs and Replacements	2,000	1,000
Apartment Revenue Certificates of 1959, Repairs and Replacements	1,000	1,000
Apartment Revenue Certificates of 1961, Repairs and Replacements		1,000
University of Florida Educational and General		
343. Salaries of 2040 Positions From General Revenue Fund	10,863,862	11,451,584
From following Trust Funds:		
Incidental	2,404,647	2,519,991
Seminary Interest	2,000	2,000
American Legion	1,240	1,240
Educational and General Grants	214,389	214,389
344. Other Personal Services From General Revenue Fund	1,399,435	1,457,003

ITEM	1963-64	1964-65
345. Expenses		
From General Revenue Fund	2,100,672	2,227,727
From Incidental Trust Fund	450,000	450,000
346. Operating Capital Outlay		
From General Revenue Fund	677,894	738,044
From Incidental Trust Fund	350,451	337,222
346a. To establish an extension of the University of Florida Engineering College in the East Central Florida area. Lump Sum		
From General Revenue Fund	1,511,000	
Agricultural Experiment Station		
347. Salaries of 914 Positions		
From General Revenue Fund	4,878,553	5,033,608
From following Trust Funds:		
Hatch Act	382,450	382,450
Regional Research	44,600	44,600
Incidental	52,097	52,317
348. Other Personal Services		
From General Revenue Fund	122,879	131,349
From Incidental Trust Fund	152,231	152,011
349. Expenses		
From General Revenue Fund	979,878	983,628
From following Trust Funds:		
Hatch Act	19,000	19,000
Regional Research	14,600	14,600
Incidental	320,272	320,272
350. Operating Capital Outlay		
From General Revenue Fund	126,147	130,522
From following Trust Funds:		
Hatch Act	106,070	106,070
Regional Research	7,583	7,583
Incidental	137,300	137,300
Agricultural Extension Service		
351. Salaries of 490 Positions		
From General Revenue Fund	1,525,208	1,584,800
From Federal Grants and Donations Trust Fund	726,190	732,929
352. Other Personal Services		
From General Revenue Fund	32,900	33,520
From following Trust Funds:		
Federal Grants and Donations	5,000	5,000
State Incidental—		
Egg-laying	500	500
353. Expenses		
From General Revenue Fund	209,975	215,975
From following Trust Funds:		
Federal Grants and Donations	120,175	120,175
State Incidental—		
Egg-laying	18,500	18,500
354. Operating Capital Outlay		
From General Revenue Fund	5,678	10,168
From following Trust Funds:		
Federal Grants and Donations	10,952	10,952
State Incidental—		
Egg-laying	1,000	1,000
Engineering and Industrial Experiment Station		
355. Salaries of 257 Positions		
From General Revenue Fund	377,625	402,382
From Research Contracts Revolving Trust Fund	1,502,315	1,538,355
356. Other Personal Services		
From Research Contracts Revolving Trust Fund	531,000	535,100
357. Expenses		
From General Revenue Fund	58,750	58,750
From Research Contracts Revolving Trust Fund	305,080	323,385
358. Operating Capital Outlay		
From General Revenue Fund	39,243	39,640
From Research Contracts Revolving Trust Fund	266,400	293,000
Health Center		
359. Salaries of 1327 Positions		
From General Revenue Fund	4,669,952	4,789,581
From Operation and Maintenance Trust Fund	1,229,868	1,478,994
360. Other Personal Services		
From General Revenue Fund	161,760	145,432
From Operation and Maintenance Trust Fund	500,940	550,668
361. Expenses		
From General Revenue Fund	656,840	764,501
From following Trust Funds:		
Incidental	120,000	120,000
Operation and Maintenance	1,488,200	1,705,000
362. Operating Capital Outlay		
From General Revenue Fund	170,900	111,524
From Operation and Maintenance Trust Fund	191,800	75,000
Contracts and Grants		
363. Salaries		
From following Trust Funds:		
University Grants and Donations	600,000	600,000
University Research Contracts	200,000	200,000
Health Center Grants and Donations	1,000,000	1,000,000
Agricultural Experiment Station Grants and Donations	260,000	260,000
364. Other Personal Services		
From following Trust Funds:		
University Grants and Donations	550,000	550,000
University Research Contracts	150,000	150,000
Health Center Grants and Donations	600,000	600,000
Agricultural Experiment Station Grants and Donations	150,000	150,000
365. Expenses		
From following Trust Funds:		
University Grants and Donations	850,000	850,000
University Research Contracts	100,000	100,000
Health Center Grants and Donations	1,000,000	1,000,000
Agricultural Experiment Station Grants and Donations	250,000	250,000
366. Operating Capital Outlay		
From following Trust Funds:		
University Grants and Donations	400,000	400,000
University Research Contracts	100,000	100,000
Health Center Grants and Donations	700,000	700,000
Agricultural Experiment Station Grants and Donations	225,000	225,000
Auxiliary Enterprises		
367. Salaries of 603 Positions		
From following Trust Funds:		
Auxiliary	1,516,890	1,591,250
1948 Dormitories Revenue Certificates, Operation and Maintenance	229,560	236,450
Housing System Revenue Certificates, 1959 Issue, Revenue	359,590	370,380
368. Other Personal Service		
From following Trust Funds:		
Auxiliary	451,473	460,218

ITEM	1963-64	1964-65
1948 Dormitories Revenue Certificates, Operation and Maintenance	60,648	60,648
Housing System Revenue Certificates, 1959 Issue, Revenue	121,297	121,297
369. Expenses		
From following Trust Funds:		
Auxiliary	2,763,076	2,894,141
1948 Dormitories Revenue Certificates, Operation and Maintenance	180,000	180,000
Housing System Revenue Certificates, 1959 Issue, Revenue	331,400	331,400
370. Operating Capital Outlay		
From following Trust Funds:		
Auxiliary	193,000	191,000
1948 Dormitories Revenue Certificates, Operation and Maintenance	2,000	2,000
Housing System Revenue Certificates, 1959 Issue, Revenue	15,000	15,000
Debt Service		
371. Expenses		
From following Trust Funds:		
1948 Dormitories Revenue Certificates, Repairs and Replacements	5,000	5,000
Dormitory Revenue Certificates, 1954 Issue, Repairs and Replacements	3,000	3,000
Dormitory Revenue Certificates, 1955 Issue, Repairs and Replacements	2,000	2,000
372. Payment of Debt Service		
From following Trust Funds:		
Dormitory Revenue Certificates, 1938 Issue, Interest and Sinking	27,196	26,314
1948 Dormitories Revenue Certificates, Interest and Sinking	181,978	182,722
Dormitory Revenue Certificates, 1954 Issue, Interest and Sinking	44,955	44,409
Dormitory Revenue Certificates, 1955 Issue, Interest and Sinking	29,068	28,692
Housing System Revenue Certificates, 1959 Issue, Interest and Sinking	419,553	419,224
Laboratory School Revenue Certificates, Interest and Sinking	26,890	27,453
Dormitory Revenue Certificates, 1962 Issue Interest and Sinking	23,556	24,346
Working Capital Fund		
From Trust Fund		
373. Salaries of 209 Positions	928,250	956,100
374. Other Personal Services	97,000	97,000
375. Expenses	850,000	850,000
376. Operating Capital Outlay	37,000	37,000
University of South Florida Educational and General		
377. Salaries of 721 Positions		
From General Revenue Fund	3,948,409	4,966,453
From Incidental Trust Fund	28,350	47,250
378. Other Personal Services		
From General Revenue Fund	117,656	142,832
379. Expenses		
From General Revenue Fund	180,376	240,355
From Incidental Trust Fund	624,400	674,000
380. Operating Capital Outlay		
From General Revenue Fund	290,329	319,045
From Incidental Trust Fund	246,485	426,240
Grants and Donations		
From Trust Fund		
381. Salaries of 32 Positions	150,000	210,000
382. Other Personal Services	34,000	49,000
383. Expenses	63,900	99,200
384. Operating Capital Outlay	30,000	48,221
Auxiliary Enterprises and Debt Service		
385. Salaries of 100 Positions		
From Auxiliary Trust Fund	294,470	419,700
386. Other Personal Services		
From Auxiliary Trust Fund	56,330	66,280
387. Expenses		
From following Trust Funds:		
Auxiliary	524,355	645,575
Dormitory Revenue Certificates of 1959, Operation and Maintenance	39,794	41,994
Dormitory Revenue Certificates of 1960, Operation and Maintenance	34,625	39,490
Dormitory and Student Service Center Revenue Certificates of 1961, Operation and Maintenance	65,150	66,750
Dormitory Revenue Certificates of 1962		61,312
388. Operating Capital Outlay		
From following Trust Funds:		
Auxiliary	41,550	19,400
Student Fee Building	110,000	
Dormitory Revenue Certificates of 1959, Operation and Maintenance	3,800	1,200
Dormitory Revenue Certificates of 1960, Operation and Maintenance	1,000	800
Dormitory and Student Service Center Revenue Certificates of 1961, Operation and Maintenance	2,000	1,500
Dormitory Revenue Certificates of 1962		1,600
Debt Service		
389. Payment of Debt Service		
From following Trust Funds:		
Dormitory Revenue Certificates of 1959, Interest and Sinking	53,784	55,252
Dormitory Revenue Certificates of 1960, Interest and Sinking	68,294	68,627
Dormitory and Student Service Center Revenue Certificates of 1961, Interest and Sinking	114,206	115,123
Dormitory Revenue Certificates of 1962	78,083	98,080
University Studies, Florida Institute for Continuing		
390. Salaries of 74 Positions		
From General Revenue Fund	395,442	413,160
From Grants and Donations Trust Fund	11,500	6,000
391. Other Personal Services		
From General Revenue Fund	950,585	1,230,694
From following Trust Funds:		
Incidental	310,085	332,999
Grants and Donations	148,300	149,300
392. Expenses		
From General Revenue Fund	126,698	122,912
From following Trust Funds:		
Incidental	844,438	854,335
Grants and Donations	99,500	99,500
393. Operating Capital Outlay		
From Incidental Trust Fund	52,559	48,187
CRIPPLED CHILDREN'S COMMISSION, FLORIDA (Including a Clinic in Hillsborough County)		
394. Salaries of 72 Positions		
From General Revenue Fund	219,580	224,560
From Federal Grants Trust Fund	173,300	178,400
395. Other Personal Services		
From General Revenue Fund	314,310	314,310
From Federal Grants Trust Fund	40,440	40,440
396. Expenses		
From General Revenue Fund	1,138,410	1,140,480
From following Trust Funds:		
Federal Grants	356,070	354,000
Donations	235,000	235,000
397. Operating Capital Outlay		
From General Revenue Fund	10,060	4,190
From Federal Grants Trust Fund	5,190	2,160
398. Lump Sum		
From General Revenue Fund	86,400	

ITEM		1963-64	1964-65
	DEVELOPMENT COMMISSION, FLORIDA		
	General Activities		
399.	Salaries of 186 Positions		
	From General Revenue Fund	873,610	905,370
	From Grants for Urban Planning Trust Fund	79,320	82,080
400.	Other Personal Services		
	From General Revenue Fund	192,000	192,000
	From Grants for Urban Planning Trust Fund	85,000	85,000
401.	Expenses		
	From General Revenue Fund		
	Administration	354,000	354,000
	Paid Advertising	1,625,000	1,700,000
	From following Trust Funds:		
	Grants and Donations	25,000	25,000
	Grants for Urban Planning	20,000	20,000
402.	Operating Capital Outlay		
	From General Revenue Fund	20,900	14,700
403.	Florida World's Fair Exhibit		
	From General Revenue Fund	500,000	
	From Internal Improvement Trust Fund	500,000	
404.	Distribution of Hospital Grants		
	From Hospital Grants United States Trust Fund	7,000,000	7,500,000
	Revenue Bond Department		
	From Revolving Fee Trust Fund		
405.	Salaries of 9 Positions	53,940	55,990
406.	Other Personal Services	112,500	112,500
407.	Expenses	98,000	98,000
408.	Operating Capital Outlay	500	500
409.	Service Charge to General Revenue Fund	9,500	9,500
	Surplus Property Department		
	From Trust Fund		
410.	Salaries of 105 Positions	387,740	402,600
411.	Other Personal Services	6,000	6,000
412.	Expenses	138,610	140,280
413.	Operating Capital Outlay	8,550	8,550
	EDUCATION, DEPARTMENT OF		
	General Office		
414.	Salaries of 239 Positions		
	From General Revenue Fund	961,434	1,013,297
	From following Trust Funds:		
	Educational Certification and Service	41,000	41,000
	George-Barden U. S.	319,730	323,139
	Veterans' Education U. S.	53,596	54,094
	Civil Defense U. S.	58,465	58,765
415.	Other Personal Services		
	From General Revenue Fund	15,900	15,900
	From following Trust Funds:		
	Educational Certification and Service	1,500	1,500
	George-Barden U. S.	2,830	2,830
	Civil Defense U. S.	1,000	1,000
416.	Expenses		
	From General Revenue Fund	664,856	758,292
	From following Trust Funds:		
	Educational Certification and Service	24,205	24,205
	Grants and Donations	50,000	50,000
	Smith-Hughes U. S.	187,558	187,558
	George-Barden U. S.	629,896	626,612
	Veterans' Education U. S.	14,625	13,703
	Civil Defense U. S.	98,510	91,650
	Special School Lunch	800	800
	School Lunch U. S.	4,000,000	5,000,000
	School Milk U. S.	1,750,000	2,000,000
	Scholarships		
	From General Revenue Fund		
417.	General Scholarships	420,000	420,000
418.	Nursing Scholarships	137,500	137,500
	Textbook Program		
	From General Revenue Fund		
419.	Purchase of Textbooks	5,107,921	5,256,508
420.	Special Committee Expense	6,000	6,000
421.	Operating Capital Outlay		
	From General Revenue Fund	28,175	33,415
	From following Trust Funds:		
	Educational Certification and Service	5,000	5,000
	George-Barden U. S.	1,100	975
	Veterans' Education U. S.	300	400
	Civil Defense U. S.	1,225	1,260
	Knott Building, Maintenance of		
	From General Revenue Fund		
422.	Salaries of 8 Positions	26,540	27,190
423.	Other Personal Services	1,200	1,200
424.	Expenses	14,820	14,820
425.	Operating Capital Outlay	2,700	700
	National Defense Education Act		
	From Trust Fund		
426.	Salaries of 23 Positions	123,340	
427.	Other Personal Services	14,000	
428.	Expenses	94,145	
429.	Aid to Counties	1,770,974	1,600,950
430.	Scholarships	12,000	12,000
431.	Operating Capital Outlay	4,073	
	State Supervisory Services (in lieu of continuing appropriation in §236.071(1))		
	From General Revenue Fund		
432.	Salaries of 26 Positions	200,690	205,620
433.	Other Personal Services	800	800
434.	Expenses	46,500	46,500
	School Health		
	From Trust Fund		
435.	Other Personal Services	725	
436.	Expenses	800	183
	County Capital Outlay and Debt Service—Administrative		
	From Trust Fund		
437.	Salaries of 19 Positions	139,440	145,790
438.	Other Personal Services	20,000	20,000
439.	Expenses	85,515	85,515
440.	Operating Capital Outlay	2,600	2,600
	Teachers' Pensions		
	From General Revenue Fund		
441.	Pensions (in lieu of §231.53)	30,433	30,433
	Vocational Rehabilitation		
442.	Salaries of 202 Positions		
	From Federal Rehabilitation Trust Fund	1,031,610	1,062,030
443.	Other Personal Services		
	From Federal Rehabilitation Trust Fund	175,000	180,000
444.	Expenses		
	From General Revenue Fund	1,225,000	1,275,000
	From Federal Rehabilitation Trust Fund	1,067,490	1,119,560
445.	Operating Capital Outlay		
	From Federal Rehabilitation Trust Fund	16,520	25,000
	Vocational Rehabilitation—Disability Determination Section		
	From U. S. Trust Fund		
446.	Salaries of 83 Positions	417,910	436,980
447.	Expenses	584,790	620,140
448.	Operating Capital Outlay	13,590	13,850

Minimum Foundation Program K-12

Lump sum for Grades K through 12; provided that no money shall be paid from this appropriation on the basis of any greater number of units in the following areas than herein listed: 135 Kindergarten units annually, 339 distributive-cooperative units annually, 1,150 exceptional child units in 1963-64, 1,200 exceptional child units in 1964-65, and 500 adult education units in 1964-65; provided further that adult education units in 1964-65 above 475 in number shall be high school diploma credit courses. Provided, however, that the required county effort for all counties collectively for grades 1-12 for the fiscal year beginning July 1, 1963, shall not increase more than five per cent greater than the required effort for all counties collectively for grades 1-12 for the fiscal year beginning July 1, 1962, and provided further that, effective July 1, 1964, the required effort of all counties collectively for grades 1-12 shall be determined by multiplying by twenty-five per cent the total calculated cost of the Minimum Foundation Program for kindergarten and grades 1-12 for all counties for the preceding fiscal year for instructional salaries, transportation, current expense other than instructional salaries and transportation, and recalculation funds provided in §§236.03 and 236.031, but exclusive of adjustments for prior years as provided in §236.07(9), and provided further that the combined county effort for all coun-

ITEM	1963-64	1964-65
ties collectively for grades 1-12 shall not increase more than five per cent in any year. Notwithstanding the above provisions, the aforementioned county effort for the fiscal year beginning July 1, 1964, shall not be less than five per cent greater than the required effort for all counties collectively for grades 1-12 for the fiscal year beginning July 1, 1963.		
449. Lump Sum		
From General Revenue Fund	148,362,893	157,169,856
From Interest of State School Trust Fund	1,000,000	
Additional for 1963 Amendments to State Share of Program		
449a. Lump Sum		
From General Revenue Fund	11,396,158	12,070,525
Additional for Teacher Pay Increase		
450. Lump Sum		
From General Revenue Fund	22,025,000	23,224,548
From the appropriations provided in Item 450 all instruction units values included in the Minimum Foundation Program for instructional salaries in kindergarten and grades 1-12 have been increased by $350, and in addition to the $350 there has been added an additional $100 for each instruction unit sustained by instructional personnel on continuing contract; and in addition to the $350 there has been added $200 for each instruction unit sustained by instructional personnel on continuing contract who have completed ten years of efficient teaching service in the public schools of Florida. It is the expressed intent of the Legislature that the additional $100 and $200 referred to herein shall be used only for instructional salaries of those persons who have on or before October 1 of each fiscal year presented evidence that the test score required in §231.16(2) has been achieved, provided further that the respective county boards of public instruction shall submit a report to the State Superintendent, at the time the annual school budget is presented for approval, setting forth the method used in that county to carry out these provisions, and provided further that the State Superintendent shall report the results of the implementations to the 1965 Legislature.		
Driver Education; provided that the total amount expended from this appropriation for administration and distribution to counties during this biennium shall not exceed the total amount collected from the 5¢ per year levied for this purpose upon drivers.		
From General Revenue Fund		
451. Salaries of 6 Positions	41,970	43,100
452. Other Personal Services	2,500	3,500
453. Expenses	20,300	19,100
454. Operating Capital Outlay	700	700
455. Aid to Counties	2,000,000	2,200,000
Minimum Foundation Program—Junior Co leges		
From General Revenue Fund		
456. Lump Sum—Existing Junior Colleges	9,381,950	11,305,190
456a. Additional for Teacher Pay Increase at $550 per instruction unit	1,291,950	1,531,200
456b. Additional for Current Expense at $150 increase per instruction unit	353,050	516,800
To finance year-round operation during the second year of the biennium at those junior colleges meeting the criteria for year-round operation, as prescribed by the State Board of Education, specifically including coordination with the state university trimester schedule, and provided that if this amount is not sufficient to finance year-round operation at all junior colleges meeting such criteria the State Board of Education shall select those junior colleges which will participate in the year-round program.		
456c. Lump Sum		800,000
456d. Additional for increase in cost of administrative units in 1964-65 only		200,000
456e. Lump Sum—New Junior Colleges		
Monroe County		30,000
Okaloosa County	30,000	100,000
Polk County	30,000	200,000
W. K. Kellogg Foundation Nursing Trust Fund		
From Trust Fund		
457. Aid to Counties	51,086	
Teachers' Competence Awards		
From General Revenue Fund		
458. Aid to Counties	2,800,000	
County Capital Outlay and Debt Service		
From Trust Fund		
459. SBA—Expenses	45,000	45,000
460. SBA—Payment of Debt Service	10,119,617	10,084,230
461. Aid to Counties	9,473,815	10,718,190
EDUCATION, STATE BOARD OF		
From General Revenue Fund		
462. Deleted		
Deaf and Blind, Florida School for the		
463. Salaries of 249 Positions	1,064,960	1,088,180
464. Other Personal Services	10,000	10,000
465. Expenses	150,140	151,500
466. Food Products	70,670	70,400
467. Operating Capital Outlay	63,400	48,550
EDUCATIONAL TELEVISION COMMISSION, FLORIDA		
From General Revenue Fund		
468. Salaries of 4 Positions	26,720	27,240
469. Other Personal Services	6,000	6,000
470. Expenses	77,100	79,100
471. Operating Capital Outlay	200,000	
EGG COMMISSION, FLORIDA		
From Trust Fund		
472. Salaries of 2 Positions	5,600	5,866
473. Other Personal Services	7,550	9,050
474. Expenses	37,335	36,784
475. Operating Capital Outlay	1,000	1,000
476. Service Charge to General Revenue Fund	1,600	1,650
EVERGLADES FIRE CONTROL DISTRICT, BOARD OF COMMISSIONERS OF THE		
From General Revenue Fund		
477. Salaries of 16 Positions	62,218	64,078
478. Expenses	26,200	26,200
479. Operating Capital Outlay	16,300	9,240
EXAMINING AND LICENSING BOARDS		
ACCOUNTANCY, STATE BOARD OF		
From Trust Fund		
480. Salaries of 4 Positions	22,300	22,748
481. Other Personal Services	17,000	17,000
482. Expenses	49,450	52,150
483. Operating Capital Outlay	6,500	7,000
484. Service Charge to General Revenue Fund	9,000	9,000
ARCHITECTURE, FLORIDA STATE BOARD OF		
From Trust Fund		
485. Salaries of 3 Positions	14,415	14,559
486. Other Personal Services	15,550	16,850
487. Expenses	20,075	20,650
488. Operating Capital Outlay	550	550
489. Service Charge to General Revenue Fund	5,589	5,839
BARBERS' SANITARY COMMISSION		
From Trust Fund		
490. Salaries of 11 Positions	44,280	45,900
491. Other Personal Services	3,200	3,400
492. Expenses	40,130	42,630
493. Operating Capital Outlay	325	350
494. Service Charge to General Revenue Fund	9,200	10,000
BASIC SCIENCES, BOARD OF EXAMINERS IN THE		
From Operating Trust Fund		
495. Salary of 1 Position	4,800	4,800
496. Other Personal Services	4,370	4,370
497. Expenses	2,200	2,200
498. Operating Capital Outlay	250	250
499. Service Charge to General Revenue Fund	1,500	1,500

ITEM		1963-64	1964-65
	From Medical Technology Trust Fund		
500.	Other Personal Services	700	700
501.	Expenses	2,000	2,000
502.	Service Charge to General Revenue Fund	300	300
	BEAUTY CULTURE, STATE BOARD OF From Trust Fund		
503.	Salaries of 26 Positions	91,160	92,000
504.	Other Personal Services	8,400	8,400
505.	Expenses	86,700	98,700
506.	Operating Capital Outlay	15,000	10,000
507.	Service Charge to General Revenue Fund	25,000	25,200
	CHIROPODY EXAMINERS, FLORIDA STATE BOARD OF From Trust Fund		
508.	Other Personal Services	1,800	1,800
509.	Expenses	2,239	2,374
510.	Operating Capital Outlay	200	200
511.	Service Charge to General Revenue Fund	471	486
	CHIROPRACTIC EXAMINERS, FLORIDA STATE BOARD OF From Trust Fund		
512.	Other Personal Services	3,800	3,800
513.	Expenses	5,630	5,630
514.	Operating Capital Outlay	200	200
515.	Service Charge to General Revenue	1,000	1,000
	DENTAL EXAMINERS, FLORIDA STATE BOARD OF From Trust Fund		
516.	Salaries of 3 Positions	15,930	16,650
517.	Other Personal Services	19,250	19,750
518.	Expenses	16,190	17,200
519.	Operating Capital Outlay	1,000	1,000
520.	Service Charge to General Revenue	5,820	6,080
	ENGINEER EXAMINERS, FLORIDA STATE BOARD OF From Trust Fund		
521.	Salaries of 5 Positions	28,455	28,455
522.	Other Personal Services	8,700	8,700
523.	Expenses	15,838	15,838
524.	Operating Capital Outlay	2,000	1,500
525.	Service Charge to General Revenue Fund	5,200	5,300
	FORESTERS, STATE BOARD OF REGISTRATION FOR From Trust Fund		
526.	Other Personal Services	200	300
527.	Expenses	970	1,260
528.	Operating Capital Outlay	100	100
529.	Service Charge to General Revenue Fund	130	140
	FUNERAL DIRECTORS AND EMBALMERS, STATE BOARD OF From Trust Fund		
530.	Salaries of 4 Positions	18,369	19,388
531.	Other Personal Services	4,370	4,500
532.	Expenses	17,150	19,500
533.	Operating Capital Outlay	1,000	1,000
534.	Service Charge to General Revenue Fund	4,620	4,990
	MASSAGE, FLORIDA BOARD OF From Trust Fund		
535.	Salaries of 4 Positions	7,360	7,360
536.	Other Personal Services	710	710
537.	Expenses	3,439	3,439
538.	Service Charge to General Revenue Fund	1,383	1,383
	MEDICAL EXAMINERS, STATE BOARD OF From Trust Fund		
539.	Salaries of 6 Positions	23,610	25,700
540.	Other Personal Services	17,300	18,200
541.	Expenses	46,400	49,950
542.	Operating Capital Outlay	1,410	2,040
543.	Service Charge to General Revenue Fund	11,425	11,825
	From Physical Therapy Trust Fund		
544.	Salary of 1 Position	600	600
545.	Other Personal Services	200	200
546.	Expenses	2,525	2,725
547.	Operating Capital Outlay	150	150
548.	Service Charge to General Revenue Fund	335	347
	NATUROPATHIC EXAMINERS, STATE BOARD OF From Trust Fund		
549.	Salary of 1 Position	400	400
550.	Other Personal Services	90	90
551.	Expenses	230	230
552.	Service Charge to General Revenue Fund	88	88
	NURSING, FLORIDA STATE BOARD OF From Operating Trust Fund		
553.	Salaries of 23 Positions	112,490	115,800
554.	Other Personal Services	11,860	11,860
555.	Expenses	64,073	63,768
556.	Operating Capital Outlay	2,089	358
557.	Service Charge to General Revenue Fund	23,380	11,660
	From W. K. Kellogg Nursing Trust Fund		
558.	Salaries of 3 Positions	21,160	
559.	Other Personal Services	2,500	
560.	Expenses	14,995	
561.	Operating Capital Outlay	1,250	
	OPTICIANS, STATE BOARD OF DISPENSING From Trust Fund		
562.	Salaries of 2 Positions	1,700	1,700
563.	Other Personal Services	1,700	1,700
564.	Expenses	3,660	3,660
565.	Operating Capital Outlay	300	300
566.	Service Charge to General Revenue Fund	800	800
	OPTOMETRY, FLORIDA STATE BOARD OF From Operating Trust Fund		
567.	Salaries of 8 Positions	8,500	8,500
568.	Other Personal Services	8,670	8,670
569.	Expenses	10,390	10,390
570.	Operating Capital Outlay	250	250
571.	Service Charge to General Revenue Fund	3,090	3,090
	From General Revenue Fund		
572.	Scholarships	15,000	20,000
	OSTEOPATHIC EXAMINERS, STATE BOARD OF From Trust Fund		
573.	Other Personal Services	6,060	6,060
574.	Expenses	4,829	4,829
575.	Operating Capital Outlay	400	400
576.	Service Charge to General Revenue Fund	1,122	1,122
	PHARMACY, FLORIDA BOARD OF From Trust Fund		
577.	Salaries of 5 Positions	26,300	28,500
578.	Other Personal Services	14,700	15,750
579.	Expenses	30,765	30,965
580.	Operating Capital Outlay	850	850
581.	Service Charge to General Revenue Fund	8,100	8,200
	PSYCHOLOGY, FLORIDA STATE BOARD OF EXAMINERS OF From Trust Fund		
582.	Other Personal Services	100	100
583.	Expenses	1,100	1,100
584.	Service Charge to General Revenue Fund	200	100
	REAL ESTATE COMMISSION, FLORIDA From Trust Fund		
585.	Salaries of 64 Positions	308,520	323,440
586.	Other Personal Services	14,500	14,500
587.	Expenses	243,250	259,750
588.	Operating Capital Outlay	13,500	14,500
589.	Service Charge to General Revenue Fund	76,000	82,500
	SANITARIANS' REGISTRATION BOARD From Trust Fund		
590.	Salary of 1 Position	700	700
591.	Expenses	660	660
592.	Service Charge to General Revenue Fund	120	120
	STRUCTURAL PEST CONTROL COMMISSION OF FLORIDA From Trust Fund		
593.	Salary of 1 Position	4,000	4,000
594.	Other Personal Services	6,000	6,000
595.	Expenses	7,775	7,875
596.	Operating Capital Outlay	975	975
597.	Service Charge to General Revenue Fund	2,010	2,010
	VETERINARY EXAMINERS, STATE BOARD OF From Trust Fund		
598.	Other Personal Services	2,620	2,620
599.	Expenses	2,466	2,466
600.	Operating Capital Outlay	300	300
601.	Service Charge to General Revenue Fund	500	500

ITEM		1963-64	1964-65
	WATCHMAKERS' COMMISSION, FLORIDA		
	From Trust Fund		
602.	Salaries of 3 Positions	8,700	8,700
603.	Other Personal Services	100	100
604.	Expenses	2,215	2,215
605.	Operating Capital Outlay	250	150
606.	Service Charge to General Revenue Fund	1,150	1,150
	FORESTRY, FLORIDA BOARD OF		
607.	Salaries of 942 Positions		
	From General Revenue Fund	1,626,110	1,707,777
	From Incidental Trust Fund	2,045,390	2,073,873
608.	Other Personal Services		
	From General Revenue Fund	69,244	63,358
	From Incidental Trust Fund	49,756	55,642
609.	Expenses		
	From General Revenue Fund	840,200	806,974
	From Incidental Trust Fund	428,530	464,256
610.	Operating Capital Outlay		
	From General Revenue Fund	438,676	450,513
	From Incidental Trust Fund	176,324	24,487
611.	Payments to Counties From Withlacoochee State Forest Trust Fund	41,400	37,500
612.	Lease-Purchase Payments to Federal Government From Withlacoochee State Forest Trust Fund	250,000	250,000
	GAME AND FRESH WATER FISH COMMISSION		
	Hyacinth and Noxious Aquatic Vegetation Control Program		
	From General Revenue Fund		
613.	Salaries of 16 Positions	78,010	80,350
614.	Other Personal Services	380	370
615.	Expenses	74,680	74,680
616.	Operating Capital Outlay	10,000	8,300
	Aircraft Maintenance		
	From Trust Fund		
617.	Salaries of 5 Positions	24,420	25,320
618.	Other Personal Services	1,890	2,000
619.	Expenses	30,440	29,680
620.	Operating Capital Outlay	4,660	560
	GOVERNOR		
	From General Revenue Fund		
	General Office		
621.	Salaries of 20 Positions	126,007	126,007
622.	Other Personal Services	600	600
623.	Expenses	32,650	32,650
624.	Operating Capital Outlay	2,600	2,600
625.	Contingent	37,500	37,500
	Governor's Mansion, Operation of		
626.	Salaries of 6 Positions	17,450	17,450
627.	Contingent (payable to Governor where necessary)	19,000	19,000
	Mediation and Conciliation Service		
628.	Salaries of 2 Positions	10,090	9,300
629.	Expenses	6,837	7,350
630.	Operating Capital Outlay	670	350
	Race Relations		
631.	Lump Sum	6,000	6,000
	Southern Regional Education Board Legislative Workshop		
632.	Expenses	1,000	
	National Governor's Conference		
632a.	Lump Sum	75,000	
	HEALTH, STATE BOARD OF (Provided that General Revenue Fund appropriations may be transferred to the proper Trust Fund for disbursement.)		
	General Public Health		
633.	Salaries of 892 Positions		
	From General Revenue Fund	2,838,210	2,953,880
	From Federal Grants in Aid Trust Fund	1,828,300	1,896,300
634.	Other Personal Services		
	From General Revenue Fund	10,250	10,250
	From Federal Grants in Aid Trust Fund	318,900	318,900
635.	Expenses		
	From General Revenue Fund	1,156,310	1,158,820
	From Federal Grants in Aid Trust Fund	936,300	936,300
636.	Operating Capital Outlay		
	From General Revenue Fund	68,360	59,410
	From Federal Grants in Aid Trust Fund	35,300	35,300
637.	Grants to Localities for Mosquito Control		
	From General Revenue Fund	1,650,000	1,650,000
638.	Encephalitis Research and Control		
	From General Revenue Fund	100,000	100,000
639.	Purchase of Polio and Combined Vaccines		
	From General Revenue Fund	125,000	125,000
640.	Dental Scholarships		
	From General Revenue Fund	40,000	40,000
641.	Medical Scholarships		
	From General Revenue Fund	40,000	40,000
641a.	Lump Sum—For the establishment of an Arthropod Laboratory in West Florida		
	From General Revenue Fund	65,000	
	Air Pollution Control Commission, Florida		
	From General Revenue Fund		
642.	Salaries of 9 Positions	55,470	57,530
643.	Other Personal Services	500	500
644.	Expenses	19,030	19,030
645.	Operating Capital Outlay	4,510	4,000
645a.	Lump Sum—For one air pollution control team to service the area of Polk and Hillsborough Counties	116,600	
	Mental Health Council		
	From General Revenue Fund		
646.	Salaries of 9 Positions	60,360	62,360
647.	Other Personal Services	2,500	2,500
648.	Expenses	11,500	11,500
649.	Research	15,000	15,000
	Payment of Scholarships:		
650.	Psychiatric Social Work	30,400	30,400
651.	Clinical Psychology	15,600	15,600
652.	Psychiatric Nursing	12,000	12,000
	Grants and Donations		
	From Trust Fund		
653.	Salaries of 137 Positions	762,520	793,720
654.	Other Personal Services	31,500	30,000
655.	Expenses	321,760	307,470
656.	Operating Capital Outlay	25,500	25,500
	Hospital Services for the Indigent		
657.	Transfer to Trust Fund		
	From General Revenue Fund	885,900	918,900
658.	Payment of Hospital Expenses		
	From Trust Fund	310,000	315,000
	Health Units	2,035,000	2,035,000
	From Trust Fund		
	County Health Units		
	From General Revenue Fund		
659.	Grants to County		
660.	Salaries of 1945 Positions	7,873,300	8,056,800
661.	Other Personal Services	110,420	120,320
662.	Expenses	1,973,780	2,160,440
663.	Operating Capital Outlay	142,920	160,430
	HOTEL AND RESTAURANT COMMISSION (Provided that no moneys may be spent in excess of fees collected.)		
	From General Revenue Fund		
	General Activities		
664.	Salaries of 99 Positions	458,400	474,750
665.	Other Personal Services	25,860	27,860
666.	Expenses	152,450	152,050
667.	Operating Capital Outlay	17,200	10,600
	Industry Education Program		
668.	Salaries of 3 Positions	19,550	20,030
669.	Expenses	10,500	10,500

ITEM		1963-64	1964-65
	INDUSTRIAL COMMISSION, FLORIDA		
	Employment Security Administration		
	From Trust Fund		
670.	Salaries of 1431 Positions	6,765,350	7,055,820
671.	Other Personal Services	225,000	225,000
672.	Expenses	1,907,010	1,920,310
673.	Operating Capital Outlay	82,560	44,090
	Special Employment Security Administration		
	From Trust Fund		
674.	Salaries of 19 Positions	61,800	63,420
675.	Other Personal Services	8,500	8,700
676.	Expenses	61,050	61,050
677.	Operating Capital Outlay	5,000	5,000
678.	Service Charge to General Revenue Fund	6,880	6,880
	Unemployment Compensation Benefit Account		
	From Trust Fund		
679.	Benefits	33,100,000	35,900,000
	Area Development Program		
680.	Subsistence Payments		
	From following Trust Fund:		
	Area Redevelopment Act	46,400	46,400
	Workmen's Compensation Administration		
	From Trust Fund		
681.	Salaries of 243 Positions	1,228,260	1,299,020
682.	Other Personal Services	261,400	266,400
683.	Expenses	497,555	505,077
684.	Operating Capital Outlay	44,460	23,310
685.	Service Charge to General Revenue Fund	44,100	45,600
	Workmen's Compensation Special Disability		
	From Trust Fund		
686.	Salaries of 3 Positions	14,920	15,440
687.	Other Personal Services	3,500	3,500
688.	Expenses	4,490	4,800
689.	Operating Capital Outlay	420	420
690.	Reimbursement of Employers	300,000	360,000
691.	Service Charge to General Revenue Fund	11,020	11,400
	Child Labor Laws, Enforcement of		
	From General Revenue Fund		
692.	Salaries of 3 Positions	14,340	14,340
693.	Other Personal Services	1,300	1,300
694.	Expenses	5,300	5,300
695.	Operating Capital Outlay	520	610
	Prevailing Wage Law		
	From General Revenue Fund		
696.	Salaries of 4 Positions	23,400	24,120
697.	Other Personal Services	11,800	11,800
698.	Expenses	7,800	7,800
699.	Operating Capital Outlay	2,200	630
	Apprenticeship, Department of		
	From General Revenue Fund		
700.	Salaries of 11 Positions	56,896	57,490
701.	Other Personal Services	1,500	1,500
702.	Expenses	20,620	20,620
703.	Operating Capital Outlay	2,100	400
	Private Schools, State Approval Agency for		
	From Trust Fund		
704.	Salaries of 2 Positions	10,560	10,560
705.	Expenses	4,500	4,500
	Social Security Administration		
	From Trust Fund		
706.	Salaries of 4 Positions	21,900	22,140
707.	Other Personal Services	4,500	4,500
708.	Expenses	5,790	5,800
709.	Operating Capital Outlay	600	100
	Social Security Contribution—State		
	From Trust Fund		
710.	For State Employees	8,200,000	8,500,000
	Social Security Contribution—County		
	From Trust Fund		
711.	For County Employees	7,505,100	8,264,700
	Social Security Contribution—Municipal		
	From Trust Fund		
712.	For Municipal Employees	9,280,000	9,570,000
	INTERNAL IMPROVEMENT FUND, TRUSTEES OF THE		
	From Trust Fund		
713.	Salaries of 22 Positions	120,945	126,595
714.	Other Personal Services	30,000	30,000
715.	Expenses—Operating	71,800	79,720
716.	Expenses—Non-operating	837,900	837,900
717.	Operating Capital Outlay	4,100	4,100
718.	Service Charge to General Revenue Fund	60,000	60,000
	INTERSTATE COOPERATION, FLORIDA COMMISSION ON		
	From General Revenue Fund		
719.	Expenses	20,000	20,000
	JUDICIAL DEPARTMENT		
	Circuit Courts and Other Related Matters		
	From General Revenue Fund		
720.	Salaries of Circuit Judges as provided in subsection (10) of this section, salaries of State Attorneys and Assistant State Attorneys as provided in subsection (11) of this section, State Attorneys' Stenographers, Court Reporters, pay and mileage of Jurors and Witnesses, Printing Reports of Supreme Court and District Courts of Appeal, travel expenses of Circuit Judges, Compensation to retired judges assigned to active judicial service, etc., as provided by general law. Lump Sum	3,900,600	3,910,600
	District Court of Appeal, First		
	From General Revenue Fund		
721.	Salaries of 13 Positions	79,430	80,390
722.	Expenses	20,310	20,690
723.	Operating Capital Outlay	3,760	2,470
	District Court of Appeal, Second		
	From General Revenue Fund		
724.	Salaries of 19 Positions	112,000	112,000
725.	Other Personal Services	2,400	2,400
726.	Expenses	32,630	32,630
727.	Operating Capital Outlay	9,500	9,500
	District Court of Appeal, Third		
	From General Revenue Fund		
728.	Salaries of 16 Positions	96,730	99,630
729.	Other Personal Services	1,400	1,400
730.	Expenses	66,820	67,280
731.	Operating Capital Outlay	9,980	9,780
	Judicial Council of Florida		
	From General Revenue Fund		
731a.	Lump Sum	7,500	7,500
731b.	Deleted		
731c.	Deleted		
	Judicial Disability Retirement, Commission on		
	From General Revenue Fund		
732.	Expenses	750	750
	Supreme Court		
	From General Revenue Fund		
733.	Salaries of 30 Positions	175,210	182,210
734.	Expenses	35,300	35,300
735.	Operating Capital Outlay	26,225	24,025
	LEGISLATIVE DEPARTMENT		
	From General Revenue Fund		
736.	Lump Sum to be used for the payment of legislative expenses, including $350,000 for the biennium for the use of the Legislative Council and Reference Bureau, as authorized in Ch. 11.	1,000,000	2,400,000
	LIBRARY BOARD, STATE		
737.	Salaries of 17 Positions		
	From General Revenue Fund	46,930	46,570
	From Rural Libraries Service Trust Fund	24,410	28,090
738.	Other Personal Services		
	From General Revenue Fund	1,200	1,200
	From Rural Libraries Service Trust Fund	1,490	1,490
739.	Expenses		
	From General Revenue Fund	14,730	15,960
	From Rural Libraries Service Trust Fund	11,200	10,600
740.	Operating Capital Outlay		
	From General Revenue Fund	14,970	16,850
	From Rural Libraries Service Trust Fund	15,400	13,320
741.	Grants, Subsidies, and Contributions		
	From General Revenue Fund	100,000	100,000
	From Rural Libraries Service Trust Fund	126,100	126,100
	MILITARY DEPARTMENT		
	General Activities		
742.	Salaries of 93 Positions		
	From General Revenue Fund	239,780	245,475
	From Armory Board Trust Fund	133,941	137,101
743.	Other Personal Services		
	From General Revenue Fund	7,630	8,200
	From Armory Board Trust Fund	2,000	2,000

ITEM	1963-64	1964-65
744. Expenses		
From General Revenue Fund	230,410	230,410
From Armory Board Trust Fund	147,000	147,000
745. Operating Capital Outlay		
From General Revenue Fund	18,350	21,340
From Armory Board Trust Fund	8,500	6,500
Camp Blanding Management		
From Trust Fund		
746. Salaries of 7 Positions	32,655	33,865
747. Expenses	159,929	157,370
748. Operating Capital Outlay	19,025	22,525
National Guard Retirement		
From General Revenue Fund		
749. Benefits	31,039	41,065
MILK COMMISSION		
From Trust Fund		
750. Salaries of 19 Positions	107,368	109,743
751. Other Personal Services	38,840	38,840
752. Expenses	76,400	76,400
753. Operating Capital Outlay	7,500	7,500
754. Service Charge to General Revenue Fund	7,532	7,532
MOTOR VEHICLE COMMISSIONER, STATE		
From General Revenue Fund		
755. Salaries of 492 Positions	1,832,855	1,899,652
756. Other Personal Services	42,000	42,000
757. Expenses	654,721	662,440
758. Operating Capital Outlay	30,400	29,720
759. Purchase of License Plates	310,500	328,500
NUCLEAR COMMISSION, FLORIDA		
From General Revenue Fund		
760. Salary of 1 Position	5,620	5,790
761. Other Personal Services	2,450	2,450
762. Expenses	13,090	13,090
763. Operating Capital Outlay	500	500
764. Participation in Regional and National Nuclear Programs	5,000	5,000
PARKS AND HISTORIC MEMORIALS, FLORIDA BOARD OF		
765. Salaries of 217 Positions		
From General Revenue Fund	610,262	647,091
From Park Trust Fund	200,000	200,000
766. Other Personal Services		
From General Revenue Fund	35,600	36,200
767. Expenses		
From General Revenue Fund	118,397	112,860
From Park Trust Fund	309,160	332,050
768. Operating Capital Outlay		
From General Revenue Fund	64,150	60,130
768a. Contingent for staffing and operation of facilities authorized by the 1963 Legislature		
From General Revenue Fund	20,000	40,000
From Park Trust Fund	15,000	35,000
PAROLE COMMISSION		
From General Revenue Fund		
769. Salaries of 255 Positions	1,095,040	1,209,720
770. Other Personal Services	8,000	8,000
771. Expenses	262,350	273,720
772. Operating Capital Outlay	54,495	26,390
PERSONNEL BOARD, STATE		
From Merit System Trust Fund		
773. Salaries of 50 Positions	215,030	225,060
774. Other Personal Services	12,000	10,200
775. Expenses	54,900	59,060
776. Operating Capital Outlay	3,880	1,500
PUBLIC SAFETY, DEPARTMENT OF		
General Activities		
From General Revenue Fund		
777. Salaries of 1,156 Positions	5,024,321	5,384,514
778. Other Personal Services	6,214	5,594
779. Expenses	2,162,660	2,231,266
780. Operating Capital Outlay	768,072	484,577
781. Contribution to Highway Patrol Pension Trust Fund	176,120	188,217
Drivers License Accident Reports		
From Trust Fund		
782. Salaries of 40 Positions	116,630	145,160
783. Expenses	8,183	9,350
784. Operating Capital Outlay	126,012	53,512
Highway Patrol Pensions		
From Trust Fund		
785. Pensions	130,000	150,000
786. Funeral Expenses	1,000	1,000
PUBLIC WELFARE, STATE DEPARTMENT OF (Provided, that General Revenue Fund appropriations may be transferred to the proper Trust Fund for disbursement.)		
General Administration		
787. Salaries of 1399 Positions		
From General Revenue Fund	2,935,340	2,874,190
From following Trust Funds:		
State Welfare U. S.	3,094,470	3,402,990
Child Welfare U. S.	282,950	300,290
788. Other Personal Services		
From General Revenue Fund	9,610	10,930
From following Trust Funds:		
State Welfare U. S.	6,010	5,690
Child Welfare U. S.	3,750	4,000
789. Expenses		
From General Revenue Fund	704,640	728,590
From following Trust Funds:		
State Welfare U. S.	618,820	640,860
Child Welfare U. S.	166,250	170,900
790. Operating Capital Outlay		
From General Revenue Fund	68,640	60,620
From following Trust Funds:		
State Welfare U. S.	24,360	40,430
Child Welfare U. S.	30,230	7,990
791. Lump Sum to provide for salaries, expenses, and operating capital outlay for a reasonable implementation of 1962 Federal amendments to the Social Security Act relating to increased requirements for services for welfare recipients to be released only as determined necessary by Budget Commission.		
From General Revenue Fund	521,000	1,142,000
Assistance Programs		
792. Old Age Assistance		
From General Revenue Fund	10,796,979	10,868,227
From State Welfare U. S. Trust Fund	31,984,683	32,245,677
793. Aid to Blind		
From General Revenue Fund	524,637	528,998
From State Welfare U. S. Trust Fund	1,350,721	1,368,147
794. Aid to Dependent Children (No family receiving this aid may receive more than $81.00 per month of State and Federal moneys combined.)		
From General Revenue Fund	4,006,073	4,419,916
From State Welfare U. S. Trust Fund	18,718,339	20,626,274
795. Aid to Permanently and Totally Disabled		
From General Revenue Fund	3,133,616	3,563,411
From State Welfare U. S. Trust Fund	8,202,322	9,358,420
796. Child Welfare Services—State		
From General Revenue Fund	400,000	400,000
797. Child Welfare Services—Federal		
From Child Welfare U. S. Trust Fund	171,000	171,000
798. Prescribed Medicines for recipients of aid in Items 792, 793, and 795		
From General Revenue Fund	1,551,455	1,605,740
From State Welfare U. S. Trust Fund	4,830,230	4,999,529
799. Hospital Services, including diagnosis of suspected cancer and treatment of cancer when referred by a cancer unit or tumor clinic operating under the provisions of §381.361, for the recipients of aid in Items 792, 793, 794, 795		
From General Revenue Fund	1,118,890	1,164,407
From State Welfare U. S. Trust Fund	3,658,882	3,819,160

ITEM	1963-64	1964-65
799a. Nursing Home Care for recipients of aid in Items 792, 793, and 795, not to exceed a maximum cost of $100 per month[a].		
From General Revenue Fund	1,307,121	1,465,686
From State Welfare U. S. Trust Fund	4,069,766	4,563,463
(a) Notwithstanding the provisions of Ch. 409, no additional state moneys may be transferred to this Item from Items 792, 793, 794, 795.		
799b. Medical Assistance for the Aged (Kerr-Mills) Administration[b].		
From General Revenue Fund	100,000	150,000
From Federal Trust Fund	100,000	150,000
Hospital Services and Visiting Nurse Care[c]		
From General Revenue Fund	1,000,000	2,000,000
From Federal Trust Fund	1,543,882	3,087,764
(b) To provide for Administrative cost for reasonable implementation of the Medical Assistance for the Aged (Kerr-Mills) amendments to Social Security Act to be released only as determined necessary by Budget Commission		
(c) Notwithstanding the provisions of Ch. 409, no additional state moneys may be transferred to this item. Items 792, 793, and 795 include funds to provide improved budgetary standards effective October 1, 1963, and to meet the new maximum of $70 per recipient as provided by Federal Law.		
PURCHASING COMMISSION OF FLORIDA, STATE		
From General Revenue Fund		
800. Salaries of 28 Positions	132,020	138,630
801. Expenses	37,700	39,416
802. Operating Capital Outlay	14,100	2,900
RACING COMMISSION, STATE		
803. Salaries of 28 Positions From Operating Trust Fund	128,447	132,093
804. Other Personal Services From Operating Trust Fund	514,089	514,089
805. Expenses From Operating Trust Fund	99,753	99,678
806. Operating Capital Outlay From Operating Trust Fund	4,000	4,000
807. Service Charge to General Revenue Fund From following Trust Funds:		
Operating	333,300	335,040
Additional Dog Track Tax	83,325	83,760
RAILROAD AND PUBLIC UTILITIES COMMISSION, FLORIDA		
From General Revenue Fund		
808. Salaries of 93 Positions	555,740	572,570
809. Other Personal Services	7,080	7,080
810. Expenses	237,310	237,310
811. Operating Capital Outlay	11,620	2,320
From Trust Fund		
811a. Salaries of 47 Positions	273,033	301,292
811b. Other Personal Services	920	920
811c. Expenses	124,136	135,490
811d. Operating Capital Outlay	47,528	1,120
RAILROAD ASSESSMENT BOARD		
From General Revenue Fund		
812. Salaries of 5 Positions	23,400	24,550
813. Expenses	11,410	12,830
814. Ratio Survey	103,500	3,500
815. Operating Capital Outlay	2,000	500
ROAD DEPARTMENT, STATE		
From Trust Fund		
Administration		
816. Salaries of 1229 Positions	6,412,374	6,679,286
817. Other Personal Services	62,975	62,975
818. Expenses	2,771,491	2,834,439
Construction and Maintenance		
819. Salaries of 5854 Positions	22,654,971	23,268,021
820. Other Personal Services	973,000	800,000
821. Expenses	28,159,565	25,494,909
ST. AUGUSTINE HISTORICAL RESTORATION AND PRESERVATION COMMISSION (Provided, that the General Revenue Fund appropriation may be transferred to the Trust Fund for Disbursement.)		
From General Revenue Fund		
822. Lump Sum	75,000	75,000
From Trust Fund		
823. Lump Sum	22,990	24,910
SECRETARY OF STATE		
General Office		
From General Revenue Fund		
824. Salaries of 153 Positions	683,340	704,815
825. Other Personal Services	36,000	36,000
826. Expenses	211,070	216,820
827. Operating Capital Outlay	36,665	28,810
828. General Printing and Advertising	7,500	17,500
Administrative Code Division		
829. Salaries of 6 Positions From General Revenue Fund	36,450	37,600
830. Other Personal Services From General Revenue Fund	2,000	2,000
831. Expenses		
From General Revenue Fund	22,135	17,265
From Publications Revolving Trust Fund	10,000	
832. Operating Capital Outlay		
From General Revenue Fund	1,925	325
Vending Machines		
From Trust Fund		
833. Expenses	100	100
834. Operating Capital Outlay		90
SECURITIES COMMISSION, FLORIDA		
From General Revenue Fund		
835. Salaries of 30 Positions	167,370	172,220
836. Other Personal Services	290	290
837. Expenses	53,190	53,190
838. Operating Capital Outlay	2,100	2,100
SHERIFF'S BUREAU, FLORIDA		
From General Revenue Fund		
839. Salaries of 67 Positions	344,650	355,000
840. Other Personal Services	6,000	6,000
841. Expenses	154,600	154,600
842. Operating Capital Outlay	27,900	11,720
SOIL CONSERVATION BOARD, STATE		
From General Revenue Fund		
843. Salaries of 2 Positions	6,688	7,178
844. Expenses	5,495	4,775
845. Operating Capital Outlay	1,655	
846. Lump Sum—Additional Survey Parties	60,000	60,000
STEPHEN FOSTER MEMORIAL COMMISSION		
847. Salaries of 26 Positions		
From General Revenue Fund	28,181	30,407
From Operating Trust Fund	56,149	56,149
848. Other Personal Services		
From General Revenue Fund	2,435	2,435
From Operating Trust Fund	4,125	4,125
849. Expenses		
From General Revenue Fund	46,540	35,525
From Operating Trust Fund	71,023	61,000
850. Scholarships		
From Scholarship Trust Fund	500	500
From Operating Trust Fund	500	500
851. Operating Capital Outlay		
From General Revenue Fund	3,200	3,800
From Operating Trust Fund	2,700	2,550
SUWANNEE RIVER AUTHORITY		
From General Revenue Fund		
852. Contribution to Suwannee River Authority	15,750	15,750
TEACHERS' RETIREMENT SYSTEM OF THE STATE, BOARD OF TRUSTEES OF THE		
From General Revenue Fund		
853. Transfers to Pension Accumulation Trust Fund, in lieu of continuing appropriation in §238.11(2)(a); provided, that if the moneys appropriated in this item are insufficient to pay the retirement compensation provided in Ch. 238, additional amounts necessary to pay such retirement compensation may be transferred as authorized in §238.11(2)(a).	8,856,000	10,000,000

ITEM	1963-64	1964-65
854. Transfers to Survivors' Benefit Trust Fund, in lieu of continuing appropriation in §238.11(2)(a).	200,000	212,500
From Operating Trust Fund		
855. Salaries of 31 Positions	150,800	157,170
856. Other Personal Services	7,240	7,240
857. Expenses	18,550	18,550
858. Operating Capital Outlay	8,000	12,850
From Pension Accumulation Trust Fund		
859. Benefits	10,800,000	12,500,000
From Survivors' Benefit Trust Fund		
860. Benefits	400,000	400,000
TREASURER		
General Office		
From General Revenue Fund		
861. Salaries of 291 Positions	1,341,533	1,344,126
862. Other Personal Services	6,000	6,000
863. Expenses	729,331	730,330
864. Operating Capital Outlay	62,080	27,760
865. Legislative Pay Window—Salaries of two positions in lieu of continuing appropriation in §18.091.		1,500
Insurance Commissioner's Enforcement Trust Fund		
From Trust Fund		
866. Other Personal Services	1,000	1,000
867. Expenses	10,000	10,000
Insurance Commissioner's License Receipts Trust Fund		
From Trust Fund		
868. Salaries of 23 Positions	81,420	81,420
869. Expenses	125,615	125,115
870. Operating Capital Outlay	2,200	2,200
Insurance Commissioner's Miscellaneous Services Trust Fund		
From Trust Fund		
871. Salaries of 131 Positions	672,628	672,628
872. Other Personal Services	11,000	11,000
873. Expenses	124,500	124,500
874. Operating Capital Outlay	15,000	10,000
Insurer Examination Revolving Trust Fund		
From Trust Fund		
875. Salaries of 20 Positions	195,400	195,400
876. Other Personal Services	400	400
877. Expenses	79,200	79,200
Liquefied Petroleum Gas Administrative Trust Fund		
From Trust Fund		
878. Salaries of 10 Positions	61,932	61,932
879. Expenses	37,500	37,500
880. Operating Capital Outlay	1,500	1,500
Publications Revolving Trust Fund		
From Trust Fund		
881. Expenses	35,000	35,000
State Fire Marshal		
From Trust Fund		
882. Salaries of 22 Positions	107,940	108,240
883. Other Personal Services	1,000	1,000
884. Expenses	91,135	91,135
885. Operating Capital Outlay	5,000	5,000
Insurance Agents and Solicitors County License Tax		
From Trust Fund		
886. Service Charge to General Revenue Fund	5,600	5,700
Firemen's Relief and Pension Fund		
From Trust Fund		
887. Salaries of 5 Positions	24,300	24,300
888. Expenses	5,035	5,235
889. Operating Capital Outlay	665	465
890. Service Charge to General Revenue Fund	18,000	18,000
Municipal Police Officers' Retirement Fund		
From Trust Fund		
891. Salaries of 3 Positions	13,090	13,370
892. Other Personal Services	10,000	10,000
893. Expenses	785	820
894. Operating Capital Outlay	790	750
895. Service Charge to General Revenue Fund	34,500	34,500
Premiums for Revenue Certificate Buildings		
From Trust Fund		
896. Expenses	40,000	48,000
State Fire Insurance Fund		
From Trust Fund		
897. Salaries of 3 Positions	26,890	26,890
898. Expenses	4,120	4,130
899. Operating Capital Outlay	1,500	1,000
900. Special Payment of Fire Loss	100,000	100,000

ITEM	1963-64	1964-65
TUBERCULOSIS BOARD, STATE*		
901. Salaries of 1156 Positions From General Revenue Fund	3,440,000	3,570,000
902. Other Personal Services From General Revenue Fund	68,900	68,900
903. Expenses		
From General Revenue Fund	454,000	385,000
From Maintenance Trust Fund	331,000	390,000
904. Food Products From Maintenance Trust Fund	460,000	460,000
905. Operating Capital Outlay From Maintenance Trust Fund	100,000	50,000
906. Payment of Principal and Interest From Principal and Interest Trust Fund	17,840	17,320

*Provided, that, if during the biennium there shall be no reasonable need for the continued use of all of the hospitals included in this program, one of the hospitals, and all appurtenances thereto, shall be assigned and transferred by the State Tuberculosis Board, pursuant to §392.02, to the Board of Commissioners of State Institutions for other institutional use of the state as in its judgment and discretion appears proper. If such transfer is made, the Budget Commission is authorized, notwithstanding the provisions of §282.061, to transfer the surplus of the appropriations in Items 901, 902, 903, 904, and 905 to the state agency authorized to operate such institution.

VETERANS' COMMISSION, STATE		
From General Revenue Fund		
907. Salaries of 53 Positions	265,140	272,340
908. Expenses	35,000	35,000
909. Operating Capital Outlay	4,400	2,450
TOTAL OF SUBSECTION (2) FROM GENERAL REVENUE FUND	$413,899,863	$436,811,733
TOTAL OF SUBSECTION (2) FROM TRUST FUNDS	$373,397,806	$390,000,800

(3) EMERGENCY, DEFICIENCY APPROPRIATIONS.—The moneys in the following items are appropriated from the general revenue fund for the indicated fiscal years of the biennium to the budget commission to supplement the appropriations made from the general revenue fund to the named agencies in subsection (2) for the particular activity or function to be performed, to be used solely for needs arising as the result of an emergency, or deficiency, as the case may be. This money shall be transferred to the affected requesting agency's account only after the budget commission hears evidence and determines the existence of an emergency or that insufficient moneys were appropriated to pay the necessary costs of proper administration of the duties assigned to the requesting agency, as the case may be, during a public hearing and upon the affirmative vote of five members of said commission. No money appropriated in this subsection shall be used to create any new agency or function, or for attorney's fees, increases of salaries or the construction or equipping of any building.

ITEM	1963-64	1964-65
1. Emergency	$ 500,000	$ 500,000
2. Deficiency	500,000	500.000
TOTAL OF SUBSECTION (3) FROM GENERAL REVENUE FUND	$ 1,000,000	$ 1,000,000

(4) COUNTY SCHOOLS; CAPITAL OUTLAY, SCHOOL SALES TAX.— The moneys in the following items are appropriated from the general revenue fund for the indicated fiscal

years of the biennium to the board of education to be expended in the manner and for the purpose provided in §§236.074 and 236.075, and these appropriations are in lieu of the continuing appropriations in said sections.

ITEM	1963-64	1964-65
1. County School Additional Capital Outlay (See §235.074)	$ 10,597,000	$ 11,324,000
2. County School Sales Tax (See §236.075)	27,275,600	28,889,850
TOTAL OF SUBSECTION (4) FROM GENERAL REVENUE FUND	$ 37,872,600	$ 40,213,850

(5) CAPITAL OUTLAY; BUILDINGS, IMPROVEMENTS; CERTAIN BOARDS.—The moneys in the following items are appropriated from the named funds for the indicated fiscal years of the biennium for capital outlay—buildings and improvements:

(a) *Junior colleges.*—From the general revenue fund to state board of education for capital outlay—buildings, improvements and equipments, exclusive of site purchases, to be allocated to the boards of public instruction of the following counties for the named junior colleges. Upon request of the named county boards of public instruction and approval of such request by the state board of education and the budget commission, the comptroller shall disburse the appropriations to the named county's school fund to be deposited to the credit of the named junior college construction fund.

ITEM	1963-64	1964-65
BAY COUNTY		
1. Gulf Coast	$ 229,699	
BREVARD COUNTY		
2. Brevard	968,858	
BROWARD COUNTY		
3. Broward	1,431,646	
COLUMBIA COUNTY		
4. Lake City	990,075	
DADE COUNTY		
5. Dade	4,612,718	
ESCAMBIA COUNTY		
6. Pensacola	972,638	
JACKSON COUNTY		
7. Chipola	214,884	
8. Jackson	15,074	
LAKE COUNTY		
9. Lake-Sumter	588,150	
10. Johnson	311,860	
LEE COUNTY		
11. Edison	994,860	
MADISON COUNTY		
12. North Florida	112,524	
13. Suwannee River	21,173	
MANATEE COUNTY		
14. Manatee	652,053	
MARION COUNTY		
15. Central Florida	410,690	
16. Hampton	47,522	
PALM BEACH COUNTY		
17. Palm Beach	1,279,414	
18. Roosevelt	25,443	
PINELLAS COUNTY		
19. St. Petersburg	2,106,187	
20. Gibbs	132,417	
PUTNAM COUNTY		
21. St. Johns River	341,903	
ST. LUCIE COUNTY		
22. Indian River	253,549	
VOLUSIA COUNTY		
23. Daytona Beach	533,187	
TOTAL OF SUBSECTION (5)(a) FROM GENERAL REVENUE FUND	$ 17,246,524	

(b) *Board of commissioners of state institutions.*—From the general revenue fund to board of commissioners of state institutions for capital outlay—buildings and improvements for the agencies listed herein for the purpose of providing the buildings and improvements as listed and described in each item; provided, however, that no contract shall be entered into or any of the funds encumbered in any manner without the approval and consent of at least five members of the board of commissioners of state institutions. The sums herein designated in respect to each item are the maximum sums appropriated hereby and to be expended hereunder for the respective items listed; provided, however if the amount to fully complete any building, project, or improvement in the particular item under any agency listed herein is less than the specific amount designated for such item, then, notwithstanding the provisions of §282.081 (3), the surplus amount in that behalf may be used to supplement the amount designated for any other items under the same agency by and with the approval of the budget commission where it determines that a deficiency exists in such item.

ITEM	1963-64	1964-65
1. Deleted	$	$
2. Deleted	$	$
3. Deleted	$	$
4. Deleted	$	$
BLIND, FLORIDA COUNCIL FOR THE		
5. Reconstruction and Unification of All Agency Facilities Located in Daytona Beach—Matching	400,000	
6. Deleted		
COMMISSIONERS OF STATE INSTITUTIONS, BOARD OF		
7. Capitol Center Heating and Electric Systems	100,000	
DIVISION OF CHILD TRAINING SCHOOLS		
School for Boys at Marianna		
8. General Renovation & Expansion	75,000	
9. Deleted		
School for Boys at Okeechobee		
10. Dormitory Cottages (2)—25 Boys Each	178,000	
11. Swimming Pools (2)	45,000	
11a. Detention Facility—Renovation or Construction	75,000	
School for Girls at Ocala & Forest Hills		
12. Sewer & Water Lines to Detention Cottages	25,200	
DIVISION OF CORRECTIONS (Provided, however, that to the extent practical, the Division shall use inmate labor in constructing the buildings herein authorized.)		
Apalachee Correctional Institution		
13. Administration Building	145,000	
14. Deleted		
Avon Park Correctional Institution		
15. Dormitories (2)	63,000	
Florida Correctional Institution		
16. Central Kitchen	72,000	
Florida State Prison		
17. Sewer Renovations	214,000	
18. Deleted		
19. Superintendent's Residence	15,000	
20. Addition to Academic Building	98,789	
Glades Correctional Institution		
21. One Temporary Dormitory	60,900	
22. Two Permanent Dormitories	291,000	
23. Dining Room Addition & Renovations	31,000	
24. Deleted		
25. Deleted		
Reception & Medical Center		
26. Phase I	4,477,504	
Sumter Correctional Institution		
27. Phase I	2,430,458	
DIVISION OF MENTAL HEALTH		
Florida State Hospital		
28. Ward Building for Colored Patients—Replacement	1,930,000	

ITEM	1963-64	1964-65
29. New Ward Building & Serving Rooms—For White Female Patients	986,000	
30. Major Repairs & Improvements to Existing Buildings	248,200	
G. Pierce Wood Memorial Hospital		
31. New Laundry—Carlstrom Division	384,900	
32. Occupational—Recreational Therapy Building, Carlstrom Division	492,000	
33. Two-Story Ward Building Remodeled with Additions, Carlstrom Division	116,500	
34. Repairs & Renovation—Dorr Field	75,000	
35. Intensive Treatment Building, Carlstrom	450,000	
South Florida State Hospital		
36. Three 100 Bed Continued Treatment Buildings	1,695,000	
37. Sewage Plant Addition	100,200	
38. Deleted		
39. Major Repairs & Improvements	11,500	
40. Laundry—Enlargement	5,800	
DIVISION OF SUNLAND TRAINING CENTERS		
Sunland Training Center—Dade County		
41. Planning and Construction	3,000,000	
Sunland Training Center in Lee County		
42. Cottage (Type B)	130,000	
43. Adjustment Wing—Hospital	22,850	
44. Air Condition Hospital & Nurseries	16,825	
45. Swimming Pools (2)	75,000	
Sunland Training Center at Marianna		
46. Deleted		
47. Infirmary	75,000	
48. Cooling Tower and Major Renovations	41,600	
49. Cottages (Type B) Two	280,700	
50. Conversion of Seven Existing Cadet Quarters to Cottages	260,550	
Sunland Training Center at Orlando		
51. Air Condition Present 600-Bed Hospital	75,000	
FLORIDA STATE FIRE COLLEGE		
52. Training Shed	10,100	
53. Maintenance Shop	8,500	
RINGLING MUSEUM OF ART		
54. Lighting Fixtures	35,000	
55. Circus Museum Exhibition Building No. 1	70,000	
56. Administration Building—Planning	25,000	
CONSERVATION, BOARD OF		
Division of Salt Water Fisheries		
57. Maintenance Shop Building	17,200	
DEVELOPMENT COMMISSION, FLORIDA		
58. Renovating Florida Welcome Stations	50,000	
EDUCATION, DEPARTMENT OF		
59. W. V. Knott Building—Add 2 Floors (For Planning)	28,000	
EDUCATION, STATE BOARD OF		
Deaf and Blind, Board of Trustees of the Florida School for the		
60. Maintenance and Storage Building	180,000	
61. Dormitory for Blind (120 White Students)	550,000	
62. Classroom Building	550,000	
EVERGLADES FIRE CONTROL DISTRICT, BOARD OF COMMISSIONERS OF THE		
63. Fire Station	25,000	
FORESTRY, FLORIDA BOARD OF		
64. Lump Sum	250,000	
HEALTH, STATE BOARD OF		
65. Regional Laboratory Building —Tampa (Matching)	300,000	
66. Regional Laboratory Building —Pensacola (Matching) Provided proceeds from sale of existing property be deposited to General Revenue Fund	120,000	
JUDICIAL DEPARTMENT		
Supreme Court		
67. Double Well System for Air Conditioning	10,000	
68. Double-decking Basement Library	40,000	
PARKS AND HISTORIC MEMORIALS, FLORIDA BOARD OF		
69. Crystal River State Park	90,000	
70. Acquisition of Land, St. Joseph Peninsula	100,000	
71. Acquisition of Land, Fort San Marcos	100,000	
72. Lump Sum, other state parks	800,000	
PUBLIC SAFETY, DEPARTMENT OF		
73. Highway Patrol Station—Bradenton	70,000	
74. Highway Patrol Station—Collier County	65,000	
75. Highway Patrol Station—Ocala	60,000	
76. Highway Patrol Station—Pensacola	60,000	
77. Highway Patrol Station—Quincy	60,000	
78. Highway Patrol Station—Lake County	60,000	
79. Highway Patrol Station—Orange County	100,000	
80. Additions & Alterations to Highway Patrol Stations	200,000	
81. Communications and Work Shops	59,021	
82. Radio Tower & Transmitter House	5,900	
RAILROAD AND PUBLIC UTILITIES COMMISSION		
83. Remodeling Whitfield Building	75,536	
TOTAL OF SUBSECTION (5)(b) FROM GENERAL REVENUE FUND	$ 23,443,733	

(c) *Board of commissioners of state institutions; trust funds.*—From the following trust funds to the board of commissioners of state institutions for capital outlay-buildings and improvements for the agencies listed herein for the purpose of providing the buildings and improvements as listed and described in each item. The sums herein designated in respect to each item are the maximum sums appropriated hereby and to be expended hereunder for the respective items listed; provided, however, if the amount to fully complete any building, project, or improvement in the particular item under any agency listed herein is less than the specific amount designated for such item, then, notwithstanding the provisions of §282.081(3), the surplus amount in that behalf may be used to supplement the amount designated for any other items under the same agency by and with the approval of the budget commission where it determines that a deficiency exists in such item.

ITEM	1963-64	1964-65
AGRICULTURE, STATE DEPARTMENT OF		
Division of Marketing		
From the General Inspection Trust Fund		
1. Extensions and Renovations to Markets	$ 158,255	
DIVISION OF CORRECTIONS		
From the Industries Trust Fund		
Apalachee Correctional Institution		
2. Industries Building	100,000	
Florida State Prison		
3. Industries Building	125,000	
Glades Correctional Institution		
4. Equipment Storage Shed	36,000	
TOTAL OF SUBSECTION (5)(c) FROM TRUST FUNDS	$ 419,255	

(6) GENERAL REVENUE FUND; CAPITAL OUTLAY, BUILDINGS AND IMPROVEMENTS; BOARD OF CONTROL.—The moneys in the following items are appropriated

from the general revenue fund for the indicated fiscal years of the biennium to the board of control for capital outlay—buildings and improvements for the agencies listed herein for the purpose of providing the buildings and improvements as listed and described in each item. The sums herein designated in respect to each item are the maximum sums appropriated hereby and to be expended hereunder for the respective items listed; provided, however, if the amount to fully complete any building, project, or improvement in the particular item under any agency listed herein is less than the specific amount designated for such item, then, notwithstanding the provisions of §282.081(3), the surplus amount in that behalf may be used to supplement the amount designated for any other items under the same agency by and with the approval of the budget commission where it determines that a deficiency exists in such item.

ITEM	*1963-64*	*1964-65*
CONTROL, BOARD OF		
From General Revenue Fund		
Institutions of Higher Learning:		
1. Utility Expansion and Other Campus Improvements—FSU	$ 913,000	
2. Library Addition—UF	2,250,000	
3. Extension of Utilities and Other Campus Improvements—USF	879,000	
4. Cafeteria—Central Area (Part I)—FAU	600,000	
5. Utilities Expansion—FAU	850,000	
6. General Classroom Building, Including College of Business Administration—USF	1,300,000	
7. Dormitory—FAMU	750,000	
8. Auditorium and Humanities Building—FAU	1,900,000	
9. Chemistry Unit I—FSU	2,750,000	
10. College of Education, Renovation—UF	150,000	
11. Gulf Coast Experiment Station	200,000	
12. Psychotic Children's Unit—UF	500,000	
TOTAL OF SUBSECTION (6) FROM GENERAL REVENUE FUND	$ 13,042,000	

(7) REVENUE CERTIFICATES; CAPITAL OUTLAY—BUILDINGS AND IMPROVEMENTS; FINANCING; BOARD OF CONTROL.—The moneys in the following items are appropriated from the proceeds of revenue certificates issued for such purpose and gifts and grants made for such purpose to the board of control for capital outlay—buildings and improvements for the purpose of providing the buildings and improvements as listed and described in each item, and are in lieu of all laws authorizing the board of control to construct capital outlay—buildings and improvements without specific legislative authorization; this shall not be construed to prohibit alterations or remodeling to meet needs as determined by the board of control; provided, that the amount of state funds included in the total cost of the completed alterations or completed remodeling shall not exceed thirty-five thousand dollars; provided, however, that state funds in excess of fifteen thousand dollars shall not be used unless approved by the budget commission; provided, further, that this section shall not be construed to prohibit construction of dormitories and other auxiliary accommodations financed as provided in §243.131. The sums herein designated in respect to each item are the maximum sums appropriated hereby and to be expended hereunder for the respective items listed; provided, however, if the amount to fully complete any building, project, or improvement in the particular item under any agency listed herein is less than the specific amount designated for such item, then, notwithstanding the provisions of §282.081(3), the surplus amount in that behalf may be used to supplement the amount for any other items under the same agency by and with the approval of the budget commission where it determines that a deficiency exists in such item.

ITEM	*1963-64*	*1964-65*
NONE	NONE	NONE
TOTAL OF SUBSECTION (7)	NONE	NONE

(8) REVENUE CERTIFICATES; CAPITAL OUTLAY—BUILDINGS AND IMPROVEMENTS; STATE BOARD OF EDUCATION.—The moneys in the following items are appropriated from the proceeds of revenue certificates issued for such purpose and gifts and grants made for such purpose to the state board of education for capital outlay—buildings, improvements and equipment, exclusive of site purchases, to be allocated to the boards of public instruction of the following counties for the named junior colleges, and are in lieu of all laws authorizing the state board of education or any other state agency to construct capital outlay—buildings and improvements without specific legislative authorization.

ITEM	*1963-64*	*1964-65*
NONE	NONE	NONE
TOTAL OF SUBSCTION (8)	NONE	NONE

(9) STATE ROAD DEPARTMENT; ROAD PRISONS—The state road department is directed to replace in each of the fiscal years of the biennium one old type road prison with a modern facility. Moneys for these items are to come from the state roads primary trust fund.

(10) SALARIES, JUDICIAL OFFICERS; LIMITATIONS.—

(a) The following judicial officers shall be paid by the state the following salaries:

Justices of the supreme court $19,500.00 per annum.

Judges of the district courts of appeal $18,500.00 per annum.

Judges of the circuit courts $17,500.00 per annum.

(b) Provided that no judge of a district court of appeal, while drawing the foregoing salary, shall receive from any county or municipality any supplemental salary which shall make his total salaries exceed $22,000.00, and no judge of a circuit court shall, while drawing the foregoing salary, receive from any county or municipality any supplemental salary which shall make his total salaries exceed $21,000.00, but should the state salary of a judge of a district court of appeal fall below $21,500.00 or the state salary of a judge of a circuit court fall below $21,000.00, then any local or special law to the extent otherwise applicable shall be effec-

tive to provide a total compensation for such judges up to but not to exceed $22,000.00 for a judge of a district court of appeal and $21,000.00 for a judge of a circuit court; provided, however, any supplement now provided by local or special acts, to the extent it does not conflict with the maximum salary herein fixed, shall not be affected nor repealed by this provision.

(11) SALARIES, STATE ATTORNEYS AND ASSISTANTS; LIMITATIONS.—

(a) The salaries of the state attorneys shall be $13,500.00 each per annum and the salaries of assistant state attorneys shall be $9,000.00 each per annum; provided nothing herein shall be construed to reduce the salary of any state attorney or assistant state attorney, and provided further, that except as hereinafter provided, no state attorney, or assistant state attorney, while drawing the foregoing state salary, shall receive from any county or municipality any supplemental salary which shall make his total salary in excess of $18,500.00 per annum for the state attorney and $10,500.00 per annum for the assistant state attorney; and, provided further, that except as hereinafter provided, if the state salary of any state attorney or assistant state attorney is reduced below the above figures, then any local or special law to the extent applicable shall be effective to provide up to but not to exceed the total compensation for the state attorney of $18,500.00 per annum and assistant state attorney of $10,500.00 per annum; provided, however, any supplement now provided by local or special act to the extent it does not conflict with the maximum salary herein fixed, shall not be affected nor repealed by this provision.

(b) The state attorneys and assistant state attorneys serving in the fourth, eleventh, and thirteenth judicial circuits of the state of Florida may be paid a supplement by the counties in which they are elected or appointed, such supplement to be in addition to the highest salary authorized herein.

(12) INDUSTRIAL COMMISSION BUILDING, JACKSONVILLE.—The state budget commission is authorized to approve the use as a loan of an amount not to exceed $500,000.00 from the special administration trust fund established by §440.50, in connection with the construction of the industrial commission building in Jacksonville, which amount shall be repaid to said fund from the rental income of the building, with interest thereon equal to the average interest earned by that portion of said fund invested at interest by the state treasurer.

TOTAL OF SUBSECTION (12) FROM TRUST FUNDS $500,000.00

History.—§§1-12, ch. 63-300.
cf.—§282.011 Miscellaneous appropriations.

282.011 Miscellaneous appropriations; 1963-1965 biennium.—

(1) MONUMENT ON BATTLEFIELD OF GETTYSBURG.—The sum of twenty thousand dollars is hereby appropriated from the general revenue fund for the erection of an appropriate monument on the battlefield of Gettysburg in memory of the soldiers of Perry's Florida brigade who took part in that battle.

The governor shall appoint five suitable persons, citizens of the state to serve without compensation, to do and perform all acts necessary to carry out the purposes of this subsection.

(2) MINIMUM FOUNDATION FUND; JUNIOR COLLEGES.—There is hereby appropriated from the general revenue fund the amount of eight hundred sixty-five thousand seven hundred two dollars to the minimum foundation program for junior colleges for the 1961-63 biennium. The purpose of this appropriation shall be to finance the minimum foundation program in its entirety for the current biennium.

(3) DEPARTMENT OF PUBLIC SAFETY; HIGHWAY PATROL.—There is hereby appropriated from the state general revenue fund the sum of seven hundred sixty-seven thousand four hundred eighty-four dollars for the purpose of effectuating §321.07.

(4) BOARD OF CONTROL; PURCHASE EQUIPMENT FOR DORMITORY, FLORIDA ATLANTIC UNIVERSITY.—There is hereby appropriated from the general revenue fund of the state the sum of one hundred fifty thousand dollars to the board of control to purchase equipment for a dormitory to be constructed on the campus of the Florida Atlantic University.

(5) STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; PURCHASE OF TEXTBOOKS.—That six thousand dollars is hereby appropriated from the general revenue fund for the biennium for carrying out the purposes of §233.49.

(6) FLORIDA BOARD OF FORESTRY, FIRE CONTROL.—

(a) *Collier county.*—There is appropriated from the state general revenue fund to the Florida board of forestry the following amounts for cooperative fire control in Collier county:

ITEM	*1963-64*	*1964-65*
1. Salaries	$ 54,388.00	$ 57,520.00
2. Expense	8,963.00	9,693.00
3. Operating capital outlay	94,001.00	
4. Fixed capital outlay	80,500.00	
Total	$237,852.00	$ 67,213.00

Said moneys, together with the Collier county matching moneys as provided by law, shall be expended for the purposes of fire control in Collier county.

This act shall take effect immediately upon execution of an agreement between the Florida board of forestry and Collier county.

(b) *Polk county.*—There is appropriated from the state general revenue fund to the Florida board of forestry the following amounts for cooperative fire control in Polk county:

ITEM	*1963-64*	*1964-65*
1. Salaries	$ 89,664.00	$ 94,860.00
2. Expenses	21,930.00	23,830.00
3. Operating capital outlay	126,447.00	
4. Fixed capital outlay	152,100.00	
Total	$390,141.00	$118,690.00

Said moneys, together with the Polk county matching moneys as provided by law, shall be expended for the purposes of fire control in Polk county.

This act shall take effect immediately upon execution of an agreement between the Florida board of forestry and Polk county.

(7) NATIONAL GUARD ARMORY; CITY OF STARKE.—

(a) There shall be appropriated from the general revenue fund of the state to the military department, the sum of seventy-five thousand dollars for the planning, construction, furnishing and equipping of a national guard armory in the city of Starke, Bradford county.

(b) This appropriation is contingent upon other funds in not less than a similar amount being raised from other than state funds to match those funds appropriated in paragraph (a) as provided in §288.31.

(c) Such appropriation shall continue beyond this biennium so that sufficient time will be available to the military department to obtain matching federal funds for the construction of such armory.

(8) AGRICULTURAL AND LIVESTOCK FAIR COMMITTEE.—There is hereby appropriated from the general revenue fund of the state to the general inspection trust fund of the state treasury to the special account of the agricultural and livestock fair committee, created by §616.15, for the biennium beginning July 1, 1963, and ending June 30, 1965, the sum of three hundred thousand dollars to be used as a matching fund in the construction of agricultural and livestock exhibit buildings in the state on the conditions and restrictions in §§616.21-616.23, providing, however, an amount not to exceed twenty-one thousand dollars annually from this appropriation may be used to defray the expenses of the agricultural and livestock fair committee in the administration of their duties under §§616.21-616.23.

(9) PUBLIC DEFENDERS; SALARIES.—The moneys in the following items are appropriated from the general revenue fund for the indicated fiscal years of the biennium for the public defender system as the only appropriation of moneys to be used to pay the total salary of each position indicated in the item as provided in §282.051(1).

ITEM	*1963-64*	*1964-65*
First judicial circuit:		
1. One public defender	$ 8,000.00	$ 8,000.00
Second judicial circuit:		
2. One public defender	8,000.00	8,000.00
Third judicial circuit:		
3. One public defender	5,000.00	5,000.00
Fourth judicial circuit:		
4. One public defender	9,750.00	9,750.00
5. One assistant public defender	6,500.00	6,500.00
Fifth judicial circuit:		
6. One public defender	8,000.00	8,000.00
Sixth judicial circuit:		
7. One public defender	9,750.00	9,750.00
8. One assistant public defender	6,500.00	6,500.00
Seventh judicial circuit:		
9. One public defender	8,000.00	8,000.00
Eighth judicial circuit:		
10. One public defender	8,000.00	8,000.00
Ninth judicial circuit:		
11. One public defender	9,750.00	9,750.00
12. One assistant public defender	6,500.00	6,500.00
Tenth judicial circuit:		
13. One public defender	9,750.00	9,750.00
14. One assistant public defender	6,500.00	6,500.00
Eleventh judicial circuit:		
15. One public defender	9,750.00	9,750.00
16. Two assistant public defenders	13,000.00	13,000.00
Twelfth Judicial Circuit:		
17. One public defender	8,000.00	8,000.00
Thirteenth judicial circuit:		
18. One public defender	9,750.00	9,750.00
19. One assistant public defender	6,500.00	6,500.00
Fourteenth judicial circuit:		
20. One public defender	8,000.00	8,000.00
Fifteenth judicial circuit:		
21. One public defender	9,750.00	9,750.00
22. One assistant public defender	6,500.00	6,500.00
Sixteenth judicial circuit:		
23. One public defender	5,000.00	5,000.00
Total from general revenue fund	$ 186,250.00	$ 186,250.00

(10) FLORIDA HOTEL AND RESTAURANT COMMISSION; INSPECTIONS.—The sum of fifty thousand dollars is hereby appropriated from the general revenue fund for the 1963-65 biennium to carry out the provisions of §509.032.

(11) STATE BOARD OF CONSERVATION; STUDY OF RED TIDE.—There is hereby appropriated from the general revenue fund of the state the sum of two hundred fifty thousand dollars for the biennium 1963-1965 to the state board of conservation for the purpose of conducting a study of red tide.

One hundred twenty-five thousand dollars shall be released each year of said biennium for carrying out the purpose of this subsection.

(12) STEPHEN FOSTER MEMORIAL, CARILLON TOWER.—The sum of twenty thousand dollars is appropriated from the general revenue fund for the purpose of paying off indebtedness plus interest due on the carillon tower at Stephen Foster memorial.

(13) STATE DEPARTMENT OF AGRICULTURE.—

(a) *Poultry and domestic animal disease diagnostic laboratory; Suwannee county.*—The sum of one hundred forty-seven thousand fifty-six dollars is hereby appropriated from the general revenue fund for the purposes of constructing, equipping and staffing the laboratory and the paying of other costs necessary to carry out the provisions of this act for the 1963-65 biennium.

(b) *Pesticide residue program.*—The moneys in the following items are appropriated from the named funds for the indicated fiscal years of the biennium to the state department of agriculture as the amounts to be used to pay the salaries and other expenses for the pesticide residue program.

ITEM	*1963-64*	*1964-65*
1. Salaries of 12 Positions		
From General Revenue Fund	$ 33,486	$ 34,956
From General Inspection Trust Fund	33,486	34,956
2. Expenses		
From General Revenue Fund	23,800	23,800
From General Inspection Trust Fund	23,800	23,800
3. Operating capital outlay		
From General Revenue Fund	27,003	4,525
From General Inspection Trust Fund	27,002	4,525

(c) *Control and eradication of infectious anemia and piroplasmosis.*—There is hereby appropriated from the general revenue fund of the state one hundred fifty thousand dollars for the

biennium, of which sum two thirds may be expended during the fiscal year 1963-64, for carrying out the purposes of this chapter.

(14) LICENSE PLATES, RETROREFLECTIVE MATERIALS.—There is hereby appropriated the additional sum of ninety thousand dollars from the general revenue fund to be used to supplement the appropriation in item 759, §282.01(2) for the purchase of license plates treated with a retroreflective material. This subsection shall take effect January 1, 1965.

(15) DEPARTMENT OF PUBLIC WELFARE; CHILD ADOPTION SERVICES.—A sum of one hundred seventy thousand dollars is appropriated from the general revenue fund for the purpose of paying administrative expenses and costs, not covered by the fees charged for adoption services as herein provided, necessary to carry out provisions of this act during the next two years.

(16) FLORIDA WING CIVIL AIR PATROL.—A sum of twenty thousand dollars annually, for a total of forty thousand dollars for the 1963-65 biennium, is appropriated from the general revenue fund for the purpose of the acquisition, installation, conditioning and maintenance of equipment and facilities for the Florida wing headquarters and its subordinate units of the civil air patrol; provided, however, that no part of the appropriation shall be expended for the purchase of aircraft, uniforms, or personal effects of members of the civil air patrol or for compensation or salary to such members; provided, further, however, that the wing commander of the Florida wing of the civil air patrol may employ administrative help which may be paid from such appropriation.

The wing commander of the Florida wing of the civil air patrol shall furnish to the comptroller of the state a surety company bond payable to the governor of the state in a principal amount of not less than twenty thousand dollars.

(17) STATE BOARD OF EDUCATION; TRAINING GRANTS.—There is appropriated for the biennium 1963-1965 from the general revenue fund, the sum of forty thousand dollars for carrying out the purposes of §239.371.

(18) ANNIVERSARY OF BATTLE OF OLUSTEE.—The sum of five thousand dollars is hereby appropriated from the general revenue fund to be disbursed in such amount as may be necessary by the Florida library and historical commission to appropriately observe the anniversary of the battle of Olustee, or Ocean Pond.

The governor may appoint five citizens of Florida, to serve without compensation, as the battle of Olustee centennial advisory committee to the Florida library and historical commission to facilitate the carrying out of the purpose of this subsection.

History.—(1) §§1, 2, ch. 63-226; (2) §1, ch. 63-265; (3) §2, ch. 63-361; (4) §1, ch. 63-366; (5) §2, ch. 63-373; (6)(a) §§1, 2, ch. 63-369; (6)(b) §§ 1, 2, ch. 63-471; (7) §§1-3, ch. 63-402; (8) §1, ch. 63-393; (9) §1, ch. 63-410; (10) §1, ch. 63-420; (11) §1, ch. 63-458; (12) §1, ch. 63-477; (13)(a) §2, ch. 63-476, (b) §1, ch. 63-497, (c) §3, ch. 63-442; (14) §§1, 2, ch. 63-525; (15) §8, ch, 63-449; (16) §§1, 2, ch. 63-548; (17) §2, ch. 63-561; (18) §§1, 2, ch. 63-571.

cf.—§§27.55, 27.56 public defender.

Note.—§282.001(8) Formerly §§603.20, 616.20.

282.012 Expenditures for capital outlay; junior colleges and institutions of higher learning; subject to ratification of constitutional amendment.—

(1) This section shall take effect only upon and pursuant to ratification at a special election to be held on November 5, 1963 as provided by chapter 63-523 of an amendment to Art. XII of the state constitution adding a new section authorizing the issuance of bonds for capital outlay at institutions of higher learning.

(2) The moneys in the following items are authorized to be expended for the enumerated authorized capital outlay projects from the institutions of higher learning and junior colleges capital outlay and debt service trust fund in the state treasury or from the proceeds of bonds or certificates payable from the institutions of higher learning and junior colleges capital outlay and debt service trust fund:

(a) State board of education for the named junior colleges to be allocated to the boards of public instruction of the following counties upon request of the board of public instruction of the county subject to approval of such request by the state board of education and the state budget commission, and the comptroller shall disburse the approved amount to the county's school fund to be deposited to the credit of the named junior college construction fund.

Item	(County college)	Amount
	BAY COUNTY	
1.	Gulf Coast	$ 511,966.00
	BREVARD COUNTY	
2.	Brevard	2,159,432.00
	BROWARD COUNTY	
3.	Broward	3,190,922.00
	COLUMBIA COUNTY	
4.	Lake City	1,362,628.00
	DADE COUNTY	
5.	Miami-Dade	10,281,022.00
	ESCAMBIA COUNTY	
6.	Pensacola	2,167.850.00
	JACKSON COUNTY	
7.	Chipola	478,954.00
8.	Jackson	33,592.00
	LAKE COUNTY	
9.	Lake-Sumter	809,456.00
10.	Johnson	429,212.00
	LEE COUNTY	
11.	Edison	1,369,212.00
	MADISON COUNTY	
12.	North Florida	250,804.00
13.	Suwannee River	47,196.00
	MANATEE COUNTY	
14.	Manatee	1,453,322.00
	MARION COUNTY	
15.	Central Florida	915,372.00
16.	Hampton	105,920.00
	PALM BEACH COUNTY	
17.	Palm Beach	2,851,600.00
18.	Roosevelt	56,712.00
	PINELLAS COUNTY	
19.	St. Petersburg	4,694,388.00
20.	Gibbs	295,140.00
	PUTNAM COUNTY	
21.	St. Johns River	762,052.00
	ST LUCIE COUNTY	
22.	Indian River	565,126.00
	VOLUSIA COUNTY	
23.	Daytona Beach	1,188,368.00
	TOTAL PARAGRAPH (a)	$ 35,980,246.00

(b) Board of control for the institutions under its jurisdiction, namely but not limited

to the university of Florida, Florida state university, university of South Florida, Florida Atlantic university, Florida agricultural and mechanical university, the institution to be located in east central part of Florida and the institution to be located in Escambia county, as listed herein for the capital improvement projects as listed and described in each item. The sums herein designated in respect to each item are the maximum sums to be expended hereunder for the respective items listed; provided however that grants and donations may be added to any item; and provided further that if the amount to complete any project in the particular item listed herein is less than the specific sum designated for such item, then notwithstanding the provisions of §282.081(3), the surplus amount unexpended may be used to supplement the sum designated for any other item listed herein by and with the approval of the state budget commission where it determines that a deficiency exists in such item.

Item	Amount
1. University of Florida:	
General Classroom Building	$ 1,200,000.00
Library Addition	2,250,000.00
College of Education, Renovation	350,000.00
Gulf Coast Experiment Station	200,000.00
Relocate Plant and Grounds and Prepare Site	1,000,000.00
Connection of Engineering and Industries Building to Reed Laboratory	465,000.00
Engineering—Unit No. 1	2,500,000.00
Chemistry and Chemical Engineering	1,500,000.00
Mechanical Engineering Building	2,000,000.00
Life Science (Biology) Building: a) Part I	2,127,000.00
b) Part II Health Center Project—Part I	330,000.00
Subtotal	$ 13,922,000.00
2. Florida State University:	
Men's Dormitory—Equipment	229,000.00
Utility Expansion and Other Campus Improvements	913,000.00
Chemistry Unit 1	2,750,000.00
Library Additions	1,490,000.00
Infirmary (Total Cost $1,000,000.00)	250,000.00
Social Science Building	2,500,000.00
Science Unit 1	1,300,000.00
Relocating Greenhouse; Computer Center Expansion; Molecular Building Loading Ramp; Physical Education Facilities	215,000.00
Women's Dormitory (Matching)	921,000.00
Land Acquisition	350,000.00
Oceanograph Institute Coastal Facilities	200,000.00
Subtotal	$ 11,118,000.00
3. Florida Agricultural and Mechanical University:	
Men's Dormitory (matching)	$ 750,000.00
Women's Dormitory (matching)	750,000.00
Vocational Technical Building	1,750,000.00
Renovation of Vocational Technical Building for Maintenance, Warehouse and Receiving Center	50,000.00
Hospital Air Conditioning 2 Floors (Patient Rooms)	70,000.00
Music and Arts Classroom Building	1,000,000.00
Poultry Buildings and Developing Farm Transferred from Florida State University	182,000.00
Farm Mechanics Building	150,000.00
Subtotal	$ 4,702,000.00
4. University of South Florida:	
Extension of Utilities and Other Campus Improvements	879,000.00
General Classroom Building Including College of Business Administration	$ 1,300,000.00
Dormitory Equipment and Furnishings	98,000.00
Health and Physical Education Classroom Building	1,800,000.00
Central Receiving and Storage Building	130,000.00
Maintenance Service Shops	135,000.00
Expansion and Central Utilities Plant	667,000.00
General Classroom Building Including College of Education	1,500,000.00
Outdoor Physical Education Facilities	250,000.00
Dormitories for Fall 1965 (matching)	773,000.00
Central Core for Fall 1965 Dormitories (matching)	311,000.00
Infirmary	750,000.00
Science and Technology Building: a) Construction	$ 1,900,000.00
b) Utilities Extension to Building	262,000.00
Subtotal	$ 10,755,000.00
5. Florida Atlantic University:	
Cafeteria—Central Area (Part I)	600,000.00
Utilities Expansion	850,000.00
Auditorium and Humanities Building	1,900,000.00
Dormitory Equipment	150,000.00
Social Sciences and Administration Building	1,800,000.00
Science Building	1,600,000.00
Dormitories (matching)	1,000,000.00
Physical Education Facilities	400,000.00
Cafeteria—Central Area (Part II)	300,000.00
Subtotal	$ 8,600,000.00
6. Proposed Degree Granting Institution at Pensacola:	
Administrative—Classroom Building	$ 1,400,000.00
Planning for 1965 construction	200,000.00
Subtotal	$ 1,600,000.00
7. East Central Florida Area:	
Extension of the University of Florida Engineering College in the east central Florida area	$ 1,000,000.00
Proposed degree granting institution in east central Florida: Planning for construction	200,000.00
Subtotal	$ 1,200,000.00
TOTAL PARAGRAPH (b)	$ 51,897,000.00

(c) The respective boards are authorized to select the projects to be realized from those listed in paragraphs (a) and (b) of subsection (2) of this section provided that of the proceeds of bonds or revenue certificates issued during the 1963-65 biennium under the provisions of Art. XII the state constitution, not more than thirty million dollars shall be allocated to projects listed in paragraph (a) subsection (2) of this section and not more than forty five million dollars shall be allocated to projects listed in paragraph (b), subsection (2) of this section; provided further however that all projects listed in subsection (2) of this section which are in the 1963 general appropriations act shall be realized during the 1963-65 biennium.

(d) The allocation of funds among the institutions listed in paragraph (a) of subsection (2) of this section shall be in the same ratio to total allocations as the ratio of authorizations for each institution bears to total authorizations, except that the ratio of allocation for

any institution to the total allocation may be reduced in an amount not exceeding five per cent.

(3) If any general revenue funds are released and expended for capital outlay projects appropriated in the 1963 general appropriations act and provided for herein then the proceeds of the bonds or certificates issued in accordance with the amendment to Art. XII of the state constitution shall be first used to reimburse the general revenue fund of the state.

(4) The capital outlay projects approved herein are to be financed in accordance with the amendment to Art. XII of the state constitution, and any moneys in the "Institutions of higher learning and junior colleges capital outlay and debt service trust fund", authorizing the state board of education to issue bonds or certificates for the purpose of obtaining funds for acquiring, building, constructing, altering, improving, enlarging, finishing or equipping capital outlay projects authorized by the legislature upon a vote of three-fifths of the elected members of each house.

(5) The bond review board shall review the bonds or certificates issued under the provisions of the amendment to Art. XII of the state constitution to determine whether such financing has legislative approval and is consistent with legislative intent.

(6) To assist the legislature in future implementation of the amendment to Art. XII of the state constitution, if adopted, the state board of education is directed to conduct a study of future needs of higher education in Florida with special attention to vocational-technical education, including vocational training at the state school for the deaf and blind. This study shall include identifying the needs of the state for vocational-technical education, describing the role of existing institutions in providing such education, and proposing a plan for the long-range development, including organization, finance, and location, of institutions which may be needed to provide vocational-technical education. The report of this study shall be made available to the 1965 legislature.

History.—§§1-6, ch. 63-524.

282.02 University of Florida; building appropriations.—

(1) The construction or alteration of the following buildings is hereby authorized at the university of Florida to be paid from the following funds:

(a) An addition to and air conditioning of the university infirmary at a cost not to exceed one hundred seventy five thousand dollars which amount is hereby appropriated from the university of Florida auxiliary trust fund.

(b) Completion of the renovation of the main floor of the new wing of the Florida-union building at a cost not to exceed forty thousand dollars which amount is hereby appropriated from the Florida-union building trust fund.

(c) Construction of a wing for office space for the food service division at a cost not to exceed twenty thousand dollars which amount is hereby appropriated from the auxiliary fund, food service division.

(d) An addition to Florida field stadium at a cost not to exceed one million dollars; all from funds available to the university athletic association and from the proceeds of self-liquidating revenue certificates issued for such purpose.

(e) Construction and equipping of an institutional laundry to provide laundry service for the teaching hospital, housing facilities, food service, and other university activities from the proceeds of revenue certificates in an amount not to exceed three hundred fifty thousand dollars.

(f) The construction of a bookstore and post office addition to the student center at the Florida state university is hereby authorized at a cost not to exceed seventy-five thousand dollars which amount is hereby appropriated from the proceeds of sale of revenue certificates issued for such purposes.

(g) The construction of an addition to the university school at the Florida state university is hereby authorized at a cost not to exceed one hundred thirty-nine thousand eight hundred dollars which amount is hereby appropriated from the proceeds of sale of revenue certificates issued for such purposes.

History.—§§1, 2, ch. 57-356; §1, ch. 57-802; (2) r. §1, ch. 61-516; (1)(a), (d) §1, ch. 63-372.

282.021 Definitions.—For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and operating budgets, the following words shall have the meanings indicated:

(1) LEGISLATIVE BUDGETS. — A state agency's request to the legislature, filed with the budget commission pursuant to §216.02, or supplemental detailed requests filed with the legislature, for the amounts of money such agency believes will be needed in the performance of the functions that it is authorized by law to perform.

(2) APPROPRIATIONS ACTS.—The legislature's authorization, based upon legislative budgets or based upon legislative findings of the necessity for an authorization where no legislative budget is filed, for the expenditure of amounts of money by an agency for stated purposes in the performance of the functions it is authorized by law to perform.

(3) OPERATING BUDGETS. — A state agency's plan for the annual expenditures of money authorized by the legislature, filed with the budget commission pursuant to §216.16 and within the amounts provided for such agency in the appropriations acts, together with the exceptions provided for in §282.061, for the functions to be performed as authorized by law.

(4) STATE AGENCY.—Any state officer, department, division, board, bureau, commission or other separate unit of the state government, created or established by law.

(5) PERQUISITES.—Those things, or the

use thereof, or services of a kind which confer on the officers or employees receiving same, some benefit that is in the nature of additional compensation, or which reduces to some extent the normal personal expenses of the officer or employee receiving the same, and shall include but not be limited to such things as quarters, subsistence, utilities, laundry services, medical service, use of state owned vehicles for other than state purposes, servants paid by the state, and other similar things.

(6) VETOED, 1961 BY GOVERNOR.

(7) FISCAL YEAR OF THE STATE. — A period of time beginning on July 1 and ending on the following June 30, both dates inclusive.

(8) BIENNIUM. — Two consecutive fiscal years beginning July 1 of every odd-numbered year.

(9) REVOLVING FUND. — A cash fund maintained within or outside of the state treasury and established from an appropriation, to be used by an agency in making authorized expenditures.

(10) APPROPRIATION.—A legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations acts.

(11) CONTINUING APPROPRIATION. — An appropriation automatically renewed without further legislative action, period after period, until altered or revoked by the legislature.

(12) EXPENDITURE.—The creation or incurring of a legal obligation to disburse money.

(13) DISBURSEMENT.—The payment of an expenditure.

(14) SALARY.—The cash compensation for services rendered for a specific period of time.

(15) OTHER PERSONAL SERVICES.—The compensation for services rendered by a person who is not a regular or fulltime employee filling an established position. This shall include, but not be limited to temporary employees, student or graduate assistants, common or casual labor, consultant fees and other services specifically budgeted by each agency in this category.

(a) In distinguishing between payments to be made from salaries appropriation and other personal services appropriation, those persons filling an established position shall be paid from salaries appropriations and those persons performing services for a state agency, but who are not filling an established position, shall be paid from the other personal services appropriations.

(b) It is further intended that those persons paid from salaries appropriations shall be state officers or employees and shall be eligible for membership in a state retirement system and those paid from other personal services appropriations shall not be eligible for such membership.

(16) EXPENSE—The usual, ordinary, and incidental expenditures by an agency, including, but not limited to, such items as contractual services, commodities and supplies of a consumable nature, current obligations and fixed charges, and excluding expenditures classified as operating capital outlay. Payments to other funds or local, state, or federal agencies are included in this budget classification of expenditure.

(17) OPERATING CAPITAL OUTLAY.—Equipment, including bound books, fixtures and other tangible personal property of a nonexpendable nature, the normal expected life of which is one year or more.

(18) POSITION.—The work, consisting of duties and responsibilities, assigned to be performed by an officer or employee.

(19) FULL-TIME POSITION.—A position being occupied by an officer or employee for the entire normally established work period, daily, weekly, monthly, or annually.

(20) PART-TIME POSITION.—A position being occupied by an officer or employee for less than the entire normally established work period.

(21) CLASS OF POSITIONS.—All positions which are sufficiently similar as to kind or subject matter of work, level of difficulty or responsibilities, and qualification requirements of the work to warrant the same treatment as to title, pay range, and other personnel transactions.

(22) SERIES.—A group of classes which are sufficiently similar in kind of work performed to warrant similar titles, but sufficiently different in level of responsibility to warrant different levels and rates of pay.

(23) COMMON CLASS.—A class utilized by more than one state agency.

(24) SINGLE-AGENCY CLASS.—A class utilized exclusively by one state agency.

(25) TITLE OF POSITION, CLASS OF POSITION.—A descriptive name assigned to a position or a class of positions by the merit system council or by the employing authority in a nonmerit system agency.

(26) PAY PLAN.—A document which formally describes the philosophy, methods, procedures, and the salary schedule established by the state personnel board or by the employing authority in a nonmerit system agency to compensate employees for work performed.

(27) SALARY SCHEDULE.—An official document which contains a complete list of classes and their assigned salary range.

(28) SALARY RANGE.—A series of steps from the minimum to the maximum salary paid for work in a specific class.

(29) BUDGETED POSITION.—A position listed in the agency's legislative budget as defined by subsection (1) of this section, and subsequently included in the appropriate operating budgets as defined by subsection (3) of this section.

(30) AUTHORIZED POSITION.—A budgeted position within the number fixed by the legislature and amendments thereto in accordance with existing statutes.

In counting the number of authorized positions, part-time positions may be converted to full-time equivalents.

(31) ESTABLISHED POSITION.—An authorized position which has been classified by the merit system council or by the employing

authority in the case of exempt positions and positions of nonmerit system agencies.

(32) POSITION NUMBER.—The numerical identification assigned to an established position by the merit system council or by the employing authority in the case of exempt positions and positions of nonmerit system agencies.

(33) RECLASSIFICATION.—Changing an established position in one class in a series to the next higher or lower class in the same series, or to a class in a different series which the merit system council or the state budget director for nonmerit system agencies determines to be a natural change in the duties and responsibilities of the position.

(34) PROMOTION.—Changing an employee from a position in one class to a different position in another class having a greater degree of responsibility and a higher rate of pay.

(35) DEMOTION.—Changing an employee from a position in one class to a different position in another class having a lesser degree of responsibility and a lower rate of pay.

(36) TRANSFER.—Changing an employee from a position in one class to another position in the same class or a different class having the same degree of responsibility and the same rate of pay, either within a state agency or between state agencies.

History.—§1, ch. 61-401; (15), (18)-(36) n. §1, ch. 63-514.

282.031 Construction.—For the purpose of appropriation of moneys in the state treasury, the following words shall be construed to mean:

(1) Shall be paid a salary of $..... (or words of similar import)—The fixing of the annual rate of cash compensation to be paid to the individual filling the specified position from moneys appropriated for that purpose and shall not be construed as an appropriation or as a continuing appropriation.

(2) Shall be reimbursed for expenses (or words of similar import)—That such expenses are to be paid from moneys appropriated for that purpose and shall not be construed as an appropriation or as a continuing appropriation.

History.—§1, ch. 61-401.

282.041 Disbursement of state moneys.—All moneys in the state treasury shall be disbursed by state warrant, drawn by the comptroller and countersigned by the governor upon the state treasury, payable to the ultimate beneficiary.

History.—§1, ch. 61-401.

282.051 Limitations on appropriations; revolving fund.—

(1) The annual rate of salary of any officer and employee filling the position specifically named in an item in the appropriations acts shall be as provided in one of the following paragraphs:

(a) In the amount appropriated for such position;

(b) The amount appropriated in an item for the named positions in that item shall be divided by the indicated number of such positions, and the resulting quotient shall be the annual rate of salary of each such position; or

(c) Within the amounts appropriated where such salary may be otherwise fixed pursuant to law.

(2) Unless a specific salary is set by the legislature, the budget commission may approve and prescribe for any agency a comprehensive position classification and compensation plan under which the agency shall operate and shall have the power and authority to adopt and enforce rules and regulations necessary for proper control.

(3) Unless approved by the budget commission during each biennium as being justifiable and in the best interest of the state:

(a) The annual rate of compensation (salaries, combined salaries, other compensation for services, and perquisites) for each position not specifically indicated in the appropriations acts but for which appropriation was made shall not exceed the annual rate proposed therefor in the legislative budget, except where specifically authorizd by law and except for reclassifications as defined in §282.021 (33), which could be accomplished within the agency's appropriations and which do not change the plan of operations as reflected in the agency's operating budget.

(b) The annual rate of compensation (salaries, combined salaries, or other compensation for services, and perquisites) of any state officer or employee shall not exceed twelve thousand five hundred dollars per annum; provided, however, for personnel in the state university system whose primary duty is teaching and research (not including the nonacademic areas of general administration, extension, counseling, libraries, etc.) the compensation shall not exceed fifteen thousand dollars per annum except when specifically authorized by law.

(c) The total number of positions for which salary appropriations are made in the appropriations acts shall not exceed the number provided therefor; if the number is not so provided, then the number of positions of any state agency shall not exceed the number included in the budget commission's recommendations to the legislature.

(d) No person employed by the state may hold more than one employment during his normal working hours with the state, such working hours to be determined by the head of the affected state agency.

(e) No person may receive compensation simultaneously from more than one appropriation from any moneys in the state treasury or other state moneys.

(f) 1. No perquisites shall be furnished by the state. Whenever the state is to furnish those things defined as perquisites in §282.021(5), the budget commission shall approve the kind and monetary value of such before the same may be furnished by any agency.

2. If goods and services are to be sold to officers and employees rather than being furnished as perquisites, the kind and selling price

thereof shall be approved by the budget commission before such sales are made. The selling price may be deducted from any amounts due by the state to any person receiving such things. The amount of cash so deducted shall be faithfully accounted for, reported, and turned over to the state treasurer at least once each month with a certificate as to the correctness of such accounting. The state treasurer shall receive such moneys and issue his receipt to the agency transmitting the same.

(g) No revolving fund may be established pursuant to §18.101(2).

(4) The budget commission shall report all such approvals made pursuant to subsection (3) and the reasons for such approvals to the legislative appropriations and auditing committee.

(5) (a) Where the budget commission approves a revolving or petty cash fund for making refunds or other payments which are approved by the state comptroller, the same shall be established from an account within the general revenue fund to be known as payments for revolving funds from funds not otherwise appropriated. Reimbursements made from revolving or petty cash funds shall be made in strict accordance with the provisions of §215.26(2). No payments of salaries or travel expenses shall be made from any revolving fund outside the state treasury.

(b) Vouchers for reimbursement of expenditures from revolving funds established under this section shall be presented in a routine manner to the state comptroller for approval and payment, the proceeds of which shall be immediately returned to the revolving or petty cash fund involved.

(c) The revolving or petty cash fund authorized herein shall be properly maintained and accounted for by the agency requesting same and, upon the expiration of the need therefor, shall be returned in the amount originally established to the general revenue fund for credit to the payments for revolving funds account therein. All revolving or petty cash funds established for all state agencies shall be on hand in total as of June 30 the second year of each biennium.

History.—§1, ch. 61-401; (3)(a), (b) §2, ch. 63-514; (5) §1, ch. 63-542.

282.061 Transfers of appropriations.—

(1) It is the intent of the legislature that expenditures for those services defined in §282.021(15) as other personal services be budgeted and expended as a separate classification of expenditure as soon as practicable after July 1, 1961. The budget commission is hereby authorized to establish procedures and make such transfers and authorize or delete such positions as is required to carry out the legislative intent.

(2) It is the intent of the legislature that the legislative budgets prepared for the 1963-65 biennium shall be prepared in such manner as to reflect other personal services as a separate classification of expenditure.

(3) In order to carry out the legislative intent:

(a) Unless otherwise expressly provided by law, appropriated moneys shall be expended only for the purpose for which appropriated, except that if not required for such purposes, said moneys may upon approval of the budget commission as being justifiable and in the best interests of the state, be transferred within the affected requesting agency's accounts as follows:

1. Moneys appropriated for "salaries" may be transferred to "other personal services," or "food products."

2. Moneys appropriated for "other personal services" may be transferred to "salaries," "expenses," or "food products."

3. Moneys appropriated for "expenses" may be transferred to "other personal services," "food products," or "operating capital outlay."

(b) The budget commission shall report all such approvals and the reasons for such approvals to the legislative appropriations and auditing committee.

History.—§1, ch. 61-401.

282.071 Federal money reappropriated.— Federal money appropriated by the congress to be used for state purposes, whether by itself or in conjunction with moneys appropriated by the legislature of the state, is hereby reappropriated as far as it may be necessary to the purpose for which same was made available and insofar as the same is permitted by federal law; provided, however, that except for the state road department, the agricultural experiment station and agricultural extension service of the university of Florida, said funds shall not be expended except in pursuance of detailed budgets filed with and approved by the budget commission as provided in §216.20.

History.—§1, ch. 61-401; §1, ch. 63-337.

282.081 Unexpended balances of appropriations.—

(1) (a) Any unexpended balance of appropriations for salary of the position specifically named in an item in the appropriations acts for any fiscal year shall revert to the fund from which appropriated and be available for reappropriation.

(b) The unexpended balances of all other appropriations, including lump sum appropriations and continuing appropriations, for the first year of a biennium, as reflected in the records of the comptroller, may be used for a like purpose in the second fiscal year of the biennium, but any balance of any such appropriation remaining unexpended at the end of the biennium beginning with the biennium ending June 30, 1963, and not excepted pursuant to subsections (2) or (3) of this section shall revert to the fund from which appropriated and be available for reappropriation. Subsequent inconsistent laws shall supersede this section only to the extent that they do so by express reference to this section.

(2) Any balance of any appropriation, except appropriations for capital outlay-buildings and improvements, not disbursed but expended or contracted to be expended shall, on or before

the end of the biennium, be certified by the head of the affected agency to the budget commission, showing in detail to whom obligated and the amount of such obligation. Any balance not so certified shall revert to the fund from which appropriated and be available for reappropriation. The budget commission shall review and approve or disapprove any or all of the items and amounts so certified, and shall furnish the comptroller a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balances of said appropriations. Any such encumbered balance remaining undisbursed on December 31 of the same calendar year in which such certification was made, shall revert to the fund from which appropriated and be available for reappropriation. In the event the aforesaid certification is not made and the obligation is proven to be legal, due, and unpaid, then the same shall be paid and charged to the appropriation for the current fiscal year of the agency affected.

(3) Any balance of any appropriation for capital outlay-buildings and improvements, not disbursed but expended, contracted to be expended, or committed by the budget commission, shall, on or before the end of the biennium in which such appropriation was made, be certified by the affected agency to the budget commission, showing in detail the commitment or to whom obligated and the amount of such commitment or obligation. The budget commission shall review and approve or disapprove any or all of the items and amounts so certified, and shall furnish the comptroller a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balances of said appropriations. Any such encumbered balances remaining undisbursed at the end of one year after the date of completion or occupancy of the capital outlay-building or improvement for which such appropriation was made, shall revert to the fund from which appropriated and be available for reappropriation. In the event the aforesaid certification is not made, and the balance of the appropriation has reverted and the obligation is proven to be legal, due, and unpaid, then the same shall be presented to the legislature for its consideration.

History.—§1, ch. 61-401; (1)(b) §1, ch. 63-539.

282.091 Agencies not to make contracts for expenditures in excess of amounts appropriated.—No agency of the state government shall contract to spend or enter into any agreement to spend any moneys in excess of the amount appropriated to such agency unless specifically authorized by law, and any contract or agreement in violation of this section shall be null and void.

History.—§1, ch. 61-401.

282.092 Disbursement of county health unit trust funds.—County health unit trust funds may be expended by the state board of health for the respective county health departments in accordance with budgets and plans agreed upon by county authorities of each county and the state board of health. The limitations on appropriations set forth in §282.051, shall not apply to county health unit trust fund.

History.—§1, ch. 63-375.

CHAPTER 283

PUBLIC PRINTING AND STATIONERY

283.01 Public printing to be let to lowest bidder.—All the public printing of the state shall be let out upon contract to the lowest responsible bidder, who shall furnish all paper and other material used in printing and binding.

History.—§2, ch. 3699, 1887; RS 480; GS 652; RGS 1302; CGL 1978.

283.02 State officers not to be interested in contract.—No member of the legislature or other officer of this state shall be interested, directly or indirectly, in such contract; provided, however, that nothing herein shall prohibit a member of the legislature from receiving such a contract when he or his firm is the lowest bidder of all bidders submitting competitive bids for the contract.

History.—§3, ch. 3699, 1887; RS 481; GS 653; RGS 1303; CGL 1979; §1, ch. 28026, 1953.

283.03 Printing must be done in the state.—All the public printing of this state shall be done in the state, and the bond given by any contractor for such printing shall so state.

History.—§4, ch. 3699, 1887; RS 482; GS 654; RGS 1304; CGL 1980.

283.04 Public printing divided into two classes.—All the public printing of the state shall be divided into two classes, class A, which shall embrace all printing required for the legislative department of the state government, and all of the printing required to be done for the supreme court, and class B, which shall embrace all of the printing required for the state not included in class A.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.

283.05 The board of commissioners of state institutions; requirements in calling for bids.—The board of commissioners of state institutions shall give thirty days' notice by publication in one or more newspapers in this state, calling for bids on class A printing from printers whose manufacturing plants are located within the state.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.

283.06 Separate awards; deposit required with bid.—Each award of contract, or contracts, for printing shall be made separate and upon a unit bid price for each item to be contracted for by the board of commissioners of state institutions. The board of commissioners of state institutions shall require to be submitted with the bids for public printing, designated class A, a certified check in an amount not to exceed two thousand dollars.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.

283.07 Term of new contracts.—Upon the expiration of the contract, or contracts, now in force for printing which is herein designated as class A, the board of commissioners of state institutions shall enter into a new contract, or contracts, for this class of public printing, and such contract, or contracts, may be made by said board hereafter for a period of either two years or four years as in the judgment of said board is deemed for the best interest of the state.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.

283.08 Statements under oath required to be filed by bidder.—The board of commissioners of state institutions is prohibited from considering any bids submitted for public printing, designated as class A, unless the bidder for such contract shall file, with the bid submitted, a statement under oath that such bidder is at the time of filing such bid operating in good faith a printing plant in the state, and that, at the time of making such bid, such bidder is fully and completely able to perform such contract, and that such bidder is at the time of submitting said bid actually in said bidder's

name the owner of a printing plant, and in good faith operating such printing plant in the current operation of a printing business in the state; and, if any of said statements under oath herein required be not filed by any bidder for any public printing designated as class A, the board of commissioners of state institutions is prohibited from considering any such bid and from awarding any contract for public printing designated as class A to any such bidder.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.

283.09 False statements; forfeit of deposit as liquidated damages.—If any bidder for any contract for public printing, designated as class A, shall, in the statement under oath required in §283.08, make false statements concerning such bidder's ability at the time of making such bid to perform such contract, and such bidder's operation in good faith as owner of a printing plant in the state at the time of making such bid, the certified check by such bidder submitted with the bid of such bidder shall be forfeited as liquidated damages to the state, and the board of commissioners of state institutions shall pay the proceeds of such certified check of such bidder to the state treasurer who shall credit the same to the general school fund.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937.
cf.—A12S4 Derivation of state school fund.

283.10 Bids required on class B printing.—No general contract shall be let to cover the printing designated as class B, but each job coming under this classification shall be let separately under regulations adopted by the state purchasing commission to the lowest responsible bidder who shall manufacture the same within the state. Such contract shall apply only to the work under consideration and shall require competitive bids on all purchases in excess of fifty dollars and advertising as required in §287.081, on all contracts in excess of two thousand dollars, subject to the other provisions of said section.

History.—§5, ch. 3699, 1887; RS 483; GS 655; §1, ch. 6207, 1911; RGS 1305; CGL 1981; §1, ch. 14824, 1931; §1, ch. 18064, 1937; §1, ch. 59-319.

283.11 Different contracts for different classes.—The board of commissioners of state institutions may make different contracts for different kinds or classes of printing or binding.

History.—§7, ch. 3699, 1887; RS 484; GS 656; RGS 1306; CGL 1982.

283.12 Classification; publication; general laws, special acts, resolutions, memorials.—The secretary of state shall furnish true and accurate copies of all laws, resolutions and memorials passed by the legislature for publication.

(1) He shall select, segregate and classify all acts of the legislature, including memorials and resolutions, dividing the publication thereof into two classified volumes, to wit: Volume I, general acts, Volume II, special acts, broken down into as many separate books as may be necessary; provided, that in such general acts shall be included all acts that are passed as general laws and all memorials and resolutions, including proposed constitutional amendments, and in such special acts shall be included only those acts passing as special laws and becoming law as such.

(2) He shall furnish the contractor with copy for printing and binding the general laws of Florida and the special acts of the legislature in separate volumes together with a general alphabetical index to each.

(3) The board of commissioners of state institutions shall prepare contracts for speedy publication of the pamphlet form of laws, the general laws, the special acts and the secretary of state shall recommend to the board the number of copies of each to be printed.

(4) The secretary of state shall supervise the publishing of the session laws, both general and special, under the contract between the board of commissioners of state institutions and the printer, as aforementioned. Each house of the legislature shall provide for two proofreaders who shall be employed by the secretary of state to insure true and accurate copy of these publications, for such period of time as the secretary of state deems necessary to accomplish the purposes set forth herein. Said proofreaders shall be compensated from legislative funds.

History.—§6, ch. 3699, 1887; RS 485; GS 657; RGS 1307; CGL 1983; §1, ch. 25033, 1949; (4) n. §1, ch. 63-136.

283.15 Journals of legislature.—The contractor shall complete and deliver to the secretary of state such number of copies of the journal of the proceedings of the senate and the house as the board of commissioners of state institutions shall determine, such number shall not exceed three hundred. The secretary of state shall deliver, one copy of each to, the governor, each cabinet officer, each justice of the supreme court, one copy of each to each member of the senate and the house, and upon requisition one copy each to any official government agency, and shall retain in his office the remaining copies for sale at a price to be determined by the board of commissioners of state institutions.

History.—§6, ch. 1904, 1872; RS 488; GS 660; RGS 1310; CGL 1986; §2, ch. 25033, 1949.
cf.—§257.05(2) State publications furnished the state library.

283.17 Secretary of state required to provide printed pamphlet copies of each general law immediately after it is filed.—Immediately after any general act of the legislature shall become a law and filed in the office of the secretary of state, the secretary of state shall cause to be printed in pamphlet form a sufficient number of copies to supply any governmental agency, such copies to be kept and retained in the office of the secretary of state until distributed as provided in §283.18.

History.—§1, ch. 12097, 1927; CGL 1987; §4, ch. 25033, 1949.

283.18 Pamphlet copies of laws furnished

for general use.—The secretary of state shall distribute such copies upon requisition to any official of the legislative, judicial or executive branches of state or county government in Florida; provided that surplus copies may be distributed to practicing attorneys in Florida upon their written request and payment of a nominal fee sufficient to pay for mailing.

History.—§2, ch. 12037, 1927; CGL 1988; §5, ch. 25033, 1949.

283.19 **Appropriation; speed in printing and delivery required.**—There shall be appropriated from the general fund of this state such sums as may be necessary to carry §283.17 into effect; provided, that the secretary of state shall procure the printing of such laws by such persons as will insure the speediest and most expeditious printing and delivery thereof, consistent with good workmanship.

History.—§3, ch. 12097, 1927; CGL 1989; §36, ch. 26869, 1951.

283.20 **Republication of session laws.**—The secretary of state, with the approval of the board of commissioners of state institutions shall have authority, in event of sufficient requests for sale, to provide for the republication of the general session laws of the legislature, where copies of such laws on hand and available for sale have been exhausted; to sell such republished laws at a price to be fixed by the board sufficient to cover the cost of printing.

History.—§1, ch. 13686, 1929; CGL 1936 Supp. 1989(1); §6, ch. 25033, 1949.

283.21 **Purchase of blank books, stationery, etc.**—The comptroller shall purchase from parties in this state manufacturing same, all the blank books, stationery and paper to be used in the different departments; and the books of record, blank books and stationery of the various counties in this state shall be purchased by the county commissioners from parties manufacturing the same in this state; provided, that they can be bought on as fair and reasonable terms as elsewhere, taking quality into consideration.

History.—§1, ch. 3727, 1887; RS 490; GS 661; RGS 1311; CGL 1990.

283.22 **State depositories of public documents.**—The general library of each institution in the university system shall be designated as state depositories and entitled to receive copies of reports of state officials, departments, institutions, and all other state documents published by the state. Each officer of the state empowered by law to distribute such public documents are hereby authorized to transmit without charge except for payment of shipping costs the number of copies of each public document desired upon requisition from the librarian. It is made the duty of the library as the depository to keep public documents in convenient form accessible to the public. The depository under rules formulated by the board of control is authorized to exchange documents for those of other states, territories and countries.

History.—§§1-3A, ch. 20229, 1941; §7, ch. 25033, 1949; §21, ch. 29615, 1955; §1, ch. 63-141.

283.23 **Law libraries of certain colleges designated as state legal depositories.**—

(1) The law libraries respectively, of the university of Florida, Stetson university, the university of Miami and the Florida agricultural and mechanical university for negroes are designated as state depositories for all public documents published by or under the authority of the state.

(2) The law libraries upon requisition from the said universities shall be entitled to receive copies of each and all reports of state officials, departments, institutions and all other state documents or volumes published by the state without charge except for payment of shipping costs. Each and every officer of the state empowered by law to distribute said publications or documents is hereby authorized to transmit upon payment of shipping costs or cash on delivery to said depositories the copies of each publication or document so requested; provided however, the number of copies of each of the general and special laws shall be limited to eight copies to each of the said state legal depositories; the number of each of the volumes of the Florida Statutes and supplements shall be at least nine copies to the law library of the university of Florida and more when needed and requested for official use not to exceed forty-five, two to the law library of Stetson university, two to the law library of the university of Miami and two to the law library of the Florida agricultural and mechanical university for negroes; the number of house and senate journals shall be limited to one copy of each to each state legal depository.

(3) It is made the duty of the librarian of any depository to keep all public documents in convenient form accessible to the public.

(4) The libraries of all junior colleges approved by the state board of education under §230.46, shall be designated as state depositories for Florida Statutes and supplements published by or under the authority of the state; provided that these depositories may each receive one of each volume upon request, without charge except for payment of shipping costs.

History.—§§1-3, ch. 20742, 1941; §8, ch. 25033, 1949; (1), (2) §22, ch. 29615, 1955; (4)n. §1, ch. 59-368.

283.24 **Public printing; copies to Library of Congress.**—The secretary of state or any state official or state agency, board, commission, or institution having charge of publications hereinafter named, are hereby authorized and directed to furnish the library of congress in Washington, D. C., upon requisition from the library of congress, not to exceed three copies, of the acts of legislature, journals of both houses of the legislature, volumes of the supreme court reports, volumes of biennial reports of cabinet officers, and copies of reports, studies, maps or other publications by official boards or institutions of Florida, from time to time, as such are published and are available for public distribution.

History.—§1, ch. 22020, 1943; §9, ch. 25033, 1949.

283.25 **Distribution of session laws.**—Copies of the session laws of each session of the legislature of this state shall be distributed

free by the secretary of state to each of the following officers, courts, boards and agencies of Florida.

(1) As many copies as the governor, the justices of the supreme court and the attorney general, of this state, may require for official use.

(2) Such copies to the secretary of state of the United States as shall be requested for the use of the Government of the United States; not to exceed ten copies.

(3) A maximum of two copies upon request to each institution in the university system, university of Miami, university of Tampa, Stetson university, Florida southern college and Rollins college; copies to be mailed to the president of each institution.

(4) Such copies to each of the several cabinet members of this state (other than the governor and the attorney general); the railroad and public utilities commission; the supreme court of the United States; and the United States circuit court of appeals for the fifth circuit; as they shall request for official use the maximum number to be determined by the board of commissioners of the state institutions.

(5) One copy to each member of the Florida senate and house of representatives of each current session of the legislature; the secretary of the senate and the chief clerk of the house of each current session of the legislature; the judges of the several courts of record, including the county judges; the prosecuting attorneys and their assistants of the several courts of record, including the prosecuting attorneys for the county judges' courts; the clerks of the several courts of record; the state board of health; the state board of forestry; state livestock sanitary board; the state board of public welfare; the Florida industrial commission; the adjutant general; the state chemist; the state auditor; the Florida school for the deaf and blind; the board of control; the superintendent of the Florida state hospital; the superintendent of the Florida state prison farm; one copy to each and every board, commission, and institution supervised by the board of commissioners of the state institutions; the following county officers in each county, the sheriff, the assessor of taxes, the tax collector, the justices of the peace, the superintendent of public instruction, the supervisor of registration, and the board of county commissioners; each member of the congress of the United States from this state; the attorney general of the United States; each of the judges, marshals, clerks and district attorneys of the district courts of the United States within this state;

(6) In distributing the laws, the secretary of state shall forward all copies intended for the officers of each county to the clerk thereof, with directions to make proper delivery thereof, and a roll containing a list of names of parties for whom they are intended, upon which roll the clerk shall obtain the receipt of each person to whom a copy is delivered, and return the same to the secretary of state's office to be placed on file.

(7) The secretary of state may exchange Florida statutes and session laws for copies of statutes and session laws of other states not exceeding three copies of each to any one state. The copies so procured by exchange shall be deposited in the supreme court library, in the attorney general's library, and in the university of Florida's law library, the same to become a part of their libraries.

(8) The secretary of state shall after a period of ten years take inventory of all officially published laws of Florida and reserving ten sets for reference purposes may destroy all obsolete volumes. Should the secretary of state find a sale for obsolete volumes over ten years old, he shall set a price and dispose of such volumes in excess of ten sets, depositing funds received in the general revenue fund of the state. A list of obsolete volumes sold or destroyed shall be filed with the board of commissioners of state institutions.

History.—§10, ch. 25033, 1949; (8) n. §1, ch. 29903, 1955; §24, ch. 57-1; (3) §2, ch. 63-141.

Note.—Formerly §16.15(4).

cf.—§339.34 Copy of laws to be furnished to road department.

CHAPTER 284

STATE FIRE INSURANCE TRUST FUND

284.01 State fire insurance trust fund created.—

(1) A fund is hereby created to be carried by the state treasurer to be designated as the state fire insurance trust fund. Whenever any policy of insurance now in force upon property of this state shall expire, such property shall not be reinsured in an insurance company or companies, but the state treasurer shall insure such property and all other state property of an insurable nature from time to time, in the state fire insurance trust fund, in an amount not exceeding the replacement value of such property, and at a rate as nearly as practicable as that charged upon other property of a similar character by licensed insurance companies in this state.

(2) Property insurable in the state fire insurance trust fund shall be restricted to buildings and contents and any other related items which the state treasurer of the fund deems insurable under the above restrictions.

(3) A building which has a valuation of less than five hundred dollars shall not be insured in the fund.

(4) Contents in any one building which have a total valuation less than five hundred dollars shall not be insured in the fund.

(5) In the event of a disagreement between the state treasurer and the board or person having charge of such property, as to whether such property would qualify for insurance in the fund, the matter of disagreement shall be determined by the board of commissioners of state institutions.

(6) In the event of a partial loss to a building or any loss of contents, the loss shall be adjusted on the basis of actual cash value of the property at the time of loss, but not exceeding the amount that it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §1, ch. 57-101; §2, ch. 61-119; §1, ch. 61-463.

284.02 Payment of premiums.—The board of commissioners of state institutions shall pay premiums upon such property so insured in the fund provided for in §284.01, upon the presentation of a bill for such premiums, by the state treasurer; and such sums as may be necessary for the payment thereof are hereby appropriated from any moneys in the general revenue fund not otherwise appropriated; and the comptroller shall draw his warrant in payment of same in favor of the state fire insurance trust fund upon requisition of the state treasurer approved by said board; provided, that the general revenue fund shall be reimbursed by agencies operating entirely from funds other than general revenue appropriations the amount of premium paid for their benefit.

The general revenue fund shall be reimbursed by all agencies, except state-supported educational institutions, for any fire insurance premiums which have been paid for their benefit on any property which the agencies rent or lease in its entirety to private individuals or corporations. The reimbursement to the fund shall be made from the proceeds received by the agencies from rental income on such property.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §1, ch. 28092, 1953; §2, ch. 57-101; §2, ch. 61-119; §2, ch. 61-463.
cf.—§255.02 Boards authorized to replace buildings destroyed by fire.

284.03 Deficits in fund supplied from general revenue fund; repayment.—Should a fire occur upon property insured in the state fire insurance trust fund that would require more funds, to pay the amount of such loss covered by insurance in said fund, than there is at that time available in said fund, in that event there is hereby appropriated out of any funds in the general revenue fund, not otherwise appropriated, a sum which, added to the sum then available in said state fire insurance trust fund, shall be sufficient to pay the amount of the insurance due; provided, that in the event any funds shall be paid out of the general revenue fund under the provisions of this chapter, in excess of the premiums upon state property heretofore or hereafter charged and unpaid, such excess amounts so paid out of the general revenue fund shall be returned to said fund out of the first

premium earnings of said state fire insurance trust fund after paying the necessary expenses of administration.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §2, ch. 61-119.

284.04 Notice and information required by state treasurer of all newly erected or acquired state property subject to insurance.—The board of commissioners of state institutions and all other boards and persons in charge of state property in this state shall notify the state treasurer of all newly erected or acquired property subject to insurance, as soon as erected or acquired, giving its value and any other information the state treasurer may require in connection with such property; also, notify the state treasurer immediately of any decrease in value of any property carried in the state fire insurance trust fund. In case of disagreement between the state treasurer and the board or person in charge of any state property, as to its true value or the amount of the insurance to be carried thereon, or the proper premium rate or rates, the matter in disagreement shall be determined by the board of commissioners of state institutions.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §2, ch. 61-119.

284.05 Inspection of state property insured.—The state treasurer, in person or by his representative, shall inspect all property of the state insured in the state fire insurance trust fund, and whenever conditions are found to exist which, in the opinion of the state treasurer, or his representative, are hazardous from the standpoint of destruction by fire, the state treasurer, or his representative, may order the same repaired or remedied, and such boards, officers or persons in charge of such property are required to have such dangerous conditions immediately repaired or remedied upon the written notice from the state treasurer, or his representative, of such hazardous conditions; and such amounts as may be necessary to comply with such notice or notices shall be paid by the board of commissioners of state institutions or by the board or person in charge of such property out of any moneys appropriated for the maintenance of the respective institutions, or for the repairs or permanent improvement of such insurable properties, or from any incidental or contingent funds they may have on hand. In the event of a disagreement between the state treasurer and the board or person having charge of such property as to the necessity of the repairs or remedies ordered, the matter in disagreement shall be determined by the board of commissioners of state institutions.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §2, ch. 61-119.

284.06 State treasurer's annual report to governor to be transmitted to legislature.—The state treasurer shall report annually to the governor, for transmittal to the legislature, at each subsequent regular session, what investigations have been made by him and what actions taken to decrease the fire hazard of the various insurable properties of the state, together with his recommendations as to further safeguards and improvements.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991.

284.07 Employment of competent person for insurance department; salaries and expenses.—For the purpose of effectively carrying out the provisions of this chapter, and furnishing other needed help in the insurance branch of his office, the state treasurer may employ a competent person with experienced knowledge in the matter of fire insurance rates and risks, as director of the fund who shall perform such other duties as the state treasurer may direct; the state treasurer is further authorized to employ additional persons needed in connection with the administration of such funds. Salaries and the necessary expenses incident to the administration of the fund shall be paid out of the state fire insurance trust fund, and the amounts necessary to pay such salaries and expenses are to be appropriated out of the state fire insurance trust fund.

History.—§1, ch. 7294, 1917; §1, ch. 7902, 1919; RGS 1312; §1, ch. 8430, 1921; CGL 1991; §1, ch. 22620, 1945; §1, ch. 25399, 1949; §1, ch. 28014, 1953; §3, ch. 57-101; §2, ch. 61-119; §3, ch. 61-463.

284.08 Maximum insurance risk carried by state.—No single risk shall be carried in the state fire insurance trust fund in excess of fifty thousand dollars, except with the approval of the board of commissioners of state institutions. When the amount of insurance necessary on any single risk shall exceed fifty thousand dollars, or such other amount as may be determined by the board of commissioners of state institutions as a safe limit for insurance in the state fire insurance trust fund, said board may authorize the state treasurer to place such additional insurance as the board may deem necessary, in any fire insurance company or association authorized to transact business in Florida, through duly authorized and licensed local agencies, to an amount not exceeding the replacement value of such properties.

An amount sufficient to pay the premiums on such insurance is hereby appropriated out of any funds in the state treasury not otherwise appropriated, to be paid on vouchers approved by the board of commissioners of state institutions.

History.—§1, ch. 9150, 1923; CGL 1992; §1, ch. 14520, 1929; §2, ch. 61-119.

284.09 Investment of funds.—Whenever the cash balance in the state fire insurance trust fund, after paying all accrued expenses and losses, shall exceed twenty thousand dollars, the state treasurer may invest so much of the surplus funds above that amount as he may deem expedient, in bonds of the United States, or in county or municipal bonds issued under authority of the laws of the state; and may sell such bonds or so much thereof at any time, if necessary to pay any losses or expenses in excess of the available cash balance in the state fire insurance trust fund; such sale or sales to

be made to the state board of education, the state sinking fund commission, or in the open markets, as the treasurer may deem most expedient.

History.—§3, ch. 9151, 1923; CGL 1993; §4, ch. 57-101; §2, ch. 61-119.

284.10 Reduction of fire hazards on state property.—Whenever the cash balance in the state fire insurance trust fund, after paying all accrued expenses and losses, together with the other assets of the fund at their fair cash value, shall exceed one million dollars, the state treasurer may, upon request of the state board of education, the board of commissioners of state institutions, or the state board of control, advance sufficient sums of money to install in any building or buildings owned and/or controlled by either of said boards, such equipment, apparatus, facilities or improvements as will reduce, and, if possible, eliminate, fire hazards. The installation of such equipment, apparatus, facilities and improvements must be such as would, in accordance with standard methods of insurance rating, entitle such boards to a reduction in the premium rate of fire insurance covering the particular building involved.

History.—§1, ch. 20311, 1941; §2, ch. 61-119.

284.11 Premium rate after reduction of hazard.—The state treasurer shall, after the installation of such equipment, apparatus, facilities and improvements, continue to charge and collect premiums with respect to such buildings at a rate based upon the condition of said buildings without such equipment, apparatus, facilities and improvements. The amounts so paid into the state fire insurance trust fund, in excess of the actual premium rate which would otherwise be collected, based on the condition of the buildings after the installation of such equipment, apparatus, facilities and improvements, shall be retained by the state treasurer and credited against the amounts advanced by him for such equipment, apparatus, facilities and improvements. When the excess payments so made are sufficient to reimburse the state treasurer for the amounts so advanced by him for the installation of such equipment, apparatus, facilities and improvements, together with an additional amount equal to five per cent per annum on the amounts so advanced, then the premium rates on said buildings shall thereafter be based on the condition of said buildings after the installation of such equipment, apparatus, facilities and improvements.

History.—§2, ch. 20311, 1941; §2, ch. 61-119.

284.12 Property subject to reduction of hazards.—The provisions of §§284.10 and 284.11 shall apply to buildings on which the fire insurance is carried, either entirely or partially, by the state fire insurance trust fund. In the event such fire insurance is carried, in part, with commercial insurers, amounts equal to the reduction in premiums occasioned by the installation of such equipment, apparatus, facilities and improvements shall be paid to the state treasurer for deposit in the state fire insurance trust fund, to apply in payment of the amounts so advanced to install such equipment, apparatus, facilities and improvements, together with interest thereon as hereinabove provided.

History.—§3, ch. 20311, 1941; §2, ch. 61-119.

284.13 Appropriation for reduction of hazards.—The amounts to be advanced from the state fire insurance trust fund, under the provisions of §§248.10-248.12, are hereby appropriated for the purpose of making such advances for equipment, apparatus, facilities and improvements. The amounts necessary to pay premiums on fire insurance and to repay the state fire insurance, as hereinabove provided, are hereby appropriated out of the general revenue fund.

History.—§4, ch. 20311, 1941; §7, ch. 22858, 1945; §2, ch. 61-119.

284.14 State fire insurance trust funds; leasehold interest.—In the event the state, or any department thereof, has acquired or hereafter acquires a leasehold interest in and to any improved real property and by the terms and provisions of said lease it is obligated to insure such premises against loss by fire, or by the terms and provisions of said lease it is obligated to withstand any loss occasioned by fire to such premises, it shall insure such premises in the state fire insurance trust fund, according to the provision and in the manner now provided by law.

History.—§1, ch. 20676, 1941; §2, ch. 61-119.

284.15 State-owned buildings to be insured in fund.—Every state-owned building financed in whole or part by revenue bonds or certificates shall, when completed and during the period such bonds or certificates are outstanding, be insured in the state fire insurance trust fund up to fifty per cent of the insurance coverage required for said building with respect to the risk of fire and extended coverage, provided, that the resolution authorizing issuance of such bonds or certificates permits the state board or agency which constructed said building or for which such building was constructed, to place such coverage in said fund.

(1) When such coverage is placed in the state fire insurance trust fund, the premium for such coverage shall be paid by such board or agency out of funds available for such purposes within the provisions of the resolution authorizing issuance of said bonds or certificates.

(2) If any such resolution shall permit, said board or agency shall request that additional coverage required for any such building with respect to the mentioned risks be procured through the state fire insurance trust fund, and in such event the state treasurer shall place such additional coverage with any fire insurer possessed of a certificate of authority to engage in business in this state; and such board or agency shall pay to the state treasurer the premiums required for such additional coverage out of funds available for such purpose as provided in any such resolution, and the state treasurer is authorized to pay any such premiums so received by him to the proper insurer.

History.—§1, ch. 57-319; §2, ch. 61-119.

CHAPTER 285

SEMINOLE INDIAN RESERVATION

285.01 Lands set aside; description.—The following described lands in the county of Monroe, are set aside and given to the Seminole Indians of Florida as a reservation, to-wit:

All of the lands now belonging to the state in township fifty-six south of range thirty-two east, being all of sections seven to fifteen, inclusive, and seventeen to thirty-six, inclusive, containing eighteen thousand five hundred sixty acres, more or less.

Also, all of sections one to four, inclusive; ten to fifteen, inclusive; twenty-two to twenty-four, inclusive, and sections thirty-five and thirty-six, in township fifty-seven south of range thirty-two east, containing nine thousand six hundred acres, more or less.

Also, all of sections one to three, inclusive; ten to fourteen, inclusive; twenty-four, twenty-five, thirty-five and thirty-six, of township fifty-eight south of range thirty-two east, containing seven thousand six hundred eighty acres, more or less.

Also, all of sections seven to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-six south of range thirty-three east, containing eighteen thousand five hundred sixty acres, more or less.

Also, all of sections one to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-seven south of range thirty-three east, containing twenty-two thousand four hundred acres, more or less.

Also, all of sections one to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-eight south of range thirty-three east, containing twenty-two thousand four hundred acres, more or less.

History.—§1, ch. 7310, 1917; RGS 1313; CGL 1994; §7, ch. 22858, 1945.

285.02 Trustees to convey to board of commissioners of state institutions in trust for benefit of Indians.—The trustees of the internal improvement trust fund shall convey to the board of commissioners of state institutions the title to said described lands, in trust, however, for the perpetual use and benefit of the Seminole Indians and as a reservation for them.

History.—§2, ch. 7310, 1917; RGS 1314; CGL 1955; §2, ch. 61-119.

285.03 Grant of Florida lands to Seminole Indians.—A grant is made, for use of the Seminole Indians of Florida, of a tract of land situated in Broward county, described as follows:

Beginning three hundred thirty feet west of the northeast corner of lot fourteen, of section thirty-six, township fifty south, range forty-one east; thence west four hundred ninety-five feet; thence south one thousand three hundred twenty feet, thence east four hundred ninety-five feet, thence north one thousand three hundred twenty feet to point of beginning, being fifteen acres, more or less.

The said described lands shall become a part of the Seminole Indian Reservation, reserved by act of legislature, 1931, to use of the Seminole Indians of Florida.

If, at any time, said lands should be abandoned or not used for the purpose for which granted, such lands would revert to the State of Florida.

History.—§§1, 4, ch. 16175, 1933; CGL 1936 Supp. 1995(1).

285.04 Trustees of internal improvement trust fund authorized to exchange state lands for United States lands.—To provide more adequately for the needs of the Seminole Indians in Florida, and for cooperating with the United States therein, the trustees of the internal improvement trust fund may, in their discretion, exchange state lands with the United States for lands owned by the United States.

History.—§1, ch. 17065, 1935; CGL 1936 Supp. 1995(2); §2, ch. 61-119.

285.05 Trustees of internal improvement trust fund authorized to exchange lands with individuals.—The trustees of the internal improvement trust fund may, in their discretion, exchange state lands with private land owners, and, in turn, exchange any lands so acquired with the United States for government owned lands, to facilitate the carrying out of the purpose described in §285.04.

History.—§2, ch. 17065, 1935; CGL 1936 Supp. 1995(3); §2, ch. 61-119.

285.06 State Indian reservation.—When, as the result of the exchanges provided for in §§285.04 and 285.05, there shall have been established a reservation for the Indians by the United States in Florida, the state Seminole Indian reservation in Monroe county, created by chapter 7310, acts of 1917, shall be withdrawn

and returned to the said trustees; and thereupon the trustees of the internal improvement trust fund shall set aside a tract of land of approximately equal size and of suitable character, adjacently located, as nearly as may be, to the reservation to be established by the United States; and said lands, when so set aside, shall constitute the state Indian reservation and shall be held in trust by the board of commissioners of state institutions for the perpetual benefit of the Indians and as a reservation for them.

History.—§3, ch. 17065, 1935; CGL 1936 Supp. 1995(4); §2, ch. 61-119.

285.07 **Purpose of law.**—That the purpose of §§285.07-285.13 is to protect the Seminole Indians of Florida against undue and unnecessary hardships during these difficult years of transition from their ancestral culture to the culture of the white man's civilization and to aid said Indians to obtain economic independence as a tribe and as individuals.

History.—§1, ch. 29908, 1955.

285.08 **Definitions.**—For the purpose of §§285.09-285.13:

(1) Tribe means the Seminole tribe in the state composed of bands of Indians known and referred to as Miccosukee and Muskogee or Cow Creek.

(2) Indian or Indians means one or more members of a tribe.

(3) Trustee means the board of commissioners of state institutions.

(4) Reservation means that tract of land of approximately one hundred four thousand eight hundred acres located in Palm Beach and Broward counties set aside for the perpetual use and benefit of Seminole Indians by legislative acts of 1917 and 1935, known as the Seminole Indian Reservation.

(5) The flood control project means the central and south Florida flood control program.

History.—§2, ch. 29908, 1955.

285.09 **Lawful to take wild game and fish any time for food.**—It shall be lawful for Indians to take wild game and fish at any time within the boundaries of the reservation, provided that game may be taken only for food for the Indians themselves.

History.—§3, ch. 29908, 1955.

285.10 **No license required.**—For a period of twenty-five years from the effective date of this law, no license shall be required for Indians to hunt and fish provided such hunting or fishing is for the sole purpose of obtaining food for the Indians themselves. Nothing in this law shall serve to exempt Indians from purchasing licenses required for taking or dealing in fish (other than garfish), amphibians, reptiles, fur-bearing animals or any other form of wildlife for commercial purposes. Each Indian using such hunting and fishing privileges as provided herein shall be required to have an identification card issued without cost by the game and fresh water fish commission through the superintendent of the Seminole Indian agency. Each Indian is required to have said identification on his person at all times when using such hunting and fishing privileges and shall exhibit same to officers of the game and fresh water fish commission upon the request of such officers.

History.—§4, ch. 29908, 1955.

285.11 **Reservation; improvement leases.**—The trustees shall have the right to lease any part or parts of the reservation to any person willing to enter into an improvement lease; provided, however, that such lease shall not exceed fifteen years. The lessee shall be required to make such improvements to or on the property as are agreed upon in the lease. The improvements shall become a part of the lands of the reservation thereby accruing to the benefit of the tribe upon expiration of the lease.

History.—§5, ch. 29908, 1955.

285.12 **Reservation; mineral deposits.**—The tribe shall benefit from the discovery and development of all mineral deposits on the lands of the reservation the same as if the title to said lands were vested in the tribe.

History.—§6, ch. 29908, 1955.

285.13 **Camp sites; flood control.**—Indians living in camps settled prior to the passage of §§285.07-285.13 within the boundaries of the flood control project shall be permitted to continue to live in such camp sites. When any such camp site is threatened with flood waters as a result of the building of the flood control project, the trustee shall cause such camp sites to be re-located to a level above dangers resulting from said flood waters or shall otherwise protect such camp sites from said flood waters.

History.—§7, ch. 29908, 1955.

285.14 **Board of commissioners of state institutions as trustee to accept donations of and acquire property for Indians.**—

(1) The board of commissioners of state institutions, as the trustee, defined in §285.08, may accept donations of real and personal property from any source whatsoever, and may include the same in the corpus of the trust created under this chapter.

(2) The board of commissioners of state institutions, as trustee, may acquire lands in the name of the state and devote the same to the exclusive use, occupancy and benefit of said Indians for the purpose of promoting the health, general welfare, safety and best interest of said Indians.

(3) All funds accruing to the trustees of the trust granted under this chapter, may be expended by said trustee for such purposes as in the judgment and discretion of the board will best promote the safety, health, general welfare and best interest of said Indians.

(4) The trustees of the internal improvement trust fund, the state board of education of Florida and any other state board or agency

having title to lands or having lands under their jurisdiction, management or control may, in the discretion of said board, convey and transfer to the board of commissioners of state institutions the title to any of said lands in trust for the use and benefit of said Indians.

History.—§1, ch. 59-451; (4) §2, ch. 61-119.

285.15 Grant of fishing and hunting privileges by trustees of fund.—

(1) The trustees of the internal improvement trust fund of the state, in their discretion, may grant exclusive hunting and fishing privileges and rights to the Seminole Indians of Florida as defined in §285.08, covering lands under their administration, management, control and supervision, not to exceed a term of fifteen years. The rights granted under this section extend only to game taken by the said Indians for personal consumption, and no other license or permit shall be required, notwithstanding the provisions of any other law.

(2) The trustees of the internal improvement trust fund of Florida, in their discretion, may grant to the Seminole Indians of Florida, as defined in §285.08, the exclusive right to take frogs for personal consumption and for commercial purposes, covering lands under the said internal improvement trust fund's administration, management, control and supervision, not to exceed a term of fifteen years.

History.—§1, ch. 59-451; §2, ch. 61-119.

285.16 Civil and criminal jurisdiction; Indian reservation.—

(1) The state of Florida hereby assumes jurisdiction over criminal offenses committed by or against Indians or other persons within Indian reservations and over civil causes of actions between Indians or other persons or to which Indians or other persons are parties rising within Indian reservations.

(2) The civil and criminal laws of Florida shall* obtain on all Indian reservations in this state and shall be enforced in the same manner as elsewhere throughout the state.

History.—§§1, 2, ch. 61-252.

* Word shall added.

CHAPTER 287

STATE PURCHASING COMMISSION

287.011 Definitions.—The following terms are defined for the purposes of this chapter to have the following meanings:

(1) The word "agencies" shall mean and include all the various state agencies, officers, departments, boards, commissions and institutions.

(2) The word "commodities" shall mean and include the various commodities, goods, merchandise, class B printing, equipment and other personal property purchased by the agencies of the state, but not including commodities purchased for resale except class B printing and the materials covered by chapters 233 and 283, with the exception of §283.10. Bids shall be required on class B printing, which is included in the definition of the word "commodities."

(3) The word "commission" shall mean the state purchasing commission.

History.—§1, ch. 57-171; (2) §1, ch. 59-318; (2) §1, ch. 61-293.
Note.—Similar provisions in former §287.01.
cf.—ch. 233 Courses of study and instructional aids.
ch. 283 Public printing and stationery.

287.021 Purpose.—The purposes or aims of the commission shall be to coordinate and promote efficiency and economy in the purchase for the state by its agencies of the commodities used by them.

History.—§2, ch. 57-171.
Note.—Similar provisions in former §287.02.

287.031 State purchasing commission; establishment; members.—There is hereby established a state purchasing commission of Florida, to be known and designated as the state purchasing commission of Florida, which shall consist of the governor, the secretary of state, the attorney general, the comptroller, the treasurer, the superintendent of public instruction, the commissioner of agriculture.

History.—§3, ch. 57-171.
Note.—Similar provisions in former §287.03.

287.041 Rules, regulations.—

(1) The chairman of the purchasing commission shall be the governor and the commission shall prescribe rules and regulations governing the manner in which its business may be conducted and in which the authority and duties granted to it by law may be carried out. It shall meet at regular times and in special meeting at the call of the chairman upon due notice to the membership. It shall employ a suitable and competent person, not a member of the commission, as executive director, and shall employ such clerical and other assistants as may be necessary to carry out its purposes. Its office shall be at the state capitol.

(2) The members of the purchasing commission shall serve without compensation but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§4, ch. 57-171; (1) §2, ch. 61-293; (2) §19, ch. 63-400.
Note.—Similar provisions in former §287.04.

287.051 Duties and powers.—The purchasing commission shall supervise the performance, through its executive director and upon its request, through the agencies of the state, of the following duties:

(1) A study of the purchases of commodities by the agencies of the state, the compilation, exchange and coordination of information concerning same and the distribution of such information to the agencies, to any county, municipal or other local public authority requesting same, including county boards of public instruction.

(2) The planning and coordination of purchases in volume for the agencies in order to take advantage of and secure the economies possible by volume purchasing; the arrangement of agreements between agencies whereby one agency may make a purchase or purchases for another agency or for a county, municipal or other local public authority; the negotiation and execution of purchasing agreements and contracts through and under which the commission may require state agencies to purchase, and the obtaining or establishment of methods for obtaining of competitive bid prices upon which any agency of the state may purchase and, where practicable, upon which a county, municipal or other local public authority may purchase.

(3) The arrangement of provisions in purchase contracts of the state or any agency, providing that the same price for which a commodity is available to the state, shall also, during the period of time provided therein be available to any county, county board of public instruction, municipal or other local public agency or authority which may desire to purchase at the state contract price. Purchases by any county, county board of public instruction, municipal or other local public agency or authority under the provisions in state purchase contracts, at the state contract price, shall be exempt from the competitive bid requirements

otherwise applying to purchases by such political subdivisions and authorities.

History.—§5, ch. 57-171; §3, (2)(3) §4, ch. 61-293.
Note.—Similar provisions in former §287.05.

287.061 Purchases by agencies; regulated by commission.—

(1) The purchasing commission shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities. It shall have the power to amend, add to, or eliminate purchasing regulations. The adoption of, amendment, addition to, or elimination of purchasing regulations shall be based upon a determination by the purchasing commission, upon a majority vote registered in its minutes, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the state comptroller and to all agencies affected thereby. Thereafter, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The comptroller of the state shall not approve any account nor order and direct any payment of any account for the purchase of any commodity covered by an existing purchasing regulation when the purchase price of such commodity is in excess of the maximum fair price fixed therefor by such purchasing regulation. The said commission shall furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the purchasing commission and any amendments, changes or eliminations of same that may be made from time to time.

(2) The state purchasing commission shall have supervision over the purchasing and purchasing practices of each state agency or institution and may by regulation or order correct any practice that appears contrary to this chapter or to the best interests of the state. If it shall appear that any agency or institution is not practicing economy in its purchasing or is permitting favoritism or any improper purchasing practice, the commission shall require that the agency or institution immediately cease such improper activity with full and complete authority in the commission to carry into effect its directions in such regard.

(3) The state purchasing commission shall have and exercise all rights, powers, jurisdiction, duties, privileges and authority heretofore vested by law in the state budget commission relating to the approval of the purchase of all types of automobiles, buses, coaches, trailers, trucks, tractors, draglines and similar rolling equipment, motorboats and aircraft. Such purchases made by any officer, board, agency, department or branch of the state government shall be subject to the approval of the state purchasing commission. Such purchases shall be made in accordance with rules and regulations of the state purchasing commission relating to the purchase of state owned motor vehicles. The title of such property shall remain in the name of the state.

(4) If any of the funds appropriated to any department or agency are to be expended for equipping, operating or maintaining printing, duplicating or reproduction services or facilities, then each such department or agency shall compile cost records as prescribed by the state auditor of all such expenditure and work done; provided that this shall not apply to any department or agency using a reproduction machine or a photo-reproducing machine in ordinary office reproduction of typewritten matter; however, the purchase of any printing and duplicating equipment when the amount of such purchase exceeds three thousand dollars, shall be made only under such rules and regulations adopted by the state purchasing commission.

History.—§6, ch. 57-171; (3) n. ch. 61-235; (4) n. §1, ch. 61-236.
Note.—Similar provisions in former §287.06.

287.071 Agencies to furnish information as to purchases.—Each and every agency of the state shall furnish information relative to its purchases of commodities, and as to its methods of purchasing such commodities to the purchasing commission upon the request of said purchasing commission.

History.—§7, ch. 57-171.
Note.—Similar provisions in former §287.07.

287.081 Purchases exceeding $1000 to be made on bids.—

(1) No purchase shall be made where the purchase price thereof is in excess of one thousand dollars unless made upon competitive bids received; and when the purchase price is in excess of two thousand dollars no purchase shall be made unless competitive bids are received after advertising therefor in a newspaper of general circulation at least once a week for not less than two consecutive weeks prior to the date on which bids are to be received; provided, however, that if the executive head of any agency of the state shall determine that a real emergency exists in regard to the purchase of any commodities, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then and in such event the provisions herein for competitive bidding shall not apply and the head of such agency shall file with the purchasing commission a statement under oath certifying the conditions and circumstances. Upon receipt of such statement the purchasing

commission may, in writing, authorize the purchase.

(2) There is excepted from bid requirements purchasing agreements, contracts, and maximum price regulations executed or approved by the purchasing commission, also noncompetitive items available from one source only. In connection with the purchase of noncompetitive items only available from one source, a certification of the conditions and circumstances requiring the purchase shall be filed with the purchasing commission. Upon receipt of such certification the purchasing commission may, in writing, authorize the purchase.

(3) Whenever two or more competitive bids are received, one or more of which relates to commodities manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities manufactured within this state shall be given preference. A similar preference shall be given to commodities manufactured within this state whenever purchases are made without competitive bids, and when practical the commission may by regulation establish reasonable preferential policies for other commodities giving preference to resident suppliers of this state.

Any foreign manufacturing company with a factory in the state and with over two hundred employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(4) Any procedures adopted by the state purchasing commission with reference to public printing must comply with the provisions of chapter 283. However, if any department head should determine, from the nature of the type printing to be done, that it would be detrimental to the interests of the state to requisition certain printing through the state purchasing commission due to delay incident to giving opportunity for competitive bidding, unusual problems presented or to any type of emergency, the department head may file with the purchasing commission a statement under oath certifying his reasons for requesting exemption from the provisions of the state purchasing law. Upon receipt of the statement the purchasing commission may, in writing, authorize the purchase contemplated by the department subject to the provisions of chapter 283.

History.—§8, ch. 57-171; (3)n. §1, ch. 59-310; (4)n. §2, ch. 59-318; (1)-(3) §5, ch. 61-293.

Note.—Similar provisions found in former §287.08.

287.101 Acquisition of property.—All records, equipment, files and all other personal property of every description held by the state purchasing council under chapter 287 is hereby transferred to and becomes the property of the state purchasing commission.

History.—§10, ch. 57-171.

287.111 Scope.—

(1) All existing laws and parts of laws relating to purchase of commodities by state agencies are hereby repealed, including chapter §§287.01-287.10.

(2) This chapter shall neither repeal nor modify any part of chapters 233 or 283.

History.—§11, ch. 57-171.

Note.—Similar provisions in former §287.10.

CHAPTER 288

FLORIDA DEVELOPMENT COMMISSION

288.01 Florida development commission.—There is hereby created and established a commission to be known as Florida development commission, hereinafter referred to as "commission."

History.—§1, ch. 29788, 1955.

288.02 Membership of commission; appointment and qualifications; officers; compensation; headquarters.—

(1) The commission shall consist of nine members, to-wit: one member from each congressional district as defined and limited at the time this chapter becomes a law, and a chairman from the state at large, all of whom shall be appointed by the governor. Members shall be residents of the district from which appointed and qualified electors of the state and shall be selected with special reference to their knowledge of and interest in the resources and development of the state. Of the members first appointed, the chairman and four members shall be appointed for two years and remaining members appointed for four years, provided the chairman shall serve at the pleasure of the governor. Subsequent appointments, except for filling of vacancies, shall be for the full term of four years. Vacancies occurring shall be filled by appointment of the governor for the unexpired term. The members of the commission may be suspended by the governor and may be removed from office for the reasons, under the circumstances and as provided by Art. IV, Sec. 15, Florida constitution.

(2) Members of the commission shall receive no compensation for their services but shall be reimbursed for traveling expenses as provided in §112.061.

(3) Before entering upon his duties, each member shall execute the oath of office prescribed by Art. XVI, Sec. 2, Florida constitution, and file same with the secretary of state, and otherwise comply with all statutory and constitutional provisions relating to the appointment and commissioning of public officers.

(4) As soon after appointment of the commission as may conveniently be done, the governor shall call the first meeting of the commission for the purpose of its organization. The commission shall select from its membership from time to time a vice-chairman, and shall select a secretary, who may be the director, hereinafter provided for. The commission shall also be authorized to select an assistant-secretary. In the absence, sickness or inability of the chairman of the commission to act, the duties of the chairman shall be performed by the vice-chairman; in the absence, sickness or

inability of the secretary of the commission to act, the duties of the secretary shall be performed by the assistant-secretary.

(5) The commission may adopt a seal; shall adopt rules for the transaction of its business and shall keep a record of its transactions, findings and determinations, which record shall be a public record.

(6) The headquarters of the commission shall be in the city of Tallahassee and the commission shall be furnished suitable office accommodations in such state building or buildings as may be designated by the governor and the secretary of state. The commission may establish agencies, branch offices, exhibits or other facilities at such points other than Tallahassee as the commission may determine proper.

History.—§2, ch. 29788, 1955; (4) §1, ch. 57-57; (2) §19, ch. 63-400.

Note.—Similar provisions contained in former §286.13.

288.03 Powers and duties of commission.—The general purposes of the commission shall be to guide, stimulate and promote the coordinated, efficient and beneficial development of the state and its regions, counties and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety and general welfare of the people of the state.

For the accomplishment of such purposes, the commission shall have the power and authority to:

(1) Create and build Florida industries, promote commerce and sale of Florida products, encourage employment for Florida citizens, encourage visitors from other states and countries to come to Florida, and raise the earning level of Florida's citizens; and in order to promote and develop business, agriculture, industry, commerce and employment for citizens of the state, to plan and conduct a campaign of information, advertising and publicity relating to the business, industrial, commercial, agricultural, educational, recreational, scenic, historic, transportation and residential facilities, advantages, products and attractions of the state and all parts thereof; and to disseminate any such information pertaining to Florida through and by means of the following media: newspaper advertising outside the state; magazine advertising in magazines of national circulation; outdoor advertising outside the state; radio and television advertising over stations outside the state or networks extending outside the state; preparing and circulating motion pictures; preparing, purchasing and distributing by mail, or by other means of advertising, literature and other material, including exhibits; and, although not specifically detailed but nevertheless included in such media, the promotion and encouragement of and, if necessary, the contribution to the happening and the holding of events and activities within the state, including follow-up contacts by personnel of the commission within or without the state, which in the judgment of the commission will beneficially publicize the state in furtherance of the purposes, powers and duties of the commission as prescribed in this chapter.

(2) Assist in carrying out any program of information, special events and publicity designed to attract Florida tourists, visitors and other interested persons from outside the state;

(3) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions and agricultural and industrial advantages of the state;

(4) Promote and encourage the bringing to the state of conventions, sporting events and other special events or groups;

(5) Plan and carry out programs designed to enlarge and improve trade with other states and with foreign countries, and particularly with countries in the western hemisphere;

(6) Study and recommend to the governor and the legislature such actions or measures as are necessary or desirable to remove barriers to free and advantageous flow of commerce and to relieve restrictions or burdens imposed by law or otherwise which adversely retard or affect the legitimate expansion and development of commerce and industry;

(7) Encourage research designed to further new and more extensive uses of the natural and other resources of the state, with a view to the development of new products and industrial processes;

(8) Promote and encourage the expansion and development of markets for Florida products;

(9) Serve as a clearing house for research, planning and programs to relieve the industrial problems of the state;

(10) Investigate and study conditions affecting Florida business, industry and commerce, collect and disseminate information and encourage technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the commission;

(11) Plan and develop an effective business information service that will directly assist Florida industry and also encourage industries outside the state to use business facilities within the state;

(12) Compile, collect and periodically make available scientific indexes and other information relating to current business conditions;

(13) Study long-range trends and developments in the industries of the state and analyze the reasons underlying such trends; study costs and other factors affecting successful operation of businesses within the state; and make to the governor and to the legislature, from time to time, recommendations for the improvement of any conditions, and for the elimination of any restrictions or burdens imposed by law, or otherwise existing, which adversely affect or retard legitimate development

and expansion of business, industry, agriculture and commerce;

(14) Upon request of the governor, to inquire into and report to him concerning any program of public state improvements and the financing thereof;

(15) Advise, assist and cooperate with municipal, county, regional, metropolitan area and other local planning and development agencies within the state in preparing plans and programs for physical and economic development of such areas;

(16) Advise, assist and cooperate with other federal, state, local or private organizations and individuals in planning, coordinating and promoting the further development and improvement of systems of air routes, airports and landing fields, and the stimulation and promotion of aviation commerce and industry within the state;

(17) In accordance and compliance with any federal law or regulation now enacted or hereafter to be enacted to act as the official agency of the state to work with federal agencies in matters affecting aviation, hospitals, federal distribution of surplus property and for any other purpose as to which the legislature has not designated another state officer, board, bureau, commission, department or agency in relation thereto; state, regional, county, metropolitan area or municipal planning, planning or construction of public works, urban redevelopment, and other matters concerning the acquisition, planning, construction, development, financing, control, improvement, or distribution of lands, buildings, structures, facilities, goods or services in the interest of the public, or for public purposes, or involving the expenditure of public funds, and to act as the official agency of the state in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies, in compliance with any such federal law;

(18) Accept, and expend, without the necessity of appropriation by the legislature, any gift or grant of money made to the commission for any or all of the purposes specified in this section;

(19) Cooperate with municipalities, counties and areas of the state in problems incident to the presence of large numbers of aged persons, including research and the planning, adoption and execution of programs for providing employment, entertainment and activities for such persons;

(20) Perform all of the powers and duties and exercise all of the authority prescribed by former chapter 420, or any other state statute or laws, therein vested in Florida state improvement commission, which said commission is abolished.

History.—§3, ch. 29788, 1955.
Note.—Similar provisions contained in former §§286.19, 286.20.

288.031 **Surplus property; revolving fund; appropriation.**—In section 1, item 27, subsection e., entitled surplus property division: of the appropriation made in chapter 28115, laws of Florida, acts of 1953, the same being the general appropriations act for the biennium 1953-1955, a revolving fund of fifty thousand dollars was created, which was to revert to the general revenue fund when the program was completed. This revolving fund, however, is to remain in existence as a separate trust fund until the surplus property program in the development commission is terminated. Whereupon, the balance in the revolving fund shall then be deposited in the general revenue fund.

History.—§1, ch. 57-134; §2, ch. 61-119.
Note.—Formerly §215.421.

288.04 **Executive director.**—

(1) With the approval of the governor, the commission shall appoint a director who shall be executive director of the commission and have general charge of the work of the commission. He shall serve at the pleasure of the commission. Compensation of the director shall be fixed by the commission, but shall not exceed salaries paid by the state to cabinet officers.

(2) The director shall appoint such assistants, experts, technicians and clerical staff as the commission may deem necessary for the efficient conduct of its work.

History.—§4, ch. 29788, 1955.

288.05 **Establishment of divisions.** — The work of the commission may be conducted through such divisions as may be established from time to time by resolution of the commission.

History.—§5, ch. 29788, 1955.

288.06 **Contracts; research activities.** — In the performance of its duties, the commission is empowered and authorized to make and enter into contracts, and to assume such other functions as are necessary to carry out the provisions of this chapter that are not inconsistent with this or other laws. The commission may make and enter into contracts with other boards, commissions, agencies and institutions of this state or other states, upon such terms as may be agreed upon, to have such studies and research activities conducted as may be necessary and proper, the cost thereof to be paid out of funds which may be appropriated to the commission.

History.—§6, ch. 29788, 1955.

288.07 **Accessibility of records, data and information of other state agencies.**—In collecting and assembling information, the commission is authorized to make use of such pertinent data as may be secured from boards, commissions, officials, agencies and institutions in the state. The commission shall have access to records, data, information and statistics of such other boards, commissions, agencies, officials and institutions, except such records or information that may be required by law to be confidential or secret, and any and all such state agencies are required to furnish or make available to the commission, as requested, such

records, data, information and statistics necessary or proper for the operation of the commission.

History.—§7, ch. 29788, 1955.

288.08 **Publications; sale at cost.**—The commission shall have authority to sell at approximate cost to the state such publications of the commission as, in the judgment of the commission, should not be furnished gratis to those who wish to use publications of the commission in the conduct of their business; and any amounts of money received by the commission from said source shall be added to amounts duly appropriated for the use of the commission in the prosecution of its purposes, powers and duties hereunder.

History.—§8, ch. 29788, 1955.

288.09 **Acceptance of gifts or grants.**—The commission is authorized to accept any grant, payment or gift of funds or property made by the United States or any department or agency thereof, or by any individual, firm or corporation, municipality or county or organization for any or all of the purposes specified in this chapter, and the commission may expend said funds in accordance with the terms and conditions of any such grant, payment or gift.

History.—§9, ch. 29788, 1955.

288.10 **Organization of advisory committees.**—The commission is authorized to encourage the organization of advisory boards or committees among interested groups of citizens, including those representing industry, commerce, business, labor, agriculture, forestry, planning, transportation, the professions, the press, aviation, civic affairs and other groups as the commission may deem advisable. Such boards or committees shall advise with the commission as to its work and the commission shall, as far as practicable, cooperate with such advisory boards or committees to secure the active aid thereof in the accomplishment of the aims and fulfillment of the duties of the commission.

History.—§10, ch. 29788, 1955.

288.11 **Abolition of Florida state advertising commission and Florida state improvement commission.**—

(1) Florida state advertising commission is hereby abolished and chapter 286, is hereby repealed. Any and all assets of Florida state advertising commission (including unexpended funds or appropriations) are transferred to and vested in Florida development commission, and said commission is authorized and empowered to complete any contracts and to otherwise close out the affairs of the advertising commission;

(2) Florida state improvement commission, created by §420.02, is hereby abolished, and all of the powers and duties granted to and vested in Florida state improvement commission by §§288.12-288.31, and by any other statutes or laws of this state, are granted to, vested in and shall be exercised by Florida development commission and all of said §§288.12-288.31, and such other statutes and laws shall remain in full force and effect subject to the powers and duties therein prescribed being performed by Florida development commission. Any legal commitments, contracts or other obligations heretofore entered into or assumed by Florida state improvement commission outstanding on the effective date of this chapter are hereby charged to and shall be performed by Florida development commission. Any and all assets of Florida state improvement commission (including unexpended funds or appropriations) are transferred to and vested in Florida development commission.

(3) Notwithstanding the provisions of subsection (2) of this section in the event that, at the time this chapter takes effect, any bonds therefor authorized by Florida state improvement commission and validated in the manner provided in chapter 75, have not been theretofore issued and sold then said Florida state improvement commission shall be continued as a public body corporate and politic solely for the purpose of the issuance, sale and delivery of such bonds, and shall have power to issue, sell and deliver in the name of Florida state improvement commission said bonds in the manner provided in former chapter 420 or other statutes relating to said Florida state improvement commission; provided, however, that such bonds shall in any event be so issued, sold and delivered not later than July 1, 1956. After the issuance, sale and delivery of any such bonds, the Florida development commission shall succeed to all the duties, obligations and rights of the Florida state improvement commission with respect to said bonds.

After all such bonds have been so issued, sold and delivered by said Florida state improvement commission, or on July 1, 1956, whichever is earlier, the provisions of this subsection shall become inoperative, and said Florida state improvement commission shall be abolished for all purposes.

History.—§11, ch. 29788, 1955.

288.12 **Powers; employees; organization; offices.**—The commission shall have the power to make contracts, to adopt, alter and use a common seal; to lease, buy, acquire, hold and dispose of real and personal property necessary to carry out the objects and purposes of this chapter; to select, appoint and employ, such agents, consultants, attorneys and employees as the business of the commission may require, and may define their authority and duties, fix their compensation, and in the discretion of the commission, may require bonds of any and all employees and agents. The commission shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The commission shall select its own secretary and shall prescribe rules and regulations governing the manner in which its business may be conducted and in which the powers granted to it by law may be enjoyed, including provisions for such committees amongst its mem-

bers as it shall deem necessary to facilitate the carrying on of the business of the commission. The commission, by and with the consent of any board, commission or department of the state, including any field service thereof, may avail itself of the use of information in its or their possession in carrying out the provisions of this chapter. The principal office of the commission shall be at Tallahassee, but the commission may establish agencies or branch offices at such other places and under such rules and regulations as the commission may prescribe.

History.—§2, ch. 15861, 1933; CGL 1936 Supp. 4151 (111); §2, ch. 20509, 1941; §11, ch. 29788, 1955; §1, ch. 59-407.

Note.—Similar provisions contained in former §286.16, §420.03. cf.—§339.03 Transfer of funds.

288.13 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given any county, municipality, drainage district, road or bridge district, school district or any other political subdivision, board or commission in the state to make and enter into with the commission, contracts and leases, within the provisions and purposes of this chapter. The commission is hereby expressly authorized to make agreements with and enter into any and all contracts with any political subdivisions of the state.

History.—§3, ch. 15861, 1933; CGL 1936 Supp. 4151 (112); §2, ch. 22821, 1945; §11, ch. 29788, 1955.
Note.—Formerly §420.04.

288.14 Trustees of internal improvement trust fund may cooperate.—The trustees of the internal improvement trust fund may convey and grant to the commission, and enter into agreements permitting the use and occupation by the commission, with or without compensation, of land under their control and not in use for state purposes, including swamps, overflowed lands, bottoms of streams, lakes, rivers, bays and other waters of the state, and the riparian rights thereto appertaining, as, in the judgment of said board may be reasonably necessary in carrying out the provisions of this chapter.

History.—§4, ch. 15861, 1933; CGL 1936 Supp. 4151(113); §11, ch. 29788, 1955; §2, ch. 61-119.
Note.—Formerly §420.05.

288.15 Further powers of commission.—There is hereby granted to and vested in the commission the power, right, franchise and authority:

(1) To take, exclusively occupy, use and possess rights of way for any projects, enterprises or undertakings of the commission, over and across state-owned lands not otherwise in use for state purposes.

(2) (a) The commission is hereby authorized and empowered to exercise the power of eminent domain and may condemn for the use of said commission any and all lands, easement, right of way, riparian rights, property and property rights of every description required in carrying out the objects and purposes of this chapter.

(b) The proceedings for condemnation hereunder may be instituted and conducted in the name of the commission, and the procedure shall be the same as is prescribed by chapter 73.

(3) To own and to acquire by donation, purchase, or otherwise, real and personal property, tangible and intangible, and to lease, sell, alienate and dispose of the same or any part or parts thereof in carrying out the objects and purposes of this chapter.

(4) To sue and be sued, contract and be contracted with, and to adopt and provide for the use of a seal.

(5) To subscribe for, purchase, acquire, own, sell or otherwise dispose of bonds and obligations of municipalities and political subdivisions of the state, needful or incident to carrying out the objects and purposes of this chapter, and exercise all the rights, powers and privileges incident to ownership thereof.

(6) In order to carry out the objectives and purposes of this chapter the commission is authorized to acquire, own, construct, operate, maintain, improve and extend public buildings, facilities or works within the state which are of the character hereinafter specifically mentioned. All public buildings, facilities and works which the commission is authorized to own, construct, operate and maintain must be such as can ultimately be owned and operated by an agency, department, board, bureau or commission of the state. All or any such buildings, facilities or works may be of a revenue producing character in order that the cost of the same or some part thereof, improvements or extensions thereto may be paid from receipts therefrom including in Tallahassee only rentals, leases and sales to both public and nonpublic agencies through the issue and sales or disposition of revenue bonds, notes or certificates of said commission. The building, facilities and works which said commission is hereby authorized to acquire, construct, operate, maintain, improve and extend are:

(a) Such water control and conservation and facilities or works in connection therewith as are authorized by and are in conformity with the provisions of the Florida department of water resources act. (The proposed Florida department of water resources act died on the calendar and did not become a law.)

(b) Toll bridges or tunnels, and toll roads wherever the same are connected with or form a part of the state system of public roads. The location and construction of same shall first be approved by the state road department.

(c) To accept as a gift or grant or to purchase or lease from the federal government any personal property or any real property, fixtures or appurtenances thereto, located in the state, payment for which can be made from the revenues derived therefrom, which will be used in the development of the agriculture, forest and reforestation of the state or such property as will provide recreation for the public and citizens of the state.

(d) It is expressly declared that said commission shall not be authorized, 1. except as is provided in §288.13, to acquire, own or construct any buildings, facilities or works which

are to be maintained and operated solely for municipal or local purpose; and 2. to so accept, purchase or lease from the federal government any property or business ordinarily owned and operated by private business; provided, however, this provision shall not prohibit or limit such purchase, acceptance of gift or lease of surplus property to be used for non-competitive government purposes.

(e) Public buildings, facilities and additions or improvements to existing buildings and facilities for ultimate use in connection with any of the several state institutions, departments, bureaus, boards or commissions, and in furtherance of this paragraph, the board of commissioners of state institutions and the state board of education are authorized to co-operate with the commission and to do and perform all acts and things necessary thereto. Any property acquired by the commission under the provisions of this chapter may ultimately be conveyed to the state free and clear of all debt or other encumbrance.

(f) Said commission is hereby authorized to collect reasonable rentals, tolls or charges for the use of public buildings, facilities or works constructed, acquired or owned by it and for the products and services of the same exclusively for the purpose of paying the expenses of improving, repairing, maintaining and operating its facilities and properties and paying the principal and interest on its obligations. Said commission is authorized by reasonable regulations to prescribe for the use of buildings, facilities, works or projects owned and operated by it, the amount of rentals, tolls or charges and may make and enter into contracts with any municipality, district, county or other political subdivision, board, commission, agency or department of the state for the use of said projects or sale of the products or services thereof; provided, that the receipts from any project shall not be expended on any other project except as provided in subsection (12) hereof.

(g) Provided, however, that the provisions of this chapter shall not be construed to authorize the construction, acquisition, ownership or operation by the commission of any project other than the class of projects referred to in this subsection (6).

(7) To secure, assemble, study, map, plat and chart any and all data which may pertain to the governance, rehabilitation, welfare, health, transportation, commerce, marketing, finance, business, population, land use, sanitation, waterways, mineral resources, parks, wild life, public buildings and property; and the laws relating to social, economic or conservational matters of the state, its political subdivisions and its people for the purpose of advising and assisting, proposing and recommending to state administrative officers, the state legislature and the people of the state, plans for the future development, welfare and governance of the state, in order that the state's plan of development may be co-ordinated, its economic resources be conserved and the welfare of its people be promoted.

(8) To advise and cooperate with municipal, county, regional and other local agencies and officials within the state to plan for and otherwise co-ordinate in the development of a system of air routes, airports and landing fields within the state and to protect their approaches; to co-operate with other state departments, and with boards, commissions and other state agencies and with appropriate federal agencies, and with interested private individuals and groups in the co-ordination of plans and policies for the development of air commerce and air facilities; to act as the official agency of the state in all matters affecting aviation under any federal laws now or hereafter to be enacted.

(9) To secure, gather and assemble from the United States, or any owning or disposal agency thereof, information relating to the offering for lease, sale or other disposal, of any equipment, supplies, materials or other property, real or personal, offered for lease, sale or other disposal under the provisions of the act of congress known as the surplus property act of 1944, or any amendments thereto, or any other law providing for the disposal of such property as is the subject matter of said act; and to distribute and disseminate such information to the several boards, commissions, departments, state agencies and officers of the state, and the several counties of the state, boards of county commissioners, county boards of public instruction, and other county agencies and officers, and municipalities of the state, and officers thereof, authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for state, county or municipal uses or purposes; to act as agent, if so designated by the state, or any such boards, commissions, departments, state agencies and officers of the state, or any of the several counties of the state, boards of county commissioners, county boards of public instruction, and other county agencies and officers, or municipalities of the state, and officers thereof, to enter a bid or bids in its or their behalf for any surplus property, real or personal, offered for lease, sale or other disposal by the United States, or any owning or disposal agency thereof, and as such agent to make any down payment or payment in full required in connection with such bidding.

(10) (a) The commission is hereby authorized and empowered to borrow money and incur obligations, as shall be deemed proper, to effectuate all or any of the purposes of this law and to pay any expense incident thereto. To enable the commission to borrow money for the purposes specified herein, it is hereby authorized and empowered to issue its negotiable bonds, notes or certificates in its own name; the form, denominations, rate of interest, amount, place of payment, manner, place and price of sale, date of retirement and terms of redemption prior to maturity of said bonds, notes or certificates shall be fixed by said commission. In no case shall any such bonds, notes or certificates mature later than thirty years

from date of issue, or bear interest at a rate greater than six per cent per annum, or be sold at such price that the net interest cost to the commission shall exceed six per cent to the respective maturities thereof. Provided, however, that the commission shall not borrow money for the purposes specified herein and issue and sell its bonds, notes or certificates except after public competitive bidding and sale thereof to the highest bidder; and after approval by the state board of administration as to legal and fiscal sufficiency.

(b) The bonds, notes or certificates authorized under this chapter shall be issued by resolution approved by at least six of the members of the commission; they shall be executed and signed by its chairman or vice-chairman and attested by its secretary or assistant-secretary, or such other officer as may be designated by resolution of the commission, under the seal of said commission and such execution and attestation may be with an engraved, imprinted, lithographed, or otherwise reproduced facsimile signature of such chairman or vice-chairman and secretary, or assistant-secretary, or such other officer as may be designated by resolution of the commission; provided, however, that at least one signature required to be placed thereon shall be manually subscribed. The bonds, notes or certificates shall recite that they are issued under authority of this chapter which shall be referred to by number of chapter and date of approval. The said bonds, notes or certificates of each separate issue shall be consecutively numbered and shall be recorded by the secretary of the commission in a book to be kept for that purpose.

(11) This chapter shall, without reference to any other act of the legislature, be full authority for the issuance and disposition of the bonds, notes or certificates herein authorized, and all of same shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value; payment of said bonds, notes and certificates may be secured by a pledge or deed of trust of revenue from the project for the account of which same are issued. The provisions of this law shall constitute an irrepealable contract between the commission and the holders of any bonds, notes or certificates issued pursuant to the provisions hereof. Under no circumstances shall any bonds, notes or certificates issued under this chapter or any other indebtedness created by the commission be construed as an obligation of the state, nor shall the state under any theory be bound therefor. They shall be solely and only the obligations of the commission in its corporate and representative capacity and shall be secured only by such revenues as shall be pledged as security for the payment thereof.

(12) It is the intention of this statute that maturities shall be adjusted to the anticipated revenue so that the same may be promptly paid when they mature. In the event said commission should be unable to pay any obligation at its maturity it is hereby authorized to issue refunding bonds, notes or certificates with extended maturities which will enable it to pay them from future revenues or such refunding bonds, notes or certificates may be issued to refinance outstanding bonds, notes or certificates which are to be surrendered pursuant to redemption provisions or with consent of the holder or holders thereof. The rentals, tolls or charges for any project acquired and financed hereunder through the issuance of bonds, notes or certificates which are payable from the revenues of such project shall be fixed charges and collected so that such revenues will be sufficient to pay cost not otherwise provided for operating and maintaining said project and paying the interest on and principal of such bonds, notes or certificates as the same become due, and if in any year the net revenue from any project be in excess of the amount provided to be set apart in such year to pay such principal and interest, such excess shall serve as a basis for the future reduction in such rentals, tolls or charges and may be used for the purchase or retirement of the bonds, notes or certificates issued for account of said project, the cost of improvements and extensions to such project or if and to the extent specified in the proceedings for the issuance of said bonds, notes or certificates such balance, if any, may be applied unpledged to pay the currently due amounts or maturities and interest of any other project for the same institution, board or agency. Provided, however, that if there be no additional project for the same institution, board or agency such surplus shall be applied towards calling any or all outstanding bonds, notes or certificates if they be callable, or if not callable, shall be applied towards the purchase of said bonds at the best price obtainable. The net income of said commission from each project shall be held separate and shall not be used for the payment of principal or interest of bonds, notes or certificates issued against any other project except as provided in this section.

(13) It is expressly provided (a) that nothing in this chapter shall be construed as vesting in said commission the power, right or privilege to engage in private enterprise or business for profit; and (b) that nothing in this chapter shall authorize the purchase, condemnation or other acquisition by the commission of the properties or securities of privately owned utilities or any part of same.

(14) The commission is hereby authorized and directed to proceed with the acquisition of land and buildings thereon now needed or to be needed for use in whole or in part by any agency, board, bureau or commission of the state, such acquisition to be within the area defined by the board of commissioners of state institutions for the long range development of the proposed capitol center; and (a) to con-

struct, acquire, own and operate buildings and facilities thereon, such buildings and facilities to be financed by the revenue they yield, through the issuance of revenue certificates; (b) to have specific authority in financing the acquisition, construction and operation of such buildings and facilities, to utilize rentals to both public and nonpublic agencies as well as any regularly appropriated state or other public funds; provided, however, that no revenue from lands, buildings or facilities now owned by the state may be pledged to finance the acquisition of land, buildings or facilities pursuant to the provisions of this law, except revenue from land, buildings or facilities purchased or acquired pursuant to the provisions of this law.

(15) Subsections (6) and (14) shall be liberally construed to effectuate the objectives and purposes thereof and the public policy of the state as hereby declared.

History.—§§5, 6, ch. 15861, 1933; CGL 1936 Supp. 4151(114), (115); §§3, 4, ch. 20509, 1941; §3, ch. 22821, 1945; (6) §1, ch. 26851, (14), (15) n. §§2, 3, ch. 26851, 1951; §11, ch. 29788, 1955; (10) (b) §2, ch. 57-57.

Note.—Formerly §420.06.

288.151 Issuance of bonds, notes, etc., of commission.—The commission shall further have power and be authorized, notwithstanding the provisions of any other law or laws to the contrary, to issue its bonds, notes or certificates as provided in this chapter for the combined purpose of refunding any outstanding bonds, notes or certificates theretofore issued for any project or projects, and the acquisition or construction of any new project or projects, or the improvement of any existing project or projects, or any combination of two or more projects, whether new projects or existing projects; provided, however, that the outstanding bonds, notes or certificates shall mature or be callable prior to maturity not later than five years after the date of issuance of the new bonds, notes or certificates issued to refund such outstanding bonds, notes or certificates. Pending the payment of the principal of and interest on any such outstanding bonds, notes or certificates which mature after the date of issuance of such new bonds, notes or certificates, a sufficient amount of the proceeds of such new bonds, notes or certificates shall be held irrevocably in trust and used only for the payment of the principal and interest of, and redemption premiums, if any, on said outstanding bonds, notes or certificates at or prior to the maturity or first call date thereof. Such trust fund may be invested and reinvested during such period only in direct obligations of the United States maturing not later than the dates upon which the moneys in said fund will be needed for such purposes.

No approval or consent of any other state board, body, agency or official shall be required for the issuance of such bonds, notes or certificates for such combined purposes as provided in this section, except the approvals and consents which are required for the issuance of bonds, notes or certificates for other projects or purposes under the provisions of this chapter.

History.—§1, ch. 57-209.

288.152 Pledge of excess rentals and revenues.—The commission shall further have power and be authorized, notwithstanding any provisions of this chapter or of any other law or laws to the contrary, to pledge any excess rentals or revenues derived or to be derived from any project or projects for the payment of the principal of and interest, and reserves therefor, on any bonds, notes or certificates issued to finance any other project or projects or combination of two or more projects; subject, however, to the rights of the holders of any other obligations for which such rentals or revenues are pledged. The words "project" or "projects," as used in this section, shall mean either new projects to be constructed, existing projects being refinanced, either separately or in connection with new projects being constructed, or existing projects not being refinanced.

History.—§1, ch. 57-209.

288.153 Bonds or revenue certificates; legal investments and security.—Subject to the restrictions and limitations of chapters 656-668 inclusive, and notwithstanding any other restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in bonds or revenue certificates of the Florida state improvement commission or the Florida development commission issued under the authority of former chapter 420, prior to its repeal, or under the authority of chapter 288, provided that such bonds or certificates have been approved by the state board of administration as to their legal and fiscal sufficiency and have been validated by a court of competent jurisdiction, and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in §18.10, chapter 136, and chapter 237, it being the purpose of this section to authorize any person, firm or corporation, association, political subdivision, body and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or certificates, up to the amount as authorized by law to be invested in any type of security, including United States government bonds.

History.—§1, ch. 59-389.

288.16 Commission; bonds, notes, etc.; certain private sales authorized.—

(1) The commission is hereby authorized to sell bonds, notes or certificates issued by said commission at private sale to reconstruction finance corporation or to any other similar United States governmental agency; provided that the sale of said bonds, notes or certificates shall be made at not less than par and that the interest rate thereon be not greater than five per cent per annum. In the event an offer of an issue of Florida development commission bonds, notes or certificates at public sale produces no bid, or in the event all bids received contain excessive interest rates or other terms which, in the judgment of the commission, jeopardize the successful financing of the project and are therefore rejected, the commission is authorized to negotiate for the sale of such bonds, notes or certificates under such rates and terms as are acceptable, or to transfer or dispose of them in payment of any indebtedness, work, material, service or other expense incurred in acquiring, constructing and supplying the project, facility or facilities for which the bonds, notes or certificates were authorized; provided, however, that no such bonds, notes or certificates shall be so sold or delivered on terms less favorable to the commission than the terms contained in any bids rejected at the public sale thereof, or the terms contained in the notice of public sale if no bids were received at such public sale.

(2) The provisions of this section shall be cumulative, and shall not repeal any other law relating to the subject matter hereof.

History.—§§1, 2, ch. 25264, 1949; (1), §1, ch. 26834, 1951; §11, ch. 29788, 1955; (1) §1, ch. 57-58.
Note.—Formerly §420.061.

288.17 Purchase or construction of state buildings; pledge of funds appropriated.—Any state agency is authorized to pledge any funds which may be appropriated by the legislature for the use by such agency for expenses for the payment of service charges necessary to pay the interest and retire the principal serially on revenue certificates issued by the Florida development commission upon approval of the state board of administration, the proceeds of which are used for the purchase or construction of buildings, individually or jointly with other state agencies, for the use as office space. The authority to pledge funds herein provided for is expressly limited to any funds as, if and when appropriated, in that the legislature is under no obligation to make any future appropriation.

History.—§1, ch. 29831, 1955.

288.18 Planning, promoting and supervising state building projects.—The board of commissioners of state institutions shall be responsible for promoting any state building project financed as provided by law in any community where a state building is needed.

Whenever the Florida development commission and the board of administration shall find a building project financially feasible, all state agencies, commissions, bureaus or branch offices of any department occupying rented office space in the area shall occupy space in the state building to the extent that space is available.

Any state agency required to occupy space by the board of commissioners of state institutions may contract for such space and pledge such rentals as are provided and appropriated by the legislature for the purpose of financing the retirement of revenue certificates for the lifetime of any issue.

The board of commissioners of state institutions may make the Florida development commission its agent in the planning and the supervision of the buildings, including the collection of rentals and the maintenance of buildings and sale of certificates.

History.—§2, ch. 29831, 1955.

288.19 Records, accounts, and reports.—Full, detailed and accurate records and accounts shall be kept of all proposals, acts, proceedings, orders, determinations, receipts, disbursements and expenditures made or contemplated by, or under the authority of, the commission hereby provided for, all of which shall be kept open for public inspection and review at all reasonable times, and said commission shall, from time to time, publish the details of its activities in such form, as shall be deemed best calculated to serve the purpose of giving full publicity to all transactions had by, or proposed to said commission for its approval. Provided, however, said commission shall publish such report of its activities at least three times annually.

The commission shall make to the governor an annual report, setting forth in appropriate detail the business transacted during the year, and the condition of the commission at the close of the year. Such annual reports shall be accompanied by duly certified audits of the accounts of the commission. The commission shall furnish to the governor such additional reports and information as he shall from time to time require.

History.—§§7, 12-A, ch. 15861, 1933; CGL 1936 Supp. 4151 (116), 4151(122); §6, ch. 20509, 1941; §11, ch. 29788, 1955.
Note.—Formerly §420.07.

288.20 Revenue to be deposited in state treasury.—

(1) All moneys received by the commission from whatever source shall be deposited in the state treasury to the credit of the proper funds. All disbursements shall be by warrants to be issued by the state comptroller only after receipt of a voucher signed by the executive director or other officer designated by the commission. Said vouchers shall include such information as may be required by the comptroller. When the warrants are chargeable to a trust fund, such vouchers shall also be accompanied by such additional documents as may be provided for in the trust provisions under which such moneys are received.

(2) The moneys on deposit with the state treasurer as ex-officio treasurer of the commis-

sion, on July 1, 1959, shall be deposited in the state treasury as provided in subsection (1) above; provided, however, that all moneys which are identifiable with the revenue bond department of the commission shall be deposited in the fund to be known as the revenue bond fee trust fund.

History.—§8, ch. 15861, 1933; CGL 1936 Supp. 4151 (117); §5, ch. 20509, 1941; §4, ch. 22821, 1945; §11, ch. 29788, 1955; §1, ch. 59-228; (2) §2, ch. 61-119.
Note.—Formerly §420.08.

288.201 Custodian of investments.—The state treasurer shall be the custodian of all securities owned by the commission and it shall be the duty of the state treasurer to collect the interest, or other income on, and the principal of such securities in his custody as the said sums become due and payable, and to deposit the same, when so collected, into the fund to which the investments belong.

History.—§2, ch. 59-228.

288.202 Revenue bond fee trust fund.—The revenue bond fee trust fund created in §288.20 (2) shall be maintained as a separate fund. The cash balance of this fund plus the amounts paid out but not reimbursed shall never exceed the sum of one hundred twenty-five thousand dollars. Upon the termination of the revenue bond program of the commission, the balance in such fund shall be deposited in the general revenue fund unallocated. All direct out-of-pocket expenses of the commission incident to the issuance and sale of any bonds, notes or certificates issued under the provisions of chapter 288 shall be paid from this fund. Such expenses shall include but not be limited to, costs of validating, printing and delivery of the bonds, printing of the prospectus and publication of notice of sale of the bonds. All expenses paid for and on behalf of any bond issue shall be reimbursed to the revenue bond fee trust fund from the proceeds of the sale of the bonds.

History.—§2, ch. 59-228; §2, ch. 61-119.

288.203 Revenue bond department, expenses.—The general administrative expenses of the revenue bond department of the commission shall be paid from the revenue bond fee trust fund, pursuant to budgets filed with and approved by the state budget commission. Only salaries of personnel of the revenue bond department of the commission and necessary administrative expenses incident thereto shall be paid from this fund in addition to the expenses authorized in §288.202.

History.—§2, ch. 59-228; §2, ch. 61-119.

288.204 Fee schedule.—The commission shall adopt a schedule of fees, to be approved by the state board of administration before becoming effective, which may be revised from time to time as conditions warrant and with the approval of the state board of administration, designed so that the revenue bond fee trust fund established in §288.202, will be reimbursed for the amount expended for general administrative expenses of the revenue bond department. The fees charged to each bond issue shall be paid from the proceeds of the sale of the bonds and shall be deposited in the revenue bond fee trust fund.

History.—§2, ch. 59-228; §2, ch. 61-119.

288.21 Existing rights and powers not impaired.—This chapter shall not be construed as in conflict with any right or power vested in any municipality or political subdivision of the state, but it is intended to create a state agency with authority to own, operate, manage and maintain only the classes of projects specified in this chapter.

History.—§9, ch. 15861, 1933; CGL 1936, Supp. 4151 (118); §5, ch. 22821, 1945; §11, ch. 29788, 1955.
Note.—Formerly §420.09.

288.22 Members not liable for obligations of commission.—The members of the commission each and several, shall not be liable personally for any debt or obligation created by the commission.

History.—§10, ch. 15861, 1933; CGL 1936 Supp. 4151(119); §11, ch. 29788, 1955.
Note.—Formerly §420.10.

288.23 Commission authorized to acquire roads and bridges.—

(1) The commission is authorized and empowered, upon the application of any county or counties evidenced by resolution of the board or boards of county commissioners thereof, to acquire by purchase, gift or eminent domain and/or to construct within such county or counties so making application therefor, any road or bridge, including the acquisition of necessary rights-of-way therefor, connecting state highways within such county or counties, provided, however, in the event the said commission shall determine, agree or contract to build or construct any road or bridge under the provisions hereof then it shall so advise the state road department of such determination, agreement or contract and shall give the state road department complete copies of all documents, agreements, resolutions, contracts, and instruments relating to such matter and shall request the state road department to do such construction work including the acquisition of necessary rights-of-way, planning, surveying and actual construction of such project and shall also transfer to the credit of state road department in the treasury of the state the funds hereinafter provided for such projects and the state road department shall thereupon be authorized, empowered and directed to proceed with such construction, including the acquisition of necessary rights-of-way, and to use the said funds for such work, and no other work, in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

(2) The authority herein and hereby conferred to acquire rights-of-way shall be construed to extend to and include the acquisition of new rights-of-way separately to be used in the future for the construction of new roads and new bridges and for the acquisition of rights-of-way to be used in the future for

widening or four-laning or extending, or otherwise, improving existing state roads, and bridges. Provided, however, that no rights-of-way shall be acquired hereunder except for use in the construction of roads and bridges that have been prior to such acquisition legally designated as state roads and bridges, and provided further, that if any provision or any part of any provision of this amended section shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of this amended section. The acquisition of rights-of-way as provided above separately and in advance of the construction of improvements on such rights-of-way, shall be and constitute a separate project or purpose under the provisions of this chapter or under the provisions of any other law or laws, and the commission shall be fully authorized to issue its bonds, notes or certificates in the manner provided in this chapter to finance the cost of the acquisition of such rights-of-way separately and in advance of the construction of improvements on such rights-of-way.

History.—§1, ch. 23758, 1947; §11, ch. 29788, 1955; §1, ch. 57-86.
Note.—Formerly §420.12.
cf.—§339.03 Transfer of certain state road funds; investment; distribution of proceeds.

288.24 Commission authorized to acquire ferries and toll ferries.—

(1) The commission be and it is hereby authorized:

(a) To acquire, own, maintain, and operate ferries and toll ferries wherever the same are connected with or form a part of or are auxiliary to the state system of public roads.

(b) To fix and collect reasonable rentals, tolls or charges for the use of any ferries operated by or under agreement with the said commission.

(c) To enter into a contract or contracts with the state road department for the acquisition, maintenance or operation of any such ferry or ferries.

(2) That the acquisition, ownership, maintenance and operation of said ferries and toll ferries be exercised in accordance with existing laws governing the powers of said commission in connection with other buildings, facilities, additions, and improvements.

History.—§§1-4, ch. 25009, 1949; §11, ch. 29788, 1955.
Note.—Formerly §420.121.

288.25 Commission authorized to acquire airports, facilities, etc.—

(1) There is hereby granted to and vested in commission, in addition to the powers now vested in the same, the right and power to acquire airports and air navigation facilities by donation, purchase, or otherwise, and to maintain, manage and operate such airports and air navigation facilities either by itself or through its duly authorized agents.

(2) That said commission is authorized to adopt reasonable regulations and to prescribe for the use, amount of rental, tolls or charges and to make and enter into contracts with any municipality, district, county, or other political subdivision, board, commission, agency or department of the state or of the federal government for the maintenance, management, control and operation of any such airports.

(3) The definition of words in this section shall be the same as their definitions in other existing laws.

(4) The commission is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the state, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes the commission may, by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards. In like manner the commission may acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of such municipality. The commission may by sale, lease, or otherwise, dispose of any such property, airport, air navigation facility, or portion thereof or interest therein. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease or other disposal may be effected in such manner and upon such terms as the commission may deem in the best interest of the state.

(5) Nothing contained in this section shall be construed to limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning.

(6) The commission may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(7) In the condemnation of property authorized by this section, the commission shall proceed in the name of the state in the manner provided by law. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage.

(8) (a) In operating an airport or air navigation facility owned or controlled by the

state, the commission may enter into contracts, leases and other arrangements with any persons, granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes; conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or making available services to be furnished by the commission or its agents at such airport or air navigation facility.

In each such case the commission may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the state; provided that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion of facility thereof.

(b) The commission may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the commission might not have undertaken under paragraph (a) of this subsection.

(c) To enforce the payment of any charges for repairs to, or improvements, or storage, or care of any personal property made or furnished by the commission or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the commission as provided by law.

(9) The commission is authorized to accept, receive, receipt for, disburse and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the commission upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the commission is authorized to act as agent of the state or any municipality or municipalities acting jointly, upon the request of such municipality or municipalities, in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, make available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance, or operation of a municipal airport or air navigation facility; and if requested by such municipality or municipalities may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance or operation; and all municipalities are authorized to designate the commission as their agent for the foregoing purposes. The commission, as principal on behalf of the state, and any municipality, on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for municipal airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States. All moneys received by the commission pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

History.—§§1-9, ch. 25262, 1949; §11, ch. 29788, 1955.
Note.—Formerly §420.122.

288.26 Financing by commission.—The acquisition or construction of such road or bridge may be financed by the commission through the issuance and sale of revenue certificates, bonds or debentures, such issuance and sale to be in accordance with the provisions and requirements of §288.15; provided, however, that as to any noncallable, unmatured bonds or certificates outstanding which the holder or holders thereof are willing to surrender in exchange for new bonds of the same unit or authority bearing the same or a lower rate of interest, which new bonds may be issued for the sole purpose of establishing a more advantageous maturity schedule by such exchange may be effected by negotiation and, when a part of an expanded funding program, only the amount of new bonds or certificates in excess of the original outstanding principal amount shall be required to be sold by advertised bids, and the commission and the state board of administration are authorized to take such action and perform such duties as may be necessary to give effect to this provision; provided, further, that any and all revenue certificates, bonds or debentures issued by the said commission under the provisions of §288.15 or under the provisions of §§288.23-288.30, shall have printed in the body and upon the face and as a part thereof the following language: "This instrument is an obligation of the commission in its corporate and representative capacity and is secured only by such revenue as shall be pledged as security for its payment and is not an obligation of the state, nor of any county of the state and will not and cannot be paid, redeemed, satisfied nor liquidated

with tax funds of the said state nor of any county of the state, except that the foregoing limitations shall not apply to any tax funds or other funds paid or agreed to be paid by the state road department to the commission pursuant to authority of law as rentals charges or purchase payments which tax funds or other funds so paid or payable have been set forth in the face of this certificate."

History.—§2, ch. 23758, 1947; §1, ch. 26336, 1949; §11, ch. 29788, 1955.

Note.—Formerly §420.13.

288.27 Lease or sale by commission.—The commission is authorized and empowered to lease or sell such roads or bridges so acquired or constructed to the state road department, upon such terms and conditions as will secure sufficient revenue for paying all cost incurred in connection with the acquisition or construction of such roads or bridges and which will represent the fair market value thereof for leasehold and for purchase purposes.

History.—§3, ch. 23758, 1947; §11, ch. 29788, 1955.

Note.—Formerly §420.14.

288.28 Road department authorized to purchase.—The state road department is hereby authorized and empowered to lease or purchase from the commission such roads or bridges as may have been acquired or constructed under the provisions of §288.23 and to pay either the rental or the purchase price from the surplus gasoline taxes which may in the future accrue to the credit of the county or counties in which the road or bridge is located, under the provisions of Sec. 16, Art. IX of the state constitution.

History.—§4, ch. 23758, 1947; am. §1, ch. 26768, 1951; §11, ch. 29788, 1955.

Note.—Formerly §420.15.

cf.—§338.09 Purchase or lease of development commission properties.

288.281 Financing construction or acquisition of roads and bridges; additional method.—

(1) Upon request of any county, any road or bridge district, or any authority, evidenced by a resolution duly adopted by the governing body thereof, the commission is authorized and empowered to issue and sell interest bearing bonds, notes, or certificates in its own name for and on behalf of said county, road or bridge district, or authority, for the purpose of financing the construction of roads or bridges within the county, district, or authority, or the acquisition of rights-of-way for such roads. The governing body of the county, district, or authority may request in said resolution that the commission construct or acquire said project by and through its statutory agent, the state road department.

(2) Any county, road or bridge district, or authority making application to the commission pursuant to this section may prescribe the terms, conditions, and limitations under which said bonds, notes, or certificates shall be issued and sold and the proceeds of the sale of said bonds, notes, and certificates shall be applied.

(3) Any bonds, notes or certificates issued by the commission pursuant to this section may be secured by and payable as to both principal and interest, in whole or in part, from the twenty per cent surplus gasoline tax funds accruing under the provisions of §16, Art. IX of the state constitution, tolls or other revenue derived from the operation of the project, or ad valorem taxes or any combination thereof that may be legally available to said county, road or bridge district, or authority. If authorized by the state road department bonds, notes, or certificates may be additionally secured by and payable as to both principal and interest from legally available eighty per cent surplus gasoline tax funds accruing to the state road department under the provisions of §16, Art. IX of the state constitution.

(4) This section is intended to be cumulative of other powers granted to the Florida development commission, the state road department, the counties, districts, and authorities under other provisions of law and is not intended to repeal, abrogate or modify any such provisions.

History.—§1, ch. 61-433.

288.29 Ratifying prior transactions.—Any transaction heretofore consummated, or in the process of consummation, in whole or in part, concerning the acquisition, condemnation, financing, construction, lease or sale of any such road or bridge within the intentment of §§288.23-288.30, be and the same is hereby ratified, legalized and confirmed.

History.—§5, ch. 23758, 1947; §11, ch. 29788, 1955.

Note.—Formerly §420.16.

288.30 Cumulative provisions. — Sections 288.23-288.29 are intended to be cumulative of other powers granted to the commission and the state road department under other provisions of law, and are not intended to repeal, abrogate or modify any such provisions.

History.—§6, ch. 23758, 1947; §11, ch. 29788, 1955.

Note.—Formerly §420.17.

288.31 Armories; financing construction authorized.—

(1) The commission shall have the power to borrow money and incur obligations by way of bonds, notes or revenue certificates and issue such obligations for the purpose of financing either in whole or in part the construction of armories in such counties and municipalities as designated by the state armory board. The authority hereby conferred shall empower the said commission to issue such certificates or bonds for the financing of the share or portion of the cost to be borne by a county or municipality when required by the provisions of a grant of funds from the state or the federal government or any other source, or to authorize the borrowing and issuing of obligations for financing such an armory in its entirety. Bonds, notes or certificates issued hereunder shall be issued in conformity to all the provisions of former chapter 420, and the

commission shall be empowered to fix the rentals or charges to be collected for the purpose of the retirement or purchase of said obligations. The commission and the county or municipality shall be empowered to enter into such lease, or leases, as may be necessary to insure the providing of sufficient funds to retire such obligations and when the said obligations shall have been fully paid, the armory shall be conveyed to the state. Leases with the county or municipality under the terms of this section shall provide for the control of the building and its use to be vested in the military commander representing the armory board in accordance with the provisions of §250.41.

(2) For the purpose of determining the amount of the contribution of any county or municipality towards the requirement of matching state or federal funds, real estate provided or donated by such county or municipality may be considered as a portion of the contribution required to the amount of the fair appraised value of the same as determined by the armory board, and all lands, buildings and structures shall be conveyed to and become the property of the commission when it acts under the provisions of this section, the same to be conveyed to the state when all obligations against same shall have been paid in full.

(3) Nothing in this section shall be construed as authorizing the pledging, mortgaging or otherwise hypothecating the real estate and armory building, but the obligations issued hereunder shall pledge only the income from the armory building as covered in its rental by the county or municipality or from other sources.

(4) The purpose of this section is to provide a means for financing and supplying the funds necessary to be furnished by a county or municipality to meet and match funds made available by the state or federal government on a matching basis or to provide the total amount of the construction costs of armories.

(5) Counties and municipalities are hereby authorized and empowered to levy taxes not to exceed one mill to provide the funds necessary for the lease or leases herein provided and for the retirement of bonds or certificates of indebtedness issued by the commission under the provisions of this section.

(6) Nothing in this section, however, shall be construed to repeal any provision of chapter 250, as amended in 1949.

History.—§1, ch. 24200, 1947; §§1, 2, ch. 25125, 1949; (2), §10, ch. 26484, 1951; §11, ch. 29788, 1955.
Note.—Formerly §420.18.
cf.—§130.02, County bond issue for constructing.
§193.32, Annual levy, limitations.
§250.40, Armory board; how armories obtained.

288.32 Urban planning assistance revolving trust fund.—

(1) There is hereby created a revolving trust fund (hereinafter referred to as the "fund") which shall be known as the urban planning assistance revolving trust fund.

(2) The fund shall be used exclusively for the purpose of paying the costs of any or all federal urban planning assistance projects, which shall be administered by the Florida development commission under the provisions of §701 of the federal housing act of 1954 or any successor thereto. Provided, however, that any moneys expended from the fund for any such project shall be repaid into the fund by the federal assistance grant upon receipt by the Florida development commission of the full amount of the federal grant for such project when such project has been completed in its entirety and reviewed and audited by the appropriate federal authorities.

(3) An appropriation is hereby made from the general revenue fund of the state of Florida in the amount of forty-five thousand dollars which sum is to be paid into the fund created hereby.

(4) Procedures for administering said fund shall be formulated by the agency or agencies concerned with the administration thereof.

(5) Upon the completion, discontinuation or termination for any cause of all federal urban planning assistance projects under §701 of the federal housing act of 1954 or any successor thereto, or when for any other reason the fund created hereby is no longer needed to effectuate the purposes of this act, the full amount of the fund shall be paid over to and deposited in the general revenue fund of the state of Florida and thereupon the provisions of this act shall be null, void and of no force nor effect.

(6) This act shall be construed to have the effect of superseding any general or special law concerning the subject matter of this act or any part thereof, and shall be liberally construed so as to effectuate the purposes hereof.

History.—§§1-5, 7, ch. 63-459.

CHAPTER 289

FLORIDA INDUSTRIAL DEVELOPMENT CORPORATION

289.011 Definitions.—As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) Corporation means a Florida industrial development corporation created under this act.

(2) Financial institution means any banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) Member means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) Board of directors means the board of directors of the corporation created under this act.

(5) Loan limit means for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History.—§1, ch. 61-177.

289.021 Industrial development corporation; incorporation.—Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this act, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the office of the secretary of state, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(1) The name of the corporation, which shall include the words "Industrial development corporation of Florida."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Florida and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(5) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors.

(6) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than one hun-

dred thousand dollars. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(7) The articles of incorporation shall be in writing, subscribed by not less than nine natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(8) The articles of incorporation shall recite that the corporation is organized under the provisions of this act.

The secretary of state shall not approve articles of incorporation for a corporation organized under this act until a total of at least fifteen national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation; and said written agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him, and all filing fees and taxes prescribed by chapter 608, have been paid, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.

History.—§2, ch. 61-177.

289.031 Special corporate powers.—In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of chapter 608, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the small business administration and any other similar federal agency, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in subsections (4), (5), or (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States department of commerce, the Florida development commission, and any other simliar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the

promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

History.—§3, ch 61-177.

289.041 Securities of industrial development corporation, authorized financial transactions.—Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) Any person including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state except as otherwise provided in this act; provided, however, that a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation;

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein and;

(3) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent of the loan limit of such member.

The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History.—§4, ch. 61-177.

289.051 Membership, financial institutions; loans to corporation, limitations.—Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the state insurance commissioner; two and one half per cent of the capital and surplus of commercial banks and trust companies; one half of one per cent of the total outstanding loans made by savings and loan associations, and building and loan associations; two and one half per cent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; two and one half per cent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one tenth of one per cent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to subsection (3)(a), each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures,

notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one per cent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History.—§5, ch. 61-177.

289.061 **Membership duration; withdrawal.**—Membership in the corporation shall be for the duration of the corporation; provided, that upon written notice given to the corporation five years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member.

History.—§6, ch. 61-177.

289.071 **Powers of stockholders and members.**—The stockholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in §289.091;

(2) To make, amend and repeal bylaws;

(3) To amend this charter as provided in §289.081;

(4) To dissolve the corporation as provided in §289.151;

(5) To do all things necessary or desirable to secure aid, assistance loans and other financing from any financial institution, and from any agency established under the small business investment act of 1958, public law 85-699, 85th congress, or other similar federal laws now or hereafter enacted;

(6) To exercise such other of the powers of the corporation consistent with this act as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined under §289.051(3)(b).

History.—§7, ch. 61-177.

289.081 **Amendments to articles of incorporation.**—The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two thirds of the votes to which the stockholders shall be entitled and two thirds of the votes to which the members shall be entitled; provided, that no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the state comptroller to examine the corporation or the obligation of the corporation to make reports as provided in §289.121, shall be made; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each member affected by such amendment.

Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

History.—§8, ch. 61-177.

289.091 **Conduct of corporation business and affairs.**—The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than fifteen nor more than twenty-one, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at

the annual meeting, which annual meeting shall be held during the month of January, or, if no annual meeting shall be held in the year of incorporation, then within ninety days after the approval of the articles of incorporation at a special meeting as hereinafter provided. At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History.—§9, ch. 61-177.

289.101 **Surplus.**—Each year the corporation shall set apart as earned surplus not less than ten per cent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

History.—§10, ch. 61-177.

289.111 **Corporation depository.**—The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

History.—§11, ch. 61-177.

289.121 **Comptroller; examination; reports.**—The corporation shall be examined at least once annually by the state comptroller and shall make reports of its condition not less than annually to said comptroller and more frequently upon call of the comptroller, who in turn shall make copies of such reports available to the state insurance commissioner and the governor; and the corporation shall also furnish such other information as may from time to time be required by the comptroller and secretary of state. The corporation shall pay the actual cost of said examinations. The comptroller shall exercise the same power and authority over corporations organized under this act as is now exercised over banks and trust companies by the provisions of the Florida banking code, where such banking code is not in conflict with this act.

History.—§12, ch. 61-177.

289.131 **Meetings.**—The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of by-laws; by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business.

History.—§13, ch. 61-177.

289.141 **Corporative existence.**—The period of duration of the corporation shall be fifty years, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in §289.151.

History.—§14, ch. 61-177.

289.151 **Dissolution.**—The corporation may upon the affirmative vote of two thirds of the votes to which the stockholders shall be entitled and two thirds of the votes to which the members shall be entitled dissolve said corporation as provided by chapter 608, insofar as said chapter 608 is not in conflict with the provisions of this act. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.—§15, ch. 61-177.

289.161 **Credit of state.**—Under no circumstances shall the credit of Florida be pledged to any corporation organized under the provisions of this act.

History.—§16, ch. 61-177.

289.171 **Federal small business investment act, applicability.**—Any corporation organized under the provisions of this act shall be a state development company, as defined in the small business investment act of 1958, public law 85-699, 85th congress, or any other similar

federal legislation, and shall be authorized to operate on a state-wide basis.

History.—§17, ch. 61-177.

289.181 **Tax exemptions, tax credits, etc.**—Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by §§192.54 and 201.10, or by any other general laws are granted to corporations organized pursuant to this act.

History.—§18, ch. 61-177.

289.191 **Occupational license tax.** — Every corporation organized and engaged in business under the provisions of this act shall pay an annual state occupational license tax of fifty dollars. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed in §205.02; provided, however, no county or municipality shall levy any such occupational license tax in a greater amount than those prescribed in said §205.02.

History.—§19, ch. 61-177.

289.201 **Fiscal year.**—Corporations organized under this act shall adopt the calendar year as their fiscal year.

History.—§20, ch. 61-177.

CHAPTER 290

FLORIDA NUCLEAR CODE AND SOUTHERN INTERSTATE NUCLEAR COMPACT LAW

290.01 Commission established.—This chapter shall be known as the Florida nuclear code and southern interstate nuclear compact law. There is hereby created and established a commission to be known as the Florida nuclear and space commission, hereafter to be referred to as the commission.

History.—§1, ch. 57-178; §1, ch. 61-262; §1, ch. 63-474.

290.02 Membership; terms of office.—The commission shall consist of nine members who shall be appointed by the governor and shall serve for terms of four years, and the four-year terms shall run concurrently with the four-year term prescribed by the state constitution for the governor of the state and until their successors are appointed and qualified; provided, that the first nine members of the commission shall be appointed by the governor for terms that shall expire at the time of the expiration of the term of the present governor and until their successors are appointed and qualified. The governor shall appoint as members of the commission citizens and residents of the state. At the time of the appointment of the members of the commission, the governor shall designate one of the members to be the chairman of the commission. Upon being appointed, each member of the commission shall execute the oath of office prescribed by §2 of Art. XVI of the state constitution and file the same with the secretary of state. The members of the commission shall serve without compensation for their services but shall be entitled to be reimbursed for their actual and necessary expenses incurred in the performance of their official duties to the same extent as allowed other state officers.

History.—§2, ch. 57-178.

290.03 Commission state agency.—The commission is hereby constituted an official agency of the state.

History.—§3, ch. 57-178.

290.04 Commission headquarters.—The headquarters of the commission shall be in the city of Tallahassee.

History.—§4, ch. 57-178.

290.05 Authority to employ executive director.—The commission is hereby granted the power to appoint an executive director who shall, subject to the direction of the commission, have general charge of the work of the commission. He shall serve at the pleasure of the commission. Compensation of the director shall be fixed by the legislature. The director shall be entitled to be reimbursed for his necessary expenses incurred in the performance of his official duties to the same extent allowed other state employees pursuant to §112.061.

History.—§5, ch. 57-178; §1, ch. 61-262; §2, ch. 63-474.

290.051 Purpose.—It is the purpose of part I of this chapter to provide for:

(1) A program to permit and promote maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state, and to facilitate intergovernmental cooperation with respect to the utilization and regulation of sources of ionizing radiation to the end that duplication of functions may be minimized; and

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities by the appropriate state agency or agencies with respect to by-product, source and special nuclear materials, as well as x-ray, radium and other sources not controlled by the atomic energy commission.

History.—§2, ch. 61-262.

290.06 Powers and duties of commission.—The powers and duties of the commission shall be:

(1) To employ such other personnel as in its judgment may be necessary in carrying out the work of the commission and to fix the salaries for such employees.

(2) To acquire facts concerning nuclear and space development on a state, national, and international level and to be informed fully of such developments.

(3) To formulate a state nuclear and space program, to advise the governor and agencies of the state on all nuclear and space matters and to make recommendations to the governor

relative to legislation in the field of nuclear and space energy.

(4) To coordinate development and regulatory activities of the state relating to nuclear and space matters, including cooperation with other agencies of the state, other states, the federal government, education, and industry.

(5) To convene, when necessary, a coordinating council consisting of representatives of the appropriate state agencies to secure coordinated action in any matters bearing on the state's nuclear and space program.

(6) To promote and support a comprehensive program of education and research relative to nuclear and space development in the fields of education, science, agriculture, industry, transportation, medicine, and all other fields of endeavor which may aid in, or be benefited by nuclear and space development and nuclear and space science and engineering.

(7) To promote, in cooperation with the Florida development commission, the industrial development of Florida by attracting new industry based on nuclear science and engineering.

(8) To hold meetings and seminars within the state and by this and other methods to disseminate information to the people of Florida relative to nuclear and space developments and their effect.

(9) To advise the governor when the commission determines that any proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state. The governor may, after consultation with the commission, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state and may issue an order to that effect, in which event the proposed rules and regulations shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations.

(10) To inform the several agencies of the state and political subdivisions as to activities relating to development and regulations of sources of ionizing radiation.

History.—§6, ch. 57-178; §1, ch. 61-262; (2)-(6), (8) §3, ch. 63-474.

290.07 Definitions.—For the purpose of this chapter, the following words shall have the meanings indicated:

(1) By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) Ionizing radiation means gamma rays and x-rays; alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3) License; general and specific.

(a) General license means a license effective pursuant to regulations promulgated under the provisions of this act without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) Specific license means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(4) Nuclear energy means all forms of energy released in the course of nuclear fission or nuclear fusion or other nuclear transformation.

(5) Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, or any successor thereto, and other than federal government agencies licensed by the United States atomic energy commission, or any successor thereto.

(6) Source material means uranium, thorium, or any other material which the governor declares by order to be source material after the United States atomic energy commission, or any successor thereto, has determined the material to be such; or ores containing one or more of the foregoing materials, in such concentration as the governor declares by order to be source material after the United States atomic energy commission, or any successor thereto, has determined the material in such concentration to be source material.

(7) Special nuclear material means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the governor declares by order to be special nuclear material after the United States atomic energy commission, or any successor thereto, has determined the material to be such, but does not include source material; or any material artificially enriched by any of the foregoing, but does not include source material.

History.—§2, ch. 61-262.

290.08 Reports by other agencies.—The several agencies of the state and political subdivisions thereof shall keep the commission fully and currently informed as to their activities relating to development and regulation of sources of ionizing radiation.

History.—§2, ch. 61-262.

290.09 Submitting proposed regulations or ordinances; effective date.—No rule, regulation or ordinance or amendment thereto, or repeal thereof, primarily and directly relating to atomic energy or the use of atomic energy, which any department, division, commission or other agency of the state or of any political sub-

division thereof may propose to issue or promulgate, shall become effective until ninety days after it has been submitted to the commission, unless the commission or the governor waives all or any part of such ninety day period.

History.—§2, ch. 61-262.

290.10 Licensing and registration of sources of ionizing radiation.—

(1) At such time as may hereafter be appropriate, the governor is authorized to designate a state agency which is empowered to provide by rule or regulation for general or specific licensing or registration of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension or revocation of licenses.

(2) The regulatory agency is authorized to require registration or licensing of other sources of ionizing radiation.

(3) The regulatory agency is authorized to exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the regulatory agency makes a finding that the exemption of such source of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(4) Rules and regulations promulgated pursuant to this act may provide for recognition of other state or federal licenses as the regulatory agency may deem desirable subject to such registration requirements as the regulatory agency may prescribe.

(5) All proposed rules and regulations noted in this section are subject to the review procedures outlined in this act.

History.—§2, ch. 61-262.

290.11 Inspection.—The regulatory agency or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property upon which there are located sources of ionizing radiation for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representatives.

History.—§2, ch. 61-262.

290.12 Records.—

(1) The regulatory agency shall:

(a) Maintain a file of copies of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations.

(b) Maintain a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto.

(c) Maintain a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon.

(2) The regulatory agency is empowered to require each person who possesses or uses a source of ionizing radiation to maintain and, when requested, to furnish to the regulatory agency and to the nuclear commission, records relating to its receipt, storage, transfer or disposal and such other records as the regulatory agency may require subject to such exemptions as may be provided by rules or regulations.

(3) The regulatory agency is empowered to require each person who possesses or uses a source of ionizing radiation to maintain and, when requested, to furnish to the regulatory agency and nuclear commission, appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the regulatory agency. Any person possessing or using a source of ionizing radiation shall furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record:

(a) Annually upon request.

(b) At any time such employee has received excessive exposure, and

(c) Upon termination of employment upon request.

History.—§2, ch. 61-262.

290.13 Federal-state agreements.—

(1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1), possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this act which shall expire either ninety days after receipt from the regulatory agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

History.—§2, ch. 61-262.

290.14 Municipal regulations and ordinances.—Any municipality may enact, in manner prescribed by law, health regulations and ordinances not inconsistent with this act and rules and regulations adopted under this act.

History.—§2, ch. 61-262.

290.15 Administrative procedure and judicial review.—

(1) In any proceeding under this act:

(a) For the issuance or modification of rules and regulations relating to control of sources of ionizing radiation; or

(b) For granting, suspending, revoking, or amending any license; or

(c) For determining compliance with rules and regulations of the regulatory agency; the regulatory agency shall afford an opportunity for a hearing upon the request of any person whose interest may be affected by the proceed-

ing, which hearing shall be held at a time and place designated by the regulatory agency. Written notice of the time, place, and purpose of such hearing shall be furnished to all such interested persons not less than ten days before such hearing; such persons shall thereupon be admitted as parties to the proceeding. On the basis of such hearing, the regulation or order shall be continued, modified or reviewed within thirty days after such hearing.

(2) Whenever the regulatory agency finds that an emergency exists requiring immediate action to protect the public health and safety, it may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately; but on application to the regulatory agency made within ten days after such order such person shall be afforded a hearing at the earliest feasible date as fixed by the regulatory agency. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within thirty days after such hearing.

(3) Any final order or determination entered in any proceeding under subsections (1) and (2), shall be subject to judicial review in the circuit court in and for the county in which the order was entered within sixty days after the entry of such order.

History.—§2, ch. 61-262.

290.16 Injunctive relief.—A civil action may be instituted in the circuit court on behalf of the regulatory agency for injunctive relief to prevent the violation of the provisions of this act or rules or regulations promulgated under this act, and said court may proceed in the action as in other civil actions and may restrain in all such cases any person from violating any of the provisions of this act or said rules or regulations.

History.—§2, ch. 61-262.

290.17 Prohibited uses.—It is unlawful for any person to use, manufacture, produce, transfer, transport, receive, acquire, own or possess any source of ionizing radiation unless licensed by or registered with the regulatory agency in accordance with the provisions of this act.

History.—§2, ch. 61-262.

290.18 Impounding of materials.—The regulatory agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this act or any rules or regulations issued thereunder.

History.—§2, ch. 61-262.

290.19 Penalties.—

(1) Any person who violates any of the provisions of this chapter or any rule or regulation promulgated thereunder shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

(2) Any person who interferes with, hinders or opposes any agent, officer or member of the regulatory agency in the discharge of his duties under this act shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

(3) Any person who fails to comply with a lawful order issued pursuant to this act within the time fixed by the regulatory agency or the time allowed for review under §290.16, whichever is the longer, shall, upon conviction, be guilty of a misdemeanor and shall be punished by imprisonment not exceeding six months or by fine not exceeding $1,000.00.

History.—§2, ch. 61-262

290.30 Definitions; southern interstate nuclear compact.—As used in this act, unless the context requires otherwise:

(1) Compact means the southern interstate nuclear compact;

(2) Board means the southern interstate nuclear board.

History.—§1, ch. 61-227.

290.31 Florida party to southern interstate nuclear compact. — The southern interstate nuclear compact is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in accordance with the terms of the compact, which said compact is substantially as follows:

(1) POLICY AND PURPOSE.—The party states recognize that the proper employment of nuclear energy, facilities, materials and products can assist substantially in the industrialization of the south and the development of a balanced economy for the region. They also recognize that optimum benefit from an acquisition of nuclear resources and facilities requires systematic encouragement, guidance and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the south and contribute to the individual and community well-being of the people of this region.

(2) BOARD.—

(a) There is hereby created an agency of the party states to be known as the southern interstate nuclear board (hereinafter called the board). The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of

his functions thereon (either for the duration of his membership or for any less period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party state shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors' insurance, provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold and convey real and personal property and any interest therein.

(j) The board shall adopt by-laws, rules and regulations for the conduct of its business, and shall have the power to amend and rescind these by-laws, rules and regulations. The board shall publish its by-laws, rules and regulations in convenient form and shall also file a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

(3) FINANCES.—

(a) The board shall submit to the executive head or designated officer or officers of each state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the latest official decennial census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under subsection (2)(h), provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under subsection (2)(h), the board shall not incur any obligation prior to the allotment of funds by the party jurisdiction adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection.

(4) ADVISORY COMMITTEES.—The board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not to be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

(5) POWERS.—The board shall have the power to:

(a) Ascertain and analyze on a continuing basis the position of the south with respect to nuclear and related industries.

(b) Encourage the development and use of nuclear energy facilities, installations and products as part of a balanced economy.

(c) Collect, correlate and disseminate information relating to civilian uses of nuclear energy, materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of

1. Nuclear industry, medicine or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materia products, installations or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of nuclear product, material or equipment use and disposal and of proper techniques or processes for the application of nuclear resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety and other standards, laws, codes, rules, regulations and administrative practices in or related to nuclear fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made in the case of Florida, through the Florida nuclear commission.

(i) Prepare, publish and distribute (with or without charge), such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the atomic energy commission or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states. to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic areas covered by this compact.

(6) SUPPLEMENTARY AGREEMENTS.—

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this act shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this act shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(7) OTHER LAWS AND REGULATIONS.—Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish or otherwise impair

jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of congress.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercal purposes.

(8) ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.—

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

(9) SEVERABILITY AND CONSTRUCTION.—The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

History.—§2, ch. 61-227.

290.32 Florida participation. —

(1) The board member from Florida shall be the chairman of the Florida nuclear and space commission when approved by the governor; otherwise, the governor shall appoint the member. The member or the governor may designate another person as his deputy or assistant.

(2) Any supplementary agreement entered into under §290.31(6) requiring the expenditure of funds shall not become effective as to Florida until the required funds are appropriated by the legislature.

(3) The department, agencies and officers of this state and its subdivisions are authorized to cooperate with the board in the furtherance of any of its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, either the governor or the Florida nuclear and space commission.

(4) To carry out the purposes of this act, there is appropriated out of the general revenue fund a sum equal to Florida's share of board needs as determined by §230.31(3), for the fiscal year 1961-1962. This sum shall not be greater than five thousand dollars and the money shall not be expended until the board has come into existence as provided by the terms of the compact.

History.—§3, ch. 61-227; (1), (3) §5, ch. 63-474.

TITLE XIX

PENSIONS AND WAR VETERANS

CHAPTER 291

CONFEDERATE PENSIONS

291.01 State board of pensions.—The governor, comptroller and the treasurer of this state constitute the state board of pensions.

History.—§3, ch. 4894, 1901; §1, ch. 5600, 1907; §1, ch. 5885, 1909; §1, ch. 6424, 1913; §1, ch. 6818, 1915; §1, ch. 7259, 1917; RGS 1443; CGL 2097.

291.02 Persons entitled to pensions; amount; requirements.—Any person who enlisted and served in the military or naval service of the confederate states during the war between the states of the United States, and did not desert the confederate service, and who performed service in actual line of duty for a period of not less than one year, or who was in actual service at the time of the close of said war, unless incapacitated for such duty by reason of wounds received or disease contracted while in line of duty, or who was otherwise honorably discharged for any cause, and shall have been a bona fide citizen of this state for eight years next preceding the filing of his claim for pension, shall be entitled, upon application, to receive a pension in the amount of nine hundred dollars per annum, in monthly payments of seventy-five dollars each; provided, however, that no soldier or soldier's widow, who is now on the pension roll and drawing a pension shall be required to make other and further proof; provided, further, that no applicant for a pension under this section, who has previously made satisfactory proof of service under any former law, which proof of service meets the requirements of this section, although not now on the pension roll, shall not be required to make new proof of service; provided, further, that the provisions of this section shall apply to all those who were members of the Florida reserve, and also those known as "home guards," which were in the service of the state during the war between the states of the United States; provided, further that the provisions of this section

shall apply to those who were members of the militia of any of the confederate states, who saw actual service in the confederate service for at least one year, or who were in the service at the end of the war, and who have been bona fide residents of the state for fifteen years; provided, further, that any soldier or sailor who performed actual service for a period of one year or more in line of duty and was absent from his command at the time same was mustered out, upon a furlough granted him after January 15, 1865, shall not be presumed to have deserted the service and shall be entitled to a pension under the provisions of this section, unless proven to be a deserter; and provided, further, that a discharge from a federal prison by reason of sickness, where such sickness is shown by official records and also by positive proof, shall not be considered a desertion.

History.—§1, ch. 4894, 1901; §2, ch. 5600, 1907; §2, ch. 5885, 1909; §2, ch. 6424, 1913; §2, ch. 6818, 1915; §2, ch. 7259, 1917; §1, ch. 7924, 1919; §1, ch. 7925, 1919; RGS 1444; §1, ch. 8400, 1921; §1, ch. 10208, 1925; CGL 2098; §1, ch. 18046, 1937; CGL 1940 Supp. 2098(1); §1, ch. 22912, 1945; §1, ch. 26906, 1951.

291.03 Home guards of other states not eligible for pension.—Soldiers of organizations known as home guards of other states in the war between the states, shall not be eligible to a pension under the laws of this state; provided this section shall not affect the pension of any soldier or the widow of any soldier on the pension roll of this state at this time; and, provided this section shall not apply to those who are eighty years of age and have resided continuously in the state for sixty years prior to May 28, 1931.

History.—§1, ch. 14735, 1931; CGL 1936 Supp. 2102(1).

291.04 Widows of deceased soldiers or sailors entitled to pensions; amount; requirements.—The widow of any deceased soldier or sailor who enlisted and served in the military or naval service of the confederate states during the war between the states of the United States and did not desert the service and who performed service in actual line of duty, for a period of not less than one year, unless incapacitated for such duty by reason of death, wounds received or disease contracted while in actual line of duty, or who was otherwise honorably discharged for any cause, shall be entitled to receive the sum of fifteen hundred dollars per annum, in monthly payments of one hundred twenty-five dollars, upon the following conditions:

(1) Such widow shall have resided continuously in this state for a period of eight years next preceding the date of filing her pension claim;

(2) Such a widow's marriage shall have been solemnized on or prior to June 1, 1917;

(3) Such widow of any such deceased soldier or sailor, who at the time of his death was drawing a pension either under this chapter or under a special act of the legislature of this state, shall not be required to make proof of her husband's service;

(4) If such widow's husband, at the time of his death, was not drawing a pension, either under this chapter or under a special act of the legislature of this state, then such widow of any deceased soldier or sailor shall make proof of her husband's service.

(5) There is hereby appropriated out of the general revenue fund a sufficient amount to cover the increase provided herein.

History.—§1, ch. 5109, 1903; §3, ch. 5600, 1907; §3, ch. 5885, 1909; §3, ch. 6424, 1913; §3, ch. 6818, 1915; §3, ch. 7259, 1917; §2, ch. 7924, 1919; RGS 1445; §2, ch. 8400, 1921; §2, ch. 10208, 1925; CGL 2099; §1, ch. 18046, 1937; CGL 1940 Supp. 2098(1); §2, ch. 22912, 1945; §1, ch. 28106, 1953; §1, ch. 29940, 1955; §1, (5) n. §2, ch. 57-801; §1, ch. 63-319.

291.05 Rates and amounts of pensions provided by special acts.—All persons receiving pensions under special acts heretofore passed shall be paid, in lieu of the amounts they are now receiving thereunder, at the same rate and the same manner that all pensions are paid under this chapter.

History.—§1, ch. 5109, 1903; §3, ch. 5600, 1907; §3, ch. 5885, 1909; §3, ch. 6424, 1913; §3, ch. 6818, 1915; §3, ch. 7259, 1917; §2, ch. 7924, 1919; RGS 1445; §2, ch. 8400, 1921; §2, ch. 10208, 1925; CGL 2099; §1, ch. 18046, 1937; CGL 1940 Supp. 2098(1).

291.06 Widows of soldiers or sailors drawing pensions under special acts entitled to pension.—When any soldier or sailor, drawing pension under a special act of the legislature, shall die and leave surviving him a widow from whom he has not been divorced, such widow, upon proof of marriage to, and death of, her husband, shall be granted a pension payable from the date of the death of her husband, and at the same time and rate as other pensioners are paid; and the comptroller shall draw his warrants in payment of such pension so long as such widow continues to be a resident of the state.

History.—§1, ch. 9205, 1923; CGL 2101.

291.07 Widows entitled to pensions under this chapter not debarred by remarriage.—The widow of any person entitled to pension under the law of this state by reason of service in or for the confederate states during the war between the states shall not be debarred from pension on account of remarriage.

History.—§1, ch. 18047, 1937; CGL 1940 Supp. 2099(1).

291.08 Additional pension for loss of eye, foot or hand in actual service.—All pensioners of the state, now or hereafter drawing a pension, who lost an eye, a foot, or a hand, in actual military service during the Civil War, shall be paid the sum of five dollars per month in addition to the regular pension provided by law for pensioners of this state, and the comptroller shall draw his warrants for such pensioners to include the additional sum of five dollars per month herein provided.

History.—§1, ch. 9204, 1923; CGL 2100.

291.09 Pensioners of other states.—No person receiving a pension from any other state shall be entitled to a pension under this chapter.

History.—§1, ch. 4894, 1901; GS 758; §4, ch. 5600, 1907; §4, ch. 5885, 1909; §4, ch. 6424, 1913; §4, ch. 7259, 1917; RGS 1446; CGL 2102.

291.10 Payment of allowed claims; denied applications; additional proof; new applications; chaplains not affected; new proof not required where drawing pension; payment during absences from state, removal or incarceration.—The payment of all allowed claims shall be made from the date of the filing of the application in the pension department, unless the applicant is the widow of a soldier receiving a pension, at the time of his death, under this chapter, when payment shall be made to such widow from the date of the death of her husband if her application be filed within ninety days after his death; provided, that an applicant for pension under this chapter, whose application for pension has been denied by the board for any cause, shall file within three months of the denial of said application, additional proof that is satisfactory to the state pension board; otherwise, the action of the board will be considered final on such application; provided, however, such action of the board shall not prevent a new application from being made and filed under the provisions of this chapter, which, if granted, shall entitle the person applying to receive a pension from the date of filing of such new application; provided further, that nothing in this chapter shall be construed to prevent chaplains in the regular confederate service from receiving a pension.

Any person who drew a pension from the state on or before May 21, 1919, and is entitled to a pension under this chapter, shall not be required to make new proof and shall be paid from May 21, 1919.

Payments shall not continue to pensioners during absences from this state of longer duration than twelve months; provided, that when a pension has been discontinued because of such absence, it shall be renewed upon return of pensioner to this state where it is shown that such absence was not permanent; provided, that payments to pensioners be discontinued immediately upon their removal from this state, if said removal is shown to be permanent; provided further, that upon any pensioner being incarcerated or confined in any state institution in this state, the payment of any pension shall be discontinued during such time of confinement, unless such pensioner has a wife or minor children dependent upon him or her for support, when such pension shall be paid to those so dependent upon such pensioner.

History.—§1, ch. 4894, 1901; §6, ch. 5600, 1907; §5, ch. 5885, 1909; §5, ch. 6424, 1913; §5, ch. 7259, 1917; §3, ch. 7924, 1919; RGS 1447; CGL 2103.

291.11 Restoration of pension suspended for absence from state when physical infirmity, etc., prevents pensioner from returning.—Any pensioner on the pension roll of this state, who has reached the age of eighty-three years or more, whose pension shall have been suspended because of absence from the state for more than twelve months, shall be restored to the pension roll of this state upon application therefor, where it is made to appear that such person is unable to return to the state by reason of physical infirmity, blindness or other sufficient cause to be determined by the state pension board.

History.—§1, ch. 14781, 1931; CGL 1936 Supp. 2121(1).

291.12 Proof.—Applicants for pensions under this chapter shall make oath before an officer authorized to administer oaths and use a seal, stating the company and regiment in, or ship upon, which he enlisted and served, the date of enlistment and date and cause of discharge, his citizenship and rights to the benefits of this chapter. He shall furnish the affidavit of a commissioned officer under whom, or two comrades with whom, he served, or the transcript from the muster roll from the adjutant general's office at Washington, to establish the service claimed, or other documentary evidence satisfactory to the board of pensions.

History.—§1, ch. 4894, 1901; §6, ch. 5600, 1907; §6, ch. 5885, 1909; §6, ch. 6424, 1913; §6, ch. 7259, 1917; RGS 1448; CGL 2104.

291.13 County commissioners investigate claims.—The board of county commissioners, of the county in which the applicant resides, shall investigate all claims made under this chapter and report upon the application whether or not the pension applied for should be granted.

History.—§1, ch. 4894, 1901; §7, ch. 5600, 1907; §7, ch. 5885, 1909; §7, ch. 6424, 1913; §7, ch. 7259, 1917; RGS 1449; CGL 2105.

291.14 Board of pensions furnish application blanks.—The state board of pensions shall furnish, annually, suitable blanks for making such reports, and shall file applications immediately upon receipt of same.

History.—§1, ch. 4894, 1901; §8, ch. 5600, 1907; §8, ch. 5885, 1909; §8, ch. 6424, 1913; §8, ch. 7259, 1917; RGS 1450; CGL 2106.

291.16 County commissioners examine pension rolls annually; report to pension board; persons dropped.—The county commissioners of each county shall, at least once a year, examine the pension rolls of their respective counties and ascertain whether or not any person on said pension roll should be dropped from same by reason of not being entitled to draw pension under the provisions of this chapter, and make report of their findings to the state board of pensions, who may drop such pensioners from the list, if, in their judgment, the same should be done. The pension board may discontinue from the pension roll any pensioner, upon satisfactory evidence that said pensioner is not entitled, under the provisions of this chapter, to receive a pension.

History.—§1, ch. 4894, 1901; §3, ch. 5109, 1903; §10, ch. 5600, 1907; §10, ch. 5885, 1909; §10, ch. 6424, 1913; §10, ch. 7259, 1917; RGS 1452; CGL 2108.

291.17 Cooperation of confederate veterans.—The several camps of confederate veterans of this state are requested to cooperate with the boards of county commissioners and state pension board in purging the roll, if there be persons on said roll who are not justly entitled to receive a pension.

History.—§11, ch. 7259, 1917; RGS 1453; CGL 2109.

291.18 Certificates. — The state board of pensions shall forward to each pensioner, who is not on the pension roll at the time of the passage of this law, a certificate that he is entitled to draw a pension, which shall be prima facie evidence to all courts of the same.

History.—§1, ch. 4894, 1901; GS 760; §11, ch. 5600, 1907; §11, ch. 5885, 1909; §11, ch. 6424, 1913; §12, ch. 7259, 1917; RGS 1454; CGL 2110.

291.21 Board of pensions prescribes regulations.—The state board of pensions shall prescribe rules and regulations for the carrying out of the provisions of the pension laws of this state, see that laws are complied with, and shall make reports and recommendations to the governor, at least thirty days before the meeting of the legislature. Said board may make rules and regulations for the conduct of their business as they may deem proper, not in conflict with the spirit and purpose of the pension law.

History.—§4, ch. 5109, 1903; GS 762; §14, ch. 5600, 1907; §14, ch. 5885, 1909; §14, ch. 6424, 1913; §14, ch. 6818, 1915; §14, ch. 7259, 1917; RGS 1457; CGL 2113; §1, ch. 61-19.

291.22 Monthly payment of pensions.—Payments of pensions granted to persons in this state shall be made monthly, and the comptroller shall issue his warrant on the state treasurer in favor of each pensioner granted a pension under the laws of this state, for a sum equal to one-twelfth of the amount annually granted to such person, and mail the same out on the last secular day of each month.

History.—§1, ch. 7260, 1917; RGS 1458; CGL 2114.

291.23 Mailing of warrants for month of December in each year.—The comptroller shall mail out the warrants for December of each year to the confederate veterans on the pension roll of this state, in time so that they will be delivered to said pensioners not later than the twentieth day of the month of December in each year.

History.—Ch. 7755, 1918; RGS 1459; CGL 2115.

291.27 Pension board may make additional rules.—The pension board may make such additional rules and regulations, not inconsistent with the provisions of this chapter, as may be deemed necessary to safeguard the pension fund and to better carry out the objects and purposes of this chapter.

History.—§4, ch. 7260, 1917; RGS 1462; CGL 2118.

291.28 Maximum charge for service to pensioner when fee not agreed upon before service is rendered.—It is unlawful for any person to demand or charge any soldier, or the widow of any soldier, applying for a pension under the laws of this state, more than five dollars for all services rendered the person applying for such pension, when no fee or contract has been agreed upon between the parties before such service has been rendered or performed.

History.—§1, ch. 7260, 1917; RGS 1463; CGL 2119.

291.29 Maximum charge for service to pensioner.—It is unlawful for any person to charge any soldier, or the widow of any soldier, applying for a pension under the laws of this state a fee of more than fifteen dollars for all services rendered in connection with the obtaining of such pension, where such charge for such service has been agreed upon.

History.—§2, ch. 7260, 1917; RGS 1464; CGL 2120.

291.30 Penalty for charging unlawful fees for service rendered applicant for pension.—Any person charging, accepting or collecting more than the fees stipulated in §§291.28 and 291.29, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned for not more than one year.

History.—§3, ch. 7261, 1917; RGS 5405; CGL 7548.
cf.—§775.06 Alternative punishments.

291.31 Pension board required to investigate war record of special act pensioners; strike name from pension roll; notice to pensioner of intention to strike name.—The state pension board shall investigate the war record of each and every soldier who, or whose widow, has been heretofore, or may hereafter be, granted a pension under special act of the legislature and if it be found to the satisfaction of the said pension board that any soldier who is now receiving or may hereafter receive a pension, or whose widow is now receiving or may hereafter receive a pension, under special act of the legislature, deserted the army or navy of the confederacy or did not render service to the confederate states or the state or of any other state as a soldier or sailor of the confederate states, or of the state, or of any other state, the state pension board shall strike the name of such soldier or the widow of such soldier, from the pension roll of the state and discontinue all payments of pension immediately such action is taken. Before the board shall strike off any name from the pension roll, a written notice of such intended action shall be first given to the pensioner whose name is proposed to be stricken, which notice shall be mailed at least fifteen days before the board shall strike any such name, and such pensioner shall have an opportunity to furnish evidence before the board in support of his pension before his name shall be stricken.

History.—§1, ch. 9206, 1923; CGL 2121.

291.32 Pensioner to designate under oath person to receive money accrued between last payment and date of death.—Upon the death of any pensioner, all money accrued from the date of last payment to date of death shall be paid to the person who shall have been designated by such pensioner, said designation to be under oath and on a form prescribed by the state comptroller and filed in the office of said comptroller during the lifetime of such pensioner; provided, that upon the failure of any pensioner to so designate a beneficiary, or upon the death of the designated beneficiary prior to the death of the pensioner, that such money shall be paid to his personal representative, and all pensioners who have heretofore died since January 1, 1940, without designating a beneficiary and to whom such mon-

ey has accrued, the same shall be paid to the personal representative of such pensioner as appointed by the proper probate court. Upon proof of death being made of any such pensioner who has heretofore died or may hereafter die, the state comptroller shall issue a warrant payable to the person so designated by the pensioner or the personal representative of the pensioner, as the case may be.

History.—§1, ch. 18045, 1937; CGL 1940 Supp. 2121(2); §1, ch. 21970, 1943.

291.37 Transfer of pension funds; appropriation for pensions.—

(1) The comptroller shall authorize the treasurer to transfer all funds now in the pension tax fund to the general revenue fund of the state, and henceforth all pensions under chapter 291, shall be paid from the general revenue fund.

(2) All money hereafter paid into the state treasury from delinquent tax collections, from cancellation of confederate pension warrants under former §291.33, and from other sources, which have heretofore been credited to the pension tax fund, shall be credited to the general revenue fund of the state, and there is hereby appropriated sufficient sum from the general revenue fund of the state for the issuance of new warrants.

History.—§§1, 2, ch. 22007, 1943; §7, ch. 24337, 1947.

CHAPTER 292

SERVICE OFFICER

292.001 Authority to change terminology.—Wherever the term "state veterans' commission" appears in this chapter, the term "department of veterans' affairs" shall be substituted by the statutory revision department of the attorney general's office.

History.—§23, ch. 63-572.

292.01 Free assistance on claims.—The adjutant general of the state shall assist all ex-service men and women in preparing claims for and securing such compensation, hospitalization, vocational training, and any other benefits or privileges to which they are, or may become, entitled under the laws of the United States; and all service rendered under the provisions of this section shall be without expense to the claimant.

History.—§1, ch. 8536, 1921; CGL 2130.

292.04 Department of veterans' affairs created.—There is hereby created a department of veterans' affairs. The members of the department shall be appointed by the governor and shall consist of one from each congressional district and one from the state at large, all of whom shall be veterans of a war in which the United States was or is a participant, and who were separated from the armed forces of the United States under honorable conditions. Each member of the department shall be a citizen of the state; members of the department shall serve for terms of four years, except that one member of the first board appointed hereunder shall serve for one year, two members for two years, and two members for three years, and two members for four years. Members shall serve without compensation, but members shall be reimbursed for traveling expenses as provided in §112.061.

History.—§1, ch. 22695, 1945; §1, ch. 57-133; §19, ch. 63-400; §23, ch. 63-572.

292.041 Department of veterans' affairs.—The name of the "state veterans' commission" is hereby changed and it shall hereafter be known and designated as the "department of veterans' affairs" with all the rights, powers, duties, privileges, liabilities and authority heretofore vested in or exercised by the members of the "state veterans' commission."

History.—§1, ch. 24069, 1947.

292.05 Duties of department.—

(1) The department of veterans' affairs shall provide assistance to all former, present and future members of the armed forces of the United States and their dependents in preparing claims for and securing such compensation, hospitalization, vocational training, and any other benefits or privileges to which said persons or any of them are or may become entitled under any federal or state law or regulation by reason of their service in the armed forces of the United States. All services rendered under the provisions of the law shall be without charge to the claimant.

(2) Except as may otherwise be provided in this law the department of veterans' affairs may employ such personnel and incur such expenses as it may deem necessary to carry out the objects and purposes of this law and may also prescribe the salary standards, rights, powers, duties and qualifications of all persons employed hereunder.

(3) The department of veterans' affairs shall have authority to promulgate rules and regulations pertaining to all service work and the duties of all service officers in the state.

(4) The department of veterans' affairs may make proper provision for schools for service officers at such times and places as in the discretion of the department may be necessary, for the proper certification of any candidate for the position of service officer attending such schools, and for the certification of present service officers, upon such terms and conditions as in the discretion of the department of veterans' affairs may be necessary.

(5) The department of veterans' affairs shall, on the 30th day of June and the 31st day of December of each year, make a semiannual written report to the governor of the state, which report shall show the expenses incurred in service work in the state, the number, nature and kind of cases handled by the service officers of the state, the amounts of benefits obtained for veterans, and the names and addresses of all certified service officers, including county and city service officers, and such other information and recommendations as may appear to the department of veterans' affairs to be right and proper.

History.—§2, ch. 22695, 1945; §23, ch. 63-572.

292.06 State service officer.—The department of veterans' affairs shall employ a state service officer to serve under the direction, supervision and control of the department of veterans' affairs in carrying out the objects and purposes of this law and to act as executive secretary of the department, and his duties shall be prescribed by the department. His salary shall be fixed by the department. The state service officer

shall be a resident of the state and must have served as a member of the armed forces of the United States in a war in which the United States was or is a participant and must have been separated from such service under honorable conditions.

History.—§3, ch. 22695, 1945; §1, ch. 28213, 1953.

292.07 Assistant state service officers.—The department of veterans' affairs is hereby authorized to appoint such number of assistants to the state service officer as may be necessary, in the discretion of the department, to carry out the purposes of this law, and to fix their respective salaries.

(1) There shall be two senior assistant state service officers and such number of assistant state service officers as may be necessary as aforesaid.

(2) The duties of the said assistants shall be prescribed by the state service officer.

(3) The state service officer and his assistants shall also be reimbursed for traveling expenses as provided in §112.061.

(4) The residence and other qualifications of such assistants shall be the same as those prescribed for the state service officer, except that the department of veterans' affairs may prescribe additional qualifications as a condition precedent to their appointment and employment.

History.—§4, ch. 22695, 1945; §2, ch. 28213, 1953; §19, ch. 63-400.

292.08 Local service officers.—

(1) The board of county commissioners of each county, and the proper officers of each city in this state, may employ county or city service officers to cooperate with the department of veterans' affairs in rendering the services imposed upon the department of veterans' affairs under the provisions of this law. Any county or city desiring to employ a county or city service officer under the provisions of this section may notify the department of veterans' affairs of its intention to do so and request the department to furnish it with the name or names of a person or persons qualified to fill such position. The department shall thereupon certify to such county or city the name or names of candidates for such positions who meet the requirements and qualifications prescribed by the department. The county or city may thereupon employ any person or persons so certified by the department and pay the salary and other expenses of the person or persons so employed, and provide for office space, clerical assistance, and any other expenses of the office.

(2) Any person employed by any county or city under the provisions of this section shall from the time of his employment be subject to such rules and regulations as the department of veterans' affairs may from time to time prescribe. Appropriations made by any county or city or both for the purposes set forth in this section are hereby declared to be appropriations for a county or municipal purpose, as the case may be. Any two or more counties may jointly employ a service officer.

History.—§5, ch. 22695, 1945; §23, ch. 63-572.

292.10 County commissioners authorized to assist war veterans; powers.—The boards of county commissioners of the several counties of the state be and they are hereby granted full and complete power and authority to aid and assist wherever practical and feasible the veterans, male and female, who have served in the armed forces of the United States in any war, and received an honorable discharge from any branch of the military service of the United States, and their dependents, in presenting claims for and securing such compensation, hospitalization, education, loans, vocational training and any other benefits or privileges to which said veterans, or any of them, are or may become entitled to under any federal or state law or regulation by reason of their service in the armed forces of the United States.

History.—§1, ch. 23017, 1945.

292.11 County service officer.—The boards of county commissioners of the several counties of the state are hereby authorized to employ a county service officer, and to provide office space, clerical assistance and the necessary supplies incidental to providing and maintaining a county service office, and to pay said expenses and salaries from the moneys hereinafter provided for; the county service officer must be an honorably discharged veteran who served in the armed forces of the United States during a period of war and his duties, compensation and terms of employment shall be prescribed by the board of county commissioners of such county.

History.—§2, ch. 23017, 1945.

292.12 Cooperation with other agencies.—The boards of county commissioners of the several counties of the state may, in order to accomplish the purposes of this law, work jointly with any agency of the federal government, any present or future state agency or commission, or any other county in the state, or any municipality in such county, and such board may contribute directly from the funds herein provided to any such agency, commission, political entity or municipality in furtherance of the purpose of this law, and may, with any other county or municipality, employ jointly a county service officer to carry out for such counties the purposes of this law.

History.—§3, ch. 23017, 1945.

292.13 Services to be without charge.—All services performed by any county service officer employed hereunder for any veteran or his or her dependents shall be rendered without charge to said veteran or said dependents.

History.—§4, ch. 23017, 1945.

292.14 Construction of law.—It is the intent and purpose of the legislature that in construing this law the broadest interpretation

be given to the same, in order to carry out and effectuate the purposes of this law.

History.—§5, ch. 23017, 1945.

292.15 Taxation and appropriation.—The boards of county commissioners of the several counties of the state be and the same are hereby expressly authorized and empowered to levy a tax not to exceed one-half mill, or use available funds on hand and unappropriated, whether derived from taxation or otherwise, for the purpose of aiding and assisting the veterans described in §292.10, by providing a service officer and maintaining a service office in said county, and to disburse said moneys at such times and in such manner and under such terms and conditions as may be provided by resolution of said boards of county commissioners from time to time.

History.—§6, ch. 23017, 1945.

292.16 Construction of §§292.10-292.15—Sections 292.10 to 292.15 shall not be construed to be exclusive, but shall be cumulative and supplemental to other acts relating to the same general purposes of this law.

History.—§7, ch. 23017, 1945.

CHAPTER 293

UNIFORM VETERANS' GUARDIANSHIP LAW

293.01 Short title.—This chapter may be cited as the "Uniform veterans' guardianship law."

History.—§18, ch. 14579, 1929; CGL 1936 Supp. 2146(1).
cf.—ch. 295, Veterans in general.

293.02 Definitions.—As used in this chapter:

"Person" includes a partnership, corporation or an association.

"Bureau" means the United States veterans' bureau or its successor.

"Estate" and "income" shall include only moneys received by the guardian from the bureau and all earnings, interest and profits derived therefrom.

"Benefits" shall mean all moneys payable by the United States through the bureau.

"Director" means the director of the United States veterans' bureau or his successor.

"Ward" means a beneficiary of the bureau.

"Guardian" as used herein shall mean any person acting as a fiduciary for a ward.

History.—§1, ch. 14579, 1929; CGL 1936 Supp. 2146(2).

293.03 Appointment of guardian for ward authorized.—Whenever, pursuant to any law of the United States or regulation of the bureau, the director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.

History.—§2, ch. 14579, 1929; CGL 1936 Supp. 2146(3).

293.04 Number wards for whom one guardian may act.—Except as hereinafter provided, it is unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. In any case, upon presentation of a petition by an attorney of the bureau, under this section, alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in said case.

The limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five wards if they are all members of the same family.

History.—§3, ch. 14579, 1929; CGL 1936 Supp. 2146(4).

293.05 Petition for appointment of guardian.—A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled, or if the person so entitled shall neglect or refuse, to file such a petition within thirty days after mailing of notice by the bureau to the last known address of such person, indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward, the petition shall show that such ward has been rated incompetent on examination by the

bureau, in accordance with the laws and regulations governing the bureau.

History.—§4, ch. 14579, 1929; CGL 1936 Supp. 2146(5).
cf.—§294.02 Appointment of guardians.
§744.06 Jurisdiction.

293.06 Appointment of guardian of minor ward; certificate setting forth age and necessity.—Where a petition is filed for the appointment of a guardian of a minor ward, a certificate of the director, or his representative, setting forth the age of such minor, as shown by the records of the bureau, and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the bureau, shall be prima facie evidence of the necessity for such appointment.

History.—§5, ch. 14579, 1929; CGL 1936 Supp. 2146(6)

293.07 Appointment of guardian of mentally incompetent ward; certificate setting forth incompetence rating and necessity for appointment.—Where a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the director, or his representative, setting forth the fact that such person has been rated incompetent by the bureau, on examination in accordance with the laws and regulations governing such bureau; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the bureau, shall be prima facie evidence of the necessity for such appointment.

History.—§6, ch. 14579, 1929; CGL 1936 Supp. 2146(7).

293.08 Notice by court of petition filed for appointment of guardian.—Upon the filing of a petition for the appointment of a guardian, under the provisions of this chapter, the court shall cause such notice to be given as provided by law.

History.—§7, ch. 14579, 1929; CGL 1936 Supp. 2146(8).

293.09 Guardian's bond.—Before making an appointment under the provisions of this chapter, the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made, the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have power, from time to time, to require the guardian to file an additional bond.

Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath that shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof, over and above all their debts and liabilities and exclusive of property exempt from execution.

History.—§8, ch. 14579, 1929; CGL 1936 Supp. 2146(9).

293.10 Guardian required annually to file with court full and accurate accounts; certified copy of accounts to bureau; hearing on accounts and notice thereof.—Every guardian, who shall receive on account of his ward any moneys from the bureau, shall file with the court, annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the bureau having jurisdiction over the area in which such court is located. The court shall fix a time and place for the hearing on such account not less than fifteen days nor more than thirty days from the date of filing same and notice thereof shall be given by the court to the aforesaid bureau office not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

History.—§9, ch. 14579, 1929; CGL 1936 Supp. 2146(10).
cf.—§§294.08, 294.09, Procedure at hearing.

293.11 Failure of guardian to file accounts is grounds for removal.—If any guardian shall fail to file any account of the moneys received by him from the bureau on account of his ward within thirty days after such account is required by either the court or the bureau, or shall fail to furnish the bureau a copy of his accounts as required by this chapter, such failure shall be grounds for removal.

History.—§10, ch. 14579, 1929; CGL 1936 Supp. 2146(11).

293.12 Guardian's compensation; bond premiums.—Compensation payable to guardian shall not exceed five per cent of the income of the ward during any year. In the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor, payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau in the manner provided in §293.10. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

History.—§11, ch. 1479, 1929; CGL 1936 Supp. 2146(12).

293.13 Investment of funds of estate by guardian.—Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law and approved by the court.

History.—§12, ch. 14579, 1929; §1, ch. 17473, 1935; CGL 1936 Supp. 2146(13).

293.14 Guardian's application of estate funds for support and maintenance of person other than ward.—A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court

after a hearing, notice of which has been given the proper office of the bureau in the manner provided in §293.10.

History.—§13, ch. 14579, 1929; CGL 1936 Supp. 2146(14).

293.15 Certified copies of public records made available.—Wherever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the representative of such bureau, with a certified copy of such record. For each and every certified copy so furnished by the official the said official shall be paid by the board of county commissioners the fee provided by law for copies.

History.—§14, ch. 14579, 1929; CGL 1936 Supp. 2146(15); §7, ch. 29749, 1955.

293.16 Procedure for commitment of veteran to United States veterans' bureau hospital; powers and custody; notice required.—

(1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans' administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans' administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans' administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this act shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans' administration or other agency. The chief officer of any facility of the veterans' administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this act are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans' administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint, as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans' administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans' administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans' administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans' administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

(4) Any person transferred as provided in this section shall be deemed to be committed to the veterans' administration or other agency of the United States pursuant to the original commitment.

History.—§15, ch. 14579, 1929; CGL 1936 Supp. 2146(16); §1, ch. 21795, 1943.

293.17 Provisions for discharge of guardian of minor and incompetent wards.—When a minor ward, for whom a guardian has been appointed under the provisions of this chapter or other laws of this state, shall have attained his majority and, if incompetent, shall be declared competent by the bureau and the court, and when any incompetent ward not a minor shall be declared competent by said bureau and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

History.—§16, ch. 14579, 1929; CGL 1936 Supp. 2146(17).

293.18 Construction and application of chapter.—This chapter shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the bureau. It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—§§17, 19, ch. 14579, 1929; CGL 1936 Supp. 2146(18).

293.19 Court costs in small estates.—Guardians who are holding funds received from, or who are currently in receipt of funds from, the veterans' administration for the ward, and where the amount so received during the accounting year does not exceed the sum of five hundred dollars, and where the funds on hand at the end of the accounting year do not exceed the sum of five hundred dollars, the court costs in such cases for docketing, indexing, filing, auditing, recording, and passing by order or otherwise of annual reports shall not exceed the sum of two dollars.

History.—§2, ch. 21795, 1943.

293.20 Administrator of veterans' affairs as party in interest.—The administrator of veterans' affairs shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans' administration. Not less than fifteen days prior to hearing in such matter, notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans' administration having jurisdiction over the area in which any such suit or any such proceeding is pending.

History.—§3, ch. 21795, 1943.

CHAPTER 294

SUPPLEMENTAL VETERANS' GUARDIANSHIP LAW

294.01 Provisions applicable to uniform veterans' guardianship law.—The provisions of this chapter shall supplement and be applicable to chapter 293 (Uniform veterans' guardianship law.)

History.—§21, ch. 14579, 1929; CGL 1936 Supp. 2146(20).

294.02 Appointment of guardians. — The county judges of this state shall have power to appoint guardians.

History.—§1, ch. 11906, 1927; CGL 2133.
cf.—§293.05 Petition for appointment of guardian.
§744.06 Jurisdiction.

294.03 Copy of petition mailed to ward prior to hearing.—A copy of the petition, provided for in §293.05, shall be mailed by the clerk of the court to the person or persons for whom a guardian is to be appointed, to the last known address of such person or persons, not less than five days prior to the date set for the hearing of the petition by the court.

History.—§2, ch. 11906, 1927; CGL 2134.

294.04 Guardians of beneficiaries of "War risk insurance act" or "World War veterans' act of 1924"; persons ineligible to serve.—It is unlawful for a county judge to appoint either himself, or a member of his family, as guardian for any person entitled to the benefits of an act of congress known as the "War risk insurance act" or entitled to the benefits of an act of congress known as the "World War veterans' act of 1924", as amended, except in cases where the person entitled to such benefits is a member of the family of the county judge involved.

History.—§4, ch. 11906, 1927; CGL 2136.

294.05 Guardian empowered to receive moneys due ward from U. S. government for military or naval service.—In addition to the power granted the guardian under the provisions of chapter 293, he shall also have the right to receive for the account of the ward any money due from the United States government in the way of arrears of pay, bonus, compensation or insurance, or other sums due by reason of his service (or the service of the person through whom the ward claims) in the military or naval branch of the United States government.

History.—§6, ch. 11906, 1927; CGL 2138.

294.06 Guardian required to file inventory; failure is grounds for discharge and forfeit of commissions.—Every guardian shall, within thirty days after his qualification and whenever subsequently required by the county judge, file in the office of the county judge a complete inventory of all the ward's personal property in his hands, and also, a schedule of all real estate in the state belonging to his ward, describing it and its quality, whether improved or not, and if improved in what manner, and the appraised value of same. Failure on the part of the guardian to conform to the requirements of this section shall be grounds for discharge of the guardian, in which case the guardian shall forfeit all commissions.

History.—§6, ch. 11906, 1927; CGL 2138.

294.07 Notice of appointment of general guardian filed; veterans' guardianship closed; responsibilities and penalties transferred to general guardian.—When the appointment of a general guardian is made in the proper court and such guardian has qualified and taken charge of the other property of the ward, such general guardian shall file notice of such appointment in the court where the guardianship under chapter 293 is pending and have this guardianship settled up and closed so that the general guardian may take charge of the money referred to and described in chapters 293 and 294. When the appointment of a general guardian for such person, whether incompetent or minor children, or other beneficiaries entitled to the benefits of the "World War veterans' act of 1924" as amended, and the "War risk insurance act" as amended, has

been confirmed by the court having jurisdiction, such general guardian shall be responsible and be subject to the provisions and penalties contained in the aforesaid acts of congress as well as the requirements pertaining to guardians as set forth in chapters 293 and 294.

History.—§6, ch. 11906, 1927; CGL 2138.

294.08 Notice to ward or next of kin of hearing on annual accounts.—The court need not appoint a guardian ad litem to represent the ward at the hearing provided for in §293.10. If the residence of the next kin of said ward is known, notice by registered mail shall be sent to such relative. Notice also shall be served on the ward, or if said ward be mentally incapable of understanding the matter at issue, such notice may be served on the person in charge of the institution where such ward is detained, or on the person having charge or custody of said ward.

History.—§7, ch. 11906, 1927; CGL 2139.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

294.09 Judge of court required to examine vouchers and audit accounts; affidavits required to support improper items; rejected items; decree recorded; accounts and vouchers filed.—The judge of the court on the day of which the hearing is had as provided for in §293.10, shall carefully examine the vouchers and audit and state the account between the guardian and ward. Proper evidence shall be required in support of vouchers or items of the account that may appear to the court not to be just and proper, such evidence to be taken by affidavit or by any other legal mode. If any voucher be rejected, the item or items covered by said disapproval of any voucher or vouchers shall be taxed against the guardian personally. After such examination, the court shall render a decree upon said account which shall be entered on record and the account and vouchers shall be filed. Such partial settlement shall be taken and presumed as correct on final settlement of guardianship.

History.—§8, ch. 11906, 1927; CGL 2140.

294.10 Guardian's petition for authority to sell ward's real estate; notice by publication required; penalties. — When any guardian of the estate of an infant or incompetent shall have the control or management of any real estate, the property of such infant or incompetent, and shall deem it necessary or expedient to sell the same, the guardian shall apply either in term time or in vacation by petition to the county judge or judge of the circuit court for the county in which said real estate may be situated for authority to sell the same, and if the prayer of said petition shall appear to the judge reasonable and just and financially beneficial to the estate of the ward, he may authorize said guardian to sell said estate under such conditions as the interest of said infant or incompetent may, in the opinion of the said judge, seem to require. Such authority shall not be granted unless the guardian shall have given previous notice, published once a week for four successive weeks in a newspaper published in the county where the application is made, of his intention to make application to such judge for authority to sell the same, setting forth in said notice the time and place and to what judge said application will be made. If the lands lie in more than one county, application shall be made in each county. Failure on the part of the guardian to comply with the provisions of this section shall make him and his bondsmen individually responsible for any loss that may accrue to the estate of the ward involved, and shall be ground for the immediate removal of such guardian as to his functions, but not discharge him as to his liability or discharge the liabilities of his sureties.

History.—§9, ch. 11906, 1927; CGL 2141.

294.11 Guardianship petition; county judge's fee; notice, etc., filed; copies of documents required by U. S. veterans' bureau; attorney's fee.—Upon the filing of the petition for guardianship, granting of same and entering decree thereon, the county judge shall be entitled to a fixed charge or cost of ten dollars, which shall include the cost of recording the petition, bond and decree and the issuing of letters of guardianship. The notice from the United States veterans' bureau and the certified copy of the physical examination made by neuropsychiatrist experts, etc., need not be recorded but must be kept in the file. Upon issuing letters of guardianship or letters appointing a guardian for the estate of an infant or incompetent, the county judge shall send to the regional office of the United States veterans' bureau having jurisdiction in this state, two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The fee for the attorney filing said petition and conducting said proceedings shall be fixed by the court in an amount as reasonably small as possible and not to exceed twenty-five dollars.

History.—§10, ch. 11906, 1927; CGL 2142.

294.12 Final settlement of guardianship; notice required; guardian ad litem fee; papers required by United States veterans' bureau.—On the final settlement of the guardianship, the notice provided herein for partial settlement must be given and the other proceedings conducted as in case of partial settlement, except that a guardian ad litem may be appointed to represent the ward, whose fee shall in no case exceed fifteen dollars; providing, however, if the said ward has been pronounced competent and is shown to be mentally sound and appears in court and is twenty-one years of age, the settlement may be had between the guardian and the ward under the direction of the court without notice to next of kin, or the appointment of a guardian ad litem. A certified copy of said final settlement so made in all cases must be filed with the United States veterans' bureau by the clerk of the court.

History.—§11, ch. 11906, 1927; CGL 2143.

CHAPTER 295

LAWS RELATING TO VETERANS, GENERALLY

295.01 Children of deceased veterans; education.—It is hereby declared to be the policy of the state to provide educational opportunity at state expense for dependent children, either of whose parents entered the army, navy, marine or nurses corps of the United States from the state, and died in that service or from injuries sustained or disease contracted therein between the 6th day of April, 1917, and the 2nd day of July, 1921; the 7th day of December, 1941 and the 2nd day of September, 1945 and the 25th day of June, 1950 to the date of the cessation of hostilities as determined by the United States government, or who have died since or may hereafter die from diseases or disability resulting from such war service; where the parents of such children have been bona fide residents of the state for five years next preceding their application for the benefits hereof, and subject to the rules, restrictions and limitations hereof.

History.—§1, ch. 20966, 1941; §1, ch. 21655, 1943; §1, ch. 28195, 1953.

295.02 Use of funds; age, etc.—All sums appropriated and expended under this chapter shall be used to pay matriculation fees, board, room rent and buy books for the children of deceased veterans as defined and limited in §295.01, who are between the ages of sixteen and twenty-two years and who are in attendance at a state supported institution of higher learning, including junior colleges; provided, that no tuition shall be charged or paid by the child benefited hereby; and provided further, that any child having entered upon a course of training or education under the provisions of this chapter, consisting of a course of not more than four years and arriving at the age of twenty-two years before the completion of said course may continue said course and receive all benefits of the provisions of this chapter until said course is completed. Sums provided hereby shall be administered by the board of control and such board shall determine eligibility for the benefits hereof.

History.—§2, ch. 20966, 1941; §1, ch. 63-124.

295.03 Minimum requirements.—Upon failure of any child benefited hereby to comply with the ordinary and minimum requirements of the institution attended, both as to discipline and scholarship, the benefits hereof shall be withdrawn as to him or her and no further moneys expended for his or her benefits so long as such failure or delinquency continues.

History.—§3, ch. 20966, 1941.

295.04 Appropriation; benefits.—The sum of eight thousand dollars or so much thereof as may be necessary for the purpose hereof, shall be appropriated in the biennial general appropriations act for each fiscal year provided that not more than one hundred dollars per quarter or one hundred fifty dollars per semester or trimester shall be expended on any one student. Only students in good standing in their respective institutions shall receive the benefits hereof and no student shall receive such benefits for more than twelve quarters, eight semesters or eight trimesters.

History.—§4, ch. 20966, 1941; §38, ch. 26869, 1951; §2, ch. 63-124.

295.05 Admission; enrollment.—Eligibility for admission is not affected by this chapter, but all children receiving benefits hereunder shall be enrolled according to the customary rules and requirements of the institution attended.

History.—§5, ch. 20966, 1941.

295.07 Veterans preference in appointment, reinstatement and reemployment.—In certification for appointment, in appointment, in reinstatement, in reemployment and in retention in position in all establishments, boards, commissions, agencies, political subdivisions, and municipalities of the state, preference shall be given to:

(1) Those ex-service men and women, who have served on active duty in any branch of the armed forces of the United States and who have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability, which is compensable under public laws administered by the U. S. veterans' administration, or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the U. S. veterans' administration, the war department, or the navy department.

(2) The wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any position.

(3) The unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions.

(4) Those ex-servicemen and women who

have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized) and have been separated therefrom under honorable conditions.

History.—§1, ch. 24201, 1947.

295.08 Competitive examination systems preference points; professional and scientific services.—In all examinations to determine the qualification for entrance into the service of all establishments, agencies, boards, commissions, political subdivisions, and municipalities of the state where the employment of persons is subject to the merit system, civil service, or other competitive system, ten points shall be added to the earned ratings of those persons included under subsections (1), (2), (3) of §295.07, and five points shall be added to the earned ratings of those persons included under subsection (4) of §295.07, provided, that such points shall be added only to earned ratings which are equal to or greater than the minimum rating for qualification as announced by the establishment, agency, board, commission, political subdivision, or municipality of the state controlling the particular examination; the names of preference eligibles shall be entered on an appropriate register or lists of eligibles in accordance with their respective augmented ratings, and the name of a preference eligible shall be entered ahead of all others having the same rating; provided, however, that, except for positions in professional and scientific services for which the entrance salary is over three thousand dollars per annum, the names of all qualified ten-point preference eligibles whose service-connected disability has been rated by the veterans' administration to be thirty per cent or more shall be placed at the top of the appropriate register or employment list, in accordance with their respective augmented ratings.

History.—§2, ch. 24201, 1947.

295.09 Promotion examinations; preference points.—Where employees of all establishments, agencies, boards, commissions, political subdivisions, and municipalities of the state where the employment of persons is subject to the merit system, civil service or other competitive system, shall have served in the armed forces of the United States and shall have been honorably discharged and shall have been reinstated in his former position, upon his first examination to determine his qualifications for promotion, ten points shall be added to the earned rating of those persons included in subsections (1), (2), (3) of §295.07, and five points shall be added to the earned ratings of those persons included under subsection (4) of §295.07.

History.—§3, ch. 24201, 1947.

295.10 Noncompetitive positions; preferences.—In all positions where employment of persons is not subject to merit system, civil service, or other competitive system, preference in appointment and employment shall be given by all establishments, agencies, boards, commissions, political subdivisions, and municipalities of the state heretofore referred to, first to those persons included under subsections (1), (2), (3) of §295.07, second to those persons included under subsection (4) of §295.07, provided that such persons possess the minimum qualifications necessary to the discharge of the duties involved; third, all other persons.

History.—§4, ch. 24201, 1947.

295.11 Report of reason for not employing preferred veteran applicant; investigation.—Any establishment, agency, board, commission, political subdivision, or municipality of the state heretofore referred to, where the employment of persons is not subject to the merit system, civil service, or other competitive system, which may hereafter appoint or employ a non-veteran to a position to which one or more persons named in subsections (1), (2), and (4) of §295.07 has made application, shall forthwith file his reasons for such appointment of such non-veteran with the director of the state veterans commission, whose duty it shall be, upon the demand of any of those persons named in subsections (1), (2), (3), and (4) of §295.07 having made application for the position awarded such non-veteran, and feeling himself aggrieved under the provisions of this law, to investigate complaints arising hereunder and the said director of the state veterans commission, finding the equities to be with the complainants, shall use all of the powers of his office on behalf of such complainant.

History.—§5, ch. 24201, 1947.

295.12 Law not applicable to.—Nothing contained in §§295.07-295.12 is intended to apply to any position in or under the legislative or judicial branches of the state government, or to any position or appointment which is required to be confirmed by the senate.

History.—§6, ch. 24201, 1947.

295.13 Disability of minority of veterans and spouse removed, benefits under servicemen's readjustment act.—The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the act of congress entitled the servicemen's readjustment act of 1944, (58 stat. 284) as heretofore or hereafter amended (38 U.S.C. 693 et seq.), and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said act of the congress, as heretofore or hereafter amended, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing, or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the government or the administrator of veterans' affairs pursuant to said act and amendments thereto; or if the administrator be the creditor, by reason of a loan or a sale pursuant to said act and amendments. This section shall not create, or render enforceable, any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor.

History.—§1, ch. 28204, 1953.

TITLE XX

DRAINAGE

CHAPTER 298

GENERAL DRAINAGE

298.01 Formation of drainage district.—The board of drainage commissioners of this state, or a majority of the owners, or the owners of a majority of the acreage of any contiguous body of wet or overflowed lands or lands subject to overflow, situate in one or more counties in this state, may form a drainage district for the purpose of having such lands reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by drainage or otherwise; and for that purpose the said board of drainage commissioners, or a majority of the owners, or the owners of a majority of the acreage of said lands may make and sign a petition, in which shall be stated the name of the proposed drainage district and the number of years the same is to continue; the boundary line of the proposed drainage district; the names so far as known, and the last known post office address of the owners of lands or other property in said district, together with a general description of the lands and the approximate number of acres owned by each; when the name or post office address of the owner of any of said lands or other property is unknown this fact shall be set out in said petition; the petition shall further state that the owners of the lands within said district, whose names are subscribed to said petition, are willing to and do obligate and bind the lands owned by them situated in the proposed drainage district to pay the tax which may be assessed against their respective lands to pay the expense of organizing and of making and maintaining the improvements that may be necessary to effect the reclamation of said lands, so formed into a drainage district, and to drain and protect the same from the effects of water; the petition shall contain a prayer, asking that

the lands described therein be declared a drainage district under provisions of this chapter; the petition may be signed by the board of drainage commissioners, or by a majority of the owners, or the owners of a majority of the acreage of said lands, or same may be signed by both commissioners and owners of lands. After the petition has been so signed, the same shall be filed in the office of the clerk of the circuit court of the county in which such lands, or the greater part thereof, are situate.

History.—§1, ch. 6458, 1913; RGS 1098; CGL 1451; §7, ch. 22858, 1945.

cf.—Chapter 378, Flood control districts.

298.02 Notice of application to form drainage district.—Immediately after the petition shall have been filed, the clerk in whose office the same has been filed, shall give notice by causing publication to be made once a week for four consecutive weeks in some newspaper published in each county in which lands and other property described in the petition are situate, and said notice shall be substantially in the following form.

Notice of Application to Form a Drainage District

Notice is hereby given to all persons interested in the following described lands in _____ county, Florida, viz: (Here describe the property as set out in the petition) _____ that a petition asking that the foregoing lands be formed into drainage district under chapter 298, of the Florida Statutes, has been filed in this office, and that the foregoing lands will be affected by the formation of said drainage district and rendered liable to taxation for the purpose of paying the expenses of organization, and making and maintaining the improvements that may be necessary to effect the reclamation of the lands included in such district, and you and each of you are hereby notified to appear within the first return date occurring not less than twenty (20) days after the final notice has been published for four (4) weeks as required by said chapter, at the office of the clerk of the circuit court of _____ county, and show cause, if any there be, why said drainage district, as set forth in said petition, shall not be organized as a public corporation of the state of Florida.

Date of first publication _____, 19___

_____Clerk of the Circuit Court of _____ County, Florida.

The certificates of the clerk or the affidavit of another, with a copy of said notice affixed, showing that said notice has been published as required by this chapter, shall be sufficient evidence of such fact.

The circuit court of the county in which the petition has been filed shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries and limits of said district, without regard to county lines, for all purposes of this chapter.

History.—§2, ch. 6458, 1913; RGS 1099; CGL 1452; §20, ch. 29737, 1955.

298.03 Objections to formation of district; hearing; decree incorporating district filed; decree filed in counties affected.—Any owner of lands in the proposed district, who may not have signed the petition, may appear, on or before the return date stated in the notice, and advocate or resist the organization and incorporation of said drainage district; if he shall desire to resist the establishment of the district, he shall file his objection in writing, stating therein his reasons why the said drainage district should not be organized and incorporated or why his lands or any part thereof should not be included therein, or he may deny the statements in said petition. Such objections, if any there be, shall be heard by the court in a summary manner, without unnecessary delay, on a day to be named by the court or judge thereof, upon application of the petitioners or any of those signing the said petition. Upon the hearing, which may be adjourned, from time to time, for good cause shown, of the said objections, if any have been filed, if the court shall be of the opinion that the establishment of the said drainage district and the improvements to be made thereunder will be for the advantage of the owners of the real property therein or that the same would be in the interest of the public health, convenience or welfare, he shall overrule said objections; and, in case all such objections are overruled, or in case no such objections have been filed, the court thereupon shall, by its order duly entered of record, declare and decree said drainage district a public corporation of this state, for a term not exceeding the time mentioned in said petition; provided, that no drainage district shall be established or consolidated under any provisions of this chapter until there shall have been first obtained the written approval or consent of the owner or owners of a majority in acreage of the lands within said district. If the court finds that the lands set out in said petition should not be incorporated into a drainage district, it shall dismiss said proceedings and adjudge the costs against the said petitioners in proportion to the acreage represented by each. Any person having signed the petition shall have no right to have such proceedings dismissed as to him without the written consent of the other owners of a majority in acreage who signed said petition. The petition may be amended as any other pleading. Immediately after the said district has been declared a corporation by the court, the clerk thereof shall transmit to the secretary of state a certified copy of the findings and decree of the court incorporating said district, and the same shall be filed in the office of the secretary of state. A copy of said finding and decree, together with a plat of the district, shall also be filed in the office of the clerk of the circuit court in each of the counties having land in said district, where the same shall become a permanent record, and

each such clerk shall receive a fee of one dollar for filing and preserving the same.

History.—§3, ch. 6458, 1913; RGS 1100; CGL 1453; §35, ch. 29737, 1955.

298.04 Change of venue in proceedings under chapter.—No change of venue shall be allowed in any of the proceedings had under the provisions of this chapter, except where the judge of the court in which the petition has been filed shall be disqualified for any of the reasons stated in the statute of this state relating to the change of venue in civil cases. If the judge of such court is disqualified or is charged by any person interested in the formation of said district with being disqualified, for any of the reasons stated in the statutes, said judge shall call in a judge from some other judicial circuit of this state to sit and hear the proceedings and render his decree and judgment, the same as the regular judge could have. Such judge shall retain jurisdiction in such reclamation proceedings only until the disqualification of the regular judge of the circuit court shall have been removed. Said judge so called shall receive for his services mileage and compensation as now provided by law under similar conditions.

History.—§33, ch. 6458, 1913; RGS 1130; CGL 1485.

298.05 Revival of cause on death of party to any proceedings under chapter; constructive service on nonresidents.—No action under this chapter shall abate by reason of the death or disability of any party to any proceeding, but upon suggestion of such death or disability the cause shall be immediately revived in the name of the heirs, devisees or their legal representatives, and summons shall be served on such heirs, devisees and legal representatives at least five days before the day set for hearing the cause; if the heirs, devisees or legal representatives of the deceased party are nonresidents, notice by publication shall be given them in the manner and for the time provided for in §298.02, and the cause shall then proceed in all respects as in case of the original parties being in court.

History.—§34, ch. 6458, 1913; RGS 1131; CGL 1486; §21, ch. 29737, 1955.

298.06 Dissolution of district in certain cases. — If, after determining the objections made to the commissioners' report, the court shall find that the estimated costs of works and improvements as reported by the board of commissioners, or as amended by the court, exceed the estimated benefits, the court shall then render its decree, declaring the incorporation of the district to be dissolved as soon as all costs incurred, which shall include court costs and all obligations and expenses incurred in behalf of the district by the board of supervisors, shall have been paid, and if the uniform tax levied under the provisions of §298.29 be found insufficient to pay all such costs the board of supervisors shall make such additional uniform tax levies as will be necessary to pay such deficiency; provided, that in estimating the cost of constructing the works and improvements of the district the amount of interest that might accrue upon bonds that may be issued by the board of supervisors under the provisions of this chapter shall not be considered as a part of the cost of construction.

History.—§36, ch. 6458, 1913; RGS 1133; CGL 1488.

298.07 Amending former decree incorporating district; changing boundary lines and plan of reclamation; form of notice; objections, hearing and determination on petition.—The board of supervisors or the board of drainage commissioners, for and in behalf of any drainage district organized under the provisions of this chapter, or the owners of land adjacent to such district, shall have the right to file a petition, in the office of the clerk of the court organizing said district, praying the court to amend its former decree incorporating the district, by correcting the names of the landowners, by striking out any such names, by adding, striking out or correcting the description of any land within or alleged to be within the boundary lines of any such district, or in any other manner amend its decree; said petition may ask permission of the court to amend or change "the plan of reclamation," or to correct any errors, omissions or other mistakes that have been discovered in "the plan of reclamation"; or said petition may ask that the boundary lines of said district be extended so as to include lands not described by, and included in, the petition and decree of the court incorporating the district. If such petition asks the court's permission to change "the plan of reclamation," or that the boundary lines of such district be in any manner changed, it shall also ask the court to appoint three commissioners, as provided for under the provisions of §298.30, to appraise the land that shall be taken for right of ways, holding basins, or other work, or assess the benefits and damages to any or all lands, public highways, railroad and other property already in the district. or that may be annexed to the district by the proposed amendments, and changes to "the plan of reclamation" or the proposed change in the boundary lines of said district. As soon as said petition shall have been filed, the clerk of the court shall give notice in the manner and for the time provided for in §298.02, said notice to be substantially in the following form:

"Notice of Drainage Hearing

To the owners and all persons interested in the lands corporate, and other property in and adjacent to _____drainage district:

You, and each of you, are hereby notified that _____ (here state by whom petition was filed), has filed in the office of the circuit court of_____county, Florida, a petition praying said court for permission to_____ (here insert the prayer of said petition), and unless you show cause to the contrary on or before the return date of the circuit court of said county, after the publication of this notice as required by law, the prayer of said petition may be granted.

Date of first publication_____day of_____, 19_____

Clerk of Circuit Court of_____County."

Any owner of land or other property located in the district, or any owner of land or property located outside of the district that will be affected by the proposed changes, amendments, and corrections enumerated in the petition, shall have the right to file objection to the granting of the prayer of said petition on or before the return date of the court in which the petition is to be heard, occurring not less than ten days after publication of said notice. The court shall hear said petition and all objections that may have been filed against said petition in a summary manner on a day to be named by said court, or the judge thereof, upon application of any party interested and enter its decree according to its findings. The clerk of said court shall, within ten days after the granting of such decree, transmit a certified copy of the petition to the secretary of the board of supervisors and also shall transmit a copy of the same to each of the clerks of the circuit courts of the counties having land in the district and to the secretary of state. Each such clerk shall file and preserve the same in his office, and for such filing and preserving he shall receive a fee of one dollar. If said decree of the court provides that "the plan of reclamation," may be amended, changed or corrected or the boundary lines of the district extended, the court shall appoint three commissioners, possessing the same qualifications as the commissioners appointed under the provisions of §298.30, to appraise property to be taken, assess benefits and damages and estimate the cost of improvements, the same as is required of commissioners acting under the provisions of §298.32. Said commissioners shall make their report in writing and file the same with the circuit court clerk, after which the same shall proceed in the same manner as is now provided for the organization of drainage districts; provided, that if the petition be dismissed the district shall pay the cost, but if the petition be sustained, in whole or in part, the objectors shall pay the court costs incurred by reason of such objections.

History.—§39, ch. 6458, 1913; RGS 1136; CGL 1491; §2, ch. 29737, 1955.

298.08 Adjacent districts may be consolidated; elections; petition to court; notice; objections, hearing and decree.—Any two or more adjacent districts, established under this chapter, whether incorporated in the same or different counties, may be united and consolidated in one district, and such new district and the board of supervisors thereof shall have the rights, powers and privileges of any district organized under this chapter. In order to effect such consolidation, the board of supervisors of each of the original districts shall call an election in the same manner as elections for supervisors, stating the time, place and object of such election. If the owners of a majority of the acreage voting in each district vote in favor of the proposition to unite and consolidate such districts, the board of supervisors of each district shall present a petition to the circuit court of the county in which the greatest amount of the lands is located, accompanied with a complete return of said election, in which petition shall be stated the names of the original districts, when incorporated, the names of the owners of the lands and the boundaries of the districts. When said petition has been filed, the clerk of said circuit court shall give notice of such filing in the manner provided for giving notice in §298.02, said notice to state substantially the contents of said petition and the objects sought and the term of court at which said matter is to be heard. Any person owning land in either of said districts, on or before the first day of said court, may file objections to the regularity or sufficiency of any of the proceedings had in the premises, and if such objections are overruled, or if no objections are made, the court shall make an order that any two or more of the several districts so asking to be united shall be united and consolidated as one district, under some appropriate designation, with all the rights, powers and privileges of such districts organized under this chapter; the lands so included in the new district shall be subject to all lien, liabilities and obligations of the original districts, and a new board of supervisors shall be elected, as is now provided in case of election of supervisors; all orders made in regard to extension of time, boundaries or uniting districts shall be spread on the records of the circuit court, and a certified copy thereof shall be filed with the clerk of the circuit court of each county in which any of such lands is located, and also with the secretary of state, and said clerk shall receive a fee of one dollar for filing and preserving such certificates.

History.—§44, ch. 6458, 1913; RGS 1141; CGL 1498.

298.09 Extending corporate life of drainage district; meeting of landowners; petition to court; proceedings, etc.—Whenever the board of supervisors of any district organized under this chapter finds, that in order to either raise funds to complete "the plan of reclamation," pay for works already completed, pay bonds outstanding and interest thereon, or interest on the same, restore any works or construct new works, or for any other cause the time for which any such drainage district has been incorporated should be extended, such board shall call a meeting of landowners of the district, in the same manner as is provided for in §298.11; the notice shall state the time, place and purpose of such meeting; if the vote of the owners of the majority of acres represented at said meeting be cast in favor of such extension of the district's corporate existence, a petition will be presented to the court organizing the district, asking for such extension of time. Such meeting shall be conducted in the same manner as is provided in §298.11 for the election of supervisors, except that one member of the board of supervisors shall act as chairman of such meeting and the secretary of the board, or his deputy, shall act as clerk; and, if a majority of the acreage represented at

such meeting shall vote in favor of such extension, the board of supervisors shall, not less than ten days before the next term of the circuit court, file a petition with the clerk of said court, praying for the extension of the corporate existence of the district; and after the filing of such petition the same proceedings shall be had as is provided for in this chapter for the incorporation of the district. If such petition be granted by the court, within ten days thereafter, the said clerk shall transmit a copy of the decree to the secretary of the board of supervisors, a copy of the same to the secretary of state and to the clerk of the circuit court of each county having land in the district, who shall file and preserve the same in his office, and for such service he shall receive a fee of one dollar. In case the court should find that such extension should not be allowed, said petition shall be dismissed and the cost incurred in the case be paid by the district.

History.—§45, ch. 6458, 1913; RGS 1142; CGL 1499.

298.10 Appeal not to act as supersedeas.—No appeal from any action of the circuit court had under this chapter shall be permitted to act as supersedeas or to delay any action or the prosecution of any work begun under the provisions of this law.

History.—§35, ch. 6548, 1913; RGS 1132; CGL 1487.

298.11 Election of board of supervisors; drainage commissioners to represent state at election; if no election held, drainage commissioners to appoint supervisors, etc.—Within twenty days after any drainage district shall have been organized and incorporated under the provisions of this chapter, the clerk of the circuit court in which the petition has been filed shall, upon giving notice by causing publication thereof to be made once a week for two consecutive weeks in some newspaper published in each county in which lands of the district are situate, the last insertion to be not less than ten nor more than fifteen days before the day of such meeting, call a meeting of the owners of the lands situate in said district, at a day and hour specified, as some public place in the county in which the district was organized, for the purpose of electing a board of three supervisors, to be composed of owners of the lands in said district, two of whom at least shall be residents of the county or counties in which such district is situate, or some adjoining county; the land owners, when assembled, shall organize by the election of a chairman and secretary of the meeting, who shall conduct the election; at such election each and every acre of land in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy in writing duly signed, for every acre of land owned by him in such district, and the three persons receiving the highest number of votes shall be declared elected as supervisors; and said land owners shall at such election determine the length of the terms of office of each supervisor so elected by them, which shall be respectively one, two and three years, and they shall serve until their successors shall have been elected and qualified.

The board of drainage commissioners of this state, at any such meeting, may represent the state, and shall have the right to vote for supervisors, or upon any matter that may come properly before said meeting to the extent of the acreage owned by the state in such district, which vote may be cast by any person designated by said board of drainage commissioners; guardians may represent their wards, executors and administrators may represent estates of deceased persons, and private corporations may be represented by their officers or duly authorized agents; provided, however, that the owners of a majority of the acreage included in such district shall be necessary to constitute a quorum for the purpose of holding such election, or any election thereafter, and in case the owners of a majority of the acreage included in such district are not present in person or duly represented, at the time and the place stated in the notice calling such meeting, then no election shall be held, and notice of such failure shall be given in writing by any person interested to the board of drainage commissioners of this state, which shall as soon as practicable appoint three competent persons who own land in such district as such supervisors for the term of one, two and three years respectively, and who shall hold their office until their successors are elected or appointed and qualified. Any such supervisor so appointed by the said board of drainage commissioners may be removed by the said board for dishonesty, incompetency or failure to perform the duties imposed upon him by this chapter, and any vacancies which may occur in any such office so filled by appointment shall be filled by the said board as soon as practicable.

History.—§4, ch. 6458, 1913; RGS 1101; CGL 1454.

298.12 Annual election of supervisors; term of office, etc.—Every year in the same month after the time for the election of the first board of supervisors, they shall call a meeting of the landowners in the district in the same manner as is provided for in §298.11, and the owners of land in such district shall meet at the stated time and place and elect one supervisor therefor, or in case of their failure to elect, the board of drainage commissioners shall appoint such supervisor, in like manner as prescribed in §298.11, who shall hold his office for three years or until his successor is elected and qualified; and in case of a vacancy in any office of supervisor elected by the landowners, the remaining supervisors, or if they fail to act within thirty days, the board of drainage commissioners of this state, may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term.

History.—§5, ch. 6458, 1913; RGS 1102; CGL 1455.

298.13 Supervisor's oath of office. — Each supervisor, before entering upon his official duties, shall take and subscribe to an oath

before some officer authorized by law to administer oaths, that he will honestly, faithfully and impartially perform the duties devolving upon him in office, as supervisor of the drainage district in which he was elected or appointed, and that he will not neglect any of the duties imposed upon him by this chapter.

History.—§6, ch. 6458, 1913; RGS 1103; CGL 1456.

298.14 Organization of board; annual reports to landowners; compensation of members of board; proviso.—The board of supervisors, immediately after their election or appointment, shall meet at some convenient place and choose one of their number president of the board, and elect some suitable person secretary, who may or may not be a member of the board, and who may be required to execute bond for the faithful performance of his duties, as the board of supervisors may require. Such board shall adopt a seal with a suitable device, and shall keep a record of all of its proceedings in a substantially bound book to be kept for the purpose, which shall be open to inspection by any interested person, his agent or attorney. The board of supervisors shall report to the landowners, at the annual meeting held under the provisions of §298.12, of what work has been done, either by engineers or otherwise. The members of the board shall be reimbursed for their traveling expenses pursuant to §112.061, but said board shall receive no compensation for their service unless the landowners at the annual meeting shall determine to pay a compensation, which in no event shall exceed five dollars per day for the time actually engaged in work for the district and in attending sessions of the board; provided, however, that if the secretary be a member of the board he shall be entitled to compensation as provided in this chapter.

History.—§7, ch. 6458, 1913; RGS 1104; CGL 1457; §11, ch. 63-400.

298.15 Board of supervisors to keep record of proceedings, etc.—The board of supervisors of any district organized under this chapter shall cause to be kept a well-bound book, entitled "record of board of supervisors of _____ district," in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record shall at all times be open to the inspection of any one interested, whether tax payer or bond holder.

History.—§28, ch. 6458, 1913; RGS 1125; CGL 1478.

298.16 Appointment of chief engineer; engineer's bond and duties.—Within thirty days after organizing, the board of supervisors shall appoint a chief engineer, who may be an individual, copartnership or corporation, and who shall engage such assistants as the board of supervisors may approve. Such chief engineer shall enter into a bond with good surety, in a sum to be named by said board, and which bond and surety shall be approved by said board, conditioned that he will faithfully and honestly perform all the duties required of him by said supervisors, and deliver to his successor all instruments, papers, maps, documents and other things that may have come into his hands by virtue of his employment. The chief engineer shall have control of the engineering work in said district, and he may, whenever he deems it necessary, confer with the chief engineer of this state, or the board of drainage commissioners, and he may, by and with the consent of the board of supervisors, consult any eminent engineer and obtain his opinion and advice concerning the reclamation of lands in said districts. The said engineer shall make all necessary surveys of the lands within the boundary lines of said district, as described in the petition, and of all lands adjacent thereto that will be improved or reclaimed in part or in whole by any system of drainage that may be outlined and adopted; and said engineer shall make a report in writing to the board of supervisors, with maps and profiles of said surveys, which report shall contain a full and complete plan for draining and reclaiming the lands described in the petition, or adjacent thereto, from overflow or damage by water, with the length, width and depth of such canals, ditches, dikes or levees, or other works that may be necessary, in conjunction with any canals, drains, ditches, dikes, levees or other works heretofore constructed or built by the trustees of the internal improvement fund, or any other person, that may now be in process of construction, or which may be hereafter built by them, that may be necessary or which can be advantageously used in such plan for reclamation; and also, an estimate of the costs of carrying out and completing the plan of reclamation, including the cost of superintending the same and all incidental expenses in connection therewith; said maps and profiles shall also indicate so far as necessary the physical characteristics of the lands, and location of any public roads, railroads and other right of ways, roadways and other property or improvements located on such lands.

History.—§8, ch. 6458, 1913; RGS 1105; CGL 1458.

298.17 Appointment and duties of treasurer of district; appointment of deputies; bond of treasurer; audit of books; disbursements by warrant; form of warrant.—The board of supervisors in any drainage district shall select and appoint some competent person, bank or trust company, organized under the laws of the state, as treasurer of such district, who shall receive and receipt for all the drainage taxes collected by the county collector or collectors, and he shall also receive and receipt for the proceeds of all tax sales made under the provisions of this chapter. Said treasurer shall receive such compensation as may be fixed by the board of supervisors. Said board of supervisors shall also have the authority to employ a fiscal agent, who shall be either a resident of the state or some corporation organized under the laws of Florida and authorized by such laws to act as such fiscal agent for municipal corporations, who shall assist in the keeping of the tax books, col-

lections of taxes, the remitting of funds to pay maturing bonds and coupons, and perform such other service in the general management of the fiscal and clerical affairs of the district as may be determined by such board; and said board shall have the right to define the duties of such fiscal agent and fix its compensation. Said board of supervisors shall furnish the secretary and the treasurer with necessary office room, furniture, stationery, maps, plats, typewriter and postage. The secretary and the treasurer, or either of them, may appoint, by and with the advice and consent of the board of supervisors, one or more deputies as may be necessary. Said treasurer shall give bond in such amount as shall be fixed by the board of supervisors, conditioned that he will well and truly account for and pay out, as provided by law, all moneys received by him as taxes from the county collector, and the proceeds from tax sales for delinquent taxes, and from any other source whatever on account or claim of said district, which bond shall be signed by at least two sureties, or by some surety or bonding company, approved and accepted by said board of supervisors, and said bond shall be in addition to the bond for proceeds of sales of bonds, which is required by §298.47. Said bond shall be placed and remain in the custody of the president of the board of supervisors, and shall be kept separate from all papers in the custody of the secretary or treasurer. Said treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. All interest accruing on such funds shall, when paid, be credited to the district. The board of supervisors shall audit or have audited the books of the said treasurer of said district at least once each year and make a report thereof to the landowners at the annual meeting and publish a statement within thirty days thereafter, showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of the year. The aforesaid treasurer of the district shall pay out funds of the district only on warrants issued by the district, said warrants to be signed by the president of the board of supervisors and attested by the signature of the secretary. All warrants shall be in the following form:

$_____ Fund _____ No. of Warrant _____
Treasurer of _____ Drainage District, State of Florida.
Pay to _____ Dollars
out of the money in _____ fund
_____ of drainage district. For _____.
By order of board of supervisors of _____ Drainage District, Florida.

_____
President of District.

Attest:

_____
Secretary of District.

History.—§25, ch. 6458, 1913; RGS 1122; §1, ch. 9129, 1923; CGL 1475.

298.18 Supervisors to employ attorney for district; duty of attorney.—The board of supervisors within thirty days after organizing shall employ an attorney to act for the district and to advise said board. Such employment shall be evidenced by an agreement in writing, which, as far as possible, shall specify the exact amount to be paid to said attorney for all services and expenses. Such attorney shall conduct all legal proceedings and suits in court where the district is a party or interested, and shall in all legal matters advise the said board of supervisors, all officers, employees or agents of said district and board, and generally look after and attend to all matters of a legal nature for said board and district. When the said board may deem it necessary, it may, by and with the advice of said attorney, and under the like terms and conditions as above set forth, employ another attorney.

History.—§27, ch. 6458, 1913; RGS 1124; CGL 1477.

298.19 Appointment and duties of superintendent of plant and operations and overseers.—For the purpose of preserving any ditch, drain, dike, levee or other work constructed or erected under the provisions of this chapter and for the taking care and the operation of the equipment owned by said district and the maintenance of the canals and other works of said district, including the removal of obstructions from the same, and such other duties as may be prescribed by said board, the board of supervisors may employ a superintendent of plant and operations who shall have charge and supervision of the works of the district after the construction of the same, and said board also may employ or appoint an overseer or overseers who shall hold their positions at the will of the board, and who shall assist said superintendent in the performance of the work aforesaid.

History.—§40, ch. 6458, 1913; RGS 1137; §1, ch. 9129, 1923; CGL 1492.

298.20 Supervisors to fix compensation for work and employees.—The board of supervisors, except where otherwise provided, shall, by resolution, at time of hiring or appointing, provide for the compensation for work done by any officer, engineer, attorney or other employee and shall also pay the fees, and necessary expenses of all court and county officers who may, by virtue of this chapter, render service to said district. Reimbursement of travel expenses shall be made as provided by §112.061. It is understood that the ordinary fee statute does not apply to services rendered under this chapter by any county officer, but each such officer shall receive only a reasonable compensation for services actually rendered, the same to be fixed by the court in which the proceeding is pending, except where otherwise provided in this chapter, that said drainage districts or petitioners for such corporations may prepare, write or print all copies of petitions, writs, orders and decrees or other papers, and furnish same to the clerk or other officer for his use, and in such event said officer

shall be entitled to receive as compensation for issuing the said writs and copies of petitions, decrees, orders or other papers, only the reasonable value of the services actually rendered.

History.—§37, ch. 6458, 1913; RGS 1134; CGL 1489; §19, ch. 63-400.

298.21 Supervisors may remove officers and employees.—The board of supervisors may at any time remove any officer, attorney, chief engineer or other employee appointed or employed by said board.

History.—§47, ch. 6458, 1913; RGS 1144; CGL 1501.

298.22 Powers given supervisors to effect reclamation of land in district.—In order to effect the drainage, protection and reclamation of the land in the district subject to tax, the board of supervisors may clean out, straighten, open up, widen, or change the course and flow, alter or deepen any canal, ditch, drain, river, water-course, or natural stream; and concentrate, divert or divide the flow of water in or out of said district; construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and syphons, and may connect same, or any of them, with any canals, drains, ditches, levees or other works that may have been heretofore, or which may be hereafter constructed by the trustees of the internal improvement fund or the board of drainage commissioners of the state, and with any natural stream, lake or water-course in or adjacent to said district, build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; acquire, construct, operate, maintain, use, sell, convey, transfer or otherwise provide for pumping stations, including pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment; contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of the said pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same; construct or enlarge, or cause to be constructed or enlarged, any and all bridges that may be needed in or out of said district, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right of way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of said works and improvements across, through or over any public highway, railroad right of way, track, grade, fill or cut, in or out of said district; remove any fence, building or other improvements, in or out of said district; and shall have the right to hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right of way, sluice, reservoir, holding basin or franchise, in or out of said district, for right of way, holding basin for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for drainage, protecting and reclaiming the lands in said district. Said board of supervisors also may develop, hold and control all water power created by the construction of works of said district, and may construct and maintain hydro-electric power plants for the purpose of developing such power for the use of said district, use any funds in the treasury of said district not otherwise appropriated for the construction and maintenance of such power plants; and the said board of supervisors may lease any surplus power in excess of that required for the uses of said district, and the proceeds of such leases shall be paid into the treasury of said district. Said board also may condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages, and shall follow the procedure set out in chapter 73.

History.—§26, ch. 6458, 1913; §1, ch. 7897, 1919; RGS 1123; CGL 1476; §1, ch. 14714, 1931.

298.23 Supervisors given power to take land for right of ways, etc.; payment, etc.—The board of supervisors of drainage districts organized under this chapter shall not have the right to enter upon, or appropriate, any land for right of ways, holding basins or other works of the districts, until the prices awarded to the owners of such land shall have been paid to such owners, or into the hands of the clerks of the circuit courts organizing such districts for the use of such owners; and if the sums awarded be not so paid within five years from the date of filing the commissioner's reports, all proceedings as to the taking of such property for right of ways, holding basins and other works, not so paid for, shall abate at the cost of said district. Whenever any land is acquired by any district under the provisions of this chapter and the price of such property has been paid the owner by the district, the title, use, possession and enjoyment of such property shall pass from the owner and be vested in the district, and subject to its use, profit, employment and final disposition. The price awarded for all lands acquired by any district for right of ways, holding basins, or other works, and the amount of damage assessed by the board of commissioners and confirmed by the court to any tract or parcel of land or other property in the district, shall be paid in cash to the owner thereof or to the clerk of the court for the use of such owner, and that portion of any tract or parcel of land not taken for use of the district shall be assessed for the benefits accruing in accordance with the provisions in this chapter.

History.—§29, ch. 6458, 1913; RGS 1126; CGL 1479.

298.24 Bridges to be built in compliance with plans approved by engineer, etc.; requiring construction of bridges; constructing ditches across highways, etc.—All bridges contemplated by this chapter and all enlargements

of bridges already in existence shall be built and enlarged according to and in compliance with the plans, specifications and orders made or approved by the chief engineer of the district. If any such bridge shall belong to any corporation, or be needed over a public highway or right of way of any corporation, the secretary of said board of supervisors shall give such corporation notice by delivering to its agent or officer, in any county wherein said district is situate, a copy of the order of the board of supervisors of said district declaring the necessity for the construction or enlargement of said bridge. A failure to construct or enlarge such bridge, within the time specified in such order, shall be taken as a refusal to do said work by said corporation, and thereupon the said board of supervisors shall proceed to let the work of constructing or enlarging the same at the expense of the corporation for the cost thereof, which costs shall be collected by said board of supervisors from said corporation, by suit therefor, if necessary. But before said board of supervisors shall let such work, it shall give some agent or officer of said corporation, authorized by the laws of this state to accept service of summons, or upon whom service of summons for said corporation might be made, at least twenty days' actual notice of the time and place of letting such work. Any owner of land, within or without the district, may, at his own expense, and in compliance with the terms and provisions of this chapter, construct a bridge across any drain, ditch, canal or excavation in or out of said district. All drainage districts shall have full authority to construct and maintain any ditch or lateral provided in its "plan of reclamation," across any of the public highways of this state, without proceedings for the condemnation of the same, or being liable for damages therefor. Within ten days after a dredge boat or any other excavating machine shall have completed a ditch across any public highway, a bridge shall be constructed and maintained over such drainage ditch where the same crosses such highway; provided, however, the word corporation as used in this section shall not apply to counties.

History.—§30, ch. 6458, 1913; RGS 1127; CGL 1480.

298.25 Type of bridges over drains in large counties.—Whenever any drainage district cuts or digs a drain, canal or ditch across any public highway, in counties having a population of not less than one hundred thirty thousand, according to the last preceding state census, the style, type and character of such bridge shall be determined by the engineer of the county and the chief engineer of the drainage district, and approved by a majority of the board of county commissioners as soon as the plan of reclamation, locating such canals, drains or ditches, is filed in the office of the clerk of the circuit court of the county or counties in which the lands within the drainage district are located; and the cost of the same, as estimated by the chief engineer of the drainage district, shall be included by the commissioners of the drainage districts in the assessment for the construction of the plan of reclamation.

History.—§§1, 2, ch. 11344, 1925; CGL 1481, 1482.

298.26 Chief engineer to make annual reports to supervisors; approval of reports "plan of reclamation."—The chief engineer shall make a report in writing to the board of supervisors once every twelve months, and oftener if said board shall so require. Upon receipt of the final report of said engineer, concerning the surveys made of the lands contained in the district organized and the lands adjacent thereto and for reclaiming the same, the board of supervisors shall adopt such report, or any modification thereof, approved by the chief engineer, after consulting with him or some one representing him; and thereafter such adopted report shall be the plan for draining or reclaiming such lands from overflow or damage by water, and it shall, after such adoption be known and designated as "the plan of reclamation," which plan shall be filed with the secretary of the board of supervisors and by him copied into the records of the district.

History.—§9, ch. 6458, 1913; RGS 1106; CGL 1459.

298.27 When plan insufficient, supervisors have power to make new plans; additional levy; may issue bonds; procedure.—Where the works set out in "the plan of reclamation" of any drainage district is found insufficient to reclaim, in whole or in part, any or all of the lands of the district, the board of supervisors shall have the right to formulate new or amended plans, containing new canals, ditches, levees or other works, and additional assessments may be made in conformity with the provisions of §298.32, the same to be made in proportion to the increased benefits accruing to the lands because of the additional works. If it should be found at any time that the amount of total tax levied under the provisions of §298.36, or that the funds derived from the sale of bonds under the provisions of §§298.47-298.50, are insufficient to pay the cost of works set out in "the plan of reclamation," the board of supervisors may make an additional levy to provide funds to complete the work and, in addition thereto, ten per cent of said total amount for emergencies; and, if in their judgment it seems best, may issue bonds not to exceed the amount of said additional levy. If it should be found, at any time, that the plan of reclamation as adopted requires modification by widening, lowering or deepening the canals or ditches, or widening or raising the levees, or enlarging or improving the other works authorized by the plan of reclamation, or the construction of additional canals, ditches or levees, and that the amount of the total tax levied under the provisions of §298.36, or that the funds derived from the sale of bonds under the provisions of §§298.47-298.50, are not sufficient to carry out the plan of reclamation with such modification, the board of supervisors may file its petition in the office of the clerk of the court organizing said district, praying the court's permission to change

the plan of reclamation and asking the court to appoint three commissioners, as provided for under the provisions of §298.30, to appraise the land that shall be taken for such enlarged or improved works and assess the benefits and damages to any or all lands, public highways, railroads or other property in the district by the proposed amendments and changes to the plan of reclamation. Notice of the filing of such petition shall be given, and a hearing shall be held, and commissioners shall be appointed in the same manner as provided in §298.07, possessing the same qualifications as commissioners appointed under the provisions of §298.30; who shall appraise the property to be taken, assess benefits and damages and estimate the cost of improvement; and who shall proceed in the manner provided in §298.32; provided, however, that said commissioners may, in a proper case, confirm any previous assessment made under the provisions of this chapter. Said commissioners shall make report in writing, and file the same with the circuit court clerk, after which the same shall be proceeded with in the same manner as is now provided for in the case of an original incorporation and assessment.

After the lists of lands with the assessed benefits and the decree and judgment of court have been filed in the office of the clerk of the circuit court, as provided in §298.34, then the board shall have power to levy an additional tax of such portion of said benefits on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the increased cost of the completion of the proposed works and improvements, as shown in said "plan of reclamation," as amended, including the cost of superintending the same, and all incidental expenses in connection therewith; and, in addition thereto, ten per cent of said total amount for emergencies; and, if in their judgment it seems best, may issue bonds not to exceed the amount of said additional levy. The additional taxes authorized to be levied under the provisions of this section shall be levied and collected in the same manner as taxes levied under the provisions of §298.36. Bonds issued under the provisions of this section shall draw interest at a rate not to exceed six per cent per annum, payable semiannually, and shall be made payable at such time and at such place as the board of supervisors may determine. Any additional tax authorized to be levied under the provisions of this section shall be apportioned to, and levied upon, each tract of land in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as herein provided, then the amount of the interest (as estimated by said board of supervisors), which will accrue on such bonds, shall be included and added to the said additional levy; but the interest to accrue on said bonds shall not be included as part of the cost of construction, in determining whether or not the expenses and costs of making the improvements shown in the plan of reclamation are equal to, or in excess of the benefits assessed.

History.—§46, ch. 6458, 1913; §1, ch. 7309, 1917; RGS 1143; CGL 1500.

298.28 Water courses to be connected with drainage of district; connecting drains after completion of plan of drainage.—At the time of the construction, in any district incorporated under this chapter, of "the plan of reclamation", all canals, ditches or systems of drainage already constructed in said district and all water courses shall, if necessary to the drainage of any lands in said district, be connected with and made a part of the works and improvements of the plan of drainage of said district, but no canals, ditches, drains, or systems of drainage constructed in said district, after the completion of the aforesaid plan of drainage of said district, shall be connected therewith, unless the consent of the board of supervisors shall be first had and obtained; which consent shall be in writing and shall particularly describe the method, terms and conditions of such connection, and shall be approved by the chief engineer. Said connection, if made, shall be in strict accord with the method, terms and conditions laid down in said consent. If the land owners wishing to make such connection are refused by the board of supervisors, or decline to accept the consent granted, the said land owners may file a petition for such connection in the circuit court having jurisdiction in said district, and the matter in dispute shall in a summary manner be decided by said court, which decision shall be final and binding on the district and land owners. No connection with the works or improvements of said plan of drainage of said district, or with any canal, ditch, drain or artificial drainage, wholly within said district, shall be made, caused or affected by any land owners, company or corporation, municipal or private, by means of, or with, any ditch, drain, cut, fill, roadbed, levee, embankment or artificial drainage, wholly without the limits of said district, unless such connection is consented to by the board of supervisors, or in the manner provided for in this chapter.

History.—§48, ch. 6458, 1913; RGS 1145; CGL 1502.

298.29 Levy of taxes; collection of taxes; supervisors may borrow money and issue negotiable papers.—The board of supervisors of any drainage district organized under the provisions of this chapter shall, as soon as they have organized, as provided under §298.14, levy a uniform tax, of not exceeding fifty cents per acre, upon each acre of land within such drainage district, as defined in the petition and decree incorporating said district; to be used for the purpose of paying expenses incurred, or to be incurred, in organizing said district, making surveys of the same and assessing benefits and damages, and to pay other expenses necessarily incurred, as may be estimated by said board and chief engineer; before said board may, by provisions of this chapter, provide funds to pay the total costs of works and improvements of the dis-

trict. In case the boundary lines of the district be extended, under the provisions of this chapter, so as to include lands not described and contained in the petition, the same uniform assessment shall be made on such other lands as soon as same shall have been annexed and included in the district. Such shall be due and payable as soon as assessed and become delinquent ninety days thereafter. It shall become a lien upon the land against which it is assessed from the date of assessment, and shall be collected in the same manner as the annual installment of tax. In case the sum received for such assessment exceed the total cost of items for which the same has been levied the surplus shall be placed in the general fund of the district and used to pay cost of construction; provided, that if the corporation of the district be dissolved, as provided in this chapter, the amount of surplus, if there be any, shall be prorated and refunded to the landowners paying such assessment; provided, that if it shall appear as necessary to obtain funds to pay any expense incurred or to be incurred, in organizing said district before a sufficient sum can be obtained by the collection of said uniform tax, the board of supervisors may borrow a sufficient amount of money to meet emergencies at a rate of interest not exceeding eight per cent per annum, and may issue negotiable notes or bonds therefor, signed by the members of the board, and may pledge any and all assessments made under the provisions of this section for the repayment thereof; provided, however, that §6 of Article IX of the constitution of Florida shall be complied with as to all bonds within its purview. Said board of supervisors may issue, to any person performing work or service, or furnishing anything of value in the organization of said district, negotiable evidence of debts, bearing interest at not exceeding six per cent. In the event any installment of taxes has been levied for the payment of any obligation of any district, or in the event of the levy of a maintenance tax, the board of supervisors may issue notes bearing a rate of interest not exceeding eight per cent per annum, which notes shall be payable out of said installment of taxes or maintenance tax so levied, and shall not be in excess of seventy-five per cent of said levy or liens; the proceeds derived from such notes shall be used only for the purpose of meeting such maturing obligations of said district, or for any other purpose for which said installment and maintenance taxes have been levied.

History.—§10, ch. 6458, 1913; RGS 1107; §1, ch. 9129, 1923; CGL 1460.

298.30 Appraisal of lands for right of ways, etc.—Within twenty days after the adoption of "the plan of reclamation," the secretary of the board of supervisors shall prepare and transmit a certified copy thereof to the clerk of the circuit court organizing said drainage district; and at the same time, a board of supervisors shall file with said clerk a petition asking the judge of said court to appoint three commissioners to appraise the lands within and without said district to be acquired for rights-of-way, holding basins and other drainage works of the district, and to assess benefits and damages accruing to all lands in the district by reason of the execution of "the plan of reclamation." Immediately after the filing of such petition, the judge of said court shall, by an order, appoint three commissioners, who shall be freeholders residing within the state, and who shall not be landowners in said district, nor of kin within the fourth degree of consanguinity to any person owning land in said district. A majority of said commissioners shall constitute a quorum and shall control the action of the board on all questions.

History.—§11, ch. 6458, 1913; RGS 1108; CGL 1461; §22, ch. 29737, 1955.

298.31 Clerk to notify commissioners of appointment; meeting of commissioners; duties of clerk; organization of commissioners.—The clerk of the circuit court, upon the filing of said order of appointment, shall notify each of said commissioners of his appointment by written or printed notice, and in the same he shall state the time and place for the first meeting of said commissioners; the secretary of the board of supervisors, or his deputy, shall attend such meeting, and shall furnish to said commissioners a complete list of lands, described in the petition or adjacent thereto, that will be affected by carrying out and putting into effect "the plan of reclamation," and the names of the owners of such lands, as shown in the petition and the decree of the court incorporating the district. Said secretary shall also furnish to said commissioners a copy of "the plan of reclamation," with maps and profiles in his office. The commissioners at said meeting, or within ten days thereafter, shall each take and subscribe to an oath that they will faithfully and impartially discharge their duties as such commissioners and make a true report of the work done by them. The said commissioners shall, also, at said meeting, elect one of their own number chairman, and the secretary of the board of supervisors, or his deputy, shall be ex officio secretary of said board of commissioners during their continuance in office.

History.—§12, ch. 6458, 1913; RGS 1109; CGL 1462.

298.32 Proceedings of commissioners; duties of district attorney and chief engineer; assessment; change of plan; property assessable; compensation; assessment of lands outside district.—Immediately after qualifying, as provided in §298.31, the commissioners shall begin their duties; they may, at any time, call upon the attorney of the district for legal advice and information relative to their duties, and the chief engineer or one of his assistants shall accompany said commissioners when engaged in the discharge of their duties and shall render his opinion in writing when called for. Said commissioners shall proceed to view the premises and determine the value of all lands, within or without the district, to be acquired

and used for right of way, holding basins or other works set out in "the plan of reclamation;" they shall assess the amount of benefits, and the amount of damages also, if any, that will accrue to each governmental lot, forty-acre tract, or other subdivision of land (according to ownership), public highways, railroads and other right of ways, not traversed by such works and improvements, from carrying out and putting into effect "the plan of reclamation" theretofore adopted. The commissioners, in assessing the benefits to lands, public highways, railroad and other right of ways, not traversed by such works and improvements, as provided for in "the plan of reclamation," shall not consider what benefits will be derived by such property after other ditches, improvements or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in "the plan of reclamation", or as the same may afford an outlet for drainage or protection from overflow of such property. The commissioners shall give due consideration and credit to any other canal, drain, ditch, dike, levee, or other systems of reclamation which may have already been constructed and which affords partial or complete protection to any tract or parcel of land in the new district. The public highways, railroads and other right of ways, shall be assessed according to the increased physical efficiency and decreased maintenance cost of roadways, by reason of the protection to be derived from the proposed works and improvements. The commissioners shall have no power to change "the plan of reclamation" provided for in this chapter. The board of commissioners shall prepare a report of their findings, which shall be arranged in tabular form, the columns of which shall be headed as follows: column one, "owner of property assessed"; column two, "description of property assessed"; column three, "number of acres assessed"; column four, "amount of benefits assessed"; column five, "amount of damages assessed"; column six, "number of acres to be taken for right of ways, holding basins, etc."; column seven, "value of property to be taken." They shall also, by and with the advice of the engineer of the district, estimate the cost of the works set out in "the plan of reclamation," which estimate shall include the cost of property required for right of ways, holding basins and other works and damages, and the probable expense of organization and administration, as estimated by the board of supervisors, and shall tabulate the same. Said report shall be signed by at least a majority of the commissioners and filed in the office of the clerk of the circuit court organizing such drainage district. The secretary of the board of supervisors, or his deputy, shall accompany said commissioners while engaged in their duties, and shall perform all clerical work for said board; he shall also, under the advice, supervision and direction of the attorney for the district, prepare their report. Said board of commissioners shall report to the board of supervisors the number of days each has been employed and the actual expenses incurred. Each commissioner shall be paid five dollars per day for his services, and reimbursed for traveling expenses as provided in §112.061. In case the report of said commissioners shall contain assessments of benefits and damages to lands not included in the original petition as signed and filed, the board of supervisors shall file in the office of said clerk a petition praying that the court grant permission for the extension of the boundary lines of said district, so as to embrace all lands that will be benefited, as shown by the report of said commissioners, after such petition has been filed, the same shall be proceeded with in accordance with the provisions of this chapter, governing the extension of boundary lines of districts.

History.—§13, ch. 6458, 1913; RGS 1110; CGL 1463; §19, ch. 63-400.

298.33 Form of notice of filing of commissioners' report; publication of notice.—Upon the filing of the report of the commissioners, the clerk of said circuit court shall give notice thereof, by causing publication to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be made at least ten days before a return date of said circuit court, to be named in such notice, on which exceptions may be filed. It shall not be necessary for the clerk to name the parties interested, but it shall be sufficient to say:

"Notice of filing Commissioners' Report for _____Drainage District

Notice is hereby given to all persons interested in the following described land and property in _____county (or counties), in the State of Florida, viz.: (Here describe land and property) included within "_____Drainage District" that the commissioners heretofore appointed to assess benefits and damages to the property and lands situate in said drainage district and to appraise the cash value of the land necessary to be taken for right of ways, holding basins and other works of said district, within or without the limits of said district, filed their report in this office on the_____day of_____, 19_____, and you and each of you are hereby notified that you may examine said report and file exception to all, or any part thereof, on or before the first Monday in_____, 19_____.

First publication _____, 19_____.

_____

Clerk of the Circuit Court,

_____County, Florida."

Provided, that where lands in different counties are contained in said report, the said notice shall be published in some newspaper in each county in which such lands so affected are situate, and it shall not be necessary to publish a list of all said lands in each county, but only that part of same situated in the respective counties.

History.—§14, ch. 6458, 1913; RGS 1111; CGL 1464; §2, ch. 29737, 1955.

298.34 Filing exceptions to report; hearing; determination by court, etc.—The board of drainage commissioners, the drainage district, or any owner of land or other property to be affected by said report, may file exception to any part, or all, of the report of said commissioners within the time specified in §298.33. All exceptions shall be heard and determined by the court in a summary manner so as to carry out liberally the purposes and needs of the district. If no exceptions are filed, or if it is shown, upon the hearing of all of said exceptions, that the estimated cost of construction of improvements contemplated in the plan for reclamation is less than the benefits assessed against the lands in said district, the court shall approve and confirm said commissioners' report; but, if the court, upon hearing the objections filed, finds that any or all such objections should be sustained, it shall order the report changed to conform with such findings, and when so changed the court shall approve and confirm such report and enter its decree accordingly. The court shall adjudge and apportion the costs incurred by the exceptions filed, and shall condemn any land or other property, within or without the boundary lines of the district, that is shown by the report of the commissioners to be needed for rights of way, holding basins or other works, or that may be needed for material to be used in constructing said works, following the procedure provided in chapters 73 and 74; provided however, that any property owner may accept the assessment of damages in his favor made by the commissioners, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so, unless he gives the supervisors of the district, on or before the time shall have expired for filing exceptions, as provided in this chapter, notice in writing that he demands an assessment of his damages by a jury; in which event the supervisors of the district shall institute in the circuit court of the proper county an action to condemn the lands and other property that must be taken or damaged in the making of such improvements, with the right and privilege of paying into court a sum to be fixed by the circuit court or judge, and proceeding with the work, before the assessment by the jury; provided, any person or party interested may prosecute an appeal to the appropriate district court of appeal in the manner and within the time provided by the Florida appellate rules. If it shall be ascertained and determined that any tract or lot of land, or parts thereof upon which the uniform tax authorized and levied as provided in §298.29, has been paid, will not be benefited by or received any benefit from, the completion of the plan for improvement, then the uniform tax so paid upon such tract, lot or part thereof, shall be refunded and paid to the person paying same.

The clerk of said circuit court shall transmit a certified copy of the court decree and copy of the commissioners' report, as confirmed or amended by the court, to the secretary of the board of supervisors of the district; and the clerk of said circuit court shall also transmit a certified copy of the said decree and that part of the said report affecting land in each county to the clerk of the circuit court of each county having lands in the district, or affected by the said report, where the same shall be filed and become a permanent record, and each such clerk shall receive a fee of one dollar for receiving, filing and preserving same.

History.—§15, ch. 6458, 1913; RGS 1112; CGL 1465; §22, ch. 63-559.

298.35 Powers of supervisors to carry out "the plan of reclamation"; engineer to be superintendent of works.—The board of supervisors of the drainage district shall have full power and authority to build, construct, excavate and complete any and all works and improvements which may be needed to carry out, maintain, and protect "the plan of reclamation." To accomplish that end the said board of supervisors may employ men and teams and purchase machinery, employ men to operate same, and directly have charge of and construct the works and improvements in such manner, or by use of other or more efficient means than provided for in the plans adopted. They may, at their discretion, let the contract for such works and improvements, either as a whole or in sections, and when such contracts are let they shall be advertised and let to the lowest and best bidder, who shall give a good and approved bond, with ample security, conditioned that he will well and promptly carry out the contract for such work and improvements; which contract shall be in writing and to which shall be attached and made a part thereof, complete plans and specifications of the work to be done and improvements to be made under such contract, which plans and specifications shall be prepared by the chief engineer and shall be incorporated in, and attached to, the contract; such contract shall be prepared by the attorney for the district and approved by the board of supervisors and signed by its president and the contractor, and executed in duplicate. The chief engineer shall be the superintendent of all the works and improvements, and shall, at least once each year and when required, make a full report to said board of all work done and improvements made, and make suggestions and recommendations to the board as he may deem proper.

History.—§16, ch. 6458, 1913; RGS 1113; CGL 1466.

298.36 Assessing land for reclamation; apportionment of tax; lands belonging to state assessed; drainage tax record.—After the lists of lands, with the assessed benefits and the decree and judgment of court, have been filed in the office of the clerk of the circuit court as provided in §298.34, then the board of supervisors shall, without any unnecessary delay, levy a tax of such portion of said benefits, on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and im-

provements, as shown in said "plan of reclamation" and in carrying out the objects of said district; and, in addition thereto, ten per cent of said total amount for emergencies. The said tax shall be apportioned to, and levied on, each tract of land in said district in proportion to the benefits assessed, and not in excess thereof; and in case bonds are issued, as provided in this chapter, a tax shall be levied in a sum not less than an amount, ninety per cent of which shall be equal to the principal of said bonds. The amount of bonds to be issued for paying the cost of the works as set forth in the plan of reclamation shall be ascertained and determined by the board of supervisors; provided, however, that the total amount of all bonds to be issued by the district shall in no case exceed ninety per cent of the benefits assessed upon the lands of the district. The amount of the interest (as estimated by said board of supervisors), which will accrue on such bonds, shall be included and added to the said tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making said improvements are equal to, or in excess of, the benefits assessed. The benefits, and all lands in said district belonging to the state, shall be assessed to, and the taxes thereon shall be paid by, the state out of funds on hand, or which may hereafter be obtained, derived from the sale of lands belonging to the state; this provision shall apply to all taxes in any drainage district including maintenance and ad valorem taxes, either levied under this or any other law, and to taxes assessed for preliminary work and expenses, as provided in §298.29, as well as to the taxes provided for in this section. The secretary of the board of supervisors, as soon as said total tax is levied, shall, at the expense of the district, prepare a list of all taxes levied, in the form of a well bound book, which book shall be endorsed and named "DRAINAGE TAX RECORD OF _____ DRAINAGE DISTRICT _____ COUNTY, FLORIDA," which endorsement shall be printed or written at the top of each page in said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said secretary.

History.—§17, ch. 6458, 1913; RGS 1114; §1, ch. 12040, 1927; CGL 1467.

cf.—§153.05(12) Water system improvements and sanitary sewers; special assessments.
§192.08 Exemption from taxation of state property.
§192.27 Taxes against state properties; notice.
§235.34(2) Sanitary improvements; expenditures authorized.

298.37 Board to levy amount of annual installments; certificate to collectors.—The board of supervisors shall, each year thereafter, determine, order and levy the amount of the annual installments of the total taxes levied under §298.36, which shall become due and be collected during said year at the same time that state and county taxes are due and collected, which said annual installment and levy shall be evidenced and certified by the said board, not later than November 1st of each year, to the collector of each county in which lands and other property of said district are situated. The certificate of such installment tax shall be substantially in the following form:

STATE OF FLORIDA }
COUNTY OF_____ }

This is to certify that by virtue and authority of the provisions of chapter 298 of the Florida statutes, the board of supervisors of "_____ Drainage District of Florida" does hereby levy the sum of $_____ as the annual installment of tax for the year 19____ of the total tax levied under the provisions of §298.36 of said statutes, which said total tax has heretofore been certified to the clerk of the circuit court of your county; and said board of supervisors of said drainage district by and with the authority of §298.54 of said statutes, has levied, also, the sum of $_____ as a maintenance tax for said year; said annual installment of tax and maintenance tax on the real estate and other property situate in your county are set out in the following table, in which are: *First*, the names of the present owners of said lands, or as they appeared in the decree of the court organizing said district; *second*, the description of said lands and other property opposite the names of said owners; *third*, the amount of said installment of tax levied on each tract of land; *fourth*, the amount of said maintenance tax levied against the same.

The said taxes shall be payable and collectible the present year at the same time that state and county taxes are due and collected, and you are directed and ordered to demand and collect the said taxes at the same time you demand and collect the state and county taxes on the same lands, and this "drainage tax book" shall be your warrant and authority for making such demand and collection.

WITNESS the signature of the president of said board of supervisors, attested by the seal of said district, and the signature of the secretary of said board, this the_____day of_____ _____, A. D. 19____.

_____
President of District.

_____
Secretary.
(SEAL)

Then shall follow a table or schedule showing, in properly ruled columns, *first*, the names of the present owners of said lands, or the names of such owners as they appeared in the decree of the circuit court organizing said district if the names of present owners are not known to said board of supervisors; *second*, the description of the said lands opposite the names of the said owners; *third*, the amount of the said annual installment of tax levied on each tract of land; *fourth*, the amount of maintenance tax; *fifth*, a blank column in which the collector shall record the several amounts as collected by him, with the dates of payment

thereof; and *sixth*, a blank column in which the collector shall record the names of the person or persons paying the several amounts; the columns in which the annual installment tax and the maintenance tax, if any appear, shall be correctly totaled; and the total amount shall correspond to the amount set out in the above mentioned certificate. The said certificate and table shall be prepared in the form of a well-bound book which shall be endorsed and named "Drainage Tax Book, _____ Drainage District, _____ County, Florida, for the year 19____," which endorsement shall also be printed at the top of each page in the said book.

History.—§18, ch. 6458, 1913; RGS 1115; §1, ch. 9129, 1923; CGL 1468.

298.38 Collectors to collect drainage tax; bond of tax collector to supervisors.—The collector of each county in which lands of any drainage district, organized under this chapter, are situated, shall receive the "drainage tax book" each year and he shall promptly and faithfully collect the tax therein set out and exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands. Where any tract or part thereof has been divided and sold or transferred, the collector shall receive taxes on any part of any tract, piece or parcel of land, charged with such taxes and give his receipt accordingly. The above and foregoing "drainage tax book" shall be the warrant and authority of the collector for making such demand and collection. The said collector shall make due return of all "drainage tax books", immediately after the first Monday in April of each year, to the secretary of the board of supervisors of the aforesaid drainage district, and shall pay over and account for all moneys collected thereon, each year, to the treasurer of said district at the same time when he pays over state and county taxes. Said collector shall, in said "drainage tax book", verify by affidavit his return. The secretary shall, each year, within ten days after the return of said collector is delivered to him, prepare and certify to said collector a "drainage back tax book" containing the list of lands so returned by the collector as delinquent; deliver the same to him and take his receipt therefor; and said collector shall proceed to collect such delinquent drainage taxes and demand payment therefor in the manner as provided for the collection of current drainage taxes. Before receiving the aforesaid "drainage tax book" the collector of each county in which lands of the drainage district are located, shall execute, to the board of supervisors of the district, a bond with at least two good and sufficient sureties, or some surety or bonding company approved by said board, in a sum that is double the probable amount of any annual installment of said tax to be collected by him during any one year, conditioned that said collector shall pay over and account for all taxes so collected by him according to law. Said bond, after approval by the board of supervisors, shall be deposited with the secretary of the board of supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested so to do.

History.—§19, ch. 6458, 1913; RGS 1116; CGL 1469.

298.39 When unpaid taxes delinquent; penalty.—All taxes, provided for in this chapter, remaining unpaid, after the first Monday in April of the year for which said taxes were levied, shall become delinquent and bear a penalty of two per cent per month on the amount of said taxes from date of delinquency until paid. In computing said penalty each fractional part of a month shall be counted as a full month.

History.—§20, ch. 6458, 1913; RGS 1117; CGL 1470.

298.40 Penalty for failure of collector to promptly remit taxes collected; compensation of collector.—If any county collector refuses, fails or neglects to make prompt payment of the tax, or any part thereof, collected under this chapter to the treasurer of the district, then he shall pay a penalty of ten per cent on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his bond. The collector shall retain for his services one per cent on the amount he collects on current taxes and two per cent of the amount he collects on delinquent taxes.

History.—§21, ch. 6458, 1913; RGS 1118; CGL 1471.

298.401 Tax assessors and collectors; compensation; characterization of services.—

(1) In any drainage or sub-drainage district whose area shall extend into not more than two counties, the tax assessors of each county containing lands within such districts where drainage taxes are assessed on the county tax roll by the county assessor shall be paid an amount equal to one per centum of the total of taxes of the district, by each assessed within his county, except errors, and one per centum on delinquent taxes when redeemed. The tax collectors of each county containing lands within the district shall be paid an amount equal to one per centum of the total of taxes of the district by each collected, and one per cent upon delinquent taxes when collected. The above payments shall apply to the taxes assessed and collected for the year 1948 and subsequent years.

(2) The services of the tax assessors and tax collectors in assessing and collecting such drainage district taxes are hereby declared to be special services performed directly for these districts and any payment therefor shall not be considered a part of the general income of the official's office, nor come under the provisions of §§116.03 and 145.10. The personnel required to do said special work shall be paid for such special services from the receipts provided in subsection (1), above.

(3) All commissions or fees paid by such

drainage districts prior to January 1, 1948, and included in the reports of income and expenses by the assessors and collectors for 1947 and prior years shall be considered closed accounts and not subject to any adjustments or refunds to such districts. All payments for services received by the assessors and collectors from such districts subsequent to January 1, 1948, for current or prior tax rolls shall be considered to have been paid under the provisions of subsection (2), above. None of such payments shall be credited against services to be performed in the future.

(4) The provisions of this section shall not apply, repeal or affect any local law or general law of local application heretofore passed, fixing and establishing the compensation of county tax assessors or tax collectors.

History.—§§1-4, ch. 25196, 1949.

298.41 Taxes and costs a lien on land against which taxes levied; sub-drainage districts; form of certificate asserting lien.—All drainage taxes provided for in this chapter, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien of equal dignity with the liens for state and county taxes, and other taxes of equal dignity with state and county taxes, upon all the lands against which such taxes shall be levied as is provided in this chapter; provided, that if any drainage district, organized or established under the provisions of this chapter, shall be within the boundaries of a district theretofore established under the laws of this state, the district last organized and established shall be designated as a sub-drainage district, and the lien for taxes assessed or levied for the purpose of such sub-drainage district, with the penalties for default in the payment thereof and all costs incurred, shall be a lien of equal dignity with the lien for drainage taxes assessed or levied for the district first established; provided, further, that a sale of any of the lands within a drainage district for state and county or other taxes shall not operate to relieve or release the lands so sold from the lien for subsequent installments of drainage taxes, which lien may be enforced as against such lands as though no such sale thereof had been made. Such lien for drainage taxes shall be evidenced by certificate substantially in the following form, to-wit:

STATE OF FLORIDA,

County of _____ ss.

To _____, Clerk of the Circuit Court of said county.

THIS IS TO CERTIFY That by virtue and authority of the provisions of chapter 298 of the Florida Statutes, the board of supervisors of _____ drainage district, in which are situated lands in the following counties, in the State of Florida, have and do hereby certify the taxes authorized by the said statute, which tax and the land against which the same are levied in your county, are described in the following table, in which table are: *first,* the names of the present owners of said land so far as known to the board of supervisors, or the owners of said land as they appear in the decree of the circuit court organizing said districts; *second,* the descriptions of the said lands opposite the names of said owners; and *third,* the amount of said taxes levied on each tract of land:

(Here insert such table).

The said tax shall be payable in annual installments, the amount of each installment, as well as the amount of the maintenance tax, will be determined and certified to the county collector of your county not later than the first day of November of each year. The aforesaid tax and such maintenance taxes as may be levied, from time to time, are hereby declared a lien upon all lands herein and heretofore described.

WITNESS the signature of the president of said board of supervisors, attested by the seal of said district, and the signature of the secretary of said board, this the _____ day of _____, A. D. 19____.

_____

President.

ATTEST:

(SEAL) _____

Secretary.

The certificate and tables specified in this section shall be prepared in a well-bound book and filed in the office of each of the clerks of the circuit court of the counties having lands in said districts as the same may affect the lands in his county, where the same shall be a permanent record in his office. The said book shall be prepared by the secretary of the board of supervisors at the expense of the drainage district, shall be designated as the "drainage tax record," and each recorder shall receive a fee of one dollar for filing and preserving said book.

History.—§22, ch. 6458, 1913; RGS 1119; §1, ch. 9129, 1923; §2, ch. 12040, 1927; CGL 1472.

298.42 Owners of land assessed for construction of canals, etc., may pay taxes in advance.—Any person owning lands assessed for the construction of any canal, ditch or other improvement, under the provisions of this chapter, shall have the right and privilege of paying such tax assessment, notice of which right and privilege shall be given by publication in a newspaper of general circulation in the county or counties where the lands are situated for not less than two weeks prior to the time fixed, to the treasurer of the board of supervisors of the district, at any time on or before a date to be fixed by resolution of the board of supervisors; and the amount to be paid shall be the full amount of the tax levied, less any amount added thereto to meet interest. When such tax assessment has been paid, the secretary of the board of supervisors shall enter upon the drainage tax record, oppo-

site each tract for which payment is made, the words "paid in full," and such tax assessment shall be deemed satisfied; and the secretary of the board of supervisors shall also make, or cause to be made, the same entry, opposite each tract for which payment is made, in the table included in the certificate filed in the office of the clerk of the circuit court under the provisions of §298.41.

History.—§49, ch. 6458, 1913; RGS 1146; §1, ch. 9129, 1923; CGL 1503.

298.43 Drainage district bonds and obligations may be accepted in payment of drainage taxes, etc.—The governing board or commission, of each drainage or sub-drainage district in this state, shall have the right to provide by resolution that bonds or other obligations of such drainage or sub-drainage district, including matured interest coupons, shall be receivable at par in the redemption of lands, within such drainage or sub-drainage district, from tax sale certificates which are held by, or in trust for, the governing board or commission of such drainage or sub-drainage district, and in the purchase of lands, the title to which has vested in such drainage or sub-drainage district, or the governing board thereof, by virtue of tax sales.

When, in pursuance of a resolution of the governing board or commission of any drainage or sub-drainage district, bonds or other obligations, including matured interest coupons, of such drainage or sub-drainage district, shall be used for the purpose of redeeming any lands from the effect of tax sales, as herein provided, the fees and costs allowed and fixed by law in connection with such redemption shall be paid in cash.

History.—§§1, 2, ch. 14712, 1931; CGL 1936 Supp. 1474(1), 1474(2).

298.44 Payment of drainage taxes with bonds and matured interest coupons.—

(1) Bonds, matured interest coupons, or other obligations of any drainage or sub-drainage district within this state, shall be received at par and in lieu of money in the payment of all taxes and assessments, or installments of taxes or assessments, levied or assessed by any such drainage or sub-drainage district, except that so much, or any part, of any such tax or assessment as is applicable under the law primarily or solely to maintenance of the works and improvements of the drainage or sub-drainage district, or to the administration of its affairs, shall be payable solely in cash.

(2) If any tax collector, receiver or other officer charged with the duty of collecting drainage district or sub-drainage district taxes, shall not be able, from the records of his office, to determine what amount or proportion of any tax or assessment, or installment of a total tax, is applicable primarily or solely to the maintenance of the works and improvements of the district or sub-district, or to the administration of its affairs, such tax collector, receiver or other officer, shall accept the certificate of the secretary or other authorized officer of such district or sub-district as to that fact; and shall, also, accept the certificate of the secretary or other authorized officer of such district or sub-district to the effect that so much of any such tax or assessment, or installment of a total tax, as is shown by such certificate not to be applicable primarily or solely to the maintenance of the works and improvements of the district or sub-district, or to the administration of its affairs, has been paid by the delivery to such secretary, or other authorized officer, of bonds or matured interest coupons, or other obligations of such district or sub-district, as provided by this section; and upon the payment to such tax collector, receiver or other officer, of the remaining amount of such tax or assessment, or installment of total tax, he shall issue tax receipt in full. Such tax collector, receiver or other officer shall be entitled to compensation as if the amount paid had been in cash.

History.—§§1-3, ch. 14713, 1931; §§1, 2, ch. 16256, 1933; CGL 1936 Supp. 1474(3)-1474(5), 1474(9), 1474(10).

298.45 Drainage tax book evidence of matters contained; suits to enforce liens; sales of land; notice of suit; form; proceeds of sale.—

(1) The "drainage tax book" of the district, as returned by the collector to the secretary of the board of supervisors of the drainage district shall be prima facie evidence in all courts of all matters therein contained. The liens established and declared in this chapter may, and shall be enforced by an action on delinquent tax bills, made and certified by the tax collector, which action shall be instituted in the circuit court without regard to the amount of the claim forthwith when any tax becomes delinquent. The board shall, within twelve months after April 1st of each year, institute a suit in chancery in the corporate name of the district against the land or lands upon which such drainage tax has not been paid, in the county in which the property is situated; except, when the tract or property sued upon be in more than one county, in which event the suit may be brought on the whole tract, in any county in which any portion thereof may be situated. The pleadings, process, proceedings, practice and sales, in cases arising under this chapter shall, except as herein provided, be the same as in an action for the enforcement of mortgages upon real estate. Service of process upon all non-residents shall be made in like manner as provided by the laws of Florida relative to the publication of process against non-resident and unknown defendants. All sales of lands made under this section shall be by a master appointed by the court.

(2) In case said district shall fail to commence suit within ninety days after the taxes have become delinquent, the holder of any bond or bonds, or note or notes, issued by the district shall have the right to bring suit for the collections of the delinquent taxes, in which event said district shall be included as a defendant; and the proceedings in such suit brought by any noteholder or bondholder shall, in all respects, be governed by the provisions ap-

plicable to suits by the said district. In the event such proceedings are brought by any noteholder or bondholder and lands are bought in the name of the district, the board of supervisors shall pay in cash into the court all costs and the attorney's fees allowed by the court before any certificate shall be issued to said district. Any judgment or decree that may be rendered in any such suit shall be enforcible only against such lands. All suits for the enforcement of the lien on lands for such delinquent taxes, whether by the district or a noteholder or bondholder, shall be in chancery, and said proceedings and any judgment or decree that may be rendered therein, shall be in the nature of proceedings in rem, and it shall not be material that the ownership of said lands be correctly alleged in said proceeding and the judgment or decree rendered shall be enforced wholly against such lands.

(3) All, or any part, of said delinquent lands situated in one county may be included in one suit for said county, instituted for the collection of said delinquent taxes; and notice of the pendency of such suit shall be filed and recorded as in other suits of foreclosure of liens in this state.

(4) The title acquired through any sale of lands under the aforesaid proceedings shall be subject to the lien of all subsequent annual installments of drainage tax and of interest on unpaid installments upon the same. In all suits for the collection of delinquent taxes, the judgment for said delinquent taxes and penalty shall also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax in the same suit, and shall bear interest at the rate of ten per cent per annum, until redemption of the same. The proceeds of sale made under and by virtue of this chapter shall be paid at once to the aforesaid treasurer and shall be accounted for by him the same as the drainage taxes; any surplus that may remain after payment of said delinquent taxes, penalties, costs and attorney fees, shall be paid over to, or held subject to, the order of the defendants, or as may be ordered in the judgment or decree of sale.

History.—§23, ch. 6458, 1913; RGS 1120; §1, ch. 8561, 1921; §1, ch. 9129, 1923; CGL 1473.

298.46 Trial of suits; order of sale; time for redemption; evidence and pleadings; bidding in land for district; provisos, etc.—

(1) All suits instituted under §298.45 shall stand for trial as other equitable actions, unless a continuance be granted for good cause shown within the discretion of the court; and such continuance, for good cause shown, may be granted as to a part of said lands or defendants, without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted; and in all cases where no answer has been filed on or before the time for filing same, or if answer is filed and the cause shall be decided for plaintiff, the court by its decree shall grant the relief prayed for; and it shall direct the master to sell the lands described in the complaint as is done in all cases involving a foreclosure of mortgage; and it shall direct the master of the court to sell the lands described in the complaint to the highest and best bidder, for cash in hand at public outcry, at the courthouse door of the county wherein the suit is pending, after having first advertised such sale (such advertisement may include all the lands described in the decree and ordered sold), once each week for two consecutive weeks in some newspaper published in the county; and, if all the lands so advertised for sale be not sold on the day as advertised, such sale shall continue from day to day until completed; and said master shall deliver to the purchaser or purchasers at said sale or to the board of supervisors in case said property be bid in in the name of said district, as hereinafter provided, a certificate showing such purchase; and said certificate shall show on its face that the same is subject to redemption within one year; and said master shall make a report of such sale or sales to the court from time to time.

(2) The title to said land so sold shall thereupon become vested in such purchaser, subject, however, to the liens for all subsequent annual installments of drainage taxes, and interest thereon, and saving to infants and insane persons having no guardian the rights they now have by law, and subject, further, to the right of the owner or any person holding any lien or interest in said lands or any part of them, to redeem the same by the payment within one year from the date of sale into the hands of the clerk of said court of a sum of money sufficient to pay the past due annual installments and state and county taxes paid by the district, if any, costs, interests, including interest on the judgment at the rate of ten per cent per annum, and attorney's fees charged against the same. Upon such redemption of any property, the cancellation of the certificate shall be entered of record. The court shall retain jurisdiction of such foreclosure suit until after the expiration of said period of redemption, and shall thereupon, upon proper application by the purchaser or holder of such certificate or certificates, make an order of confirmation, confirming the sales so made by the master in all cases where there has been no redemption as above provided, and the same shall thereby become the owners in fee simple of the lands respectively bought by them, and the master shall execute deeds to holders of such certificates and such deeds so executed and delivered pursuant thereto shall have the same probative force as deeds executed under judgments and decrees in other civil actions.

(3) All such suits may be disposed of on oral testimony and this law shall be liberally construed, so as to give to said lien for said drainage tax and interest upon the same, the effect of a bona fide mortgage for a valuable consideration and a first lien upon all said lands as against all persons having an interest therein. In such suits it shall be sufficient to

allege generally and briefly the organization of the district, and the levy, and nonpayment of the taxes, setting forth the descriptions of the lands proceeded against, and the amount chargeable to each tract; provided, that no informality or irregularity in holding any of the meetings provided herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein shall be a valid defense.

(4) Provided further, that in any case where the lands are offered for sale by the master, and the sum of the tax due, together with interest, costs and penalty, is not bid for the same, said board shall bid the whole amount due thereon, as aforesaid, in the name of the district, and the master shall sell same to such district, and such lands so bid in the name of the district shall, if subsequently confirmed in accordance with the above provision, become the property of the district in fee simple and shall be held and disposed of by the board of supervisors at such price and on such terms as in the discretion of the board may be for the best interest of said district; and in the sale or disposition of such lands, the board of supervisors may, in their discretion, accept in payment or part payment therefor, any bonds or interest coupons of the district, which are past due, at their face value with accrued interest.

(5) Provided further, that in all judgments, decrees and orders of sale of delinquent lands, the court shall make proper and equitable provisions for ascertaining the amount and for the payment of all unpaid state and county taxes with the penalties and costs thereon against the lands ordered sold to be paid either by the purchaser or purchasers or out of the proceeds of the sale thereof, or the court may order and direct said lands to be sold subject to such state and county taxes without regard to the amount thereof.

History.—§24, ch. 6458, 1913; RGS 1121; §1, ch. 9129, 1923; CGL 1474; §7, ch. 22858, 1945; §2, ch. 29737, 1955.

298.47 Supervisors may issue bonds.—The Board of Supervisors may, if in their judgment it seems best, issue bonds not to exceed ninety per cent of the total amount of the taxes, exclusive of the amount for interest, levied under the provisions of §298.36, in denominations of not less than one hundred dollars, bearing interest from date at rate not to exceed six per cent per annum, payable semiannually, to mature at annual intervals within thirty years, commencing after a period of years not later than ten years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board; provided, that §6 of article IX of the Florida constitution shall be complied with as to all such bonds as are within its purview. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said treasurer shall, at the time of the receipt by him of said bonds, execute and deliver to the president of the board of said district, a bond with good and sufficient sureties to be approved by the said board of supervisors, conditioned that he shall account for and pay over, as required by law and as ordered to do by said board of supervisors, any and all money received by him on the sale of such bonds, or any of them, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof, under and according to the terms herein prescribed, and that he will return, duly canceled, any and all bonds not sold to the board of supervisors when ordered by said board so to do, which said surety bond shall remain in the custody of the said president of said board of supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do.

The aforesaid bond of said treasurer may, if the said board shall so direct, be furnished by a surety or bonding company, which may be approved by said board of supervisors; provided, if it should be deemed more expedient to the board of supervisors, as to money derived from the sale of bonds issued, said board may, by resolution, select some suitable bank or banks, or other depository, as temporary treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of supervisors.

No bonds shall be issued under this chapter, except with the approval of the board of drainage commissioners of the State of Florida, and said board may, prior to such approval, require any or all plans of drainage or reclamation therein, and any or all contracts for the work or for the sale of bonds, to be submitted to and approved by it.

History.—§41, ch. 6458, 1913; RGS 1138; §1, ch. 9129, 1923; §3, ch. 12040, 1927; CGL 1493.

cf.—Ch. 75, Validation of bonds, procedure.

298.48 Sale of bonds and disposition of proceeds.—The bonds shall not be sold for less than ninety five cents on the dollar, with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the aforesaid taxes. The said treasurer shall promptly report all sales of bonds to the board of supervisors, which board shall at reasonable times thereafter, prepare and issue warrants in substantially the forms provided in §298.17 for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold. Each of said warrants shall specify what bonds and accruing interest it is to pay, and the said treasurer shall place sufficient funds at the place of payment to pay

the maturing bonds and coupons when due, as well as a reasonable compensation to the bank or trust company for paying same. The successor in office of any such treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose.

History.—§41, ch. 6458, 1913; RGS 1138; §1, ch. 9129, 1923; §3, ch. 12040, 1927; CGL 1493.

298.49 Interest upon matured bonds, etc.—All bonds and coupons not paid at maturity shall bear interest at the rate of six per cent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment, and the said interest shall be appropriated by the board of supervisors out of the penalties and interest collected on delinquent taxes or any other available funds of the district. Any expense incurred in paying said bonds and interest thereon, and a reasonable compensation to the bank or trust company for paying same, shall be paid out of other funds in the hands of the treasurer and collected for the purpose of meeting the expenses of administration.

History.—§41, ch. 6458, 1913; RGS 1138; §1, ch. 9129, 1923; §3, ch. 12040, 1927; CGL 1493.

298.50 Levy of tax to pay bonds, sinking fund.—The board of supervisors in making the annual tax levy, as provided in this chapter, shall take into account the maturing bonds and interest on all bonds, and make provisions in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of §298.36 are not sufficient to pay the principal and interest on all bonds issued, then the board of supervisors shall make such additional levies upon the benefits assessed as are necessary for this purpose, and under no circumstances shall any tax levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same.

A sufficient amount of the drainage tax shall be appropriated by the board of supervisors for the purpose of paying the principal and interest of the said bonds and the same shall, when collected, be preserved in a separate fund for that purpose and no other. Should said drainage tax prove insufficient for the payment of any bonds issued subsequent to June 1st, 1927, additional taxes apportioned to the amounts of said drainage tax may be levied in such amounts as may be necessary for such purposes.

History.—§41, ch. 6458, 1913; RGS 1138; §1, ch. 9129, 1923; §3, ch. 12040, 1927; CGL 1493.

298.51 Defaults, receivership for district, etc.—If any bond or interest coupon on any bond issued by said district is not paid within sixty days after its maturity, a court of competent jurisdiction, on the application of any holder of such bond or interest coupon so overdue, may appoint a receiver for the district; said receiver shall be a resident of the state or some corporation organized under the laws of Florida and authorized by such laws to act as receiver; such appointment by such court shall not be made except upon reasonable notice of such application for such appointment having been given to the board of supervisors of said district; and the proceeds of taxes collected by the receiver shall be applied after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said district which are then due and payable; and the said receiver may be directed to foreclose, by suit, as provided in this chapter, the lien of said taxes of said lands, and said suits so brought by the receiver shall be conducted as, and governed by, the provisions applicable to suits by the said district as provided, and with like effect; and the decrees, deeds and all other acts herein shall have the same presumptions in their favor; provided, however, that when all costs, overdue interest and bonds which are then due and payable, as provided in this chapter have been paid, the receiver shall be discharged and the affairs of the district conducted by a board of supervisors of said district as provided by law.

History.—§41, ch. 6458, 1913; RGS 1138; §1, ch. 9129, 1923; §3, ch. 12040, 1927; CGL 1493.

298.52 Refunding and extending bonds.—Any drainage district now or hereafter created or organized under any general or special law heretofore or hereafter enacted by the state may, whenever in the judgment of the governing board thereof it is advisable and for the best interests of the land owners in the district, refund any or all of the then outstanding bonded indebtedness of such district by taking up and canceling any or all of its outstanding bonds as and when they become due, or before they are due, if the holders thereof will surrender them, and issuing in lieu thereof new bonds of such district payable in such longer time, not to exceed fifty years from their date, as said governing board may determine; such refunding bonds shall not exceed in the aggregate the amount of the bonds refunded thereby, and shall bear interest at a rate not exceeding six per cent per annum, payable semiannually, and may be exchanged for the outstanding bonds at par or sold for not less than ninety-five cents on the dollar and accrued interest, and the proceeds used solely in the payment of outstanding bonds. Any discount or expense of such sale of the refunding bonds shall be paid out of the maintenance fund of the district, if any, or out of surplus in the sinking fund, if any. Any land owner shall have the right at any time within thirty days after the adoption of the resolution providing for the issuance of the refunding bonds, to pay the full amount of uncollected principal or assessment charge-

able to his land for the payment of the bonds proposed to be refunded, and his lands shall thereby be released from any tax or assessment for the payment of said bonds; provided, however, his land shall remain liable, subject to the limitations prescribed in the law under which the original bonds were issued and the original or revised benefits assessed against said land, for any additional tax which may be required to pay said bonds by reason of other lands in the district not paying the tax or assessment. Unless and until refunding bonds shall have been authorized and issued, the governing board shall continue the levy of annual taxes sufficient to pay the outstanding bonds and interest thereon as they fall due. When any bonds of such district are refunded pursuant to the authority hereby conferred, the collection of corresponding installments of tax or assessment shall likewise be deferred. The governing board shall make proper provision for the payment of the principal and interest of said refunding bonds in like manner as was required in the case of the issuance of original bonds by the law under which such district is or may have been incorporated; and the holders of such refunding bonds shall have the same rights as are given the holders of bonds under the law under which such district is or may have been incorporated. Any landowner failing to avail himself of the privilege conferred by this section of paying in full the unpaid principal tax or assessment against his land shall not be heard to complain by reason of additional interest to be collected from his lands by reason of the extension of the bonds. Taxes or assessments levied for the payment of refunding bonds and the interest thereon shall be secured by the same lien as other taxes of such district levied for the payment of the original bonds, and the additional interest which will accrue on account of such refunding bonds shall be included and added to the original drainage tax and shall be secured by the same lien; but the interest to accrue shall not be considered as a part of the cost of construction in determining whether the tax exceeds the benefits assessed. No proceedings shall be required for the issuance of refunding bonds other than those provided by this section; provided, however, that the validity of all bonds issued under this chapter and the validity of all proceedings had incident to and culminating in the issuance of such bonds shall, prior to the sale or delivery of such bonds, be determined and established in the manner now or hereafter provided by law for the validation of bonds issued by counties, municipalities, taxing districts or other political districts or subdivisions of this state.

History.—§1, ch. 13627, 1929; CGL 1936 Supp. 1493(1); §7, ch. 22858, 1945.

cf.—ch. 75 Validation of bonds; procedure.
§100.321 Test suit.
§726.01 Fraudulent conveyances void.

298.53 Valuations in connection with ad valorem tax to pay bonds; power of courts; service of process.—If any drainage district incorporated by special act or under general law shall hereafter issue any bonds for payment of which an ad valorem tax is levied based on valuations of real property to be made by the governing board, such valuations shall be made under rules and regulations adopted by said board, and if such board is composed of state officers, such rules and regulations shall be approved by the attorney general of the state.

Levies of such tax, including the valuations upon which they are to be made, may if necessary be made by or under the order of any court having jurisdiction to enforce the payment of said bonds or of any judgment thereon against the district. Service in any action or proceeding against the district in relation to such bonds may be made upon any member of the governing board of such district as now or hereafter constituted, or if such governing board is composed of state officers acting ex officio, upon any executive officer of the state performing any of the duties of any such officer, who is now or may hereafter be ex officio a member of said board.

History.—§§1, 2, ch. 12006, 1927; CGL 1494, 1495.

298.54 Maintenance tax.—To maintain and preserve the ditches, drains or other improvements made pursuant to this chapter and to repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, including any sum which may be required to pay state and county taxes on any lands which may have been purchased and which are held by the district under the provisions of this chapter, the board of supervisors may, upon the completion of the said improvements, in whole or in part as may be certified to the said board by the chief engineer, and on or before the first day of October in each year thereafter, levy a tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." Said maintenance tax shall be apportioned upon the basis of the net assessments of benefits assessed as accruing for original construction, shall not exceed ten per cent thereof in any one year, and shall be certified to the collector of each county in which lands of said district are situate in the same book and in like manner and at same time as the annual installment of tax is certified, but in a separate column under the heading "maintenance tax." Said collector shall demand and collect the maintenance tax and make return thereof, and shall receive the same compensation therefor, and be liable for the same penalties for failure or neglect so to do, as is provided herein for the annual installment of taxes.

History.—§42, ch. 6458, 1913; RGS 1139; §1, ch. 9129, 1923; §1, ch. 10281, 1925; CGL 1496.

298.55 Readjustment of assessment of benefits; petition; notice; hearing; determination; readjustment not oftener than once in five years.—Whenever the owners of twenty-five per cent or more of the acreage of the lands in the district shall file a petition with the

clerk of the circuit court organizing the district, stating that there has been a material change in the values of the property in the district since the last previous assessment of benefits and praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax, the said circuit court shall give notice of the filing and hearing of said petition in the manner and for the time provided for in §298.02. Such notice may be in the following form:

"Notice is hereby given to all persons interested in the lands included within the _____ drainage district that a petition has been filed in the office of the clerk of the circuit court of _____ county, _____ praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax in said district, and that said petition will be heard by said circuit court on the first day of the next _____ term of said court.

Date of first publication _____, 19___.

_____

Clerk of the circuit court of _____ county."

Upon the hearing of said petition, if said court shall find that there has been a material change in the values of the lands in said district since the last previous assessment of benefits, the court shall order that there be made a readjustment of the assessment of benefits for the purpose of providing a basis upon which to levy the maintenance tax of said district. Thereupon, the court shall appoint three commissioners, possessing the qualifications of commissioners appointed under §298.30, to make such readjustment of assessment in the manner provided in §298.32; and said commissioners shall make their report, and the same proceedings shall be had thereon, as nearly as may be, as are provided for the assessment of benefits accruing for original construction; provided, that in making the readjustment of the assessment of benefits said commissioners shall not be limited to the aggregate amount of the original or any previous assessment of benefits, and that after the making of such readjustment the limitation of ten per cent of the annual maintenance tax which may be levied shall apply to the amount of benefits as readjusted; and, provided further, that there shall be no such readjustment of benefits oftener than once in five years.

History.—§43, ch. 6458, 1913; RGS 1140; CGL 1497.

298.56 Bonds issued secured by lien on lands benefited; assessment and collection of taxes may be enforced.—All bonds issued by any board of supervisors under the provisions of this chapter shall be secured by a lien on all lands and other property benefited in the district, and the board of supervisors shall see to it that a tax is levied annually and collected under the provisions of this chapter, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessment and collection may be enforced by mandamus.

History.—§51, ch. 6458, 1913; RGS 1148; CGL 1505.

298.57 Land owner in district may construct drains across land of intervening land owner; proceedings.—Any land owner within a drainage district organized under this chapter may construct ditches to drain his lands into the public ditches; and if any intervening land owner should refuse permission to cross his land with such ditch, the land owner seeking to construct such ditch may, by proceedings in the circuit court, to be conducted in the same manner as condemnation proceedings instituted by railroads, condemn a right of way for ditch. In such proceedings the jury shall deduct from the damages the benefits that will accrue to such intervening land owner by the construction of such ditch, and such intervening land owner shall have the right to use such ditch for the drainage of his own lands.

History.—§50, ch. 6458, 1913; RGS 1147; CGL 1504.
cf.—Ch. 73 Eminent domain.

298.58 Board of supervisors authorized to pay dues to Florida drainage association.—The board of supervisors of any drainage district incorporated under the laws of the state, being a member of the Florida drainage association, may pay out of any funds available for such purposes, any fees and dues required of it as a member of said association.

History.—§1, ch. 7306, 1917; RGS 1151; CGL 1508.

298.59 Supervisors authorized to obtain consent of United States.—In case the plan of reclamation of any drainage district organized and incorporated under this chapter and the improvement provided thereunder be of such nature as requires the permission or consent of the government of the United States, or any department or officer of the government of the United States, the board of supervisors of the drainage district may obtain the required permission or consent of the government of the United States or any proper officer or department thereof; and to that end the board of supervisors may bind the drainage district to comply with any conditions that may be attached to such permission or consent, including the giving of any bond or other obligation for the faithful performance of such conditions.

History.—§1, ch. 7308, 1917; RGS 1152; CGL 1509.

298.60 Unpaid warrants issued by district to draw interest.—Any warrant issued under this chapter that is not paid when presented to the treasurer of the district because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant; and such warrant shall draw interest thereafter at the rate of six per cent per annum, until such time as there is money on hand to pay the amount of such warrant and the interest then accumulated; but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in

the treasury to pay said endorsed warrants and interest.

History.—§31, ch. 6458, 1913; RGS 1128; CGL 1483.

298.61 Sureties on bonds may be bonding company; payable to district; provisions, etc.—The sureties required on any or all bonds required to be given by this chapter may be a surety or bonding company approved by the board of supervisors and shall be made payable to the district by its corporate name, in which name all suits shall be instituted and prosecuted. All penalties herein named shall be payable to and recoverable by said district. All bonds required by this chapter shall cover defaults of deputies, clerks or assistants of the officers appointing them.

History.—§32, ch. 6458, 1913; RGS 1129; CGL 1484.

298.62 Lands may be acquired for right of ways and other purposes.—Any and all drainage and subdrainage districts created or organized under the laws of the state may acquire by gift, purchase, exchange, donation or condemnation, any lands within or without the said district for canal right of ways, or for other general purposes of the said district, and if acquired by condemnation the procedure shall be as prescribed in chapters 73 and 74.

History.—§1, ch. 8558, 1921; CGL 1510.

298.63 Bonds to secure loans from secretary of interior.—All drainage districts in this state, whether existing under authority of general law or special enactment, may issue bonds or other evidence of indebtedness with or without interest in an amount not exceeding the total indebtedness of district issuing such bonds at the time of the issue authorized hereunder, for the purpose of enabling such districts to comply with and take advantage of the provisions of any act of the congress authorizing the secretary of the interior or other government agency to make loans to drainage and levee districts.

All drainage districts in this state, as aforesaid, are further authorized to do all other acts and things required of them as a prerequisite to securing from the secretary of the interior, or other government agency, loans authorized by federal law now in force or which may be enacted hereafter.

History.—§§1, 2, ch. 14507, 1929; CGL 1936 Supp. 1522(1), 1522(2).

cf.—Ch. 75, Validation of bonds.

298.64 Dredging and cleaning drainage canals and ditches; use of state convicts.—Contracts may be made by the board of commissioners of state institutions with drainage or conservancy districts providing for the said board of commissioners of state institutions to dredge and clean out drainage canals or ditches of such districts and to receive payment therefor in credit on taxes or tax certificates due, or that become due, by any board or department of the state on lands in any such districts; and the board of commissioners of state institutions is authorized to select and use such number of state convicts as may be necessary for such work; provided that this section shall not be held to alter, change or modify any law, rule or order in force for the working of state convicts by the state road department for construction or maintenance of state roads.

History.—§1, ch. 15984, 1933; CGL 1936 Supp. 1522(3).

cf.—A9S2 Ad valorem taxes for state purposes abolished.

298.65 Auditing of drainage district records by state auditing department; powers of auditors; penalties.—The governor may, when requested by a resolution adopted by the local governing authority of any drainage district or sub-drainage district, direct an audit to be made, by the state auditing department, of the accounts, books and records of any drainage, or sub-drainage district; and every officer and employee thereof shall furnish to the state auditor or his assistants, all books, records, information or any and all documents pertaining to the financial affairs of any such district. The district shall not be required to pay any of the costs of such examination. Upon the completion of the audit of any district, as herein provided, the state auditor shall deliver one copy of the same to the governor of the state and one copy to the board of commissioners, trustees or other governing body of the district so audited.

The state auditor, or his assistants, may summons witnesses and administer oaths to them and inquire of them under oath as to any and all affairs concerning any such taxing district or its financial affairs; provided, that if any witness or person summoned fails to appear, or having appeared refuses to testify, or having testified, testifies falsely, they shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year. Each and every officer, employee or agent of any such taxing district in the state, who refuses to furnish any information or to disclose any records requested and desired by the state auditor, or his assistants, in auditing and checking the affairs of any such taxing district in the state, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars or imprisoned in the county jail not to exceed one year.

History.—§§1, 2, ch. 16977, 1935; CGL 1936 Supp. 1522(4), 1522(5), 7498(1).

cf.—§775.06 Alternative punishment.

298.66 Obstruction of drainage canals, etc., prohibited; damages; penalties. — No person may willfully, or otherwise, obstruct any canal, drain, ditch or water course or damage or destroy any drainage works constructed in any drainage district.

(1) Any person who shall willfully obstruct any canal, drain, ditch or water course or shall damage or destroy any drainage works constructed by any drainage district, shall be liable to any person injured thereby for the full amount of the injury occasioned to any land or crops or other property by reason of such misconduct, and shall be liable to the

drainage district constructing the said work for double the cost of removing such obstruction or repairing such damage.

(2) Whoever shall willfully or otherwise obstruct any canal, drain, ditch, or water course, or impede or obstruct the flow of water therein, or shall damage or destroy any drainage works constructed by any drainage district, upon conviction thereof, shall be punished by imprisonment in the state prison not exceeding five years or in the county jail not exceeding twelve months or fined not exceeding five thousand dollars.

History.—§5, ch. 6190, 1911; §52, ch. 6458, 1913; RGS 5293, 5294; §§1-3, ch. 10110, 1925; CGL 1518, 1519, 7413-7415.
cf.—§775.06 Alternative punishment.

298.67 Redemption of certain drainage tax certificates; duty of clerk circuit court.—All certificates of land sold for the nonpayment of drainage taxes and Everglades drainage tax certificates of land sold for the nonpayment of taxes, assessed prior to the year 1916, now held by the state treasurer and the board of commissioners of Everglades drainage district or other state officers, in pursuance of sales made in accordance with the statute authorizing certificates to be issued in the name of the state treasurer or the said board or officers, shall be held by the said state treasurer or said board or officers, subject to redemption upon the payment of the amount of taxes and costs stated in the certificate, together with six per cent interest per annum thereon, together with the taxes for each year subsequent to the year for which the lands were sold, taking the valuation expressed in the certificate as a basis of valuation; provided, that the owner has paid the taxes for any year subsequent to such sale, on certification of which he shall be allowed to furnish the state treasurer or the clerk of the circuit court with his application for redemption of said certificates, as is provided by law, as a tax receipt or receipts or a certificate or certificates from the tax collector of said county, showing the payment of the taxes on the land for any or all of the years subsequent to the year expressed in the tax certificate, and the clerk of the circuit court shall attach such receipt or certificate to his report to the comptroller.

Upon the presentation of a tax certificate under this chapter to the clerk of the circuit court of the county in which the lands are situated, the clerk shall enter the fact of such redemption on the books and records of his office, for which service the clerk shall receive a fee of fifteen cents.

History.—§§1, 2, ch. 7303, 1917; RGS 1153; CGL 1523; §7, ch. 22858, 1945.

298.68 The word "owner" defined.—The word "owner," as used in this chapter, shall mean the owner of the freehold estate, as appears by the deed record, and it shall not include reversioners, remaindermen, trustees or mortgagees, who shall not be counted and need not be notified by publication, or served by process, but shall be represented by the present owners of the freehold estate in any proceeding under this chapter.

History.—§38, ch. 6458, 1913; RGS 1135; CGL 1490.

298.69 Board of drainage commissioners.—The governor, the comptroller, the state treasurer, the attorney general and the commissioner of agriculture of the state, and their successors in office, shall constitute the board of drainage commissioners.

History.—§1, ch. 5377, 1905; RGS 1154; CGL 1524.

298.70 Board of drainage commissioners authorized to borrow money.—The board of drainage commissioners may borrow money and incur obligations, from time to time, on such terms and at such rates of interest as it may deem proper for the purpose of raising funds to continue and prosecute to final completion canals, drains, dikes, locks and reservoirs under construction by said board and build and construct such other canals, drains, dikes, locks and reservoirs as the said board may deem advantageous to the territory embraced in any drainage district established or that may be established in this state.

History.—§1, ch. 6454, 1913; RGS 1155; CGL 1525.

298.71 Board of drainage commissioners may issue notes; suit by holder; judgment.—The board of drainage commissioners may issue their promissory note or notes, or other written obligations, or evidence of indebtedness, for the repayment of such loans at such times and upon such terms and at such rates of interest as the said board may deem advisable; and if upon the maturity of such promissory notes, or written obligations, or other evidences of indebtedness, the same are not redeemed or paid, the said board may be sued by the holder or holders thereof, and any judgment obtained thereon shall be satisfied out of the proceeds of the drainage tax provided by law to be assessed on the lands embraced in the drainage district.

History.—§2, ch. 6454, 1913; RGS 1156; CGL 1526.

298.72 Board of drainage commissioners may use proceeds of drainage tax to pay loans, etc.—Any drainage tax provided by law to be assessed on the lands embraced in the drainage district shall be available, and be used by the board of drainage commissioners for the repayment of any loan or loans obtained by said board under the provisions of this chapter.

History.—§3, ch. 6454, 1913; RGS 1157; CGL 1527.

298.73 Matured written obligations receivable in payment of taxes.—The promissory notes, or written obligations, or other evidences of indebtedness that may be issued by the board of drainage commissioners under the provisions of this chapter, may be used on or after maturity in the payment of drainage taxes on any lands in said drainage district by whomsoever such lands may be owned, and the tax collectors of the several counties embraced in said drainage district, in whole or in part, shall receive such notes, written obligations, or other evidences of indebtedness of said board of drainage commissioners on

or after maturity in payment of such drainage taxes whenever the same may be tendered to such tax collectors to the extent of the principal and unpaid interest of such promissory notes, written obligations, or other evidences of indebtedness.

History.—§4, ch. 6454, 1913; RGS 1158; CGL 1528.

298.74 **Drainage of lakes.**—It is unlawful for any person to drain or draw water from any lake of greater area than two square miles so as to lower the level thereof without first obtaining the written consent of all owners of property abutting on or bounded by said lake; provided, however, this section shall not apply to any lake included wholly within the Everglades drainage district. Courts of equity shall have jurisdiction to enjoin any person from violating the provisions of this section.

History.—§§1, 2, ch. 6596, 1915; RGS 1190, 1191; CGL 1630, 1631.

298.75 **Foreclosure of drainage tax liens.**—(1) The lien of any and all drainage taxes heretofore or hereafter imposed by any drainage district organized under this chapter upon real estate may be foreclosed by such drainage district by suit in chancery. The term "drainage taxes" wherever used herein shall refer to and include all taxes, assessments and installments, penalties, court costs, including attorney's fees for plaintiff's attorney, authorized by this chapter.

The secretary of the drainage district whose taxes are sought to be enforced shall mail a copy of the notice to each owner therein described, if the name of such owner and his address appear on the tax roll of said drainage district for the year in which taxes were last extended upon such property, or if the name and address do not appear thereon then the notice shall be mailed to the person last paying taxes upon such lands as shown by the tax collector's receipt book. The said secretary shall enclose with every copy mailed a statement as follows: "Warning, property in which you are interested is listed in the enclosed advertisement," and the said secretary shall prepare and file in the cause a certificate that he, the secretary, did on the_____ day of_____, 19_____, mail a copy of the notice addressed to the several owners whose names were on such tax roll or ascertained as aforesaid, which certificate shall be signed by the said secretary; and such certificate shall be prima facie evidence of the fact that such notices were mailed; provided, however, that it shall not be necessary to set forth in such certificate the names of the several owners to whom such notices were mailed.

Suits for the foreclosure of such tax liens under this chapter shall be in the nature of proceedings in rem against the lands upon which said taxes are a lien, and it shall not be material that the ownership of said lands be correctly alleged in said proceedings or that parties having an interest in or liens or claims upon said land be made parties to said proceeding by name or description or be served with process therein, except that notice shall be given as hereinafter provided. In any such suit as many lots, parcels or tracts of land, regardless of ownership, and as many tax liens may be included in one suit as the complainant may desire. Any judgement or decree that may be rendered in any such suit shall be enforceable only against said lands.

Any suit hereby authorized shall be commenced by a complaint in chancery in the circuit court of the county in which the property is situated; except, when the lots, parcels or tracts of land sued upon be in more than one county, in which event the suit may be brought on all the lots, parcels or tracts of land, in any county in which any lot, parcel or tract of land thereof may be situated. The suit shall be brought in the name of the drainage district whose taxes are sought to be enforced, as plaintiff, and against any or all lands upon which any drainage taxes are delinquent for the period set out in the complaint, as defendant, in which complaint there shall be briefly described the levy and nonpayment of taxes which are delinquent for the period set out in the complaint, the lands proceeded against and the amount chargeable to each lot, parcel or tract. It shall be unnecessary to name in such complaint or proceedings any person owning or having any interest in or lien or claim upon such lands as defendants.

Jurisdiction of any of said lands and of all parties interested therein or having any lien or claim thereon shall be obtained by publication of a notice to be issued as of course by the clerk of the circuit court in which such complaint is filed on the request of plaintiff, once each week for not less than four consecutive weeks, directed to all persons and corporations interested in or having any lien or claim upon any of the lands described in said notice and said complaint. Such notice shall describe the lands involved and the respective principal amounts sought to be recovered in such suit for taxes on such respective parcels of land, and requiring all such parties to file their answers with the clerk of the circuit court and to serve a copy thereof upon plaintiff's attorney, whose name and address shall appear in, or be annexed to, said notice, not later than the date fixed in said notice, which date shall be not less than twenty-eight nor more than sixty days after the first publication of the notice. Said notice may be in substantially the following form, with blanks appropriately filled in:

(Name of drainage district), Complainant	In the Circuit Court for
-vs-	_____ County, Florida,
Certain Lands Within Said District Upon Which Drainage Taxes for the Year (or Years) (here insert the year or years) Have Not Been Paid, Defendant	In Chancery Cause No. _____

Notice to Defend

To All Persons and Corporations Interested In Or Having Any Lien or Claim Upon any of the Lands Described Herein:

You are hereby notified that (name of drainage district) has filed its complaint in the above named court to foreclose delinquent drainage taxes with interest and penalties, upon the parcels of land set forth in the following schedule, the aggregate amount of such taxes, interest and penalties, against said respective parcels of land, as set forth in said complaint, being set opposite such parcels in the following schedule, to-wit:

Description of Lands, Amount of Taxes

In addition to the amount set opposite each parcel of land in the foregoing schedule, interest and penalties, as provided by law on such delinquent drainage taxes, together with a proportionate part of the costs and expenses of this suit and a reasonable attorney's fee for plaintiff's attorney to be fixed by this court are sought to be enforced and foreclosed in this suit.

You are hereby required to file your answer with the clerk of the above styled court and to serve a copy thereof on plaintiff's attorney, whose name and address appear herein, on or before the _____ day of _____, 19____, and if you fail to do so on or before said date said complaint will be taken as confessed by you and the above styled court will proceed to the entry of a final decree as to the above described lands, and said respective parcels of land will be sold by decree of said court for nonpayment of said taxes and interest and penalties thereon and the costs of this suit including a reasonable attorney's fee for plaintiff's attorney to be fixed by the court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this court, this the _____ day of _____, 19____.

_____
Clerk of Said Court

By_____
Deputy Clerk

(Name of Plaintiff's Attorney)

_____
Attorney for Plaintiff
(His Address)

_____

Proof of publication of said notice, as herein required, shall be by affidavit of the publisher or some agent or employee filed in said cause.

The amendments to this section enacted by chapter 57-822 shall apply to all suits hereinafter filed and, at the option of the plaintiff therein, to all suits heretofore filed which are still pending.

(2) All persons interested in any land involved in a suit in chancery to enforce liens for delinquent drainage taxes shall be deemed to take notice of the levy, assessment and delinquency of such taxes and of suits to enforce the same; and they shall, upon the entry of the final decree therein and the execution of the master's deed, be fully and completely barred and foreclosed of all equity of redemption in and to all of such land whether they were or were not named as defendants or served with process, unless such persons who were not made parties or were not served with process shall petition the court within the time, under the conditions and on the grounds herein provided to vacate the final decree and the master's deed.

(3) If any person shall, within the time herein allowed, show by petition to the court that he is interested in certain land involved in a drainage tax foreclosure suit, describing it; and further show that the delinquent drainage taxes against said land claimed in the suit were paid previous to the entry of the final decree and that the final decree for that reason was erroneously entered, or shall show that he wants to redeem said land from foreclosure sale and pay the delinquent drainage taxes thereon as claimed in the complaint and tenders into the court with his petition the amount necessary for that purpose; and further shows that he was not made a party defendant to said suit or was not served with process and for that reason had no opportunity to redeem said land from sale or had no opportunity to bring to the attention of the court the fact of previous payment of the delinquent drainage taxes, as the case may be; the court may, if satisfied with the truth of the petition, vacate the final decree and master's deed as to the land described in the petition; but, in no case shall the final decree or master's deed be vacated, except on the petition of some person who has not had his day in court, and on no ground except to permit the payment of the taxes claimed, or on the ground that the taxes were paid at the time of the entry of the final decree and that the decree for that reason was erroneously entered; provided, however, any person interested in the land, including defendants to the suit who were legally served with process, may by petition, within the time herein provided, bring to the attention of the court a jurisdictional question such as the disqualification of the circuit judge entering the final decree, and have the final decree vacated on such jurisdictional grounds by offering to redeem and tendering into court the amount of delinquent taxes necessary for that purpose.

(4) The time limit for petitioning the court to vacate the final decree or master's deed, as provided herein, and as permitted hereby, shall be one year from the entry of the final decree in all cases where the final decree may be entered subsequent to June 16, 1941; and shall be one year from said date in all cases where the final decree was entered prior to said date.

(5) Where a final decree has been entered, or whenever one may hereafter be entered, in any drainage tax foreclosure suit and a master's deed consequent thereon has been or may be issued and recorded, and the time herein allowed for vacating said decree and said master's deed has elapsed and no petition to vacate the same has been filed or presented within the time allowed; then, thereafter all persons interested in

the involved land shall be conclusively deemed to have consented to the final decree, and sale and master's deed, the title shall be vested in the grantee of the master's deed, his heirs and assigns, in fee simple forever, and his title shall be paramount and superior to all other titles, liens and claims, and its validity shall never be questioned in any court at law or equity.

(6) Nothing in this section contained shall, or is intended to, enlarge or extend the rights of any person who was regularly and duly made a party to any such foreclosure suit and was regularly and duly served with process and who has had his day in court.

(7) This section shall apply only to drainage districts organized, created and existing under the general drainage laws of the state as such drainage laws are brought forward as chapter 298.

(8) This section shall apply to all land which has been, or which may hereafter be, involved in a drainage foreclosure suit which has gone or may go to final decree, whether such foreclosure suit was either brought, conducted or concluded before or after or partly before and partly after June 16, 1941.

Nothing in this section shall in any way apply to what is known as Baldwin drainage district in Duval and Nassau counties, or any proceedings heretofore had in respect thereto; nor to the district known as the Ideal Farms drainage district in Polk and Hillsborough counties, or any proceedings had in this respect thereto; nor to the Iona drainage district in Lee county, nor to the Ft. Myers drainage district in Lee county; nor to Everglades drainage district.

History.—§§1-8, ch. 21003, 1941; am. §7, ch. 22858, 1945; §2, ch. 29737, 1955; (1) §§1, 2, ch. 57-822.

298.76 Special or local legislation; effect, etc.—

(1) Chapter 298 is amended to provide that special or local laws may be enacted by the legislature granting additional authority, powers, rights and privileges or taking away authority, powers, rights and privileges granted or provided for by said chapter 298 or any section thereof, pertaining to or affecting any drainage district heretofore or that may be hereafter created as provided for by said chapter 298.

(2) It is hereby expressly provided that special or local laws may be enacted by the legislature, changing the method of voting for a board of supervisors for any drainage district heretofore or hereafter created and organized under said chapter 298.

(3) Special or local laws may be enacted by the legislature providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any drainage district heretofore or hereafter organized and created as provided for by said chapter 298.

(4) Special or local legislation may be enacted by the legislature, changing the governing authority or governing board of any drainage district heretofore or hereafter organized and created as provided for by said chapter 298, or any section thereof.

(5) Any special or local laws that may be hereafter passed and enacted by the legislature, pertaining to any drainage district heretofore or hereafter created and organized as provided by said chapter 298, shall prevail as to said drainage district and shall have the same force and effect as though it had been a part of said chapter 298 or any section thereof at the time said drainage district was created and organized.

History.—§§1-4, ch. 21972, 1943.

298.77 Assessments; readjustment, procedure, notice, hearings, etc.—

(1) Whenever the board of supervisors or the owners of twenty-five per cent or more of the acreage of the land of any drainage district situated wholly in a single county existing under the general drainage laws of Florida, now chapter 298, joined by the holders of not less than ninety-five per cent of the indebtedness outstanding against said district, shall file a petition with the clerk of the circuit court organizing such district, stating that there has been a material change in the value of the property in the district since the last previous assessment of benefits, contributed to by the drainage system; that a relatively large portion or portions of said district have become nontaxable for the purpose of paying the indebtedness of such district; that a named person, corporation or agency has purchased the obligations of said district at a discount and under circumstances whereby the district is expected to pay in discharge of its obligations a sum greatly less than the par value of said obligations; that improvements within such district made possible or practicable by the drainage effected have been such as to enhance values in a portion or portions thereof more than in other portions of the district; and that developments in all parts of such district are believed to have been retarded by the inability of property owners to pay assessments and discharge individual properties from the lien of the drainage tax; and praying for readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of taxes to pay the indebtedness of such district and to maintain its drainage system, the said clerk shall give notice of the filing and hearing of said petition in the manner and for the time provided for in §298.02.

(2) Such notice may be in the following form:

NOTICE IS HEREBY GIVEN to all persons interested in the lands included within the_____ Drainage District that a petition has been filed in the office of the Clerk of the Circuit Court of _____County, Florida, praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of taxes against the various pieces and parcels of land in said district to pay its indebtedness and maintain its drainage system, and

that said petition will be heard by the said circuit court on the_____day of_____, 19____.

Dated _____, 19_____.

_____

Clerk of the Circuit Court of

_____County.

(3) Any interested person may file answer to said petition before the return day and, if so, shall be duly heard, but if not, the cause shall proceed ex parte. Upon the hearing of said petition, if said court shall find that there has been a material change in the values of the lands in said district since the last previous assessment of benefits, contributed to by the drainage system, and that the other material allegations of the petition herein required to be set forth are substantially true, the court shall order that there be made a readjustment of the assessment of benefits for the purpose of providing a basis upon which to levy further and future taxes for the payment of the obligations of, and maintaining the drainage system in, said district. Thereupon the court shall appoint three commissioners possessing the qualifications of commissioners appointed under §298.30, to make such readjustment of assessment of benefits to each piece or parcel of land which has accrued or will accrue as a result of the drainage system in the manner provided in §298.32, and said commissioners shall make their report, and said proceeding shall be had thereupon as nearly as may be as provided for the assessment of benefits accruing for original construction; provided, that in making the readjustment of the assessment of benefits, said commissioners shall not increase the existing assessment, or unpaid portion thereof, on any piece or parcel of land; provided, further, that after the making of such readjustment, the limitation of ten per cent of the annual maintenance tax which may be levied shall apply to the amount of benefits as readjusted.

History.—§1, ch. 22103, 1943.

298.78 Lien; release.—Any landowner shall have right at any time within ninety days after the date of said decree, or at any time thereafter with consent of holders of not less than ninety-five per cent of bonds, to obtain a full release of his lands from the lien and liability of the assessment by the payment of an amount to be stated in the decree, which shall include the proportionate amount of the indebtedness chargeable against said piece or parcel of land, together with an additional amount estimated to be required to pay the bonds by reason of the failure of other pieces or parcels to pay the indebtedness so charged against them, said amounts to be approved by holders of not less than ninety-five per cent of bonds.

History.—§2, ch. 22103, 1943.

298.79 Pending suits unaffected.—Nothing in this law contained shall operate to abate or otherwise affect any suit pending in any state or federal court of this state on June 14, 1943, wherein the validity of the taxes or assessments or the validity of the bonds of such drainage district is being contested, unless the parties to such suit by their attorneys of record so stipulate and the court in such suit so orders.

History.—§3, ch. 22103, 1943.

298.80 Drainage districts; foreclosures by; amount of bid at foreclosure sale.—In any action by any drainage district created or organized under chapter 6458, acts of 1913, or acts amendatory thereof or supplemental thereto (Chapter 298), for the foreclosure of liens in favor of such district, the maximum amount required to be paid on behalf of such district by the board of supervisors at any sale therein decreed, for the lands so ordered sold, shall not be in excess of the value of the interest to be acquired at such sale by the purchaser of the lands sold, as such value shall be ascertained and determined by the board of supervisors of such district.

History.—§1, ch. 22799, 1945.

298.81 Drainage liens; foreclosures; period for redemption.—

(1) In any suit hereafter instituted by any drainage district organized and existing under and by virtue of chapter 6458, acts of 1913, (Chapter 298), and other acts amendatory thereof and supplemental thereto, for the foreclosure of any lien or liens in favor of such district for delinquent drainage taxes, upon any sale therein of the premises decreed to be sold, the court may immediately confirm such sale and authorize the issuance to the purchaser, upon compliance with the terms of his bid, of a deed of conveyance for the premises so sold by the master appointed to make such sale.

(2) Nothing contained in this section shall require, in any suit of the character referred to in subsection (1), the immediate confirmation of any sale and the issuance thereupon to the purchaser of a deed of conveyance for the premises so sold, but in every such suit the court in its discretion may direct the master to deliver to the purchaser at the sale, or to the board of supervisors in case the property be bid in in the name of the district, a certificate showing such purchase, in which event there shall be allowed a period of twelve months for the redemption from such sale as provided for under existing provisions of law prior to the confirmation of the sale and the issuance of a deed to the purchaser.

History.—§§1, 2, ch. 22926, 1945.

TITLE XXI

PORTS AND HARBORS

CHAPTER 307

STEVEDORES

307.01 Appointment and bond of stevedore.—Any board of commissioners of pilotage of this state may grant licenses to competent and trustworthy persons to act as stevedores in the port and harbor for which said board is appointed; but such board shall only grant such number of licenses as it may deem necessary, having due regard to the business of the port and harbor; and no person shall be licensed except such as on examination prove competent to serve as stevedores. Said board shall require from each person licensed satisfactory bond, in penalty not to exceed three hundred dollars, for the proper performance of his duties as stevedore; but the said board of commissioners shall not appoint any person to act as stevedore who has not been a resident of the state six months previous to the date of his commission.

History.—§1, ch. 1740, 1870; §1, ch. 2032, 1874; RS 925; GS 1281; RGS 2451; CGL 3860.
cf.—§205.35, Contractors, license tax.

307.02 To hold licenses during good behavior.—Persons licensed under §307.01 shall hold their licenses during good behavior, but any license may be revoked by said board upon complaint, after due notice and hearing, if in the opinion of said board, the misconduct, neglect of duty or other cause of complaint shall be sufficient to justify such removal.

History.—§2, ch. 1740, 1870; RS 926; GS 1282; RGS 2452; CGL 3861.

307.03 Acting as stevedore without license.—Any person acting as stevedore on a ship or other vessel in any port or harbor of this state without a license, shall be subject to a fine of fifty dollars or shall be imprisoned for thirty days; and it is hereby declared that to constitute the offense it will be sufficient, if it be found that the person accused has either actually exercised the duties of a stevedore, as aforesaid, or by any contract, agreement or engagement has undertaken the work of loading a ship, or other vessel, as aforesaid, under which contract, agreement or engagement such ship or other vessel is being loaded by himself or another as stevedore, or has in anywise made himself responsible as stevedore for the work of loading such ship or other vessel, and the work of loading is being done under such responsibility, whether said work be done by himself or by another; and every violation of this section on the same ship or other vessel on different days, shall for each day be deemed a separate offense.

History.—§§4, 6, ch. 1740, 1870; RS 2747; GS 3742; RGS 5767; CGL 7997.

307.04 Master may load his vessel with his own crew.—Nothing in this chapter shall be so construed as to prevent any master of a ship or vessel from loading his own vessel with his own crew.

History.—§6, ch. 1740, 1870; RS 929; GS 1283; RGS 2453; CGL 3862.

307.05 Certain charters void. — No action shall be maintained in this state to enforce or secure any right given by a ship charter in which charter is a provision giving the charterer, consignee or shipper a right in any way to interfere with the selection, by the master or owner, of a stevedore to load or unload his vessel. Every such charter shall be void in this state.

History.—§1, ch. 3757, 1887; RS 930; GS 1284; RGS 2454; CGL 3863.

307.06 Compensation not to be accepted for awarding vessel to stevedore; penalty.—It is not lawful for any person to accept directly or indirectly any compensation for awarding or causing to be awarded to any person the loading or unloading of any vessel. Any person violating the provisions of this section shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year.

History.—§2, ch. 3757, 1887; RS 931, 2748; GS 1285, 3743; RGS 2455, 5768; CGL 3864, 79998.

307.07 Interference with awarding vessel forbidden; penalty.—It is not lawful for any person to control or attempt to control the owner or master of any vessel in awarding the loading or unloading of his vessel, except by solicitation in his own behalf as a contracting stevedore regularly engaged in the business of stevedoring. Any person violating the provisions of this section shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year.

History.—§3, ch. 3757, 1887; RS 932, 2749; GS 1286, 3744; RGS 2456, 5769; CGL 3865, 7999.
cf.—§775.06 Alternative punishment.

CHAPTER 308

SHIPPING MASTERS

308.01 Appointment and duties. — There shall be created in and for the several ports of this state, one or more shipping masters, to be appointed by the mayor with the consent of the common council of each city or incorporated town in this state, whose business it shall be to provide and ship crews for vessels and seamen, in accordance with the laws of the United States, whenever required to do so, by proper authority, representing the vessels or owners.

History.—§1, ch. 1750, 1870; RS 933; GS 1287; RGS 2457; CGL 3866.

308.02 Bond, etc.; penalties.—Before obtaining the license provided for in §308.03, said shipping master shall execute a bond, with two good and sufficient sureties, to be approved by the mayor, in the sum of two thousand dollars, payable to the mayor and his successors in office, conditioned for the honest and faithful transaction of all business appertaining to his office and occupation; and if any shipping master, or any other person by his consent, procurement, advice or connivance, shall be found guilty of harboring, concealing or enticing away any marine or seaman from a vessel, or encouraging any marine or seaman to mutiny or disobey lawful orders, he or they shall, in addition to the punishment provided by law for every such offense under this chapter, forfeit for the use of the port or town for which he is appointed, not less than one hundred nor more than one thousand dollars; the cause to be tried in the proper court on complaint of the mayor or party aggrieved.

History.—§2, ch. 1750, 1870; RS 934; GS 1288; RGS 2458; CGL 3867.
cf.—§862.02, Penalty for enticing seamen from vessels.

308.03 License and regulation; penalties.—The mayor and council may grant license in conformity to this chapter, under such rules and regulations as they may prescribe, and such ordinances and orders as in their judgment may be most conducive to the interests of their port, and for the government of the shipping and for the welfare and protection of the marine and seamen, subject to the laws of the United States, and for the direction and government of said shipping masters as they may deem proper; and the same at any time may amend or revoke, and may impose fines for the violation of such rules, ordinances, orders and regulations, provided such fines so imposed by city or town authority under this chapter shall not exceed fifty dollars for each offense in violating said rules, orders and regulations or ordinances.

History.—§3, ch. 1750, 1870; RS 935; GS 1289; RGS 2459; CGL 3868.

308.04 Acting as shipping master without license; penalties.—Whoever attempts to exercise the calling of a shipping master, or falsely represents himself as a shipping master, in this state, not having been licensed or appointed by law, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§4, ch. 1750, 1870; RS 2750; GS 3745; RGS 5770; CGL 8000.
cf.—§775.06, Alternative punishment.
§862.01, Penalty for boarding vessel without permission of master.

CHAPTER 309

PROTECTION OF PORTS AND HARBORS

309.01 Deposit of material in tide water regulated.—

(1) It is not lawful for any person to discharge or cause to be discharged, deposit or cause to be deposited, in the tide or salt waters of any bay, port, harbor or river of this state any ballast or material of any kind other than clear stone or rock free from gravel or pebbles, which said clear stone or rock shall be deposited or discharged only in the construction or enclosures in connection with wharves, piers, quays, jetties, or in the construction of permanent bulkheads connecting the solid and permanent portion of wharves. It is lawful to construct three characters of bulkheads for retention of material in solid wharves. First, clear stone or rock enclosures, or bulkheads, may be built upon all sides to a height not less than two and one-half feet above high water mark, and after the said enclosures have been made so solid, tight and permanent as to prevent any sand, mud or gravel, or other material that may be discharged or deposited in them, from drifting or escaping through such enclosure, any kind of ballast may be discharged or deposited within same. The aforesaid enclosures may be constructed of wood, stone and rock combined, the stone and rocks to be placed on the outside of the wood to a height not less at any point than two and one-half feet above high water mark. Second, a bulkhead may be built by a permanent wharf consisting of thoroughly creosoted piles not less than twelve inches in diameter at the butt end, to be driven close together and to be capped with timber not less than ten or fourteen inches drift, bolted to each pile, and one or more longitudinal stringers to be placed on the outside of the bulkhead and securely anchored by means of iron rods to piles driven within the bulkheads, clear rock to be on the inside of the bulkhead, to a height of not less than two and a half feet above high water; and after this is done, ballast or other material may be deposited within the permanent enclosure so constructed. Third, a bulkhead may be constructed to consist of creosoted piles, as described herein, driven not exceeding four feet apart from center to center, inside of which two or more longitudinal stringers may be placed, and securely bolted to the piles. Inside of these longitudinal pieces two thicknesses of creosoted sheet piling are to be driven, each course of the sheet piling to make a joint with the other so as to form an impenetrable wharf, and within this permanent bulkhead so constructed, any ballast or other material may be deposited. No such enclosure, piers, quays or jetties shall be begun until the point whereat it is to be built shall have been connected by a substantial wharf with a shore or with a permanent wharf; provided, that the owners of wharves may at any time, with the consent of the board of pilot commissioners of the port or harbor in which such wharves are situated, build wharves of clear stone or rock, or creosoted walls as hereinafter provided, on each side of their wharves from the shore to a point at which the water is not more than fifteen feet deep, and when such walls have attained a height of two and one-half feet above high water mark, and have been securely closed at the deepwater end by stone or creosoted walls of the same height, any kind of ballast may be deposited in them. The pilot commissioners of the different ports and harbors of this state shall designate by ordinance the depth of water at which enclosures, piers, quays, jetties and bulkheads may be built without obstruction to navigation within the bays, ports, rivers and harbors over which they respectively have jurisdiction. Nothing contained in this section shall interfere with any rights or privileges now enjoyed by riparian owners. While this section empowers those who desire to construct the several characters of wharves, piers, quays, jetties and bulkheads, provided for and described herein, nothing in this section shall be so construed as to require any person not desiring to construct a permanent wharf by filling up with ballast, stone or other material, to construct under the specifications contained herein; and nothing in this chapter shall be so construed as to prevent any person from constructing any wharf or placing any pilings, logs or lumber in any waters where he would have heretofore had the right so to do.

(2) This section shall not prohibit Escambia county from placing in Pensacola bay, on the Escambia county side, beside the old Pensacola bay bridge, certain materials, as recommended by the salt water division of the department of conservation, to increase the number of fish available for persons fishing from the old Pensacola bay bridge.

(3) This section shall not prohibit Manatee county from placing in the Manatee county portions of Sarasota bay and Tampa bay and in the Manatee river, certain materials, as recommended by the salt water division of the department of conservation to increase the number of fish available for persons fishing in the above areas.

History.—Ch. 3298, 1881; RS 936; §1, ch. 4370, 1895; GS 1290; RGS 2460; CGL 3869; (2) n. §1, ch. 61-11; (3) n. §1, ch. 63-423.

309.02 Deposit on wharf, etc., regulated.— It is not lawful for any person to deposit or cause to be deposited on any wharf or quay, any ballast, stone, earth, or like material, except such wharf or quay may be so secured as to prevent such ballast or other material from washing into the waters of the harbor.

History.—§3, ch. 3142, 1879; RS 937; GS 1291; RGS 2461; CGL 3870.

CHAPTER 310

PILOT COMMISSIONERS AND PILOTS

310.01 Pilot commissioners to be appointed and to act as port wardens.—The governor, by and with the advice and consent of the senate, shall appoint a board of pilot commissioners for each county in this state in which a port is located, to consist of five members, who shall not be pilots, owners or agents of pilot boats, consignees of vessels, or charterers, or officers of any corporation acting as consignee or charterer, or in any manner interested in the business of pilotage or the employment of pilots, who shall have their office for four years, unless sooner removed by the governor; the said board is to consist of citizens of said county, and the said commissioners shall be empowered to act as port wardens, and to perform all the duties of the same. They shall take the usual oath of office.

History.—§1, ch. 1670, 1868; RS 938; §1, ch. 4171, 1893; GS 1292; §1, ch. 6493, 1913; §1, ch. 6942, 1915; RGS 2462; CGL 3871.
cf.—§313.01, Harbor master ex-officio board member.

310.02 Unlawfully personating pilot commissioner; penalty.—It is unlawful for any person, except the commissioners legally appointed, to assume to act as pilot commissioners, or to undertake the performance of any of the duties prescribed by law, or pertaining to said office of pilot commissioner; and it is unlawful for any person to employ any other than the legally appointed commissioners for the performance of such duties; and it is, also, unlawful for any person to issue certificates of surveys on vessels, vessel material or goods damaged; and any person violating the provisions of this section shall be fined in a sum of not to exceed five hundred dollars or be imprisoned for a period not to exceed three months.

History.—§6, ch. 4046, 1891; §1, ch. 4991, 1901; GS 3735; RGS 5760; CGL 7990.
cf.—§775.06 Alternative punishment.

310.03 Pilot commissioners to examine and license pilots.—The board of pilot commissioners shall examine persons who may wish to be licensed as pilots, in all matters pertaining to the management of vessels; also in regard to their knowledge of the channel and the harbor where they wish to act as pilots; and if upon examination they find them qualified to take command of all classes of vessels liable to enter that port and are throughly familiar with the channel and currents of the harbor, they shall appoint and license such number of those found qualified as are requisite to perform the duties required of the pilots for that port, so there shall not be more than four pilots for the port of Pensacola plus apprentices to come in over quota as herein provided; three for the ports of Apalachicola and Carrabelle, at both East and West Passes inclusive; two for the port of Fernandina and Nassau Inlet; nine for the port of Jacksonville, fifteen for the ports of Tampa, Port Tampa, and Manatee, inclusive; two for the port of St. Petersburg; three for the port of Punta Gorda; three for the port of Charlotte Harbor; two for the port of Boca Grande; three for the port of Panama City; two for the port of Cedar Keys; two for the port of Key West; three for the port of St. Augustine; two for the port of Palm Beach; five for the port of Miami; three for the port of Port St. Joe except when a vacancy shall occur in the number of pilots now licensed, there shall be two and two for any port not especially mentioned in this chapter; and thereafter when vacancies occur in the number of pilots in any of the ports of this state, the commissioners of that port may, in their discretion, grant licenses as pilots heretofore, provided, until the number of pilots reaches the number allowed by this chapter for that port; provided, however, that pilots who are now duly licensed shall hold their license according to the law. Said pilots shall be entitled to hold their licenses and appointments during good behavior; provided, further, that the limits of the number of pilots shall not be construed to apply to apprentices who are now serving the time provided by law; and provided,

that in the event a vacancy occurs while an apprentice is serving his apprenticeship, he shall have prior consideration over other applicants for the position; but such apprentice shall be entitled to act as pilot on complying with the law, notwithstanding the fact that the total number of pilots may exceed the limit herein provided and the said board shall require from each pilot satisfactory bond for the faithful performance of his duty; provided, however, that the provisions of this law shall in no way affect or apply to pilots who are now duly licensed and qualified pilots, or alter, amend, repeal or change any local or special law pertaining to appointment, qualification or number of pilots for any ports in the state.

History.—§3, ch. 1670, 1868; RS 939; §1, ch. 4573, 1897; §1, ch. 5226, 1903; GS 1293; §1, ch. 5948, 1909; §1, ch. 6206, 1911; RGS 2463; §1, ch. 8540, 1921; §1, ch. 9303, 1923; §1, ch. 10202, 1925; §1, ch. 12194, 1927; CGL 3872; §1, ch. 13758, 1929; §1, ch. 14820, 1931; §1, ch. 16101, 1933; §1, ch. 18059, 1937; §1, ch. 23972; §1, ch. 23653, 1947; §1, ch. 57-75; §1, ch. 61-348; §1, ch. 63-494.

310.04 Apprenticeship.—There may be indentured in each port of this state one apprentice for every five, and three over five, or multiple of five licensed pilots of such port; but every port may have one apprentice. Any person desiring to become a pilot's apprentice shall file with the board of pilot commissioners a written application approved by a majority of the licensed pilots of the port, one of whom shall signify his willingness to have such apprentice indentured to him; and if there be a vacancy in the number of apprentices allowed for such port, the board of pilot commissioners shall approve such application; and the applicant shall then, with the approval of his parent or guardian, be indentured as an apprentice to the licensed pilot who has signified his willingness to take such apprentice for the term of four years; and the indenture shall be recorded in the records of the board of pilot commissioners, and the said board shall thereupon assign the said apprentice to a regular pilot boat on the bar of such port. In filling vacancies in the number of licensed pilots for any port, the board of pilot commissioners shall prefer, in the order of a service, those who have served apprenticeship under this law; provided, that no other requirements than those provided for by law shall be demanded of those who are serving as pilot apprentices; provided, however, that for the ports of Tampa, Port Tampa and Manatee, there may be indentured not to exceed four apprentices, and for the port of Pensacola there may be indentured not to exceed two apprentices, at any one time.

History.—§4, ch. 1670, 1868; §3, ch. 1893, 1872; §1, ch. 3161, 1879; RS 940; §1, ch. 5225, 1903; GS 1294; RGS 2464; CGL 3873; §2, ch. 23972, 1947; §1, ch. 26799, 1951; §24, ch. 57-1; §2, ch. 57-75.
cf.—Ch. 446, Apprentices.

310.041 Apprentices; ports of Key West; Palm Beach; Pensacola; Tampa and Port Tampa and Manatee; powers.—In the ports of Key West, Palm Beach, Pensacola, and Tampa and Port Tampa and Manatee, any pilot apprentice indentured in either of said named ports certified by a majority of the pilots in active service in said port, may be authorized by the board of pilot commissioners of said port to pilot any vessel within the limits and specifications fixed by said board of pilot commissioners of the port in which said apprentice is indentured, upon the written petition of a majority of the pilots in active service at such time at such said port.

History.—§3, ch. 57-75.

310.05 Suspension of pilots; revocation of license; forfeiture; leave of absence.—The said commissioners may suspend any pilot for misbehavior, negligence, incompetency, drunkenness, and for any conduct detrimental to commerce, or injurious to navigation, at the discretion of the board; and said board may revoke the license of any pilot if, in the opinion of the board, the conduct of the offender is so gross as to warrant such revocation. A pilot shall forfeit his license and authority as such by more than seventy-two hours' absence from the bar, except in case of sickness, or absence in the discharge of his duty; provided, the board of pilot commissioners may grant a leave of absence to any pilot for a longer period of time if there remains on duty a sufficient number of pilots to serve the commerce of the port.

History.—§5, ch. 1670, 1868; RS 942; GS 1295; §2, ch. 6206, 1911; RGS 2465; CGL 3875.

310.06 Piloting without license.—Whoever acts as pilot for any port of this state without a license from the board of pilot commisssioners shall be punished by fine not exceeding one hundred dollars for each offense.

History.—RS 2740; GS 3737; RGS 5762; CGL 7992.

310.07 Records.—The board of pilot commissioners shall keep a record of all their proceedings, including appointments, licenses and revocation of licenses, which record shall be turned over to their successors in office.

History.—§6, ch. 1670, 1868; RS 943; GS 1296; RGS 2466; CGL 3876.

310.08 Fees.—The board of pilot commissioners shall receive the sum of twenty dollars from each pilot whom they examine, appoint and license, in lieu of all other fees and compensation.

History.—§7, ch. 1670, 1868; RS 944; GS 1297; RGS 2467; CGL 3877.

310.09 Per diem to pilots in quarantine.—In all cases where a pilot shall be detained in quarantine by reason of having boarded any vessel in the discharge of his duty as such pilot, the said vessel or owners shall be required to pay to such pilot four dollars per day during the time of his necessary detention in quarantine.

History.—§2, ch. 3161, 1879; RS 946; GS 1298; RGS 2468; CGL 3878.

310.10 Pilot bringing vessel in entitled to take her out.—Any licensed pilot who shall take or bring a steamer or vessel into port shall be entitled to take her out, and any other pilot taking out such steamer or vessel shall forfeit the full amount of pilotage to the pilot reject-

ed; and the master of said steamer or vessel, or the owner or owners thereof, shall be bound to pay to the pilot rejected the fees as established by law, unless the master shall show good cause to the contrary, which shall be satisfactory to the board of pilot commissioners.

History.—§1, ch. 1893, 1872; RS 947; GS 1299; RGS 2469.

310.11 Rates of pilotage.—The board of pilot commissioners of each port may fix the rate of pilotage which shall be paid by any vessel entering their port; but in no case shall they fix the rates less than the minimum or greater than the maximum rates herein provided. All steamers or vessels entering any port or leaving the same, shall be subject to pay to any licensed pilot performing duty on board, or to the pilot who shall first speak to such steamer or vessel, the following rates of pilotage: A minimum and maximum rate as may be fixed from time to time for their respective ports by the respective boards of pilot commissioners, for any steamer or vessel regardless of draft or tonnage as follows: A minimum rate of not less then twenty-eight dollars and not more than fifty-six dollars as may be fixed from time to time for their respective ports by the respective boards of pilot commissioners, for any steamer or vessel drawing less than eight feet; for steamers or vessels drawing over four feet a maximum rate of seven dollars per foot. These rates shall apply to all steamers or vessels, whether owned wholly by citizens of this state or not; and provided further that all steamers or vessels drawing less than six feet of water, and having a coastwise license, shall be exempt from paying pilotage, unless they employ a pilot; but the foregoing rates shall not apply to the ports of Pensacola, Jacksonville, Fernandina and Panama City in which ports the minimum rate for vessels of eight foot draft or under shall be a flat fifty-six dollars with seven dollars per foot additional for all vessels of greater draft; provided further, however, that the foregoing minimum rates shall not apply to the ports of Tampa, Port Tampa, Manatee, St. Petersburg, Fort Pierce, and Palm Beach, in which ports minimum rates shall be fixed by the respective boards of the pilot commissioners or, if there be no such board, the governing body having jurisdiction over such port.

History.—§2, ch. 1893, 1872; ch. 3160, 1879; RS 948; GS 1300; RGS 2470; CGL 3880; §1, ch. 26888, 1951; §1, ch. 59-415; §1, ch. 61-385; §1, ch. 63-44.

310.12 Pilot commissioners may make regulations for port.—Every steamer or vessel of any description, of the tonnage of twenty tons and upwards, while lying at anchor in any of the bays, ports, harbors or rivers of this state, where there is a board of pilot commissioners, shall during the night show such light as may be required by the port regulations established for the port; and it shall be lawful for the board of pilot commissioners to make and promulgate, in conformity with law, rules and regulations for the government and protection of the port.

History.—Ch. 3142, 1879; RS 949; GS 1301; RGS 2471; CGL 3881.

310.13 Duties as to protection of ports.—The board of pilot commissioners of each port shall take such steps as may be necessary to detect any violation in their ports or waters within their jurisdiction of the laws for the protection of ports, harbors, bays and rivers; and they shall cause complaint to be made for the arrest of every offender against such laws; and the county commissioners of the county in which such pilot commissioners are appointed shall audit and pay the expenses of the board of pilot commissioners, which shall be incurred under this section, as other charges against the county are audited and paid.

History.—Ch. 3438, 1883; RS 950; GS 1302; RGS 2472; CGL 3882.

cf.—§125.01 et seq., Powers and duties of county commissioners.

310.14 Minimum tonnage of pilot boats on certain bars.—All pilots engaged in the business of piloting on the bars of those ports of this state into which have come and taken cargo, during the past five years, foreign owned sailing vessels of five hundred tons burden and upwards, at an average rate of not less than two hundred and fifty vessels per year, according to the records of the United States custom houses at such ports, respectively, are required to pursue their said business of piloting for such ports on vessels of not less than twenty tons burden, and are prohibited from carrying on their said business on vessels of any less burden than twenty tons.

History.—§1, ch. 3753, 1887; RS 951; GS 1303; RGS 2473; CGL 3883.

cf.—§311.01, Steam pilot boats regulated.

310.15 Registration.—The pilot commissioners for those ports within this state that are within the provisions of §310.14 shall register such a number of vessels of not less than twenty tons burden as are, in their opinion, requisite and necessary to the proper piloting of vessels coming into such ports, and the pilot commissioners shall provide a book for the purpose of such registration and cause the same to be kept in the office open to the inspection of the public. Each registration shall set forth the name and tonnage of the pilot boat so registered, and for each registration the pilot commissioner making the same shall be entitled to demand and receive a fee of ten dollars.

History.—§2, ch. 3753, 1887; RS 952; §1, ch. 4371, 1895; GS 1304; RGS 2474; CGL 3884.

310.16 Unregistered vessels; penalties.—It is unlawful for any vessel that shall not have been registered according to the provisions of law to be used in the business of piloting for those ports within the state that are within the provisions of §310.15; and any person, who shall engage in the business of piloting on the bars of those ports within the state that are within the provisions of the said section on any vessel not registered according to this law by the pilot commissioners of such port, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment

in the county jail not exceeding one month. Whenever a vessel so registered ceases to be employed in the business of piloting for the port in which she has been registered as aforesaid, her master shall notify the pilot commissioners of such port of the same within ten days thereafter, for her name to be erased from the registry, and should any such master fail to so notify such pilot commissioners as aforesaid, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one month.

History.—§2, ch. 3753, 1887; RS 952; §1, ch. 4371, 1895; GS 3736; RGS 5761; CGL 7991.
cf.—§775.06, Alternative punishment.
§311.04, Penalty for piloting in unregistered boat.

310.17 Piloting in certain ports on boats of less than twenty tons burden; penalty.—Any pilot engaged in the business of piloting for any port within this state which is covered by the provisions of §310.14, who carries on his said business for such port on any boat or craft other than a vessel of twenty tons burden or upward, which has been duly registered in accordance with the provisions of §310.15, shall be punished by imprisonment not exceeding one month, or by fine not exceeding one hundred dollars.

History.—§3, ch. 3753, 1887; RS 2741; §1, ch. 4371, 1895; GS 3739; RGS 5764; CGL 7994.
cf.—§775.06, Alternative punishment.

310.18 Organization of board.—The board of pilot commissioners and port wardens of each and every port of this state may annually elect one of their members president, and another vice-president; and appoint one of their number secretary, and fix his compensation, who shall hold his office during the pleasure of the board, said compensation to be paid out of the receipts of the office. The secretary shall keep, in such books as shall be provided for the purpose, a full, true and complete record of all their acts, proceedings, surveys and reports, and such books shall be open to the public inspection of any person interested therein; and the said board of commissioners shall have and use a common seal, and each commissioner and port warden may administer oaths, examine witnesses and take affidavits concerning the business of said office, and all willful false swearing under such oaths shall be deemed perjury, and shall be punished accordingly.

History.—§1, ch. 4046, 1891; GS 1305; RGS 2475; CGL 3885; §7, ch. 22858, 1945.
cf.—§837.01, Perjury otherwise than in judicial proceedings.

310.19 Make rules and regulations.—The board of pilot commissioners may also make such rules and regulations for their own government and the discharge of their duties under this chapter as they may deem necessary and proper; provided, however, that said board of pilot commissioners and port wardens shall adopt no rules and regulations which may conflict in any way with the rules and regulations of the state board of health now in force, or that may hereafter be adopted by said state board of health. They shall keep an office in the port or city for which they are appointed and shall have the exclusive right to perform all the duties of pilot commissioners and port wardens for the ports or cities for which they are appointed.

History.—§1, ch. 4046, 1891; GS 1306; RGS 2476; CGL 3886.
cf.—§381.241, State board of health to promulgate quarantine regulations.

310.20 Violating rules of board; penalty.—Whoever violates any lawful rule or regulation of a board of pilot commissioners shall be punished by imprisonment not exceeding sixty days, or by fine not exceeding one hundred dollars.

History.—§5, ch. 3142, 1879; RS 2744; GS 3740; RGS 5765; CGL 7995.
cf.—§775.06, Alternative punishment.

310.21 To examine vessel.—The board of pilot commissioners, or some one of them, on being notified and requested by any of the parties in interest shall proceed in person on board of any vessel for the purpose of examining the condition and storage of cargo, and if there be any goods damaged on board said vessel they shall inquire, examine and ascertain the cause or causes of such damage, and make a memorandum thereof, and enter the same in full upon the books of the office; and if, after the arrival in port of any vessel, the hatches shall be first opened by any person not a pilot commissioner and port warden, and the cargo, or any part thereof, shall come from on ship board in a damaged condition, these facts shall be presumptive evidence that such damage occurred in consequence of improper storage or negligence on the part of the persons in charge of the vessel, and such default shall be chargeable to the owner, consignee, master, or other person in interest (as part owner or master of said vessel), each and all of whom shall be primarily liable for such damages; and the said board shall be exclusive surveyors of any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed to sea, and shall examine the condition of the hull, spars, sails, rigging, and all the appurtenances thereof, and they shall call to their assistance one or more carpenters, sail makers, riggers, shipwrights, or other person skilled in his profession to aid them in their examination and survey; provided, such person shall not be interested therein, and all parties so called shall be sworn, and shall each be allowed a fee of five dollars, to be paid by the person requiring said examination.

History.—§2, ch. 4046, 1891; GS 1307; RGS 2477; CGL 3887; §7, ch. 22858, 1945.

310.22 To keep a record of examination, etc.—The commissioners shall specify what damage has occurred, and record in the books of the office a full and particular account of all surveys held on said vessel. They shall also be the judges of the repairs necessary to render said vessel again seaworthy, or for the safety of said vessel and cargo on the intended voyage. They shall also have exclusive cognizance of all matters relating to the sur-

veys of vessels and their cargoes arriving at such ports in distress or damage in said ports, and shall be the judges of its fitness to be reshipped to its port of destination, or whether it shall be sold for the benefit of whom it may concern. They shall, also, if called upon to do so, estimate the value of measurement of any vessel, when the same is in distress or libeled, and record the same in the books of said office.

History.—§2, ch. 4046, 1891; GS 1308; RGS 2478; CGL 3888.

310.23 Board to examine cargo, record, etc.—The board of pilot commissioners, or some one of them, on being notified and requested so to do by any of the parties in interest, shall proceed in person to any warehouse, store or dwelling, or in the public street, or on the wharf, and examine any merchandise, vessels, materials, or other property said to have been damaged on board of any vessel, and inquire and examine and ascertain the cause or causes of such damage, and make a memorandum thereof, and of such property, and record in the books of the office a full and complete statement thereof; and said board, when so requested, shall furnish a certificate of any record in the books of said office to any party interested therein, upon their paying to said board the regular fee for said certificate. All certificates issued shall be under the seal of said office, and signed by the president or vice-president and secretary, and said certificate shall be evidence of the existence and contents of the record in any court in this state. In all cases of inquiries, examinations and surveys, relating to vessels and cargoes on board thereof, as specified in this chapter, the said board shall give notice to all persons interested in, or having charge of the subject matter of such inquiry, examination or survey, by advertisement in at least one daily newspaper printed and published in the said port for which they are appointed, of the pendency of such inquiry, examination or survey, and of the time and place of completing the same; the expense whereof shall be added to and paid with the fee for making each inquiry, examination or survey.

History.—§3, ch. 4046, 1891; GS 1309; RGS 2479; CGL 3889.

310.24 Board to attend sales; auctioneers.—The board of pilot commissioners, or some one of the members thereof, shall attend personally all sales of vessels, when condemned vessels, materials and goods, in a damaged state, shall be sold at public auction in the ports for which they were appointed, by reason of such damage, for the benefit of owners or underwriters, or for account of whom it may concern; and auctioneers making such sales, shall give due notice thereof to said board before the sale, and all such sales shall be made by auctioneers under the direction and by order of the commissioners, for which service they shall be entitled to receive a commission of one-half of one per cent on the gross amount of sales thereof, to be paid to said board of pilot commissioners on demand of the auctioneer making such sale; and such property shall be exempt from the payment of auction duties to the state.

History.—§4, ch. 4046, 1891; GS 1310; RGS 2480; CGL 3890.

310.25 Duties of auctioneers; compensation.—The auctioneers shall make monthly statements to the board of pilot commissioners, specifying the total amount of each day's sale made by them under this chapter, which statement shall be filed in said commissioner's office, and the commissioners, when required by the owner or consignee thereof, shall certify the cause of such damage, the amount of such sales, and the charges on the same, all of which shall be recorded in the books of said office; and the said board of pilot commissioners shall be allowed, for each and every survey held on board of any vessel, on hatches, stowage of cargo or damaged goods, or at any warehouse, store or dwelling, or in the public street, or on the wharf within the limits of the ports for which they are appointed, on goods said to be damaged, the sum of ten dollars; and for each and every certificate given in consequence thereof, the sum of two dollars; and for each and every survey on the hull, sails, spars or rigging of any vessel damaged, or arriving at said port in distress, the sum of five dollars; and for each and every certificate given in consequence thereof, the sum of two dollars and fifty cents; and for each valuation on measurement of any vessel, the sum of ten dollars; and the compensation and emoluments of said office shall be divided equally among the said five commissioners composing the board.

History.—§4, ch. 4046, 1891; GS 1311; RGS 2481; CGL 3891.

310.26 Board to receive percentage on pilotage.—The board of pilot commissioners shall receive, annually, from each pilot one per cent on the gross amount of pilotage earned by said pilot during each year, to be paid by each pilot at such times and in such manner as the said board of pilot commissioners shall prescribe; and this one per cent of pilotage shall be in lieu of all other fees and compensation now paid to said board of pilot commissioners by any pilot into any port into which come annually one hundred vessels of five hundred tons burden and upwards.

History.—§5, ch. 4046, 1891; GS 1312; RGS 2482; CGL 3892.

310.27 Board to keep accounts.—The said board of pilot commissioners shall keep a full and accurate account of all their receipts and expenditures, and transmit to the comptroller a true copy thereof annually, on the first Monday in January of each year, which copy shall be verified by the oaths of the president and secretary of said boards; and each commissioner shall append to such account an affidavit that he has not taken or received any moneys or goods as presents, directly or indirectly, for services as commissioner, except the legal fees.

History.—§7, ch. 4046, 1891; GS 1313; RGS 2483; CGL 3893.

CHAPTER 311

REGULATION OF THE KIND AND SIZE OF BOATS TO BE USED BY THE BAR PILOTS

311.01 Steam pilot boats.—The bar pilots for those ports of this state from which shall clear in any year, beginning January 1st and ending December 31st, for foreign ports, not less than one hundred and fifty steam vessels, which, loaded with their entire cargo in the ports from which they cleared, shall be required to carry on their business as such pilots in steam vessels of not less than fifty tons burden.

History.—§1, ch. 5224, 1903; GS 1314; RGS 2484; CGL 3894.

311.02 Other pilot boats.—The bar pilots of all other ports of this state shall carry on their business as such pilots in steam or sail vessels of such tonnage or sizes as the board of pilot commissioners for such ports, respectively may deem suitable for such business, and shall license therefor.

History.—§2, ch. 5224, 1903; GS 1315; RGS 2485; CGL 3895.

311.03 Register with pilot commissioners.—Before any pilot boat shall be used in the business of piloting, her tonnage and class, and the name of the managing owner thereof, shall be registered with the board of pilot commissioners of the port where she is to engage in such business, in a book to be kept for that purpose; and, on such registration she shall be numbered, and by such number licensed for the business of piloting on the bar of such port. And the board of pilot commissioners shall be entitled to a fee of ten dollars for every vessel so registered.

History.—§3, ch. 5224, 1903; GS 1316; RGS 2486; CGL 3896.
cf.—§310.15, Registration of pilot boats.

311.04 Piloting in unregistered boat; penalty.—Any person who shall conduct or engage in the business of piloting on the bar of any port in this state, in any boat or vessel that is not registered and licensed according to law, shall be punished by fine not exceeding one hundred dollars or by imprisonment not exceeding one month.

History.—§5, ch. 5224, 1903; GS 3738; RGS 5763; CGL 7993.
cf.—§775.06, Alternative punishment.
§310.16, Penalty for piloting in unregistered boat.

311.05 License surrendered in certain cases.—Whenever a vessel registered and licensed shall cease to be employed in the business of piloting for the port where she is registered, her managing owner shall, within ten days thereafter, notify the pilot commissioners of such port and surrender to them her license, and she shall not thereafter be used as a pilot boat for such port, unless re-registered and licensed.

History.—§5, ch. 5224, 1903; GS 1317; RGS 2487; CGL 3897.
cf.—§310.16, Penalty for failure to notify commissioners of discontinuance of piloting.

CHAPTER 312

INCORPORATION OF PILOTS

312.01 Pilots may incorporate themselves.—Any three or more full branch bar pilots for any port of this state may incorporate themselves in the manner and with the rights and liabilities hereinafter prescribed.

History.—§1, ch. 5227, 1903; GS 1318; RGS 2488; CGL 3898.

312.02 Incorporation provisions. — All the provisions of the laws of Florida relating to the incorporation of any other corporation shall be followed in the procurement of letters patent for such corporations.

History.—§2, ch. 5227, 1903; GS 1319; RGS 2489; CGL 3899.

312.03 By-laws; stockholders to be pilots.—The stockholders of the corporation may provide, by by-laws or by means of an agreement made preliminary to their application for a charter, that the stockholders shall consist only of pilots duly licensed to be such in and for the port of which they are incorporated; that each stockholder shall, except as provided by by-laws, devote his time and skill to the corporation, and not enter into competition therewith under penalties to be fixed by the corporation; that the fees and earnings accruing to each stockholder as a pilot shall belong to and be collected by the corporation; that the shares of stock shall not be transferable except to the corporation, or to a duly licensed pilot of the port, with the consent of the corporation; that upon the death of any stockholder, his stock shall belong to the corporation at such price and on such terms as may be provided in the by-laws; that when any stockholder shall cease to be an active pilot of the port for which he is licensed, his share of stock shall draw only two thirds of the dividends of earnings drawn by the shares held by stockholders who are active pilots of the port; that any stockholder who has not become a retired pilot, but who does not engage actively in piloting for the port, but shall perform other services for the corporation, shall receive earnings or dividends upon his share of stock in pursuance of such agreement as may be made between him and the corporation at the time his stock is issued to him, or at any time thereafter; that no stockholder shall mortgage, hypothecate or pledge his stock without the consent of the corporation.

History.—§3, ch. 5227, 1903; GS 1320; RGS 2490; CGL 3900.

312.04 Corporation not responsible for loss in certain cases.—All the rights, powers and liabilities conferred or imposed by the laws of Florida relating to corporations for profit, shall apply to corporations organized under this chapter, except so far as inconsistent with the terms hereof or with the by-laws made in pursuance of the authority conferred by this chapter. The corporation, however, shall not be responsible for any loss or damage accruing by any vessel through the negligence of any stock-holding pilot, but such stockholder shall be individually liable to the same extent as if he were not a stockholder.

History.—§4, ch. 5227, 1903; GS 1321; RGS 2491; CGL 3901.

CHAPTER 313

HARBOR MASTERS FOR PORTS IN GENERAL

313.01 Appointment and removal of harbor masters.—

(1) The governor shall appoint, by and with the consent of the senate, all harbor masters required for the several ports of this state. They shall hold their offices for the term of two years, unless sooner removed. The governor may make such appointment or fill any vacancy in such office, between the sessions of the legislature, by appointment ad interim. Such harbor masters shall be ex-officio members of the board of port wardens and pilot commissioners for their respective ports. Any harbor master may be removed for neglect or breach of duty.

(2) In all counties having a population of more than three hundred thousand, according to the last official census, the office and position of harbor master as provided in chapters 313 and 314, is abolished.

History.—§§1, 4, ch. 3306, 1881; RS 953; §1, ch. 5223, 1903; GS 1322; RGS 2492; CGL 3902; §1, ch. 28347, 1953.
cf.—Ch. 314, Harbor masters for certain ports.

313.02 Bond.—Every harbor master appointed for any port shall give an approved bond in the sum of five hundred dollars, payable to the governor of the state, for the faithful performance of his duty, such bond to be approved by the county commissioners of the county in which the port is situated, and by the comptroller, and to be filed with the secretary of state.

History.—Ch. 3602, 1885; RS 954; GS 1323; RGS 2493; CGL 3903.

313.03 Deputies.—Each harbor master may appoint as many deputies as he shall require for the needs of his port, such deputies to be paid by such harbor master.

History.—Ch. 3602, 1885; RS 955; GS 1324; RGS 2494; CGL 3904.

313.04 Duties.—Every master of any vessel arriving at the ports in this state shall report to the harbor master for a station, or for a berth at the wharves, and the harbor master shall regulate and station or assign berths at the wharves to said vessel; and the harbor master shall remove or cause to be removed, from time to time, all vessels not employed in receiving or discharging their cargoes to make room for such others as require to be more immediately accommodated for the purpose of receiving and discharging their cargoes, and to facilitate their dispatch. Said harbor masters shall be present at all times, either in person or by deputy, to facilitate by stationing or assigning berths at the wharves to vessels arriving at the port, and to facilitate them in discharging and receiving their cargoes and to prevent confusion and delay. And the harbor masters shall have full and absolute power to determine how far and in what instance it is the duty of masters, and others having charge of vessels, to accommodate each other in their respective situations.

History.—RS 956; §2, ch. 5223, 1903; GS 1325; RGS 2495; CGL 3905.

313.05 Compensation.—Harbor masters, respectively, shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed for the services rendered by himself or his deputy, under the provisions of this section, not exceeding the sum of twenty dollars for each vessel, according to the amount and value of the services rendered.

History.—§2, ch. 5223, 1903; GS 1326; RGS 2496; CGL 3906.

313.06 Obstructing or resisting harbor masters; penalties.—If any person, master, consignee, agent, wharfinger or wharf owner, lessee of a wharf or other person shall oppose or resist the harbor master or his deputies in the execution of duty, or disobey any order given by either of said officers as to the manner of removing or adjusting the rigging of any vessel under the control of such person, he shall be punished by fine not exceeding one thousand dollars or imprisoned not exceeding six months. Any master of a vessel who shall fail to report to the harbor master for a berth at the wharves, on arriving in port, shall be punished by fine not exceeding fifty dollars or imprisoned not exceeding thirty days.

History.—§1, ch. 3602, 1885; §8, ch. 3752, 1887; RS 2745, 2746; §2, ch. 5223, 1903; GS 3741; RGS 5766; CGL 7996.
cf.—§775.06 Alternative punishment.

CHAPTER 314

HARBOR MASTERS FOR CERTAIN SPECIFIED PORTS

314.01 Appointment.—The governor shall appoint, by and with the advice and consent of the senate, one harbor master for each port in the state, into which have come, during the past five years, vessels of five hundred tons burden and upwards, at the average rate of not less than two hundred and fifty vessels per year, according to the records of the United States customs house at or nearest the port for which such appointment shall be made.

History.—§1, ch. 3752, 1887; RS 957; GS 1327; RGS 2497; CGL 3907.

cf.—Ch. 313, Harbor masters for ports in general.

314.02 Bond.—Each harbor master so appointed shall enter into a bond in the penal sum of two thousand dollars, with two or more sureties, payable to the governor of the state and his successors in office, conditioned for the faithful discharge of the duties of his office, by himself and his deputies, and for the payment of any damage any person may sustain in consequence of any wrongful act of such officer or his deputy under color of his office; such bond to be approved by the county commissioners of the county in which is situated said port and by the comptroller, and to be filed with the secretary of state.

History.—§2, ch. 3752, 1887; RS 958; GS 1328; RGS 2498; CGL 3908.

314.03 To be ex-officio member of pilot commissioners, and observe rules.—Such harbor master shall be ex-officio a member of the board of port wardens and pilot commissioners of the port for which he is appointed, and shall act in obedience to the rules of such boards in all matters within their jurisdiction, with reference to which they may establish rules.

History.—§3, ch. 3752, 1887; RS 959; GS 1329; RGS 2499; CGL 3909.

314.04 Deputies.—Any harbor master so appointed may appoint deputies to assist him in the performance of his duties, he paying them for their services and being responsible for their acts.

History.—§4, ch. 3752, 1887; RS 960; GS 1330; RGS 2500; CGL 3910.

314.05 Duties as to boarding vessel, etc.—The harbor master, by himself or deputy, shall board every vessel entering the port for which he is appointed, after such vessel has been released by the health authorities of the port, demand of the master the certificate of the vessel's release by such health authorities and deliver the same within twenty-four hours to the secretary of the board of health; but it is unlawful for any such officer, in boarding such vessels under this section, to solicit from such vessel any business either for himself or any one else, and any violation of this provision by any such officer shall subject him to removal from his said office, by the governor, if such violation be committed by the harbor master, and, if committed by any deputy harbor master, then, by the harbor master, who in such cases shall remove promptly such deputy.

History.—§5, ch. 3752, 1887; RS 961; GS 1331; RGS 2501; CGL 3911.

314.06 Stationing vessels.—The master of every vessel arriving in a port for which a harbor master shall be appointed, under the provisions of this chapter, shall apply to such harbor master, or one of his deputies, for a station in the stream, or a berth at the wharves, and the harbor master or his deputy shall forthwith station such vessel in the stream or at the wharves, as the case may be, so as to best facilitate the loading or discharge of such vessel, and at the same time interfere as little as possible with other vessels in the vicinity; but in stationing vessels at wharves or assigning them berths thereat, he shall conform in every instance to the wishes of the managers of such wharves as to their location at the same.

History.—§6, ch. 3752, 1887; RS 962; GS 1332; RGS 2502; CGL 3912.

314.07 Duties as to the loading or unloading of vessels.—The harbor master appointed under the provisions of this chapter shall be present at all times, either in person or by deputy, to facilitate the loading or unloading of vessels by assigning to them berths at the wharves, and by requiring each to accommodate others needing more immediate accommodation, in accordance with the provisions of §314.06.

History.—§7, ch. 3752, 1887; RS 963; GS 1333; RGS 2503; CGL 3913.

314.08 Fees.—Such harbor master shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed under this chapter, for the services rendered by himself or deputy, under the provisions of this chapter, not exceeding the sum of twenty dollars, according to the amount and value of the services rendered.

History.—§9, ch. 3752, 1887; RS 965; GS 1334; RGS 2504; CGL 3914.

314.09 Change of station.—Should any vessel, after having been stationed by such harbor master, require a change of station, application shall be made by the manager of

such wharf to such officer, and he shall make such change, for which he shall receive no compensation, unless the vessel requiring such change requires to be removed to another wharf or out into the stream.

History.—§9, ch. 3752, 1887; RS 966; GS 1335; RGS 2505; CGL 3915.

314.10 Recovery of double amount.—Whenever any fee or compensation due the harbor master under the provisions of this chapter is not paid within forty-eight hours from the rendition of the services for which the same is due, such officer may then demand the same from the master or his consignee, and upon refusal of payment may sue for and recover from the person owing the same double the amount which has been so demanded.

History.—§10, ch. 3752, 1887; RS 967; GS 1336; RGS 2506; CGL 3916.

CHAPTER 315

PORT FACILITIES FINANCING LAW

315.01 Short title.—This law shall be known and may be cited as the "1959 port facilities financing law."

History.—§1, ch. 59-411.

315.02 Definitions.—As used in this law, the following words and terms shall have the following meanings:

(1) The term "port district" or the word "district" shall mean any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

(2) The term "port authority" or the word "authority" shall mean any port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.

(3) The word "county" shall mean any county and the word "municipality" shall mean any municipality in Florida.

(4) The word "unit" shall mean any county, port district, port authority or municipalities, except Duval and Hillsborough counties and any port district, port authority or municipality existing and being solely within said counties.

(5) The term "governing body" shall mean the board or body in which the general legislative powers of a unit shall be vested.

(6) The term "port facilities" shall mean and shall include harbor, shipping and port facilities and improvements of every kind, nature and description, including (but without limitation) channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment or improvement of any thereof.

(7) The word "cost" as applied to any port facilities shall mean and shall include the cost of acquisition or construction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, all other expenses necessary or incident to determining the feasibility or practicability of such construction, the cost of acquiring or improving, enlarging and extending existing port facilities and preparing the same for sale or lease to provide funds for financing port facilities under the provisions of this law if, in the determination of the governing body, such acquisition, such improvement, enlargement and extension or such preparation for sale or lease are necessary to such financing, administrative expenses and such other expenses as may be necessary or incident to any financing herein authorized. Any obligation or expense heretofore or hereafter incurred by a unit in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the unit out of the proceeds of port facilities bonds issued under the provisions of this law.

History.—§2, ch. 59-411.

315.03 Grant of powers.—Each unit is hereby authorized and empowered:

(1) To acquire, construct, lease, operate and maintain any port facilities either within or without or partly within and partly without the corporate limits of the unit, or within or partly within the corporate limits of any other unit on property owned or acquired by it; provided, however, that no unit shall acquire, construct, lease, operate or maintain such port facilities in any county of the state other than the county in which such unit is located without securing the prior approval or consent of the unit or units in which such port facilities are proposed to be located, which approval or consent, if given, shall be evidenced by a resolution or ordinance duly adopted.

(2) To acquire by purchase, grant, gift or lease or by the exercise of the right of eminent domain and to hold and dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property, for or in connection with any port facilities, whether or not subject to mortgage, liens, charges or other encumbrances;

(3) To add to or extend, or cause or permit to be added to or extended, any existing lands or islands now or hereafter owned by a unit bordering on or being in any waters by the

pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities or for the purpose of improving, creating or extending any property of the unit for use of or disposal by the unit;

(4) To construct, or cause or permit to be constructed, an island or islands in any waters by the pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities;

(5) To construct any bridge, tunnel, road or causeway, or any combination thereof, to, from or between any port facilities;

(6) To dredge or deepen harbors, channels and turning basins, to cooperate with the United States or any agency thereof in the dredging or deepening of any harbor, channel or turning basin, to enter into contracts with the United States or with any agency thereof concerning any such dredging or deepening project, and to pay such amounts to the United States or any agency thereof or to others as shall be required by the terms of any such contract;

(7) To fill in, extend and enlarge, or cause or permit to be filled in, extended and enlarged, any existing port facilities, to demolish and remove any and all structures thereon or constituting a part thereof, and otherwise to prepare the same for sale or lease to provide funds for financing port facilities under the provisions of this law;

(8) To acquire any existing port facilities and to fill in, extend, enlarge or improve the same, or to cause or permit the same to be extended, enlarged or improved, for any public purpose or for sale or lease for the purpose of providing funds for the acquisition by the unit of any port facilities or for the payment of bonds, notes or other obligations of the unit for or in connection with any port facilities;

(9) To sell at public or private sale or lease for public or private purposes all or any portion of any port facilities now or hereafter owned by the unit, including any such facilities as extended, enlarged or improved, and all or any portion of any property of the unit improved, created, extended or enlarged under the authority of this law, on such terms and subject to such conditions as the governing body shall determine to be in the best interests of the unit;

(10) To contract for the purchase by the unit of any port facilities to be constructed, enlarged, extended or improved by any public body, agency or instrumentality or by any private person, firm or corporation, and to provide for payment of the purchase price thereof in such manner as may be deemed by the governing body to be in the best interests of the unit, including, but without limitation, the sale or exchange of any property of the unit therefor or the issuance of bonds or other obligations of the unit;

(11) To accept loans or grants of money or materials or property at any time from the United States or the State of Florida or any agency, instrumentality or subdivision thereof, upon such terms and conditions as the United States, the State of Florida, or such agency, instrumentality or subdivision may impose;

(12) To exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned or constructed by the unit;

(13) To operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots;

(14) To lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions, as the governing body shall determine to be in the best interests of the unit;

(15) To contract debts for the acquisition or construction of any port facilities or for any other purposes of this law, to borrow money, to make advances, and to issue bonds or other obligations to finance all or any part of such acquisition or construction or in the carrying out of any other purposes of this law;

(16) To make advances to the United States or any agency or instrumentality thereof in connection with any port facilities, including the dredging or deepening of any harbor, channel or turning basin to serve any port facilities;

(17) To enter on any lands, waters or premises, within or without the unit or within the corporate limits of any other unit, for the purpose of making surveys, soundings and examinations with relation to any existing or proposed port facilities;

(18) To contract with the United States or the State of Florida or any agency or instrumentality thereof or with any public body or political subdivision or with any private person, firm or corporation with reference to any of the powers hereby granted;

(19) To perform any of the acts hereby authorized through or by means of its own officers, agents or employees or by contract, and

(20) To do all acts and things and to enter into all contracts and agreements necessary or convenient to carry out the purposes of this law.

History.—§3, ch. 59-411.

315.04 Other consents or approvals; use of state lands.—Except as hereinafter provided in this section, and except as provided in §315.03 (1), the approval or consent of any other political subdivision or public body, agency or instrumentality of the State of Florida, except the trustees of the internal improvement fund,

shall not be required for the exercise of any of the powers granted by this law. Any municipality located in a county authorized by law to operate port facilities or in which there is a port district or a port authority shall exercise any powers granted by this law only if the governing body of such county, port district or port authority shall by resolution determine that the best interests of the county will be served thereby and consent thereto. The State of Florida hereby consents to the exercise of any and all powers granted by this law without further authorization or approval thereof by any of its agencies or instrumentalities, except as may be required from the trustees of the internal improvement fund as to the use of any state lands lying under water which are necessary for the accomplishment of the purposes of this law.

History.—§4, ch. 59-411.

315.05 Port facilities bonds.—The governing body is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of a unit for the purpose of paying all or a part of the cost of any one or more port facilities. The bonds of each issue or series shall be dated, shall bear interest at such rate or rates not exceeding six per cent per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the governing body, and may be made redeemable before maturity, at the option of the unit, at such price or prices and under such terms and conditions as may be fixed by the governing body prior to the issuance of the bonds. The governing body shall determine the form of the bonds including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds, and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers. Notwithstanding any other provisions of this law or any recitals in any bonds issued under the provisions of this law, all such bonds shall be deemed to be negotiable instruments under the laws of Florida. The bonds may be issued in coupon or in registered form, or both, as the governing body may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and any bonds issued by a unit under this law shall not be considered in computing the amount of indebtedness which the unit may incur under any other law. The governing body may sell such bonds in such manner, either at public or private sale and for such price, as it may determine to be for the best interests of the unit, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per cent per annum computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the delivery of definitive bonds, the unit may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The governing body may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost. Bonds may be issued under the provisions of this law without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this law.

History.—§5, ch. 59-411.

315.06 Sources of payment and security for bonds.—The governing body may provide that bonds issued under the provisions of this law shall be payable from and secured by a pledge of any one or more of the following sources:

(1) Revenues of any one or more port facilities now owned or hereafter acquired or constructed by the unit;

(2) Proceeds of the sale or lease of all or any part of any port facilities now or hereafter owned by the unit as such facilities may be extended, enlarged or improved, or of any property of the municipality improved, created, extended or enlarged or prepared for sale or lease under the authority of this law;

(3) Any money received by the unit from the United States or any agency or instrumentality thereof in connection with any port facilities or in repayment of any advances made by the unit for all or any part of the cost of any port facilities.

The governing body may provide that such bonds shall be general obligations of the unit for which the full faith, credit and taxing power of the unit shall be additionally secured by a pledge of revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality there-

of as herein authorized. The governing body of such unit may provide that such bonds shall be payable as to principal and interest in the first instance from such revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality. The governing body of any unit may additionally secure any such bonds by a mortgage or other encumbrance, subject to such terms and conditions as it shall provide, upon all or any part of any port facilities now or hereafter owned by the unit, as such facilities may be extended, enlarged or improved, or of any property of the unit improved, created, extended or enlarged or prepared for sale or lease under the authority of this law, and the governing body is hereby authorized to sell at public or private sale or lease any of such port facilities or property, subject to such terms and conditions and for such price, payable at one time or from time to time in installments as the governing body may provide, and to apply the proceeds of any such sale or lease, after paying all costs in connection therewith, to payment of the cost of any port facilities financed under the provisions of this law or to the payment of the principal of or the interest or redemption premiums on any bonds issued hereunder or to the payment of any other obligation or obligations herein authorized.

History.—§6, ch. 59-411.

315.07 Contracts for borrowing of money.—The governing body may contract with any person, firm, corporation or public body or with the United States or any agency or instrumentality thereof for the borrowing of money for paying all or any part of the cost of any one or more port facilities, and any such contract may contain such terms, conditions or provisions as the governing body may determine not in conflict with the provisions of this law. The provisions of §315.06 applicable to bonds shall be applicable also to contracts entered into under the above provisions of this section. Any such contract may be hypothecated by the unit, and the unit may borrow money under such terms and conditions as it shall determine in anticipation of the receipt of funds under such contract.

History.—§7, ch. 59-411.

315.08 Trust agreement or resolution.—In the discretion of the governing body, any bonds issued under the provisions of this law may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in relation to the acquisition of property and the acquisition, construction, improvement, maintenance, repair, lease, operation and insurance of any port facilities in connection with which such bonds shall have been authorized, the custody, safeguarding or application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of Florida which may act as depositary of the proceeds of bonds or of revenue or other funds to furnish such indemnifying bonds or to pledge such securities as may be required by the governing body. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee under any such trust agreement, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the governing body may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution shall be treated as a part of the cost of the operation of the port facilities.

History.—§8, ch. 59-411.

315.09 Remedies.—Any holder of bonds issued under the provisions of this law or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this law or by such trust agreement or resolution to be performed by the unit or by any officer thereof, including the fixing, charging and collecting of rates, rentals and other charges.

History.—§9, ch. 59-411.

315.10 Refunding bonds.—The governing body is hereby authorized to provide by resolution for the issuance of refunding bonds of the unit for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this law or which shall have been issued to provide funds for the payment of the cost of any port facilities under the provisions of any other law, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the governing body, for the additional purpose of acquiring or constructing additional port facilities. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the unit in respect of the same, shall be governed by the provisions of this law insofar as the same may be applicable.

History.—§10, ch. 59-411.

315.11 Exemption from taxation.—As adequate port facilities are essential for the welfare of the inhabitants and the industrial and commercial development of the area within or served by the unit, and as the exercise of the powers conferred by this law to effect such purposes constitutes the performance of proper public and governmental functions, and as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal or other taxes or assessments thereon, whether located within or without the territorial boundaries of the unit, or upon the income therefrom, and any bonds issued under the provisions of this law, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state.

History.—§11, ch. 59-411.

315.12 Bonds, legal investments.—Bonds issued by a unit under the provisions of this law are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or unit officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the unit is now or may hereafter be authorized by law.

History.—§12, ch. 59-411.

315.13 Action by resolution.—All action required or authorized to be taken under the provisions of this law by the governing body may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon such adoption. Except as otherwise provided in this law, no resolution under this law need be published or posted, nor shall any such resolution require for its passage more than a majority of all the members of the governing body then in office.

History.—§13, ch. 59-411.

315.14 Public purposes.—It is hereby determined and declared that each and all of the powers conferred by this law and the exercise thereof are proper public and municipal purposes.

History.—§14, ch. 59-411.

315.15 Additional and alternative method.—This law shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing. Bonds may be issued and any other action may be taken hereunder notwithstanding that any other law may provide for the issuance of bonds for like purposes or the taking of like action and without regard to the requirements, restrictions or procedural provisions contained in any other law.

History.—§15, ch. 59-411.

315.16 Liberal construction.—This law, being necessary for the welfare of the inhabitants of the state, shall be liberally construed to effect the purposes thereof.

History.—§16, ch. 59-411.

TITLE XXII

MOTOR VEHICLES

CHAPTER 317

REGULATION OF TRAFFIC ON HIGHWAYS

317.011 **Definitions.**—The following words and phrases, when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) AUTHORIZED EMERGENCY VEHICLE.—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations and ambulances operated by private corporations as are designated or authorized by the department of public safety or the chief of police of an incorporated city or any duly elected sheriff of the various counties.

(2) BICYCLE.—Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is over twenty inches in diameter, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

(3) BUS.—Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) BUSINESS DISTRICT.—The territory contiguous to, and including, a highway when fifty per cent or more of the frontage thereon, for a distance of three hundred feet or more, is occupied by buildings in use for business.

(5) CANCELLATION.—Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(6) CROSSWALK.—

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(7) DAYTIME.—Daytime means from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(8) DEPARTMENT.—Any reference herein to department shall be construed as referring to the department of public safety, consisting of the governor and the members of the cabinet, acting directly or through its duly authorized officers and agents.

(9) DIRECTOR.—Director of the department of public safety.

(10) DRIVER.—Every person who drives or is in actual physical control of a vehicle, on a highway, or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

(11) EXPLOSIVES.—Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing, that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effect on contiguous objects or of destroying life or limb.

(12) FARM TRACTOR.—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(13) FLAMMABLE LIQUID.—Any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tabliabue or equivalent closed-cup test device.

(14) GROSS WEIGHT.—The weight of a vehicle without load plus the weight of any load thereon.

(15) HOUSE TRAILER.—

(a) A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or

(b) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead permanently or temporarily for the advertising, sales, display or promotion of merchandise or servvices, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(16) IMPLEMENT OF HUSBANDRY.—Every vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(17) INTERSECTION.—

(a) The area embraced within the prolongation or connection of the lateral curb lines; or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling

upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(18) LANED HIGHWAY.—A highway, the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(19) LIMITED ACCESS FACILITY.—A street or highway especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(20) LOCAL AUTHORITIES.—Includes all officers and public officials of the several counties and municipalities of this state.

(21) MOTOR VEHICLE.—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(22) MOTORCYCLE.—Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(23) MOTOR-DRIVEN CYCLES.—Every motorcycle and every motor scooter with a motor which produces not to exceed five brake horsepower, including every bicycle with motor attached.

(24) OFFICIAL TRAFFIC-CONTROL SIGNAL.—Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(25) OFFICIAL TRAFFIC-CONTROL DEVICES.—All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(26) OPERATOR.—Every person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(27) OWNER.—A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner, for the purpose of this chapter.

(28) PARK OR PARKING.—The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this chapter.

(29) PEDESTRIAN.—Any person afoot.

(30) PERSON.—Every natural person, firm, copartnership, association, or corporation.

(31) PNEUMATIC TIRES.—Every tire in which compressed air is designed to support the load.

(32) POLE TRAILER.—Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(33) POLICE OFFICER.—Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations including Florida highway patrolmen, sheriffs, deputy sheriffs and municipal police officers.

(34) PRIVATE ROAD OR DRIVEWAY.—Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(35) RADIOACTIVE MATERIALS.—Any materials or combination of materials which emit ionizing radiation spontaneously, in which the radioactivity per gram of material, in any form, is greater than 0.002 microcuries.

(36) RAILROAD.—A carrier of persons or property upon cars operated upon stationary rails.

(37) RAILROAD SIGN OR SIGNAL.—Any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(38) RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

(39) RESIDENCE DISTRICT.—The territory contiguous to, and including, a highway not comprising a business district when the property on such highway, for a distance of three hundred feet or more, is in the main improved with residences or residences and buildings in use for business.

(40) REVOCATION.—Revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted in this chapter.

(41) RIGHT OF WAY.—The right of one vehicle or pedestrian to proceed in a lawful

manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

(42) ROAD TRACTOR.—Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(43) ROADWAY.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(44) SADDLE MOUNT.—An arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground and only the rear wheels of the towed vehicle rest upon the ground.

(45) SAFETY ZONE.—The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(46) SCHOOL BUS.—Every motor vehicle that complies with the color and identification requirements of chapter 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children.

(47) SEMITRAILER.—Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

(48) SIDEWALK.—That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

(49) SPECIAL MOBILE EQUIPMENT.—Every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(50) STAND OR STANDING.—The halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers, as may be permitted by law under this chapter.

(51) STOP.—When required means complete cessation from movement.

(52) STOP OR STOPPING.—When prohibited means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(53) STREET OR HIGHWAY—The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

(54) SUSPENSION.—A licensee's privilege to drive a motor vehicle is temporarily withdrawn.

(55) THROUGH HIGHWAY.—Every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required to yield right of way to vehicles on such through highway in obedience to either a stop sign or yield sign, or otherwise in obedience to law.

(56) TRAFFIC.—Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

(57) TRAILER.—Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(58) TRUCK.—Every motor vehicle designed, used or maintained primarily for the transportation of property.

(59) TRUCK TRACTOR.—Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(60) TWILIGHT.—As used in this chapter, the time between sunset and full night or between full night and sunrise.

(61) VEHICLE.—Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

History.—§1, ch. 63-175; (35) §1, ch. 63-213.
Similar provisions in former §§317.01, 317.73.

317.012 Administration and enforcement.—The motor vehicle department, department of public safety, state road department, Florida public utilities commission and law enforcement officers generally are hereby authorized and directed to administer and enforce the provisions of this chapter applicable within their respective jurisdictions.

History.—§1, ch. 63-175; §1, ch. 63-279.
Similar provisions in former §317.94.

317.021 State road department may adopt sign manual.—The state road department may adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter, for use upon highways within this state. Such uniform system shall correlate with, and so far as possible conform to, the system then current as approved by the American association of state highway officials.

History.—§1, ch. 63-175.
Similar provisions in former §317.02.

317.031 State road department may sign all state highways.—The state road department may place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways outside of municipalities as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

History.—§1, ch. 63-175.
Similar provisions in former §317.03.

317.032 Uniform signals and devices.—

(1) On and after July 1, 1963, it shall be unlawful to sell any official traffic-control signal or official traffic-control device unless it conforms with the uniform system adopted by the state road department pursuant to §317.021, and certificate of such conformance has been issued by the department prior to such sale.

(2) All official traffic-control signals or official traffic-control devices purchased and installed in this state by any public body or official after July 1, 1963, shall conform to the uniform system adopted by the state road department pursuant to §317.021, provided, however, this section shall not prevent the continued use by such body or official of any traffic-control signal or device purchased by it prior to July 1, 1963.

(3) The state road department shall compile and publish a manual of minimum specifications for all traffic-control signals and devices certified by it as conforming with the uniform system and shall make copies of such manual for the uniform system available to all counties, municipalities, and other public bodies having jurisdiction of streets or highways open to the public in this state.

(4) The state road board is authorized, after hearing pursuant to fourteen days notice, to direct the removal of any purported traffic-control device wherever located which fails to meet the requirements of this section. The public agency erecting or installing the same shall immediately remove said device or signal upon the direction of the board.

History.—§1, ch. 63-7.

317.041 Obedience to and effect of traffic laws.—

(1) PROVISIONS OF ACT REFERRING TO VEHICLES UPON THE HIGHWAYS; EXCEPTIONS.—The provisions of this chapter relating to the operation of vehicles refer to the operation of vehicles upon the state-maintained highway system and county-maintained highway system throughout this state including state-maintained municipal connecting link roads as defined in §335.05(1); except that the provisions of §§317.071-317.211 shall apply upon highways and elsewhere throughout the state.

(2) REQUIRED OBEDIENCE TO TRAFFIC LAWS.—It is unlawful and, unless otherwise declared in this chapter with respect to particular offense, it is a misdemeanor for any person to do any act forbidden, or fail to perform any act required, in this chapter. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

(3) OBEDIENCE TO POLICE OFFICERS.—No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with the authority to direct, control or regulate traffic.

(4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY ACT; EXCEPTIONS.—

(a) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, Florida, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter.

(b) Unless specifically made applicable, the provisions of this chapter except those contained in §§317.201 and 317.211 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

(5) AUTHORIZED EMERGENCY VEHICLES.—

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle, except when otherwise directed by a police officer, may:

1. Park or stand, irrespective of the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions, so long as he does not endanger life or property.

(c) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such

provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History.—§1, ch. 63-175.
Similar provisions in former §317.04.

317.042 Applicability to animals and animal-drawn vehicles.—Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

History.—§1, ch. 63-175.
Similar provisions in former §317.01(24).

317.043 Conflicting ordinances prohibited; exception.—It is unlawful for any municipal corporation to pass or attempt to enforce any ordinance in conflict with the provisions of this chapter; provided, however, that this section shall not apply to school zones.

History.—§1, ch. 63-175.
Similar provisions in former §320.55.

317.051 Obedience to and required official traffic-control devices.—

(1) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter.

(2) No provisions of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

(3) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(4) Any official traffic-control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence.

History.—§1, ch. 63-175.
Similar provisions in former §317.05.

317.052 Detour signs to be respected.—It is unlawful to tear down or deface any detour sign or to break down or drive around any barricade erected for the purpose of closing any section of a state road to traffic during the construction or repair thereof, or to drive over such section of road until again thrown open to public traffic; however, such restriction shall not apply to the person in charge of such construction or repairs.

History.—§1, ch. 63-175.
Similar provisions in former §320.54(5).

317.061 Traffic-control signal devices.—Whenever traffic, including municipal traffic, is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows; provided, however, that nothing in this section shall apply to automatic warning signal lights installed or to be installed at railroad crossings. Traffic lights presently in operation shall comply with this section prior to June 30, 1965.

(1) GREEN INDICATION.—

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian-control signal as provided in §317.062, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) STEADY YELLOW INDICATION.—

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal as provided in §317.062, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall start to cross the roadway.

(3) STEADY RED INDICATION.—

(a) Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown.

(b) Unless otherwise directed by a pedestrian-control signal as provided in §317.062,

pedestrians facing a steady red signal shall not enter the roadway.

(4) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(5) No traffic-control signal device shall be used which does not exhibit a yellow or "caution" light between the green or "go" signal and the red or "stop" signal.

No traffic-control signal device shall display other than the color red at the top of said vertical signal, nor shall it display other than the color red at the extreme left of said horizontal signal.

History.—§1, ch. 63-175.
Similar provisions in former §317.06.

317.062 Pedestrian walk-and-wait signals.— Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait," or "Don't Walk," are in place, such signals shall indicate as follows:

(1) WALK.—Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles except emergency vehicles.

(2) WAIT OR DON'T WALK.—No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal may proceed to a sidewalk or safety zone while the "Wait" or "Don't Walk" signal is showing.

History.—§1, ch. 63-175.

317.063 Flashing signals.—

(1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set out in §§234.25 and 317.453.

History.—§1, ch. 63-175.

317.064 Lane-direction-control signals.— When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane or lanes over which a green signal is shown, but shall not enter or travel in any lane or lanes over which a red signal is shown.

History.—§1, ch. 63-175.

317.065 Display of unauthorized signs, signals or markings.—

(1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History.—§1, ch. 63-175.

317.066 Interference with official traffic-control devices or railroad signs or signals.— No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.

History.—§1, ch. 63-175.

317.071 Accidents involving death or personal injuries.—

(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of §317.091. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or to comply with said requirements under such circumstances shall, upon conviction, be guilty of a

felony and shall be punished by imprisonment in the state penitentiary for not more than 1 year or by fine of not more than $5,000.00 or by both such fine and imprisonment.

(3) The department shall revoke the operator's or chauffeur's license of the person so convicted.

History.—§1, ch. 63-175.
Similar provisions in former §317.07.
cf.—§322.26 Revocation of license on conviction of failure to stop.

317.081 Accidents involving damage to vehicle or property.—The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of §317.091. Every stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and, upon conviction, be punished as provided in §317.701.

History.—§1, ch. 63-175.
Similar provisions in former §317.08.

317.091 Duty to give information and render aid.—The driver of any vehicle involved in an accident resulting in injury to, or death of, any person or damage to any vehicle or other property which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving, and shall upon request and if available exhibit his license or permit to drive to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident and shall give such information and upon request exhibit such license or permit to any police officer at the scene of the accident or who is investigating the accident and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person.

History.—§1, ch. 63-175.
Similar provisions in former §317.09.

317.101 Duty upon striking unattended vehicles or other property.—The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to such other vehicle or property shall, in addition to fulfilling the requirements of §317.121, immediately stop and shall then and there locate and notify the operator or owner of such vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property or, in the event an unattended vehicle is struck, shall attach securely in a conspicuous place in or on such vehicle a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking.

History.—§1, ch. 63-175.
Similar provisions in former §317.10.

317.111 Arrest authority of officer at scene of an accident.—A police officer at the scene of a traffic accident may arrest any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter in connection with the accident.

History.—§1, ch. 63-175.

317.112 Form of traffic citations.—

(1) Every traffic-enforcement agency in this state shall provide in appropriate form traffic tickets containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this act.

(2) The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each ticket contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.

(3) All prosecution on any charge involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic upon the highways of the state shall be by a uniform traffic ticket substantially as hereinafter set forth:

UNIFORM TRAFFIC TICKET AND COMPLAINT

Case No._____ Docket No._____ Page No._____

State of ____) SS. NO._____
County of __) COMPLAINT-AFFIDAVIT
__City __Village __Township
of _____

in the _____ Court of _____

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

On _____ the_____ day of _____ 19____, at__A.M. P.M.

Name _____
Last (Please print) First Middle

Street _____
City-State _____
Age__ Birth date __ Race__ Sex__ Ht.__ Wt.__
Driver's License No. _____
Kind Number
Vehicle License No. _____ State ____ Yr.____
Make _____ Style _____ Color _____
Upon a public highway, name at (location)____
_____

DID UNLAWFULLY (PARK) (OPERATE) IN THE CITY, VILLAGE, TOWNSHIP, COUNTY AND STATE AFORESAID AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

Leading causes of accidents

Speeding (over limit) (..m.p.h in ..m.p.h. zone) — 5-10 m.p.h. — 11-15 m.p.h. — over 15 m.p.h.

Improper Left Turn — No signal — Cut corner — From wrong lane

Improper Right Turn — No signal — Into wrong lane — From wrong lane

Disobeyed Traffic Signal (When light turned red) — Past middle intersection — Middle of intersection — Not reached intersection

Disobeyed Stop sign — Wrong place — Walk speed — Faster

Improper passing and Lane usage — At intersection — Between traffic — Lane straddling — Cut-in — On right — Wrong lane — Wrong side of pavement — On hill — On curve

—Following too closely —Failure to yield

Other violations:
in violation of Sec. _____ of _____
—State Statute —Local Ordinance in such case made and provided.

Parking: —Overtime —Double parking
Meter No. _____ —Prohibited area —Expired meter

(Describe) Other —parking violation _____

Conditions that Increased Seriousness of Violation

Slippery pavement — Rain — Snow — Ice
Darkness — Night — Fog — Snow
Other traffic present — Cross — Oncoming — Pedestrian — Same direction
Caused person to dodge — Pedestrian — Driver — Just missed accident
Type accident — PD — PI — Fatal — Ped. — Vehicle — Hit fixed object — Right angle — Head on — Sideswipe — Rear end — Ran off roadway — Intersection
Area: — Business — Industrial — School — Residential — Rural
Highway Type: — 2 lane — 3 lane — 4 lane — 4 lane divided

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW.

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 19__.

_____
(Name and title)

_____
(Signature and identification of officer or other complainant)
(Unit No.) _____

COURT APPEARANCE: __DAY OF _____, 19__, AT __M.,
ADDRESS OF COURT _____
I PROMISE TO APPEAR IN SAID COURT OR BUREAU AT SAID TIME AND PLACE.

Signature _____

(4) Such citations shall not be admissible in evidence in any trial.

History.—§1, ch. 63-14.
Note.—Effective January 1, 1964.

317.121 Immediate reports of accidents.— (1) The driver of a vehicle involved in an accident resulting in injury to or death of any persons or property damage to an apparent extent of fifty dollars or more shall immediately by the quickest means of communication give notice of such accident to the local police department, if such accident occurs within a municipality; otherwise, to the office of the county sheriff or the nearest office or station of the Florida highway patrol.

(2) Every coroner, or other official performing like functions, upon learning of the death of a person in his jurisdiction as the result of a traffic accident shall immediately notify the nearest office or station of the department.

History.—§1, ch. 63-175.
Similar provisions in former §317.12.

317.131 Written reports of accidents by drivers.— (1) The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or total damage to all property to an apparent extent of fifty dollars or more shall, within five days after such accident, forward a written report of such accident to the department.

(2) The department may require any driver of a vehicle involved in an accident of which written report must be made as provided in this section, to file supplemental written reports, whenever the original report is insufficient in the opinion of the department, and may require witnesses of accidents to render reports to the department.

(3) Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident, or thereafter by interviewing participants or witnesses shall, within twenty-four hours after complet-

ing such investigation, forward a written report of such accident to the department.

History.—§1, ch. 63-175.
Similar provisions in former §317.13.

317.141 When driver unable to report.—
(1) An accident report is not required under this chapter from any person who is physically incapable of making a report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of an accident, as required in §§317.121 and 317.131 and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report not made by the driver.

(3) Whenever the driver is physically incapable of making a written report of an accident as required in this chapter, then the owner of the vehicle involved in such accident shall within five days after the accident make such report not made by the driver.

History.—§1, ch. 63-175.
Similar provisions in former §317.14.

317.151 Accident report forms.—
(1) The department shall prepare and upon request supply to police departments, sheriffs, and other appropriate agencies or individuals, forms for written accident reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The written reports shall call for sufficiently detailed information to disclose, with reference to a vehicle accident, the cause, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all the information required therein unless not available.

History.—§1, ch. 63-175.
Similar provisions in former §317.15.

317.161 False reports.—Any person who gives information in oral or written reports as required in this chapter knowing or having reason to believe that such information is false shall be punished as provided in §317.701.

History.—§1, ch. 63-175.

317.171 Accident reports confidential.—All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use of the records for accident prevention purposes, except that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirements that such a report be made to the department.

History.—§1, ch. 63-175.
Similar provisions in former §317.17.

317.181 Department to tabulate and analyze accident reports.—The department shall tabulate and may analyze all accident reports and shall publish, annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

History.—§1, ch. 63-175.
Similar provisions in former §317.18.

317.191 Any incorporated city may require accident reports.—Any incorporated city, town, village, or other municipality may, by ordinance, require that the driver of a vehicle involved in an accident shall also file with a designated city department a written report of such accident or a copy of any report herein required to be filed with the department. All such written reports shall be for the confidential use of the city department and subject to the provisions of §317.171.

History.—§1, ch. 63-175.
Similar provisions in former §317.19.

317.201 Driving while under the influence of intoxicating liquor or narcotic drugs.—
(1) It is unlawful and punishable as provided in subsection (2) for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Every person who is convicted of a violation of this section shall for first conviction thereof be punished by imprisonment for not more than 6 months, or by a fine of not less than $25.00 nor more than $500.00, or by both such fine and imprisonment; for a second conviction within a period of three years from the date of a prior conviction for violation of this section, such person shall be punished by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than $500.00; upon a third or subsequent conviction within a period of 5 years from the date of conviction of the first of three or more convictions for violations of this section, such person shall be punished by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than $500.00.

History.—§1, ch. 63-175.
Similar provisions in former §317.20.

317.211 Reckless driving.—
(1) Any person who drives any vehicle in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(2) Every person convicted of reckless

driving shall be punished upon a first conviction by imprisonment for a period of not more than 90 days, or by fine of not less than $25.00, nor more than $500.00, or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not more than 6 months, or by a fine of not less than $50.00 nor more than $1,000.00, or by both such fine and imprisonment.

History.—§1, ch. 63-175.
Similar provisions in former §317.21.

317.221 Unlawful speed.—

(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) (a) The maximum speed limit for motor vehicles on the highways except those a part of the national system of interstate and defense highways, shall be:

1. Thirty miles per hour in business or residence districts.
2. Sixty-five miles per hour during the daytime at other locations on the highway.
3. Fifty-five miles per hour during the nighttime, at other locations on the highway.

(b) On all highways which comprise a part of the national system of interstate and defense highways and having not less than four traffic lanes, the minimum speed shall be forty miles per hour and the maximum speed shall be seventy miles per hour from one half hour before sunrise until one half hour after sunset. At other times the minimum speed shall be forty miles per hour and the maximum speed shall be sixty-five miles per hour.

(3) The maximum speed limit for every motor vehicle of a gross weight in excess of eight thousand pounds, unless equipped with pneumatic tires and designed for carrying passengers, and every motor vehicle towing house trailers, boats, utility trailers, or another vehicle or vehicles, shall be:

(a) Thirty miles per hour in business or residence districts.

(b) Fifty miles per hour during the daytime, at other locations on the highway.

(c) Forty-five miles per hour during the nighttime, at other locations on the highway.

(4) No school bus shall exceed the maximum speed limit of forty miles per hour on highways outside of municipalities; or of twenty-five miles per hour in any business or residence district.

(5) The driver of every vehicle shall, consistent with the requirements of subsection (1), drive at an appropriately reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when any special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(6) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(7) No person shall operate any motor-driven cycle at nighttime at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

History.—§1, ch. 63-175; (2)a. by §1, ch. 63-436.
Similar provisions in former §317.22.

317.233 Establishment of municipal and county speed zones.—

(1) MUNICIPAL SPEED.—The maximum speed within any municipality shall be thirty miles per hour in the daytime or nighttime. Provided that a municipality may set speed zones altering such speed, both as to maximum and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the state road department, except no changes shall be made on state highways, connecting links or extensions thereof which shall be changed only by the state road department.

(2) SPEED ON COUNTY ROADS.—The maximum speed on any county maintained road shall be:

(a) In any business or residence district, thirty miles per hour in the daytime or nighttime.

(b) On any other part of a county road not a business or residence district, as set forth in §317.221.

Provided that the board of county commissioners may set speed zones altering such speeds, both as to maximum and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the state road department, except that no such speed zone shall permit a speed of more than sixty-five miles per hour.

(3) POSTING OF SPEED LIMITS.—All speed zones shall be posted with clearly legible signs. No change in speeds from thirty miles per hour or from those established in §317.221 shall take effect until the zone is posted by the authority changing the speed pursuant to this section and §317.241. All signs which limit or establish speed limits, maximum and minimum, shall be so placed and so painted as to be plainly visible and legible in daylight or in darkness when illuminated by headlights.

(4) PENALTY.—Violation of the speed limits established pursuant to this section shall be punished as set forth in §317.701.

History.—§1, ch. 63-175.
Similar provisions in former §317.23.

317.234 Electrical or mechanical speed-measuring devices; warning signs required;

power of arrest; admissibility of evidence.—

(1) The department shall adopt a uniform sign for the purpose of giving public notice that the rate of speed for motor vehicles is measured by electronic, electrical, or mechanical devices in connection with law enforcement. Such signs and the letters thereon shall be of sufficient size so as to be clearly legible at a distance of five hundred feet. Whenever any peace officer engaged in the enforcement of the motor vehicle laws of this state or any county or municipality thereof, uses an electronic, electrical, or mechanical speed-measuring device approved by the department of public safety and licensed by the federal communications commission, to determine the speed of a motor vehicle on any road, street, or highway or other public way, signs giving public notice to drivers that such devices are being used for law enforcement purposes shall be posted in accordance with the following requirements:

(a) If such speed-measuring device is being operated on a highway outside an incorporated municipality signs of the type described herein shall be erected on all highways leading to the point where the device is being operated not more than two miles and not less than one mile from such point.

(b) If such speed-measuring device is being operated within the limits of any incorporated municipality signs of the type described herein shall be erected upon all highways of the state highway system at the municipal limits of such municipality, and in addition such signs shall be erected upon all roads leading to the point where the device is being operated not more than five hundred feet and not less than three hundred feet from such point.

(2) Whenever any peace officer engaged in the enforcement of the motor vehicle laws of this state uses such an electronic, electrical, or mechanical speed-measuring device to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device shall be located at a point in which passing is allowed by vehicles going in each direction for a distance of five hundred feet from the location of such device and shall have been tested to determine that it is operating accurately. Tests for this purpose shall be made not less than once each six months according to procedures and at regular intervals of time prescribed by the department.

(3) A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the motor vehicle laws of this state when such testimony is derived from the use of such an electronic, electrical, or mechanical speed-measuring device, upon showing that the speed-measuring device which was used had been tested and warning signs posted as prescribed in this section and that the accused violator was lawfully arrested under the laws of this state.

(4) Nothing contained in this section shall be construed to relieve the prosecution in any case of the requirement to prove beyond a reasonable doubt all facts essential to show the accused person guilty of the offense with which he is charged.

History.—§1, ch. 63-175.
Similar provisions in former §317.231.

317.235 Establishment of school speed zones, enforcement; designation.—

(1) No school zone speed limit shall be less than fifteen miles per hour. Such speed limit shall be in force only during those hours established by the county superintendent of public instruction and violation of said speed limit during the hours specified shall be deemed a misdemeanor punishable as provided in §317.701. The county superintendent shall set times for school zone restrictions which shall correspond to the periods when the pupils are arriving at and leaving regularly scheduled school sessions.

(2) Permanent signs designating school zones and school zone speed limits shall be uniform in size and color, and shall have the times during which the restrictive speed limit is enforced clearly designated thereon. The state road board shall establish adequate standards for said signs.

(3) Portable signs designating school zones and school zone speed limits shall be uniform in size and color. Such signs shall be erected on the roadway only during those hours when pupils are arriving at and leaving regularly scheduled school sessions. The state road board shall establish adequate standards for said signs.

(4) Nothing herein shall prohibit the use of automatic traffic control devices for the control of vehicular and pedestrian traffic at school crossings in lieu of permanent or portable school zone signs. The state road board shall establish standards for such automatic flashing signals.

History.—§1, ch. 63-175; (4) a. by §1, ch. 63-178.
Similar provisions in former §317.232.

317.241 Establishment of state speed zones.—

(1) Whenever the state road department shall determine, upon the basis of an engineering and traffic investigation, that any speed hereinbefore set forth in §§317.221(2) and (3) is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place, or upon any part of a highway outside of a municipality or upon any state highways, connecting links or extensions thereof within a municipality, said state road department may determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

(2) The Florida turnpike authority is hereby authorized to set such maximum and minimum speed limits for travel over those roadways under their authority as they deem safe and advisable not to exceed as a maximum limit seventy miles per hour.

(3) Violation of the speed limits estab-

lished pursuant to this section shall be punished as set forth in §317.701.

History.—§1, ch. 63-175.
Similar provisions in former §317.24.

317.251 Drive on right side of roadway; exceptions.—

(1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by signs or markings designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b).

History.—§1, ch. 63-175.
Similar provisions in former §317.25.

317.261 Passing vehicles proceeding in opposite directions.—Drivers of vehicles proceeding in opposite directions shall pass each other to the right; and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one half of the main traveled portion of the roadway, as nearly as possible.

History.—§1, ch. 63-175.
Similar provisions in former §317.26.

317.271 Overtaking and passing a vehicle.— The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the head lamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §317.27.

317.281 When overtaking on the right is permitted.—

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving traffic in each direction;

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History.—§1, ch. 63-175.
Similar provisions in former §317.28.

317.291 Limitations on overtaking, passing, changing lanes and changing course.—

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this chapter and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction of any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within one hundred feet of any approaching vehicle.

(2) No vehicle shall be driven from a direct course in any lane on any highway until the driver shall have determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move, that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

(3) The driver of any vehicle overtaking or

passing any other vehicle or changing lanes or course shall prior to such overtaking, passing, or changing, give the appropriate signal as may be required by law, provided however that the giving of such signal shall not give the signaling driver any right of way. His actions shall remain subject to the provision of subsections (1) and (2).

History.—§1, ch. 63-175.
Similar provisions in former §317.29.

317.301 Further limitations on driving to left of center of roadway.—

(1) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing; provided, however, this section shall not apply to any intersection on a state or county maintained highway located outside city limits unless such intersection is marked by an official state road department or county road department traffic-control device indicating an intersection either by symbol or by words and such marking is placed at least one hundred feet before the intersection;

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

(2) The foregoing limitations shall not apply upon a one-way roadway.

History.—§1, ch. 63-175.
Similar provisions in former §317.30.

317.311 No-passing zones.—

(1) The state road department is authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous; and may, by appropriate signs or marks on the roadway indicate the beginning and end of such zones; and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

History.—§1, ch. 63-175.
Similar provisions in former §317.30.

317.312 One-way roadways and rotary traffic islands.—

(1) The state road department may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(2) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History.—§1, ch. 63-175.

317.321 Driving on roadways laned for traffic.—Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official signs may be erected, directing specified traffic to use a designated lane, or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway; and drivers of vehicles shall obey the directions of every such sign.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

History.—§1, ch. 63-175.
Similar provisions in former §317.32.

317.322 Driving on divided highways.— Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority.

History.—§1, ch. 63-175.

317.323 Limited access.—No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority.

History.—§1, ch. 63-175.

317.331 Following too closely.—

(1) The driver of a motor vehicle shall not

follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway.

(2) It is unlawful for the driver of any motor truck, or motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within three hundred feet of another motor truck, or motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow moving vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History.—§1, ch. 63-175.
Similar provisions in former §317.33.

317.341 Turning at intersection.—The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Both the approach for a right turn, and a right turn, shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(4) Local authorities in their respective jurisdictions may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

History.—§1, ch. 63-175.
Similar provisions in former §317.34.

317.351 Turning on curve or crest of grade prohibited.—No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

History.—§1, ch. 63-175.
Similar provisions in former §317.35.

317.361 Starting parked vehicle.—No person shall start a vehicle which is stopped, standing, or parked, unless and until such movement can be made with reasonable safety.

History.—§1, ch. 63-175.
Similar provisions in former §317.36.

317.371 When signal required.—

(1) No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by such movement.

(2) A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear, when there is opportunity to give such signal.

(4) The signals provided for in §317.381 shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not, except as provided in §317.902 be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

History.—§1, ch. 63-175.
Similar provisions in former §317.37.

317.381 Signals by hand and arm or signal device.—

(1) The signals herein required shall be given either by means of the hand and arm or by signal lamp or a signal device.

(2) It is hereby declared that a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, when the distance from the center of the top of the steering post to the left outside limit (or right in the case of a right-hand drive vehicle) of the body, cab, or load exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load exceeds fourteen feet. The latter measure-

ment shall apply not only to a single vehicle, but also to any combination of vehicles.

(3) Any vehicle or combination of vehicles constructed, loaded or capable of being loaded so as to exceed the dimensions hereinbefore promulgated shall be equipped with direction signals of a type approved by the department and said signals shall be in good working condition.

History.—§1, ch. 63-175.
Similar provisions in former §317.38.

317.391 Method of giving hand and arm signals.—All signals herein required, given by hand and arm, shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) LEFT TURN.—Hand and arm extended horizontally.

(2) RIGHT TURN.—Hand and arm extended upward.

(3) STOP OR DECREASE SPEED.—Hand and arm extended downward.

History.—§1, ch. 63-175.
Similar provisions in former §317.39.

317.401 Vehicles approaching or entering intersections.—

(1) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.

(2) When two vehicles enter an intersection from different highways at the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(3) The driver of a vehicle about to enter or cross a state maintained road or highway from a paved or unpaved road and not subject to control by an official traffic-control device shall yield the right of way to all vehicles approaching on said state maintained road or highway.

(4) The driver of a vehicle about to enter or cross a paved county road or highway from an unpaved road or highway and not subject to control by an official traffic-control device shall yield the right of way to all vehicles approaching on said paved road or highway.

(5) The foregoing rules are modified at through highways and otherwise, as hereinafter stated.

History.—§1, ch. 63-175.
Similar provisions in former §317.40.

317.411 Vehicle turning left.—The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

History.—§1, ch. 63-175.
Similar provisions in former §317.41.

317.421 Vehicle entering stop or yield intersection.—

(1) Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in §317.031.

(2) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by §317.422(1), and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(3) The driver of a vehicle aproaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary as provided in §317.422(2), and shall yield the right of way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. Provided, however, that if such a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right of way.

History.—§1, ch. 63-175.
Similar provisions in former §317.42.

317.422 Manner of obeying stop signs and yield signs.—

(1) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(2) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

History.—§1, ch. 63-175.

317.431 Vehicle entering highway from private road or driveway.—The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on said highway.

History.—§1, ch. 63-175.
Similar provisions in former §317.43.

317.432 Emerging from alley, driveway or building.—The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right of way to any pedestrian as may be neces-

sary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

History.—§1, ch. 63-175.

317.442 Stopping, standing or parking outside of municipalities.—

(1) Upon any highway outside of a municipality, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway; but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway.

(2) This section shall not apply to the driver or owner of any vehicle which is disabled, while on the paved or main traveled portion of a highway, in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position, or to passenger-carrying buses temporarily parked while loading or discharging passengers, where highway conditions render such parking off the paved portion of the highway hazardous or impractical.

(3)(a) Whenever any officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this section such officer is hereby authorized to move such vehicle, or require the driver or other persons in charge of the vehicle to move the same, to a position off the paved or main traveled part of such highway.

(b) Whenever any officer finds a vehicle unattended upon any bridge or causeway or in any tunnel, or on any public highway, where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety, cost of such removal to be a lien against motor vehicle.

(c) Any vehicle moved under this chapter which is a stolen vehicle shall not be subject to the provisions hereof unless the moving authority has reported to the Florida highway patrol the taking into possession of said vehicle within twenty-four hours of the moving of said vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §317.44.

317.443 Parking near rural mail box during certain hours, penalties.—Whoever parks any vehicle within thirty feet of any rural mail box upon any state highway in this state between the hours of 8:00 a.m. and 3:00 p.m. shall be punished by a fine not exceeding $30.00 or by imprisonment not exceeding 30 days.

History.—§1, ch. 63-175.
Similar provisions in former §317.441.

317.444 Stopping, standing or parking prohibited in specified places.—

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(a) Stop, stand or park a vehicle:

1. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
2. On a sidewalk;
3. Within an intersection;
4. On a crosswalk;
5. Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless the state road department indicates a different length by signs or markings;
6. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
7. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
8. On any railroad tracks;
9. At any place where official signs prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

1. In front of a public or private driveway;
2. Within fifteen feet of a fire hydrant;
3. Within twenty feet of a crosswalk at an intersection;
4. Within thirty feet upon the approach to any flashing signal, stop sign or traffic-control signal located at the side of a roadway;
5. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance (when property signposted);
6. At any place where official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

1. Within fifty feet of the nearest rail of a railroad crossing;
2. At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

History.—§1, ch. 63-175.

317.445 Additional parking regulations.—

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or edge of the roadway.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or edge of the

roadway, or its left wheels within twelve inches of the left-hand curb or edge of the roadway.

(3) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the state road department has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

History.—§1, ch. 63-175.

317.446 Opening and closing vehicle doors.—No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History.—§1, ch. 63-175.

317.447 Obstruction of public streets, highways, etc.—

(1) It is unlawful for any person or persons to willfully obstruct the free, convenient and normal use of any public street, highway or road, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon, and any person or persons violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $500.00 or by confinement in the county jail not exceeding six months, or by both such fine and imprisonment.

(2) The provisions of this chapter are supplementary to the provisions of any other statute of the state.

History.—§§1, 2, ch. 63-270.

317.448 Authority for local governments to support local traffic safety councils; contracts and leases; contributions.—Each county or municipality of this state is hereby authorized to support local traffic safety councils and may enter into any contract, lease or agreement with any approved local safety council for the donation to, or the use and occupation by, such traffic safety council of any land owned, leased or held by any such county or city during such time and on such terms as such county or city may authorize; and the board of county commissioners of any county and the mayor and city council of any city may make contributions of money or property to such traffic safety councils for the purpose of assisting such councils in the coordinating, planning, developing, formation and implementation of sound local traffic safety programs.

History.—§1, ch. 63-9.

317.452 Scope and effect of regulations, equipment.—

(1) It is a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts, or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden, or fail to perform any act required, under this chapter.

(2) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors, except as herein made applicable.

History.—§1, ch. 63-175.
Similar provisions in former §317.45.

317.453 Certain vehicles to stop at all railroad crossings.—

(1) The driver of any motor vehicle carrying passengers for hire or of any school bus carrying any child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or a part of a cargo, or of any vehicle designed for the carrying of flammable liquids or explosives, before crossing at grade any track or tracks of a railroad shall stop such vehicle not less than ten feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

(2) No stop need be made at any such crossing where a police officer or a traffic control signal directs traffic to proceed.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not less than $10.00 nor more than $50.00 and in default of the payment of said fine shall be imprisoned in the county jail for a term of not more than 30 days.

History.—§1, ch. 63-175.
Similar provisions in former §317.451.

317.454 When stop required at railroad crossings.—No person operating any motor vehicle upon a public road shall cross, or attempt to cross, at a point designated by the state road department as a dangerous crossing, any railroad track intersecting the road at grade other than a crossing at which there is a gate or watchman (except on electric railway tracks in an incorporated city or town) without first bringing said motor vehicle to a full stop at a distance of not less than ten feet nor more than fifty feet from the nearest rail, and shall

then look in both directions along the tracks and listen for the approach of any locomotive, car or train of cars thereon; provided, however, that the requirements of this section shall not extend to railroad tracks located within the limits of incorporated cities or towns; and provided further, that in any civil action for damages against any railroad company for alleged actionable injuries sustained by any person at any railroad crossing in this state by reason of a collision at said crossing with any engine or train of cars, the provisions of §§768.05 and 768.06, relating to liability of railroad companies in actions for negligence shall govern.

History.—§1, ch. 63-175.
Similar provisions in former §317.451.

317.455 Signs at dangerous crossings.—Every railroad company operating or leasing any track intersecting a public road at grade and falling within the purview of §317.454, shall place and maintain a suitable signboard on each side of the track or tracks on the right side of the highway not less than ten feet from the ground and forty inches by fifty inches, two hundred feet from the crossing, which said board shall be painted with black lettering and white background with the following inscription thereon: STOP—RAILROAD CROSSING—FLORIDA LAW; provided, that for use at night said signboard shall be equipped with a suitable mirror reflector of such size, color and description as may be approved by the state road department for use at railroad crossings, so designated that same will reflect the rays of a motor vehicle headlight; and provided further, that where railroad warning signs have already been placed, or shall hereafter be placed, at any railroad crossing by the state road department, said railroad companies shall not be required to erect or maintain additional signs or reflectors at such crossings.

History.—§1, ch. 63-175.
Similar provisions in former §317.451.

317.461 When lighted lamps are required.—(1) Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

(2) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible, or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection (1) in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(3) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

History.—§1, ch. 63-175.
Similar provisions in former §317.46.

317.471 Number of head lamps on motor vehicles.—(1) Every motor vehicle, other than a motorcycle or motor-driven cycle, shall be equipped with at least two head lamps, with at least one on each side of the front of the motor vehicle; which head lamps shall comply with the requirements and limitations set forth in this chapter and shall show a white light.

(2) Every motorcycle and every motor-driven cycle shall be equipped with at least one, and not more than two, head lamps which shall comply with the requirements and limitations of this chapter and shall show a white light.

History.—§1, ch. 63-175.
Similar provisions in former §317.47.

317.481 Tail lamps.—(1) Every motor vehicle, trailer, semitrailer and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear to the left of the center of the vehicle which when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear; provided, that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

(2) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

History.—§1, ch. 63-175.
Similar provisions in former §317.48.

317.491 Application of succeeding sections.—The sections of this chapter immediately following, relating to clearance and marker lamps, reflectors, and stop lights, shall apply as stated in said sections to vehicles of the type therein enumerated; namely, passenger buses, trucks, truck tractors, and certain trailers, semitrailers and pole trailers, respectively, when operated upon any highway; and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in §317.461.

History.—§1, ch. 63-175.
Similar provisions in former §317.49.

317.501 Additional equipment required on certain vehicles.—In addition to other equipment required in this chapter, the following

vehicles shall be equipped as herein stated under the conditions stated in §317.491:

(1) On every bus or truck, whatever its size, there shall be the following:

On the rear, two reflectors, one at each side, and one stop light.

(2) On every bus or truck eighty inches or more in over-all width, in addition to the requirements in subsection (1):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stop light.

(4) On every trailer or semitrailer having a gross weight in excess of three thousand pounds:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(5) On every pole trailer in excess of three thousand pounds gross weight:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer, and pole trailer weighing three thousand pounds gross, or less:

On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded, or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

History.—§1, ch. 63-175.
Similar provisions in former §317.50.

317.511 Color of clearance lamps, side marker lamps and reflectors.—

(1) Front clearance lamps and those marker lamps and reflectors mounted on the front, or on the side near the front, of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white as provided in §317.481(2), and the light emitted by a back-up lamp shall be white or amber.

History.—§1, ch. 63-175.
Similar provisions in former §317.51.

317.521 Mounting of reflectors, clearance lamps and side marker lamps.—

(1) Reflectors when required by §317.501, shall be mounted at a height not less than twenty-four inches and not higher than sixty inches above the ground on which the vehicle stands; except, that if the highest part of the permanent structure of the vehicle is less than twenty-four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width, and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination, provided illumination is given as required herein with reference to both.

History.—§1, ch. 63-175.
Similar provisions in former §317.52.

317.531 Visibility of reflectors, clearance lamps and marker lamps.—

(1) Every reflector upon any vehicle, referred to in §317.501 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within five hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of five hundred feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of five hundred feet from the side of the vehicle on which mounted.

History.—§1, ch. 63-175.
Similar provisions in former §317.53.

317.532 Obstructed lights not required.— Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have

clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History.—§1, ch. 63-175.

317.541 Performance of stop lights.—

(1) Stop lights shall be actuated upon application of the service (foot) brake, and shall be capable of being seen and distinguished from a distance of one hundred feet to the rear of the vehicle in normal daylight, but shall not project a glaring or dazzling light, and all motor vehicles shall be equipped with stop lights.

(2) A stop light may be incorporated with a tail lamp.

History.—§1, ch. 63-175.
Similar provisions in former §317.54.

317.551 Lamp or flag on projecting load.— Whenever the load upon any vehicle extends to the rear four feet or more, beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in §317.461, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square.

History.—§1, ch. 63-175.
Similar provisions in former §317.55.

317.561 Lamps on other vehicles and equipment.—All vehicles, including animal-drawn vehicles and including those referred to in §317.452(3), not hereinbefore specifically required to be equipped with lamps, shall, at the time specified in §317.461, be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

History.—§1, ch. 63-175.
Similar provisions in former §317.56.

317.571 Signal lamps and signal devices.—

(1) Any motor vehicle may be equipped, and when a signal lamp or device is required under this chapter shall be equipped, with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, and signals of intention to turn to the right or left, all of which signals shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the front and rear, but shall not project a glaring or dazzling light; except, that a stop signal need be visible only from the rear.

(2) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in §317.461.

History.—§1, ch. 63-175.
Similar provisions in former §317.57.

317.581 Lamps on parked vehicles.—

(1) Every vehicle shall be equipped with one or more lamps which, when lighted, shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and a red light visible from a distance of five hundred feet to the rear of the vehicle. The location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(2) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(3) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto outside of a municipality, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (1).

(4) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

History.—§1, ch. 63-175.
Similar provisions in former §317.58.

317.591 Requirements for use of lower beam.—

(1) Twilight as used in this section shall mean the time between sunset and full night or between full night and sunrise.

(2) The lower or passing beam shall be used at all times during the twilight hours in the morning, the twilight hours in the evening, and during fog, smoke and rain.

History.—§1, ch. 63-175.
Similar provisions in former §317.59.

317.601 Requirements for trucks hauling logs and pulpwood.—It shall be the duty of every owner, licensee and driver, severally, of any truck or wagon carrying logs or pulpwood, to use such stanchions, standards, stays, supports or other equipment, appliances or contrivances, together with one or more lock chains, so as to fasten such load securely to the truck or wagon.

History.—§1, ch. 63-175.
Similar provisions in former §317.60.

317.611 Brake equipment required.—

(1) Every motor vehicle, other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of, and to stop and hold, such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the

brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, and bicycle with motor attached, when operated upon a highway shall be equipped with at least one brake, which may be operated by hand or foot.

(3) Every trailer or semitrailer of a gross weight of three thousand pounds or more, when operated upon a highway shall be equipped with brakes adequate to control the movement of, and to stop and to hold, such vehicle; and so designed as to be applied by the driver of the towing motor vehicle from its cab; and said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

(4) PERFORMANCE ABILITY OF BRAKES.—Every motor vehicle, or combination of motor-drawn vehicles, shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicles, or combinations of vehicles, having brakes on all wheels:	30	14
Vehicles, or combinations of vehicles, not having brakes on all wheels:	40	10.7

(5) MAINTENANCE OF BRAKES.—All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable, with respect to the wheels on opposite sides of the vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §317.61.

317.621 Horns and warning devices.—

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a highway

(2) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle, or bell, except as otherwise permitted in this chapter.

History.—§1, ch. 63-175.
Similar provisions in former §317.62.

317.631 Mufflers, prevention of noise and smoke.—Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise or annoying smoke, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

History.—§1, ch. 63-175.
Similar provisions in former §317.63.

317.641 Mirrors.—Every vehicle, operated singly or when towing any other vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such motor vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §317.64.

317.651 Windshields must be unobstructed and equipped with wipers.—

(1) No person shall drive any motor vehicle with any sign or other nontransparent material upon the front windshield, sidewings, side or rear windows of such vehicle, other than a certificate or other paper required to be so displayed by law.

(2) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(3) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

History.—§1, ch. 63-175.
Similar provisions in former §317.65.

317.661 Certain vehicles to carry flares or similar devices.—

(1) No person shall operate any motor truck, passenger bus, truck tractor, trailer, semitrailer, pole trailer or motor vehicle towing a house trailer upon any highway outside the corporate limits of municipalities at any time from a half hour after sunset to a half hour before sunrise, unless there shall be carried in such vehicle the following equipment, except as provided in subsection (2):

(a) At least three flares or three red electric lanterns each of which shall be capable of being seen and distinguished at a distance of five hundred feet under normal atmospheric conditions at nighttime; or at least three red emergency reflector warning devices capable of distinguishably reflecting the uppermost distribution of light or composite beam of oncoming vehicles from either direction at a distance of five hundred feet under normal atmospheric conditions at nighttime.

Each flare (liquid-burning pot torch) shall be capable of burning for not less than twelve hours in five miles per hour wind velocity, and capable of burning in any air velocity from zero to forty miles per hour. Every such flare shall be substantially constructed so as to withstand reasonable shocks without leaking. Every such flare shall be carried in the vehicle in a

metal rack or box. Every such red electric lantern shall be capable of operating continuously for not less than twelve hours and shall be substantially constructed so as to withstand reasonable shock without breakage. Every red emergency reflector warning device, flare and red electric lantern shall be made in accordance with specifications fixed by the director of the department of public safety, who is hereby authorized to fix the same, which specifications shall have as a minimum requirement that the reflecting elements shall conform to the specifications for class A reflex reflectors established by the society of automotive engineers, New York.

(b) At least three red-burning fusees, unless red electric lanterns or red emergency reflector warning devices are carried.

Every fusee shall be made in accordance with specifications of the bureau of explosives, New York, and so marked, and shall be capable of burning at least fifteen minutes.

(c) At least two red cloth flags, not less than twelve inches square with standards to support same.

(2) No person shall operate at the time and under the conditions stated in subsection (1), any motor vehicle used in the transportation of inflammable liquids in bulk, or in transporting compressed inflammable gases or explosives as defined in §317.011, unless there shall be carried in such vehicle three red electric lanterns meeting the requirements above stated or three red emergency reflector warning devices meeting the requirements above stated and the specifications fixed by the director of the department of public safety, and there shall not be carried in said vehicle any flares, fusees, or signal produced by a flame.

History.—§1, ch. 63-175.
Similar provisions in former §317.66.

317.671 Display of warning devices when vehicle disabled.—

(1) Whenever any motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer, or any motor vehicle towing a house trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles, the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway, except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (fifteen minutes), the driver shall place three liquid burning flares (pot torches), or three lighted red electric lanterns or three portable red emergency reflectors on the traveled portion of the highway in the following order:

1. One, approximately one hundred feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

2. One, approximately one hundred feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

3. One, at the traffic side of the disabled vehicle not less than ten feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subparagraph 1. of this subsection, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within five hundred feet of a curve, hill crest or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than one hundred feet nor more than five hundred feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) shall be placed as follows:

One at a distance of approximately two hundred feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one at a distance of approximately one hundred feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one at the traffic side of the vehicle and approximately ten feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle, and one at a distance of approximately one hundred feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway of this state at any time or place mentioned in subsection (1), the driver of such vehicle shall immediately display the following warning devices: one red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle, and two red electric lanterns or portable red reflectors, one placed approximately one hundred feet to the front and one placed approximately one hundred feet to the

rear of this disabled vehicle in the center of the traffic lane occupied by such vehicle. Flares, fusees or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this paragraph.

(6) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of §317.661, applicable thereto.

History.—§1, ch. 63-175.
Similar provisions in former §317.67.

317.691 Inspections by officers of the department.—

(1) The director, members of the state highway patrol, and such other officers and employees of the department as the director may designate, or sheriffs and deputy sheriffs, may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer may give a written notice to the driver and shall send a copy to the department. Said notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within a period of forty-eight hours.

History.—§1, ch. 63-175.
Similar provisions in former §317.69.

317.701 Penalties.—

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter, unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter, for which another penalty is not provided, shall for first conviction thereof be punished by a fine of not more than $100.00 or by imprisonment for not more than 10 days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than $200.00 or by imprisonment for not more than 20 days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than $500.00 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

History.—§1, ch. 63-175.
Similar provisions in former §317.70.

317.711 Uniformity of interpretation.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History.—§1, ch. 63-175.
Similar provisions in former §317.71.

317.721 Motor vehicles, throwing advertising materials in.—

(1) It is unlawful for any person on a public street, roadway, highway or sidewalk, in the state, to throw in, or attempt to throw in any motor vehicle, or offer, or attempt to offer to any occupant of any motor vehicle, whether standing or moving, or to place or throw in any motor vehicle, any advertising matter relating to hotels, restaurants, apartment houses, tourist homes, tourist camps, motor courts, trailer parks, or other lodging facilities, or the rates in connection therewith, or upon such public street, roadway, highway or sidewalk, to solicit or attempt to solicit by folder or other printed matter patronage for any such place or places from any occupant of any motor vehicle whether standing or moving or to cause or secure any person or persons to do any one of such unlawful acts.

(2) It is unlawful to throw or place, or cause to throw in, or place in any motor vehicle while the same is moving along any public highway of this state or moving along any street in any municipality in this state, or is stopped on any public highway in this state, or on any street in any municipality of this state for the purpose of observing traffic rules, warnings or regulations, any pamphlet, booklet, literature or other advertising information or matter relating to hotels, restaurants, apartment houses, tourist camps, motor courts, trailer parks and other lodging and eating facilities in the state, or the accommodation to be had thereat or the rates in connection therewith; or to solicit any occupant of said motor vehicle to become a guest of any hotel, restaurant, apartment house, tourist camp, motor court, trailer park, inn, or other lodging or eating place in the state; excepting therefrom, however, the right of any owner of any such place of business or his bona fide employee to solicit such business from the occupant or occupants of any automobile or vehicle parked within one hundred feet of the said place of business.

History.—§1, ch. 63-175.
Similar provisions in former §317.72.

317.731 Limitations on backing.—The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

History.—§1, ch. 63-175.

317.741 Obstruction to driver's view or driving mechanism.—

(1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's or motorman's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

History.—§1, ch. 63-175.

317.751 Vehicles exceeding size, weight limitations prohibited.—It is unlawful for any per-

son to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in §§317.731-317.951, or otherwise in violation of §§317.731-317.951, and the maximum size and weight of vehicles herein specified shall not be lawful throughout the state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in §§317.731-317.951.

History.—§1, ch. 63-175.
Similar provisions in former §317.75.

317.761 Maximum width, height, length.—

(1) The total outside width of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in §§317.731-317.951.

(2) No vehicle shall exceed a height of thirteen feet six inches, inclusive of load carried thereon.

(3) No vehicle shall exceed a length of forty feet extreme over-all dimension, inclusive of front and rear bumpers, and load carried thereon; provided, that any vehicle in excess of thirty-five feet, except buses, shall have not less than three axles. No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of fifty-five feet, inclusive of load carried thereon; provided, that automobile tow-away or drive-away operations, transporting new or used trucks may use what is known to the trade as saddle mounts, provided the over-all length shall not exceed fifty-five feet and in no instance may more than two saddle mounts be towed.

(4) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with a bumper.

(5) The length limitation imposed by this section shall not apply to vehicles operated in the daytime when transporting poles, pipes, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at night by a public utility when required for emergency repair of public service facilities or properties, when operated under special permit as hereinafter provided for, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

History.—§1, ch. 63-175.

317.771 Maximum weights.—

(1) The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty thousand pounds.

(2) For the purpose of §§317.731-317.951, an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

(3) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth herein, the total weight with load imposed upon the highway by all the axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the vehicle or combination of vehicles, measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between first and last axles of vehicles or combination of vehicles.	Maximum load in pounds on all the axles.
4	40,000
5	40,000
6	40,000
7	40,000
8	40,000
9	44,140
10	44,980
11	45,810
12	46,640
13	47,480
14	48,310
15	49,150
16	49,980
17	50,810
18	51,640
19	52,480
20	53,310
21	54,140
22	54,980
23	55,810
24	56,640
25	57,470
26	58,310
27	59,140
28	59,970
29	60,810
30	61,640
31	62,470
32	63,310
33	64,140
34	64,970
35	65,800
36	66,610

Except as hereinafter provided, no vehicle or combination of vehicles exceeding the gross weights specified above shall be permitted to travel on the public highways within the state.

History.—§1, ch. 63-175; (3) a. by §1, ch. 63-131.
Similar provisions in former §317.77.

317.781 Construction and loading requirements.—No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except for road maintenance purposes.

History.—§1, ch. 63-175.
Similar provisions in former §317.78.

317.791 Towing requirements.—

(1) When one vehicle is towing another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When one vehicle is towing another vehicle and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.

(2) When a vehicle is towing a trailer or semitrailer on a public road or highway by means of a trailer hitch attached to the rear of the vehicle there shall be attached in addition thereto safety chains from the trailer or semitrailer to the vehicle. These safety chains shall be of sufficient strength to maintain connection of the trailer or semitrailer to the pulling vehicle under all conditions while the trailer or semitrailer is being towed by the vehicle.

(3) The provisions of this section shall not apply to trailers or semitrailers using a hitch known as a fifth-wheel nor to farm equipment traveling less than twenty miles per hour.

History.—§1, ch. 63-175; §1, ch. 63-278.
Similar provisions in former §317.79.

317.801 Weight and load unlawful; inspection; penalty; review.—

(1) Any officer or agent of the motor vehicle department, state department of public safety or the Florida public utilities commission, having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales, provided such public scales are within two miles.

(2) Whenever an officer upon weighing a vehicle or combination of vehicles with load, determines that the axle weight or gross weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until a determination can be made as to the amount of weight thereon, and if overloaded the amount of penalty to be assessed as provided herein, provided, however, that any and all gross weight over and beyond six thousand pounds beyond the maximum herein set shall be unloaded and all material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; provided, that for enforcement purposes all scaled weights of the gross or axle weight of vehicles and combinations of vehicles shall be deemed to be not closer than ten per cent to the true gross weight.

(3) Any person who violates the overloading provisions of this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(a) When the excess weight is one hundred pounds or less than the maximum herein provided the penalty shall be $5.00;

(b) Five cents per pound for each pound of weight in excess of the maximum herein provided when the excess weight exceeds one hundred pounds.

(4) Whenever any person violates the provisions of this chapter and becomes indebted to the state because of such violation in the amounts aforesaid and refuses to pay the said penalty, such penalty shall become a lien upon said overloaded motor vehicle, and the same may be foreclosed by the state in a court of equity and it shall be presumed that the owner of the overloaded motor vehicle is liable for said sum, provided that any person, firm or corporation claiming an interest in said seized motor vehicle may at any time after the state's lien attaches to said motor vehicle obtain possession of the seized vehicle by filing a good and sufficient forthcoming bond with the officer having possession of the said vehicle, payable to the governor of the state in twice the amount of the state's lien, with a corporate surety duly authorized to transact business in this state as surety, conditioned to have said motor vehicle or combination of vehicles forthcoming to abide the result of any suit for the foreclosure of said lien, and it shall be presumed that the owner of the overloaded motor vehicle is liable for the penalty imposed under this section. Upon the posting of such bond with the officer making the seizure, the vehicle shall be released and the bond shall be forwarded to the state road department for safekeeping. The lien of the state against the motor vehicle aforesaid shall be foreclosed in equity and the ordinary rules of court relative to proceedings in equity shall control. If it shall appear that the seized vehicle has been released to the defendant upon his forthcoming bond, the state shall take judgment of foreclosure against the property itself, and judgment against the defendant and the sureties on said bond for the amount of the lien including cost of proceedings. After the rendition of the decree, the state may at its option proceed to sue out execution against the defendant and his sureties for the amount recovered as aforesaid or direct the sale of the vehicle under foreclosure.

(5) Any officer collecting the penalty herein imposed shall give to the owner or driver of the overloaded vehicle an official receipt for all penalties collected; such officers or agents of the state departments shall co-operate with the owners or drivers of motor vehicles so as not to unduly delay said vehicles. All penalties imposed and collected under this section by any state agency having jurisdiction, shall be paid to the treasurer of the state, who shall credit the total amount thereof to the state roads trust fund which shall be used to repair and maintain the roads of this state, and to enforce chapter 317, relating to weights of vehicles.

(6) There is hereby created a board of review consisting of the chairman of the state road department, the chairman of the public utilities commission, the motor vehicle commissioner, and the director of the department of public safety, or their authorized representatives, which may review any penalty imposed upon any vehicle or person under the provisions of chapter 317, relating to weights imposed on the highways by the axles and wheels of motor vehicles.

Any person aggrieved by the imposition of a civil penalty pursuant to this section may apply to the said review board for a modification, cancellation, or revocation of said penalty, and the said review board is hereby authorized to modify, cancel, revoke or sustain such penalty.

History.—§1, ch. 63-175; §1, ch. 63-279.
Similar provisions in former §317.80.

317.802 Emergency transportation, perishable foods; establishment of weight loads, etc.—

(1) The governor of Florida may declare an emergency to exist when there is a breakdown in the normal public transportation facilities necessary in moving perishable food crops grown in the state. The state road department is authorized during such emergency to establish such weight loads for hauling over the highways from the fields or packing houses to the nearest available public transportation facility as circumstances demand. The department shall designate special highway routes, excluding the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the perishables.

(2) It is the intent of the legislature in this act to supersede any existing laws when necessary to protect and save any perishable food crops grown in the state and give authority for agencies to provide necessary temporary assistance requested during any such emergency.

History.—§1, ch. 63-1.

317.811 Operations not in conformity with law; special permits.—The state road department, with respect to highways under its jurisdiction, and local authorities, with respect to highways under their jurisdiction, may, in their discretion, upon application and good cause shown therefor that the same is in the public interest issue special permits in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in §§317.731-317.951, or otherwise not in conformity with the provisions of §§317.731-317.951, upon any highway under the jurisdiction of the party issuing such permit and for the maintenance of which said party is responsible. The permit shall describe the vehicle or vehicles and load to be operated or moved and the highways for which the permit is requested. The state road department or local authority is authorized to issue or withhold such permit at its discretion; or if such permit is issued, to limit or prescribe conditions of operation of such vehicle or vehicles and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure. The state road department or such local authority is authorized to promulgate rules and regulations concerning the issuance of such permits, and to charge a fee for the issuance thereof, which rules, regulations and fees shall have the force and effect of law. The minimum fee for issuing any such permit shall be five dollars. The state road department may issue a blanket permit for a period not to exceed one hundred eighty days, the fee for which shall not exceed fifty dollars. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms or conditions of such special permit.

History.—§1, ch. 63-175; §1, ch. 63-280.
Similar provisions in former §317.81.

317.821 Weight, load, speed limits may be lowered; condition precedent.—Anything in this chapter to the contrary notwithstanding, the state road department with respect to state highways and local authorities with respect to highways under their jurisdiction, may prescribe, by notice hereinafter provided for, loads and weights and speed limits lower than the limits prescribed in this chapter and other laws, whenever in its or their judgment any road or part thereof, or any bridge or culvert shall by reason of its design, deterioration, rain or other climatic or natural causes be liable to be damaged or destroyed by motor vehicles, trailers or semitrailers, if the gross weight or speed limit thereof shall exceed the limits prescribed in said notice; and said state road department or local authority may, by like notice, regulate or prohibit, in whole or in part, the operation of any specified class or size of motor vehicles, trailers or semitrailers on any highways or specified parts thereof under its or their jurisdiction, whenever in its or their judgment, such regulation or prohibition is necessary to provide for the public safety and convenience on said highways, or parts thereof, by reason of traffic density, intensive use thereof by the traveling public, or other reasons of public safety and convenience. The notice or the substance thereof shall be posted at conspicuous places at terminals of and all intermediate crossroads and road junctions with the section of highway to which said notice shall apply. After any such notice shall have been posted, the operation of any motor vehicle or combination contrary to its provisions shall constitute a violation of this chapter, provided, that no limitation shall be established by any county, municipal or other local authorities pursuant to the provisions of this section that would interfere with or interrupt traffic as authorized hereunder over state highways, including officially established detours for such highways, including cases where such

traffic passes over roads, streets or thoroughfares within the sole jurisdiction of such county, municipal or other local authorities unless such limitations and further restrictions shall have first been approved by the state road department, provided, further, that with respect to county roads, except such as are in use as state highway detours, the respective county road authorities shall have full power and authority to further limit the weights of vehicles upon bridges and culverts upon such public notice as they deem sufficient and existing laws applicable thereto shall not be affected by the terms of this chapter.

History.—§1, ch. 63-175.
Similar provisions in former §317.82.

317.831 Damage to highways; liability of driver and owner.—Any person driving or moving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damages which said highway or structure may sustain as a result of any illegal operating, driving or moving of such vehicles, object, or contrivance; whether or not such damage is a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weights as provided in this act but authorized by special permit issued pursuant to §317.811. Whenever such driver is not the owner of such vehicle, object or contrivance but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in any civil action brought by the authorities in control of such highway or highway structure.

History.—§1, ch. 63-175.

317.832 Injurious substances prohibited; dragging vehicle or load; obstructing, digging, etc.—

(1) It is unlawful to place or allow to be placed upon any state road any tacks, wire, scrap metal, glass, crockery, or other substance which may be injurious to the feet of persons or animals, or the tires of vehicles, or in any way injurious to the road.

(2) It is unlawful to allow any vehicle or contrivance or any part of same, or any load or portion of a load carried on the same to drag upon any state road.

(3) It is unlawful to obstruct, dig up or in any way disturb any state road; provided, that this paragraph shall not be construed so as to hinder or prevent the installation or replacement of poles for telephone or telegraph wire lines in accordance with the provisions of law now existing or that may hereafter be enacted.

(4) It is unlawful for any vehicle to be equipped with any solid tires or any airless type tire on any motor driven vehicle when operated upon a highway.

History.—§1, ch. 63-175.
Similar provisions in former §§320.54(3) and 320.11.

317.833 Removal of injurious substances.—

(1) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §320.54(3).

317.834 Certain vehicles prohibited on hard surfaced roads.—It is unlawful to operate upon any hard surfaced road in Florida any log cart, tractor, well machine or any steel tired vehicle other than the ordinary farm wagon or buggy, or any other vehicle or machine that is likely to damage a hard-surfaced road except ordinary wear and tear on the same.

History.—§1, ch. 63-175.
Similar provisions in former §320.43.

317.835 Rough surfaced wheels prohibited.—No person shall drive, propel, operate or cause to be driven, propelled or operated over any state road or graded public road of this state any tractor engine, tractor or other vehicle or contrivance having wheels provided with sharpened or roughened surfaces, other than roughened pneumatic rubber tires, unless the rims or tires of the wheels of such tractor engines, tractors or other vehicles or contrivances are provided with suitable filler blocks between the cleats so as to form a smooth surface. This requirement shall not apply to tractor engines, tractors or other vehicles or contrivances if the rims or tires of their wheels are constructed in such manner as to prevent injury to such roads; provided, this restriction shall not apply to tractor engines, tractors and other vehicles or implements used by any county or the state road department in the construction or maintenance of roads or to farm implements weighing less than one thousand pounds when provided with wheel surfaces of more than one half inch in width.

History.—§1, ch. 63-175.
Similar provisions in former §320.42.

317.841 Motor vehicle lamps; equipment authorized.—

(1) Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use. Any motor vehicle may be equipped with not to exceed three auxiliary driving lamps mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in §§317.731-317.951.

(2) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(3) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(4) Any motor vehicle may be equipped with one or more backup lamps either separately or in combination with other lamps; but any such backup lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(5) Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in §317.852.

(6) Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of §317.852 shall apply to any combination of head lamps and auxiliary passing lamps.

History.—§1, ch. 63-175.
Similar provisions in former §317.84.

317.852 Multiple-beam road lighting equipment.—Except as otherwise provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions of loading.

(2) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

History.—§1, ch. 63-175.
Similar provisions in former §317.851.

317.861 Approaching vehicle; distribution of light.—

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light so equipped or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver, and in no case shall the high-intensity portion which is projected to the left of the prolongation of the extreme left side of the vehicle be aimed higher than the center of the lamp from which it comes at a distance of twenty-five feet ahead, and in no case higher than a level of forty-two inches above the level upon which the vehicle stands at a distance of seventy-five feet ahead.

(2) Whenever the driver of a vehicle approaches another vehicle from the rear within three hundred feet such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light.

History.—§1, ch. 63-175.
Similar provisions in former §317.86.

317.871 Motor vehicles; single distribution lamps, when permitted.—Head lamp systems which provide only a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to June 1, 1950, in lieu of multiple-beam road lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations.

(1) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

History.—§1, ch. 63-175.
Similar provisions in former §317.87.

317.872 Lighting equipment on motor-driven cycles.—The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour, and at a distance of not less than three hundred feet when the motor-driven cycle is operated at a speed of thirty-five or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in §317.-852(1), and the lowermost beam shall meet the requirements applicable to a lowermost dis-

tribution of light as set forth in §317.852(2).

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

History.—§1, ch. 63-175.
Similar provisions in former §§317.851, 317.86, 317.87, 317.88.

317.881 Motor vehicles; minimum head lamp requirement.—Any motor vehicle may be operated at nighttime under the conditions specified in §§317.852 and 317.871, when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in said §§317.852 and 317.871; provided, that at no time when lighted lamps are required shall such motor vehicle be operated at a speed in excess of twenty miles an hour.

History.—§1, ch. 63-175.
Similar provisions in former §317.88.

317.891 Head lamps, auxiliary lamps; number to be displayed.—

(1) At all times when lamps are required to be lighted under the laws of Florida, at least two lighted lamps shall be displayed, one on each side of the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candle power not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time upon a highway.

History.—§1, ch. 63-175.
Similar provisions in former §317.89.

317.902 Certain lights prohibited; exceptions.—

(1) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light or blue light visible from directly in front thereof.

(2) Flashing lights are hereby prohibited on motor vehicles except as a means of indicating a right or left turn or to indicate that a vehicle is parked or disabled upon the highway.

(3) This section shall not apply to police, fire, authorized emergency vehicles, or rural mail carriers whose duties require frequent stops on public highways.

History.—§1, ch. 63-175.
Similar provisions in former §317.90.

317.903 Operation of vehicles and actions of pedestrians on approach of authorized emergency vehicle.—

(1) Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, yield the right of way to such emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the right hand edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by any law enforcement officer.

(2) Every pedestrian using said road right of way, shall yield the right of way until the authorized emergency vehicle has passed, unless otherwise directed by any law enforcement officer.

(3) Any authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal; by siren, exhaust whistle, or other adequate device and while en route to such emergency, said emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state.

(4) Nothing herein contained shall diminish or enlarge any rules of evidence or liability in any case involving the operation of an emergency vehicle.

History.—§1, ch. 63-175.
Similar provisions in former §317.901.

317.911 Transportation of explosives, flammables, radioactive materials, etc.—

(1) Any vehicle used for transporting any explosives as a cargo or part of a cargo upon the highways, roads or streets of this state shall be marked or placarded on the front, both sides and the rear, with the word "EXPLOSIVES" in letters not less than six inches high or in lieu thereof shall conspicuously display upon an erect pole a red flag, not less than five hundred forty square inches in area with the word "EXPLOSIVES" thereon in white letters not less than six inches high. Any vehicle used for transporting any flammable liquids as a cargo or part of a cargo upon the highways, roads or streets of this state shall be marked or placarded on each side and the rear with the word "GASOLINE," other name of fuel or flammable liquid carried or other applicable wording, in letters of such height as required by rules and regulations made and promulgated by the state fire marshal. Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used. Any vehicle used for transporting any radioactive material as a cargo or part of a cargo upon the highways, roads or streets of this state but not regulated as to such transportation by federal authority shall be marked or placarded with such words and symbols of identification as may be prescribed by the regulations of the state fire marshal. The state fire marshal is authorized in accordance with chapter 633 to make and promulgate such additional rules and regula-

tions governing the transportation of explosives, flammable liquids, and other dangerous articles, including radioactive materials, by vehicles upon the highways, roads and streets as he shall deem advisable for the protection of the public, and all such rules and regulations shall have the full force and effect of law, provided that, as to radioactive materials, he shall promulgate rules and regulations no less restrictive than those imposed by federal authority for similar interstate transportation.

(2) The provisions of subsection (1) shall not be applicable to the transporting of liquefied petroleum gas. The rules and regulations applicable to the transporting of liquefied petroleum gas on the highways, roads or streets of this state shall be only those made and promulgated by the state fire marshal under chapter 527.

History.—§1, ch. 63-175; §2, ch. 63-213.
Similar provisions in former §317.91.

317.921 Health and sanitation hazards.—No motor vehicle, trailer or semitrailer shall be equipped with an open toilet or other device that may be a hazard from a health and sanitation standpoint.

History.—§1, ch. 63-175.
Similar provisions in former §317.92.

317.922 Riding in house trailers.—No person or persons shall occupy a house trailer while it is being moved upon a public highway.

History.—§1, ch. 63-175.

317.931 Enforcement of law; inspections, etc.—Any officer of the state authorized to administer or enforce the motor vehicle laws of the state may require the driver of a vehicle to stop and submit such vehicle and its equipment to an inspection, and such test with reference hereto as may be appropriate, to determine that such vehicle is in a safe operating condition, and that it complies with the provisions of this chapter.

History.—§1, ch. 63-175.
Similar provisions in former §317.93.

317.941 Excessive appearance bonds prohibited.—It is unlawful for any officer in the discharge of his duties, as provided for in this chapter, to demand an excessive appearance bond, and in all such cases the gravity of the offense committed shall be considered in the requirement of such appearance bonds.

History.—§1, ch. 63-175.

317.951 Selling or using lamps or equipment.—

(1) On and after July 1, 1963, no person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer or semitrailer, or use upon any such vehicle any seat belt, head lamp, auxiliary, fog lamp, rear lamp, signal lamp or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the director and approved by him. The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

(2) No person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer or semitrailer any lamp or device mentioned in this section which has been approved by the director unless such lamp or device bears thereon the trade-mark or name under which it is approved so as to be legible when installed.

(3) No person shall use upon any motor vehicle, trailer or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the director.

History.—§1, ch. 63-175.

317.952 Authority of director with reference to lighting devices.—

(1) The director is hereby authorized to approve or disapprove lighting devices and to issue and enforce regulations establishing standards and specifications for the approval of such lighting devices, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such regulations shall correlate with and, so far as practicable, conform to the then current standards and specifications of the society of automotive engineers applicable to such equipment.

(2) The director is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter, within a reasonable time after such device has been submitted.

(3) The director is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

(4) The director upon approving any such lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by him.

(5) The director shall publish lists of all lamps and devices by name and type which have been approved by him.

History.—§1, ch. 63-175.

317.953 Revocation of certificate of approval on lighting devices.—When the director has reason to believe that an approved device as being sold commercially does not comply with the requirements of this chapter, he may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the director shall determine whether said approved device meets the requirements of this chapter. If said device does not meet the requirements of this chapter he shall give notice to the person holding the certificate of approval for such device in this state.

If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the director that said approved device as thereafter to be sold meets the requirements of this chapter, the director shall suspend or

revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this chapter. The director may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this chapter, the director may refuse to renew the certificate of approval of such device.

History.—§1, ch. 63-175.

317.961 Reregistration of certain motor vehicles not conforming with §317.771.—Any motor vehicles or combination of vehicles which conformed to the requirements of motor vehicle laws relative to weights and sizes prior to the enactment of chapter 25342, Laws of Florida, 1949, which are now registered and continue to reregister yearly for operation in this state, and due to their peculiar construction and design may not, in the opinion of the motor vehicle commissioner, be made to conform to the axle spacing requirements of §317.771, without excessive expenses may be continued in operation for the life of the vehicle, subject to all safety and operational requirements of law, without being made to conform to the said axle spacing requirements of §317.771, provided that such vehicles or combination of vehicles shall be limited to a total gross load, including weight of vehicle, of twenty thousand pounds per axle plus scale tolerances and shall not exceed five hundred fifty pounds per inch width of tire surface. Such vehicles equipped with more than three axles shall not exceed a gross weight, including the weight of the vehicle and scale tolerances of seventy thousand pounds provided such gross weight shall not exceed twenty thousand pounds per axle and five hundred fifty pounds per inch width of tire surface plus scale tolerances. Such reregistration may be made only by the said commissioner and shall show that the license is a specially issued one. Dump trucks, concrete mixing trucks, fuel oil and gasoline trucks designed and constructed for special type work or use need not be registered as required herein, but shall meet the requirements of this section as to load limits. Any vehicle violating the weight provisions of this section shall be penalized as provided in §317.801.

History.—§1, ch. 63-175.
Similar provisions in former §317.96.

317.971 Television receiving set in view of motor vehicle operator prohibited.—

(1) It shall be unlawful to operate upon any public road or highway in the state a motor vehicle which is equipped with a television receiving set, when such receiver is in view of the driver.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor.

History.—§1, ch. 63-175.
Similar provisions in former §317.97.

317.981 More than one person riding on certain two-wheel motor vehicles prohibited.—It is unlawful for any person to ride on any motorcycle or motor-driven cycle except on a seat permanently attached to such vehicle and specifically designed to carry such person in a safe manner. No such vehicle shall be used to carry more persons at one time than the number for which it is designed and equipped.

History.—§1, ch. 63-175.
Similar provisions in former §317.98.

317.982 Unlawful for person to ride on exterior of vehicle.—

(1) It is unlawful for any operator of a passenger vehicle to permit any person to ride on the bumper, radiator, fender, hood, top, trunk or running board of such vehicle when operated upon any primary or secondary road which is paved and maintained by the state or county; provided, however, that the operator of any vehicle shall not be in violation of this act where such operator permits any person to occupy seats securely affixed to the exterior of such vehicle.

(2) This section shall not apply to a performer engaged in a professional exhibition or a person participating in an exhibition or parade, or any such person preparing to participate in such exhibitions or parades.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to the penalty provisions of this chapter.

History.—§1, ch. 63-127.

317.991 Display of red lights; motor vehicles of volunteer firemen.—Privately-owned vehicles belonging to the active firemen members of regularly organized volunteer fire-fighting companies or associations, while en route to scenes of fires or other emergencies, in the line of duty as active firemen members of regularly organized fire-fighting companies or associations may display red lights visible from the front and from the rear of such vehicles, subject to the following restrictions and conditions:

(1) Such light may not have a light source greater than fifty candle power for each light displayed.

(2) Two such red lights may be displayed on each end of the vehicle and such lights shall be of the flasher or revolving type.

(3) Such red lights shall consist of a lamp with a red lens and shall not consist of an uncolored lens with a red bulb.

(4) Such red lights shall not be a part of the regular head lamps or tail lights or turn signal lights displayed on such vehicles.

(5) No inscription of any kind shall appear across the face of the lenses of the red lights.

(6) The lenses of such red lights shall not be less than three inches nor more than eight inches in diameter.

(7) In order for an active volunteer fire-

man to display such red light on his vehicle, he must first secure a written permit from the chief executive officers of the fire-fighting organization to use such red lights, and this permit shall be carried by him at all times while such red lights are displayed.

(8) It is unlawful for any person who is not an active fireman member of a regularly organized volunteer fire-fighting company or association to display on any motor vehicle owned by him at any time, red lights as described above.

(9) It is unlawful for any active volunteer fireman to use or display red lights as provided for herein except while en route to scenes of fires or other emergencies in the line of duty.

(10) Any active volunteer fireman, or any other person who violates any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $5.00 and no more than $25.00, and shall be dismissed from membership of the fire-fighting organization by the chief executive officers thereof.

History.—§1, ch. 63-175.
Similar provisions in former §317.99.

317.992 Standards for lights on highway maintenance and service equipment.—

(1) The state road department shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on highway maintenance and service equipment when operated on the state highway system and county road system of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, as far as possible, conform with those approved by the American association of state highway officials.

(2) It shall be unlawful to operate any highway maintenance and service equipment on any highway as described heretofore above unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History.—§1, ch. 63-175.

317.01001 Regulation of pedestrian travel outside municipalities.—The provisions of this section relating to pedestrians shall refer exclusively to pedestrian actions on highways outside of municipalities.

(1) Pedestrians shall be subject to traffic-control signals at intersections as provided in §317.061, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

(2) Where sidewalks are provided, no pedestrian shall, unless required by other circumstances, walk along and upon the portion of a roadway paved for vehicular traffic.

(3) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the shoulder on the left side of the roadway in relation to the pedestrian's direction of travel, facing traffic which may approach from the opposite direction.

(4) No person shall stand in the portion of a roadway paved for vehicular traffic, for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(6) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger; provided that any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(7) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(8) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(9) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(10) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(11) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(12) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices, and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(13) Notwithstanding the foregoing provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

(14) Enforcement officers, vested by law with the authority of directing, controlling and regulating traffic, shall upon observing conduct

in violation of the above, issue a warning to each pedestrian violating any of the provisions of this section. Any pedestrian who willfully fails or refuses to comply with any lawful order or direction so given shall be guilty of a misdemeanor and punished as provided for in §317.701.

(15) The provisions of subsections (1)-(13) shall not be construed as creating, and shall not be admissible in aid of, any right, action or defense in any civil action.

History.—§1, ch. 63-175.
Similar provisions in former §317.0100.

317.01011 Disabled persons, exemption from payment of parking fees; issuance of identification stickers.—

(1) No county, city, town or any agency thereof shall exact any fee for parking on the public streets or highways or in any metered parking space from any person who has suffered the amputation of one or both legs or who has suffered the loss of the use of one or both legs as a consequence of paralysis or other permanent disability and who is licensed to operate a motor vehicle in Florida.

(2) No penalty shall be imposed upon any such disabled person for parking on such streets or highways or in such metered space for a longer period of time than other persons are permitted to park on such streets or highways or in such metered space; provided, persons not so disabled using the vehicle of a disabled person with a sticker for their own use shall not have the privileges of this section.

(3) Upon the application of any such disabled person, the tax collector of the county in which such disabled person applies for his automobile license plate shall issue to such person a certificate showing that such disabled person is entitled to the immunities provided in this section and a sticker reflecting the disability, which sticker shall be displayed upon the lower right hand portion of the windshield of the motor vehicle of such disabled person.

(4) The state motor vehicle commissioner is authorized and empowered to make any necessary rules and regulations to carry out the purposes of this section and to provide the necessary procedure for assuring that all applicants meet the qualifications prescribed in this section.

(5) The state motor vehicle commissioner shall prescribe the form of the application, the certificate and the design of a distinctive identifying sticker and said commissioner shall supply such applications, certificates and stickers to the tax collectors of the several counties.

(6) The state motor vehicle commissioner shall prescribe the fee to be paid by the applicant for said certificate and sticker but the said fee shall not exceed fifty cents, and the said commissioner shall in his discretion determine at what intervals the said certificate and sticker shall be renewed.

(7) The fee as set by the state motor vehicle commissioner shall be collected by the tax collectors of the several counties from the applicant at the time the certificate and sticker are issued and all such fees so collected shall be paid over to the state motor vehicle commissioner and used to defray the expenses of carrying out the purposes of this section.

History.—§1, ch. 63-175.
Similar provisions in former §317.0101.

317.0102 Coasting prohibited.—

(1) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(2) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

History.—§1, ch. 63-175.

317.0103 Following, parking near fire apparatus prohibited.—The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History.—§1, ch. 63-175.

317.0104 Crossing fire hose.—No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or highway, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History.—§1, ch. 63-175.

317.0105 Bicycle regulations.—

(1) Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this chapter and except as to provisions of this chapter which by their nature can have no application.

(2) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(3) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(4) No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

(5) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(6) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(7) Wherever a usable path for bicycles has been provided adjacent to a roadway bicycle riders shall use such path and shall not use the roadway.

(8) Person operating a bicycle shall keep at least one hand upon the handle bars.

(9) Enforcement officers, vested by law with the authority of directing, controlling and

regulating traffic, shall upon observing conduct in violation of the above, issue a warning to each person violating any of the provisions of this section. Any person who willfully fails or refuses to comply with any lawful order or direction so given shall be guilty of a misdemeanor and punished as provided for in §317.701.

History.—§1, ch. 63-175.

317.0106 Driving through safety zone prohibited.—No vehicle shall at any time be driven through or within a safety zone.

History.—§1, ch. 63-175.

317.0107 Locomotive whistles.—Every railroad locomotive crossing or attempting to cross over any public highway in this state, which is within the purview of §317.454, shall be equipped with a suitable whistle in good working order, and said whistle shall be blown in such manner before said locomotive reaches the crossing, that any motor vehicle driver who has complied with §317.454 will likely be warned thereby of the approach of any such locomotive or train or cars.

History.—§1, ch. 63-175.

317.0108 Conflicting ordinances prohibited; exception.—It is unlawful for any municipal corporation to pass or attempt to enforce any ordinance in conflict with the provisions of this chapter.

History.—§1, ch. 63-175.

CHAPTER 318

MOTOR VEHICLE COMMISSIONER

318.01 State motor vehicle commissioner; term; salary.—The state motor vehicle commissioner shall have full and complete charge of all the affairs of administering the laws of the state relative to motor vehicles as hereinafter provided and may employ such clerical assistants as may be necessary from time to time to enable him to speedily, completely and efficiently perform the duties of his office and of said laws. The said state motor vehicle commissioner shall be appointed by the governor for a term of four years and shall receive an annual salary as provided for in the general appropriations act. The terms of office of said motor vehicle commissioner shall begin and run concurrently with the regular terms of office of the successive governors of this state.

History.—§§1, 4, ch. 11901, 1927; CGL 1327, 1330; §1, ch. 15720, 1931; §1, ch. 15859, 1933; §1, ch. 19363, 1939; §1, ch. 20299, 1941; §1, ch. 23971, 1947; §11, ch. 25035, 1949; §1, ch. 28261, 1953.

cf.—§319.08 et seq. Title certificates, duties and functions respecting.

318.02 State motor vehicle commissioner; oath; bond.—The state motor vehicle commissioner shall be required to take and subscribe to the oath of office prescribed by the constitution of Florida to be taken by all state officers and to make and file an approved surety bond in the sum of two hundred thousand dollars, payable to the governor of Florida and his successors in office, conditioned upon the faithful performance of his duties and the strict accounting for and paying over to the state treasurer all sums of money coming into his hands by virtue of his office or under color thereof.

History.—§3, ch. 11901, 1927; CGL 1329.

cf.—§2, Art. XVI, Florida const. Oath of office.
§113.07 Bonds of officials.

318.03 Powers and duties of commissioner.—The duties of the state motor vehicle commissioner are as follows:

(1) To carry out and administer all laws of the state relative to the registration, re-registration, licensing and certification of motor vehicles as provided by law.

(2) To issue and cancel title certificates of motor vehicles.

(3) To collect all sums of money required to be collected in connection with his office.

(4) To issue, in the name of the state motor vehicle commissioner, all licenses, permits and certificates required to be issued, being strictly accountable therefor.

(5) In general, to perform all duties devolving upon him under provisions of law relating to the subject of licenses for motor vehicles, whether now existing or hereafter enacted.

It is the intention of the legislature that this section shall be liberally construed in accordance with the purpose and intent of the recommendation of the governor and comptroller to the 1927 session of the legislature.

History.—§§2, 3, ch. 11901, 1927; CGL 1328, 1329.

cf.—§319.08 et seq., Title certificates, duties respecting.
§320.01 et seq., Licenses and registration, duties respecting.

318.04 Quarterly accounting required.—The state motor vehicle commissioner shall render a quarterly accounting to the comptroller showing a complete record of all moneys collected, of all expenditures of his office, of the amounts remitted or paid over to the state treasury, and of the amounts payable to the treasury but held in suspension awaiting final adjustment.

History.—§7, ch. 11901, 1927; CGL 1333.

318.06 Funds from which salaries, expenses, etc., to be paid.—Salaries of the state motor vehicle commissioner, auditors and all clerical help employed in the administration of the motor vehicle laws, shall be payable out of the general revenue fund and sufficient appropriation therefor shall be included in the biennial appropriations act and counted as part of the expense of administration of said laws. Said officer shall be reimbursed for traveling expenses as provided in §112.061.

History.—§6, ch. 11901, 1927; CGL 1332; §39, ch. 26869, 1951; §19, ch. 63-400.

318.07 Comptroller not liable for acts or omissions of commissioner.—No liability shall attach to the comptroller for any acts done or thing omitted by the state motor vehicle commissioner, or under his direction, by virtue of the administration of the motor vehicle laws of this state, but all responsibility therefor shall rest upon said motor vehicle commissioner under his oath of office and official bond provided for in §318.02.

History.—§8, ch. 11901, 1927; CGL 1334.

318.08 Offices of commissioner and clerks.—The offices of the state motor vehicle commissioner, and of all clerical assistants under his control, shall be in the building provided by the state for the use of the state road department; and janitor and other service connected with said offices shall be provided by said commissioner as part of the expenses of his office.

History.—§9, ch. 11901, 1927; CGL 1335.

318.09 Microfilming, and destroying records.—

(1) The purpose of this section is to make

available for the use of the state motor vehicle commissioner sufficient floor space to enable him to efficiently administer the affairs of the agency.

(2) The state motor vehicle commissioner is hereby authorized to destroy records and documents as hereinafter provided, and to reclaim binders and filing equipment.

(3) The state motor vehicle commissioner is hereby authorized in his discretion to destroy agency reports, receipts, tag applications, and other records not specifically provided for herein, after audit of his office and the respective county offices involved has been completed for the period embracing the dates of said instruments; that the commissioner is hereby authorized in his discretion to destroy general correspondence files over three years old and bills of sale and other supporting title data in excess of seven years old.

(4) The commissioner is hereby authorized to photograph, microphotograph, or reproduce on film whereby each page will be exposed in exact conformity with the original, the old cash books, title record books, and such other documents as he may in his discretion select and that, he is hereby authorized to destroy any of said documents after they have been photographed and filed and after audit of his office and the respective county offices involved has been completed for the period embracing the dates of said instruments. That photographs or microphotographs in the form of film or print of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

(5) The state motor vehicle commissioner is authorized:

(a) To destroy title abstract records of motor vehicles for which Florida certificates of title have been outstanding for a period of more than ten years, provided the title record of the last two transfers of ownership are retained in the permanent title files and,

(b) To destroy title records of motor vehicles for which Florida certificates of title have been issued for a period of fifteen years or more after microphotographing or reproducing on film the title record of the last two transfers of ownership which shall be filed in conformity with the original records.

History.—§ §1-3, ch. 23666, 1947; §11, ch. 25035, 1949; (5) n. §1, ch. 57-183; (5)(b) §1, ch. 59-394.

CHAPTER 319

TITLE CERTIFICATES

319.08 Deputy motor vehicle commissioners; funds collected; title indexes.—

(1) The state motor vehicle commissioner, with the approval in writing of the governor, may employ all necessary deputies, in addition to the present officers of the law, to carry out the provisions of this chapter, and incur such additional necessary expenses in the enforcement of this chapter, as may be provided in the general appropriations act, and the commissioner, together with such deputies, employees and the existing officers of the law, are required to enforce all provisions of law pertaining to registration, certification, sale and distribution of motor vehicles as set forth in chapters 319, 320, and 330, by criminal prosecution for violations thereof.

(2) All moneys received by the commissioner under the provisions of this chapter shall be deposited in the general revenue fund. The commissioner shall maintain indexes by name of owner or vendor and vendee, and of cars, by make and by manufacturer's motor number and chassis number.

History.—§12, ch. 9157, 1923; CGL 3984, 3985; §40, ch. 26869, 1951; (1) §1, ch. 57-769.

319.14 Sale of motor vehicles used as taxicabs, for hire vehicles, u-drive-it, long-term lease and police cars, etc.—

(1) No person, firm or corporation shall knowingly offer for sale, sell, or exchange any motor vehicle as now or as may hereafter be defined by law, which was previously licensed, registered or used as a taxicabs, u-drive-it, police car, long-term lease, or for hire, until the certificate of title for such motor vehicle, or its duplicate, in the event a duplicate has been issued, shall have been surrendered to the motor vehicle commissioner, and until the motor vehicle commissioner has stamped in a conspicuous place on such certificate of title, or its duplicate, the words: "This motor vehicle has previously been used as a 'taxicab' or 'for hire,'" or "This motor vehicle has previously been used as a 'u-drive-it,'" or "This motor vehicle has previously been used as a 'police car,'" or "This motor vehicle has previously been used under 'long term lease,'" as the case may be. "Police car" is defined to mean a vehicle previously owned by the state, a county or a municipality and used in the enforcement of the law. "Long term lease" is hereby defined to mean under a written lease, for use without driver, to one lessee, for twelve months or longer duration. A "u-drive-it" vehicle is a vehicle which is rented or leased, without a driver, under a written agreement for less than twelve months, from time to time and to one or more persons.

(2) The owner of such vehicles, before offering the same for sale or exchange, shall affix, as may be prescribed by the motor vehicle commissioner, a notice on the lower right-hand corner of the windshield, not less than six inches square, stating that said motor vehicle has been previously titled, registered or used as a taxicab or for hire or as a u-drive-it, or police car, or long-term lease, as the case may be.

(3) Any person, firm or corporation who, with intent to offer for sale or exchange any motor vehicle described in subsection (1), knowingly or intentionally, advertises, publishes, disseminates, circulates or places before the public or causes the same to be done, in any newspaper, publication, or other written form, or by radio or television, any such offer for sale or exchange of such vehicle or vehicles as current model vehicles, during the time said vehicles are then current model vehicles, shall in every instance state clearly and precisely

in such advertisement or publication that such motor vehicle which is so advertised, has been previously titled, registered or used as a taxicab, u-drive-it, police car, long-term leased vehicle, or for-hire vehicle, as the case may be as to such use. A current model vehicle is one which has been formally introduced by its manufacturer in a national announcement and continues as such until such time as the same manufacturer announces a subsequent model. Publication of any such advertisement without including such statement shall constitute a violation of this law, and the person, firm or corporation causing such advertisement or publication to be made shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalties provided in subsection (5). Each such publication shall be deemed a separate offense and subject to such penalties.

(4) The provision of subsections (1) and (2) providing for the certificate of title to be stamped to show the use to which said vehicle has previously been used and the notice required to be affixed to the windshield stating the use to which said vehicle has previously been used shall not apply to u-drive-it or long-term leased vehicles after such vehicles have ceased to be current model vehicles as defined in this section. At any time after any u-drive-it or long-term lease vehicle shall cease to be a current model, each year after the manufacturers national announcement and introduction of a subsequent model, the motor vehicle commissioner on request of the owner of the vehicle as shown in said certificate shall issue a new corrected certificate of title and remove from the certificate the notation as to its previous use. Nothing in this subsection shall apply to taxicabs or police cars or other for-hire vehicles and all of the provisions of subsections (1) and (2) shall continue to apply to such motor vehicles.

(5) Any person, firm or corporation who knowingly sells or exchanges or offers to sell or exchange a motor vehicle contrary to the provisions of this section, and every officer, agent or employee of any person, firm or corporation and every person who shall authorize, direct, aid in, or consent to the sale or exchange or offer for sale or exchange a motor vehicle contrary to the provisions of this section or who violates the provisions of subsection (3) of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

History.—§ §1-3, ch. 20226, 1941; (1), (2) §1, ch. 28185, 1953; (1), (2), §1, ch. 29850, 1955; (2) §1, ch. 57-390; (3) §1, ch. 59-174; §1, ch. 59-452.

319.15 Notice of lien on motor vehicles; recording.—No liens for purchase money or as security for a debt in the form of retain title contract, conditional bill of sale or chattel mortgage, or otherwise, on a motor vehicle, as now or may hereafter be defined by law, shall be enforceable in any of the courts of this state, against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien, showing the following information, viz:

(1) Name and address of the registered owner;

(2) Date and amount of lien;

(3) Description of the motor vehicle; particularly showing make, type, motor and serial number; and

(4) Name and address of lien holder;

shall be recorded in the office of the motor vehicle commissioner of the state, which filing is in lieu of all filing and recording now required or authorized by law, and shall be effective as constructive notice when filed; provided, however, that this law shall not apply or be effective as to any retain title contract, conditional bill of sale, chattel mortgage or other like instrument executed prior to August 1, 1941, nor to any retain title contract, conditional bill of sale, chattel mortgage or other like instrument covering any new or used motor vehicle floor plan stock of any motor vehicle dealer.

History.—§1, ch. 20917, 1941.
cf.—§28.22 Record books to be kept.

319.151 Title certificate to accompany notice of lien.—The motor vehicle commissioner shall not enter any lien upon his lien records, whether it be a first lien or a subordinate lien, unless the official certificate of title issued for the vehicle is furnished with the notice of lien, so that the record of lien, whether original or subordinate, may be noted upon the face thereof.

History.—§9, ch. 28184, 1953.

319.16 Satisfaction of lien.—Upon the payment of any such lien the debtor, or the registered owner of such motor vehicle, shall be entitled to demand and receive from the lien holder a satisfaction of such lien which shall likewise be filed in the office of such motor vehicle commissioner.

History.—§2, ch. 20917, 1941.

319.161 Methods of proof.—The motor vehicle commissioner under precautionary rules and regulations to be promulgated by him may permit the use, in substitution of the formal satisfaction of lien, of other methods of satisfaction, such as perforation, appropriate stamp, or otherwise, as he deems reasonable and adequate.

History.—§10, ch. 28184, 1953.

319.17 Rules and regulations; public record.—The motor vehicle commissioner shall make such rules and regulations as he deems necessary or proper for the effective administration of this law and shall prepare the forms of such notice of lien and satisfactions thereof, to be supplied, at not to exceed fifty per cent more than cost to any applicant, for recording such liens or satisfactions and shall keep a permanent record of such notice of liens and satisfactions in a book in his office open to the inspection of

the public at all reasonable times. The said commissioner is hereby authorized to furnish certified copies of such notices or satisfactions for a fee of one dollar; which certified copies shall be admissible in evidence in all courts of this state under same conditions and to same effect as certified copies of other public records.

History.—§3, ch. 20917, 1941.

cf.—§319.08 Deputy motor vehicle commissioner; funds collected; title indexes.

319.18 Fees for recording.—The motor vehicle commissioner shall be entitled to a fee of fifty cents for the recording of each notice of lien and each satisfaction thereof, to be paid at the time of the recording thereof. All of the fees collected shall be paid into the general revenue fund.

History.—§4, ch. 20917, 1941; §41, ch. 26869, 1951.

319.19 Failure to furnish satisfaction.—Should any person, firm or corporation holding such lien, which has been recorded in the office of such motor vehicle commissioner, upon payment of such lien and on demand, fail or refuse, within thirty days after such payment and demand, to furnish the debtor or the registered owner of such motor vehicle a satisfaction thereof, then, in that event, he, it or they, shall be held liable for all costs, damages, and expenses, including reasonable attorney's fees, lawfully incurred by the debtor or the registered owner of such vehicle in any suit which may be brought in the courts of this state for the cancellation of such lien.

History.—§5, ch. 20917, 1941.

319.20 Application of law; definitions.—The provisions of this law shall apply exclusively, except as otherwise specifically provided, to motor vehicles required to be registered and licensed under the provisions of chapter 320. For the purposes of this law the term "Motor Vehicle" shall also include a commercial trailer of one ton or more and a tractor-trailer combination and trailer-coach. For the purposes of this law "person" includes a natural person, firm, co-partnership, association or corporation; "Trailer-Coach" means any trailer or semi-trailer so designed and equipped as to provide living and/or sleeping facilities and drawn by a motor vehicle; and "Commissioner" means the motor vehicle commissioner of Florida.

History.—§1, ch. 23658, 1947.

319.21 Necessity of manufacturer's statement of origin and certificate of title.—

(1) No manufacturer, distributor, dealer or other person shall sell or otherwise dispose of a new motor vehicle to a distributor, dealer or other person without delivering to such distributor, dealer or other person a manufacturer's statement of origin duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof, on forms approved by the commissioner; nor shall any distributor, dealer or other person purchase, acquire or bring into the state, except for temporary use and not for sale, a new motor vehicle without obtaining from the seller thereof such manufacturer's statement of origin. Such statement of origin shall be in the English language. In addition to the assignments stated herein, such manufacturer's statement of origin shall contain thereon a certification of the identification and description of the motor vehicle delivered and the name and address of the distributor, dealer or other person to whom said motor vehicle was originally sold, over the signature of an authorized official of the manufacturer who made the original delivery; provided however, that no statement of origin shall be required as to any new motor vehicle purchased from a person other than a manufacturer or a representative of a manufacturer in a state which does not require such statement of origin. Prior to the issuance of a certificate of title for any such new motor vehicle, the holder of any security interest therein may demand and receive from the owner thereof the manufacturer's statement of origin and may hold the same so long as he holds such security interest.

(2) No person hereafter shall sell or otherwise dispose of a motor vehicle without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser, nor purchase or otherwise acquire, or bring into the state a motor vehicle, except for temporary use, unless such person shall obtain a certificate of title for same in his, her or its name in accordance with the provisions of this law; provided that any dealer holding current dealer license plates issued by this state may, in lieu of having a certificate of title issued in the name of such dealer, reassign any existing certificate of title issued in this state or, if no certificate of title exists on such motor vehicle in this state and if the motor vehicle is not a new motor vehicle requiring a manufacturer's statement of origin under the provisions of this section, such dealer shall, over his signature, briefly note such fact of nonexistence and show the name and address of the party from whom the vehicle was obtained, on the face of the separate application for initial certificate of title which is made by the purchaser or transferee. It shall not be necessary for any licensed automobile dealer in Florida to obtain a certificate of title on any new motor vehicle which he is selling or which he acquires for sale if he obtains a manufacturer's statement of origin as provided in subsection (1) hereof, but such dealer shall attach the manufacturer's statement of origin to and certify on the face of the separate application for initial certificate of title which is made by the purchaser that said motor vehicle is a new motor vehicle, and shall also disclose the name and address of the manufacturer, distributor, or other person from whom he acquired said new motor vehicle.

(3) Notwithstanding the provisions of other laws of this state, no motor vehicle shall be eligible for initial registration in this state on and after August 1, 1961, unless the provisions of this section have been complied with insofar as said motor vehicle is concerned.

History.—§2, ch. 23658, 1947; §1, ch. 25150, 1949; §1, ch. 61-296.

319.22 Transfer of title.—

(1) Except as provided in §§319.21 and 319.28, no person acquiring a motor vehicle from the owner thereof, whether such owner be a dealer or otherwise, hereafter shall acquire a marketable title in or to said motor vehicle until he, she, or it shall have had issued to him, her or it a certificate of title to said motor vehicle; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title or an assignment of such certificate for said motor vehicle for a valuable consideration. Except as otherwise provided herein, no court in any case at law or in equity shall recognize the right, title, claim or interest of any person in or to any such motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered, unless evidenced by and on a certificate of title duly issued, in accordance with the provisions of this law.

(2) An owner who has made a bona fide sale or transfer of a motor vehicle and has delivered possession thereof to a purchaser shall not by reason of any of the provisions of this law, be deemed the owner of such vehicle so as to be subject to civil liability for the operation of such vehicle thereafter by another when such owner has fulfilled either of the following requirements:

(a) When such owner has made proper endorsement and delivery of the certificate of title as provided by this law.

(b) When such owner has delivered to the commissioner, or placed in the United States mail, addressed to the commissioner, either certificate of title properly endorsed, or the following notice:

Motor Vehicle Commissioner
Tallahassee, Florida

I have this day sold and delivered to.....
....., Motor
(Name and Address of New Owner)
Vehicle, Certificate of Title No.....
Make..... Type..... Model.....
Serial No..... Motor No..... Year Make.....
Date..... .....
(Former Owner)
.....
(Address of Former Owner)

History.—§3, ch. 23658, 1947; §2, ch. 25150, 1949.

319.23 Application for, and issuance of certificate.—

(1) Application for a cerificate of title shall be made upon a form to be prescribed by the commissioner and shall be sworn to before a notary public or other officer empowered to administer oaths; and shall be filed with the commissioner and shall be accompanied by the fee prescribed in this law; and if a certificate of title has previously been issued for such motor vehicle in this state, shall be accompanied by said certificate of title duly assigned, or assigned and reassigned, unless otherwise provided for in this law; and if the motor vehicle for which application for a certificate of title is made is a new motor vehicle for which a manufacturer's statement of origin is required by the provisions of §319.21 (1), the application for a certificate of title shall be accompanied by such manufacturer's statement of origin.

(2) If a certificate of title has not previously been issued for such motor vehicle in this state, said application, unless otherwise provided for in this law, shall be accompanied by a proper bill of sale or sworn statement of ownership, or a duly certified copy thereof, or by a certificate of title, bill of sale or other evidence of ownership required by the law of another state from which such motor vehicle was brought into this state. The said application shall also be accompanied by a sworn statement that the applicant has made a physical examination of said motor vehicle and that the motor and serial numbers are identical with the motor and serial numbers shown in said application.

(3) Upon application for certificate of title of a vehicle previously titled or registered outside of this state, the application shall show on its face such fact and the time and place of the last issuance of certificate of title, or registration, of such vehicle outside this state, and the name and address of the governmental officer, agency, or authority making such registration, together with such further information relative to its previous registration, as may reasonably be required by the commissioner, including the time and place of original registration, if known, and if different from such last foreign registration. The applicant shall surrender to the commissioner all certificates, registration cards, or other evidence of foreign registration as may be in his possession or under his control.

(4) The certificate of title issued by the commissioner for a vehicle previously registered outside this state shall give the name of the state or country in which such vehicle was last previously registered outside this state. The commissioner shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The commissioner shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying same with the records of motor vehicles in his office, or otherwise as he may decide; and if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, he shall issue a certificate of title over his signature, but not otherwise.

(5) In the case of the sale of a motor vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser, and in all other cases such certificate shall be obtained by the purchaser. In all cases of transfers of motor vehicles, the application for certificate of title, or corrected certificate, or assignment or reassignment, shall be filed within ten days from the delivery of such motor vehicle. An appli-

cant shall be required to pay an extra fee of one dollar, in addition to all other fees and penalties required by law for failing to file such application within said ten days. Licensed dealers need not apply for certificates of title for such motor vehicles in stock or where such are acquired for stock purposes, but upon transfer of same shall either give transferee a reassignment of the certificate of title on such motor vehicle or shall make notation on the face of the application by transferee as provided in §319.21.

History.—§4, ch. 23658, 1947; §3, ch. 25150, 1949; (2) §1, ch. 28184, 1953; (1) §2, ch. 61-296.
cf.—§319.32 Fees for memorandum certificate.

319.24 Issuance in duplicate; delivery; liens and encumbrances.—

(1) The commissioner shall issue the certificate of title and all corrected certificates in duplicate. One copy shall be retained by him and filed in his office.

(2) The commissioner or his duly authorized deputy shall sign the original certificate of title and all corrected certificates, and, if there are no liens or encumbrances on said motor vehicle, as shown in his records or as shown in the application, shall deliver said certificate to the applicant, or as directed by the applicant, or person, agent or attorney submitting such application. If there are one or more liens or encumbrances on said motor vehicle, said certificate and a form to be subsequently used by the lien holder as a satisfaction shall be delivered or mailed to the holder of the first lien as shown by the records in the office of the commissioner as soon as possible. If the application for certificate shows the name of a first lien holder different from the name of the first lien holder as shown by the records in the office of the commissioner, the certificate shall not be issued to any person until after all parties who appear to hold a lien or liens and the applicant for the certificate have been notified in writing by the commissioner of the conflict. If the parties do not amicably clear up the conflict within ten days from the date of the sending of such notice, then the commissioner shall serve notice in writing by registered mail on all persons appearing to hold liens on that particular vehicle, including the applicant for the certificate, to show cause within ten days from the date the notice is mailed why he should not issue and deliver the certificate to the lien holder whose name appears in the application as the first lien holder without showing any lien or liens as outstanding other than those appearing in the application, or which may have been filed subsequent to the filing of the application for the certificate. If any person other than the lien holder shown in the application or a party filing a subsequent lien should in answer to said notice to show cause appear in person, or by a representative, or in writing, and file a statement in writing under oath that his lien or liens on that particular vehicle is still outstanding with the amount unpaid, then the commissioner shall not issue the certificate to anyone until after such conflict has been settled by the lien claimants involved or by a court of competent jurisdiction. If not settled amicably, the complaining party shall have ten days to obtain a ruling, or a stay order, from a court of competent jurisdiction, and if no ruling or stay order is issued and served on the commissioner within said ten days, he shall issue the certificate to the original applicant showing no liens except those shown in the application and thereafter. All duplicate certificates and corrected certificates shall only show such lien or liens as was shown in said application and subsequently filed liens that may be outstanding.

(3) The certificate of title shall be retained by the first lien holder until the entire amount of such first lien is fully paid.

(4) If the owner of the motor vehicle desires to place a second or subsequent lien or encumbrance against said motor vehicle, upon written request of the owner as shown by the certificate of title, to the first lien holder by registered mail, such first lien holder shall forward the certificate to the commissioner for such endorsement or endorsements, and the commissioner shall return the certificate to the first lien holder after endorsing such lien on the certificate and on his duplicate. The commissioner shall make the same notation on the memorandum certificate, if one accompanied the notice of lien, and return same to the owner. If the first lien holder should fail, neglect or refuse to forward the certificate of title to the motor vehicle commissioner at the request of the owner within ten days from the date of such request, then the motor vehicle commissioner, on the written request of the subsequent lien holder or an assignee thereof, shall demand of the first lien holder the return of said certificate for the notation of the second or subsequent lien or encumbrance.

(5) If there is a subsequent lien or encumbrance on said motor vehicle, the certificate shall be delivered to the person holding the next lien or encumbrance upon said motor vehicle and be retained by such person until the entire amount of such lien or encumbrance is fully paid.

(6) (a) Upon final payment of any first lien or encumbrance, a satisfaction thereof shall be endorsed in the space provided on the face of the certificate of title and if there are no subsequent liens shown thereon said certificate shall be delivered to the owner, person, firm or corporation paying off said lien or encumbrance and an executed satisfaction on a form to be provided by the commissioner shall be forwarded within ten days to the motor vehicle commissioner by the lien holder who has received payment.

(b) In the event the certificate of title shows a subsequent lien or liens not then being discharged, an executed satisfaction of the first lien, shall be delivered to the person, firm or corporation paying off said lien and the certificate of title showing satisfaction of the first lien shall be forwarded to the commissioner within ten days.

(c) If there are no subsequent liens or encumbrances upon said motor vehicle, the motor vehicle commissioner shall upon receipt of certificate of title showing satisfaction of the first lien, forward to the owner a corrected certificate showing no liens or encumbrances. If there is a subsequent lien not being discharged, the certificate of title shall be delivered to the subsequent lien holder as provided in subsection (5).

(7) When the original certificate of title cannot be returned and evidence satisfactory to the commissioner is produced that all liens or encumbrances have been satisfied, upon application by the owner for a duplicate copy of the certificate upon the form prescribed by the commissioner, accompanied by the fee prescribed in this law, a duplicate copy of the certificate of title, without statement of liens or encumbrances, shall be issued by the commissioner and delivered to the owner.

(8) Any person failing to forward to the motor vehicle commissioner upon written demand of the commissioner such satisfaction of lien and the certificate of title, as required by this section, shall upon conviction, for a first offense, be sentenced to pay a fine of ten dollars and costs of prosecution, and, in default of the payment thereof, shall be imprisoned for not more than five days, and for every subsequent failure to deliver upon demand such satisfaction and the certificate of title be sentenced to pay a fine of twenty-five dollars, and costs of prosecution, and, in default of the payment thereof, shall be imprisoned for not more than ten days.

(9) Any person failing to return to the commissioner a certificate of title, when there are subsequent liens or encumbrances to be noted, or for correction and delivery of corrected certificate as provided by this law, shall upon conviction be sentenced to pay a fine of ten dollars and costs of prosecution, and in default of the payment thereof be imprisoned for not more than five days, and for every subsequent failure to return such certificate of title shall be sentenced to pay a fine of twenty-five dollars and costs of prosecution, and, in default of the payment thereof, shall be imprisoned for not more than ten days; provided, that no person shall be deemed guilty of a violation of this section if he shall forward the certificate of title to the commissioner within ten days of the demand by the commissioner together with the satisfaction of any lien or encumbrance paid to him.

(10) The commissioner shall assign a number for each certificate of title and shall maintain in his office indices for such certificate of title. The commissioner shall not be required to retain on file any bill of sale or duplicate thereof, or notice of lien, or satisfaction of lien, covering any motor vehicle for a period longer than seven years after the date of the filing thereof and thereafter the same may be destroyed.

(11) The commissioner shall in the sending of any notice only be required to use the last known address as shown by the records in his office.

History.—§5, ch. 23658, 1947; §4, ch. 25150, 1949; § §2-5, ch. 28184, 1953; (2) and (6) §1, ch. 59-189; (2) §1, ch. 61-510; (6) (a), (b) §1, ch. 61-450.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

319.241 Removal of lien from records.—If the owner of a motor vehicle upon which a lien has been filed in the office of the motor vehicle commissioner or noted upon a certificate of title for a period of five years, applies to the commissioner in writing for such lien to be removed from the commissioner's files or from the certificate of title and accompanies said application with evidence satisfactory to the commissioner that the applicant has notified the lien holder by registered mail, not less than twenty days prior to the date of said application, of his intention to apply to the commissioner for removal of said lien, ten days after receipt of the said application, the commissioner may remove said lien from his office files or from the certificate of title, as the case may be, provided, no statement in writing protesting removal of said lien is received by the commissioner from the lien holder within the said ten days period. If, however, the lien holder should file with the commissioner within the said ten days period, a written statement that the said lien is still outstanding with the amount unpaid, the commissioner shall not remove said lien until such time as the lien holder presents a satisfaction thereof to the commissioner.

History.—§1, ch. 59-479.

319.25 Rules and regulations; forms; cancellation of certificates; lists and searches; fees.—

(1) The commissioner may adopt such reasonable rules and regulations as he may deem necessary to insure uniform and orderly operation of this law. The commissioner shall provide and furnish the forms required by this law.

(2) If it appears that a certificate of title has been improperly issued, the commissioner shall have the power and it shall be his duty to cancel same. Upon cancellation of any certificate of title the commissioner shall notify the person to whom such certificate of title was issued as well as any lien holders appearing thereon of said cancellation and shall demand the surrender of such certificate of title, but said cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return same to the commissioner forthwith. If a certificate of registration has been issued to the holder of a certificate of title so cancelled, the commissioner shall immediately cancel same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the commissioner forthwith.

(3) The commissioner shall keep on hand a sufficient supply of blank forms, which, except

certificate of title and memorandum certificate forms, shall be furnished and distributed without charge to all persons residing within the state.

(4) The commissioner is authorized, upon application of any person and payment of the proper fees, to prepare and furnish lists containing title information in such form and subject to such territorial division and/or other classification as the commissioner may authorize; to search the records of the bureau and make reports thereof, and to make photographic copies of the bureau records and attestations thereof.

(5) Fees therefor shall be charged and collected as follows:

(a) For lists of title for the entire state, or any part or parts thereof, divided according to counties, a sum computed at the rate of not over five cents per item.

(b) For photographic copies of records and attestations thereof, under the signature and seal of the commissioner, one dollar a copy. Such copy or copies shall be taken as prima facie evidence of the fact therein stated, in any court of the state.

(c) For information relating to the registration and title of a motor vehicle, fifty cents, provided, licensed dealers or individuals, firms or corporations who own or represent a person having an interest in or who hold a recorded lien may obtain without charge oral or written information upon such vehicles up to and including five vehicles in any one day and not more than fifty in any one month.

(d) The commissioner shall furnish without charge or limitation as to number to state highway patrol, sheriffs or chiefs of police or any licensed dealer or his authorized representative, after satisfying the commissioner as to the purpose of the investigation, information on any title or tag.

History.—§6, ch. 23658, 1947; §5, ch. 25150, 1949; (5) §6, ch. 28184, 1953; (5) (c), (d) n. §1, ch. 59-157.

319.26 Theft or conversion of motor vehicles.—

(1) It shall be the duty of the department of public safety, every sheriff, chief of police, constable, or designated officer of the motor vehicle department, having knowledge of a stolen motor vehicle, immediately to furnish the commissioner with full information in connection therewith.

(2) It shall be the duty of the commissioner whenever he may receive a report of the theft or conversion of a motor vehicle, whether the same has been registered or not, and whether owned in this or any other state, together with the make and manufacturer's serial number or motor number thereof, to make a distinctive record thereof and file same in the numerical order of the manufacturer's serial number or motor number with the index records of the vehicles of such make. Such index shall be known as the "Stolen and Recovered Motor Vehicle Index". The commissioner shall prepare a report listing motor vehicles stolen and recovered as disclosed by the reports submitted to him, to be distributed as he may deem advisable.

(3) The commissioner shall publish once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of the same to the director of public safety, a copy to every sheriff and all police departments in Florida. The published list shall not include the converted cars. Such list shall also be forwarded to the secretary of state, or other proper official, in each state of the United States. Before issuing a certificate of title, or corrected certificate, or duplicate, or memorandum certificate, as heretofore provided, the said commissioner shall check the motor, chassis and serial number on the motor vehicle to be registered against the stolen and recovered motor vehicle index.

(4) In the event of the recovery of a stolen or converted motor vehicle it shall be the duty of the owner immediately to notify the commissioner who shall cause the record of the theft or conversion to be removed from his index.

History.—§7, ch. 23658, 1947.

319.27 Application of existing laws; rights of mortgagees, lien holders, etc.; notation on certificate.—

(1) The provisions of §§28.22 and 319.15 shall never be construed to apply to or to permit or require the notice of lien, deposit, filing or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument, or any copy of the same, made hereafter and covering a motor vehicle.

(2) Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument made after August 1, 1949, and covering a motor vehicle required to be registered, if a notation of the lien or encumbrance has been made by the commissioner on the face of the certificate of title for such vehicle, shall be valid as against the creditors of the mortgagor whether armed with process or not and subsequent purchasers, mortgagees and other lien holders or claimants, but otherwise shall not be valid against them. All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the commissioner. Provided, however, that the lien shown on the application for original certificate of title shall take priority over all liens or encumbrances filed subsequent to the date shown on such application. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any duly noted lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against the creditors of such owner, or holder of subsequent liens, mortgages or encumbrances upon such motor vehicle.

(3) (a) The holder of a chattel mortgage, trust receipt, conditional sales contract or similar instrument covering a motor vehicle, upon presentation of the certificate of title issued in

this state, and the surrender of the memorandum certificate previously issued to the owner, if one is available, together with a sworn notice of lien on a form to be provided by the commissioner and showing the following information: (a) date and amount of lien, (b) kind of lien, (c) name and address of registered owner, (d) description of motor vehicle, showing make, type, motor and serial number, and (e) name and address of lien holder; may have notation of such lien made on the face of such certificate of title. Should the original lien holder sell and assign his lien to some other person and such assignee desires to have his name substituted on the certificate of title as the holder of such lien, he may on delivering the original certificate of title to the commissioner and a sworn statement of such assignment, have his name substituted as such lien holder.

(b) Any person, firm or corporation holding a lien for purchase money or as security for a debt in the form of a chattel mortgage, trust receipt, conditional sales contract or similar instrument covering a motor vehicle upon which no certificate of title has been issued in this state, may use the facilities of the office of the motor vehicle commissioner for the recording of such lien as constructive notice of such lien to creditors and purchasers of said motor vehicle in Florida, provided such lien holder files a sworn notice of such lien, in the office of the motor vehicle commissioner, showing the following information, viz: (a) name and address of the owner on the date lien was created, (b) date and amount of lien, (c) description of the motor vehicle, particularly showing make, type, motor and serial number, and (d) name and address of lien holder. Upon the filing of such notice of lien it shall be recorded in the office of the motor vehicle commissioner, and provided further, this section shall not apply to any retain title contract, conditional bill of sale, chattel mortgage, trust receipt or other like instrument covering any new or used motor vehicle floor plan stock of any motor vehicle dealer.

(c) When a Florida certificate of title is first issued on such vehicle the lien information shall be noted on the Florida certificate of title as is now provided for the noting of liens on motor vehicles registered and titled in Florida.

(d) Upon payment of any such lien the debtor, or the registered owner of such motor vehicle, at the time or subsequent to the time a Florida certificate of title is issued on said motor vehicle, shall be entitled to file in the office of such motor vehicle commissioner a satisfaction of such lien.

(e) The motor vehicle commissioner shall be entitled to a fee of one dollar for the recording of each notice of lien and a fee of fifty cents for each satisfaction thereof, both to be paid at the time of the recording of the lien.

(f) Any person, firm or corporation purchasing a motor vehicle upon which no certificate of title has been issued in Florida shall be deemed to be an innocent purchaser for value, without notice, of any retain title contract, conditional bill of sale or chattel mortgage, provided such purchaser: 1. procures from the person selling such vehicle a sworn statement showing: a. that no lien does exist, b. name and address of owner on the date the current tag on such vehicle was acquired; c. county and state where current tag on such vehicle was acquired; 2. attaches to such sworn statement the certificate of title, if one has been issued. If a certificate of title has not been issued, procures from the seller an oath that no certificate of title has ever been issued, and 3. obtains a telegram or statement in writing from the motor vehicle commissioner, or like officer, in the state of the current tag, to the effect that no lien does exist on said motor vehicle. If facilities do not exist in that office for the recording of liens, then the purchaser shall obtain a telegram or statement in writing from the recording officer of the city or county and state of the residence of the seller as shown by the sworn statement, that no lien against said motor vehicle is of record in such county.

If the law of such state does not require retain title contract, conditional bill of sale or chattel mortgage to be recorded in the office of the motor vehicle commissioner, or like officer in said state, or elsewhere in said state, or noted as a lien on a motor vehicle registration certificate, in order to be enforceable against subsequent purchasers or lienors in said state, then it shall be unnecessary for said purchaser of said motor vehicle to obtain such telegram or statement in writing and, unless said purchaser has actual knowledge of such retain title contract, conditional bill of sale or chattel mortgage, said purchaser shall be deemed to be an innocent purchaser for value, without notice, if said purchaser has otherwise complied with the provisions of this subsection.

(g) Except for the recording of liens upon motor vehicles upon which no title certificate has been issued in this state, the office of the motor vehicle commissioner shall not be a recording office for liens on motor vehicles, and all liens, mortgages and encumbrances, on motor vehicles titled in Florida, shall be noted upon the face of the certificate of title as and when issued in Florida or on a duplicate or corrected copy thereof, as is now provided by law.

(4) The provisions of §§28.22 and 319.15 shall continue to apply to the notice of lien, deposit, filing, refiling, or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument or any copy of same, made prior to August 1, 1949, and covering a motor vehicle, unless and until the indebtedness evidenced by such chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, has been noted

by the motor vehicle commissioner on the certificate of title provided for by this law.

History.—§8, ch. 23658, 1947; §6, ch. 25150, 1949; (3) §10, ch. 26484, 1951; (3) §7, ch. 28184, 1953; (3) §1, ch. 59-340.

319.28 Transfer of ownership by operation of law.—

(1) In the event of the transfer of ownership of a motor vehicle by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, attachment, execution or other judicial sale or whenever the engine of a motor vehicle is replaced by another engine, or whenever a motor vehicle is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a chattel mortgage, conditional sales contract, trust receipt or other like agreement, the commissioner, upon the surrender of the prior certificate of title, or when that is not possible, upon presentation of satisfactory proof to the said commissioner of ownership and right of possession to such motor vehicle, and upon payment of the fee prescribed by law, and presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the application is predicated upon a chattel mortgage, conditional sales contract, trust receipt or other like agreement, the original or a certified copy of the original of such instrument shall accompany the application provided that if the owner under a chattel mortgage voluntarily surrenders possession of such motor vehicle the original of the chattel mortgage shall accompany the application for a certificate of title and it shall not be necessary to institute proceedings in any court to foreclose such mortgage.

When the application for a certificate of title is made by an heir or heirs of a previous owner who died intestate it shall not be necessary to accompany the application with an order of a probate court, provided the applicant files with the motor vehicle commissioner an affidavit that the estate is not indebted and the surviving spouse, if any, and the heirs, if any, have amicably agreed among themselves upon a division of the estate. If the previous owner died testate the application shall be accompanied by a certified copy of the will, if probated and an affidavit that the estate is solvent with sufficient assets to pay all just claims, and if the will is not being probated then by sworn copy of the will and an affidavit that the estate is not indebted.

(2) Only an affidavit by the person, or agent of the person to whom possession of such motor vehicle has so passed, setting forth facts entitling him to such possession and ownership, together with a copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession. If the applicant cannot produce such proof of ownership he may submit such evidence as he may have, and the commissioner may thereupon, if he finds the evidence sufficient, issue a certificate of title.

(3) If, from the records in the office of said commissioner, there appears to be any other lien or liens on said motor vehicle, such certificate of title shall contain a statement of said liens, unless such application is either accompanied by proper evidence of their satisfaction or extinction, or contains a statement reciting that at least five days' registered mail notice of intention to seek repossessed certificate of title has been given each lien or encumbrance holder noted as subsequent on the last issued certificate of title. If such notice is given and no written protest to the commissioner is presented within ten days from the date of the giving of the registered notice by any subsequent lien holder, then the certificate of title shall be issued showing no liens. If the former owner or any subsequent lien holder should file within the said ten days a written protest, under oath, then the commissioner shall not issue the repossessed certificate for ten days thereafter. If within said ten days no injunction or other order of a court of competent jurisdiction has been served on the commissioner commanding him not to deliver the certificate, then he shall deliver the repossessed certificate to the applicant or as may otherwise be directed in the application showing no other liens than those shown in the application.

History.—§9, ch. 23658, § § 1, 2, ch. 23723, 1947; §7, ch. 25150, 1949; (1) §8, ch. 28184, 1953; (1) §1, ch. 61-446.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

319.29 Lost or destroyed certificates; memorandum certificates.—

(1) In the event of a lost or destroyed certificate of title, application shall be made to the commissioner by the owner of said motor vehicle or the holder of a lien thereon for a duplicate copy of same upon a prescribed form and under regulations issued by the commissioner and accompanied by a fee prescribed by this law. Such application shall be signed and sworn to by the person making the same. Thereupon the commissioner shall issue a duplicate copy of said certificate of title to the person entitled to receive the certificate of title under the provisions of this law. Said duplicate copy and all subsequent certificates of title issued in the chain of title originated by said duplicate copy shall be plainly marked across their faces "duplicate copy," and any subsequent purchaser of said motor vehicle in the chain of title originating through such duplicate copy shall acquire only such rights in such motor vehicle as the original holder of said duplicate copy himself had.

(2) Any purchaser of such motor vehicle may at the time of such purchase require the seller of same to indemnify him and all subsequent purchasers of said motor vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the original certificate. In the event of the recovery of the original certificate of title by said owner he shall forthwith surrender same to the commissioner for cancellation.

(3) The owner of a motor vehicle shown by

the certificate of title may at any time make application to the commissioner for a memorandum certificate, which application shall be made upon a form to be prescribed by the motor vehicle commissioner and signed and sworn to by such applicant. Upon receipt of such application, if the same appears to be regular, together with the fee prescribed by this law, the commissioner shall issue to such applicant a memorandum certificate for said motor vehicle. Whenever the original certificate is delivered to a lien holder, the commissioner shall furnish to the owner a memorandum certificate without application and without any further fees. If the application is made at the time of application for a certificate of title no fee shall be required for the memorandum certificate. In the event such memorandum certificate is lost or destroyed, the holder thereof may obtain a duplicate copy of the same upon the filing of an application therefor with said commissioner on a prescribed form and accompanied by the fee prescribed in this law. In the event of the recovery of the original memorandum certificate by said owner he shall forthwith surrender same to the commissioner for cancellation. Such memorandum certificate shall be effective only for the purpose of obtaining a certificate of registration, is not assignable, and constitutes no evidence of title or of right to transfer or encumber the motor vehicle described therein.

History.—§10, ch. 23658, 1947; §8, ch. 25150, 1949; §11, ch. 25035, 1949.

319.30 Dismantling, destruction, change of identity of vehicle; motor vehicle declared salvage.—

(1) Each owner of a motor vehicle and each person mentioned as owner in the last certificate of title, when such motor vehicle is dismantled, destroyed, or changed in such manner that it is not the motor vehicle described in the certificate of title, shall surrender his certificate of title to the commissioner and thereupon said commissioner shall with the consent of any holders of any liens noted thereon, enter a cancellation upon his records. Upon cancellation of a certificate of title in the manner prescribed by this section, the commissioner may cancel and destroy all certificates and all memorandum certificates in that chain of title.

(2) When the frame or engine is removed from a motor vehicle and not immediately replaced by another frame or engine, or when an insurance company has paid out money as compensation for total loss of motor vehicle, such motor vehicle shall be considered to be salvage. The owner of every motor vehicle model 1955 and those produced thereafter which have been declared salvage shall, within seventy-two hours after such vehicle has been declared salvage, forward to the motor vehicle commissioner the title to the motor vehicle along with the vehicle's serial plate, whereupon the commissioner shall process the title and plate in the manner set forth in subsection one.

History.—§11, ch. 23658, 1947; §9, ch. 25150, 1949; §1, ch. 59-341.

319.31 Requisites of certificates; forms.— A certificate of title shall be printed upon a special watermarked paper to be selected by the commissioner. The commissioner may by regulation require additional information and may alter, change or modify the following forms shown in this section. He may prescribe such additional forms as may be needed in the administration of this law.

(1) CERTIFICATE OF TITLE

No.....

State of Florida, County of.....

This is to Certify that.....

(Registered Owner's Name)

.....

(Registered Owner's Address in Full)

is the owner of the following described motor vehicle:

Make..... Body..... Type..... Model.....

Mfr's Serial No..... Motor No.....

Year made.....

having acquired title to said motor vehicle from.....

.....

(Name of Previous Owner)

upon which motor vehicle are the following liens, mortgages or encumbrances:

LIENS.....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above, if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount	Kind of Lien	Holder	Address

Date of Notation.....

Date of Satisfaction.....

Commissioner's Signature.....

SECOND LIEN

Amount	Kind of Lien	Holder	Address

Date of Notation.....

Date of Satisfaction.....

Commissioner's Signature.....

THIRD LIEN

Amount	Kind of Lien	Holder	Address

Date of Notation.....

Date of Satisfaction.....

Commissioner's Signature.....

Witness my hand this..... day of....., 19.....

.....

(Motor Vehicle Commissioner)

(2) An "Assignment of Certificate of Title" shall appear on the face of or on the reverse side of each certificate of title.

ASSIGNMENT OF CERTIFICATE OF TITLE

State of Florida

County of.....

The undersigned, being the owner of the motor vehicle described in the within Certificate of Title, hereby sells and assigns all right, title

and interest in and to said Certificate of Title and the motor vehicle described therein to.....

.....

(Name of Assignee)

.....

(Address of Assignee in Full)

The undersigned states and warrants that there are no mortgages, liens or encumbrances on said motor vehicle except as noted on the face of this Certificate of Title.

Date.....

.....

(Signature of Assignor)

.....

(Address in Full)

Subscribed and sworn to before me at..... in the State of..... this..... day of....., 19.....

.....

(Notary Public)

A "reassignment by..... dealer" shall likewise appear on the reverse side of each Certificate of Title.

REASSIGNMENT BY.....DEALER

To be filled in by.....Dealer only.....

State of Florida

County of.....

The undersigned, being a.....Dealer, License No.....who purchased the motor vehicle described in the within Certificate of Title, hereby sells and assigns all his right, title and interest in and to said Certificate of Title and the motor vehicle described therein to

.....

(Name of Assignee)

.....

(Address of Assignee)

The undersigned states and warrants that there are no mortgages, liens or encumbrances on said motor vehicle except as noted on the face of this Certificate of Title.

Date.....

.....

..... DEALER

SUBSCRIBED and sworn to before me at..... .....in the State of..... this .....day of....., 19.....

.....

(Notary Public)

(3) APPLICATION FOR CERTIFICATE OF TITLE

State of Florida

County of.....

....

(Name of Applicant) (Address in Full)

hereby states that he, she, or it is the lawful owner or purchaser of the following described motor vehicle and makes application for a Certificate of Title to same:

Make..... Body..... Type..... Model.....

Mfr's Serial No..... Motor No.....

Year Made.....

Applicant acquired said motor vehicle by.....

.....

(State How Acquired)

From .....

residing at .....

(Address of Previous Owner in Full)

The following is a full statement of all liens, mortgages or encumbrances on said motor vehicle:

LIENS.....

(Note: If there are no liens, mortgages or encumbrances, the word "none" must appear on the above line; if there are any liens the word "yes" must appear with the following information.)

Amount Kind of Lien Holder Address

First Lien .....

Second Lien .....

Third Lien .....

Deliver Certificate to .....

Address .....

If previously registered outside of Florida;

"The above vehicle was previously registered on the ..... day of ..... A. D. 19..... at ..... in the County of ..... State of .....

By .....

(Officer, Agency or Authority)

Date .....

.....

(Signature of Applicant)

Subscribed and sworn to before me at .... in the State of ..... this ..... day of ..... 19.....

.....

(Notary Public)

DEALER CERTIFICATE

(To be part of Application)

I hereby certify that the Motor Vehicle described above is a ..... vehicle, and

(new or used)

was acquired by me from .....

(Name of Manufac-

..... whose

turer, Distributor or Former Owner)

address is .....

and no certificate has previously been issued.

I warrant title and certify that there are no liens other than shown in such application.

.....

By .....

License No. .....

Address .....

(4) MEMORANDUM CERTIFICATE CERTIFICATE OF TITLE

State of Florida, County of .....

No. ..... This is to certify that .....

(Registered Owner's Name)

.....

(Registered Owner's Address in Full)

appears from the record of this office to be the Registered Owner named in the above-mentioned certificate of title for the following described motor vehicle:

Make ..... Body .....

Type ..... Model .....

Mfr's. Ser. No. ..... Motor No. ..... Year Made .....

Having acquired title to said motor vehicle from:

(Address of Previous Owner in Full)

.....

(Name of Previous Owner)

.....

upon which motor vehicle are the following liens, mortgages or encumbrances:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above; if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....
Date of Satisfaction .....
Commissioner's Signature .....

SECOND LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....
Date of Satisfaction .....
Commissioner's Signature .....

THIRD LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....
Date of Satisfaction .....
Commissioner's Signature .....

This memorandum certificate is effective only for the purpose of obtaining a certificate of registration, is not assignable, and constitutes no evidence of title or of right to transfer or encumber the motor vehicle described herein.

Witness my hand this ..... day of ..... 19.....

.....

(Motor Vehicle Commissioner)

(5) APPLICATION FOR MEMORANDUM CERTIFICATE

State of Florida, County of .....

The undersigned hereby represents that he is the Registered Owner named in the Certificate of Title Number ..... issued by Motor Vehicle Commissioner ..... for the following described motor vehicle:

Make ..... Body .....
Type ..... Model .....
Mfr's. Ser. No. ..... Motor No. ..... Year Made .....

and that he is the lawful owner of said motor vehicle and is entitled by law to receive a memorandum certificate therefor.

.....

(Signature of Applicant)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

.....

(Notary Public)

(6) APPLICATION FOR ASSIGNMENT OF LIEN

State of Florida
County of .....

The undersigned hereby represents that he is the assignee of that certain lien dated the ..... day of ..... 19..... covering that certain motor vehicle described as follows:

Make Type Motor Serial Number

.....

originally held by .....
whose address is .....

as shown by accompanying certificate of title and desires to have the certificate show such lien now held by the undersigned and represents that on this date there is a balance of $..... as principal still due and unpaid.

.....

(Signature of Applicant)

.....

(Address)

Subscribed and sworn to before me at ..... in the State of ..... this ..... day of ..... 19.....

.....

(Notary Public)

(7) APPLICATION FOR DUPLICATE COPY OF CERTIFICATE OF TITLE OR MEMORANDUM CERTIFICATE

State of Florida, County of .....

The undersigned hereby makes application for a duplicate copy of (Certificate of Title) (Memorandum Certificate) No. ..... issued to .....

(Owner's Name)

residing at .....
on the ..... day of ..... 19....., for the following described motor vehicle:

Make ..... Body .....
Type ..... Model .....
Mfr's. Ser. No. ..... Motor No. ..... Year Made .....

upon which there are the following mortgages, liens, and encumbrances:

LIENS .....

(Note: If there are no liens, mortgages or encumbrances the word "none" will appear above; if there are any liens the word "yes" will appear with the following information.)

FIRST LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....

SECOND LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....

THIRD LIEN

Amount ..... Kind of Lien .....
Holder ..... Address .....
Date of Notation .....

This applicant represents, for the purpose of obtaining said duplicate copy that he is the lawful owner of (lien holder of) said motor vehicle, and that the original Certificate of Title (memorandum certificate) has been lost or destroyed; that said motor vehicle has not

been sold or disposed of, or mortgaged or otherwise encumbered except as above set forth, and is now in the possession of .....

.....

(Name of Owner or Lien Holder)

residing at .....

(Address in Full)

and that if said Certificate of Title (memorandum certificate) be hereafter recovered by this applicant, he will deliver same to the Commissioner of motor vehicles for cancellation.

Deliver Certificate to .....
Address .....
Dated .....

.....

(Signature of Applicant)

.....

(Address in Full)

Subscribed and sworn to before me at .... in the State of ....., this ..... day of ..... 19.....

.....

(Notary Public)

(8) NOTICE OF LIEN

Certificate No. .....

Notice is hereby given that there is an existing written contract between the undersigned involving the motor vehicle described below, and the undersigned lien holder claims a lien as herein shown.

Motor No.		Serial No.
Make	Year	Type
Kind of Lien	Amount of Lien	Date of Lien

(To be signed by the Registered Owner or Owners and by the Lien Holder and sworn to by each before a Notary.)

.....

.....

(Signature of Registered Owner)

.....

(Address of Owner)

Sworn to and subscribed before me this ..... day of ..... 19.....

.....

(Notary Public) (SEAL)

.....

(Signature of Lien Holder)

.....

(Address of Lien Holder)

Sworn to and subscribed before me this ..... day of ..... 19.....

.....

(Notary Public) (SEAL)

(9) SATISFACTION OF LIEN

Certificate No. .....

The undersigned owner and holder of the following described lien on the following described motor vehicle:

Motor No.		Serial No.
Make	Year	Type
Kind of Lien	Amount of Lien	Date of Lien

Hereby acknowledges full payment and satisfaction of the above described lien this ..... day of ..... 19.....

.....

(Signature of Lien Holder)

.....

(Address of Lien Holder)

Sworn to and subscribed before me this ..... day of ..... 19.....

.....

(Notary Public) (SEAL)

History.—§12, ch. 23658, 1947; §10, ch. 25150, 1949.

319.32 Fees.—The commissioner shall charge a fee of fifty cents for each memorandum certificate, except as provided in §319.29; fifty cents for each duplicate copy of a certificate of title; fifty cents for each assignment by a lien holder and a fee of one dollar for each original certificate of title. He shall also charge a fee of one dollar for noting a lien on a certificate, which fee shall include the services for the subsequent issuance of a corrected certificate or cancellation of lien when that particular lien is satisfied.

He shall charge a fee of fifty cents for noting the cancellation of any lien filed prior to August 1, 1949.

All fees collected under this law shall be paid into the general revenue fund.

History.—§13, ch. 23658, 1947; §11, ch. 25150, 1949; §42, ch. 26869, 1951.

319.33 Alteration or forgery; procuring or passing certificate covering stolen vehicle; serial numbers; false or fictitious name or address.—Whoever alters or forges any certificate of title to a motor vehicle, or any assignment thereof or any cancellation of any liens on a motor vehicle; or whoever holds or uses such certificate or assignment or cancellation knowing the same to have been altered or forged; or whoever procures or attempts to procure a certificate of title to a motor vehicle, or passes or attempts to pass a certificate of title or any assignment thereof to a motor vehicle, knowing or having reason to believe that such motor vehicle has been stolen; or whoever sells or offers for sale in this state a motor vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered or defaced with knowledge of such destruction, removal, covering, alteration or defacement of said motor number or manufacturer's serial number; or whoever uses a false or fictitious name or gives a false or fictitious address or makes any false statement in any application or affidavit required under the provisions of this law, or in a bill of sale or sworn statement of ownership or otherwise commits a fraud in any application shall upon conviction thereof be punished by

imprisonment in the state penitentiary not exceeding five years, or by fine not exceeding five thousand dollars or both, in the discretion of the court. This section shall not be exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of motor vehicles, but shall be deemed supplementary thereto.

History.—§14, ch. 23658, 1947.

319.34 Transfer without delivery of certificate; operation without certificate; failure to surrender; other violations.—Whoever shall, except as otherwise provided for in this law, purport to sell or transfer a motor vehicle without delivery to the purchaser or transferee thereof a certificate of title thereto duly assigned to such purchaser as provided in this law or shall operate in this state a motor vehicle for which a certificate of title is required without such certificate having been obtained in accordance with the provisions of this law, or upon which the certificate of title has been cancelled; or whoever shall fail to surrender any certificate of title or memorandum certificate or any certificate of registration or license plates or tags upon cancellation of the same by the commissioner and notice thereof as prescribed in this law; or whoever fails to surrender the certificate of title to the commissioner as provided in this law in case of the destruction or dismantling or change of a motor vehicle in such respect that it is not the motor vehicle described in the certificate of title; or whoever shall violate any of the other provisions of the law, or any lawful rule or regulation promulgated pursuant to the provisions of this law, shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both, for each offense.

History.—§15, ch. 23658, 1947; §12, ch. 25150, 1949.

CHAPTER 320

MOTOR VEHICLE LICENSES, ETC.

320.01 Definitions, general.—In construing these statutes, when applied to motor vehicles, where the context permits, the word, phrase or term:

(1) "Motor vehicle" includes automobiles, motorcycles, motor trucks and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but does not include traction engines, road rollers and such vehicles as run only upon a track.

(2) "Local authorities" includes all officers and public officials of the several counties and municipalities of this state.

(3) "Owner" includes any person, firm, corporation, or association controlling any motor vehicle by right of purchase, gift, lease or otherwise.

(4) "Chauffeur" includes any person operating any motor vehicle as an employee of the owner thereof; provided, the term "chauffeur" does not apply to a person using a motor driven vehicle as an incident to their employment in some other capacity.

(5) "Trailer" includes all four wheel vehicles coupled to, or drawn by, a motor vehicle.

(6) "Semi-trailer" includes any two wheel vehicle coupled to, or drawn by, any motor vehicle.

(7) "Motorcycle sidecar" includes any attachment to a motorcycle for extra conveying capacity, requiring the use of one or more extra wheels.

(8) "Solid tires" includes all tires of any material or substance, which do not depend upon confined air for the support of the load, except airless cushion tires.

(9) "Pneumatic tires" includes all tires made of rubber and fabric inflated with air.

(10) "Trucks" includes any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform, rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passengers; also, any unit consisting of tractor and trailer so constructed as to haul merchandise or loads other than persons.

(11) "Tractor" includes any motor vehicle having four or more wheels designated or used for drawing other vehicles, but having no provision for carrying loads independently.

(12) "Cwt." shall be understood to refer to the net weight per hundred pounds, or major fraction thereof, of a motor vehicle.

(13) "Net weight" shall be construed to be the actual scale weight with complete catalogue equipment.

(14) The word "passenger", or any abbreviation thereof, shall not include the driver.

(15) "Private use" shall be construed to mean the use of all vehicles, which are not properly classified as "for hire" vehicles.

(16) "For hire" vehicles include all motor vehicles, or trailers drawn by motor vehicles, when used for transporting persons, commodities or materials for compensation; let or rented to another for a consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau or when offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When freight or passengers are transported in a motor vehicle outside of a municipal corporation of this state, for compensation or when freight is transported in a motor vehicle not owned by the same person owning the said freight, so that there is identity of ownership between the said freight and motor vehicle, such transportation shall be deemed "for hire." The carrying of goods, wares, merchandise and other personal property in motor vehicles by corporations or associations for their stockholders, shareholders and members, cooperative or otherwise, shall be deemed transportation "for hire"; provided, however, the following shall not be deemed as operating "for hire," to-wit: Motor vehicles used for transporting school children to and from school under contract with school officials; hearses and ambulances when operated by licensed embalmers and morticians, their agents and employees in this state; motor vehicles used in the transportation of agricultural and horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of said supplies or to associations of said growers or consumers; and motor vehicles temporarily used by farmers for the transportation of agricultural and horticultural products from farms or groves to packing houses or to points of shipment by transportation companies; motor vehicles not exceeding one and one-half tons under contract with the government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

(17) "State road" shall be construed to mean any part of any road, including the bridges thereon, heretofore or which may hereafter be designated by the legislature or by the state road department, in accordance with law, as a state road, which has been, or may hereafter be constructed, maintained, or otherwise improved by the state road department, or which is now, or may hereafter be, in course of construction, maintenance or improvement by such department.

(18) "Station wagons," also known as "suburbans," not used for hire, are hereby declared to be "automobiles for private use" so far as the same relates to the laws of this state, fixing and prescribing fees and taxes on automobiles, and shall hereafter pay the same fees and taxes as are prescribed by the laws of Florida for "automobiles for private use."

(19) A "farm tractor" is hereby defined to be a motor vehicle operated principally upon a farm, grove, or orchard in agricultural or horticultural pursuits and which uses the highways of this state incidentally in going from their headquarters to such farms, groves or orchards and returning therefrom, or in going from one farm, grove or orchard to another, except that said term shall not include a truck chassis upon which any spraying machine is hauled by anyone engaged in whole or in part in spraying for others for compensation. A "farm trailer" is defined as a vehicle without motive power which is drawn by a farm tractor and used principally for the purpose of transporting plows, harrows,

fertilizer distributors, spray machines and other farm or grove implements, and which uses the highways of this state only incidentally in connection with farm tractors as above described.

(20) "Motor-driven cycle" shall be construed to mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower, and every bicycle with motor attached.

(21) "Brake horsepower" shall be construed to mean the actual unit of torque developed per unit of time at the output shaft of an engine as measured by a dynamometer.

History.—§§1, 6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1006, 1011; §§2, 5, ch. 8410, 1921; §2, ch. 9156, §1, 9157, 1923; §§1, 3, ch. 10182, 1925; CGL 1280, 1285, 1677; §3, ch. 15625, 1931; §3, ch. 16085, 1933; §1, ch. 20743, 1941; §1, ch. 20911, 1941; RGS 1006; (16) §1, ch. 26923, 1951; (20), (21) n. §1, ch. 59-351.
cf.—§1.01 for general definitions.

320.02 Application for registration; forms.—Every owner, or person in charge of a motor vehicle, trailer, semi-trailer, or motorcycle sidecar, which shall be operated or driven upon the highways of the state, or which shall be maintained in this state, shall for each such vehicle so owned, cause to be filed by mail or otherwise, in the office of the state motor vehicle commissioner of the state, a certified application for registration of same on a blank to be furnished for that purpose, containing:

(1) A description of each motor vehicle to be registered, including purpose for which it is to be used, the name of the manufacturer, the style, type, engine number, or permanent vehicle identification number, horsepower and net weight in pounds, and in case of motor trucks, trailers, and semi-trailers, the factory rated load capacity, as well as the net weight in pounds, according to the standard of the National Automobile Chamber of Commerce; and in case of motor vehicles for carrying passengers, the net weight in pounds and the seating capacity.

(2) The name, age, residence and business address of the owner of such vehicle, and also the county and state or place, if outside of the state, in which he resides.

History.—§2, ch. 7275, 1917; RGS 1007; §3, ch. 8410, 1921; §2, ch. 10182, 1925; CGL 1281; §1, ch. 15625, 1931; §1, ch. 16085, 1933; §1, ch. 26909, 1951; §1, ch. 28186, 1953.
cf.—§47.29 et seq. Service of process on nonresident motor vehicle owners or operators.
§320.51, Exemption of farm tractors and trailers.

320.03 License plates; duties of tax collectors.—The tax collectors in the several counties of the state shall deliver license plates to applicants, subject to the requirements of law, in accordance with rules and regulations to be prescribed with reference thereto by the state motor vehicle commissioner. Each tax collector shall be required to give a good and sufficient surety bond, payable to the state motor vehicle commissioner and his successors in office, conditioned that he will faithfully and truly perform the duties imposed upon him according to the requirements of law and the rules and regulations of the state motor vehicle commissioner, and that he will well and truly pay over and account for all license plates, records and other property and money which may come into his possession or control by reason of such service. The amount of such bond shall be fixed by the state motor vehicle commissioner and shall be in proportion to the amount of accountability which is likely to arise in such capacity, the said amount to be fixed by the state motor vehicle commissioner.

Each tax collector shall keep a full and complete record and account of all license plates or other properties received by him from the state motor vehicle commissioner, or from any other source, and shall make prompt remittance of moneys collected by him at such times and in such manner as rules and regulations promulgated in that behalf may prescribe.

History.—§2, ch. 7275, 1917; RGS 1007; §3, ch. 8410, 1921; §2, ch. 10182, 1925; CGL 1281; §1, ch. 15625, 1931; §1, ch. 16085, 1933.

320.031 Mailing of license plates.—

(1) The motor vehicle commissioner and the tax collectors of the several counties of the state may at the request of the applicant use United States mail service to deliver motor vehicle registrations and renewals thereof and license plates to applicants.

(2) A mail service charge in an amount to be determined and fixed by the commissioner shall be paid to and collected by the commissioner for registrations and license plates mailed directly from the motor vehicle department and a mail service charge, in an amount to be determined and fixed by county budget commissions in counties having such commissions and by the motor vehicle commissioner in counties not having budget commissions, shall be paid to and collected by the tax collector. The amount of said mail service charge shall not be less than the actual cost of mailing and not more than fifty cents. Said service charge shall be in addition to the service charge provided by §320.04, and shall be used and accounted for in accordance with law.

History.—§§1, 2, ch. 29956, 1955; §1, ch. 59-190.

320.04 License plates; service charge.—

(1) There shall be a service charge of fifty cents for each application which is handled, in connection with the issuance of any license plate, aircraft license, certificate of title, duplicate or transfer, which service charge shall be collected from the applicant as compensation for all services rendered in connection with the handling of the application. Said fees shall be retained by the tax collector as other fees accruing to the tax collector's office.

(2) The same service fees herein provided for shall be collected by the motor vehicle commissioner on all applications handled direct from his office, and the proceeds thereof, together with any fees returned to him by the tax collector shall be paid into the general revenue fund. No tax collector, deputy tax collector or employee of the state or any county shall charge, collect or receive any fee or compensation as notary public in connection with

or incidental to the issuance of license tags or titles.

History.—§2, ch. 7275, 1917; RGS 1007; §8, ch. 8410, 1921; §2, ch. 10182, 1925; CGL 1281; §1, ch. 15625, 1931; §§1, 5, ch. 16085, 1933; §§1, 2, ch. 23149, 1945; §10, ch. 26484; §43, ch. 26869, 1951; §1, ch. 61-403; (1) §1, ch. 63-143.

320.05 Registration; open to inspection.—Upon the receipt of an application for the registration of a motor vehicle, as herein provided for, the state motor vehicle commissioner shall file such application in his office and register such motor vehicle, with the name, residence and business address of the owner, manufacturer or dealer, as the case may be, together with the facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such motor vehicle by the state motor vehicle commissioner, which book or index shall be open to the inspection of the public during business hours.

History.—§3, ch. 7275, 1917; RGS 1008; CGL 1282.

***320.06 Registration; certificate and number; fees.**—

(1) Upon the filing of such application and the payment of the fee herein provided for, the state motor vehicle commissioner shall assign to such motor vehicle a distinctive license number, and without expense to the applicant, issue and deliver to the owner a certificate of registration and one license number plate for each motor vehicle, trailer, semi-trailer and motorcycle sidecar so registered, of the form and size herein provided for. In the event of the loss, mutilation or destruction of a certificate of registration or a license number plate, the owner of a registered motor vehicle, trailer, semi-trailer, or motorcycle sidecar may obtain from the state motor vehicle commissioner a duplicate thereof, upon filing in the office of the state motor vehicle commissioner an affidavit showing the facts and upon payment of a fee of one dollar for each duplicate. Number plates shall be of metal especially treated with a retroreflective material as specified by the motor vehicle commissioner and the director of the department of public safety, designed to increase nighttime visibility and legibility and shall be at least five inches wide and not less than twelve inches in length, and shall show in bold characters the year of registration, serial number, name of state, and the slogan, "SUNSHINE STATE."

(2) An additional sum of five cents shall be added to and collected on each motor vehicle license tag sold in this state in order to provide that all Florida license plates shall be treated with retroreflective material.

History.—§§4, 13, ch. 7275, 1917; RGS 1009, 1018; §§4, 10, ch. 8410, 1921; §5, ch. 10182, 1925; CGL 1283, 1292; §1, ch. 13701, 1929; §1, ch. 20408, 1941; §1, ch. 26481, 1951; §§1, 2, ch. 63-490.

*Note.—Effective January 1, 1965.

320.061 Unlawful to alter license plate; penalty.—No person shall change or alter any official registration license number plate issued for and assigned to any motor vehicle, whether by mutilation, alteration, defacement, change of color or in any other manner change such official registration license plate from its original appearance when officially issued. Any person violating the provisions of this section shall be subject to the penalties provided by §320.57.

History.—§9, ch. 28186, 1953.

320.062 Safety glass prerequisite to registration; penalty.—

(1) On and after January 1, 1954, no school bus, passenger bus, taxicab, private passenger car or other passenger motor vehicle sold as a new motor vehicle on or after that date shall be registered in this state unless it is equipped with safety glass of a type approved by the state department of public safety with respect to glass used in partitions, doors, windows and windshields. No truck or truck tractor sold as a new motor vehicle after said date shall be registered unless it is equipped with safety glass approved by the said department in all doors, windows and windshields of the driver's compartment.

(2) The term safety glass shall mean any product composed of glass, so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other or similar product as may be approved by the said department.

(3) The department of public safety shall publish a list of types of glass by name approved by it as meeting the requirements of this section and the state motor vehicle commissioner shall not register after January 1, 1954, any new motor vehicle unless it is equipped with an approved type of safety glass and he shall thereafter suspend the registration of any motor vehicle subject to the provisions of this section which he finds to be not so equipped, said suspension of registration to remain in effect until the motor vehicle is made to conform to the requirements of this section.

(4) It shall be a misdemeanor for any person to replace any glass or glazing material used in partitions, doors, windows or windshields in any motor vehicle with any material other than safety glass of a type approved by the said department of public safety; provided that with respect to trucks this section shall be applicable only to glass used in doors, windows and windshields of the driver's compartments.

History.—§§1-4, ch. 28047, 1953.

***320.063 License plates for 1965; St. Augustine quadricentennial celebration.**—Notwithstanding the provisions of §320.06, and any agreement, rule or regulation promulgated under authority of law, for the year 1965 only, all numbered license plates for motor vehicles issued under authority of this state may show in bold Spanish red characters on a Spanish yellow background the year 1965, the serial number, name of the state, and the slogan, ST. AUGUSTINE QUADRICENTENNIAL CELEBRATION, or some similar slogan.

History.—§1, ch. 63-418.

*Note.—Effective January 1, 1965.

320.07 Registration renewed annually.—

(1) Such registration shall be renewed annually and in the same manner and upon pay-

ment of the same fee as provided for in the original registration, such renewal to take effect on January 1 of each year; provided, however, that during the period 1964-1970, such registration shall be renewed for periods of thirteen months each upon payment of an amount equal to one and one-twelfth of the annual registration fee, such registration to take effect on the first day of the months stated for the years respectively, as follows: In 1964, on January 1 for thirteen months; in 1965, on February 1 for thirteen months; in 1966, on March 1 for thirteen months; in 1967, on April 1 for thirteen months; in 1968, on May 1 for thirteen months; in 1969, on June 1 for thirteen months; and in 1970 and thereafter, on July 1 for twelve months. Provided further that motor carriers may register semiannually the commercial motor vehicles used by them in their business and no registration or license shall be required to be paid during such semiannual period as the same may not be registered and in use, if the annual registration rate for the aforesaid motor vehicles is in excess of one hundred dollars, fee not included.

(2) The registration of vehicles owned and operated by this state or any county, municipality, or other governmental agency shall not be renewed annually, but permanent license number plates of a distinctive coloring shall be issued for such vehicles. All such license number plates shall be of the same distinctive coloring, which shall differ from that used on plates issued annually. Such permanent plates shall be displayed as required by §320.35, and shall be removed upon the sale of the vehicle or when it becomes no longer eligible for a permanent plate, and may be replaced when mutilated as provided in §320.06. The use of any such plate on any vehicle other than a state, county, municipal or other governmental agency is hereby expressly prohibited except as approved by the motor vehicle commissioner.

(3) The sale of license number plates by the motor vehicle commissioner or his agents, for each year, shall begin on July 1 after 1970, and prior to that date as set forth in subsection (1). The operation of any motor vehicle after the twentieth of the following month as set out above, without having attached thereto a license tag for the current year, shall subject the operator thereof to arrest and punishment as provided by law for the operation of a motor vehicle without proper license. The time for the operation of any motor vehicle for the current year may be extended by the governor for a period of thirty days, if within his judgment and discretion an emergency exists justifying the thirty days extension period.

History.—§5, ch. 7275, 1917; RGS 1010; CGL 1284; §2, ch. 15625, 1931; §1, ch. 16084, 1933; §§2, 5, ch. 16085, 1933. §1, ch. 26544, 1951; am. §2, ch. 28186, 1953; §1, ch. 61-12; (1), (3) §1, ch. 63-528; (1) §2, ch. 63-496.

320.08 License taxes.—There are hereby levied and imposed annual license taxes for the operation of motor vehicles which shall be paid to and collected by the state motor vehicle commissioner upon the registration or re-registration of the following vehicles:

(1) MOTORCYCLES.—

"A" Series: All motorcycles: $10.00 flat.

"R" Series: All motor-driven cycles which are certified by the manufacturer not to exceed 5 brake horsepower: $10.00 flat.

(2) AUTOMOBILES FOR PRIVATE USE.—

"Q" Series: Antique automobiles: $7.50 flat.

"D" Series: Net weight of 2,000 pounds or more, but less than 2,500 pounds: $12.50 flat.

"Plain" Series: Net weight of 2,500 pounds or more, but less than 3,500 pounds: $20.00 flat.

"W" Series: Net weight of 3,500 pounds or more, but less than 4,500 pounds, $27.50 flat,

"WW" Series: Net weight of 4,500 pounds or more: $35.00 flat.

An "antique automobile" is defined as any passenger automobile manufactured more than twenty years prior to the current year. Before a license tag shall be issued for an "antique automobile" the state motor vehicle commissioner shall require a certificate from a member of the highway patrol of this state that such vehicle is mechanically safe to be used upon the highways of this state.

(3) TRUCKS FOR PRIVATE USE.—

"G" Series: Net weight less than 2,000 pounds: $2.50 flat plus $0.50 per cwt.

"GH" Series: Net weight not less than 2,000 pounds and not more than 3,000 pounds: $5.00 flat plus $0.60 per cwt.

"GK" Series: Net weight not less than 3,000 pounds and not more than 5,000 pounds: $7.50 flat plus $0.75 per cwt.

"P" Series: Trucks, used in citrus groves, known as "goats" and any other vehicles when used in the field by farmers or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which shall not be operated principally upon the highways of the state: $7.50 flat.

A "goat" is defined as being a motor vehicle designed, constructed and used principally for the transportation of citrus fruit within citrus groves.

(4) TRACTORS AND TRUCKS FOR COMMERCIAL USE.—

"CV" Series: Both private and for hire. Net weight more than 5,000 pounds: $10.00 flat plus $1.10 per cwt.

(5) MOTOR VEHICLES AND TRAILERS CONSTRUCTED AND DESIGNED FOR AN EXCLUSIVE USE.—

"GW" Series: Motor vehicles, trailers and semitrailers equipped with machinery and designed for an exclusive use in the nature of well drilling, excavation, construction, spraying and like purposes: each $32.50 flat.

"K" Series: School buses used exclusively for the purpose of transporting pupils to and from school or school or church activities or functions within their own counties: $30.00 flat.

The operators of any motor vehicle used exclusively for the transportation of pupils to and from school or school or church activities or functions shall not be charged any sum greater than that paid by the operators or owners of ambulances, hearses or automobile wreckers owned and operated by a garage in connection with its regular business.

"K" Series: Motor vehicles operated solely as wreckers, owned and operated by a garage in connection with its regular business: $30.00 flat.

"K" Series: Hearses, ambulances: $30.00 flat.

(6) AUTOMOBILES FOR HIRE.—

"E" Series: Under 9 passengers: $12.50 flat plus $1.00 per cwt.

"S" Series: 9 passengers and over: $12.50 flat plus $1.50 per cwt., plus $10.00 per passenger.

(7) SMALL TRAILERS.—

"V" Series: all two-wheel trailers weighing 500 pounds or less: $5.00 flat, per year or any part thereof. There shall be no reduction for half or quarter year license for trailers in this special class. The minimum charge law for issuing license tags shall be inapplicable to the aforesaid special class.

(8) TRAILERS FOR PRIVATE USE.—

"BB" Series: Net weight not less than 501 pounds and not more than 1,050 pounds: $2.50 flat plus $0.75 per cwt.

"B" Series: Net weight not less than 1,051 pounds and not more than 4,000 pounds: $2.50 flat plus $0.75 per cwt.

"L" Series: Net weight over 4,000 pounds: $10.00 flat plus $1.50 per cwt.

"MH" Series: Trailer coaches used for housing accommodations: $15.00 flat.

(9) TRAILERS FOR HIRE.—

"N" Series: Net weight not over 4,000 pounds: $10.00 flat plus $1.00 per cwt.

"O" Series: Net weight over 4,000 pounds: $10.00 flat plus $2.00 per cwt.

(10) DEALERS DEMONSTRATION TAGS.

"M" Series: All dealers' demonstration tags: $12.50 flat.

(11) EXEMPT OR OFFICIAL.—

"X" Series: All exempt or official tags: $3.00 flat.

(12) LOCAL BUSES.—

"C" Series: Buses and passenger cars operated wholly within cities or within twenty-five miles thereof: $12.50 flat plus $1.50 per cwt.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §§1, 2, ch. 13888, 1929; §1, ch. 14656, 1931; §3, ch. 15625, 1931; §3, ch. 16085, 1933; CGL 1936 Supp. 1285(1); §§1, 2, ch. 18030, 1937; CGL 1940 Supp. 1285(2); §1, ch. 20310, 1941; §1, ch. 20507, 1941; §1, ch. 24272, 1947; §1, ch. 25393, 1949; §3, ch. 28186, 1953; (1) §2, ch. 59-351; (5) §1, ch. 59-387; (6) §1, ch. 59-312; §1, ch. 59-387; §1, ch. 61-116; §1, ch. 63-528.

cf.—§320.74 For hire license plate, when use prohibited.

320.081 License fees for trailer coaches and trailers used for housing accommodations.—

(1) This section shall apply only to trailers and vehicles not self-propelled used for housing accommodations and known as trailer coaches.

(2) The annual license fee to be paid by said owners and operators of house trailers in the state shall be fifteen dollars; and shall be paid to the motor vehicle commissioner of the state at the same time and in the same manner as provided for other motor vehicle licenses. This license tax shall be in lieu of all other taxes and a suitable license plate shall be issued to evidence payment thereof.

(3) It shall be permissible in this state to operate a trailer coach, licensed hereunder without a corresponding state license on the vehicle towing same.

History.—§§1-3, ch. 23969, 1947; §2, ch. 63-528.

320.083 Amateur radio operators; special tags; fee.—

(1) Owners of motor vehicles who are residents of the state, and who hold an unrevoked and unexpired official amateur radio station license issued by the federal communications commission, upon application, accompanied by proof of ownership of such amateur radio station license, complying with the state motor vehicle laws relating to registration and licensing of motor vehicles, and upon the payment of the regular license fee for tags, as prescribed under §320.08, and the payment of an additional fee of $1.00, shall be issued a license plate, as prescribed by §320.06, for private passenger cars, upon which, in lieu of the numbers as prescribed by said §320.06, shall be inscribed the official amateur radio call letters of such applicant as assigned by the Federal communications commission.

(2) The motor vehicle commissioner shall make such rules and regulations as necessary to ascertain compliance with all state license laws relating to use and operation of a private passenger car before issuing these tags in lieu of the regular Florida license plate, and all applications for such tags shall be made to the motor vehicle commissioner.

(3) The motor vehicle commissioner shall, on or before the first day of January of each year, furnish to the sheriff of each county in the state an alphabetically arranged list of the names, addresses and license tag letters of each person to whom a license tag is issued under the provisions of this section, and it shall be the duty of the sheriffs of the state to maintain and to keep current such lists for public information and inquiry.

(4) This section is supplementive to the motor vehicle licensing laws of Florida and nothing herein shall be construed as abridging or amending such laws.

History.—§§1-4, ch. 25049, 1949.

320.084 Free motor vehicle license plate to amputee veterans.—

(1) A free motor vehicle license number plate shall be issued by the motor vehicle commissioner or his agents upon proof by any veteran, a resident of Florida, that he is the owner of a motor vehicle and acquired same through financial assistance by the veterans administration of the federal government, such assistance being provided for those world war II veterans who suffered the loss or loss of use

of one or both legs at or above the ankle, but no such license plate shall be transferable. The vehicle license plate issued under this section shall be a permanent motor vehicle license plate and shall be of a distinctive color as provided in §320.07(2). Such permanent vehicle license plate shall be removed upon the sale of the vehicle and shall be used by the veteran on any motor vehicle such veteran may acquire in replacement thereof.

(2) Korean war veterans, disabled between June 24, 1950 and July 27, 1953 shall be entitled to the same motor vehicle tax exemption as now provided for veterans of world war II, under the same circumstances, provided in subsection (1) of this section and subject to the conditions provided in said subsection.

(3) The license number plate provided for in subsections (1) and (2) shall be obtained through the office of the state motor vehicle commissioner. The license number of all plates issued under this section may upon the specific request in writing of the veteran concerned be preceded by the letter and series designation of "DV." The state motor vehicle commissioner is authorized to issue designation plates upon request to be displayed on the front of the vehicle containing only the letters "DV."

History.—§1, ch. 26839, 1951; §7, ch. 28186, 1953; (2) n. §3, ch. 57-266; (3) n. §1, ch. 59-104; (1) §1, ch. 63-277.

320.085 Antique automobiles used for display or exhibit; special tags; fee.—

(1) An "autorama" is hereby defined as a place where any antique automobiles manufactured more than twenty years prior to the current year are displayed or exhibited.

(2) That all antique automobiles displayed and exhibited in an autorama located in this state, or used for publicity purposes in connection therewith on the roads and highways of the state, and the owner of said autorama, complying with the state motor vehicle laws relating to registration and licensing of motor vehicles and upon the payment of the regular license fee for tags, as prescribed under §320.08, and the payment of an additional fee of one dollar for each license plate, shall be issued by the state motor vehicle commissioner a distinctive license plate with such letters and numerals as shall be selected by said autorama.

(3) The distinctive license plate with letters and numerals shall be in lieu of the "T" license provided for in §320.08.

History.—Comp. § § 1, 2, ch. 28203, 1953.

320.086 Ancient motor vehicles; "horseless carriage" license plates.—Notwithstanding any other provision of law, any owner of a motor vehicle of the age of thirty-five years or more from the date of manufacture, operated or moved over the highway primarily for the purpose of historical exhibition or other similar purpose, upon application in the manner and at the time prescribed by the state motor vehicle commissioner, shall be issued a special license plate for such motor vehicle at a fee of seven dollars fifty cents for each such plate, which shall be permanent and valid for use thereon without renewal so long as the vehicle is in existence in lieu of the regular license plate. In addition to the payment of all other fees required by law, the applicant shall pay such fee for the issuance of the special license plate as may be prescribed by the state motor vehicle commissioner commensurate with the cost of manufacture. The registration numbers and special license plates assigned to such motor vehicles shall run in a separate numerical series, commencing with "Horseless Carriage No. 1" and the plates shall be of a distinguishing color.

History.—§1, ch. 57-326; §1, ch. 59-206.

320.087 Intercity buses operated in interstate commerce; tax.—All intercity motor buses owned or operated by residents or nonresidents of Florida in interstate commerce or combined interstate and intrastate commerce as a result of which operation such motor buses operate both within and without Florida under the authority of the interstate commerce commission, shall be subject to motor vehicle license and registration taxes on a basis commensurate with the use of Florida highways. The state motor vehicle commissioner shall require the registration in Florida of that percentage of intercity motor buses operating in interstate commerce or combined interstate-intrastate commerce, into or through Florida, which the mileage of those intercity buses actually operated in Florida bears to the total mileage all such intercity motor buses are operated both within and without Florida. Such percentage figure, so determined, shall be the Florida mileage factor. In determining the Florida license and registration tax to be paid on the buses actually operated in Florida, under the foregoing method, the state motor vehicle commissioner shall first compute the amount that the Florida license tax would be if all of such buses were in fact subject to Florida tax, and then apply to said amount the Florida mileage factor above referred to. The state motor vehicle commissioner shall prescribe rules and regulations as he deems necessary for the proper carrying out of the provisions of this section.

History.—§§1, 2, ch. 59-194.

320.088 Manufacturers of motor-driven cycles; certification with commissioner.—It shall be the responsibility of each manufacturer of motor-driven cycles offered for sale in Florida to certify to the motor vehicle commissioner, by model designation, all models which they have manufactured since January 1, 1949, which produce not to exceed 5 brake horsepower. Said certification shall be in such form as prescribed by the motor vehicle commissioner.

History.—§3, ch. 59-351.

320.09 Additional fee for certain vehicles.—Buses, trailers and semi-trailers, of seven passenger capacity or more, shall pay in addition to the fee charged per hundred pounds provided in §320.08, the same fee per passenger capacity, as is provided to be paid by "for hire" buses.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933.

320.10 Exemptions. — The provisions of §§320.08 and 320.09 shall not apply to any motor vehicle, trailer, or semi-trailer, owned and operated by the federal government. Neither shall the provisions of said sections apply to any motor truck, trailer or semi-trailer owned and operated by this state, or any county or any municipality of this state, including public school authorities owning vehicles used in transporting school children to and from school in the state and including churches owning vehicles used in transporting passengers without compensation solely for church and Sunday school purposes in the state. Neither shall the provisions of said sections apply to any motor truck, trailer, or semi-trailer owned and operated exclusively by the boy scouts of America or any subsidiary organization thereof, and motor vehicles or station wagons owned and operated exclusively for the benefit of boys clubs, the national Audubon society, the national children's cardiac hospital, humane societies and the civil air patrol, the American legion and the children's Bible mission, girl scouts of America, the salvation army, the red cross of America or any of its official vehicles operated by local chapters, volunteer fire department vehicles owned and used exclusively by the volunteer fire department, mobile blood bank units where operated as a nonprofit service by organizations, mobile x-ray units or trucks or buses used exclusively for public health purposes, school buses owned and operated by a non-profit educational or religious corporation, the united service organization, the young men's christian association, camp fire girls' council, the young women's christian association, the twenty-niners, inc., the children's home society of Florida, and the goodwill industries, while used exclusively for carrying out the purposes of said organizations. All such vehicles, except those owned and operated by the federal government, shall be furnished a number plate upon the proper application to the state motor vehicle commissioner and upon the payment of two dollars to cover the cost of same; and there shall be issued therefor a number plate under series X. Vehicles exempt under this provision must be equipped with proper plates showing such exempt status.

History.—§6, ch. 7275, 1917; §1, ch. 7787, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933; §1, ch. 20411, 1941; §1, ch. 20912, 1941; §1, ch. 28314, 1953; §1, ch. 29980, 1955; §1, ch. 57-804.

***320.13 Dealers' registration tags, duplicates, and alternative method of registration.**— Dealers' tags may be duplicated by the state motor vehicle commissioner upon an affidavit that the original has been actually destroyed, but shall not be duplicated upon the loss otherwise of the original. Duplicates when issued shall be paid for at one dollar each. Dealers' tags provided in this chapter shall be valid for use on motor vehicles owned by the dealer to whom such tags were issued only for demonstration or for movement of motor vehicles to or from dealers' places of business; but shall not be valid for use for hire.

When a dealer in motor vehicles shall choose to register any motor vehicle he has for sale and secure a regular motor vehicle license tag therefor, he may, upon sale thereof, have the **registration and license tag issued for such motor vehicle transferred to the purchaser by making application to the state motor vehicle commissioner and remitting twenty-five cents for each such transfer.**

History.—§§1, 3, ch. 9159, 1923; CGL 1313, 1315; §1, ch. 24186, 1947; §1, ch. 63-173.
*Note.—First para. as amended effective January 1, 1964.

320.131 Temporary tags.—

(1) The motor vehicle commissioner is hereby authorized and empowered to design, issue and regulate the use of temporary tags to be designated "temporary tags" for use in cases where dealer tags may not be lawfully used. No such temporary tag shall be valid for more than five days after it is affixed to a motor vehicle.

(2) The motor vehicle commissioner is hereby authorized and empowered to sell to any franchised dealer, licensed used car dealer, trailer coach dealer or certificated common carrier said "temporary tags" for one dollar each and the proceeds shall be deposited in the general revenue fund.

(3) The motor vehicle commissioner is hereby empowered to issue and enforce rules and regulations for the administration of this section.

(4) Any person unlawfully using any such "temporary tag" or violating any rule or regulation issued by the motor vehicle commissioner pursuant to this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both, in the discretion of the court.

History.—§§1-4, ch. 59-348; (1), (2), (4) §1, ch. 61-150.

320.14 Fractional registration fee.—

(1) Any truck, tractor, bus, trailer or semi-trailer registered under this section prior to April 1 of any year, which has been registered in this state during the previous year shall be charged the full license fee as set forth in §320.08; any such truck, tractor, bus, trailer or semi-trailer registered subsequent to March 31 of any year, which has not been subject to registration for such year prior to that time, shall be charged for such registration at the rate of one-twelfth of the full license fee for the month of registration and one-twelfth of such full license fee for each month of the license year succeeding the month of registration; provided, however, that no license plate shall be issued for less than five dollars, except where otherwise expressly provided.

(2) Any truck, tractor, bus, trailer or semi-trailer registered during the month of January of any year, which has not been registered nor subject to registration in this state during the previous year shall be charged the full license fee as set forth in §320.08; any such truck,

tractor, bus, trailer or semi-trailer registered subsequent to January 31 of any year, which has not been subject to registration for such year prior to that time, shall be charged for such registration at the rate of one-twelfth of the full license fee for the month of registration and one-twelfth of such full license fee for each month of the license year succeeding the month of registration; provided, however, that no license plate shall be issued for less than five dollars, except where otherwise expressly provided.

(3) Any motor vehicle other than a truck, tractor, bus, trailer or semi-trailer as hereinbefore specified registered after June 30 of any year and not subject to registration prior to that time shall, on application to the motor vehicle commissioner for registration of such motor vehicle after June 30, of the aforesaid year, be charged at the rate for such registration one-half the annual rate; provided, however, that no license plate shall be issued for less than five dollars, except where otherwise provided.

(4) Any motor vehicle other than a truck, tractor, bus, trailer or semi-trailer registered after September 30 of any year and not subject to registration prior to that date shall for the remainder of that license year be registered for one-fourth the annual rate; provided, however, that no license plate shall be issued for less than five dollars, except where otherwise expressly provided.

History.—§7, ch. 7275, 1917; §1, ch. 7276, 1917; RGS 1012; §5, ch. 8410, 1921; §4, ch. 10182, 1925; CGL 1286; §4, ch. 16085, 1933; §1, ch. 25139, 1949; §8, ch. 28186, 1953; §1, ch. 57-373.

320.15 Deductions from registration tax.—Any owner whose vehicle has been destroyed or permanently removed beyond the state shall be entitled to deduct from any registration tax which may thereafter become due from such owner upon another vehicle, the pro rata of the annual registration fee or tax theretofore paid on each vehicle up to the time it was destroyed or permanently removed beyond the state; provided, however, that all "for hire" vehicles which may be permanently removed beyond the state or destroyed may, upon the surrender of the tags and license, be entitled to credit with the motor vehicle commissioner for license upon any other vehicle for the pro rata unexpired time of such license, which shall not be more, however, than one-half of such license period. Such credit will not be valid for use after February 20 of the next year following date of issue.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933; §1, ch. 59-266.

320.16 Interstate commerce; advance payment and refund.—Where any automobile is used for hire, whether for carrying passengers or freight either singly or in combinations, over the highways of the state, in interstate commerce, a charge shall be collected in the form of a registration fee initially computed and assessed on the basis of the foregoing schedule, and the same shall be collected upon the registration of the vehicle as an advance payment on the compensation entitled to be received by the state for the use of the state's highway system, but the person so registering or re-registering said vehicle shall be entitled to a refund of the entire amount collected with legal interest thereon upon making payment to the state for the mileage actually traveled by the vehicle in its use of the state's highway system, to be paid for at the rate of four cents per mile each way, which rate of four cents per mile each way is determined and declared to be a reasonable and just compensation to be charged and collected for the use of the improved highway system provided by the state and its several counties, districts and municipalities for the use of motor vehicles. Proof of the mileage traveled shall be made to the state motor vehicle commissioner, who shall ascertain and determine the number of miles actually traveled by the vehicle, which mileage would be subject to the charge of a mileage tax under this chapter, and the findings of said commissioner when made after full hearing shall be deemed and held to be prima facie just and correct, but subject to judicial review in appropriate proceedings brought for that purpose by the claimant against the state motor vehicle commissioner to enforce such refund.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933.

320.17 Classification and assessment by commissioner.—The state motor vehicle commissioner may determine the classification of, and the amount of tax due on, any motor vehicle required to be registered under the laws of Florida, and may fix, determine and assess the amount of registration or re-registration fees and taxes to be paid for registration, re-registration and license thereof, and his determination when made and certified to in writing shall be prima facie evidence of the validity, regularity and propriety thereof and of the liability of the motor vehicles involved therein to classification and tax so determined, fixed and assessed. No such determination when made by the state motor vehicle commissioner shall be disregarded or set aside in any court, except when clearly shown to be unwarranted in law or in fact.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933.

320.18 Withholding registration.—The state motor vehicle commissioner may withhold the registration of any motor vehicle, the owner of which shall have failed to register the same under the provisions of law for any previous period or periods for which it appears registration should have been made, in this state, until the fee for such period or periods shall be paid; provided, if the owner of the motor vehicle submits proof that he did not operate the motor vehicle for a longer period than January or

February of the previous year, or for a longer period than January or February of the current year, that he shall not be precluded or prevented from obtaining a license tag for the current year under the provisions of this chapter.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933.

320.19 Lien of tax and enforcement.—The registration tax required under this chapter, when not paid, shall constitute a first lien upon the motor vehicles against which the same is chargeable, which lien shall be superior to all other liens upon such motor vehicle, and may be enforced and collected, if delinquent more than thirty days, by levy and sale in the same manner as under an execution of law on the amount of the tax due, which enforcement may be under a tax warrant issued for that purpose by the state motor vehicle commissioner and enforced in like manner as is provided by law for the enforcement of tax warrants by the comptroller.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933.
cf.—55.20 et seq., Levy and sale under executions.

320.20 Disposition of license moneys.—All moneys paid into the state treasury under the provisions of law relative to the licensing of motor vehicles, shall be deposited in the general revenue fund.

History.—§27, ch. 7275, 1917; RGS 1031; §12, ch. 8410, 1921; CGL 1304; §4, ch. 15625, 1931.
Am. §44, ch. 26869, 1951.

320.23 Taxes deemed compensatory. — All taxes prescribed by this chapter shall be deemed to be compensatory for the use of the public highways of this state by operators of motor vehicles and auto transportation companies taxed under the provisions of this chapter and as a fair contribution to the cost of constructing and maintaining the public highways of this state; and the administration and enforcement of this chapter and all regulations and restrictions imposed hereby and authorized to be imposed by this chapter are declared to be for the purpose of conservation of the state's property and in the interest of safety in the use of its highways.

History.—§5, ch. 15625, 1931; CGL 1936 Supp. 1304(1).

320.24 Counties and municipalities may not impose licenses on motor vehicles, etc.—It is unlawful for any county or municipality to collect any license or registration fee on any motor-driven vehicle, trailer, semi-trailer or motorcycle sidecar in this state.

History.—§8, ch. 7275, 1917; RGS 1013; §6, ch. 8410, 1921; CGL 1287.
cf.—§13, Art. IX Florida const., taxes on motor vehicles.

320.25 Obtaining license by false statements; penalty.—Any person who shall apply for and obtain from the state motor vehicle commissioner a license plate by means of false or fraudulent representations made in any application therefor shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months. The state motor vehicle commissioner may take up and cancel any such license which has been so obtained by false and fraudulent representation.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933; CGL 1936 Supp. 7792(3).
cf.—§775.06 Alternative punishment.

320.26 Counterfeiting tags, etc., prohibited; penalty.—No person shall counterfeit, manufacture, sell or dispose of automobile license tags or plates in the state, without first having obtained the permission and authority of the state motor vehicle commissioner of Florida, in writing. Any person violating the terms of this section shall be guilty of a misdemeanor, and if the violator be a natural person, he shall be fined not less than one hundred dollars nor more than five hundred dollars, or be confined in the county jail of the county wherein the offense occurred, for a period not to exceed six months.

If the violator of this section is an association or corporation, then the penalty for the violation of the terms hereof shall be a fine of not less than one hundred dollars nor more than five hundred dollars, to be imposed upon such association or corporation, and the official of the association or corporation under whose direction or with whose knowledge, consent or acquiescence such violation occurred may be imprisoned in the county jail of the county in which the offense occurred not to exceed six months, in addition to the fine which may be imposed upon such association or corporation.

History.—§§1, 2, ch. 16086, 1933; CGL 1936 Supp. 7792(5).
cf.—§775.06 Alternative punishment.

320.261 Attaching license tag not assigned unlawful; penalty.—Any person who knowingly attaches to any motor vehicle any license tag not issued and assigned to such vehicle shall be guilty of a misdemeanor and shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding three months.

History.—§1, ch. 59-478.

320.27 License required of secondhand dealers; bond.—

*(1) SECONDHAND DEALERS LICENSE.—No person, firm or corporation shall carry on or conduct in this state the business of buying, selling or dealing in used motor vehicles, unless and until he or it shall have received a license from the motor vehicle commission authorizing the carrying on or conducting of such business; provided, however, that this section shall not apply to any individual isolated transaction, but it shall be assumed that any person, firm or corporation who engages in three or more transactions during any twelve months period is carrying on or conducting said business and shall have such license. However, this section shall not apply to

the sale by banks and finance companies of motor vehicles acquired as an incident to their regular business, nor shall it apply to motor vehicle rental companies who sell motor vehicles to licensed motor vehicle dealers. Such license shall be furnished annually by the motor vehicle commissioner and shall run from January 1.

*(2) APPLICATION AND FEE.—The application for said license shall be in such form as may be prescribed by the motor vehicle commissioner and subject to such rules and regulations with respect thereto as may be so prescribed by him. Such application shall be verified by oath or affirmation and shall contain a full statement of the name or names of the person or persons applying therefor, the name of the firm or copartnership with the names and places of residence of all members thereof, if such applicant be a firm or copartnership, the name and residence of the principal officers, if the applicant be a body corporate or other artificial body, the name of the state under whose laws the corporation is organized, the former place or places of residence of said applicant and prior business or businesses in which said applicant has been engaged and its location. Such application shall describe the exact location of the place of business. The application shall state whether the place of business is owned in fee simple by the applicant and when acquired or, if leased, a true copy of the lease is to be attached to the application. The applicant shall certify that the location is a permanent one, and is not the residence of the applicant, nor is it a tent nor a temporary stand or other temporary quarters, and that the location affords sufficient unoccupied space upon and within which to adequately store all motor vehicles offered and displayed for sale, and is a suitable place where applicant can in good faith carry on said business and keep and maintain books, records and files necessary to conduct the said business which will be available at all reasonable hours to inspection by the motor vehicle commissioner or any of his inspectors or other employees. Said applicant shall further certify that the business of buying, selling and dealing in motor vehicles is the principal business which shall be conducted at the said location, provided, however, that the foregoing certification shall not apply to any applicant who holds a current license as a secondhand dealer on January 1, 1964. Such application shall contain such other relevant information as may be required by the motor vehicle commissioner. It shall be accompanied by a sworn statement of two reputable persons of the community in which the principal place of business is to be located, certifying to the good moral character of the person or persons applying for such license and certifying that the facts set forth in the application are true. Upon making such application the person applying therefor shall pay to the motor vehicle commissioner a fee of five dollars in addition to any other fees now required by law. Said commissioner shall if he deems it necessary cause an investigation to be made to ascertain if the facts set forth in said application are true and shall not issue license to said applicant until he is satisfied that the facts set forth in said application are true.

(3) LICENSE CERTIFICATE.—A license certificate shall be issued by the motor vehicle commissioner in accordance with such application when the same shall be regular in form and in compliance with the provisions of this section, and such license, when so issued, shall entitle the licensee to carry on and conduct the business of buying and selling and dealing in used motor vehicles for a period of one year from the first day of January of the current year only at the location set forth in said license.

(4) SUPPLEMENTAL LICENSE. — Any person conducting the business of buying, selling or dealing in used motor vehicles and having received a license therefor, shall obtain a supplemental license for each additional place or places of business not contiguous to the premises for which original license is issued, on a form to be furnished by the commissioner, and upon payment of a fee of five dollars for each such additional location. Only one licensed dealer shall operate at the same place of business.

(5) RECORDS TO BE KEPT BY LICENSEE.—Every such licensee shall keep a book or record in such form as may be prescribed or approved by the motor vehicle commissioner, in which he shall keep a record of the purchase, sale or exchange or receipt for the purpose of sale, of any secondhand motor vehicle, a description of such vehicle, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered as the case may be. Such description shall also include the identification or engine number, maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon and shall also include a statement that a number has been obliterated, defaced or changed, if such is the fact.

(6) CERTIFICATE OF TITLE REQUIRED. —He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of chapter 319 or any other law or parts of laws providing for the issuance of certificates of title, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

(7) PENALTY.—Any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $250.00 nor more than $1,000.00, or by imprisonment in the county jail for not less than 30 nor more than 90 days, or both, as the court may decree.

(8) EXTENSION OF LICENSE.—The current license held by any secondhand dealer

shall entitle such dealer to engage in such business until December 31, 1957.

(9) The motor vehicle commissioner may suspend or revoke any license issued under the provisions of this section for the violation by the licensee of any of its provisions or any other law of this state having to do with dealing in used motor vehicles or for perpetrating a fraud upon any person as a result of said dealing in used motor vehicles; provided, however, that at least ten days' notice of the intention to revoke such license shall be served by registered mail upon the licensee, fixing time and place of a hearing upon the cause of such revocation and giving to such licensee an opportunity to appear and be heard in defense of such charge and to produce such witnesses as he may deem necessary, and the right to be represented by counsel in such hearing.

(10) BOND.—

(a) Annually before any license shall be issued to a dealer in used motor vehicles, the applicant dealer must deliver to the commissioner a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in the state as surety in the sum of three thousand dollars. Such bond shall be in a form to be approved by the motor vehicle commissioner, and shall be conditioned upon compliance with the conditions of any contract in writing made by the dealer relative to the sale or exchange of any vehicle, and to the fulfillment of any written warranty with any purchaser.

(b) Such bond shall be to the motor vehicle commissioner and to his successors in office, and in favor of any purchaser of a motor vehicle, and against any dealer in motor vehicles licensed under this law, or an agent of such dealer, when such purchaser shall suffer any loss or damage as a result of any breach of contract on the part of the dealer or his agent; provided, however, that the aggregate liability of the surety to all such purchasers shall, in no event, exceed the sum of such bond.

(c) Any franchised dealer in new motor vehicles has the option of either delivering to the commissioner the bond above provided for, or in lieu thereof, filing with the commissioner a certified statement of net worth, under oath, signed by the dealer and his bookkeeper reflecting a net worth as of December 31 of the preceding year of not less than fifteen thousand dollars.

History.—§11, ch. 9157, 1923; CGL 1060, 7452; am. §§1-2, ch. 23660, 1947; (2), (9) §§10, 11, ch. 28186, 1953; (2), (4), (5), (7), (8), (10) n. §1, ch. 57-404; (10) (c) §1, ch. 59-238; (1), (2) §§1, 2, ch. 63-349.

*Note.—Subsections (1) and (2) effective January 1, 1964.

cf.—§775.06 Alternative punishment.

§1.01(13) defines registered mail to include certified mail with return receipt requested.

320.271 Used cars; removal of tags.—Every person, firm or corporation upon the sale and delivery of any used or second-hand motor vehicle shall remove any license tag from such motor vehicle, which was not issued and assigned to such motor vehicle by the motor vehicle commissioner of this state.

History.—§1, ch. 57-182.

320.272 Secondhand motor vehicle dealers; Sunday and holiday closing.—

(1) The following definitions shall apply for the words or terms used in this section unless other meaning is clearly apparent from the language or context:

"Motor vehicle" means and includes all vehicles defined in §320.01.

"New motor vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred by a manufacturer, distributor or dealer to an ultimate purchaser.

"Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new motor vehicle for purposes other than resale.

"Used motor vehicle" means every motor vehicle, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer, distributor, or dealer or which has been registered or is commonly known as secondhand within the ordinary meaning thereof.

"Person" includes natural persons, firms, partnerships, corporations, associations or other artificial bodies, trustees, receivers and officers, employees, agents, and others acting for or on behalf of any person.

(2) It shall be unlawful for any person, firm or corporation licensed under §320.27 to engage in the business of buying, selling, trading or exchanging new, used or secondhand motor vehicles, or to offer to buy, sell, trade or exchange new, used or secondhand motor vehicles, or to participate in the negotiation thereof, or to attempt to buy, sell, trade or exchange any new, used or secondhand motor vehicle or interest therein or any written instrument pertaining thereto, on the first day of the week, commonly called Sunday, or on legal holidays, commonly called New year's day, Fourth of July, Labor day, Thanksgiving day and Christmas.

(3) A violation of any provision of this section shall subject the offender to the penalties provided for in §320.27(9) and for a first offense to the suspension of license not to exceed 30 days and for a second offense the revocation of license. All suspension or revocation orders shall be reviewable by the filing with the appropriate circuit court of a petition by the person aggrieved by the order for a writ of certiorari in the manner and within the time provided by the Florida appellate rules and the statutes of this state not superseded by or in conflict with said rules.

(4) Upon proof of the violation of any provision of this section by any licensee it shall be presumed that every other dealer licensed under §320.27, has sustained damages for which no adequate relief exists, except by injunction, and any other licensee shall be entitled to an injunction in any court of competent jurisdiction to restrain and enjoin a further violation of this section.

(5) In any such proceedings to enjoin or restrain a further violation of this section it shall not be necessary to allege or prove any special damages it being presumed by the legislature that every other licensed dealer has and will continue to sustain damages by any one continuing to violate this section.

History.—§§1-5, ch. 59-295; (3) §11, ch. 63-512.
Note.—See 126 So. 2d 543, Moore v. Thompson; 366 U.S. 497.

320.28 Nonresident dealers in secondhand motor vehicles and trailer coaches.—Every dealer in used, or secondhand motor vehicles and trailer coaches who is a nonresident of the state and does not have a permanent place of business in this state, and who has not qualified as a dealer under the provisions of §§320.27 and 320.77-320.82, and every person other than a dealer qualified under the provisions of said §§320.27 and 320.77-320.82, who brings any used or secondhand motor vehicle or trailer coach into the state for the purpose of sale, except to a dealer licensed under the provisions of §§320.27 and 320.77-320.82, shall at least ten days prior to the sale of said motor vehicle or trailer coach, or the offering of said vehicle for sale or the advertising of said vehicle for sale, make and file with the motor vehicle commissioner the official application for a certificate of title for said vehicle as provided by law. Any person who has had one or more transactions involving the sale of three or more used or secondhand motor vehicles or trailer coaches in Florida during any twelve months period shall be deemed to be a secondhand dealer in motor vehicles or trailer coaches.

History.—§§1, 6, ch. 17113, 1935; §1, ch. 18032, 1937; CGL 1940 Supp. 1317(1), 1317(6); §1, ch. 24192, 1947; §1, ch. 25140, 1949; §1, ch. 57-388.
cf.—320.71, Nonresident automobile dealer's license.

320.29 Title certificate to be delivered.—Every person, upon the sale and delivery of any used or secondhand motor vehicle shall, within twenty-four hours thereof, deliver to the vendee, endorsed according to law, a certificate of title issued for said vehicle by the state motor vehicle commissioner.

History.—§2, ch. 17113, 1935; §2, ch. 18032, 1937; CGL 1940 Supp. 1317(2), 1317(7).
cf.—§319.08 et seq., Title certificates.

320.30 Penalty for violating §§320.28, 320.29.—No action, nor right of action to recover any such motor vehicle, nor any part of the selling price thereof, shall be maintained in the courts of this state by any such dealer or vendor, his successors or assigns, in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of §§320.28 and 320.29, and in addition thereto, such vendor or dealer, upon conviction for the violation of any of the provisions of said sections, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months; provided, however, that this section shall not apply to the holder of a note or notes representing a portion of the purchase price of such motor vehicle when the owner thereof was and is a bona fide purchaser of said note or notes, before maturity, for value and without knowledge that the vendor of such vehicle had not complied with said sections.

History.—§3, ch. 17113, 1935; §3, ch. 18032, 1937; CGL 1940 Supp. 1317(3), 1317(8), 8132(1), 8132(2).
cf.—§775.06 Alternative punishment.

320.31 Definitions covering §§320.28-320.30.—The terms dealer and vendor, used in §§320.28-320.30, shall be construed to include every individual, partnership, corporation or trust whose business in whole or in part, is that of selling new or used motor vehicles and likewise shall be construed to include every agent, representative, or consignee of any such dealer as defined above, as fully as if same had been herein expressly set out.

History.—§4, ch. 17113, 1935; §4, ch. 18032, 1937; CGL 1940 Supp. 1317(4), 1317(9); §7, ch. 24337, 1947.

320.33 Unlawful to possess motor vehicles from which serial number has been removed.—It is unlawful for any person to knowingly buy, sell, receive, dispose of, conceal or have in his possession any motor vehicle from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said motor vehicle.

History.—§25, ch. 7275, 1917; RGS 1030; CGL 1303.

320.34 Failure to register motor vehicle.—No motor vehicle, trailer, semi-trailer or motorcycle sidecar shall be operated upon or driven over the highways of this state, or any road or street therein, unless the same be registered according to law and the registration fee paid.

History.—§26, ch. 7275, 1917; RGS 5309; §13, ch. 8410, 1921; CGL 7486.

320.35 License plates; how displayed.—No person shall operate nor authorize the operation of a vehicle over the highways of this state or roads or streets therein, which at the time of such operation, shall not have the proper current license plate issued and assigned to said vehicle conspicuously displayed in a horizontal position, front of license plate out and top up, securely attached to the rear of said vehicle so as to prevent swinging and so located as to be illuminated at night by rays of the tail light or other rear light. Each separate day of operation in violation of this provision shall be considered a separate and distinct offense. The operation over the highways of this state, or any road or street therein, of any vehicle with a license plate attached, which was not issued for and assigned to that particular vehicle, shall be deemed an operation of such vehicle without a proper license plate.

History.—§12, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011, 1017; §9, ch. 8410, 1921; §2, ch. 10182, 1925; CGL 1285, 1291; §3, ch. 15625, 1931; §3, ch. 16085, 1933; CGL 1936 Supp. 7792(2); §1, ch. 22041, 1943; §1, ch. 59-380.

320.36 Registration of "for hire" vehicles; marking of certificate of title by commissioner. (1) Every person, firm or corporation who shall apply to the motor vehicle commissioner or his legally authorized agent for registration of a "for hire" motor vehicle as defined in §320.01(16), shall accompany such application for registration also with a certificate of title for said motor vehicle or an application for a certificate of title, as provided by law, and upon payment of the lawful issuing fees, the motor vehicle commissioner or such agent shall issue an appropriate "for hire" registration license plate. The motor vehicle commissioner shall also issue and deliver to the applicant a certificate of title for such vehicle and shall impress upon such certificate the words, "Taxicab" or "For Hire," or "Police Car" or "U-Drive-It," or "Long Term Lease," as the case may be, as is shown in the application for registration.

(2) If such motor vehicle has been previously registered for private use in this state and a "private use" registration license plate and a certificate of title have been issued for such vehicle by the motor vehicle commissioner, said application shall be accompanied by the "private use" registration license plate theretofore issued together with the official certificate of title issued for such vehicle, and the written consent of lien holders, if any, holding a lien upon said vehicle, for the transfer of the vehicle from private use to for hire use, and upon payment of the lawful issuing fees, less the unused value of the "private use" license plate, the motor vehicle commissioner or his agent shall issue an appropriate registration "for hire" license plate and shall impress upon the original certificate of title the words, "For Hire."

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933; CGL 1936 Supp. 7792(4); §7, ch. 22858, 1945; §12, ch. 28185, 1953; §2, ch. 29850, 1955.

cf.—§775.06 Alternative punishment.

320.37 Registration not to apply to nonresidents.—The provisions of this chapter relative to registration and display of license number plates shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation doing business in this state; provided, that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence, relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required thereby; but such exemption shall not apply to motor vehicles operated for hire.

History.—§15, ch. 7275, 1917; RGS 1020; §1, ch. 9155, 1923; §6, ch. 10182, 1925; §§1, 2, ch. 10187, 1925; §1, ch. 12096, 1927; CGL 1293.

cf.—§47.29 et seq., Service of process on nonresident motor vehicle owners or operators.
§205.16 Disabled veterans of Spanish-American, Korean and world war, exemption.
§322.23, Suspending privileges of nonresidents.

320.38 When nonresident exemption not allowed.—The provisions of law authorizing the operation of motor vehicles over the highways of the state by nonresidents of this state, when such vehicles shall be duly registered or licensed under the laws of some other state or foreign country, shall not apply to any nonresident who shall accept employment, or engage in any trade, profession or occupation in this state. In every case where a nonresident shall accept employment, or engage in any trade, profession or occupation in the state, or shall enter his children to be educated in the public schools of the state, such nonresident shall be required to register his motor vehicles in this state, if such motor vehicles are proposed to be operated on the highways of the state.

The provisions of law authorizing the operation in the state of motor vehicles under nonresident or foreign registration shall not apply to any motor vehicle equipped with auxiliary fuel tanks or carrying an auxiliary fuel supply to be used in avoidance of the purchase of fuel in the state.

History.—§6, ch. 7275, 1917; §1, ch. 7737, 1918; RGS 1011; §5, ch. 8410, 1921; §3, ch. 10182, 1925; CGL 1285; §3, ch. 15625, 1931; §3, ch. 16085, 1933; §1, ch. 19252, 1939.

320.39 Reciprocal agreements for nonresident exemption.—The state motor vehicle commissioner, the state road department and the railroad commission may negotiate and consummate with the proper authorities of the several states of the United States, reciprocal agreements whereby residents of such other states operating motor vehicles properly licensed and registered in their respective states, may have such privileges and exemption in the operation of their said motor vehicles, in this state, as residents of this state may have and enjoy in the operation of motor vehicles, duly licensed and registered in this state, in such other states; provided, nothing herein shall be construed to relieve any motor vehicle owner or operator from complying with and abiding by all other applicable laws, rules and regulations relating to safety of operation of motor vehicles and the preservation of the highways of this state. In the making of such reciprocal agreements, the said motor vehicle commissioner, the said state road department and said railroad commission shall have due regard to the advantage and convenience of motor vehicle owners and the citizens of this state.

Any and all such reciprocal agreements consummated by said motor vehicles commissioner, the state road department and the railroad commission shall not become effective until approved by the governor of the state; provided, all such reciprocal agreements by said motor vehicle commissioner, the state road department and said railroad commission are made subject to cancellation at any time by the legislature; provided, however, that nothing herein contained shall apply to rates, rules or regulations now or hereafter applicable to common or contract carriers by motor transportation companies over the highways of the state.

The motor vehicle commissioner, the state road department and the railroad commission shall give proper publicity to the terms of

every such reciprocal agreement entered into by them, or either of them.

History.—§§1-3, ch. 19479, 1939; CGL 1940 Supp. 1326(2)-1326(4).

320.51 Farm tractors and trailers exempt.—Farm tractors and farm trailers as defined in §320.01 (19) shall be exempt from the provisions of the motor vehicle laws of this state which require the registration of such vehicles, and shall be exempt from the payment of any fee of any kind and shall be exempt from the requirement that such vehicle display a registration tag as is required on other vehicles. Provided, however, that nothing herein contained shall be construed as exempting such farm tractors and farm trailers from the requirements of the motor vehicle laws of this state, and rules and regulations issued thereunder, relating to the tires to be used upon such tractors and trailers when using the highways of this state.

History.—§2, ch. 20911, 1941.

320.57 Penalties for violations of this chapter.—Any person convicted of violating any of the provisions of this chapter shall, unless otherwise provided herein, be fined not exceeding one hundred dollars, or be imprisoned in the county jail not to exceed three months.

History.—§26, ch. 7275, 1917; RGS 5605; §14, ch. 8410, 1921; §7, ch. 10186, 1925; CGL 7792, 7793.
cf.—§775.06 Alternative punishment.

320.58 License inspectors; powers, appointment, etc.—To enforce the provisions of the laws of this state relating to the registration of motor vehicles, the governor may appoint as many license inspectors as may be recommended and deemed necessary by the state motor vehicle commissioner, not to exceed eight in number, who shall enforce the provisions of said laws and said license inspectors are clothed with full police power to carry out and enforce the provisions of said laws and to enforce the provisions of other laws in regard to traffic on the public highways of this state. The license inspectors herein provided shall be appointed to serve at the pleasure of the governor or until such time as he may be advised by the state motor vehicle commissioner that the services of such inspectors are no longer required, and the services of any inspector appointed under the provisions of this section may be discontinued at any time when the governor deems such services no longer needful. Each inspector appointed under the provisions of this section shall receive as compensation for his services, to be paid by the comptroller from the general revenue fund, the sum of one hundred fifty dollars per month for the time that he serves, payable monthly, and each inspector shall be reimbursed for traveling expenses as provided in §112.061, not to exceed the sum of one hundred fifty dollars per month, which shall be reimbursed upon itemized statements approved by the comptroller. A sufficient appropriation shall be included in the biennial appropriations act for payment of such salaries and expenses.

History.—§7, ch. 10182, 1925; CGL 1305; §46, ch. 26869, 1951.

320.59 Liability to guest or passenger.—No person transported by the owner or operator of a motor vehicle as his guest or passenger, without payment for such transportation, shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been caused by the gross negligence or willful and wanton misconduct of the owner or operator of such motor vehicle, and unless such gross negligence or willful and wanton misconduct was the proximate cause of the injury, death or loss for which the action is brought; provided, that the question or issue of negligence, gross negligence, and willful or wanton misconduct, and the question of proximate cause, and the issue or question of assumed risk, shall in all such cases be solely for the jury; provided that nothing in this section shall apply to school children or other students being transported to or from schools or places of learning in this state.

History.—§1, ch. 18033, 1937; CGL 1940 Supp. 1296(a).

320.60 Definitions for §§320.61-320.70.—Whenever used in §§320.61-320.70, unless the context otherwise requires, the following words and terms have the following meaning:

(1) "Manufacturer" means any person, resident or non-resident in this state, who manufactures or assembles motor vehicles and includes in the case of a corporation or co-partnership its central or principal sales corporation or other agency through which it distributes its products.

(2) "Factory branch" means a branch office maintained by a manufacturer for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives in this state.

(3) "Factory representative" means a representative employed by a manufacturer or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

(4) "Person" means a person, firm, corporation or association.

(5) "Commissioner" means the state motor vehicle commissioner.

(6) "Motor vehicle dealer" means any person, firm or corporation who for commission, money or other things of value, sells, exchanges, buys or rents, or offers or attempts to negotiate, a sale or exchange of any interest in motor vehicles, or who is engaged wholly or in part in the business of selling motor vehicles whether or not such motor vehicles are owned by such person, firm or corporation.

History.—§1, ch. 20236, 1941; §7, ch. 22858, 1945.

320.61 Licenses required of motor vehicle manufacturers, factory branches and factory representatives. — No manufacturer, factory branch or factory representative shall engage in business as such in this state without a license therefor as provided in this law.

History.—§2, ch. 20236, 1941.

320.62 Licenses; amount; disposition of proceeds.—The annual license for each manufacturer, factory branch or factory representative shall be five dollars and shall be in addition to all other licenses or taxes, now or hereafter levied, assessed or required of the applicant. The proceeds from all such licenses under this law shall be paid into the state treasury to the credit of the general revenue fund. All licenses shall be payable on or before the first day of October of each year, and shall expire, unless sooner revoked or suspended, on the 30th day of the following September.

History.—§3, ch. 20236, 1941; §47, ch. 26869, 1951.

320.63 Application for license; contents.—Any person desiring to be licensed as a manufacturer, factory branch or factory representative shall make application therefor to the commissioner upon a form containing such information as the commissioner shall require. The commissioner may require with such application or otherwise, information relating to the applicant's solvency, his financial standing or other pertinent matter commensurate with the safeguarding of the public interest, all of which may be considered by said commissioner in determining the fitness of said applicant to engage in the business for which said applicant desires said license. Each application shall be accompanied by the fee for the annual license. All licenses shall be granted or refused within thirty days after application therefor.

History.—§4, ch. 20236, 1941.

320.64 Denial, suspension or revocation of license; grounds.—A license may be denied, suspended or revoked on the following grounds:

(1) Proof of unfitness of applicant.

(2) Material misstatement of applicant in his application for a license.

(3) Willful failure of the applicant or licensee to comply with any provision of this law.

(4) Because the applicant or licensee has indulged in any illegal act relating to his business.

(5) Because the applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities which shall not have been ordered by said dealer.

(6) Because the applicant or licensee has attempted to coerce, or has coerced, any motor vehicle dealer to enter into any agreement with the manufacturer, factory branch or representative, as the case may be.

(7) Because the applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, threatened to cancel the franchise of such motor vehicle dealer.

(8) Because the applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer or without just provocation, cancelled the franchise of such motor vehicle dealer.

(9) Any previous conduct which would have been grounds for revocation or suspension of a license, if the applicant were licensed, shall be sufficient grounds for the disapproval of the application.

(10) Because the applicant or licensee has sold, exchanged or rented a motorcycle or motor scooter which produces in excess of 5 brake horsepower knowing the use thereof to be by or intended for the holder of a restricted Florida driver's license.

History.—§5, ch. 20236, 1941; (10)n. §4, ch. 59-351.

320.65 Denial of license; notice.—The Commissioner may without prior notice deny the application for a license within thirty days of the receipt therefor, by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant, whose license shall have been so denied for a public hearing, the commissioner shall set the time and place of hearing upon such denial, and he shall hear the same with reasonable promptness. If after such hearing the commissioner shall find and determine that his previous action was not justified he shall approve such application and if he determines that his previous action was justified he shall affirm his previous action.

History.—§6, ch. 20236, 1941.

320.66 Hearing for revocation, etc.—No license shall be suspended or revoked except after public hearing. The commissioner shall give the licensee at least five days written notice of the time and place of such hearing, together with the reasons for his proposed action. At such hearing the licensee shall be given full opportunity to be heard in person or through an attorney.

History.—§7, ch. 20236, 1941.

320.67 Inspection of license, books, etc.—The commissioner may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to him against such licensee.

History.—§8, ch. 20236, 1941.

320.68 Revocation of license held by firms or corporations.—If an applicant or a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved of or had knowledge of said acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

History.—§9, ch. 20236, 1941.

320.69 Rules and regulations.—The commissioner may make such rules and regulations as he shall deem necessary or proper for the effective administration and enforcement of this law.

History.—§10, ch. 20236, 1941.

320.70 Penalties for violation.—Any person being a manufacturer, factory branch, or factory

representative, who violates any provision of §§320.61-320.70, or who does any act enumerated in §320.64 as a ground for the denial, suspension or revocation of a license, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding one thousand dollars, or imprisoned not exceeding one year, or both in the discretion of the court.

History.—§11, ch. 20236, 1941; §7, ch. 22858, 1945.

320.71 Nonresident automobile or trailer coach dealer's license.—From and after the passage of this section any person who is a non-resident of the state, and who does not have a dealer's contract from the manufacturer or manufacturer's distributor of automobiles or trailer coaches authorizing the sale thereof in definite Florida territory, and who sells or engages in the business of selling automobiles or trailer coaches at retail within the state, shall pay a license tax of seven hundred fifty dollars per annum in each county where such sales are made; five hundred dollars of said tax shall be transmitted to the state comptroller to be deposited in the general revenue fund of the state, and two hundred fifty dollars thereof shall be retained by the county. The license tax shall cover the period from January 1 to the following December 31, and no such license shall be issued for any fractional part of a year.

History.—§1, ch. 20851, 1941; §2, ch. 57-388.

320.72 Specially selected numbers.—

(1) Upon application of any person, firm or corporation, accompanied by the fee of one dollar, in addition to all other costs and charges for the issuance of an automobile license plate, the tax collector of any county and the motor vehicle commissioner are hereby authorized to issue an automobile license plate with any particular number selected by such applicant, when such number is available for such issuance.

(2) No person may apply for or receive an automobile license plate with any specially selected number except upon payment of the sum of one dollar as herein provided.

(3) All funds collected and raised pursuant to the provisions of this section shall be retained by the tax collector as other fees accruing to the tax collector's office.

(4) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished accordingly.

(5) Upon application by any member of congress or United States senator, the motor vehicle commissioner of the state is authorized to issue to such congressman or United States senator, an automobile license plate stamped MC, these letters to be followed by the number of the appropriate congressional district, or when the applicant is a United States senator, a license plate stamped USS followed by the numeral I in the case of the senior senator or by the numeral II in the case of the junior senator and that license plate so issued may be displayed on the rear of the vehicle for which it is purchased, in the manner prescribed by law, in lieu of the regular automobile license plate. These plates shall be purchased at the usual and regular cost for a motor vehicle license plate for the particular vehicle upon which the plate is to be used. The application for such license plate shall specify the vehicle upon which it is to be used and no other or additional license plate shall be required for that vehicle. Upon further application to, and authorization by the motor vehicle commissioner of the state, the license plate may be transferred from one vehicle to another on payment of the regular fee for a motor vehicle license plate for the vehicle to which it is transferred. The provisions under subsections (1) and (2) that the additional sum of $1.00 must be paid by any person, firm or corporation applying for or receiving any specially selected automobile license plate number, shall not apply to the special license plates for congressmen and United States senators authorized by this section.

History.—§§1-4, ch. 20925, 1941; §48, ch. 26869, 1951; (5) n. §1, ch. 29639, 1955; (3) §1, ch. 59-495.

320.74 "For Hire" license plate; when use prohibited.—

(1) Every person, firm or corporation operating or having operated an automobile as a taxicab, or carrying passengers for hire under license number plate series "E", shall, within ten days after discontinuing such use and operation of such automobile, surrender to the license plate agency of the county of issue the series "E" license plate, and, on payment of the lawful issuing fee, receive in exchange from such agency a license number plate of the series provided for by law for automobiles not for hire and for private use. The license agency shall immediately surrender such license plate to the motor vehicle commissioner, with the request that a credit slip be issued for the difference between the pro rata unexpired time of the amount paid for such for hire license plate less the amount required for the private use license plate. Provided however that the pro rata credit herein provided shall not exceed one half of the amount originally paid as for hire portion for such for hire license plate. The for hire portion referred to herein means the amount of tax required for registration for hire in addition to the amount required for the registration of the same automobile for private use and not for hire. The credit provided herein shall be valid to apply upon the registration of another vehicle in the same manner as provided in §320.15.

(2) It shall be unlawful for any person, firm or corporation to use or display on any automobile a series "E" license number plate from and after ten days from the time of discontinuance of the use of such automobile as a taxicab or the carrying of passengers for hire.

(3) Any person found guilty of a violation of any of the provisions of this section shall be

fined not more than five hundred dollars or imprisoned for not more than six months.

History.—§ § 1-3, ch. 21962, 1943; (1) §13, ch. 28186, 1953; (1) §2, ch. 59-266.

cf.—§775.06, Alternative punishment.

320.77 Licensing trailer coach dealers; definitions.—In construing §§320.78-320.82, the word or term used herein shall mean:

(1) Agent, means any person who, on behalf of any other person or trailer coach dealer, negotiates the sale, barter, trade or consignment or the purchase of any house trailer.

(2) Dealer, means any person, firm or corporation engaged in the business of buying, selling, trading, bartering, renting or leasing or in any manner dealing in trailer coaches.

(3) Trailer coaches, means any vehicle or conveyance equipped to travel upon the public highways not self-propelled, that is used either temporary or permanently as a residence, or a home or apartment or other housing accommodations.

History.—§1, ch. 23665, 1947.

320.78 Acting as dealer without license prohibited.—No person, firm or corporation shall act as a trailer coach dealer in this state without first obtaining a license as provided by §§320.78-320.82.

History.—§2, ch. 23665, 1947.

320.79 Application for license.—

(1) Any person desiring to engage in the business of trailer coach dealer in the state shall make application to the motor vehicle commission for a license. The motor vehicle commission shall prescribe the information to be contained from said application.

(2) All applications shall contain in addition to other information which may be prescribed by the motor vehicle commissioner the following:

(a) Name and address of individual, firm, corporation, partner, or association, or branch thereof.

(b) Name and address of the principal stockholders or other individuals connected with the applicant's business.

(c) Length of time applicant had been engaged in the house trailer business in any manner whatsoever.

(d) Statement of liability, if any.

(e) Financial statement showing financial condition of applicant whether or not applicant was an officer, director, or stockholder or partner of any of the trailer coach dealers, or organizations, or any way connected with another trailer dealer in the state.

History.—§3, ch. 23665, 1947.

320.80 Bond.—

(1) That before any license is granted by the motor vehicle commissioner to any dealer or agent as defined in §320.77, the applicant therefore must deliver to the commissioner a good and sufficient cash bond, or surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety in the amount of five thousand dollars. Said bond shall be in the form approved by the motor vehicle commissioner and shall be conditioned upon compliance with the conditions of any contract in writing made by the dealer relative to the sale or exchange of any vehicle made by said dealer and the fulfillment of any written warranty with any purchaser.

(2) Said bond shall be to the motor vehicle commissioner, and his successors in office, in favor of any purchaser of any trailer coach, as defined in §320.77 and against any agent or dealer, as defined by subsections (1) and (2) of §320.77, when said purchaser shall suffer any loss or damage as a result of any misrepresentation as to the condition, quality or otherwise of said trailer coaches, as defined by subsection (3) of §320.77.

History.—§4, ch. 23665, 1947.

320.81 License fee; presumption as to acting as dealer or agent.—A license fee of one hundred dollars shall be paid to the motor vehicle commissioner to provide necessary revenue for the enforcement of §§320.78-320.82 and for other purposes. All of the requirements herein are in addition to all other requirements and licenses now or hereafter required by law. Provided further that it shall be assumed that any person, firm or corporation who engages in three or more transactions during any twelve months period shall be deemed as having done business as an agent or dealer as the case may be, as defined by subsections (1) and (2) of §320.77, and shall comply with the regulations thereof.

History.—§5, ch. 23665, 1947.

320.82 Noncompliance with law.—Any person failing to comply with the provisions of §§320.78-320.82 shall be guilty of a misdemeanor and punishable as now provided by law.

History.—§6, ch. 23665, 1947.

cf.—§775.07, Punishment for misdemeanor.

CHAPTER 321

HIGHWAY PATROL

321.01 Department of public safety; divisions, etc.—

(1) There is hereby created a department of the state government which shall be known and designated as the department of public safety, under the control and administration of an executive board composed of the governor, the secretary of state, the attorney general, the comptroller, the treasurer, the superintendent of public instruction, and the commissioner of agriculture. The headquarters of said department shall be in Tallahassee and the secretary of state is hereby directed to assign the department suitable office room in the state capitol or other state building in Tallahassee.

(2) The department of public safety shall consist of two divisions as follows: (a) Division of the Florida highway patrol and (b) Division of state motor vehicle driver's licenses.

(3) The division of Florida highway patrol is divided into sections as follows: Headquarters section, personnel and training section, weight section, and such other sections or branches as have been or may be established by law, or by the executive board in its discretion.

History.—§§1, 2, ch. 19551, 1939; CGL 1940 Supp. 4151(615), (616); §§1, 2, ch. 20451, 1941; (3) n. §1, ch. 26800, 1951.

321.02 Division of highway patrol; powers of board.—The board shall employ a director of the state department of public safety, who shall also be the commander of the Florida highway patrol. The director shall set up and promulgate rules and regulations by which the personnel of the division of the Florida highway patrol officers shall be examined, employed, trained, located, suspended, reduced in rank, discharged, recruited, paid and pensioned, subject to civil service provisions hereafter set out. The board by and through its said director is further specifically authorized to purchase, sell, trade, rent, lease and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, office space, and perform any other acts necessary for the proper administration and enforcement of this chapter. Provided, however, that all supplies and equipment consisting of single items or in lots, shall be purchased under the requirements of §287.081. Purchases shall be made by accepting the bid of the lowest responsible bidder; the right being reserved to reject all bids. The board shall prescribe a distinctive uniform and distinctive emblem to be worn by all officers of the Florida highway patrol. It shall be unlawful for any other person or persons to wear a similar uniform or emblem, or any part or parts thereof. The board shall also prescribe a distinctive color or colors for all motor vehicles and motorcycles to be used by the Florida highway patrol.

History.—§3, ch. 19551, 1939; CGL 1940 Supp. 4151(617); §3, ch. 20451, 1941; §1, ch. 29756, 1955; §1, ch. 57-754.
cf.—§340.23(2) Traffic control FHP charged with enforcement.

321.03 Imitations prohibited; penalty.—It shall be unlawful for any person or persons in the state to color or cause to be colored any motor vehicle or motorcycle the same or similar color as the color or colors so prescribed for the Florida highway patrol. Any person violating any of the provisions of this section or §321.02 with respect to uniforms, emblems, motor vehicles and motorcycles shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment for not to exceed one year, or by both such fine and imprisonment, in the discretion of the court. The director shall employ such clerical help and mechanics as may be necessary for the

economical and efficient operation of such department.

History.—§3, ch. 19551, 1939; CGL 1940 Supp. 4151(617); §3, ch. 20451, 1941.

321.04 Personnel of the highway patrol; rank classifications; probationary status of new patrol officers; subsistence; special assignments.—

(1) The director, who shall carry the rank of colonel, shall employ patrol officers, as authorized by the legislature in appropriating funds for their salaries, not to exceed a total of seven hundred fifty, exclusive of those members of the patrol who are assigned to special departments and whose salaries are paid by the departments; not more than one shall be designated as lieutenant colonel with the title of deputy director; not more than four shall be designated as major and shall bear the titles of executive officer, inspector, and two deputy inspectors respectively; not more than twelve shall be designated as captains; not more than twenty-one shall be designated as lieutenants; not more than eleven shall be designated as first sergeants; not more than twenty-eight shall be designated as sergeants; not more than thirty-two shall be designated as corporals. In addition to the foregoing the director, with the approval and consent of the board, shall designate one officer as chief of weight section whose pay and allowance shall be equivalent to that of a captain, and one officer shall be designated as chief examiner of the drivers' license division whose pay and allowance shall be equivalent to that of a captain, and one officer shall be designated as chief of the safety education section whose pay and allowance shall be equivalent to that of a captain, and one officer shall be designated as chief of the drivers' license inspection section as may be created and duties defined by the executive board under §321.01 (3), and whose pay and allowance shall be equivalent to that of a captain. Each person who is employed as a patrol officer shall be carried on a probationary status for the period of one year from date of employment, during which period he may be dismissed without recourse. Patrol officers when sent on special detail or missions out of their regular assigned territories or headquarters shall be reimbursed for traveling expenses as provided in §112.061. The director is hereby authorized and shall assign one patrolman to the office of the governor and one patrolman to the office of the chairman of the state road department; said patrolmen shall each be selected by the governor and the chairman of the state road department; said patrolmen so assigned and so directed shall each have a rank not less than that of lieutenant, and the pay or compensation of such patrolmen shall not be lower than that of lieutenant and said patrolmen so assigned shall be paid by the department of public safety out of the appropriation made to said department; said patrolmen shall have and receive all other benefits provided for patrolmen in the highway patrol law and any other law now in existence or hereafter enacted; the director of public safety department may assign to cabinet officers a patrolman for special duty from time to time upon their request for their official state business on a temporary basis, and the director is authorized and directed to make such assignment upon request; however, such assignment shall not affect in any way the rank and pay of patrolmen assigned for temporary duty.

History.—§4, ch. 19551, 1939; CGL 1940 Supp. 4151(618); §4, ch. 20451, 1941; §1, ch. 24151, 1947; §2, ch. 26800, 1951; §2, ch. 28125, 1953; §1, ch. 29816, 1955; §1, ch. 31393, 1956; §1, ch. 57-286; §1, ch 59-114; §1, ch. 61-253; §1, ch. 63-169; §19, ch. 63-400.

321.05 Duties, functions and powers of patrol officers.—The director and members of the Florida highway patrol are hereby declared to be conservators of the peace of the state, for the purposes hereinafter set out and limited, with full power to bear arms, and they shall apprehend, without warrant, any person in the unlawful commission of any of the acts over which the members of the Florida highway patrol are given jurisdiction as hereinafter set out, and deliver him to the sheriff of the county that further proceedings may be had against him according to law. In the performance of any of the powers, duties and functions authorized by law, the director and members of the Florida highway patrol shall have the same protections and immunities afforded other peace officers which shall be recognized by all courts having jurisdiction over offenses against the laws of this state. The director and patrol officers under the direction and supervision of the director, shall perform and exercise, throughout the state, the following duties, functions and powers:

(1) To patrol the state highways and regulate, control and direct the movement of traffic thereon; to maintain the public peace by preventing violence on highways; to apprehend fugitives from justice; to enforce all laws now in effect regulating and governing traffic, travel and public safety upon the public highways and providing for the protection of the public highways and public property thereon; to make arrest without warrant for the violation of any state criminal law committed upon the right-of-way of any public road, such arrest may be made only when the offense is committed in the presence of such director or patrol officer, but no arrest shall be made without probable cause nor any search made not necessarily appropriately incident to making effective a lawful arrest; to regulate and direct traffic concentrations and congestions; to enforce laws governing the operation, licensing and taxing and limiting the size, weight, width, length and speed of vehicles and licensing and controlling the operations of drivers and operators of vehicles; to cooperate with officials designated by law to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose; to require the drivers of vehicles to stop and exhibit their drivers' licenses, registration cards or documents required by law to be carried by such vehicles; to investigate traffic accidents,

secure testimony of witnesses and of persons involved and make report thereof with copy, when requested in writing, to any person in interest, or his or her attorney; to investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.

(2) The executive board of the department of public safety or a majority thereof is hereby authorized to direct the director and patrol officers under the direction and supervision of the director to assist other constituted law enforcement officers of the state to quell mobs and riots, guard prisoners and police disaster areas.

(3) The director and patrol officers are authorized to assist, when requested by the sheriff of a county to quell mobs and riots; guard prisoners and police disaster areas within the jurisdiction of the sheriff requesting assistance and to arrest with or without a warrant;

(a) When the person to be arrested has or is believed to have committed a felony in connection with a traffic accident or the use of a vehicle on the highway;

(b) While in fresh pursuit of a person believed to have violated the traffic laws;

(c) A person wanted as a suspect in the commission of a felony or against whom a warrant has been issued.

(4) (a) All fines, costs and the proceeds of the forfeiture of bail bonds and recognizances resulting from the enforcement of this chapter by patrol officers shall be paid into the fine and forfeiture fund of the county where the offense is committed. In all cases of arrest by patrol officers the person arrested shall be delivered forthwith by said officer to the sheriff of the county or he shall obtain from such person arrested a recognizance or, if deemed necessary a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested and all fees accruing shall be taxed against the party arrested, which fees are hereby declared to be part of the compensation of said sheriffs authorized to be fixed by the legislature under article VIII, §6 of the constitution, to be paid such sheriffs in the same manner as fees are paid for like services in other criminal cases. All patrol officers are hereby directed to deliver all bonds accepted and approved by them to the sheriff of the county, in which the offense is alleged to have been committed; provided, no sheriff or constable shall be paid any arrest fee for the arrest of a person for violation of any section of chapter 317 when the arresting officer was transported in a Florida highway patrol car to the vicinity where the arrest was made; and no sheriff or constable shall be paid any fee for mileage for himself or a prisoner for miles traveled in a Florida highway patrol car. No patrol officer shall be entitled to any fee or mileage cost except when responding to a subpoena in a civil cause. The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure, except as permitted by this section; providing nothing herein shall be construed as limiting the power to locate and to take from any person under arrest or about to be arrested deadly or dangerous weapons. Nothing contained in this section shall be construed in any wise as a limitation upon existing powers and duties of sheriffs, constables or police officers.

(b) Any person so arrested and released on his own recognizance by an officer, and who shall fail to appear or respond to a summons, shall, in addition to the traffic violation charge, be deemed guilty of a misdemeanor.

(5) The executive board of the department of public safety be and it is hereby authorized and directed to assign one patrolman to the office of the governor and one patrolman to the office of the chairman of the state road department; said patrolman shall each be selected by the governor and the chairman of the state road department; said patrolman so assigned and so directed shall each have a rank not less than that of lieutenant, and the pay or compensation of such patrolmen shall not be lower than that of lieutenant; said patrolmen shall have and receive all the other benefits provided for patrolmen in the highway patrol law.

(6) The executive board of the department may employ, or assign, some fit and suitable person with experience in the field of public relations, who shall have the duty to promote, coordinate and to publicize the traffic safety activities in the state, and assign such person to the office of the governor, at a salary to be fixed by the executive board of the department. The person so assigned or employed shall be a member of the uniform division of the Florida highway patrol and he shall have the pay and rank of lieutenant while on such assignment.

History.—§5, ch. 19551, 1939; CGL 1940 Supp. 4151(619); §5, ch. 20451, 1941; §§1, 2½, ch. 23724, 1947; (5) §1, ch. 26709, 1951; (4) §1, ch. 28081, §1, ch. 28119, 1953; §1, ch. 29774, (6) n. §1, ch. 29970, 1955.

cf.—§30.23 et seq., Sheriffs' fees.
§142.01 et seq., County fine and forfeiture fund.
§901.01 et seq., Arrests generally.
§903.01 et seq., Bail generally.

321.06 Civil service.—The board is hereby empowered and directed to make civil service rules governing the employment and tenure of the members of the highway patrol. All persons employed as said patrol officers shall be subject to said civil service rules and regulations, and any amendment thereto which may thereafter from time to time be adopted. The director may, for cause, discharge, suspend or reduce in rank or pay, any member of said highway patrol by presenting to such employee the reason or reasons therefor in writing, subject to the civil service rules and regulations of the department, and subject to the review of the board, which shall serve as a court of inquiry in such cases and shall hear all complaints and defenses, if requested by such employee. Its decision shall be final and conclusive. Such civil service rules or regulations shall be subject to the revision of the legislature in the

event civil service rules adopted by the board are declared unlawful or unreasonable.

History.—§6, ch. 19551, 1939; CGL 1940 Supp. 4151(620); §6, ch. 20451, 1941.

321.07 Compensation of employees and officers.—

(1) The compensation of the employees and officers of the Florida highway patrol shall be fixed by the board; provided, however, the salary of the director shall be fixed by the legislature. Provided, however, such compensation on an annual basis shall not exceed the following base pay to wit: Recruits: two hundred dollars per month each, until accepted as a member of the patrol. Patrol officers: four thousand seven hundred seventy-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of five thousand six hundred seventy-eight dollars is reached. Corporals: four thousand nine hundred ninety-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of five thousand eight hundred ninety-eight dollars is reached. Sergeants: five thousand five hundred forty-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of six thousand four hundred forty-eight dollars is reached. First sergeants: five thousand seven hundred thirty-five dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of six thousand six hundred thirty-five dollars is reached. Lieutenants: five thousand nine hundred eighty-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of six thousand eight hundred eighty-eight dollars is reached. Captains: six thousand four hundred twenty-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of seven thousand three hundred twenty-eight dollars is reached. Majors: seven thousand eighty-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of seven thousand nine hundred eighty-eight dollars is reached. Lieutenant colonel: eight thousand seventy-eight dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of eight thousand nine hundred seventy-eight dollars is reached. In the event an officer is promoted his earned increase in the lower rank shall be added to the minimum pay of the upper rank, which will establish his base pay of the higher rank after which increase of the higher rank shall apply until maximum pay in this rank is reached. Excluding the director, any officer, chief radio technician, radio technicians, chief radio or teletype operator, radio operators, teletype operators, senior driver's license examiner or driver's license examiners of the Florida highway patrol or department of public safety who has served on the patrol or department of public safety for a period of ten years shall on the first month following the completion of this service receive in addition to his maximum pay an automatic increase of twenty-five dollars per month. Excluding the director, any officer, chief radio technician, radio technicians, chief radio or teletype operator, radio operators, teletype operators, senior driver's license examiner or driver's license examiners of the Florida highway patrol or department of public safety who has served on the patrol or department of public safety for a period of fifteen years shall on the first month following the completion of this service receive in addition to the maximum pay and the ten year raise an automatic increase of fifty dollars per month. Excluding the director, any officer, chief radio technician, radio technicians, chief radio or teletype operator, radio operators, chief teletype operator, teletype operators, senior driver's license examiner or driver's license examiners of the Florida highway patrol or department of public safety who has already completed fifteen years of service at the time of the passage of this law shall receive in addition to his maximum pay an automatic increase of seventy-five dollars per month.

(2) The compensation of the chief radio technician (engineer) of the Florida highway patrol or department of public safety shall be fixed by the board. Provided, however, such compensation on an annual basis shall not exceed the following base pay to wit: six thousand four hundred twenty-eight dollars per year for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of seven thousand three hundred twenty-eight dollars is reached. The compensation of the radio technicians (engineers) of the Florida highway patrol or department of public safety shall be fixed by the board. Provided, however, such compensation on an annual basis shall not exceed the following base pay to wit: five thousand four hundred dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of six thousand three hundred dollars is reached. The compensation of chief radio or teletype operators, not to exceed fifteen in number, and senior examiners, not to exceed twenty in number, of the Florida highway patrol or department of public safety shall be fixed by the board. Provided, however, such compensation on an annual basis shall not exceed the following base pay to wit: four thousand four hundred eighteen dollars per year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of five thousand three hundred eighteen dollars is reached. The compensation of radio operators, teletype operators and driver's license examiners of the Florida highway patrol or department of public safety shall be fixed by the board. Provided, however, such compensation on an annual basis shall not exceed the following base pay to wit: four thousand one hundred eighteen dollars per

year each for the first year; thereafter to be increased one hundred eighty dollars per year until a maximum amount of five thousand eighteen dollars is reached.

History.—§7, ch. 19551, 1939; CGL 1940 Supp. 4151(621); §7, ch. 20451, 1941; §1, ch. 22865, 1945; §2, ch. 24151, 1947; §3, ch. 26800, 1951; §§1, 2, ch. 29962, 1955; (1) §1, ch. 31394, 1956; §1, ch. 57-285; §1, ch. 61-232; §1, ch. 63-361.
cf.—Miscellaneous appropriations.

321.071 Special service officers.—The director is hereby authorized, upon approval by the board, to assign patrol officers as special service officers to:

(1) Supervise driver's license examining personnel, and

(2) Perform duties of the safety education section of the department of public safety.

Said special service officers shall, while on such assignments only, be entitled to the rank and pay of sergeant in the Florida highway patrol. There shall at no time be more than twenty of such assignments for the purpose of supervising driver's licensing personnel. There shall at no time be more than twenty of such assignments to the safety education section.

The director may, with approval of the executive board, designate certain officers as flight officers to:

(a) Perform actual flight duties as authorized pilots of the aircraft of the department of public safety.

Said flight officers shall be entitled, in addition to their maximum salary as permitted under this chapter, to additional compensation in the amount of thirty-five dollars each month while on such assignment.

History.—§2, ch. 57-285; §2, ch. 59-114; §1, ch. 61-283.

321.08 Bonds required of certain employees and officers.—The following officers and employees of said department shall give bond with good and sufficient surety in the following amounts, the form of which shall together with the sufficiency of the surety be approved by the comptroller, conditioned for the faithful performance of their respective duties and for the proper accounting and prompt payment over to the department, or the person lawfully entitled thereto, of any and all monies received by them in the performance of their duties. Such bonds shall further be conditioned to save the department and/or any person harmless from any and all damage, claims or liability which may occur as a result of any act of such officer or employee done in the scope of his employment or under color of his authority or office:

Director	$25,000.00
Supervisor drivers license division	$25,000.00
Major	$10,000.00
Captains	$ 5,000.00
Lieutenants	$ 3,000.00
All sergeants	$ 2,000.00
Corporals and patrolmen	$ 1,000.00

The bond premiums required under the provisions of this chapter shall be paid out of the funds of the department.

History.—§8, ch. 19551, 1939; CGL 1940 Supp. 4151(622); §8, ch. 20451, 1941; §3, ch. 24151, 1947.
cf.—§113.07 Bonds of officials.

321.09 Salaries and expenses to be paid from general revenue fund. — The salaries and expenses of said Florida highway patrol shall be paid from the general revenue fund, and the necessary and regular expenses incident to carrying out the provisions of this chapter shall be appropriated from said fund, and the same shall be disbursed from the state treasury in the manner and according to the same provisions of law as similar funds in the state treasury are disbursed and expended.

History.—§9, ch. 19551, 1939; CGL 1940 Supp. 4151(623); §9, ch. 20451, 1941; §50, ch. 26869, 1951.
cf.—§340.23(2) Reimbursement from turnpike authority; traffic control FHP charged with enforcement.

321.10 Report by director to board.—On or before the first day of February of each year in which a regular session of the legislature is held, the director shall make and file with the board a report covering the preceding biennial period, covering the activities of the department and the receipts and disbursements made thereby. Said report shall be accompanied by the recommendations of the director with reference to such changes in the laws applying to or affecting the department as the said director may deem expedient.

History.—§10, ch. 19551, 1939; CGL 1940 Supp. 4151(624); §10, ch. 20451, 1941.

321.11 Political activities prohibited.—No member or officer of the patrol shall perform any police duty connected with the conduct of any election, nor shall any member or officer of the patrol at any time or in any manner electioneer for or against any party ticket, or any candidate for nomination or officer on any party ticket, or for or against any proposition of any kind or nature to be voted upon at any election. Any member or officer of said patrol who shall violate the preceding provision shall be immediately discharged.

History.—§12, ch. 19551, 1939; CGL 1940 Supp. 4151(625); §12, ch. 20451, 1941.

321.12 Penalties.—

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter, or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both such fine and imprisonment.

History.—§15, ch. 19551, 1939; CGL 1940 Supp. 8135(56); §51, ch. 20451, 1941.

321.13 Certain laws exempted. — Nothing herein contained shall be construed to repeal chapter 18396, laws of Florida, 1937, being an act creating the offices of chief traffic officer and deputy traffic officers in counties having population of more than one hundred thousand by the last preceding state and federal census.

History.—§11, ch. 19551, 1939; CGL 1940 Supp. 4151(626); §11, ch. 20451, 1941.

321.14 Construction.—This chapter shall be liberally construed to the end that the greatest

force and effect may be given to its provisions for the promotion of public safety.

History.—§53, ch. 19551, 1939; CGL 1940 Supp. 415(662); §54, ch. 20451, 1941.

321.15 Highway patrol; pensions and pension trust fund.—There is hereby created and established a continuing fund to be known as the highway patrol pension trust fund. Such fund shall be made up from contributions from members (employees) of the department who have subscribed to the constitutional oath of office, and from a yearly sum to be paid into such fund from the appropriation of the drivers' license division of the department of public safety in such an amount as shall be sufficient to carry out the provisions of this law. Such state funds shall not be less than the yearly contribution paid by all members.

History.—§1, ch. 22863, 1945; §4, ch. 26800, 1951; §2, ch. 61-119.

321.16 Administration and investment of fund.—

(1) The highway patrol pension trust fund shall be administered by the director of the state department of public safety under the supervision of the executive board of the department of public safety. The state comptroller shall issue warrants for the disbursement of such fund on the receipt of signed vouchers from the director of the state department of public safety approved by the said executive board.

(2) The director of the state department of public safety under the supervision of the executive board of the department of public safety is hereby authorized to invest and reinvest such portion of the pension funds of the department of public safety as is not in their judgment required to meet current withdrawals. Such investments may be made in securities and obligations within the purview of chapter 518, and in revenue certificates and revenue bonds of the Florida state improvement commission. All investments of pension funds by the state department of public safety heretofore made are hereby validated, confirmed and ratified.

History.—§2, ch. 22863, 1945; §5, ch. 26800, 1951; (2) n. §1, ch. 28121, 1953; (1) §2, ch. 61-119.
cf.—Ch. 288, Florida development commission.

321.17 Contributions; leaving patrol; leave of absence.—

(1) Every member of the department of public safety who has subscribed to the constitutional oath of office shall come under the provisions of this law, and beginning July 1, 1953, shall contribute every month six per centum of his monthly salary; to be deducted by the state comptroller and to be paid into the state treasury to the credit of the highway patrol pension trust fund.

(2) Such members as are eligible for service credit as set forth under §321.19 (1) may pay to the state treasurer to the credit of the highway patrol pension trust fund, the sum of five dollars for each month of such service credit. Satisfactory proof of former service must be furnished the director of the state department of public safety and the executive board in the form of a sworn, written statement from member's former employer or other reliable person, or other documents of proof as may be required by them. Such money as becomes due by reason of this clause shall be paid by said employee in equal monthly payments over a period not to exceed sixty months after October 1, 1945. Employees who fail to take advantage of the benefits offered under §321.19 (1) within ninety days after October 1, 1945, shall forfeit such service credits forever. New members who may hereafter enter the service of the Florida highway patrol who fail to take advantage of the benefits offered under §321.19 (1) within ninety days after time of employment shall forfeit such service credits forever.

(3) Should a member cease to be an employee of the department of public safety because of death or by any other reason before attaining retirement or before becoming eligible for benefits for other reasons, the comptroller shall pay to him or a designated beneficiary all of the contributions made by him standing to his credit in the highway patrol pension trust fund. Such request for refund shall be made by written requisition signed by the director of the department of public safety. Any member may file in writing a designation of beneficiary. The member shall, at any time, have the privilege of changing the designated beneficiary provided such change shall be in writing. If no such written designation has been made or if the designated beneficiary predeceases the member, the beneficiary shall be the estate of the member.

(4) Members on "leave of absence" in the nation's armed services, or those who may hereafter obtain "leave of absence" for the purpose of entering the armed services of the United States and who return to service with the Florida highway patrol shall be given full service credit for such time; providing, that a contribution be made into the highway patrol pension trust fund in an amount equal to that which would have been contributed had such member remained in the service of the patrol. Request for such service credit must be made within ninety days after returning to service with the patrol or such service credit shall be forfeited forever. When request for such service credit has been approved by the director and the executive board, contributions as required shall commence within sixty days and be made in equal payments within the following twelve months. Service credit granted to employees of the department of public safety shall include such credit as has been granted for service during World War II, but in computing any service with the armed forces for credit after World War II, service credit granted shall be limited to service for a period not to exceed five years, provided said employee was on official leave of absence from the department of public safety, further provided said employee has been employed for not less than one year as a patrol officer.

History.—§3, ch. 22863, 1945; (1), (3), (4) §6, ch. 26800, 1951; (1),(3) §2, ch. 28121, 1953; §2, ch. 61-119.

321.18 Age for retirement.—

(1) Every member of the department of public safety who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has served twenty years, or has served both ten years and attained age sixty years, and every member of the department of public safety who has subscribed, on or after July 1, 1953, to the constitutional oath of office and who has served both twenty years and has attained age fifty-five, and every member of the department of public safety who has subscribed, at any time, to the constitutional oath of office who has been totally or partially disabled in line of duty, shall be entitled to be retired and to receive a pension as hereinafter provided. Every member who has reached the age of sixty-five shall, at the discretion of the executive board, be required to retire.

(2) Such retirement shall be on order of the executive board and upon request of the member to be retired, or at the discretion of the director. In the event the executive board or director orders the retirement of any member eligible to retirement, and such member shall consider himself aggrieved by such order, the member so affected shall be entitled to appeal to the executive board. Such appeal shall be in writing and filed with the secretary of state within thirty days after receipt of such order of retirement. The executive board shall consist of the governor of Florida, the secretary of state, the attorney general, the comptroller, the state treasurer, the superintendent of public instruction, and the commissioner of agriculture. Said board shall set the appeal for hearing within thirty days after the filing of such appeal; and shall review the facts as presented and determine whether such order of retirement shall continue or be revoked. Such determination shall be binding on the director and the member so appealing.

History.—§4, ch. 22863, 1945; §7, ch. 26800, 1951; §3, ch. 28121, 1953.

321.19 Computing length of service; definitions; examining committee.—

(1) (a) The computation of the length of service under this law shall include the total time spent with the department of public safety since its creation in chapter 19551, Laws of Florida, 1939, and previous law enforcement service, not to exceed ten years credit, for members employed by the department prior to January 1, 1945, and previous law enforcement service shall mean service in the state on a regular monthly or annual salary basis.

(b) Members employed on or after January 1, 1945, may claim credit for fifty per cent of the total time served by the individual as a law enforcement officer prior to becoming a member of the highway patrol.

(c) Members, claiming credit under §321.19-(1)(a) shall, within ninety days of the effective date of this law, pay to the department of public safety pension fund the sum of five dollars for each month of such previous law enforcement service credit claimed, and members employed after July 1, 1953, shall receive no credit for law enforcement service prior to becoming a member of the highway patrol.

(2) The term "total disability" shall be construed to mean the loss of eyesight, speech, right arm, both legs, or other injury, as a result of occupation while in the performance of duty, which shall totally disable such person for the performance of manual labor.

(3) The term "partial disability" shall be construed to mean the loss of hearing, nose, one eye, one leg, left arm, fingers on either hand, or any other member of the body which comes within the common law of mayhem, or any other injury which shall partially disable such person for the performance of manual labor, as the result of occupation while in the performance of duty, which shall render such member temporarily incapable of performing his duties.

(4) The commissioner of the state department of health, and two other reputable physicians, one to be appointed by the director of the state department of public safety, and one by the applicant, shall examine every applicant for a pension on the grounds of disability, and shall determine whether or not total or partial disability exists, and if partial, the extent thereof, and shall certify the results of their findings to the director of the state department of public safety and the state executive board, which findings shall be binding upon the director and the state executive board.

History.—§5, ch. 22863, 1945; §8, ch. 26800, 1951; (1) §1, ch. 28124, 1953.

321.20 Retirement pay; basis.—

(1) Every member who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has been retired following twenty years of service shall receive an annual pension payable monthly, equal to fifty per cent of the average annual salary for the last five years such member was in service; provided however, that such member may continue in service more than twenty years, and shall then receive an annual pension payable monthly, equal to fifty per cent for twenty years of service plus two per cent for each additional year of service based upon the average annual salary for the last five years such member was in service. Every member who has subscribed, on or after July 1, 1953, to the constitutional oath of office and who has been retired following the attainment of age fifty-five shall receive an annual pension payable monthly equal to two per cent for each year of service based upon the average anual salary for the last five years such member was in service. Every member who has subscribed, prior to July 1, 1953, to the constitutional oath of office and who has been retired following the attainment of age sixty shall receive an annual pension payable monthly, equal to twenty-five per cent of his average annual salary for the last five years such member was in service, plus two and one-half per cent of such average annual salary for each year of

service in excess of ten years. Provided however, that each such member to be eligible to receive a pension shall have accumulated a minimum of ten years of service within the contemplation of this law. The average annual salary of any member who has subscribed on or after July 1, 1959, to the constitutional oath of office, shall be the average annual salary received by such member during the last ten years such member was in service.

(2) Any member who has been retired because of total disability shall receive, in addition to the award made to him under the Florida workmen's compensation law, an annual pension payable monthly, of forty-five per cent of the annual salary of said member at the time of his disability, and he shall continue to receive the said pension payment so long as such total disability exists. Any member who has been retired because of partial disability shall receive in addition to the award made to him under the Florida workmen's compensation law, an annual pension, payable monthly, of thirty-five per cent of the annual salary of said member at the time of his disability, and he shall continue to receive the said pension payment so long as such partial disability exists. The director may require such member to submit to a medical examination from time to time by a doctor selected by the director, and if the examination discloses that such member is no longer disabled, such member may be ordered by the director to return to active duty with the same rank and salary that he had at the time of disability. Any such retired member who shall fail to return to duty following such order shall forfeit all rights and claims under this law.

(3) Every member who shall be entitled to retirement under the provisions of this law shall receive credit in computing his twenty years of service by taking into consideration his service in the army, navy, marine corps, air force, coast guard, or national guard, (federal service) of the United States, provided said member of the department of public safety was an employee of said department prior to entering the armed forces and received an honorable discharge from such forces and has become reemployed by the department of public safety since termination of active service with the armed forces.

(4) Every member shall have the right at any time prior to receipt of his first monthly pension payment to elect to receive a reduced pension with the provision that if such member dies after pension payments have commenced the excess, if any, of his total contributions made to the pension fund, without interest, over the total pension payments received by him shall be paid in accordance with the beneficiary designation of §321.17(3). The amount of such reduced pension shall be the actuarial equivalent of the amount of such pension otherwise payable to him in accordance with subsection (1) of this section.

(5) Every member shall have the right at any time prior to receipt of his first monthly pension payment to elect to receive a reduced pension during his lifetime with the provision that such reduced pension, (or one-half thereof if so designated) shall be continued after his death to his spouse during her lifetime. The amount of such reduced pension shall be the actuarial equivalent of the amount of such pension otherwise payable to the member in accordance with subsection (1) this section.

History.—§6, ch. 22863, 1945; §9, ch. 26800, 1951; (1) §4, (4), (5) n. §5, ch. 28121, 1953; (1), (2) §1, ch. 59-307.

321.21 Funeral expenses. — Whenever an active or retired member of the department of public safety shall be killed, or dies, from injuries, disease, or illness, contracted by reason of his occupation as a member of the department of public safety, there shall be provided a sum not to exceed five hundred dollars from the highway patrol pension trust fund for his funeral expenses. Such payment shall be in addition to return of contributions set forth in §321.17(3), and shall be in addition to pension payments set forth in §321.18.

History.—§7, ch. 22863, 1945; §10, ch. 26800, 1951; §6, ch. 28121, 1953; §2, ch. 61-119.

321.22 Pensions exempt from process.—No pension under the provisions of this law, either before or after its order of distribution, shall be held, seized, taken, retained, or levied on by virtue of any legal process issued out of any court against the beneficiary, but the same shall be paid directly to the beneficiary thereof. The highway patrol pension trust fund shall be expended only for the benefits as set forth in this law, and shall not be otherwise disposed. Should the name and/or duties of the department of public safety be changed, and/or the name and/or duties of the drivers' license division of the state department of public safety be changed, such change or changes shall in no way affect the validity of this law; such names shall be automatically substituted for the name or names now in effect, and such superseding agencies shall assume full responsibilities as provided by this law and continue benefits to eligible members. Necessary funds for the continuance of benefits to such members as may be eligible shall be provided, if necessary, from other revenue than heretofore set forth, which shall come from the state general revenue fund; the legislative intent being to establish a permanent fund for eligible members so long as it may be required.

History.—§8, ch. 22863, 1945; §11, ch. 26800, 1951; §2, ch. 61-119.

321.221 Pensions, wives of deceased patrolmen.—

(1) The widow of any highway patrolman, heretofore or hereafter killed in the line of duty, shall receive a monthly pension equal to one-half the monthly salary drawn by the deceased patrolman at the time of his death for the rest of her life, unless she remarries, in which case the pension shall terminate at the date of her remarriage.

(2) Any sums of money which would have accrued to such widow had she lived until the eighteenth birthday of such patrolman's youngest child shall accrue, share and share alike, for the use and benefit of such patrolman's child or children under eighteen years of age and unmarried during such minority. Such sums, as the same would have accrued to such widow, shall be paid to the legal guardian of the estate of such child or children, or either of them, during such minority to age eighteen years.

(3) Any widow or children not now receiving a pension under this section shall be entitled to this pension retroactive to January 1, 1954.

(4) In determining the amount of pension to be received under this section, the benefits received in the form of workmen's compensation and/or social security shall be considered and the total monthly compensation shall not exceed one-half of the salary received by the deceased patrolman at the time of his death. Provided, however, that should such total compensation exceed one-half of the monthly salary drawn by the deceased patrolman at the time of his death, the pension herein provided for shall be reduced by the amount of such excess.

(5) The payments of this pension shall be made from any unappropriated funds of the general revenue fund.

History.—§§1-4, ch. 29969, 1955; (1),(3),(4),(5)n. §1, ch. 57-348.

321.222 Provisions for modification.—Notwithstanding any provision contained herein to the contrary, the provisions relating to age for retirement under §321.18 shall be subject to amendment or modification by subsequent legislation at any time and all other provisions of this chapter relating to the administration of the system or to the duties, rights, privileges, requirements, and benefits of employees of the department of public safety who become members of the highway patrol pension system on or after July 1, 1963, shall be subject to amendment, modification, deletion, or substitution by act of the 1965 legislature of the state and such legislation shall apply retroactively to July 1, 1963 with regard to such members; provided, however, that such legislation shall not set the age for retirement, as specified in §321.18, to exceed the age of sixty years, nor shall such legislation affect any benefit which becomes payable to, or with respect to, such members prior to July 1, 1965.

History.—§1, ch. 63-390.

321.23 Photographing records; destruction of obsolete reports, etc.; effect as evidence.—

(1) The purpose of this section is to make available for the use of the director of the state department of public safety sufficient floor space to enable him to efficiently administer the affairs of the department.

(2) The director of the state department of public safety is hereby authorized to destroy reports, records, documents, papers and correspondence which in his discretion are considered obsolete.

(3) The director of the state department of public safety, and the supervisor and assistant supervisor of the drivers' license division of the department of public safety are authorized to photograph, microphotograph, or reproduce on film such documents, records, reports as they may in their discretion select. The photographs or microphotographs in the form of film or print of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§§1-3, ch. 26978, 1951; (3) §1, ch. 63-371.

321.24 Auxiliarymen to Florida highway patrol.—

(1) The director of the Florida highway patrol is hereby authorized to establish an auxiliary to the Florida highway patrol to be composed of such persons who may volunteer to serve as auxiliarymen to the Florida highway patrol. Such service to be without compensation to the individual so volunteering.

(2) Auxiliarymen serving with the Florida highway patrol shall at all times serve under the direction and supervision of the director and members of the Florida highway patrol. auxiliarymen, while serving under the supervision and direction of the director, or a member of the Florida highway patrol, shall have the same protection and immunities afforded regularly employed highway patrolmen, which shall be recognized by all courts having jurisdiction over offenses against the laws of this state.

(3) The director of the Florida highway patrol shall determine the fitness of persons to serve as auxiliarymen, shall require their completion of a regularly prescribed course of study for auxiliarymen as established and conducted by the Florida highway patrol. The total number of members of the auxiliary to the Florida highway patrol shall be limited to five times the total number of regularly employed highway patrolmen authorized by law.

(4) No member of the auxiliary shall be required to serve on any duty of and for said auxiliary without his consent thereto. The duties of the auxiliary shall be limited to assisting the Florida highway patrol in the performance of its regularly constituted duties. Nothing herein shall be construed to authorize any member of the auxiliary to make arrests.

History.—§§1-4, ch. 57-96.

321.25 Training of local officers in patrol schools.—The department of public safety is authorized to provide for the training of local law enforcement officials in matters relating to traffic in the schools established by the department for the training of highway patrol candi-

dates and officers. This training may be offered to municipal police, sheriffs and deputy sheriffs, constables and their deputies, and county traffic officers. The cost of training such local enforcement officers shall be determined by the director and shall be paid for by their respective offices, counties or municipalities, as the case may be. Such cost shall be deemed a proper county or municipal expense or a proper expenditure of the office of sheriff or constable.

History.—§1, ch. 57-292.

CHAPTER 322

DRIVERS' LICENSES

322.01 Definitions. — The following words and phrases when used in this chapter shall, for the purpose of this chapter have the meanings respectively ascribed to them in this chapter:

(1) Vehicle: Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) Motor vehicles: Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(3) Farm tractor: Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(4) School bus: Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(5) Person: Every natural person, firm, copartnership, association or corporation.

(6) Operator: Every person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor

(7) Chauffeur: Any person who operates a motor truck or truck tractor with a gross weight in excess of eight thousand pounds or width in excess of eighty inches, except the registered owner or lessee of any motor truck or truck tractor shall be exempted when transporting his own products or personal property. Any person who operates any motor vehicle transporting passengers for hire, or operates a bus transporting school children shall be required to hold a chauffeur's license.

(8) Owner: A person who holds the legal title of a vehicle or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(9) Nonresident: Every person who is not a resident of this state.

(10) Street or highway: The entire width

...ry lines of every way pub... when any part thereof is open ...of the public for purposes of ve...travel.

...) Department: Any reference herein to ...epartment shall be construed as referring to the department of public safety, consisting of the governor and the members of the cabinet, acting directly or through its duly authorized officers and agents.

(12) Suspension, revocation, and cancellation: (a) Suspension means that the licensee's privilege to drive a motor vehicle is temporarily withdrawn; (b) revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted in this chapter; (c) Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(13) Supervisor: The chief officer of the driver's license division.

(14) Director: The chief officer of the state department of public safety or the commander of the Florida highway patrol.

(15) License officer: The supervisor, who shall suspend all licenses in accordance with the requirements of this chapter.

(16) Narcotic drugs: Cocoa leaves, opium, isonipecaine, cannabis and every substance neither chemically nor physically distinguishable from them, and any and all derivatives of same, and any other drug to which the narcotics laws of the United States shall apply, and shall including all drugs and derivatives thereof known as barbiturates.

History.—§13, ch. 19551, 1939; CGL 1940 Supp. 4151(627); §13, ch. 20451, 1941; (6), (7) §1, ch. 29721, 1955; (7), (16) n. §1, ch. 61-457; (7) §1, ch. 63-156.
cf.—§§231.33, 234.14-234.21 School bus drivers.

322.02 Administration.—The department of public safety and its executive board, which are otherwise created by chapter 321, are hereby charged with the administration and function of enforcement of the provisions of this chapter.

The director, with approval of the executive board, shall employ a supervisor, who shall be a member of the uniform division of the Florida highway patrol and whose pay and allowance shall be equivalent to that of a major. He is hereby charged with the duty of serving as the executive officer of the division of state motor vehicle drivers' licenses, department of public safety, insofar as the administration of this chapter is concerned. He shall be subject to the supervision and direction of the director of said department of public safety, and his official actions and decisions as executive officer shall be conclusive unless the same are superseded or reversed by said director, executive board, or by a court of competent jurisdiction. The executive board, through its director, shall make and adopt rules and regulations for the orderly administration of this chapter.

History.—§14, ch. 19551, 1939; CGL 1940 Supp. 4151(628); §14, ch. 20451, 1941; §7, ch. 22858, 1945; §1, ch. 63-34.

322.03 Operators and chauffeurs must be licensed.—

(1) (a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this chapter. No person shall receive an operator's license unless and until he surrenders to the department all valid operators' licenses in his possession issued to him by any other jurisdiction, except no surrender is required upon a showing to the county judge that such license or licenses from other jurisdictions are necessary because of employment or part-time residence. All surrendered licenses shall be returned by the department to the issuing department together with information that licensee is now licensed in new jurisdiction. No person shall be permitted to have more than one valid operator's license at any time.

(b) No person shall drive a motor vehicle as a chauffeur unless he holds a chauffeur's license. The driver of every motor truck or truck tractor with a gross weight in excess of eight thousand pounds, or the driver of any vehicle in excess of eighty inches in width, shall be required to hold a chauffeur's license, except the registered owner or lessee of any motor truck or motor truck tractor shall be exempted when transporting his own products, or his own personal property.

Any person who operates a motor vehicle transporting passengers for hire, or the driver of any bus transporting school children shall be required to hold a chauffeur's license, provided, however that any temporary emergency movement of a motor vehicle shall not necessarily require a chauffeur's license as defined.

No person shall receive a chauffeur's license unless and until he surrenders to the department any operator's or chauffeur's license issued to him by any other jurisdiction or an affidavit that he does not possess an operator's or chauffeur's license.

History.—§15, ch. 19551, 1939; CGL 1940 Supp. 4151(629); §15, ch. 20451, 1941; §2, ch. 29721, 1955; (1)(b) §2, ch. 61-457; (1)(b) §1, ch. 63-156.
cf.—§322.32, Unlawful use of license.

322.04 Persons exempt.—The following persons are exempt from obtaining a driver's license:

(1) Any employee of the United States government, while operating a motor vehicle owned by or leased to the United States government and being operated on official business.

(2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(3) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this state only as an operator.

(4) A nonresident who is at least eighteen years of age and who has in his immediate pos-

session a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur; except, any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state.

(5) The provisions of this section shall not apply to any nonresident who shall accept employment, or shall enter his children to be educated in the public schools of the state, or a child of such nonresident who is at least sixteen years of age, but in such case or cases such nonresident or child of the nonresident shall be required to obtain a driver's license in the same manner as is required of residents of the state before such nonresidents or children shall be permitted to operate any motor vehicle on the highways of the state.

(6) Any person working for firms under contract to the United States government, whose residence is without this state and whose main point of employment is without this state may drive a vehicle on the public roads of Florida for periods up to sixty days while in this state on temporary duty, provided that such person has a valid driver's license from the state of such person's residence.

History.—§16, ch. 19551, 1939; CGL 1940 Supp. 4151(630); §16, ch. 20451, 1941; §1, ch. 21949, 1943; (1), (5) §3, ch. 29721, 1955; (5) §1, ch. 59-315; (6) n. §1, ch. 61-124.

322.05 Persons not to be licensed.—The department shall not issue any license:

(1) To any person, as an operator, who is under the age of sixteen years, except that the department may issue a restricted license as hereinafter provided, to any person who is at least fourteen years of age.

(2) To any person, as a chauffeur, who is under the age of sixteen years. Persons between the ages of sixteen years and eighteen years who make application for license as a chauffeur shall be subject to all the requirements and provisions of said §322.09, and all provisions of said §322.09, shall be applicable to all persons between the ages of sixteen years and eighteen years who apply for license as chauffeur. The director of the department of public safety may require of such applicant for chauffeur's license such examination of the qualifications of the applicant as said director shall deem proper and said director may limit the use of any license granted as said director may deem proper.

(3) To any person, as an operator or chauffeur, whose license has been suspended, during such suspension, nor to any person whose license has been revoked, until the expiration of one year after such license was revoked.

(4) To any person, as an operator or chauffeur, who is an habitual drunkard, or is an habitual user of narcotic drugs, or is an habitual user of any other drug to a degree which renders him incapable of safely driving a motor vehicle.

(5) To any person, as an operator or chauffeur, who has been adjudged to be afflicted with, or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(6) To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

(7) To any person, when the director has good cause to believe that the operation of a motor vehicle on the highways by such person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued an operator's license.

History.—§17, ch. 19551, 1939; CGL 1940 Supp. 4151(631); §17, ch. 20451, 1941; §2, ch. 21949, 1943; (4), §4, ch. 29721, 1955.

322.07 Instruction permits and temporary licenses.—

(1) Any person who, except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain an operator's license under this chapter, may apply for a temporary instruction permit, and the department shall issue such permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of ninety days, but, except when operating a motorcycle, such person must be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

(2) The department may, in its discretion, issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

History.—§19, ch. 19551, 1939; CGL 1940 Supp. 4151(633); §19, ch. 20451, 1941.

322.08 Application for license or instruction permit.—

(1) Every application for an instruction permit or for an operator's or chauffeur's license shall be made upon a form to be furnished by the department.

(2) Every said application shall state the full name, date of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and if so, when and by what state, and whether any such license has ever been revoked or suspended, or whether an application has ever been refused, and if so, the date of and reason for such suspension, revocation, or refusal, and for how long prior to making the present application, applicant has driven a motor vehicle.

History.—§20, ch. 19551, 1939; CGL 1940 Supp. 4151(634); §20, ch. 20451, 1941.

322.09 Application of minors.—

(1) The application of any person under the age of eighteen years for an instruction permit or operator's license shall be signed by

both the father and mother of the applicant, if both are living and have custody of him, or in the event neither parent is living, then by the person or guardian having such custody, or by an employer of such minor, or in the event there is no guardian or employer, then by another responsible person who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

There shall be submitted with each such application a certified copy of the birth certificate of the applicant. Upon the inability of the applicant to furnish such certified copy, a certificate from the public school authorities as to the age of the applicant upon entering school as required by §232.03, or the school authorities of the state where applicant enrolled in school, shall be submitted. Upon inability of applicant to establish a birth date as above provided, then the same may be established in the order of preference as provided by said §232.03.

(2) Provided, however, that any adult member of a family may secure an operator's license for himself, or herself, and one for each member or dependent in his or her immediate family by making a "multiple application" (accompanied by the required fee for each member of the family) setting forth therein the same information as to each member of the family that would be required in case the same were furnished by each in a separate application as provided herein. Such application, and the persons receiving and accepting operator's licenses thereunder, shall be subject to all applicable regulations and restrictions contained in this chapter.

(3) Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person or head of a family who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct.

History.—§21, ch. 19551, 1939; CGL 1940 Supp. 4151(635); §21, ch. 20451, 1941; (1) §1, ch. 29671, 1955.
cf.—§232.03 Evidence of date of birth.

322.10 Release from liability.—Any person, or head of a family, who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be cancelled. Thereupon, the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History.—§22, ch. 19551, 1939; CGL 1940 Supp. 4151(636); §22, ch. 20451, 1941.

322.11 Revocation of license upon death of person signing minor's application.—The department, upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license, shall cancel such license and shall not issue a new license until such time as the new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of eighteen years.

History.—§23, ch. 19551, 1939; CGL 1940 Supp. 4151(637); §23, ch. 20451, 1941.

322.111 Driver education for minors.—Beginning July 1, 1963, no operator's or chauffeur's license shall be issued to any person under eighteen years of age unless such person shall have successfully completed a driver education course which is given by a school in the public school system in compliance with §230.23(4)(k), or which is given by some other school or agency and is approved by the department of public safety as equivalent to the course given in the public school system except that an operator's or chauffeur's license shall be issued to any person who has a signed statement assuming liability of the applicant from:

(1) Both parents, if living and having custody of said applicant;

(2) Either parent, if said parent has exclusive custody of said applicant;

(3) The guardian or person having such custody, if neither parent is living.

The driver education course required by this section shall not exceed thirty-six hours of instruction. The provisions of this act shall be construed as supplemental to the provisions of §§322.05, 322.07, 322.12 and 322.16, and shall in no way apply to anyone already possessing a Florida restricted operator's, operator's or chauffeur's license prior to July 1, 1963.

History.—§1, ch. 61-331.

322.12 Examination of applicants.—The department shall examine every applicant for a restricted operator's, operator's or chauffeur's license, except as otherwise provided in chapter 322. Every applicant shall be required to pay a fee of one dollar for each such examination; provided, however, that any person required to submit to an examination following the suspension or revocation of his driver's license shall be required to pay a fee of five dollars for such additional examination. All such examination fees shall be collected by the department at the time of said examination. The department shall issue proper receipts for said examination fees and shall promptly transmit all funds received by it to the state treasurer for deposit in the general revenue fund.

Such examination shall be held in the county where the applicant resides within not more than ten days from the date application is made. It shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning and directing traffic and his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

History.—§24, ch. 19551, 1939; CGL 1940 Supp. 4151(638); §24, ch. 20451, 1941; §2, ch. 61-232.

322.13 The department may appoint local examiners.—The department may designate as examiners: state highway patrol officers, other officials, or private citizens. Any state highway patrol officer, or other person accepting designation as an examiner, shall conduct examinations hereunder and make written report of findings and recommendations to the department as it may require and in the course of such examination is authorized to administer oaths, or have persons affirm, in respect to the truth of statements on the applications filed before said examiner.

History.—§25, ch. 19551, 1939; CGL 1940 Supp. 4151(639); §25, ch. 20451, 1941; §1, ch. 57-767.

322.14 Licenses issued to operators and chauffeurs.—The department shall (upon payment of the required fee) issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, residence address and brief description of the licensee, and a space upon which the licensee's blood type may be inserted if known or available. A space shall be provided upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee except that the signature of said licensee shall not be required when it appears thereon in facsimile.

History.—§26, ch. 19551, 1939; CGL 1940 Supp. 4151(640); §26, ch. 20451, 1941; §1, ch. 29735, 1955.

322.15 License to be carried and exhibited on demand.—Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a patrol officer, justice of the peace, a peace officer, or a field deputy or inspector of the department. However, no person charged with violating this section shall be convicted if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

History.—§27, ch. 19551, 1939; CGL 1940 Supp. 4151(641); §27, ch. 20451, 1941.

322.16 Restricted licenses.—

(1) The department, upon issuing an operator's or chauffeur's license, shall have authority whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type or special mechanical control devices required on a motor vehicle which the licensee may operate, or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

The department may further impose other suitable restrictions on use of the license with respect to time and purpose of use or impose any other condition or restriction deemed necessary towards driver improvement, safety or control of operators and chauffeurs of motor vehicles in this state.

(2) The department may issue a special restricted license or may set forth such restrictions upon the usual license form or the department may issue a restrictive license to operate a motor driven cycle as defined; provided, in no instance shall a restricted license be issued to a minor under sixteen years of age, except on condition that such minor when operating a motor vehicle, except motorcycles, motor scooters or motor bikes, shall be accompanied at all times by a licensed operator or chauffeur who is not less than eighteen years of age and who is actually occupying the front seat beside such minor.

(3) The department may, upon receiving satisfactory evidence of any violation of the restriction of such license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(4) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

History.—§28, ch. 19551, 1939; CGL 1940 Supp. 4151(642), 8135(58); §28, ch. 20451, 1941; (2) §1, ch. 29683, 1955; (2) §1, ch. 57-757; (1) §1, ch. 59-432.

322.17 Duplicate certificates.—In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may (upon payment of twenty-five cents) obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed.

History.—§29, ch. 19551, 1939; CGL 1940 Supp. 4151(643); §29, ch. 20451, 1941.

322.18 Expiration of licenses; renewals, original applications and licenses; delinquent licenses.—

(1) Except for persons born during the month of September, every Florida driver's license which expires September 30, 1961, is extended and valid without any additional license fee until midnight of the last day of the licensee's birth month as the same appears upon said license, unless said date falls on Sunday or a holiday, in which case the license shall expire on Monday or the day following the holiday, however, the fact that such validity, if and when requested by the licensee, shall be evidenced upon the license by an appropriate validation as approved by the department of public safety, in compliance with §219.02, upon payment of a twenty-five cents validating fee to the county judge. All original licenses and all renewal licenses issued subsequent to September 1, 1961, shall be issued as provided in this section, upon proper application or procedure and payment of the fee prescribed in §322.21(1).

(2) All renewals for operators' or chauffeurs' licenses, after September 1, 1961, shall be renewed during the first month in which the holder's date of birth occurs and shall be renewable during that month as provided in this

section upon application and payment of the required fee and shall be renewed without examination unless the department has reason to believe the licensee is no longer qualified to receive a license. All renewal licenses issued prior to August 1, 1962, shall be for either a one or two-year period, as follows:

(a) Any person who was born in an odd-numbered year shall be issued a renewal license during his birth month, which license shall expire at midnight on the last day of the licensee's birth month in the first odd-numbered calendar year after the year in which such renewal license is issued.

(b) Any person who was born in an even-numbered year shall be issued a renewal license during his birth month, which license shall expire at midnight on the last day of the licensee's birth month in the first even-numbered calendar year after the year in which the renewal license is issued.

(3) All renewal licenses after August, 1962, shall be for a two-year period.

(4) An expired Florida driver's license may be renewed any time within eleven months after the expiration date of said license upon application and payment of the required fee, and by the payment of the delinquent fee as provided by §322.21(1) (e), in lieu of a driver's examination unless the department has reason to believe the licensee is no longer qualified to receive a license; provided however, that any person in the armed services of the United States holding a valid Florida driver's license and being out of the state due to military service at the time said license expires may renew said license at any time within ninety days after being discharged from such military service or upon being stationed at a military establishment in this state, without payment of any delinquent fee or examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license, upon making proof by affidavit of the fact of such military service and of the date of discharge.

(5) Every applicant for an original driver's license who is entitled to issuance of same, as provided in this section, shall be issued either a one-year license or a two-year license, as follows:

(a) Any person who was born in an odd-numbered year shall be issued an original license which shall expire at midnight on the last day of the licensee's birth month in the first odd-numbered calendar year after the year in which the original license is issued.

(b) Any person who was born in an even-numbered year shall be issued an original license which shall expire at midnight on the last day of the licensee's birth month in the first even-numbered calendar year after the year in which the original license is issued.

(6) There shall be no pretyping of licenses by county judges, but licenses shall be typed upon application for issuance.

(7) Each of the county judges of the several counties of the state shall maintain in his office, and keep current, an alphabetical file of the drivers' licenses issued in the county in which he is the county judge.

History.—§30, ch. 19551, 1939; CGL 1940 Supp. 4151(644); §30, 20451, 1941; §1, ch. 24346, 1947; §1, ch. 26911, 1951; §1, ch. 61-13.

322.19 Notice of change of address or name.—Whenever any person, after applying for or receiving an operator's or chauffeur's license, shall move from the address named in such application, or in the license issued to him, or when the name of a licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the department in writing of his old and new addresses, or of such former and new names, and of the number of his license.

History.—§31, ch. 19551, 1939; CGL 1940 Supp. 4151(645); §31, ch. 20451, 1941.

322.20 Records to be kept by the department.

(1) The department shall file every application for license received by it. Possession of such an application form, whether filled out or in blank, or of a counterfeit thereof, not authorized by the department or its personnel shall constitute a misdemeanor. The applications filled with the department shall be suitably indexed by it in alphabetical order containing:

(a) All applications denied and on each thereof the reasons for such denial.

(b) All applications granted.

(c) The name of every addressee whose license has been suspended or revoked by the department, and after every such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it, and maintain convenient records or make suitable notations, in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily available for the consideration of the department upon any application for renewal of a license and at other suitable times.

History.—§32, ch. 19551, 1939; CGL 1940 Supp. 4151(646); §32, ch. 20451, 1941; (1) §1, ch. 57-758.

322.201 **Records as evidence.**—A copy of all accident reports and abstracts of court records of convictions received by the department and the complete driving record of any individual duly certified by the director, supervisor or assistant supervisor, shall be received as evidence in all courts of this state without further authentication.

History.—§2, ch. 63-371.

322.21 Fees to be paid for licenses and machinery for handling and collecting the same.—

(1) The fee for:

(a) An operator's one-year license issued to any person for one year or less shall be one dollar.

(b) An operator's two-year license issued to any person for a period of more than one year shall be two dollars.

(c) A chauffeur's one-year license issued

for one year or less shall be two dollars.

(d) A chauffeur's two-year license issued for a period of more than one year shall be four dollars.

(e) The renewal of any such license shall be the same as set forth above, except that any person holding a driver's license for the preceding license year, may renew the same anytime within eleven months after expiration date, without examination, by paying an additional delinquent fee of one dollar, said delinquent fee to be forwarded by the county judge to the department of public safety.

(2) It is hereby expressly made the duty of the supervisor, driver's license division, to set up a division in the department of public safety, with the necessary personnel to perform the necessary clerical and routine work for the department in issuing, handling and recording said applications and licenses, including the receiving and accounting of all license funds and payments of the same into the state treasury, and such other incidental clerical work connected with the administration of this chapter.

(3) The department of public safety shall prepare forms for application and licenses in conformity with the provisions of this chapter and the said department shall have sufficient numbers of the same prepared to supply all applicants for operators and chauffeur's licenses, and all renewal licenses, and furnish the same to the several county judges.

(4) Licenses shall be issued by said judges pursuant to the provisions of this chapter, and subject to the direction and supervision of the department of public safety. The possession or sale of blank drivers' licenses by anyone other than the department of public safety, county judge or his designate or those designated by the department of public safety shall be a misdemeanor and punishable under the laws of this state. In the year ending August 31, 1961, each county judge shall retain a fee of twenty-five cents on each of the first ten thousand licenses issued by him during said period and ten cents on each additional license issued by him during said period; in the year from September 1, 1961, through August 31, 1962, the county judge shall retain on the drivers licenses issued by him during such period the following fee: Twenty-five cents for each of the first five thousand one-year licenses and ten cents for each one-year license in excess of the first five thousand; fifty cents on each of the first five thousand two-year licenses and twenty cents for each two-year license in excess of the first five thousand; in each yearly period beginning September 1 and ending the following August 31, commencing with September 1, 1962, the county judge shall retain a fee of fifty cents on each of the first ten thousand licenses issued by him during each such period and twenty cents on each additional license issued by him during each such period.

(5) All license moneys, except the judge's fees as aforesaid, shall be promptly remitted to the department of public safety not later than ten days after the same have been collected. The department of public safety shall transmit all funds received by it to the state treasurer, and the same shall be placed in the general revenue fund and sufficient funds for necessary expense of said department shall be included in the biennial appropriations act; said funds shall be used only for the maintenance and operation of the department of public safety.

History.—§33, ch. 19551, 1939; CGL 1940 Supp. 4151(647); §33, ch. 20451, 1941; §1, ch. 22838, §7, ch. 22858, 1945; (1) §2, ch. 24346, (4) §3, ch. 24346, 1947; §51, ch. 26869, 1951; (4) §1, ch. 59-314; (1), (4) §2, ch. 61-13.

322.211 Appointment of sub-agents for sale and issuance of drivers' licenses.—

(1) The county judge of any county having only one county judge or the senior county judge in any county having more than one county judge shall be authorized to appoint any person, firm, partnership or corporation as a sub-agent to serve at the pleasure of said judge, for the sale and issuance of drivers' licenses, giving due consideration to its moral character, business ability, financial responsibility and proper facilities for the proper issuance of said licenses. No employee of the county judge nor his relatives, or next kin by blood, or otherwise shall be appointed as a sub-agent.

(2) Sub-agents shall issue and sell drivers' licenses in said county upon the posting of an adequate bond, payable to the county judge, in an amount to be fixed and approved by the judge and under such rules and regulations as may be prescribed by the county judge and as required by law.

(3) Sub-agents shall be authorized to sell and issue drivers' licenses at such specific locations in said county as, in the judgment of the county judge, will best serve the public interests and convenience in obtaining drivers' licenses in said county.

(4) It shall be unlawful for any individual, firm, partnership or corporation to act as a sub-agent for the sale and issuance of drivers' licenses or to handle in any manner drivers' licenses for a fee or compensation of any kind in such counties unless they have been appointed as a sub-agent by the county judge as prescribed in this section.

(5) Any individual, firm, partnership or corporation who shall willfully violate any of the provisions of this law shall be guilty of a misdemeanor, and upon a conviction therefor, be fined not less than one hundred dollars for each violation.

(6) (a) Every individual, firm, partnership or corporation acting as a sub-agent for the sale and issuance of drivers' licenses under the provisions of this section in counties having a population of less than nine hundred thousand according to the latest official decennial census, may charge and receive as its compensation a service charge of twenty-five cents for the issuance of each driver's license. This service shall be an additional sum over and above the sum required by law to be collected for the issuance of each license by the county judge.

(b) Every individual, firm, partnership or corporation acting as a sub-agent for the sale and issuance of drivers' licenses under the provisions of this section, in counties having a population of more than nine hundred thousand according to the latest official decennial census, may charge and receive as its compensation a service charge of fifty cents for the issuance of each driver's license. This service shall be an additional sum over and above the sum required by law to be collected for the issuance of each license by the county judge.

(7) Sub-agents shall be required to report every ten days, or more often if required by the county judge, the sale and issuance of all licenses during the preceding ten days prior. Said report to be accompanied with the proper remittance covering the sale of the licenses on said report.

(8) Nothing herein contained shall be construed to relieve any county judge in all counties of the state of the duty of issuing drivers' licenses to the public without the payment of any service charge, as required by law.

History.—§§1-8, ch. 59-496; (6) §1, ch. 63-38.

322.22 Authority of department to cancel license.—

(1) The department is hereby authorized to cancel any operator's or chauffeur's license, upon determining that the licensee was not entitled to the issuance thereof, or that said licensee failed to give the required or correct information in his application, or committed any fraud in making such application.

(2) Upon such cancellation, the licensee must surrender to the department the license so cancelled.

History.—§34, ch. 19551, 1939; CGL 4151(648); §34, ch. 20451, 1941.

322.221 Department may require re-examination.—

(1) The department of public safety having good cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to an examination. Good cause as used herein shall be construed to mean that a licensee is subject to having his license suspended or revoked under the provisions of §322.27(1), or whenever the licensee's driving record or other evidence is sufficient to indicate that his driving privilege is detrimental to public safety.

(2) The department may require an examination or re-examination to determine the competence and driving ability of any driver, causing or contributing to the cause of any accident resulting in death, personal injury or property damage.

(3) Upon the conclusion of such examination or re-examination the department shall take action as may be appropriate and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under §322.16. Refusal or neglect of the licensee to submit to such examination or re-examination shall be ground for suspension or revocation of his license.

History.—§§ 1-3, ch. 28120, 1953; §1, ch. 59-443.

322.23 Suspending privileges of nonresidents and reporting convictions.—

(1) The privilege of driving a motor vehicle on the highways of this state, given to a nonresident, shall be subject to suspension or revocation by the department in the same manner and for the same cause as a license issued by the department may be suspended or revoked.

(2) The department is authorized, upon receiving a record of the conviction in this state of a nonresident driver, of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

History.—§35, ch. 19551, 1939; CGL 1940 Supp. 4151 (649); §35, ch. 20451, 1941.
cf.—§§320.37-320.39, Privileges of nonresidents.

322.24 Suspending resident's license upon conviction in another state.—The department is authorized to suspend or revoke the license of any resident of the state, upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of his license.

History.—§36, ch. 19551, 1939; CGL 1940 Supp. 4151(650); §36, ch. 20451, 1941.

322.25 When court to forward license to department and report convictions.—

(1) Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the state or municipal court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction, to the department.

(2) Every state or municipal court having jurisdiction over offenses committed under this chapter, or any other law of this state regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and shall suspend or revoke in accordance with the provisions of this chapter, the operator's or chauffeur's license of the person so convicted.

(3) There shall be no notation made upon a license of either an arrest or warning until the holder of the license has been duly convicted or forfeited bond.

(4) For the purpose of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(5) For the purpose of this chapter, the entrance of a plea of nolo contendere by the defendant, accepted by the state or municipal

court and under which plea the court has entered a fine or sentence, whether in this state or any other state or county, shall be equivalent to a conviction.

History.—§37, ch. 19551, 1939; CGL 1940 Supp. 4151(651); §37, ch. 20451, 1941; §1, ch. 59-313; (5) n. §3, ch. 61-457.

322.251 Personal service or registered mail.—Any notice of cancellation, suspension or revocation of a driver's license by the department of public safety shall be personally served upon the licensee or forwarded to his address by regular U. S. mail, registered with return receipt requested.

History.—§5, ch. 59-278.

322.26 Mandatory revocation of license by department.—The department shall forthwith revoke the license or driving privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses:

(1) Manslaughter resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle, or being in actual physical control thereof, or who enters a plea of nolo contendere and said plea has been accepted by the state or municipal court and said court has entered a fine or sentence to a charge of driving while under the influence of intoxicating liquor or a narcotic drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

(5) Perjury or the making of a false affidavit or statement under oath to the department under this law, or under any other law relating to the ownership or operation of motor vehicles.

(6) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twelve months.

(7) Any violation of the law against lewdness, assignation and prostitution where such violation has been effected through the use of a motor vehicle.

History.—§38, ch. 19551, 1939; CGL 1940 Supp. 4151(652); §38, ch. 20451, 1941; §1, ch. 21764, 1943; §4, ch. 61-457.
cf.—Ch. 317 Duty to stop and assist in case of accident.
§860.01 Driving while intoxicated.

322.27 Authority of department to suspend or revoke license.—

(1) The department is hereby authorized to suspend the license of an operator or chauffeur upon a showing of its records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction; or,

(b) Has been convicted of a violation of any traffic law which resulted in an accident that caused the death or personal injury of another or property damage in excess of fifty dollars; or,

(c) Is incompetent to drive a motor vehicle; or,

(d) Has permitted an unlawful or fraudulent use of such license or has knowingly been a party to the obtaining of a license by fraud or misrepresentation;

(e) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

(2) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances for the determination of the continuing qualification of any person to operate a motor vehicle. The department of public safety is authorized to suspend the license of any operator or chauffeur upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances amounting to twelve or more points as determined by the point system. The suspension shall be for a period of not more than one year.

(a) When a licensee accumulates twelve points within a twelve month period the period of suspension shall be for not more than thirty days.

(b) When a licensee accumulates eighteen points within an eighteen month period the suspension shall be for a period of not more than three months.

(c) When a licensee accumulates twenty-four points within a thirty-six month period the suspension shall be for a period of not more than one year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative value to conviction of the following violations:

1. Reckless driving wilful and wanton ..... 4 points
2. Leaving the scene of an accident resulting in property damage of more than $50.00 ..... 6 points
3. Unlawful speed resulting in an accident ..... 6 points
4. Passing a stopped school bus ..... 4 points
5. Unlawful speed ..... 3 points
6. Improper equipment (brakes-lights-steering) ..... 2 points
7. All other moving violations (including parking on a highway outside the limits of a municipality) ..... 3 points
8. Any such moving violation covered above resulting in an accident ..... 4 points

(e) In computing the total number of points, any conviction which occurred more than thirty-six months preceding the last conviction shall not be considered, provided that any point computed at half value at the time this act takes effect shall not be affected.

(f) A conviction in another state of a violation therein which, if committed in this state, would be a violation of the traffic laws of this state except a violation of §322.26, may be

recorded against a driver on the basis of one-half the number of points received had the conviction been made in a court of this state.

(g) In computing the total number of points, when the licensee reaches the danger zone, the department is authorized to send the licensee a warning letter advising that any further convictions may result in suspension of his driving privilege.

(h) The department shall administer and enforce the provisions of this law and may make rules and regulations necessary for its administration not inconsistent with this law.

History.—§39, ch. 19551, 1939; CGL 1940 Supp. 4151(653); §39, ch. 20451, 1941; §7, ch. 22858, 1945; §§1, 2, ch. 57-756; (1) (f) §1, ch. 57-759; §1, ch. 59-278; (1)(b) §1, ch. 61-42; (2)(e) §1, ch. 61-53.

cf.—§322.34, Penalty for driving while license suspended.

322.271 Authority to modify revocation or suspension.—

(1) Upon the suspension, cancellation or revocation of the driver's license of any person as authorized or required in this chapter, the department shall immediately notify the licensee, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed thirty days after receipt of such request, in the county wherein the licensee resides, unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing a duly authorized agent of the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books, papers, and may require a re-examination of the licensee.

(2) Upon such hearing the person whose license has been suspended, cancelled or revoked, may show that such cancellation, suspension or revocation of his license causes a serious hardship and precludes his carrying out his normal business occupation, trade, or employment, and that the use of his license in the normal course of his business is necessary to the proper support of himself or his family. The department may require letters of recommendation from respected business men in the community, law enforcement officers or judicial officers in determining whether such person should be permitted to operate a motor vehicle on a restricted basis for business use only and in determining whether such person can be trusted to so operate a motor vehicle.

(3) Upon such hearing the department shall either suspend, affirm or modify its order and may restore to the licensee the privilege of driving on a limited or restricted basis, for business or employment use only.

History.—§6, ch. 59-278.

322.272 Supersedeas.—The filing of a petition for certiorari to the circuit court shall operate as a supersedeas of such suspension, revocation or cancellation, except when same is based on the offense of driving or being in actual physical control of a motor vehicle under the influence of intoxicating liquor or narcotic drugs.

History.—§7, ch. 59-278; §5, ch. 61-457.

322.273 Penalty.—The penalty for violation of the terms or conditions of a license so restricted by the department of public safety shall be the same as the penalty for driving while such license is revoked, cancelled or suspended.

History.—§8, ch. 59-278.

322.28 Period of suspension or revocation.—

(1) The department shall not suspend a license for a period of more than one year, and upon revoking a license, in all cases except in prosecutions for the offense of driving a motor vehicle while under the influence of intoxicating liquor, shall not in any event grant a new license until the expiration of one year after such revocation; except as provided herein.

(2) In prosecutions for the offense of driving a motor vehicle while under the influence of intoxicating liquor, the following provisions shall apply:

(a) Upon conviction of a driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted and shall prescribe the period of such revocation in accordance with the following provisions:

1. Upon first conviction, the driver's license or privilege shall be revoked for not less than three months nor more than twelve months.

2. Upon a second conviction within a period of five years from the date of a prior conviction for said offense, the driver's license or privilege shall be revoked for not less than six months nor more than twenty-four months.

3. Upon a third or subsequent conviction within a period of ten years from the date of conviction of the first of three or more convictions for said offense, the driver's license or privilege shall be revoked for not less than one year nor more than five years.

(b) If the period of revocation shall not be specified by the court at the time of imposing sentence or within thirty days thereafter, the department shall forthwith revoke the driver's license or privilege for the maximum period applicable under subsection (2)(a). The driver may, within thirty days of such revocation by the department, petition the court for further hearing on the period of revocation and the court shall be authorized in such case at its discretion to reopen the case and to determine the period of revocation within the limits specified in said subsection (2)(a).

(c) Any person having his license revoked or suspended by the department of public safety may during the period of said revocation or suspension apply to the department of public safety for review of said revocation or suspension and restoration of his driving privileges. Upon receipt of said application the department of public safety shall provide for a hearing after notice to said applicant within thirty days and may after said hearing and such investigation as may be made, restore the driving privileges subject to such conditions and restrictions as the department may deem proper which shall not extend beyond the original period of revocation or suspension.

(d) The forfeiture of bail bond, not vacated within ten days, in any prosecution for the offense of driving while under the influence of intoxicating liquor to the extent of depriving the defendant of his or her normal faculties, shall be deemed equivalent to a conviction for the purposes of this paragraph and the department shall forthwith revoke the defendant's driver's license or privilege for the maximum period applicable under subsection (2)(a); provided, if the defendant shall subsequently be convicted of said charge, the period of revocation for such conviction shall not exceed the difference between the applicable maximum under subsection (2)(a) and the period imposed under this subsection that shall have actually expired.

(e) When any driver's license or privilege has been revoked pursuant to the provisions of this section, the department shall not grant a new license until the expiration of the period of revocation so prescribed.

History.—§40, ch. 19551, 1939; CGL 1940 Supp. 4151(654); §40, ch. 20451, 1941; §2, ch. 59-95.

322.29 Surrender and return of license.—The department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the department, except that at the end of the period of suspension such license so surrendered shall be returned to the licensee after applicant has successfully passed the complete examination.

History.—§41, ch. 19551, 1939; CGL 1940 Supp. 4151(655); §41, ch. 20451, 1941; §1, ch. 59-442.

322.30 No operation under foreign license during suspension or revocation in this state.—Any resident or non-resident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter, shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or revocation until a new license is obtained.

History.—§42, ch. 19551, 1939; CGL 1940 Supp. 4151(656); §42, ch. 20451, 1941.

322.31 Right of review.—The final orders and rulings of the department wherein any person is denied a license, or where such license has been cancelled, suspended or revoked, shall be reviewable in the manner and within the time provided by the Florida appellate rules only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida appellate rules.

History.—§43, ch. 19551, 1939; CGL 1940 Supp. 4151(657); §43, ch. 20451, 1941; r. §1, ch. 59-95; (1) ch. 59-278; §5, ch. 61-457; §18, ch. 63-512.

322.32 Unlawful use of license.—It is a misdemeanor for any person:

(1) To display, or cause or permit to be displayed, or have in his possession, any cancelled, revoked, suspended, fictitious, or fraudulently altered operator's or chauffeur's license.

(2) To lend his operator's or chauffeur's license to any other person or knowingly permit the use thereof by another.

(3) To display, or represent as one's own, any operator's or chauffeur's license not issued to him.

(4) To fail or refuse to surrender to the department upon its lawful demand, any operator's or chauffeur's license which has been suspended, revoked or cancelled.

(5) To use a false or fictitious name in any application for an operator's or chauffeur's license, or to knowingly make a false statement, or to knowingly conceal a material fact, or otherwise commit a fraud in any such application.

(6) To permit any unlawful use of an operator's or chauffeur's license issued to him.

(7) To do any act forbidden, or fail to perform any act required by this chapter.

History.—§44, ch. 19551, 1939; CGL 1940 Supp. 8135(59); §44, ch. 20451, 1941.

322.33 Making false affidavit perjury.—Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter, shall be guilty of perjury and upon conviction shall be punished accordingly.

History.—§45, ch. 19551, 1939; CGL 1940 Supp. 7476 9); §45, ch. 20451, 1941.
cf.—§837.01 et seq., Punishment for perjury.

322.34 Driving while license suspended or revoked.—Any person whose operator's or chauffeur's license, or driving privilege as a nonresident, has been cancelled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is cancelled, suspended, or revoked, is guilty of a misdemeanor and upon conviction of a first offense shall be punished by imprisonment for not less than 10 days nor more than 30 days, and there may be imposed in addition thereto a fine of not more than $500, and any person convicted of a second or subsequent charge of driving while his license is cancelled, suspended or revoked shall, in addition to a fine of not more than $1,000, be imprisoned for not less than 30 days nor more than 12 months.

History.—§46, ch. 19551, 1939; CGL 1940 Supp. 8135(60); §46, ch. 20451, 1941; §7, ch. 22858, 1945; §1, ch. 59-3.

322.35 Permitting unauthorized minor to drive.—No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized by the provisions of this chapter.

History.—§47, ch. 19551, 1939; CGL 1940 Supp. 4151(658); §47, ch. 20451, 1941.

322.36 Permitting unauthorized person to drive.—No person shall authorize, or knowingly permit, a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized by the provisions of this chapter.

History.—§48, ch. 19551, 1939; CGL 1940 Supp. 4151(659); §48, ch. 20451, 1941.

322.37 Employing unlicensed chauffeur.—No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter.

History.—§49, ch. 19551, 1939; CGL 1940 Supp. 4151(660); §49, ch. 20451, 1941.

322.38 Renting motor vehicle to another.—

(1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed, or if a nonresident he shall be licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented, and compared and verified the signature thereon with the signature of such person written in his presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where the said license was issued. Such record shall be open to inspection by any police officer, or officer or employee of the department.

History.—§50, ch. 19551, 1939; CGL 1940 Supp. 4151(661); §50, ch. 20451, 1941.

322.39 Penalties.—

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter, unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

History.—§51, ch. 19551, 1939; CGL 1940 Supp. 8135(56); §51, ch. 20451, 1941.

322.41 Municipal drivers' license.—No city, municipality or town shall impose or collect any license for the operation of any motor vehicle or any driver thereof.

History.—§52, ch. 20451, 1941.

322.42 Construction of chapter.—This chapter shall be liberally construed to the end that the greatest force and effect may be given to its provisions for the promotion of public safety.

History.—§53, ch. 19551, 1939; CGL 1940 Supp. 4151(662); §54, ch. 20451, 1941.

CHAPTER 323

MOTOR CARRIERS

*323.01 **Definitions.**—In construing this chapter, where the context permits, the word, phrase or term:

(1) Commission means the Florida public utilities commission.

(2) Corporation includes any corporation, company, association, or joint stock association.

(3) Certificate means any certificate of public convenience and necessity issued under the provisions of this chapter.

(4) Permit means any permissive permit issued under the provisions of this chapter to those carriers operating over public highways with for hire tags in transporting persons or property for compensation other than those holding certificates of public convenience and necessity under the provisions of this chapter.

(5) Public highway means every public street, road or highway in this state, and in the case of common carriers holding certificates to transport general commodities over specified highways, the term public highway shall comprehend the area abutting the same for a distance of two airline miles on either side thereof.

(6) Motor vehicle includes all vehicles or machines, propelled by power other than muscular, used upon the public highways (but not over fixed rails) for the transportation of persons or property for compensation either as common carriers, private contract carriers or for hire carriers.

(7) Motor carrier means all persons, their lessees, trustees or receivers, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over fixed rails, used in the business of transporting persons or property for compensation over any public highway in this state and shall specifically include:

(a) Every such person owning, leasing, using or exercising dominion over motor vehicles operated in common carriage of either persons or property for compensation over public highways over regular routes or on fixed schedules or between fixed termini or in charter carriage as herein defined.

(b) Every such person owning, leasing, using or exercising dominion over motor vehicles operated in the transportation of persons or property over public highways under contract or private carriage for compensation.

(c) Every such person, owning, leasing, using or exercising dominion over motor vehicles operated in the transportation of persons or

property over public highways for hire as defined and regulated by this chapter and as further defined and regulated by the commission under the authority conferred on it by this chapter.

(8) Private contract carrier means any motor carrier engaged in the transportation of persons or property over the public highways of this state who is not a common carrier but transports such persons, or property, under contract for one or more persons for compensation over such highways, where such carriage consists of continuous or recurring carriage under the same contract.

(9) For hire means any motor carrier engaged in the transportation of persons or property over the public highways of this state for compensation, which is not a common carrier or contract carrier but transports such persons or property in single, casual and nonrecurring trips. For hire carriage shall not be deemed to include charter carriage as herein defined and no for hire carriage of passengers shall be authorized by any permit as herein defined and issued by the commission under the provisions of this chapter in motor vehicles of a greater passenger-carrying capacity than nine, including the driver or chauffeur.

(10) Charter carriage or service means the transportation of a group of persons who, pursuant to a common purpose and under a single contract, have acquired the exclusive use of a motor bus of a greater capacity than nine, including the driver, in which to travel together as a group to a specified destination or for a particular itinerary either agreed upon in advance or modified or rearranged after having left the point of origin. Charter carriage shall not be deemed to include sight-seeing over public roads and highways for which individual tickets are sold, such carriage being deemed to be common carriage, and charter carriage shall not be deemed to include property or cargo carriage of any nature. Charter carriage as defined herein, in the interest of safety on the highways and safety of the traveling public, shall be performed only by common carriers of passengers whose motor vehicles meet the specifications of this chapter and are operated under the supervision and the rules and regulations of the commission.

(11) For compensation as used in these definitions and in this chapter means a return in money or in property or in anything of value for service in transporting persons or property by motor vehicles over public highways, whether paid, received or realized, directly or indirectly, and shall specifically be deemed to include any profit in money, goods or things realized on the delivered price of goods, merchandise, cargo or property, where title or ownership is temporarily vested during transit in the carrier as a subterfuge for the purpose of avoiding regulation under this chapter; provided that where said profit is equal to or less than the regularly established rate applicable to the transportation of said property by common carriers authorized by law to transport property for compensation, such scheme or device shall be presumed to be a subterfuge for the purpose of avoiding regulation under this chapter.

(12) Suburban territory as used in this chapter means that area lying immediately outside and contiguous to the corporate limits of any municipality which is continuously built up and developed and used as residential or business property as distinguished from rural property.

(13) Truck includes any self-propelled motor vehicle designed and used principally for carrying things other than passengers.

(14) Trailer includes any vehicle without motive power and having one or more axles at each end, coupled to or drawn by a motor vehicle and designed to carry property solely on its own structure where no part of its own weight of the weight of the vehicle and load so drawn.

(15) Semitrailer includes any vehicle without motive power with axle or axles at the rear end only, so designed and used in connection with a motor vehicle that some part of its own weight and that of its own load rests upon, or is carried by another vehicle.

(16) Tractor shall mean and include any self-propelled motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(17) Transportation broker means any person, firm, company or association not included in the term motor carrier and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation of property subject to this chapter, or which would be subject to this chapter except for the exemptions, provided by §323.29, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes or contracts for such transportation; provided, however, the procuring of transportation of cut flowers and the transportation of flower bulbs are exempt from this chapter.

(18) Certificate of registration means a certificate issued as a matter or course upon proper application therefor to any motor carrier engaged in transporting persons or property for compensation in interstate commerce by virtue of a certificate of public convenience and necessity or permit from the interstate commerce commission authorizing operation over the public highways of this state.

History.—§1, ch. 14764, 1931; CGL 1936 Supp. 1335(1); §1, ch. 18026, 1937; §1, ch. 25418, 1949; (17) n. §1, ch. 29787, 1955; (18) n. §1, ch. 57-111; (5), (11) §1, ch. 57-157; (9), (10) §1, ch. 57-222; (11) §20, ch. 61-530; §1, ch. 63-279; (7)-(9), (17), (18) §1, ch. 63-496.

cf.—§1.01 For general definitions.
Ch. 350, Public utilities commission.
§561.34(10), Licenses for dispensing beverages on buses.
§769.01 et seq., Liability of persons engaged in certain hazardous occupations.

*Footnote to §323.05 applicable to this section.

323.02 Certificate or permit required.—No motor carrier shall operate any motor vehicle for the transportation of persons or property for compensation on any public highway in this state without first having obtained from the

public utilities commission a certificate of public convenience and necessity or a permit as hereinafter provided or a certificate of registration of interstate commerce commission authority as hereinafter provided.

History.—§2, ch. 14764, 1931; CGL 1936 Supp. 1335(2); §2, ch. 57-111; §1, ch. 63-496; §1, ch. 63-279.

323.03 Common carriers; certificate of convenience required.—No motor carrier shall operate any motor vehicle for the transportation of persons or property as a common carrier for compensation on any public highway in this state without first having obtained from the public utilities commission a certificate that public convenience and necessity requires such operation.

(1) APPLICATION, FEES, ETC. Application for such certificate of public convenience and necessity for common carriage made by any motor carrier shall be in writing verified by the applicant and shall specify the following matters:

(a) The name and address of applicant and the names and addresses of its officers, if any.

(b) The public highway or highways over which and the fixed termini or the regular route, if any, between which or over which applicant desires to operate.

(c) The kind of transportation, whether passenger or freight, or both, in which applicant intends to engage, together with a brief description of each vehicle which applicant desires to use, including the seating capacity thereof, if buses, or the tonnage thereof, if trucks, and including specifically the size and weight of such vehicle.

(d) The proposed time schedule of operation.

(e) An agreement on the part of the applicant to conform with and abide by all tariffs and classifications as to freight or passenger carriage which may be prescribed by the commission from time to time.

Any such application shall be accompanied by a payment of a fee of one hundred dollars to be placed in the general revenue fund. A sufficient sum shall be included in the biennial appropriations act for cost of notices and hearings and for the administration of the provisions of this chapter.

(2) HEARING AND NOTICES. Upon filing of said application and payment of said fee, the public utilities commission shall fix a time for hearing said application, which shall not be less than twenty days nor more than sixty days subsequent to the filing of said application, and no application shall be granted or certificate of convenience and necessity issued without a hearing by the commission. Notice of such hearing shall be given to the applicant and to all motor carriers serving any part of the route proposed to be served by the applicant, and to the mayor or chief magistrate of each city and town in or through which the applicant desires to operate, and to the chairman of the board of county commissioners of each county in which the proposed service would be operated, and to the chairman of the state road department. Such notices shall contain a brief summary of the subject matter of the application, the type of service proposed, the territory to be served and any other pertinent facts in connection therewith, and shall be mailed at least fifteen days prior to the date assigned for hearing of such application and shall within such fifteen day period be published by the commission in one or more newspapers of general circulation in the territory proposed to be served.

(3) DISPOSITION OF APPLICATION. At the time specified in said notice, or at such time as may be fixed by the commission, a public hearing upon said application shall be held by the commission. At or after such hearing the commission may issue a certificate of public convenience and necessity, as prayed for or refuse to issue the same, or may issue the same with modifications, or upon such terms and conditions as in its judgment the public convenience and necessity may require; provided, that the commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have upon transportation facilities within the territory sought to be served by said applicant, and also the effect upon transportation as a whole within said territory.

When any application for a certificate of public convenience and necessity has been heard by the commission and denied, the commission shall not entertain any further application covering the identical or similar routes, schedules or service until the expiration of six months from the date of such denial.

When application is made by a motor carrier for a certificate to operate as a common carrier in a territory or on a line already served by a certificate holder, the commission shall grant same only when the existing certificate holder or holders serving such territory fail to provide service and facilities which may reasonably be required by the commission.

(4) CONTENTS OF CERTIFICATE. Any certificate of convenience and necessity issued under the provisions of this section shall contain among other things the following:

(a) The name of the grantee.

(b) The public highway or highways over which, and the fixed termini, if any, between which the grantee is permitted to operate.

(c) The kind of transportation, whether passenger or freight, or both, in which the grantee is permitted to engage, together with a statement of the exact routes, terminals or territory to be served.

(d) Such additional terms, conditions, provisions and limitations as the commission shall deem necessary or proper in the public interest or in the interest of transportation facilities already existing on the route or routes or in the territory to be served.

History.—§3, ch. 14764, 1931; CGL 1936 Supp. 1335(3); (1) (e) §52, ch. 26869, 1951; (1) (e) §1, ch. 57-112; (5) r. §2, ch. 57-260; §1, ch. 63-279; §1, ch. 63-496.

323.031 Bulk hauling of road construction aggregates; certificate of convenience, etc.—

(1) No motor carrier shall operate any mo-

tor vehicle for the transportation in bulk of road building and construction aggregates for compensation on any public highway of the state without first having obtained from the commission a certificate that public convenience and necessity requires such operation, except as hereinafter provided in §323.051, for any motor carrier which proposes to operate solely as a for hire carrier in a single designated county.

(2) Applications for such certificate of public convenience and necessity as a limited common carrier, in bulk, of road building and construction aggregates, made by a motor carrier shall be in writing verified by the applicant and shall include the following matters:

(a) The name and address of the applicant and the names and addresses of its officers, if any.

(b) The territory by counties over which the applicant desires to operate.

(c) A brief description of the kind of vehicles applicant desires to operate, including the tonnage capacity of such motor vehicle, trailer or semitrailer.

(d) An agreement on the part of the applicant to abide by all the laws of Florida and the rules and regulations which may be prescribed by the commission from time to time.

(e) Such additional information as the commission may prescribe.

Any such application shall be accompanied by a payment of a fee of one hundred dollars to be placed in the general revenue fund and disbursed according to law.

(3) The commission shall follow the procedure of hearings and notices, disposition of application and contents of certificate as provided in §323.03(2)-(4), respectively.

(4) (a) Any motor carrier holding a certificate of public convenience and necessity, as a common carrier, authorizing the transportation of road building and construction aggregates on June 13, 1963, shall before September 1, 1963, notify the commission of its intention to abide by the terms of this law and pay the fee imposed herein, together with the payment of any unpaid mileage tax, and the commission shall reissue its certificate as a matter of right and of course authorizing said transportation company to transport the same commodities in the same territory previously authorized.

(b) Any motor carrier holding a for hire permit authorizing the transportation of any road building and construction aggregates, on June 13, 1963, shall before September 1, 1963, notify the commission of its intention to abide by the terms of this law and pay the fee imposed herein, together with the payment of any unpaid mileage tax, and the commission may reissue its permit in accordance with the provisions of this act.

(c) Any motor carrier who shall have been transporting road building and construction aggregates in the state, without authority, prior to January 1, 1963, may make an application to the commission before December 1, 1963, for authority to transport said commodities in the territory previously served by said person, firm or corporation; at the time of filing the application, the fee of one hundred dollars required herein shall be paid.

(5) The commission is authorized to adopt reasonable rules and regulations governing the disposition of §323.031(4)(b) and (c), as follows:

(a) Proof required of said prior operations of applicant, limited to vehicles registered in applicant's name.

(b) Applicant's financial ability showing adequate financial means to operate successfully a motor carrier.

(c) Collection of past due mileage tax from January 1, 1961, to proposed date of issuance of certificate or permit.

(d) Notice of application to other transportation companies serving any part of the territory sought by applicant to transport any road building and construction aggregates.

(e) Objections by motor carriers holding similar authority applied for.

(f) A public hearing may be held, if in the opinion of the commission the objections, if any, require such hearing.

(6) This section shall not apply to motor vehicles having a load capacity of ten tons or less.

History.—§1, ch. 63-279; §§1, 4, ch. 63-416; §1, ch. 63-496.

323.04 Private contract carriers; certificate of convenience required.—No motor carrier shall operate any motor vehicle for the transportation of persons or property as a private contract carrier for compensation on any public highway in this state without first having obtained from the commission a certificate that public convenience and necessity require such operation.

(1) APPLICATION, FEES, ETC.—The application for certificate of public convenience and necessity for private contract carriage made by any motor carrier shall be in writing verified by the applicant and shall specify the following matters:

(a) The name and address of applicant and the names and addresses of its officers, if any.

(b) The public highway or highways over which the applicant desires to operate or the general territory which applicant desires to serve.

(c) The kind of transportation, whether passenger or freight, or both, in which applicant intends to engage, together with a brief description of each vehicle which applicant desires to use, including the seating capacity thereof, if buses, or the tonnage thereof, if trucks, and including specifically the size and weight of such vehicle.

(d) A sworn copy or statement of the subject matter of the contract or contracts under which applicant desires to operate.

(e) An agreement on the part of the applicant to conform with and abide by all rules and regulations which may be lawfully prescribed

by the commission in respect to such carriage.

Any such application shall be accompanied by payment of a fee of one hundred dollars to be placed in the general revenue fund and sufficient funds to defray the cost of notices and hearings and for the administration of the provisions of this chapter shall be included in the biennial appropriations act.

(2) HEARING AND NOTICES.—Upon filing of said application and payment of said fee, the commission shall fix a time for hearing said application, which shall not be less than twenty days nor more than sixty days subsequent to the filing of said application, and no application shall be granted or certificate of convenience and necessity issued without a hearing by the commission. Notice of such hearing shall be given to the applicant and to all transportation companies serving any part of the route proposed to be served by the applicant, and to the mayor or chief magistrate of each city and town in or through which the applicant desires to operate, and to the chairman of the board of county commissioners of each county in which the proposed service would be operated, and to the chairman of the state road department. Such notices shall contain a brief summary of the subject matter of the application, the type of service proposed, the territory to be served and any other pertinent facts in connection therewith, and shall be mailed at least fifteen days prior to the date assigned for hearing of such application and shall within such fifteen day period be published by the commission in one or more newspapers of general circulation in the territory proposed to be served.

(3) DISPOSITION OF APPLICATION.—At the time specified in said notice, or at such time as may be fixed by the commission, a public hearing upon said application shall be held by the commission. At or after such hearing the commission may issue a certificate of public convenience and necessity, as prayed for or refuse to issue the same, or may issue the same with modifications, or upon such terms and conditions as in its judgment the public convenience and necessity may require; provided, that the commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have upon transportation facilities within the territory sought to be served by said applicant, or congestion of traffic on the highways, or safety of traffic moving on the highways under such operations in relationship to other private or public traffic permitted by law to move over the same roads or in the same territory, and also the effect upon transportation as a whole within said territory.

When any application for a certificate of public convenience and necessity has been heard by the commission and denied, the commission shall not entertain any further application covering the identical or similar routes, schedules or service until the expiration of six months from the date of such denial.

When application is made by a motor carrier for a certificate to operate as a private contract carrier in a territory or on a line already served by a certificate holder, the commission shall grant same only when the existing certificate holder or holders serving such territory fail to provide service and facilities which may reasonably be required by the commission.

(4) CONTENTS OF CERTIFICATE.—Any certificate of convenience and necessity issued under the provisions of this section shall contain among other things the following:

(a) The name of the grantee.

(b) The public highway or highways over which the applicant is permitted to operate or the specific territory to be served by said applicant.

(c) The kind of transportation, whether passenger or freight, or both, in which the applicant is permitted to engage.

(d) Such additional terms, conditions, provisions and limitations as the commission shall deem necessary or proper in the public interest or in the interest of safety and proper operation affecting the use of the highways or in the interest of transportation facilities already existing in the territory to be served.

History.—§4, ch. 14764, 1931; CGL 1936 Supp. 1335(4); §7, ch. 22858, 1945; (1)(e) §53, ch. 26869, 1951; (1) (e) §2, ch. 57-112; (5) r. §2, ch. 57-260; §1, ch. 63-279; §1, ch. 63-496.

323.041 Transfer of certificate; modification, etc.—

(1) No certificate of public convenience and necessity authorizing common carriage or contract carriage, may be sold, assigned, or transferred by the holder to another, until the same has been approved by the commission as herein provided. This section shall apply with like effect to the transfer of control of a corporate certificate holder through transfer of stock ownership or otherwise.

(2) When any such certificate is proposed to be sold, assigned or transferred, or when stock of a corporate certificate holder is proposed to be assigned, sold, transferred or purchased and such will effect a transfer of control of the corporation, all of the parties, nominal and actual, to such transaction shall jointly file an application with the commission, upon forms, and according to rules governing form and substance thereof adopted by such commission. Such application shall set forth the details of the transaction, specifying the consideration and method of payment, the date such assignment, sale or transfer is desired to be consummated, the financial statement of the transferee, the certificate authority, if any, held by the transferee from any regulatory commission of this state, of the United States, or of any state or district of the United States, and any other pertinent facts. Such application shall be accompanied by payment of the same charge or filing fee as is required upon the filing of an application for a new or original certificate. In such application the proposed transferee shall agree to pay all taxes, assessments and obligations which may be due or owing to this state

by the transferror to the date of the entry of the order by the commission approving such transfer, as a condition precedent to such approval. Upon the filing of such petition, the commission shall issue and serve upon all railroads and all certificate holders operating under certificates of the commission authorizing transportation in the territory involved of any commodities included in the certificate sought to be assigned or transferred, a written notice which notice shall contain the general pertinent facts of such application. Said notice shall require any objections or protests to such transfer to be filed in writing with the commission by a date to be fixed in such notice. Any objection or protest filed shall state fully the basis therefor. In the event no such written protest is filed with the commission within the time fixed in such notice, then and in that event, the commission may consider said petition and act upon the same as an ex parte matter without the necessity of public hearing, and for the purpose of such consideration, the commission may require either or both of the parties to such proposed transfer to appear before it for the purpose of giving testimony, or to produce any such records or information as the commission may direct and find necessary to consider in passing upon said petition.

(3) In the event one or more written protests stating grounds therefor are filed with the commission as herein provided within the time fixed in said notice, then the commission shall cause a public hearing to be held, and shall issue and serve upon the applicants and all persons who have filed such protests a notice of such hearing, containing the general pertinent facts of such application, the date of such hearing to be not less than fifteen days following the date of such notice. At such public hearing, persons who have filed written protests as aforesaid shall have the right to appear and be heard, and to offer testimony and evidence in support of or in protest to the granting of such application. Following such hearing, if the commission finds and determines that such sale, assignment, or transfer, is not contrary to the public interest, and that the certificate has not been dormant for more than six months, it shall enter an appropriate order in the premises. The commission shall have no power or authority, directly or indirectly, to grant or issue any temporary or interim approval of a sale, assignment, or transfer as aforesaid, but shall have power only to approve or disapprove same, finally, and after hearing if protests are filed as aforesaid and hearing is requested.

(4) A certificate may be divided as to route or territories, and part thereof transferred, sold, or assigned, provided the commission finds that such routes or territories are clearly severable and the division thereof does not permit the creation of duplicate operating rights. No division of certificate rights, by sale, transfer or assignment based upon the class or classes of property authorized to be transported shall be approved, unless it appears to the satisfaction of the commission that the part of the operating rights sought to be transferred, sold or assigned is, because of a difference in the nature or type of the service rendered, considering the type of vehicle and characteristics of the customers served, clearly distinguishable and severable from the remaining operating rights; provided, however, certificates which authorize transportation of general freight or of a specified general class of freight which class would include other classes as an integral part thereof may not be severed as to any commodity or class falling within such overall general class specified in the certificate.

(5) When the transfer of any certificate, or the sale of capital stock of a corporate certificate holder, as herein provided, is approved by the commission, the commission is hereby empowered to reasonably alter, restrict or modify the terms and provisions of such certificate, or impose restrictions on such transfer where the public interest may be best served thereby, or the existing transportation facilities within the territory or on the route involved may be safeguarded or improved in the public interest.

(6) The order of the commission approving any sale, assignment, or transfer shall direct immediate cancellation of the certificate and reissuance thereof to the transferee unless alterations, restrictions or modifications of the terms and provisions of such certificate are imposed in conjunction with such approval. In such latter event the commission order of approval shall require the transferee to notify it in writing within a period of time fixed by the commission whether or not it will accept the certificate as so altered or restricted. If such notification is not given, or if given in the negative, the commission shall enter its order canceling and revoking its approval, otherwise the commission shall thereafter cancel the certificate and reissue it to the transferee.

(7) Notwithstanding any of the provisions hereof, any executor, administrator, receiver, trustee in bankruptcy or in reorganization, or other court officer, shall be entitled, as judicial assignee, to operate the business of the certificate holder, without the approval of the commission, upon filing with the commission a certified copy of this order of appointment, but any sale, transfer, or assignment by any such judicial officer shall be subject to the terms and conditions hereof.

History.—§1, ch. 57-260.

323.042 Multiple transportation authority prohibited.—No motor carrier shall acquire or hold a common carrier certificate and a contract carrier certificate or a for hire permit at the same time, or a contract carrier certificate and a for hire permit at the same time, unless the commission shall first find after a public hearing that such dual authority or multiple authority is not contrary to the public interest; provided, however, that this prohibition shall not apply to motor carriers holding such dual or multiple authority on May 26, 1959.

History.—§1, ch. 59-146; §1, ch. 63-496.

***323.05 Permit to operate motor vehicle for hire.—**

(1) No motor carrier shall operate any for hire motor vehicle on any public highway in this state in the transportation of persons or property for compensation without first having obtained from the commission a permit, which permit shall issue as a matter of right and of course when the provisions of this chapter and the laws of the state touching such motor vehicle operation have been complied with by the applicant.

(2) The permit so issued shall subject the applicant to the rules and regulations of the commission respecting the operation of such motor vehicle over state highways for compensation, and it shall also subject such applicant to the mileage tax imposed by this chapter, which mileage tax shall be collected by the state comptroller and distributed by him in the same manner and for the same purposes as motor vehicle auto license taxes are distributed. Provided, however, in lieu of such mileage tax, all motor carriers operating taxicabs under this chapter shall procure a permit therefor from the commission and shall pay to said commission at the time application is made for said permit a tax of twenty-five dollars per annum. Said permit shall entitle such motor carrier to which it is issued to register any number of taxicabs for operation under this chapter upon the payment of an annual tax to said commission of five dollars for each such taxicab so registered. For hire permits and registrations thereunder for the operation of taxicabs shall expire on June 30, annually, but may be renewed upon proper application and the payment of the annual tax provided for herein. In the event any application is denied the annual tax accompanying said application may be refunded. Provided, further, that the term taxicab as used herein shall be construed to include every motor vehicle of nine passenger capacity or less, including the driver, subject to municipal regulation, engaged in the general transportation of persons for hire, not on regular schedule or between fixed termini or over regular routes, but over the streets generally of said municipality, with occasional unsolicited trips beyond the boundaries thereof. Any and all annual taxes so collected shall be paid to the state treasurer to the credit of the general revenue fund. Such taxes shall be deemed to be compensatory for the use of the public highways of this state just as mileage taxes under §323.25.

(3) No such permit shall be required in respect to the operation of for hire motor vehicles wholly within the limits of any incorporated city or town and the suburban territory immediately adjacent thereto, when such for hire carriage is regulated by the legislative body of such city or town. The ordinances, rules or regulations adopted by the legislative body of such city or town shall be applicable to for hire motor vehicles within the suburban territory immediately adjacent thereto and such cities and towns shall have police power to enforce such ordinances, rules or regulations in such suburban territory immediately adjacent thereto, over the roads and highways in such territory to the same extent as if the territory was within the corporate limits of such towns or cities. No such permit shall be required in respect to the private carriage or distribution of his own goods, wares or merchandise over public highways by any person using his own motor vehicles in such carriage.

(4) For hire carriage of passengers shall not be permitted or authorized by the commission under this section or under this chapter in motor vehicles of a greater passenger-carrying capacity than nine, including the driver, and all for hire permits in passenger carriage issued by the commission hereunder shall specifically limit the authority so granted to such motor vehicles. In the interest of safety on the highways and safety of the traveling public, all carriage of passengers over public highways, for compensation, in groups of more than eight and in charter carriage as defined in this chapter, in a single motor vehicle, shall be deemed to be charter carriage and shall be authorized and permitted only in motor buses and as a part of the common carrier service of common carriers of passengers operating under certificates of public convenience and necessity issued under the provisions of this chapter and the rules and regulations of the commission applicable to common carriers of passengers.

(5) Application by a motor carrier for a permit to operate for hire over the public highways of this state shall be in writing verified by the applicant and shall specify among other things the following matters:

(a) The name and address of the applicant and the names and addresses of its officers, if any.

(b) A brief description of each vehicle which the applicant proposes to operate and the for hire license tag therefor issued or to be issued as to such vehicles.

(c) An agreement on the part of the applicant to keep such records as may be prescribed by the commission, and to abide by the terms of the permit issued and by the rules and regulations of the commission as to type and size of equipment, safety appliances and devices, and regulations as to load which may be reasonably prescribed by the commission from time to time, within the limits prescribed by law as to such motor vehicles.

(6) Upon the filing of such application for permit the commission shall issue the same as of course and without notice of public hearing; provided, the commission may prescribe such reasonable rules, regulations and restrictions in such permit as it may deem necessary for the safety and conservation of the highways and the protection and preservation of transportation facilities as a whole in the territory involved. In its consideration of such questions

*This section shall not affect the validity of any permit specifically authorizing for hire or charter carriage approved for issuance or issued by the commission prior to May 15, 1949, but any such permit so issued may not hereafter be extended or expanded beyond its original terms and limitations except in accordance with the provisions of §§323.01, 323.05, 323.14.

the commission may require public hearing on the application and in such hearing may consider questions of public convenience and necessity and the effect of the proposed service or carriage, if granted, on existing transportation facilities and on transportation as a whole within the territory proposed to be served and may deny or restrict or modify the proposed service if the same is found to be contrary to the public interest. Such permit shall be subject to suspension or revocation at any time by the commission upon hearing when it shall appear that the holder thereof has failed to keep records as prescribed by the commission, and to comply with the laws of the state touching motor vehicle operations or with the rules and regulations of the commission as to the operation of such vehicles over public highways.

History.—§5, ch. 14764, 1931; CGL 1936 Supp. 1335(5); §1, ch. 22842, 1945; §11, ch. 25035, 1949; §2, ch. 25418, 1949; (2) §54, ch. 26869, 1951; (2), (4) §2, ch. 57-222; (1), (2) §1, ch. 63-496.

cf.—§323.15 Mileage tax; advance deposits; lien for taxes, enforcement of lien; records, statements, etc.

323.051 For hire; single county operations of road building and construction aggregates.—

(1) A motor carrier may apply for a for hire permit to transport for compensation road building and construction aggregates between all points within a single county, which permit shall issue as a matter of right and of course when the provisions of this chapter and laws of the state touching such motor vehicle operation have been complied with by the applicant.

(2) The permit so issued shall subject the applicant to the rules and regulations of the commission respecting operations of such motor vehicle, over state highways for compensation, except that said motor carrier shall pay a permit fee of one hundred dollars and an annual road tax of fifty dollars on each vehicle in lieu of any mileage tax imposed by §323.15, and with the same immunity from paying any additional taxes as provided in §323.031.

(3) The permit so issued shall restrict the applicant's equipment used in transporting road building and construction aggregates between all points within one county named in the permit.

(4) The permit shall require that each piece of equipment registered by the permit holder shall carry an auto license plate with the county designation on the license plate the same as the county in which the permit holder is authorized to operate, except as may be provided by the rules of the commission in event of purchase of second hand equipment with a different county license plate.

(5) Any motor carrier holding a for hire permit under this section for single county operations shall not be granted any other permit for any other county, and shall not be allowed to use its equipment in any other county, except by lease to a limited common carrier of road building and construction aggregates provided that on such vehicle so leased there shall be paid one hundred dollars per vehicle, so as to comply with the road tax herein imposed on vehicles of limited common carriers.

(6) All motor vehicles and trailers of holders of for hire permits authorizing a single county operation shall have the name and address, including the county of the permit holder, lettered on the sides of the aforesaid equipment, under appropriate rules of the commission.

(7) This section shall not apply to motor vehicles having a load capacity of ten tons or less.

History.—§§1, 4, ch. 63-416; §1, ch. 63-496; §1, ch. 63-569.

323.06 Bond required; conditions; insurance policy may be substituted; self-insurance may be furnished when authorized.—

(1) The commission shall, at the time of granting a certificate or permit to any motor carrier for transporting persons or property, fix and determine the amount of the bond to be given by the applicant for the protection, in case of passenger vehicle, of the passengers and baggage carried in said vehicle and of the public against injury caused by negligence of the person or corporation operating the said vehicle, and in case of the vehicle transporting freight, for the protection of the said freight so carried if in common carriage, and of the public against injuries received through negligence of the person or corporation operating said freight-carrying vehicle; the applicant shall procure and file with the commission the said bond for liability and property damage, including loss of baggage when same has been checked in accordance with the rules prescribed by the commission, giving the said bond or bonds in a surety company authorized to do business in the state, or deposit, in lieu of said surety, bonds of the United States government or of any city or county in the state approved by the said commission.

(2) The said bonds shall be conditioned to indemnify passengers and the public receiving personal injuries by any act of negligence, and for damages to property of any person other than the assured; and such bonds shall contain such conditions, provisions and limitations as the commission may prescribe, and said bonds shall be payable to the governor of the state, or his successor in office, and shall be for the benefit of and subject to action thereon by any person or persons who shall have sustained an actionable injury protected thereby, notwithstanding any provisions in said bond to the contrary, and every bond or insurance policy given shall be conclusively presumed to have been given according to and to contain all of the provisions of this chapter.

(3) And no certificate or permit shall be valid until such bond has been filed and approved, and no such bond so accepted shall be canceled by the company issuing the same except upon thirty days notice to the commission; and upon such notice being given by the company issuing said bond or bonds, the certificate or permit of the person or corporation giving bond shall be revoked, unless a new bond shall be filed and accepted before the date for the cancellation of the said bond; provided, how-

ever, that the applicant may, in the discretion of the commission, be allowed to file in lieu of bond an insurance policy, which shall be approved by the commission, with some casualty or insurance company authorized to do business in the state; and provided, further, that no motor carrier shall be required to file a bond or insurance policy under this section if such company shall be found by the commission in its reasonable discretion to be qualified to act as self insurer under rules and regulations prescribed by the commission permitting motor carriers to become self insurers on a showing of continued net worth sufficient to reasonably protect the public against loss or damage for which the company may be liable.

History.—§6, ch. 14764, 1931; CGL 1936 Supp. 1335(6); §1, ch. 25047, 1949; §1, ch. 63-496.

323.07 Commission given authority to regulate motor carriers, and to adopt rules and regulations.—The commission may supervise and regulate every motor carrier in the state operating under the authority of this chapter, fix or approve the rates, fares, charges, classifications, rules and regulations for such motor carriers, regulate the service and safety of operations of each such motor carrier, prescribe a uniform system and classification of accounts to be used, which among other things, shall set up adequate depreciation charges; require the filing of annual and other reports and all other data by said motor carriers; and supervise and regulate motor carriers in all other matters affecting the relationship between such companies and the traveling and shipping public. The commission may by order adopt rules and regulations applicable to any and all such motor carriers, provide for the taking of testimony by depositions, prescribe rules of procedure and exercise all judicial powers, issue all writs and do all things necessary or convenient to the full and complete exercise of its jurisdiction or the enforcement of its orders and requirements. The commission may prescribe qualifications for the appointment of hearing examiners and the procedure before hearing examiners, provided, however, that the commission shall not be bound by the findings of fact or conclusions of law of such hearing examiners, and shall have authority to take additional testimony and evidence, and to grant and hear oral arguments and rehearings in all cases. Hearings may be held before the commission, a commissioner designated by the commission or a hearing examiner of the commission at its offices in Tallahassee or at any other point in the state. The commission, in the exercise of the jurisdiction conferred upon it by this chapter, may make orders and prescribe rules and regulations affecting such motor carriers, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, or village, and in case of conflict between any such order, rule or regulation, and such ordinance or permit, the order, rule or regulation of the commission shall in each instance prevail. No municipality shall have the right to require any such motor carrier to furnish any bond or insurance policy, or pay any license, fee or tax except as herein provided.

History.—§7, ch. 14764, 1931; CGL 1936 Supp. 1335(7); §7, ch. 22858, 1945; §1, ch. 57-114; §1, ch. 63-496.
cf.—§350.01 et seq. Public utilities commission.

323.08 Filing of rates and charges; subsequent changes and variations thereof; exclusion of armored car services.—

(1) Every motor carrier holding a certificate of public convenience and necessity for common carriage shall maintain on file with the commission a schedule of the rates, fares, charges and classifications, if any, and a time schedule, if any, of all motor vehicles operated under such certificate. The commission shall require each such motor carrier to keep open for public inspection at designated offices so much of said schedules, rates, fares, charges and classifications, if any, as well as time schedules, as it deems necessary for the public information.

(2) Whenever such rates or fares or time schedules are found to be unreasonable, the commission, upon its own motion, or upon complaint, shall upon hearing as herein provided, prescribe reasonable rates and time schedules to take the place of those found unreasonable, and such new rates shall be filed in place of the rates and schedules superseded. No rates or time schedules filed with the commission shall be changed by any such motor carrier without an order of the commission sanctioning the same. It is unlawful for any motor carrier to collect or receive a greater or less rate or charges for any service rendered by it than the transportation charge shown in the schedules on file with the commission, and no new rates shall take effect until the date named by the commission.

(3) The provisions of subsections (1) and (2) of this section and §323.19, shall not be applicable to common carrier armored car services now or hereafter holding certificates of public convenience and necessity authorizing the transportation of money, securities, and other valuables; and such carriers, because their transportation is more or less incidental to the protective services afforded, require separate negotiation with each person desiring to make use of their services, shall be termed limited common carriers, and such carriers shall not be restricted with requirements for domiciling equipment, when their equipment is used in transportation that is under the jurisdiction of the commission.

(4) Because of the unusual conditions under which deliveries are sometimes required to be made, which may require separate negotiations with each person desiring to make use of their services, the provisions of subsections (1), (2) of this section, and §323.19(1) and (2), shall not be applicable to common carriers of road building and construction aggregates, now or hereafter holding certificates of public convenience and necessity or for hire permits in

one designated county authorizing the transportation of any of such aggregates, and such carrier shall not be required to file a tariff and holders of limited common carrier certificates shall not be restricted with any requirements for domiciling equipment. This subsection shall not apply to motor vehicles having a load capacity of ten tons or less.

History.—§8, ch. 14764, 1931; CGL 1936 Supp. 1335(8); §1, ch. 61-474; (4) n. §§2, 4, ch. 63-416; (1), (2) §1, ch. 63-496.

323.09 Carrier may be fined, permit or certificate revoked, etc.—

(1) Whenever any motor carrier is found to be violating the provisions of this chapter or any of the rules or regulations prescribed by the commission, or any of the laws of the state touching motor vehicle operation over the public highways, the commission may, upon complaint or upon its own motion, issue its orders to the said motor carrier notifying it to appear before the commission at a fixed time and place at which time and place the commission shall investigate such violations, and if it shall be satisfied after such hearing that said motor carrier has violated or refused to observe the laws of this state touching motor vehicle operations or any of the terms of the certificate or permit issued to such motor carrier, or any of the commission's orders, rules or regulations, the commission may suspend, revoke, alter or amend any certificate or permit issued to such motor carrier, or said commission may in its discretion, impose a penalty for each such offense of not more than $5,000.00; provided, either one or more of such impositions may be imposed alternately or cumulatively, which penalty shall constitute a lien upon real and personal property of said motor carrier, prior to all other liens except those for taxes due the state, enforceable by the commission as statutory liens under chapter 86, the proceeds of which shall be deposited to the credit of the commission to be used in the administration of this chapter; provided, that the holder of said certificate or permit shall have the right of review by the supreme court upon filing therewith a petition for issuance of a writ of certiorari in the manner and within the time prescribed by the Florida appellate rules.

(2) If the commission shall determine that the holder of any such certificate or permit has failed to keep correct mileage books and records, or to make correct mileage reports of the mileage traveled over public highways in carriage authorized by its certificate or permit, or to pay mileage taxes as hereinafter provided, the commission shall forthwith issue citation against such motor carrier requiring it to appear before the commission at a fixed time and place and show cause, if any, why it should not have penalty imposed against it or its certificate or permit revoked or suspended for a fixed period, as hereinbefore provided, in the discretion of the commission.

History.—§9, ch. 14764, 1931; CGL 1936 Supp. 1335(9); §1, ch. 22658, 1945; (2) §10, ch. 26484, 1951; (1) §1, ch. 57-113; §3, ch. 61-272; (1) §13, ch. 63-512; §1, ch. 63-496.

323.10 Dormant certificates and rights; revocation of certificates.—

(1) Whenever it shall appear that any motor carrier, holding a certificate of public convenience and necessity for the transportation of persons or property on fixed schedules, or over regular routes, has failed to operate, without prior formal approval of suspension by order of the commission, over any route or schedule, or to any point or terminal for a period of six months, such certificate is hereby declared to be dormant and abandoned, and the commission, upon its own motion, or upon the petition of any existing certificate holder, shall, not less than twenty days after mailing notice to the certificate holder by registered or certified mail, return receipt requested, at his last address shown by the commission files, enter an order confirming the cancellation and revocation of such certificate, or the part thereof covering the route, territory or terminals involved.

(2) Whenever it shall appear that any motor carrier holding a certificate of public convenience and necessity or permit issued under any provision of this chapter has failed to operate without prior formal approval of suspension by order of the commission, for a period of six months, such certificate or permit is hereby declared to be dormant and abandoned, and the commission, upon its own motion, or upon the petition of any existing certificate holder, shall, not less than twenty days after mailing notice to the certificate holder by registered or certified mail, return receipt requested, at his last address shown by the commission files, enter an order confirming the cancellation and revocation of such certificate.

(3) The failure of the certificate holder to report and pay the mileage tax levied and prescribed for such operation for such period of six months shall be deemed prima facie evidence of the failure of said certificate holder to operate over such route or schedule or to such terminals for such period; provided, however, that the payment of such mileage tax shall not create any presumption of actual operation, and the burden of proof shall always be upon the certificate holder, when challenged hereunder, to establish by records and testimony the continuity of bona fide service during the period in question.

(4) Upon the entry of such foregoing order, the commission shall send a copy of same by registered or certified mail, return receipt requested, to the certificate holder at his last address shown by the commission files and said certificate holder may file a formal written petition with the commission requesting a hearing upon such order, but no such petition may be filed or request made after the expiration of ninety days immediately subsequent to the date of mailing of such order.

(5) Before the commission shall have jurisdiction to consider such petition, it shall require the petitioning certificate holder to pay to it the sum of one hundred dollars toward the costs of the public hearing hereinafter pro-

vided. Upon the filing of such petition, the commission shall cause a public hearing to be held and shall cause written notice of such hearing to be mailed in the usual manner to all holders of certificates of public convenience and necessity issued by the commission, at least fifteen days prior to the date of such hearing. Following such hearing the commission may reinstate such certificate if good and sufficient cause be shown, or shall affirm its order of revocation.

History.—§10, ch. 14764, 1931; CGL 1936 Supp. 1335(10); §1, ch. 57-173; (1), (2) §1, ch. 63-496.

323.11 Maximum width, height, length, etc.—A permit or certificate issued by the commission shall authorize operation of only vehicles complying with the provisions of §§317.731-317.951.

History.—§11, ch. 14764, 1931; CGL 1936 Supp. 1335 (11); §2, ch. 18026, 1937; §1, ch. 19107, 1939; §1, ch. 20958, 1941; §3, ch. 22825, 1945; §11, ch. 25035, 1949; §2, ch. 25047, 1949; §1, ch. 57-115.

323.12 Speed laws to be observed.—No motor carrier, holding certificate or permit, shall operate any motor vehicle on public highways in this state in excess of the speed permitted by the laws of this state.

History.—§12, ch. 14764, 1931; CGL 1936 Supp. 1335(12); §1, ch. 63-496.
cf.—Ch. 317 Speed laws generally.

323.13 Equipment required on vehicles; powers of commission.—The commission may prescribe and require as standard on all vehicles operated by motor carriers under its permits or certificates all necessary safety devices and appliances under its seal designed to establish correct mileage of the vehicle, speed governor, approved rear, side and front light, approved brakes, including air brakes or vacuum booster brakes on all trailers and semitrailers, and other safety and control devices, as well as to prescribe tire size and specifications in the interest of conservation of the public highways, such rules and regulations to be reasonably prescribed for the protection of the public and the conservation of state highways. Such rules and regulations among other things which the commission may specify and require shall in all instances require the following:

(1) Modern driver control air brakes or vacuum booster brakes on all trailers of any kind authorized for operation by its certificates or its permits.

(2) Suitable side and rear lights on all trailers or semitrailers clearly marking the dimensions of such trailers.

(3) Suitable coupling devices on all trailers authorized for use under its certificates or permits assuring accurate following trackage on the part of such trailer and deviation of not more than three inches, as hereinbefore provided. Such coupling devices to be so designed with safety chains that the pendle bar, if detached while the vehicle is in motion, will remain suspended and the trailer remain coupled.

(4) Driver vision mirrors so adjusted as to afford the driver ready view of all traffic approaching from the rear without load interference.

(5) The name and city or town address of the certificate or permit holder, as well as the number of such certificate or permit in readily visible and readable form.

(6) Such additional equipment and safety devices and road conservation requirements as the commission may reasonably prescribe from time to time.

History.—§13, ch. 14764, 1931; CGL 1936 Supp. 1335(13); §1, ch. 63-496.

***323.14 Deviations from route; charter carriage.**—

(1) Any common carrier motor carrier holding a certificate may depart from the route described in such certificate if compelled to detour on account of the closing of roads, or may depart from its authorized routes of carriage for the purpose of transporting in charter carriage a party of passengers to a point or points not on such route, providing such charter party originated on the route of or at points served by such carrier.

(2) Common carriers of passengers, under reasonable rules and regulations of the commission, may arrange for and receive for charter services such compensation as may be agreed upon between the carrier and the party or parties to be served, and such compensation may include services and expenses in addition to transportation charges.

History.—§14, ch. 14764, 1931; CGL 1936 Supp. 1335 (14); §3, ch. 25418, 1949; (2) r. §§1, 2, ch. 61-519; (1) §1, ch. 63-496.
*Footnote to §323.05 applicable to this section.

323.15 Mileage tax; advance deposits; lien for taxes; enforcement of lien; records; statements, etc.—

(1) There shall be collected from every motor carrier as herein defined to which has been granted a certificate of public convenience and necessity or a permit authorizing it to engage in the transportation of passengers or freight, or both, and from every such motor carrier to which no such certificate or permit has been granted but whose transportation operations are not exempt from the provisions of this chapter, a mileage tax of one-half cent per mile on all buses with a capacity of ten passengers or less and mileage tax of three-fourths cent per mile on all buses with a capacity of not more than twenty passengers nor less than ten passengers, and a mileage tax of one cent per mile on all buses of the capacity of more than twenty passengers nor less than ten passengers and a mileage tax of one cent per mile on all buses of the capacity of more than twenty passengers; and a mileage tax of one-half cent per mile on all trucks or trailers with a factory rated load capacity of less than five thousand five hundred pounds, and a tax of one cent per mile on all trucks or trailers with a factory rated load capacity of five thousand five hundred pounds or more, coming within the terms of this chapter, for every mile traveled for compensa-

tion by the motor vehicles of such motor carrier over the public highways of this state; and a mileage tax of one-half cent per mile on any tractor-semitrailer combination, for each mile traveled for compensation over the public highways of the state; provided, however, that at the time of issuing any permit hereunder, the commission may prescribe a reasonable deposit to be paid in advance to apply as an advance payment upon the mileage tax herein levied; which said amount shall be credited to said holder of such permit and the difference between the said amount and the correct amount of said tax shall be adjusted with the said holder of such permit. The mileage tax herein provided shall constitute a lien upon the real and personal property of said motor carrier prior to all other liens except those for taxes due the state, enforceable by the state as statutory liens under chapter 86.

(2) In order to ascertain the bus mileage of every passenger bus and the truck mileage of every freight truck traveled by the holders of certificates or permits, the commission shall prescribe the records to be kept by said holder of such certificate or permit and within thirty days of the end of each current month the said holder of a certificate or permit shall file with the commission a statement verified by an officer, if the holder of such certificate or permit is a corporation, or if the holder of such certificate or permit is a person, then by such person, showing the mileage made by said holder of such certificate or permit during the said month and shall at the time of filing such report pay to the commission the tax reflected by such report. The mileage tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character and description, state, county or municipal, including excise and license taxes levied or imposed against such motor carriers, or the operation of such business and facilities thereof, or their property, except ad valorem taxes levied upon the property other than motor vehicles of such motor carriers and except the gasoline tax and motor vehicle fuel tax, and except the motor vehicle license tax now or hereafter provided for by law.

(3) The books and records of all motor carriers shall be at all times open to inspection of the commission or any agent by it appointed for such purpose. The commission shall keep a true and accurate list of all motor carriers to whom certificates shall be issued with the post office address of each.

History.—§16, ch. 14764, 1931; CGL 1936 Supp. 1335(15); §3, ch. 18026, 1937; §1, ch. 22834, 1945; §1, ch. 26663, 1951; §1, ch. 61-272; §1, ch. 63-279; §1, ch. 63-496.

cf.—§323.05 Permit to operate motor vehicles for hire.

323.151 Limited and for hire certificates; fees; taxes.—

(1) Any motor carrier making application for a limited common carrier certificate or a for hire permit for a single county operation under §323.031(4), or any motor carrier making application for limited certificate of public convenience and necessity or a for hire permit for a single county operation, authorizing the transportation of road building and construction aggregates, shall, at the time the application is made, pay to the commission a fee as follows:

(a) Limited common carrier certificate fee, five hundred dollars;

(b) For hire permit, single county operation fee, one hundred dollars;

provided, however, that the amount so paid as a certificate tax or permit fee shall be refunded if the certificate or permit is not granted.

The certificate or permit, if issued, shall entitle such motor carrier to which it is issued to register any number of motor vehicles for operation under this chapter, upon the payment of an annual road tax to the commission of one hundred dollars for each vehicle so registered. The registration thereunder for the operation of the motor vehicles shall expire on June 30 of each year, but may be renewed upon proper application and the payment of the annual road tax provided herein. Any and all annual road taxes so collected shall be paid to the commission and shall be distributed in the same manner and for the same purposes as for the mileage tax collected under §323.15. Such road taxes shall be deemed to be compensatory for the use of the public highways of this state just as mileage taxes under §323.25, and in lieu of such mileage tax.

(2) The road tax provided for in this section shall be in lieu of all other taxes and fees of every kind, character and description, state, county or municipal, including excise and license taxes levied or imposed against such motor carriers, or the operation of such business and facilities thereof, or their property, except ad valorem taxes levied upon the property other than motor vehicles of such motor carriers and except the gasoline tax and motor vehicle fuel tax, and except the motor vehicle license tax now or hereafter provided for by law.

(3) Any motor carrier may lease to another motor carrier any of its motor vehicles registered under this chapter without the issuance of a new or additional permit for any such motor vehicle; however, the motor carriers shall abide by other laws and all rules of the commission with respect to such leasing.

(4) This section shall not apply to motor vehicles having a load capacity of ten tons or less.

History.—§§1, 4, ch. 63-416; §1, ch. 63-496; §1, ch. 63-569.

323.16 Disposition of moneys collected.— The commission shall keep a separate account of all moneys collected under this chapter. Twenty-five per cent of such funds shall be deposited in the general revenue fund. Sufficient moneys for the administration of the provisions of this chapter shall be included in the biennial appropriations act. All the balances shall be distributed as follows:

(1) Twenty-five dollars annually from each

certificate holder to all incorporated cities and towns where any such motor carriers maintain depots, warehouses, stations or agencies in such city or town.

(2) The remainder of such fund shall be placed in the state treasury to the credit of the state roads distribution trust fund and shall then be paid over monthly by the commission to the state board of administration and credited among the several counties, each county being credited with the same percentage of the whole fund that it received for the year 1944, to be used by the said state board of administration in the same manner and for the same purpose as gasoline tax moneys are used by said board under §16, Art. IX of the state constitution; provided, however, if the foregoing distribution of said tax, or any part thereof, should be held unconstitutional, then and in that event said mileage tax shall be paid into the general revenue fund of the state.

History.—§17, ch. 14764, 1931; CGL 1936 Supp. 1335(16); §2, ch. 22834, 1945; §55, ch. 26869, §2, ch. 26663, 1951; (2) §2, ch. 61-119; §2, ch. 61-272; (1) §1, ch. 63-496.

323.17 Qualifications of drivers.—No motor carrier shall entrust the operation of any motor vehicle authorized by certificates or permits of the commission to any driver for operation over state highways unless such driver be over the age of twenty-one years, in good and sound health, experienced with the operation of the vehicle entrusted to him and of proven temperate habits.

History.—§18, ch. 14764, 1931; CGL 1936 Supp. 1335(17); §1, ch. 63-496.

323.18 Drivers' working hours.—In the interest of safety and for the protection of the public, the commission shall adopt appropriate rules and regulations governing the maximum periods of time during which the drivers or chauffeurs of motor carriers subject to the provisions of this chapter shall be allowed to remain on duty. In conformity with accepted standards of safety in relation to the effect of fatigue upon a driver's ability to operate his vehicle safely, the commission may, as deemed necessary or advisable, classify and adjust the maximum number of hours of duty of a driver or chauffeur with relation to the intervals and extent of periods of rest taken between or during duty periods, conditions under which rest is taken during duty periods, number of drivers used during a given period, actual driving time as distinguished from time spent performing other duties, condition, type, and equipment of vehicles driven, time of day in which driving is done, conditions of highways, weather, traffic, and other matters or conditions of a similar nature.

History.—§19, ch. 14764, 1931; CGL 1936 Supp. 1335(18); §1, ch. 59-118; §1, ch. 63-279; §1, ch. 63-496.

323.19 Variations from filed and approved rates prohibited; rebates; free transportation.—No common carrier motor carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such company as specified in its tariffs and classification filed with and approved by the commission and in effect at the time; nor shall any such company refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person, firm, copartnership, or corporation, or other organization, or association, privileges or facilities in the transportation of persons or property except such as are regularly and uniformly extended to all; and no such company shall directly or indirectly issue, give, tender or honor any free fares except to its bona fide officers, agents, employees, and members of their immediate families; provided, that motor carriers under this chapter may exchange free transportation within the limits of this section.

History.—§20, ch. 14764, 1931; CGL 1936 Supp. 1335(19); §7, ch. 22858, 1945; §1, ch. 63-496.
cf.—§352.19 et seq. Discrimination by common carrier.

323.191 Transportation of newspapers and newspaper supplements at agreed rates.—

(1) Motor carrier common carriers holding certificates of public convenience and necessity issued by the commission may for compensation transport newspapers and newspaper supplements for rates or charges determined or agreed upon by the common carrier and the shipper or owner.

(2) Such common carriers shall not, with respect to cargo consisting of newspapers or newspaper supplements, be required to comply with the provisions of §§323.03(1)(e) and 323.08(1), (2).

(3) The provisions of §323.19 shall not apply in cases of cargo consisting of newspapers or newspaper supplements.

(4) The provisions of this act shall not exempt or excuse any motor carrier from the payment of any mileage tax imposed by law.

History.—§§1-4, ch. 63-377; §1, ch. 63-279; (1), (4) §1, ch. 63-496.

323.20 Suspension of permits temporarily; special permits.—The commission may suspend temporarily any permit or certificate issued by it when the condition of the public highway reasonably requires such suspension. The commission may also grant special permits in emergency cases to meet temporary or unusual conditions in the movement of vehicles exceeding the specifications imposed by this chapter or by the rules and regulations of the commission where proper safeguards are prescribed for safety of the traveling public and conservation of public highways.

History.—§21, ch. 14764, 1931; CGL 1936 Supp. 1335(20).

323.21 Clerks, investigators, etc.; employment and powers.—The commission shall employ such necessary clerks, investigators, auditors, attorneys, hearing examiners, and other employees, on such terms and conditions as it

shall deem advisable and necessary to carry out the provisions of this chapter. All investigators employed by the commission are vested with the powers of deputy sheriffs in all counties of the state and authorized to stop any motor vehicle on the highways and to check and inspect any such motor vehicle, including any trailer or semitrailer attached thereto, and to inspect any documents on or pertaining to such motor vehicle, trailer or semitrailer, or their use, and to inspect any bills of lading, manifests or any other shipping documents relating to the contents of such motor vehicle, trailer or semitrailer, for violation of this chapter or any motor vehicle operating under a certificate or permit issued by the commission, for violation of a rule of said commission or the laws touching motor vehicle operation, or use, and to make arrests for any such violation in the same manner as such arrest could be made by deputy sheriffs of the several counties of the state. Said investigators are also authorized to issue citation under rules and regulations of the commission to a motor carrier operating under the commission's jurisdiction or such company's agent directing said company to appear before the commission at a time and place named in said citation in answer to a charge of violation of a statute of the state, rule or order of the commission. Failure to appear at said time and place may be treated by the commission as an admission of said charge and penalty may be assessed as provided in §323.09.

History.—§22, ch. 14764, 1931; CGL 1936 Supp. 1335(21); §1, ch. 57-261; §1, ch. 63-496.

323.22 Vehicle registration and identification; fee.—

(1) The commission shall prescribe reasonable rules and regulations governing the registration and identification of motor vehicles authorized for operation under this chapter. Under such rules and regulations, the commission may prescribe appropriate identifying devices for which the commission shall charge and each motor carrier shall pay a fee of one dollar annually. Any such identifying device prescribed and furnished by the commission shall be conspicuously displayed at all times upon each motor vehicle authorized for operation under this chapter in such manner as may be prescribed from time to time by the commission. Transfers of any such identifying devices from one vehicle to another are hereby prohibited. The fees derived from the issuance of such identifying devices shall be paid into the state treasury to the credit of the general revenue fund.

(2) It is further provided, that pick-up and delivery trucks of motor carriers, operating wholly within the limits of established municipalities, or in suburban territory immediately adjacent thereto, shall not be required to have attached to them for hire tags provided for by the statutes of this state regulating motor vehicles.

History.—§23, ch. 14764, 1931; CGL 1936 Supp. 1335(22); §2, ch. 20958, 1941; §1, ch. 22674, 1945; (1) §56, ch. 26869, 1951; (1) §1, ch. 59-117; §1, ch. 63-496.

323.23 Record of hearings before the commission or examiner.—Upon application of any party participating in any hearing before the commission, a commissioner designated by the commission or a hearing examiner of the commission, the testimony at the hearing shall be taken by the official reporter and a copy of such testimony shall be furnished to any such party upon the payment of fees therefor as fixed by the commission. Upon application by either party, after entry of an order thereunder, and after ten days notice to the attorney for the commission and to all other parties who participated in such hearing, such evidence shall be duly certified by the executive secretary or acting executive secretary of the commission. Such certified copy shall be taken as a correct transcript of such proceedings in any legal proceedings in any court in this state.

History.—§24, ch. 14764, 1931; CGL 1936 Supp. 1335(23); §2, ch. 57-114.
cf.—§350.06 Official reporter of public utilities commission.

323.24 Unlawful operation may be enjoined.—Any motor carrier which operates upon the highways of this state or any transportation broker who operates within this state, without first having obtained from the public utilities commission a certificate, a permit, or a license as prescribed by this chapter, or who so operates after such certificate, permit, or license is cancelled, or who violates any of the provisions of this chapter, or any order, decision, rule or regulation, direction, demand or requirement, of the commission in relation thereto or any part or provision thereof, may be enjoined by the courts of this state, from any such violation or such unlawful or unauthorized operation within this state, at the instance of the commission or any citizen or taxpayer of this state. Provided further, that in said injunction proceedings the court may order and require such motor carrier to render an account showing the amount of mileage taxes which it should have paid the state for the operations sought to be enjoined, and the court shall have power and jurisdiction to enter appropriate judgment to enforce or compel the payment of any mileage taxes found to be due, including the entry of a money judgment for the amount of such taxes.

History.—§25, ch. 14764, 1931; CGL 1936 Supp. 1335(24); §1, ch. 22777, 1945; §1, ch. 59-119; §1, ch. 63-279; §1, ch. 63-496.

323.25 Taxes deemed compensatory.—All mileage taxes prescribed by this chapter and all such taxes imposed on motor carriers using the public highways in the transportation of persons or property for compensation shall be deemed to be compensatory for the use of the public highways of this state by motor carriers taxed under the provisions of this chapter and as a fair contribution to the cost of constructing and maintaining the public highways of this state and the administration and enforcement of this chapter and all regulations and restrictions imposed hereby and authorized to be imposed by the commission are declared to

be for the purpose of conservation of the state's property and in the interest of safety in the use of its highways.

History.—§26, ch. 14764, 1931; CGL 1936 Supp. 1335(25); §1, ch. 63-279; §1, ch. 63-496.

323.26 Railroad companies may operate motor vehicles under this chapter.—Railroad companies, their receivers or trustees, operating in this state may operate motor vehicles for hire upon the highways of this state, provided they obtain from the commission a certificate under this chapter; and provided further, that they shall be, as to said motor vehicles, motor carriers under this chapter and subject to all the provisions of this chapter; and railroad companies, their receivers or trustees operating in this state may also own the whole or any part of the capital stock of a corporation or corporations organized or operating as a motor carrier.

Except as hereinafter provided, no railroad company, its receivers or trustees, nor any company whose stock is owned by a railroad company, its receivers or trustees, shall be granted a certificate of public convenience and necessity without proof such as would be required by an independent motor carrier; provided, however, that upon the making of proper application therefor, by any such railroad company, its receivers or trustees, or by any company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers or trustees, the commission shall, as a matter of right and without a hearing, grant a certificate of public convenience and necessity to any such railroad company, or to the receivers or trustees of such company, or to any such company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers or trustees, to operate for the transportation of freight, express or United States mail over the highways and public roads of this state, using only the most practicable route located nearest to its rail lines and which is generally used between the communities served by its rail lines, said route as herein defined to be determined by the commission, motor vehicles between and within communities which are connected by and served by the rail lines of any such railroad company, but not elsewhere. The rates and charges for transportation by motor vehicles, as in this section provided, shall be the same as those which any such railroad company, its receivers or trustees may be authorized to charge if such transportation had been solely by rail; and said railroad company, its receiver or trustees, and any company in which such railroad company, its receivers or trustees, may own a majority of the stock, engaged in such operation, shall, to the extent of such operation, be liable for the same fees and taxes as are prescribed for other certificated motor carriers.

Any certificate granted by the commission as a matter of right under the foregoing proviso shall be granted subject to the following conditions, viz: when any application under this proviso is filed with the commission the applicant shall attach thereto the schedules upon which it proposes to operate trucks, and such schedules once being filed shall not be changed or enlarged without the authority of the commission after first making application to it and having such hearing thereon as the said commission may require.

No rate or classification applicable to the service applied for in force and effect as prescribed or allowed by the commission when such application is made, shall be lowered below the rate or classification of any competing truck lines over the route sought to be served by the applicant without the public utilities commission first having heard an application so to do, upon due notice as is now or may hereafter be required of any other certificated truck line.

When a certificate granted by the commission under the provisions of this section to a company in which a railroad company may own a majority of the stock has been cancelled or revoked by the commission for violation of law or any lawful order, rule or regulation of the commission, no certificate shall be granted to any other company in which said railroad company may own a majority of the stock to operate over that portion of the route as to which the certificate may have been cancelled.

History.—§27, ch. 14764, 1931; CGL 1936 Supp. 1335(26); §1, ch. 18027, 1937; §7, ch. 22858, 1945; §1, ch. 63-279.

323.27 Not required to become common carrier.—Nothing in this chapter contained shall be construed to require any motor carrier operating as a private contract carrier or a for hire carrier, to become a common carrier or to assume any of the duties or responsibilities of common carriage.

History.—§28, ch. 14764, 1931; CGL 1936 Supp. 1335(27); §1, ch. 63-496.

323.28 Law inapplicable to interstate commerce; certificate of registration.—

(1) Neither this chapter nor any provisions hereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of the union except insofar as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

(2) It shall be unlawful for any motor carrier transporting for compensation in interstate commerce in Florida for which a certificate of public convenience and necessity or a permit is required from the interstate commerce commission to operate over the public highways of this state without first having filed a certified copy of such interstate commerce commission authority with the Florida public utilities commission and having obtained from said commission a certificate of registration. It shall also be unlawful for any such companies transporting for compensation under exemptions provided by the interstate commerce act to operate in Florida without first having obtained

such a certificate of registration. Said certificate of registration shall be granted as a matter of right without public hearing.

(3) Applications for certificates of registration when properly filed on forms provided by the commission will be granted as a matter of course, and continued supervision of interstate carriers will be limited to the control of routes traveled, type, weight, size and method of operation of motor vehicles, proper accounting and payment of the compensatory mileage tax required by law and the giving of a bond or insurance to provide for protection of third parties from injuries due to negligence of interstate operators in the use of the highways and other police regulations required by law and rules and regulations of the commission. No cargo insurance will be required. Proof that bond or insurance is filed with the interstate commerce commission adequate to protect the operation on the highways of this state together with a description of such bond or insurance will be accepted in lieu of said bond.

(4) No motor vehicle shall be used in such service unless said vehicle has first been registered with and its use has been authorized by the commission. Common carriers of passengers holding a certificate of public convenience and necessity or a permit issued by the interstate commerce commission authorizing such service, will be authorized to make occasional charter trips in the state in interstate commerce upon compliance with the following requirements:

(a) Comply with the terms of subsection (3) of this section;

(b) Advise the commission in advance of the date of the proposed trip and the routes to be traveled;

(c) Make payment to the state comptroller of compensatory mileage tax required by law;

(d) Agree not to pick up any passengers for intrastate transportation in Florida; and

(e) Furnish satisfactory evidence of payment to the state motor vehicle commissioner of the required registration fees for each vehicle to be used in this state.

(5) The commission, in the exercise of the jurisdiction conferred upon it by this chapter, may make such orders and prescribe such rules and regulations affecting such interstate motor carriers as it deems necessary for the safety of the public highways.

(6) Each interstate motor carrier registered under the provisions of this chapter shall designate a resident agent.

(7) In the event Florida has entered into a reciprocal agreement with another state under the terms of §320.39, waiving certain of its laws pertaining to interstate transportation for compensation, such reciprocal agreement will be controlling as to such laws of Florida as are thereby waived.

History.—§29, ch. 14764, 1931; CGL 1936 Supp. 1335(28); §3, ch. 57-111; §1, ch. 63-279; (2) §1, ch. 63-460; (2) §1, ch. 63-496.

323.29 Exemptions from provisions of this chapter.—

(1) Recognizing and declaring that the transportation exempted in this section is casual, seasonal and not on regular routes or schedules, is slow moving, frequently in special equipment, and for comparatively short distances over the improved highways of the state, there shall be exempted from the provisions of this chapter, and from commission jurisdiction and control, motor vehicles, other than those engaged in common carrier service, used exclusively in transporting children to and from schools; transportation companies engaged in taxicab service, or the operation of hotel buses to or from depots and hotels, serving the same town or city; and motor vehicles while engaged exclusively in transporting goods, wares, merchandise, horticultural, agricultural, or logs, lumber or other forest products, fish, oysters and shrimp, and dairy products, from the point of production to that point of primary manufacture, or from the point of production to the point of assembling the same, or from either such point of production, primary manufacture or assembling to a shipping point of either a rail, water or motor transportation company, usually and generally serving the territory in which said production, manufacture or assembling takes place. There also shall be exempted from the provisions of this chapter and from commission jurisdiction and control, persons operating motor vehicles within the corporate limits of any city or town or the adjoining suburban territory, or between cities and towns whose boundaries adjoin, where such business of carriage is regulated by the legislative body of such cities or towns. There shall be further exempted from the provisions of this chapter and from commission jurisdiction and control, persons operating motor vehicles for transportation of persons for compensation, but not motor vehicles for transportation of property for compensation, in that certain area of Duval county lying east of the range line dividing range twenty-six east and range twenty-seven east.

Nothing in this chapter contained shall be construed or applied to exempt from commission jurisdiction and control, persons operating motor vehicles transporting race-horses and polo ponies for compensation, unless both the point of origin and point of destination are within the corporate limits of the same city or town.

There shall be further exempted from the provisions of this chapter and from commission jurisdiction and control, motor vehicles used exclusively in transporting agricultural or horticultural products, supplies and materials, including fertilizers and sprays, when delivered direct to the growers or consumers or to an association of such growers or consumers.

Nothing in this chapter contained shall be construed or applied to require any private motor vehicle engaged in the transportation of

goods, wares or merchandise belonging to the owner or operator of such vehicles to secure a permit or a certificate of public convenience and necessity under the provisions of this chapter, or to become subject to regulations prescribed by this chapter or by the commission in respect to common, private contract or for hire carriage, or to pay the mileage tax provided by this chapter. Casual or irregular trips by motor vehicles not engaged in the business of for hire carriage but operated under private license shall not subject such motor vehicles to the provisions of this chapter so long as such motor vehicles may not lawfully be required to operate under for hire license tags.

(2) There shall be exempted from the provisions of this chapter, and from commission jurisdiction and control, persons operating motor vehicles upon that portion of Heckscher drive in Duval county, between the city of Jacksonville and Little Talbot island.

(3) There shall be exempted from the provisions of this chapter, and from commission jurisdiction and control:

(a) Motor vehicles used exclusively in transporting ice for use in the packing of agricultural or horticultural commodities for further shipment, and

(b) Dump trucks leased by a building construction or road building contractor from another such contractor with drivers for such vehicles furnished by the lessor contractor and used exclusively in transporting construction aggregates to a concrete or asphalt mixing plant or to a construction site.

(4) The following shall not be deemed as operating for compensation under this chapter, to wit: hearses and ambulances when operated by licensed embalmers and morticians, their agents and employees in this state; wreckers used to transport motor vehicles to garages and repair shops; dump trucks when used in transportation of mixed road building materials from a mixing plant to the construction site of a public highway; and motor vehicular transportation of United States mail.

History.—§30, ch. 14764, 1931; §1, ch. 17115, 1935; CGL 1936 Supp. 1335 (29); §1, ch. 18028, 1937; §1, ch. 18029, 1937; §7, ch. 22858, 1945; (2) n. §1, ch. 57-206; (3) n. §1, ch. 59-445; (4) n. §21, ch. 61-530; §1, ch. 63-279; (1) §1, ch. 63-556; (3) (c) n. §3, ch. 63-416.

cf.—§320.01(16) When for hire licenses are required.

323.31 Transportation brokers.—

(1) LICENSE REQUIRED.—No person, firm, company or association shall for compensation sell or offer for sale transportation of property subject to this chapter or which would be subject to this chapter except for the exemptions provided by §323.29 or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person, firm, company or association holds a transportation broker's license in such transactions; provided, however, that no such person, firm, company or association shall engage in transportation subject to this chapter unless he holds a certificate or permit as provided in this chapter. And provided further, that the provisions of this section shall not apply to any motor carrier or to bona fide employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers or with a common carrier by railroad, express, or water.

(2) ISSUANCE OF LICENSE; HEARING; PROTEST.—A transportation brokerage license shall be issued to any applicant therefor, who is found to be qualified, as hereinafter provided, to perform the transportation brokerage services proposed in his application and who is found to have complied with the provisions of this section and the requirements, rules and regulations of the commission thereunder; otherwise, such application shall be denied. Upon the filing of the application and the payment of the fees hereinafter provided, the commission shall set a time for a public hearing and shall at the same time give written notice thereof to each transportation broker holding a license to do business anywhere in the state. At such public hearing the applicant will be required to establish by substantial evidence the statements made in his application as well as the fact that the issuance of a license to him would be consistent with the public interest.

(3) APPLICATION, FEES.—

(a) Application for such transportation brokerage license shall be in writing verified by the applicant and shall specify the name and address of applicant and the names and addresses of its officers or partners, if any, the locality or location within the state from which the applicant desires to operate and the kind of transportation which the applicant intends to sell, provide, procure, contract or arrange for. In addition, the application shall show that the applicant is qualified in the following particulars:

1. He has had a minimum of one year of experience in the office of a licensed transportation broker or one year of experience as a truck owner or driver in the field of motor transportation.

2. He has not been convicted of engaging in the business of transportation brokerage without a proper license in the past twelve months; and no legal proceedings are pending against him for violation of this section.

3. He has not been engaged as the owner, partner, officer, or director of a predecessor company operating as a transportation broker within the past twelve months which has become insolvent, been adjudged as bankrupt, or has unsatisfied judgments against it.

4. He has attached to his application as a part thereof a current financial statement prepared and signed by a certified public accountant showing a minimum net worth of five thou-

sand dollars and adequate financial means to operate successfully as a transportation broker.

(b) Each application shall be accompanied by a fee of five hundred dollars to be placed in the general revenue fund; provided, however, that four hundred dollars shall be refunded if the license is not issued. All licenses issued hereunder, including those licenses now in effect, shall be renewed annually by the payment of an annual license renewal fee of two hundred fifty dollars per license which shall be due on December 31 each year. If such fee is not paid in advance of such due date, it must be received by the commission on or before January 31 of the next year in order for the renewal of the license to be effective. All moneys received hereunder shall be deposited in the general revenue fund.

(c) Localities or locations from which the applicant desires to operate shall be stated as precisely as possible and if possible shall be stated by reference to a particular incorporated municipality. License shall be issued according to the localities or locations stated in the application therefor and shall authorize the applicant to do business only from the localities or locations stated. Nothing herein contained shall be interpreted as preventing any transportation broker from holding licenses to do business from more than one locality or location but a separate license shall be required for each locality or location from which business is done; provided, however, upon application to and approval by the commission, licensed transportation brokers engaged exclusively in procuring transportation for seasonal commodities, may, upon terminating seasonal operations in a given locality, move to another locality and continue such seasonal operations without procuring an additional license or licenses for such subsequent places of business.

(4) SUSPENSION OF LICENSE AND REVOCATION.—The public utilities commission may suspend a transportation broker's license if it finds that the licensee has either:

(a) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or

(b) Made false charges for services rendered by himself or by any motor carrier which he represents; or

(c) Failed to account properly and promptly, or to make settlement with any motor carrier; or

(d) Made any false or misleading statement as to services rendered by himself or by any motor carrier which he represents; or

(e) Been guilty of a fraud in the attempt to procure or the procurement of a license; or

(f) Arranged for transportation of property subject to this chapter and not exempt under the provisions of §323.29 with other than an authorized carrier; or

(g) Become not fit, willing and able properly to perform the service authorized by his license, for any other good and sufficient reason.

(5) HEARING BEFORE PUBLIC UTILITIES COMMISSION.—Before the commission shall suspend or revoke a license, it shall fix a time and place for a public hearing and give the applicant or licensee notice thereof, by registered mail, placing in the notice the grounds upon which the proposed suspension or revocation is based. Such notice shall be mailed not more than sixty or less than twenty days prior to the date set for hearing. At such hearing the licensee shall be privileged to appear in person or by or with counsel and to produce witnesses.

(6) ASSIGNMENT OF LICENSE.—No transportation brokerage license issued under the provisions of this section may be assigned or transferred without the consent of the commission authorizing such transfer. Applications shall be filed jointly by the assignor and the assignee and shall be subject to the same provisions as to hearing and notice as original applications for licenses. The commission may reasonably alter, restrict or modify the terms and provisions of any such license or impose restrictions on such transfer where the public interest may be best served thereby.

(7) RULES AND REGULATIONS; BOND OR OTHER SECURITY REQUIRED.—The commission shall prescribe reasonable rules and regulations for the protection of shippers by motor vehicle and motor carriers, to be observed by any person, firm, company or association holding a transportation brokerage license. No such license shall be issued or remain in force unless such person, firm, company or association shall have furnished a bond or other security approved by the commission, in such form and amount as will insure financial responsibility. Such bond shall be conditioned upon the payment of all obligations to motor carriers or shippers, and the supplying of authorized transportation in accordance with all contracts, agreements, or arrangements with both motor carriers and shippers. In no event shall the total of all recoveries exceed the amount of such bond or security.

(8) INSPECTION OF ACCOUNTS AND RECORDS.—The commission and its clerks and inspectors shall have the same authority as to accounts, reports, and records, including inspection and preservation thereof, of any person, firm, company or association holding a transportation brokerage license under the provisions of this section, that they have under this chapter with respect to the motor carriers subject thereto.

(9) EMERGENCY PERMITS.—On a satisfactory showing of an emergency requiring transportation brokerage services in the movement of perishable commodities, the commission may grant a temporary transportation brokerage license pending a public hearing on application for a permanent license and said commission may also grant temporary authority to any licensed transportation broker in the state to furnish

such brokerage services in the emergency area during the pendency of such emergency.

History.—§2, ch. 29787, 1955; (2), (3) §1, ch. 59-418; (3)(a) 4. §1, (7) §2, ch. 61-388; §1, ch. 63-279; (1)-(4), (6)-(9) §1, ch. 63-496.

cf.—§1.01 (13) defines registered mail to include certified mail with return receipt requested.

323.35 Penalties.—Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this chapter, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, or who fails to observe any regulations as to maximum speed of operation or maximum weight of load, of the commission, or who procures, aids or abets any person in his failure to obey, observe or comply with any such order, maximum speed of operation, maximum weight of load, decision, rule, direction, demand, or regulation, or any part or provision thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding $500.00 or by imprisonment in the county jail not exceeding 1 year.

History.—§15, ch. 14764, 1931; CGL 1936 Supp. 7794(2); §1, ch. 63-279.

Note.—Formerly §323.30.

cf.—§775.06 Alternative punishment.

323.36 Carriers; unlawful agreements.—

(1) Any part of any agreement, arrangement or other device entered into shall be unlawful and void which as a condition to the transportation of property requires or permits a regulated for hire carrier of property, freight forwarder, private carrier or other carrier or shipper or association or group of shippers to pay a charge, allowance, assessment or compensation to any person or organization if such charge, allowance, assessment or compensation is dependent or contingent upon the use of another mode of transportation in addition to motor transportation for movement of such property.

(2) Should any person, firm, partnership, organization or association of persons violate any of the provisions of this section, they shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100.00 nor more than $500.00, or by imprisonment for not less than 30 days nor more than 90 days, or by both such fine and imprisonment. Each day of the violation of any of the provisions of this section shall constitute a separate offense.

History.—§§1, 2, ch. 63-92.

CHAPTER 324

FINANCIAL RESPONSIBILITY

324.011 Purpose of chapter.—It is the intent of this chapter to recognize the existing rights of all to own motor vehicles and to operate them on the public streets and highways of this state when such rights are used with due consideration for others; to promote safety, and provide financial security by such owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle, so it is required herein that the owner and operator of a motor vehicle involved in an accident shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.001.

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(1) MOTOR VEHICLE.—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

(2) COMMISSIONER—State treasurer as ex officio insurance commissioner.

(3) OPERATOR.—Every person who is in actual physical control of a motor vehicle.

(4) PERSON.—Every natural person, firm, copartnership, association or corporation.

(5) NONRESIDENT.—Every person who is not a resident of this state.

(6) LICENSE.—Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(7) PROOF OF FINANCIAL RESPONSIBILITY.—That proof of ability to respond in damages for liability, on account of accidents arising out of the use of a motor vehicle, in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident and subject to said limits for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident.

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to §324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) of this section and conforming to the requirements of §324.151, issued by any insurance company authorized to do business in this state.

(9) OWNER.—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(10) JUDGMENT.—Any judgment which shall have become final by expiration without

appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damage.

(11) REGISTRATION.—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.01.

324.031 Manner of proving financial responsibility.—The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in §324.021(8) and §324.151, or

(2) Posting with the state treasurer of a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in §324.021(7), or

(3) Furnishing a certificate of the state treasurer showing a deposit of cash or securities in accordance with §324.161, or

(4) Furnishing a certificate of self-insurance issued by the commissioner in accordance with §324.171.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.02.

324.042 Administration.—The commissioner, by himself or through his deputy commissioners, shall administer and enforce the provisions of this chapter, and the commissioner may make such rules and regulations as may be necessary for its administration and shall provide for hearings before a deputy commissioner or referee upon request of persons aggrieved by orders or acts of the commissioner.

History.—§1, ch. 29963, 1955; §1, ch. 57-147.
Note.—Formerly §324.03.

324.051 Reports of accidents; suspensions of licenses and registrations.—

(1) The director of the department of public safety, any sheriff, police department or peace officer of this state shall within ten days following any accident within the purview of this chapter, coming to his attention, report such accident in writing to the commissioner. Such report shall contain the following information: Date and place of the accident, description of the cars involved, the names and addresses of owners or operators, the extent of the damage, and such other information as the commissioner may require. The commissioner is hereby further authorized to require reports of accidents from individual owners or operators whenever he deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the commissioner. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the commissioner. The director of the department of public safety and the motor vehicle commissioner shall carry out, and execute and enforce all orders of suspension and reinstatement of licenses and all registrations issued by the commissioner pursuant to the provisions of this chapter.

(2) Thirty days after receipt of notice of any accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, or total damage of fifty dollars or more to property, the commissioner shall suspend the licenses of the operators and all registrations of the owners of the vehicles involved in such accident and in case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall prior to the expiration of such thirty days be found by the commissioner to be exempt from the operation of this chapter, based upon evidence in his files satisfactory to him that:

(a) No injury was caused to the person or property of anyone other than such operator or owner, or

(b) The motor vehicle was legally parked at the time of such accident, or

(c) The motor vehicle was owned by the United States government, this state, any political subdivision of this state or any municipality therein, or

(d) Such operator or owner had been finally adjudicated not to be liable by a court of competent jurisdiction, or

(e) Such operator or owner had secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and had complied with one of the provisions of §324.031, or

(f) Such operator or owner has deposited with the state treasurer security to conform with §324.061 and has complied with one of the provisions of §324.031.

Provided, however, that this subsection of this section shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance or bond; nor

4. To any person who has obtained from the commissioner a certificate of self-insurance in accordance with §324.171 or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in §324.021(7).

(3) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in §324.051 herein, shall remain suspended for a period of three years unless reinstated as otherwise provided in this chapter.

History.—§1, ch. 29963, 1955; (2) (f) §2, ch. 57-147.
Note.—Formerly §324.04.

324.061 Securities deposited with state treasurer; release.—

(1) Security deposited pursuant to the provisions of §324.051(2)(f) with respect to claims for injuries to persons or properties resulting from an accident occurring prior to such deposit shall be in the form and amount determined by the commissioner which, in his judgment, will be sufficient to compensate for all injuries arising out of such accident but in no case shall the amount exceed the limits as specified in §324.021(7).

(2) Such security shall be deposited with the state treasurer and shall not be released until ordered by the commissioner under one of the following conditions:

(a) A duly attested written statement of satisfaction by all parties shown to be injured in such accident has been received by the commissioner, or

(b) In the event the depositor has been finally adjudicated by a court of competent jurisdiction not to be liable; or all judgments of liability against the depositor have been satisfied, or

(c) One year shall have elapsed after deposit and during such period the commissioner has not been duly notified of any court action brought for damages.

(d) Upon receipt of an order from a court ordering that such deposit be paid to satisfy a recorded judgment, in whole or in part, resulting from an accident. If the commissioner does not have sufficient funds on deposit to satisfy such judgment he shall forthwith call upon the judgment debtor for the balance, subject to the limits specified in §324.021(7). Upon failure of the judgment debtor to make the necessary deposit or to satisfy the judgment in full, the commissioner shall revoke the driving privilege and all registrations of such judgment debtor within ten days subsequent to notification to the judgment debtor by the commissioner.

(e) In any case in which securities deposited under this section have remained unclaimed by the person making the deposit for five years or more such deposit shall be transferred by the state treasurer to the state school fund, and all interest and income that may accrue from said deposits after the aforesaid period of time, shall belong to said fund.

History.—§1, ch. 29963, 1955; (2)(d),(e) n. §3, ch. 57-147.
Note.—Formerly §324.041.

324.071 Reinstatement; renewal of license.—Any operator or owner whose license or registration has been suspended pursuant to §324.051(2) or §324.072 may effect its reinstatement upon compliance with the provisions of §324.051(2)(d), (e) or (f). When the reinstatement of any license or registration is effected by compliance with §324.051(2)(e) or (f), the commissioner shall notify the director of public safety in those cases concerning the renewal of driver's licenses and the motor vehicle commissioner in those cases concerning registrations that such renewal shall not be granted within a period of three years from such reinstatement, nor shall any other license or registration be issued in the name of such person unless the owner or operator is continuing to comply with one of the provisions of §324.031.

History.—§1, ch. 29963, 1955; §4, ch. 57-147.
Note.—Formerly §324.05.

324.072 Proof required upon certain convictions.—

(1) The director of the department of public safety shall report to the commissioner the name of any person whose license has been revoked pursuant to the provisions of §322.26. The names of such persons shall be included in a written monthly report from said director to the commissioner, which report shall list the names and addresses of the persons involved, the reasons for revocation and such other information as the commissioner reasonably may require.

(2) Upon receipt of such notification of a license revocation by reason of conviction or forfeiture of bail, the commissioner shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly with another, except that he shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(3) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the laws of this state, and not then unless and until he shall give and thereafter maintain proof of financial responsibility as required by §324.071.

History.—§5, ch. 57-147.

324.081 Nonresident owner or operator.—

(1) The commissioner may establish reciprocal agreements with any other states for the

purpose of fulfilling the provisions of this chapter and pursuant to such agreements may suspend the license and registration of a resident of this state involved in an accident in another state.

(2) When a nonresident's operating privilege is suspended pursuant to this chapter, the commissioner shall transmit a certified copy of the record of such action to the appropriate official of the reciprocating state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of such certification that the operating privilege of a resident of this state has been suspended or revoked in any such other reciprocating state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the commissioner to suspend a nonresident's operating privilege had the accident occurred in this state, the commissioner shall suspend the license of such resident if he was the operator, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security.

(4) In the event such nonresident shall at the time have in effect an insurance policy or surety bond issued by any insurance company or surety company not authorized to do business in this state, the commissioner may reinstate such nonresident upon said company furnishing him with power of attorney to accept service of process.

History.—§1, ch. 29963, 1955; §6, ch. 57-147.
Note.—Formerly §324.06.

324.091 Notice to commissioner by insurer.—(1) Each insurer doing business in this state shall, within ten days after receiving notice of an accident involving any of its insureds under any motor vehicle liability policy or surety bond issued by such insurer, give notice to the commissioner upon such form and in such manner as he may designate, that such policy or bond was in effect at the time of such accident.

(2) Each insurer doing business in this state shall immediately give notice to the commissioner of each motor vehicle liability policy when issued to effect the return of a license which has been suspended under §324.051(2); and said notice shall be upon such form and in such manner as the commissioner may designate.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.08.

324.101 Compliance before license or registration allowed.—In case the operator or owner of a motor vehicle involved in an accident within the state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this chapter to the same extent that would be necessary, if at the time of the accident he had held a license and registration.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.09.

324.111 Failure to satisfy judgment; copy to commissioner.—Whenever any person fails within sixty days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commissioner immediately after the expiration of said sixty days, a certified copy of such judgment.

History.—§1, ch. 29963, 1955.

324.121 Suspension of license and registration.—

(1) The commissioner upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section, and in §324.141.

(2) If the judgment creditor consents in writing, in such form as the commissioner may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commissioner, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or any installments thereof prescribed in §324.141, provided the judgment debtor furnished proof of financial responsibility as provided in §324.031, such proof to be maintained for three years.

History.—§1, ch. 29963, 1955.

324.131 Period of suspension.—Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent of the limits stated in §324.021 (7) and until the said person gives proof of financial responsibility as provided in §324.031, such proof to be maintained for three years.

History.—§1, ch. 29963, 1955.

324.141 Installment payments. —

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The commissioner shall not suspend a

license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commissioner shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

History.—§1, ch. 29963, 1955.

324.151 Motor vehicle liability policies; required provisions.—A motor vehicle liability policy to be proof of financial responsibility under §324.031(1), shall be issued to owners or operators under the following provisions:

(1) An owners' liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles, within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under §324.021(7).

(2) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(3) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured, of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.

History.—§1, ch. 29963, 1955; §24, ch. 57-1.
Note.—Formerly §324.10.

324.161 Proof of financial responsibility; surety bond or deposit.—The certificate of the state treasurer of a deposit may be obtained by depositing with him twenty-five thousand dollars cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of twenty-five thousand dollars and which deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.11.

324.171 Self-insurer. — Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner, who may, in his discretion, upon application of such a person, issue said certificate of self-insurance, when he is satisfied that such person is possessed of a net unencumbered capital of at least forty thousand dollars. The commissioner may require annual reports from any self-insurer which reports must continue to show at least forty thousand dollars unencumbered net worth. Whenever the commissioner finds that any self-insurer does not possess forty thousand dollars of unencumbered net worth he shall revoke the certificate of self-insurance.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.12.

324.181 Cancellation of liability policies; plan for apportionment of certain applicants.—No motor vehicle liability policy which is obtained to effect the return of any operator's license or registration shall be cancelled by an insurer issuing the same unless ten days' notice of such cancellation shall be given to the commissioner on a form prescribed by him and to the insured, except that when evidence has been furnished of the holding of a motor vehicle liability policy, and subsequently evidence is furnished of the holding of such a policy subsequently procured, the later policy shall, on the date evidence is furnished, terminate the policy as to which evidence was previously furnished with respect to any vehicle designated in both policies.

The commissioner shall, after consultation with the insurers licensed to write automobile liability insurance in this state, adopt a reasonable plan or plans for the equitable appor-

tionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been adopted, all such insurers shall subscribe thereto and shall participate therein. Such plan or plans shall include rules for classification of risks and rates therefor.

History.—§1, ch. 29963, 1955; §1, ch. 61-69.
Note.—Formerly §324.13.

324.191 Consent to cancellation; direction to return money or securities.—The commissioner shall consent to the cancellation of any bond or certificate of insurance furnished as proof of financial responsibility pursuant to §324.031, or the commissioner shall direct and the state treasurer shall return to the person entitled thereto cash or securities deposited as proof of financial responsibility pursuant to §324.031:

(1) Upon substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter, or

(2) In the event of the death of the person on whose behalf the proof was filed, or the permanent incapacity of such person to operate a motor vehicle, or

(3) In the event the person who has given proof of financial responsibility surrenders his license and all registrations to the commissioner; providing, however, that no notice of court action has been filed with the commissioner, a judgment in which would result in claim on such proof of financial responsibility.

This section shall not apply to security as specified in §324.061 deposited pursuant to §324.051(2)(f).

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.14.

324.201 Return of license or registration to commissioner.—Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon the request of the commissioner shall immediately return his license and registrations to the commissioner. It shall be unlawful for any person whose license has been suspended to operate any motor vehicle, or for any person whose registrations have been suspended, to obtain another motor vehicle for the purpose of circumventing this chapter. If any person shall fail to return to the commissioner the license or registrations as provided herein, the commissioner shall issue a complaint to a court of competent jurisdiction which shall issue a warrant charging such person with a misdemeanor, and any sheriff of this state shall serve the warrant and such person upon conviction shall be fined not less than $50.00 nor more than $500.00 or sentenced to not less than 10 days nor more than 90 days imprisonment or both in the discretion of the court, and shall surrender to the court his driver's license, registration and plates for delivery to the commissioner. For the service and execution of such warrant the sheriff shall receive the arrest and other fees as prescribed by §30.23.

History.—§1, ch. 29963, 1955; §7, ch. 57-147.
Note.—Formerly §324.16.

324.211 Sale by owner during suspension; rights of conditional vendors, mortgagees and lessors.—If an owner's registration has been suspended hereunder, it shall be unlawful for him to transfer such registration or to have registered in any other name the motor vehicle in respect of which such registration was issued until the commissioner is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purpose of this chapter; provided, however, that any owner within the purview of this section may file an application for permission to transfer such registration, which application shall be accompanied by an affidavit of good faith showing that such transfer is not with the intent of defeating the purpose of this chapter. The commissioner, within ten days subsequent to suspension of the owner's registration, shall furnish proper application and affidavit forms to each such owner along with the notice of suspension, and the owner shall have fifteen days from receipt thereof to file such application, which application shall be either approved or rejected by the commissioner within thirty days from the filing thereof.

In addition to the penalties otherwise provided for violation of this section the commissioner may suspend the registration of any vehicle transferred contrary to the provisions of this section.

Nothing in this section or elsewhere in this chapter contained shall affect the rights of any conditional vendor, chattel mortgagee or lessor or any successor in interest of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section; and in the event of the repossession or foreclosure of a motor vehicle by such conditional vendor, chattel mortgagee, or lessor, or any successor in interest, pursuant to the exercise of rights to such repossession under the terms of the lien instrument or contract involved, by operation of law or through legal proceedings, the lien holder or lessor repossessor shall have the right to have delivered to it the registration plates which shall have been surrendered.

History.—§1, ch. 29963, 1955; §8, ch. 57-147.
Note.—Formerly §324.15.

324.221 Penalties.—Any person who shall make any misstatement in or commit any forgery upon notice required to be filed hereunder or who shall make any false affidavit in connection with the transfer or proposed transfer of the registration of a motor vehicle shall be fined not more than $500.00, or imprisoned for not more than 6 months or both.

Any person who shall violate §324.201 or any other provision of this chapter for which no

penalty is otherwise provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500.00 or imprisoned for not more than 90 days, or both, in the discretion of the court; and in any such case charging such a violation involving failure to return licenses or registrations in accordance with §324.201, the sentence imposed by the court shall be a fine not less than $50.00, or imprisonment not less than 10 days, or both, in the discretion of the court, but not exceeding the prescribed fine of $500.00 or imprisonment of 90 days. In any event the total fine and imprisonment in any such case charging a violation involving failure to return licenses or registrations in accordance with §324.201, the total of such fines and imprisonments shall not exceed $500.00 or imprisonment of 90 days.

History.—§1, ch. 29963, 1955; §9, ch. 57-147.
Note.—Formerly §324.17.

324.241 Application of law.—This law shall not apply with respect to any accident occurring prior to the effective date of this chapter.

History.—§1, ch. 29963, 1955.
Note.—Formerly §324.18.

324.251 Short title.—This chapter may be cited as the "Financial responsibility law of 1955," and shall become effective at 12:01 a.m., October 1, 1955.

History.—§§1, 5, ch. 29963, 1955.

CHAPTER 325

VEHICLE EQUIPMENT SAFETY COMPACT

325.01 Vehicle equipment safety compact, execution authorized.—The governor of this state is hereby authorized and directed to execute the following compact on behalf of this state with such other states as may enter into a compact, legal joining therein in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I

FINDINGS AND PURPOSES.—

(1) The party states find that:

(a) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(b) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to:

(a) Promote uniformity in regulation of and standards for equipment.

(b) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(c) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II

DEFINITIONS.—As used in this compact:

(1) Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) State means a state, territory or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(3) Equipment means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III

THE COMMISSION.—

(1) There is hereby created an agency of the party states to be known as the vehicle equipment safety commission hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addi-

tion to the other officers provided by this article.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

RESEARCH AND TESTING.—The commission shall have power to:

(1) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(2) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(4) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V

VEHICULAR EQUIPMENT.—

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(5) If the constitution of a party state re-

quires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

ARTICLE VI

FINANCE.—

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article III (8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under article III (8), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

CONFLICT OF INTEREST.—

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigation or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII

ADVISORY AND TECHNICAL COMMITTEES.—

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX

ENTRY INTO FORCE AND WITHDRAWAL.—

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X

CONSTRUCTION AND SEVERABILITY.—

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History.—§1, ch. 63-518.

325.02 Statutory provisions relative to equipment requirements superseded by new rules and regulations.—The provisions of chapter 317, prescribing motor vehicle equipment requirements, shall continue to be of force and effect only until superseded by a rule, regulation or code adopted by the department of public safety pursuant to the vehicle equipment safety compact. Any such rule, regulation or code shall specify the provision or provisions of existing statute being superseded in accordance with and as required by this act. Any such provision or provisions are hereby repealed, effective on the date when the rule, regulation or code superseding such provision or provisions becomes effective pursuant to the vehicle equipment safety compact and such other provisions of this act as may be applicable. Violation of any of the motor vehicle equipment requirements shall constitute a misdemeanor and shall be punishable as provided by law.

History.—§2, ch. 63-518.

325.03 Rules, approval by department of public safety.—Pursuant to article V (5) of the vehicle equipment safety compact, it is the intention of this state and it is hereby provided that no rule, regulation or code issued by the vehicle equipment safety commission in accordance with article V of the compact shall take effect until approved by the director of the department of public safety.

History.—§3, ch. 63-518.

325.04 Commissioner on motor equipment safety; director of department of public safety or his designate.—The commissioner of this state on the vehicle equipment safety commission shall be the director of the department of public safety, who shall serve during his continuance as such public safety director. The commissioner may designate a duly authorized representative from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such representative shall be as determined by the commissioner designating such representative.

History.—§4, ch. 63-518.

325.05 Employees covered by state and county retirement system.—The state and county officers and employees retirement system may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to article III (6) of the compact. Any such agreement, as nearly as may be shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History.—§5, ch. 63-518.

325.06 Cooperation with state agencies.—Within appropriations available therefor, the departments, agencies and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by article III (8) of the compact. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said commission.

History.—§6, ch. 63-518.

325.07 Filing of documents.—Filing of documents as required by article III (10) of the compact shall be with the secretary of state. Any and all notices required by commission bylaws to be given pursuant to article III (10) of

the compact shall be given to the commissioner of this state, or his duly authorized representative, if any.

History.—§7, ch. 63-518.

325.08 Budgets.—Pursuant to article VI (1) of the compact, the vehicle equipment safety commission shall submit its budgets to the director of the state budget commission.

History.—§8, ch. 63-518.

325.09 Audit.—Pursuant to article VI (5) of the compact, the state auditor is hereby authorized and required to inspect the accounts of the vehicle equipment safety commission.

History.—§9, ch. 63-518.

325.10 Governor executive head.—The term executive head as used in article IX (2) of the compact shall, with reference to this state, mean the governor.

History.—§10, ch. 63-518.

TITLE XXIII

AERONAUTICS

CHAPTER 329

AIRCRAFT, GENERALLY

329.01 Recording instruments affecting civil aircraft.—No instrument which affects the title to or interest in any civil aircraft of the United States, or any portion thereof, shall be valid in respect to such aircraft or portion thereof, against any person other than the person by whom the instrument is made or given, his heirs or devisee, and any person having actual notice thereof, until such instrument is recorded in the office of the civil aeronautics administrator of the United States, or such other office as is designated by the laws of the United States as the one in which such instruments should be filed. Every such instrument so recorded in such office shall be valid as to all persons without further recordation in any office of this state. Any instrument, recordation of which is required by the provisions of this section, shall take effect from the date of its recordation and not from the date of its execution.

History.—§1, ch. 22673, 1945.

CHAPTER 330

LICENSING AIRCRAFT AND PILOTS

330.01 Definitions.—In this chapter aircraft means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. Operating aircraft means performing the services of aircraft pilot.

History.—§1, ch. 14642, 1931; CGL 1936 Supp. 4109(1).

330.02 Aircraft required to be licensed by U. S. department of commerce; exceptions.—Public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards prescribed by the United States government with respect to navigation of civil aircraft subject to its jurisdiction, it is unlawful for any person to navigate an aircraft within the state unless such aircraft has an appropriate, effective license issued by the department of commerce of the United States and is registered by said department of commerce; provided, however, that this restriction shall not apply to military aircraft of the United States, or of a state, territory, or possession thereof, or to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft.

History.—§2, ch. 14642, 1931; CGL 1936 Supp. 4109(2).

330.03 Pilot's license issued by U. S. department of commerce required to operate any aircraft in this state; exceptions.—Public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft in any form of navigation, shall have the qualifications necessary for obtaining and holding a pilot's license issued by the department of commerce of the United States, it shall be unlawful for any person to operate any aircraft in this state unless such person is the holder of an appropriate, effective pilot's license issued by the department of commerce of the United States; provided, however, that this restriction shall not apply to persons operating military aircraft of the United States or of a state, territory or division thereof, or to persons operating aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of licensed aircraft.

History.—§3, ch. 14642, 1931; CGL 1936 Supp. 4109(3).

330.04 Pilot required to have license in his possession.—The pilot's license required shall be kept in the personal possession of the licensee when he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state upon which he shall land.

History.—§4, ch. 14642, 1931; CGL 1936 Supp. 4109(4).

330.05 Penalties.—A person who violates any provision of this chapter shall be guilty of a misdemeanor and punishable by a fine of not more than $100.00, or by imprisonment for not more than 90 days; provided, however, that

acts or omissions made unlawful by this chapter shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States, but it shall not be necessary to allege or prove, as part of the case for the state, that the defendant is not amenable, on account of the alleged violation, to prosecution under laws of the United States. That he is amenable to such prosecution shall be a matter of defense, unless it affirmatively appear from the evidence adduced by the state.

History.—§5, ch. 14642, 1931; CGL 1936 Supp. 8135(3).
cf.—§775.06 Alternative punishment.

330.06 Definitions, general.—In construing §§330.07-330.23, 330.25, when applied to aircraft as motor vehicles, where the context permits, the word, phrase or term:

(1) Aircraft means any motor vehicle (as used in §13, article IX, of the state constitution) now known, or hereafter invented, used or designed for navigation of or flight in the air.

(2) Owner includes any individual, firm, corporation, or association controlling any aircraft by right of purchase, gift, lease or otherwise.

(3) Municipality means any county, city, town, village, borough, authority, district, or other political subdivision or public corporation of this state. Municipal means pertaining to a municipality as herein defined.

(4) Local authorities means all police officers and public officials of the municipalities as defined herein.

(5) Glider includes all vehicles self-airborne whether piloted or pilotless, coupled to or drawn by an aircraft.

(6) Commissioner means the motor vehicle commissioner of the state.

(7) Operation of aircraft or operate aircraft means the use, navigation or piloting of aircraft in the airspace of this state or upon any airport within the state.

(8) Person means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes trustee, receiver, assignee, or other similar representative thereof.

(9) Airway means a route in the navigable airspace over and above the lands or waters of this state designated by the federal government or the state as a route suitable for air navigation.

(10) State or this state means the state of Florida.

(11) Aeronautics means the science and art of flight and including but not limited to transportation by aircraft; the operation; construction, repair, or maintenance of aircraft; aircraft power plants and accessories, including the repair and packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(12) Cwt shall mean one hundred pounds weight.

(13) Gross weight shall be construed to be the maximum actual weight for flight at take-off which has been established as safe and for which the aircraft is certificated as airworthy by federal regulations.

(14) The word passenger or any abbreviation thereof shall not include the pilot, copilot, flight engineer, steward or stewardess or other member of the crew necessary for the operation of the aircraft.

(15) Private use shall be construed to mean the use of aircraft, which are not properly classified as for hire aircraft.

(16) For hire aircraft include all aircraft, or gliders drawn by aircraft when used for transporting persons, commodities, or materials for compensation; let or rented to another for a consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau or when offered or used to provide transportation for persons, solicited through personal contact or advertised on a share-expense basis. When freight or passengers are transported from one airport to another for compensation or when freight is transported in an aircraft not owned by the same person owning the said freight, so that there is identity of ownership between said freight and aircraft, such transportation shall be deemed for hire. The carrying of goods, wares, merchandise and other personal property in aircraft by corporations or associations for their stockholders, shareholders and members, corporate or otherwise, shall be deemed transportation for hire.

(17) Airport means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

(18) Air navigation facility means any facility other than one owned or operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including structures, mechanisms, lights, beacons, markers, communication systems or other instrumentalities, or devices used or useful as an aid or constituting an advantage or convenience, to the safe take-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an aircraft, and any combination of any or all of such facilities.

History.—§1, ch. 24045, 1947; §11, ch. 25035, 1949.

330.07 Declaration.—It is hereby declared that the purpose of §§330.07-330.23, 330.25 is to further the public interest and aeronautical progress in the state; by making registration procedures for aircraft similar to those for automobiles, both of which are motor vehicles; by registering aircraft so as to provide a rapid and efficient method for determining the ownership of aircraft engaged in reckless operation which endangers the lives and property of

others and to aid in the advancement of air safety.

History.—§2, ch. 24045, 1947.

330.08 Application for registration; forms.—Every owner, or person in charge of an aircraft which shall be operated on, to, or from any airport in this state, shall for each such aircraft cause to be filed by mail or otherwise, in the office of the commissioner, a certified application for registration of same on a blank to be furnished for that purpose, containing:

(1) A description of each aircraft to be registered including purpose for which it is to be used, the name of the manufacturer, the manufacturer's number, type, horsepower, gross weight, seating capacity, and maximum fuel capacity in gallons.

(2) The name, age, residence and business address of the owner of such aircraft, and also the county, state or place if outside of the state, in which he resides, and a statement that he is over sixteen years of age.

(3) Statement to the effect that the owner has in his possession an appropriate effective federal certificate, permit or license relating to the ownership and airworthiness of the aircraft giving any or all of the information contained on the federal certificate, permit or license as may be required to properly register the aircraft in this state. It shall not be necessary for the registrant to provide the commissioner with originals or copies of federal certificates, permits, rating or licenses.

History.—§3, ch. 24045, 1947.

330.09 Licenses; duties of tax collectors.—(1) DUTIES OF TAX COLLECTORS.—The tax collectors in the several counties of the state shall deliver such evidence of registration as the commissioner may prescribe for aircraft to applicants subject to the requirements of law in accordance with rules and regulations to be prescribed with reference thereto by the commissioner. Each tax collector shall be required to give a good and sufficient surety bond payable to the commissioner and his successors in office conditioned that he will faithfully and truly perform the duties imposed upon him according to the requirements of law and the rules and regulations of the commissioner, and that he will well and truly pay over and account for all certificates of registration, records and other property and money which may come into his possession or control by reason of such service. Only one bond shall be required for all motor vehicle registration but the amount of such bond shall be fixed by the commissioner and shall be in proportion to the amount of accountability which is likely to arise in such capacity, the said amount to be fixed by the commissioner. Each tax collector shall keep a full and complete record and account of all certificates of registration or other properties received by him from the commissioner of from any other source, and shall make prompt remittance of moneys collected by him at such times and in such manner as rules and regulations promulgated by the commissioner in that behalf may prescribe.

(2) SERVICE CHARGE.—There shall be a service charge of fifty cents for each application which is handled, which service charge shall be collected from the applicant as full compensation for all services rendered in connection with the handling of the application. Said charge shall be retained by the tax collector as other fees accruing to the tax collector's office.

The service charge herein provided for shall be collected by the commissioner on all certificates of registration for aircraft issued direct from his office and the proceeds thereof, together with the proceeds of all fees from aircraft returned to him, shall be paid into the general revenue fund. No tax collector, deputy tax collector or employee of the state or any county shall charge, collect, receive any fee or compensation as notary public or otherwise for any service in connection with the execution of any notarial certificate to any application, registration, change of registration or for other service incidental to the issuance of certificates of registration for aircraft.

History.—§4, ch. 24045, 1947; (2) §57, ch. 26869, 1951; (2) §25, ch. 63-572.
cf.—§117.05 Fees.

330.10 Registration; open to inspection.—(1) REGISTRATION.—Upon receipt of an application for the registration of an aircraft, as herein provided, the commissioner shall file such application in his office and register such aircraft with the name, residence and business address of the owner, manufacturer or dealer as the case may be, together with facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such aircraft and displayed prominently on the outside of the aircraft, which book or index shall be open to the inspection of the public during business hours.

(2) CERTIFICATE NUMBER AND DISPLAY THEREOF.—Upon the filing of such application and the payment of the fee herein provided for, the commissioner shall assign to that aircraft the distinctive license number used by the federal government to identify that aircraft, and without expense to the applicant issue and deliver to the owner a certificate of registration which the owner shall post inside the aircraft in the same manner and location as the federal certificates are displayed. Such certificates shall be subject to inspection by state license inspectors and local authorities.

(3) DUPLICATE CERTIFICATES.—In the event of loss, mutilation or destruction of a certificate of registration, the owner of a registered aircraft may obtain from the commissioner a duplicate thereof upon filing in the office of the commissioner an affidavit showing the facts and upon the payment of a service charge of one dollar for each duplicate.

(4) RENEWAL OF CERTIFICATES ANNUALLY.—Such registration shall be renewed annually and in the same manner and upon payment of the same fee as provided for the origi-

nal registration, such renewal to take effect January 1 of each year; provided, however that air transportation companies holding federal certificates of public convenience and necessity may register semiannually the commercial aircraft used by them under such certificates in their business and no registration or license fee shall be required to be paid during such semiannual period as the same may not be registered and in use if the annual registration rate for the aforesaid aircraft is one hundred dollars, service charge not included.

The sale of registration certificates for aircraft by the commissioner and his agents for the ensuing year shall begin on December 1. The operation of any aircraft after January 15, without having posted therein a registration certificate for the current year, shall be a misdemeanor and subject the operator thereof to arrest and punishment as provided by law for the operation of a motor vehicle without proper license. Each day in which the aircraft is operated without an effective certificate shall constitute a separate offense. The time for the operation of any aircraft for the current year may be extended by the governor from January 15 of the current year for a period of thirty days, if within his judgment and discretion an emergency exists justifying the thirty days extension period.

History.—§5, ch. 24045, 1947; (3) by §1, ch. 59-179.
cf.—§320.57, Penalties for violating motor vehicle license chapter.

330.11 Registration fees.—The following registration fees shall be paid to and collected by the commissioner upon the registration or reregistration of the following aircraft, but in no case to exceed one hundred dollars annually per aircraft, service charge not included:

(1) AIRCRAFT FOR PRIVATE USE.—

"T" series: gross weight of 2000 lbs. or less	$ 5.00 flat
Plain series: gross weight of 2001 lbs. or more but, less than 2500 lbs. gross weight	10.00 flat
"D" series: gross weight of 2500 lbs. or more, but less than 3500 lbs. gross weight	15.00 flat
"W" series: gross weight of 3500 lbs. or more, but less than 4500 lbs. gross weight	20.00 flat
"WW" series: gross weight of 4500 lbs. or more	25.00 flat

(2) AIRCRAFT FOR HIRE.—

"GHF" series: gross weight less than 6000 lbs.	1.00 per cwt.
"HFH" series: gross weight 6000 lbs. or over	100.00 flat

(3) GLIDERS.—

"V" series: all gliders when towed by powered aircraft, regardless of weight per year or any part thereof	2.50 flat

There shall be no reduction for half year license for gliders in this special class.

(4) DEALER'S DEMONSTRATION CERTIFICATES.—

"M" series: all dealer's demonstration certificates	10.00 flat

Such fees shall be in lieu of all state and municipal personal property taxes on aircraft in accordance with the definition of aircraft in §330.06.

(5) FRACTIONAL REGISTRATION FEE.—Any aircraft acquired after June 30 of any year, or otherwise, not subject to registration prior to that time, shall, on application to the commissioner for registration of such aircraft after June 30 of the aforesaid year, be charged at the rate for such registration one-half the annual rate; provided, however, that no certificate of registration shall be issued for less than five dollars. Aircraft acquired after September 30 of any year or otherwise not subject to registration prior to that date, shall for the remainder of the certificate year be registered for one-fourth the annual rate; provided, however, that no certificate of registration shall be issued for less than five dollars.

History.—§6, ch. 24045, 1947; (5) §2, ch. 59-179.

330.12 Exemptions.—The provisions of §§330.07-330.23, 330.25 shall not apply except as provided in this section to:

(1) An aircraft owned by, or used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, or the District of Columbia, any state, territory, or possession of the United States, which is not engaged in carrying passengers or property for hire on commercial purposes in this state.

(2) An aircraft registered under the laws of a foreign country which grants similar exemption for aircraft of United States registry in its territory.

(3) An aircraft which is owned by a nonresident of Florida and registered in another state which is not engaged in carrying persons or property for hire or commercial purposes in this state, except if said nonresident shall be employed in this state.

(4) Any aircraft which is within this state for a total time of less than ninety days during the year and which is repaired or overhauled within this state during such time, irrespective of the use made of such aircraft while enroute to or from an overhaul or repair base in this state.

History.—§7, ch. 24045, 1947.

330.13 Interstate commerce, advance payment and refund.—Where any aircraft is used for hire, whether for carrying passengers or freight either singly or in combinations, over the airspace of this state, partially or wholly in interstate or foreign commerce, a charge shall be collected in the form of a registration fee initially computed and assessed on the basis of the foregoing schedule, and shall be collected upon the registration of the aircraft as an advance payment, but the person so registering or reregistering said aircraft shall be entitled to a refund of the amount collected upon making

payment to the state for the mileage actually traveled by the aircraft within this state, to be paid for at the rate of one tenth of one cent per mile each way computed on an airway mileage when operating on airways and on point-to-point mileage when operating off airways. Proof of mileage traveled shall be made to the commissioner who shall ascertain and determine the number of miles actually traveled by the aircraft, which mileage would be subject to the mileage tax under this law, but not to exceed one hundred dollars per aircraft annually. The findings of the commissioner when made after full hearing shall be deemed and held prima facie just and correct, but subject to judicial review in appropriate proceedings brought to enforce such refund.

History.—§8, ch. 24045, 1947; §3, ch. 59-179.

330.14 Deductions from registration tax.—Any owner whose aircraft has been destroyed or permanently removed beyond the state shall be entitled to deduct from any registration tax which may thereafter become due during the same year from such owner upon another vehicle, the pro rata of the annual registration fee or tax theretofore paid on each aircraft up to the time it was destroyed or permanently removed beyond the state; provided, however, that all for hire aircraft which may be permanently removed beyond the state or destroyed may upon surrender of the certificate of registration or duplicate thereof, be entitled to a credit with the commissioner for license upon any other aircraft during such year for the pro rata unexpired term for such vehicle, which shall not be more, however, than one-half of such registration period.

History.—§9, ch. 24045, 1947.

330.15 Withholding registration.—The commissioner may withhold registration of any aircraft, the owner of which shall have failed to register the same under the provisions of law for any previous period or periods for which it appears registration should have been made in this state, until the fee for such period or periods shall be paid; provided, if the owner of the aircraft submits proof that he did not operate the aircraft for a longer period than January or February of the previous year, or for a longer period than January or February of the current year, that he shall not be precluded or prevented from obtaining a certificate of registration for the current year under the provisions of this chapter.

History.—§10, ch. 24045, 1947.

330.16 Lien of tax and enforcement.—The registration tax required under this chapter, when not paid shall constitute a first lien upon the aircraft against which the same is chargeable, which lien shall be superior to all other liens upon such aircraft, and may be enforced or collected, if delinquent more than thirty days, by levy and sale in the same manner as under an execution of law on the amount of the tax due, which enforcement may be under a tax warrant issued for that purpose by the commissioner and enforced in a like manner as is provided by law for the enforcement of tax warrants by the comptroller.

History.—§11, ch. 24045, 1947.

330.17 Municipalities may not impose registration fees on aircraft.—It shall be unlawful for any municipality of this state to collect any license or registration fee or tax on any aircraft or glider in this state.

History.—§12, ch. 24045, 1947.

330.18 Obtaining registration by false statements.—Any person who shall apply for and obtain from the commissioner a certificate of registration by means of false or fraudulent representations made in any application therefor shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 6 months. The commissioner may take up and cancel any such certificate of registration which has been so obtained by false and fraudulent representation.

History.—§13, ch. 24045, 1947.

330.19 Counterfeiting registration certificates.—No person shall counterfeit, manufacture, print, sell or dispose of certificates of registration for aircraft in the state, without first obtaining the permission and authority of the commissioner, in writing. Any person, violating the terms of this section shall be guilty of a misdemeanor, and he shall be fined not less than $100.00 nor more than $500.00, or be confined in the county jail where the offense occurred for a period not to exceed 6 months.

History.—§14, ch. 24045, 1947.

330.20 Unlawful to possess aircraft from which serial number has been removed.—It is unlawful for any person to knowingly buy, sell, receive, dispose of, conceal or have in his possession any aircraft from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said aircraft. Violation of this section shall be punishable as a misdemeanor.

History.—§15, ch. 24045, 1947.

330.21 Failure to register aircraft.—No aircraft except those exempted in §330.12 shall be flown or operated under its own power upon any airport of this state, unless the same be registered according to law and the registration fee paid. Any person operating or owning any aircraft so operated shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

History.—§16, ch. 24045, 1947.

330.22 Transfer of registration, fee, penalty.—Upon the sale of an aircraft or glider already registered under the provisions of this chapter the vendee shall immediately notify the commissioner of the same upon a blank to be furnished by said commissioner for that purpose, certifying the name and business address of the

previous owner, manufacturer or dealer, and the number which such aircraft is registered, the name and business address of the vendee, together with all other data required for original registration. Upon the filing of such statement, such vendee shall, in case the vehicle is to be used by the new owner for private use, pay to said commissioner a fee of one dollar upon receipt of which the said commissioner shall file such statement and note upon his registration book or index the fact of such change of ownership. In the case of the sale of such aircraft already registered for private use, but to be used by the new owner for hire, the new owner shall return to said commissioner such original registration certificate, and shall make and file the statement above mentioned and pay said commissioner the amount of the registration fee required for such aircraft for hire less such amount as has been heretofore paid for such aircraft upon original registration. Said commissioner shall thereupon issue to such new owner for such aircraft without further charge an appropriate certificate of registration and shall register such aircraft and note upon his index or registration book the fact of such reregistration. Any person who shall use or knowingly or wilfully permit his servants or employees to use any such original certificate of registration on any other vehicle required to be registered under this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punished accordingly.

History.—§17, ch. 24045, 1947; §11, ch. 25035, 1949.

330.23 Disposition of moneys collected under the provisions of this chapter.—

(1) All moneys collected by the commissioner or the commission under the provisions of this chapter shall be deposited into the general revenue fund.

(2) All salaries and expenses incident to the administration and enforcement of this chapter shall be paid from the general revenue fund and the commissioner and the commission shall include the estimated amounts needed to carry out the provisions of this chapter in their legislative budget request.

History.—§18, ch. 24045, 1947; (1), (3) §24, ch. 57-1; §4, ch. 59-179.

330.25 Short title.—Sections 330.07-330.23, 330.25 may be cited as the state aircraft motor vehicle registration law.

History.—§21, ch. 24045, 1947; §11, ch. 25035, 1949.

330.27 Definitions, when used in §§330.28-330.36, 330.38, 330.39.—

(1) Aeronautics means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) Aircraft means any motor vehicle or contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) Airport means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

(4) Commission means the Florida state development commission or any department or commission subsequently designated to act as the official agency of the state in all matters affecting aviation under any federal laws now or hereafter to be enacted.

(5) Director means the director of the Florida development commission or the director of any department or commission subsequently designated to act as the official agency of the state in all matters affecting aviation under any federal laws now or hereafter to be enacted.

(6) State or this state means the state of Florida.

(7) Air navigation facility means any facility—other than one owned or operated by the United States—used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) Operation of aircraft or operate aircraft means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves the capacity of aircraft dispatcher, or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(10) Person means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(11) Municipality means any county, city, town, village, borough, authority, district or other political subdivision or public corporation, of this state. Municipal means pertaining to a municipality as herein defined.

(12) Airport hazard means any structure, object of natural growth, or use of land, which

obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

History.—§1, ch. 24046, 1947; (4), (5) §24, ch. 57-1.
cf.—§288.11 Abolishing improvement commission and substituting Florida development commission.

330.28 Declaration.—It is hereby declared that the purpose of §§330.28-330.36, 330.38, 330.39 is to further the public interest and aeronautical progress:

By providing for the protection and promotion of safety in aeronautics;

By cooperating in effecting uniformity of the laws and regulations relating to the establishment and development of airports in the several states consistent with federal aeronautics laws and regulations;

By granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to airports, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics;

By establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

By providing for cooperation with the federal authorities in the development of a national system of airports and for coordination of the aeronautical activities of those authorities and the authorities of this state.

History.—§2, ch. 24046, 1947.

330.29 Rules, regulations, standards.—

(1) POWER TO ISSUE.—The commission may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable general or special rules, regulations and procedures, and establish such minimum standards, consistent with the provisions of §§330.28-330.36, 330.38, 330.39, as it shall deem necessary to carry out the provisions of §§330.28-330.36, 330.38, 330.39 and to perform its duties thereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule or regulation of the commission shall apply to airports or air navigation facilities owned or operated by the United States or those under the jurisdiction and control of a county aviation authority or county port authority, board of county commissioners or municipal authority.

(2) CONFORMITY TO FEDERAL LEGISLATION AND RULES.—All rules and regulations prescribed by the commission under the authority of §§330.28-330.36, 330.38, 330.39 shall be kept in conformity, as nearly as may be, with the then current federal legislation governing airports and the rules, regulations and standards duly issued thereunder.

(3) FILING.—The commission shall keep on file with the secretary of state, and at the principal office of the commission, a copy of all its rules and regulations for public inspection.

(4) DISTRIBUTION.—The commission shall provide for the publication and general distribution of all its orders, rules, regulations and procedures having general effect.

History.—§3, ch. 24046, 1947; §11, ch. 25035, 1949.

330.30 Licensing of airports.—

(1) SITE APPROVALS; REGULATIONS, ISSUANCE OF CERTIFICATES, FEES, STANDARDS.—Except as provided in subsection (5) of this section, the commission is authorized to provide for the approval of airport sites and the issuance of certificates of such approvals. A charge not to exceed fifty dollars shall be made for any such approval, and certificates of such an approval may be issued to all persons requesting them. Upon the promulgation of a rule or regulation providing for such approvals, any municipality or person desiring or planning to construct or establish an airport shall, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the commission for approval of the site. The commission shall with reasonable dispatch grant approval of a site if it is satisfied:

(a) That the site is adequate for the proposed airport;

(b) That such proposed airport, if constructed or established, will conform to minimum standards of safety; and

(c) That safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approve airport sites in its vicinity.

(2) SAME; EFFECTIVE PERIOD, REVOCATION, EXISTING AIRPORTS.—An approval of a site may be granted subject to any reasonable conditions which the commission may deem necessary to effectuate the purposes of this section, and shall remain in effect, unless sooner revoked by the commission, until a license for an airport located on the approved site has been issued pursuant to subsection (3) of this section. The commission may, after notice and opportunity for hearing to holders of certificates of an approval, revoke such approval when it shall reasonably determine:

(a) That there has been an abandonment of the site as an airport site; or

(b) That there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval, or

(c) That because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted. No approval shall be required for the site of any existing airport.

(3) LICENSES; REGULATIONS, ISSU-

ANCE OF LICENSE, RENEWALS, FEES, STANDARDS, REVOCATION, UNLAWFUL OPERATION.—Except as provided in subsection (5) of this section, the commission is authorized to provide for the licensing of airports and the annual renewal of such licenses. It may charge license fees not exceeding fifty dollars for each original license, and not exceeding fifty dollars for each renewal thereof. Upon the promulgation of a rule or regulation providing for such licensing, the commission shall with reasonable dispatch, upon receipt of an application for an original license and the payment of the duly required fee therefor, issue an appropriate license if it is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for such airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the commission may deem necessary to effectuate the purposes of this section. The commission may, after notice and opportunity for hearing to the licensee, revoke any license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine:

(a) That there has been an abandonment of the airport as such, or

(b) That there has been a failure to comply with the conditions of the license or renewal thereof; or

(c) That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued.

Except as provided in §§330.28-330.36, 330.38, 330.39 it shall be unlawful for any municipality or officer or employee thereof, or any person to operate an airport without an appropriate license for such, as may be duly required by rule or regulation issued pursuant to this subsection.

(4) OPTIONAL PUBLIC HEARINGS.—In connection with the grant of approval of a proposed airport site or the issuance of an airport license under subsections (1) and (3) of this section, the commission may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public as provided in §330.32.

(5) EXEMPTIONS.—The provisions of this section shall not apply to airports owned or operated by the United States. The commission may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under this section or from any requirement of such a rule or regulation, if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety. Provided, that the commission shall make no charge to any municipality for a certificate of approval or for a license and the annual renewal of such license in connection with any municipally-owned airport.

History.—§4, ch. 24046, 1947; (5) §1, ch. 61-215.

330.31 Federal-state joint hearings, reciprocal services.—

(1) JOINT HEARINGS.—The commission is authorized to confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under §§330.28-330.36, 330.38, 330.39, or relating to the safe development of airports.

(2) RECIPROCAL SERVICES.—The commission is authorized to avail itself of the cooperation, services, records and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of §§330.28-330.36, 330.38, 330.39. The commission shall furnish to the agencies of the United States its cooperation, services, records and facilities, insofar as may be practicable.

History.—§5, ch. 24046, 1947.

330.32 Commission orders, notice and opportunity for hearings, judicial review.—Every order of the commission requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate or license shall set forth the reasons and shall state acts to be done or requirements to be met before approval by the commission will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by the commission pursuant to the provisions of §§330.28-330.36, 330.38 and 330.39 shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of §§330.28-330.36, 330.38 and §330.39 the order of the commission shall, on not less than ten days notice, specify a time when, and place where the person affected may be heard or the time within which he may request hearing, and such order shall become effective upon the expiration of the time for exercising such opportunity for hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the commission shall affirm, disaffirm or modify such order after hearing held or default by the person affected. To the extent practicable, hearings on such orders shall be held in the county where the affected person resides or does business. Any person aggrieved by an order of the commission or by the grant, denial or revocation of any approval, license or certificate may have the action of the commission reviewed by the appropriate circuit court upon filing a petition for a writ of certiorari within the time and in the manner provided by the Florida appellate rules.

History.—§6, ch. 24046, 1947; §11, ch. 25035, 1949; §12, ch. 63-512.

330.33 Penalties.—Any person violating any of the provisions of §§330.28-330.36, 330.38, 330.39 or any of the rules, regulations or orders issued pursuant thereto, shall be punishable by

a fine of not more than $100.00 or by imprisonment of not more than 30 days, or both.

History.—§7, ch. 24046, 1947.

330.34 Court aid.—The commission is authorized, in the name of the state to enforce the provisions of §§330.28-330.36, 330.38, 330.39 and the rules and regulations and orders pursuant thereto by injunction or other legal process in the courts of this state.

History.—§8, ch. 24046, 1947.

330.35 Airport zoning, approach zone protection.—

(1) Nothing in §§330.28-330.36, 330.38, 330.39 shall be construed to limit any right, power, or authority of the state or a municipality to regulate airport hazards by zoning.

(2) Airports licensed for general public use under the provisions of §330.30 are eligible for approach zone protection, and the procedure shall be the same as is prescribed in chapter 333.

(3) The commission is hereby granted all powers conferred upon political subdivisions of this state by chapter 333, to regulate airport hazards at state-owned airports. The procedure shall be to form a joint zoning board with the political subdivision of the state in which the state-owned airport is located as prescribed in chapter 333.

History.—§9, ch. 24046, 1947.

330.36 Prohibition against municipal licensing of airports.—No municipality of this state shall license airports or control their location except by municipal zoning requirements. All applicants for site approval and licensing under §§330.28-330.36, 330.38, 330.39 must show evidence of compliance with municipal zoning requirements and evidence of notification to municipalities in the immediate territory of intent to file such application. The determination of suitable sites and standards of safety for airports shall be in accordance with the provisions of §§330.28-330.36, 330.38, 330.39 without duplication of licensing and approval by municipalities. Nothing in §§330.28-330.36, 330.38, 330.39 shall be interpreted as prohibiting a municipality from issuing occupational licenses to operators of airports.

History.—§10, ch. 24046, 1947.

330.38 Construction of this law.—Nothing in §§330.28-330.36, 330.38, 330.39 shall apply to or confer commission jurisdiction or control over any county aviation authority, county port authority or municipal authority or any airports under their control.

History.—§11a, ch. 24046, 1947.

330.39 Short title.—Sections 330.27-330.36, 330.38, 330.39 may be cited as the state airport licensing law.

History.—§13, ch. 24046, 1947.

CHAPTER 331

AIRPORTS AND AIR COMMERCE

331.10 Eminent domain granted those engaged in air commerce.—All persons engaged in air commerce in the transportation of mail, freight, express and passengers by aircraft between fixed termini and on fixed schedules are hereby delegated authority to exercise the right and power of eminent domain, that is, the right to appropriate property, except state or federal, for the purpose of securing land for airports, air terminals, seaplane bases and landing fields in the state; and the fee simple title to all property so taken and acquired shall vest in such person unless such person seeks to condemn a particular right or estate in such property.

The procedure in acquiring said property shall be that prescribed and set forth in chapter 73.

History.—§1, ch. 15862, 1933; CGL 1936 Supp. 1977(100).
cf.—§1.01(3) Definition of person.

331.11 Commission may assist construction of airports.—For the purpose of aiding, assisting and encouraging the construction, financing and operation of airport administration buildings on county and municipally owned and operated airports, the following powers are expressly granted to the several counties, cities and towns of this state and to the Florida state development commission, hereinafter called the commission:

(1) Each county, city and town, which now owns and operates or hereafter shall own or operate, jointly or severally, an airport or airports is authorized and empowered to lease or convey a parcel or portion of such airport or airports to the commission and the commission is authorized to accept such lease or conveyance for the purpose of the construction thereon by the commission of an airport administration building in accordance with plans and specifications approved by the respective county, city or town, and the commission.

(2) The commission is authorized and empowered to construct such airport administration building on the parcel or portion of land so leased or conveyed to it by the county, city or town for such purpose; to borrow money and to issue and refund its negotiable bonds, notes or certificates to finance the cost of construction of such airport administration building in such manner, form, and upon such terms and conditions as it is authorized by law, which obligation shall be payable solely and exclusively from the revenues derived from the use of such building; to maintain and operate such airport administration building or to enter into a contract or contracts for the operation and maintenance of same by the county, city or town owning the airport on which such building is situated; to prescribe reasonable regulations for the use of such building; and to fix and collect reasonable rentals and charges for the use of such building for the purpose of paying the expenses of improving, repairing, maintaining and operating the same and paying the principal and interest on its obligations for same.

(3) The several counties, cities and towns, and the commission are hereby authorized to make agreements and to enter into contracts, each with the other, concerning all matters and things considered necessary and proper to provide for the construction, financing, operation and maintenance of such airport administration buildings on county and municipally owned and operated airports and to carry out and effect the purposes of this act.

History.—§1, ch. 24100, 1947.

331.12 Reconveyance of airports when indebtedness paid.—Whenever the obligations issued by the commission to finance the cost of construction of any airport administration building on a county or municipally owned and operated airport have been paid in full and discharged, it shall be the duty of said commission and it is hereby required to cancel the lease given to it by the county, city or town for the construction of such airport administration building, or to reconvey such land to the county, city or town which had conveyed the same to the commission for such purpose, and to relinquish and release all rights, title and interest in and to said airport administration building to said county, city or town.

History.—§2, ch. 24100, 1947.

331.13 Effect of §§331.11-331.14.—Nothing contained in §§331.11-331.14 shall broaden or extend the powers of the commission, except as specifically provided in §§331.11-331.14 and §§331.11-331.14 shall be liberally construed to carry their purpose into effect.

History.—§3, ch. 24100, 1947; §11, ch. 25035, 1949.

331.14 Power of city or county to grant franchises.—The city or county authorities operating in a municipal or county airport shall have the power and authority to grant exclusive franchises or concessions for a restaurant and newsstand or for the operation of any other service generally demanded by the traveling public, including exclusive franchise for ground transportation of passengers coming or going on airplanes.

History.—§3½, ch. 24100, 1947.

331.15 Auto transportation between county airports; exceptions.—

(1) The term motor carrier as used in this section shall mean any person, firm, corporation or partnership, which is engaged in the business of transporting passengers for hire by motor propelled vehicles, including, but not limited to, buses and sedan automobiles.

(2) The board of county commissioners of every county owning and operating an airport shall have the right, power and authority to enter into contracts with one or more motor carriers for the transportation of passengers for hire between such airport or airports and designated points within such county, and the Florida public utilities commission shall thereupon, and as a matter of right and without a hearing, issue to every such motor carrier a certificate of public convenience and necessity as a contract carrier without charter rights, which shall be valid during the term of said contract or contracts authorizing such motor carrier to transport passengers for hire over the roads, streets and highways of such county between such airport and the point or points designated in such contract or contracts, provided however nothing herein shall release such motor carrier from otherwise complying with the provisions of chapter 323.

(3) Provided, however, this section shall not be applicable in any county owning or operating an airport which said airport is geographically located so as to be separated from the mainland of the state by any bay, ocean, sea, river or other body of water, and further provided that the provisions of the section shall not apply to counties having a population between one hundred fifty thousand and two hundred thousand.

History.—§§1-3, ch. 26512, 1951; (1), (2) §2, ch. 63-496.

CHAPTER 332

AIRPORT LAW OF 1945

321.01 Airports and air navigation; definitions.—The following words, terms and phrases shall in this law have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) Municipality means any county, city, village, or town of this state.

(2) Airport purposes means and includes airport, restricted landing area and other air navigation facility purposes.

(3) Airport means any area, of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving and discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant right of ways, whether heretofore or hereafter established.

(4) Air navigation facility means any facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, or restricted landing area, and any combination of any or all of such facilities.

(5) Air navigation means the operation or navigation of aircraft in the air space over this state, or upon any airport or restricted landing area within this state.

(6) Person means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

History.—§1, ch. 22846, 1945.

332.02 Acquisition of real property for airports.—

(1) Every municipality is hereby authorized through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits, as specified in and including all the powers, rights, and privileges of chapters 73 and 74. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in fee simple, absolute and unqualified in any way, or any lesser interest therein. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage. Notwithstanding the provisions of this or any other statute or the provisions of any charter, the municipality may take possession of any such property so to be acquired at any time after the filing of the petition describing the same in condemnation proceedings, as provided in

chapter 74. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

(3) In the event any exercise of power under any section of this chapter by a municipality requires the removal, relocation or reconstruction of any structure located in, on, under or across any private property, public street or highway, or other public or private places, then such municipality shall reimburse the owner of such structure for the estimated or actual expense of said removal, relocation or reconstruction prior to the incurring of such expense by such owner.

History.—§2, ch. 22846, 1945.

332.03 Establishment of airports, etc., declared public power.—The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall be and are hereby declared to be acquired and used for public, governmental and municipal purposes and as a matter of public necessity.

History.—§3, ch. 22846, 1945.

332.04 Acquisition of property for airports validated.—Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

History.—§4, ch. 22846, 1945.

332.05 Tax exemptions.—Any property acquired by a municipality pursuant to the provisions of this chapter shall be exempt from taxation to the same extent as other property used for public purposes.

History.—§5, ch. 22846, 1945.

332.06 Preliminary costs and expenses.—

(1) The cost of investigation, surveying, planning, acquiring, establishing, constructing, enlarging, or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter, may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine.

(2) The word cost includes awards in condemnation proceedings and rentals where an acquisition is by lease, and also includes amounts paid to utility companies for relocation of their wires, poles and other facilities.

(3) Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally; provided, however, that any bonds issued by any municipality under authority of this chapter shall be self-liquidating bonds and shall not be a lien against the general taxing powers of the municipality.

History.—§6, ch. 22846, 1945.

332.07 Appropriations.—The governing bodies having power to appropriate moneys within the municipalities in this state acquiring, establishing, constructing, enlarging, improving, maintaining, equipping, or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities moneys sufficient to carry out therein the provisions of this chapter.

History.—§7, ch. 22846, 1945.

cf.—§193.32 Annual tax levies—limitations.

332.08 Additional powers.—In addition to the general powers in this chapter conferred and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality.

(2) (a) To adopt and amend all needful rules, regulations and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of said rules, regulations and ordinances, and enforce said penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the municipality are enforced.

(b) Provided, where a county operates one or more airports, its regulations for the govern-

ment thereof shall be by resolution of the board of county commissioners, shall be recorded in the minutes of the board and promulgated by posting a copy at the courthouse and at every such airport for four consecutive weeks or by publication once a week in a newspaper published in the county for the same period. Such regulations shall be enforced as are the criminal laws. Violation thereof shall be a misdemeanor.

(3) To lease for a term not exceeding thirty years such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; to lease or assign for a term not exceeding thirty years to private parties, any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment on such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities; provided, that in each case in so doing the public is not deprived of its rightful equal and uniform use thereof.

(4) To sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property.

(5) To exercise all powers necessarily incidental to the exercise of the general and special powers herein granted, and is specifically authorized to assess and shall assess against and collect from the owner or operator of each and every airplane using such airports a sufficient fee or service charge to cover the cost of the service furnished airplanes using such airports, including the liquidation of bonds or other indebtedness for construction and improvements.

History.—§8, ch. 22846, 1945; (2) §1, ch. 28164, 1953.

332.09 Federal funds and aid.—A municipality is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

History.—§9, ch. 22846, 1945.

332.10 Airports on water bottoms.—The powers herein granted to a municipality to establish and maintain such airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which, before the artificial making or reclamation thereof, constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport; and all the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land.

History.—§10, ch. 22846, 1945.

332.11 Cooperation of authorities.—It shall be lawful for and full power and authority is hereby conferred upon municipalities in any area of the state to cooperate in the exercise of the powers and authorities conferred upon municipalities under the provisions of this chapter, and such municipalities shall share in such exercise of power and authority equally or upon such other terms as may be mutually agreed upon between said municipalities.

History.—§11, ch. 22846, 1945.

332.12 Short title.—This chapter may be cited as the airport law of 1945.

History.—§13, ch. 22846, 1945.

CHAPTER 333

AIRPORT ZONING

333.01 Definitions.—For the purpose of this chapter, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) Airport means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) Airport hazard means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

(4) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(5) Person means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(6) Political subdivision means any county, city, town, village, or other subdivision or agency thereof, or any district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(7) Structure means any object, constructed or installed by man, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, and overhead transmission lines.

(8) Tree includes any plant of the vegetable kingdom.

History.—§1, ch. 23079, 1945.

333.02 Airport hazards contrary to public interest.—It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(2) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(3) That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein, or air rights thereover.

History.—§2, ch. 23079, 1945.

333.03 Power to adopt airport zoning regulations.—

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision, and any airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located, may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested in sub-

section (1) of this section in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

History.—§3, ch. 23079, 1945.

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History.—§4, ch. 23079, 1945.

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided in §333.03(2) by the bodies therein provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning of any airport hazard area under this chapter the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board, shall not hold its public hearings or take any action until it has received the final report of such commission, and at least fifteen days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History.—§5, ch. 23079, 1945.

333.06 Airport zoning requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) NONCONFORMING USES.—No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in §333.07(1) and (3).

History.—§6, ch. 23079, 1945.

333.07 Permits and variances.—

(1) PERMITS.—

(a) Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than eighty per cent torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and, whether application is made for a permit under this subsection or not, the said agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his own

expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for ten days after notice thereof, the said agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located, and, unless such an assessment is paid within ninety days from the service of notice thereof on the owner or his agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of six per cent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 86.

(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.

(2) VARIANCES.—Any persons desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of the airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) HAZARD MARKING AND LIGHTING.—In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable, to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain thereon, such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History.—§7, ch. 23079, 1945.

333.08 Appeals.—

(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals, as the agency involved may elect.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

History.—§8, ch. 23079, 1945.

333.09 Administration of airport zoning regulations.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under §333.07(1), deciding all matters under §333.07-(3), as they pertain to such agency, and all other matters under this chapter applying to said agency, but such agency shall not have or

exercise any of the powers herein delegated to the board of adjustment.

History.—§9, ch. 23079, 1945.

333.10 Board of adjustment.—

(1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in §333.08.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under §333.07(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and due notice and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the said board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History.—§10, ch. 23079, 1945.

333.11 Judicial review.—

(1) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board, or of any administrative agency hereunder, which is of the opinion that a decision of a board of adjustment is illegal, may present to the circuit court, in the circuit in which the decision occurs, a verified petition for the issuance of a writ of certiorari setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court in the manner and within the time provided by the Florida appellate rules.

(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the state constitution or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(6) No appeal shall be or is permitted under this section, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder.

History.—§11, ch. 23079, 1945; (1) §43, ch. 63-512.

333.12 Acquisition of air rights.—In any case which: it is desired to remove, lower or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided

by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition of the same by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

History.—§12, ch. 28079, 1945.

333.13 Enforcement and remedies.—

(1) Each violation of this chapter or of any regulations, orders or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor, and shall be punishable by a fine of not more than $500.00, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter, may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

History.—§13, ch. 23079, 1945.

333.14 Short title.—This chapter shall be known and may be cited as the airport zoning law of 1945.

History.—§15, ch. 23079, 1945.

TITLE XXIV

HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 334

FLORIDA HIGHWAY CODE, FIRST PART

Highway Administration

334.01 Short title.—Chapters 334-339 may be cited as Florida highway code of 1955.

History.—§168, ch. 29965, 1955.

334.02 Declaration of legislative intent.—Recognizing that safe and efficient highway transportation is a matter of important interest to all the people in the state, the legislature hereby determines and declares that:

(1) An integrated system of roads and connecting urban streets is essential to the general welfare of the state.

(2) Providing of such a system of facilities, its efficient management, operation and control, is recognized as an urgent problem, and as the proper objective of highway legislation.

(3) Inadequate roads and streets obstruct the free flow of traffic; result in undue cost of motor vehicle operation; endanger the health and safety of the citizens of the state; depreciate property values and impede general economic and social progress of the state.

(4) In designating the highway systems of this state, as hereinafter provided, the legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state, for present as well as for future use.

(5) To this end, it is the intent of the legislature to make the state road board custodian of the state highway system and to provide sufficiently broad authority to enable the board to function adequately and efficiently in all areas of appropriate jurisdiction, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

(6) The legislature intends to declare, in general terms, the powers and duties of the state road board, leaving specific details to be determined by reasonable rules and regulations which the board may promulgate. The legislature intends, by a general grant of authority to the state road board, to delegate sufficient power and authority to enable the board to carry out the broad objectives stated above.

(7) It is the further intent of the legislature to bestow upon local officials adequate authority with respect to the roads under their jurisdiction. The efficient management, operation and control of our county roads, city streets and other public thoroughfares are likewise a matter of vital public interest.

(8) The problem of establishing and maintaining adequate roads and streets, eliminating congestion, reducing accident frequency, providing parking facilities and taking all necessary steps to ensure safe and convenient transportation on these public ways is no less urgent.

(9) The legislature, recognizing the necessity of fixing responsibilities for the construction, maintenance and operation of the several

systems of highways, intends that the state shall have an integrated system of all roads and connecting urban streets to provide safe and efficient highway transportation throughout the state. The authority hereinafter granted to the state road board and to counties and municipalities to assist and cooperate with each other and to coordinate their activities is therefore essential.

(10) The legislature hereby finds, determines, and declares that this code is necessary for the preservation of the public safety, the promotion of the general welfare, the improvement and development of transportation facilities in the state, including the most effective utilization of parkways, scenic drives, residential streets and roads, elimination of hazards at grade intersections, and other related purposes, and as a contribution to the national defense.

History.—§1, ch. 29965, 1955.
Note.—Similar provisions in former §348.01.

334.03 Definition of words and phrases.—The following words and phrases when used in this code shall, unless the context clearly indicates otherwise, have the following meanings:

(1) Arterial highway. — A continuous route between urban areas having a population of 10,000 or more, also such roads as are designated federal interstate highways.

(2) Board.—The state road board.

(3) Chairman.—The chairman of the state road board.

(4) Commissioners.—Board of county commissioners.

(5) Department.—The road department of this state.

(6) Director.—Executive director of the state road department.

(7) Freeway.—An expressway with full control of access.

(8) Limited access facility.—A street or highway especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, busses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(9) Member.—A member of the state road board appointed by the governor.

(10) Municipal connecting links.—City and town streets and roads, or portions thereof, including structures, that constitute routes between, or extensions of said roads in the state highway system and feeder roads from by-passed areas.

(11) Person.—Any person, firm, partnership, association, corporation, cooperation, organization or business trust.

(12) Primary road system.—Those state roads designated by the board, under the provisions of law, as primary roads.

(13) Road.—The term road shall be construed to include streets, sidewalks, alleys, highways, and other ways open to travel by the public, including the road bed, right of way, and all culverts, drains, sluices, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

(14) Right of access.—The right of ingress to a highway from abutting land and egress from a highway to abutting land.

(15) Right of way.—Land in which the state, the department, a county or a municipality owns the fee or has an easement devoted to or required for the use as a public road.

(16) Secondary road system.—Those state roads designated as herinafter provided, consisting of connections between primary system routes and existing, new, or potential areas of economic development.

(17) State highway system.—The system of state primary and secondary roads designated by the state road board including necessary urban connections and extensions, the responsibility for which is lodged in the state road department.

(18) State park road system.—Roads embraced in boundaries of state parks and state roads leading to state parks other than roads of the state highway system, county roads, or municipal roads.

(19) State roads.—All streets, roads, highways and other public ways open to travel by the public generally and dedicated to the public use, according to law or by prescription and designated by the board as provided by law as parts of the state highway system, including the road bed, right of way, embankments, slopes, retaining walls, sidewalks, bridges, tunnels and viaducts necessary for the maintenance of travel thereon and all ferries in connection therewith.

(20) Structures.—Bridges, viaducts, tunnels, causeways, approaches, ferry slips, culverts, toll-houses and gates, and other similar facilities used in connection with roads.

(21) Sufficiency rating.—The objective rating of a road or section of a road for the purpose of determining its capability to serve properly the actual or anticipated volume of traffic using the road.

History.—§2, ch. 29965, 1955; (1), (11), (13), (20) a. by §1, (5) r. by §2, ch. 57-318, remaining subsections renumbered; (13) §1, (19) §2, ch. 63-27.
Note.—Similar provisions in former §§341.09, 341.28, 341.61, 341.64(1), 341.81 and 348.02.
cf.—§335.01 State roads defined.
§338.01(4) Definition of limited access facilities.

334.04 State road department established.—There is hereby established a department of government which shall be known as the state road department. The department shall be un-

der the authority and control of a state road board.

History.—§3, ch. 29965, 1955.

334.05 Headquarters of department; rental of office room, etc.—The headquarters and general office of the department shall be located at the state capital. The department may purchase, build, rent or lease suitable buildings or rooms for its headquarters, general office, branch offices or division offices and for maintenance yards and rooms for equipment and supplies in other cities and towns of this state as the business of the department may necessitate or require, and payment for the purchase, construction, rental or lease of such offices shall be made from any funds provided for the maintenance of the department. The department may condemn property if necessary for the construction of its headquarters in Tallahassee.

History.—§4, ch. 29965, 1955; §1, ch. 63-330.
Note.—Similar provisions in former §341.04.

334.06 Road districts; state road board; members; terms; vacancies.—

(1) The state is divided into five road districts, which districts shall coincide with former congressional districts as the same were defined on June 9, 1937.

(2) The state road board shall consist of six members, one from each road district. Each board member from the five road districts shall be a registered voting citizen of the state and shall have been a resident of the district which he represents for five consecutive years immediately prior to his appointment, and one from the state at large, who shall serve as chairman of said board, all of whom shall be appointed by the governor subject to confirmation by the state senate. The terms of office of said members shall begin and run concurrently with the regular terms of office of the successive governors of this state.

(3) The chairman of the board shall maintain his domicile in Tallahassee. In case any other member of the board shall change his domicile from the road district from which he was appointed, his office shall become vacant and the governor shall fill the vacancy by the appointment of another from such district.

History.—§5, ch. 29965, 1955; (2) by §1, (3) by §2, ch. 59-444.
Note.—Similar provisions in former §341.01.

334.08 Headquarters of board; bonds of members.—

(1) The headquarters of the board shall be in the headquarters offices of the department in Tallahassee.

(2) Each member, other than the chairman, shall furnish bond in the sum of fifty thousand dollars, and the chairman shall furnish bond in the sum of one hundred thousand dollars, conditioned upon the faithful performance of his duties; said bonds to be furnished by a reputable bonding company authorized to do business in this state, and to be payable to the governor and his successors in office; the bonds to be approved by the state comptroller and the premiums to be paid from the funds for the maintenance of the department.

History.—§7, ch. 29965, 1955.
Note.—Similar provisions in former §341.02.
cf.—§113.07 Bonds of state officials.

334.09 State road board; salaries and allowances.—

(1) The chairman shall receive an annual salary of seventeen thousand five hundred dollars and all other members shall receive an annual salary of six thousand dollars. All members shall be reimbursed for their travel expenses as authorized in §112.061, incurred in attending meetings of the board and in the performance of their duties.

(2) The chairman is authorized to employ an administrative assistant to the chairman whose duties are to be fixed by the chairman, at a salary to be determined by the chairman, but not in any instance to exceed the sum of six thousand six hundred dollars per annum.

(3) Payment of the salary and expenses as herein provided, shall be made out of any funds that may be apportioned and set aside for the administrative maintenance of the department.

History.—§8, ch. 29965, 1955; (1) by §1, ch. 57-770; (1) §1, ch. 63-346.
Note.—Similar provisions in former §341.03.

334.10 Powers and duties of chairman.—The chairman shall, unless otherwise provided by law or regulations of the board, carry out the orders of the board, and represent the department in dealing with other departments of the state, or with commissioners, or boards of bond trustees of counties or special road and bridge districts, and with the federal government; he shall have authority to sign and execute all documents and papers necessary to carry out his duties and the operations of the department, including deeds, instruments of sale, leases, or any other forms of conveyances, contracts and agreements. The chairman shall have authority in the absence of the executive director or secretary to designate, in writing, from time to time, as acting director or secretary for the purpose of executing such deeds, instruments of sale, leases or any other forms of conveyances, contracts and agreements, the head of a branch of the department for such periods of time as the executive director or secretary shall be absent from the department's official headquarters. Such written designations shall be first made a part of the minutes of the board, or ratified and approved thereafter. The chairman shall submit to the board at each meeting a report of all his actions and duties as official representative of the department.

History.—§9, ch. 29965, 1955; §1, ch. 61-256; §1, ch. 63-89.
Note.—Similar provisions in former §341.06.

334.11 Coordination of highway program; duties of chairman.—The chairman shall have the authority and responsibility for the coordination of the total highway and road program within the state, including the designation of systems and the development of construction standards as hereinafter provided for, and shall review the annual programs for each of the major systems to ensure coordina-

tion of planning and general conformity with the law. Local authorities are hereby authorized to cooperate with the chairman.

History.—§10, ch. 29965, 1955.

334.12 Regulations of board; notice; meetings; quorum; minutes.—

(1) REGULATIONS. — The board shall adopt and enforce regulations for the government of its meetings and proceedings and for the transaction of the business of the department. All rights, powers and duties vested by this code in the department shall be exercised in such manner as the board may by regulation provide, unless otherwise provided by law. Regulations affecting the public interest, other than regulations relating to the internal organization and operation of the department, shall be adopted as follows:

(a) The proposed regulation or regulations shall be contained in a resolution adopted by the board at a regular or called meeting and spread upon the minutes of its proceedings.

(b) Within ten days of the adoption of the resolution of the board, notice of the regulation or regulations in the form of a summary thereof (or in full, at the discretion of the board) shall be published once in a newspaper of general circulation published in each of the following cities: Jacksonville, Pensacola, Tampa, Orlando and Miami. Such notice shall fix the time and place for a public hearing before the board, to be held not less than ten nor more than twenty days from the date of publication.

(c) Opportunity shall be afforded interested persons to be heard by the board at such public hearing. Objections may be raised to the nature or form of such regulation or regulations. Following such hearing the board may amend, revise or rescind the resolution, which action shall be set forth in the minutes of the board, and the board shall by resolution adopt the regulation or regulations as proposed or as amended or revised, or may determine that no regulation is necessary.

(d) Upon the adoption of any regulation or regulations, as provided, a copy thereof certified by the chairman shall, within five days of the adoption thereof, be filed in the office of the secretary of state and shall not become effective until fifteen days after such filing, except as hereafter provided.

(e) Regulations relating to the internal organization or management of the department, not affecting the public interest, shall be adopted by resolution spread upon the minutes of the board and shall become effective immediately upon the filing of a copy thereof, certified by the chairman, in the office of the secretary of state.

(f) In the event the board determines that an emergency exists, necessitating the adoption, revision, repeal or suspension of a regulation or regulations, the board shall by resolution, spread upon the minutes of its proceedings, declare such emergency and clearly set forth the reasons therefor, taking such action as may be found by the board to be necessary. Such action shall become effective immediately upon the filing of a copy of the resolution certified by the chairman in the office of the secretary of state and shall remain effective for the duration of the emergency as specified in the resolution of the board, unless rescinded as hereinafter provided.

Within five days of the filing of any emergency regulation in the office of secretary of state, the board shall publish a notice thereof as provided in paragraph (b) above, and shall provide for a public hearing as set forth in paragraph (c).

Following such public hearing the board shall, by resolution, affirm, revise or rescind its findings relating to the existence of the emergency, its duration, or the action necessitated thereby. A copy of such resolution certified by the chairman shall be filed in the office of the secretary of state and action taken by the board other than an affirmance of the original resolution shall become effective immediately upon such filing.

(2) MEETINGS.—

(a) Meetings of the board shall be held at the state capital not less than once every three months and these shall be known as the quarterly meetings of the board; other meetings may be held at such times and places as may be decided upon or by regulations provided, such meetings to be called by the chairman on not less than one weeks notice to all members of the board; or meetings may be held, upon the request in writing of three members of the board other than the chairman, at a time and place to be designated in the request, and notice of such meeting being given at least one week in advance thereof to all members of the board. Emergency meetings may be held upon request of all members of the board without notice as herein provided.

(b) *Quorum.*—Four members shall constitute a quorum at any meeting of the board. No action shall be binding when taken by the board except at a regular or call meeting and duly recorded in the minutes of said meeting. The chairman shall not vote on any matter acted upon by the board except in the event of a tie.

(c) *Minutes.*—A complete record of the proceedings of the board shall be made, and such record shall be open to public inspection.

History.—§11, ch. 29965, 1955; (2) (b) by §4, ch. 59-444.
Note.—Similar provisions found in former §341.08.

334.13 Executive director; qualifications; salary; bond, payment; duties.—

(1) The board shall employ an executive director for the department who shall be a person of intelligence and competence. He shall be required to give a bond in the amount of one hundred thousand dollars, to be payable to the governor and his successors in office, and to be approved by the state comptroller, conditioned upon the faithful performance of his duties. The premiums of said bond to be paid

from the funds for the maintenance of the department.

(2) The director shall devote all his time and service to the department. He shall, under the direction of the chairman, be responsible for the efficient operation and administration of the offices of the secretary, director of personnel, director of outdoor advertising, purchasing, revenue projects, and comptroller. He shall, in accordance with the law or regulations of the board:

(a) Cause minutes of the meetings of the board to be kept;

(b) Cause accurate and complete books of account to be kept;

(c) Sign all vouchers for expenditures and purchase orders;

(d) Have charge of the records of the department;

(e) Sign and execute all documents and papers, including contracts and agreements for construction and the purchase of machinery, materials, and supplies;

(f) Perform any other duties as may be required by law or regulation of the board or by direction of the chairman.

(3) The board shall employ a secretary who shall be the administrative assistant of the executive director.

History.—§12, ch. 29965, 1955; (1), (2) by §3, (2) (f) r. by §4, ch. 57-318; (2) §1, ch. 61-517.
cf.—§113.07 Bonds of state officials.

334.14 State highway engineer, deputy and assistants; compensation and duties.—

(1) The board shall employ a state highway engineer who shall be a competent highway engineer, certified by a state board of engineer examiners, with at least ten years experience in highway engineering. He shall be required to give bond in the amount of one hundred thousand dollars, payable to the governor and his successors in office, to be approved by the state comptroller, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as shall be required by law, prescribed by the regulations of the board or at the direction of the chairman and shall be directly responsible to the chairman and the board for the efficient operation and administration of the engineering divisions of the department.

(2) The board shall employ a deputy state highway engineer who shall be a competent highway engineer, certified by a state board of engineer examiners, with at least ten years experience in highway engineering. He shall be required to give bond in the amount of fifty thousand dollars, payable to the governor and his successors in office, to be approved by the state comptroller, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as may be prescribed by law or by regulation of the board or the direction of the state highway engineer.

(3) The department shall employ an assistant state highway engineer of planning, an assistant state highway engineer of construction, an assistant state highway engineer of structures and an assistant state highway engineer of maintenance, whose duties shall be determined by the board and who shall be responsible for the efficient operation and administration of their respective divisions.

(4) The department shall employ one district engineer for each of the five respective road districts whose duties shall be fixed by the board and who shall be responsible for the efficient operation and administration of their respective districts.

History.—§13, ch. 29965, 1955; §5, ch. 57-318.
Note.—Similar provisions in former §341.10.
cf.—§113.07 Bonds of state officials.

334.17 Engineering consulting services.— The board is authorized to provide consulting engineering services, upon request, to any governmental unit on such terms as may be mutually agreed upon.

History.—§16, ch. 29965, 1955.
Note.—Similar provisions in former §341.16.

334.171 State to assist counties and municipalities; procedure.—

(1) In all cases where the commissioners request the advice and assistance of the road department in the construction or repair of roads, the department shall, when practicable, send the state highway engineer or any assistant engineer into such county and render all assistance practicable, without expense to the county, except that the actual and necessary expenses that such engineer or assistant may incur in complying with the request shall be paid to the department by the commissioners when properly certified to by the department.

(2) The board is authorized to enter into contracts and to make such regulations as may be necessary, for such road construction and maintenance as may by law or by resolution of any board of county commissioners or board of bond trustees of any county, or district or other subdivision of any county, be placed under its supervision and control, together with all powers for the exercise of the right of eminent domain.

(3) The department may prepare plans and specifications for all such proposed work, other than maintenance work of a regular or routine nature, and advertise for bids on same at least once a week for not less than two consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located; and the board may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to perform the work with convict labor or free labor, and may purchase such equipment and supplies as may be neces-

sary for the efficient and economical prosecution of the work.

(4) (a) In all cases where counties or municipalities request legal assistance of the road department in connection with matters relating to state roads, including acquisition of rights of way, agreements, proposed agreements, road bond issues, or proposed road bond issues, such legal assistance shall be furnished by the resident attorney of the road department, who shall assign an assistant attorney to render such legal assistance as the county or municipality may require. Said legal assistance shall be without expense to the county or municipality except that the actual and necessary expenses incurred in complying with the request shall be paid to the department.

(b) Where disagreement arises as to the existence, interpretation, or operation of any agreement or alleged agreement between the county or municipality and the road department, or as to any bond issue, or as to secondary road funds, or if in the opinion of the resident attorney there is a conflict between the interest of the road department and said county or municipality, the attorney general, at the request of the county or municipality, is authorized to furnish the above described legal assistance; and shall be reimbursed only for actual and necessary expenses incurred in complying with the request of the county or municipality.

(c) In cases in which there appears to be a failure of the road department, or road board, or state highway commissioner to abide by agreements with the county or municipality, the attorney general, upon request of the county or municipality, shall, at his discretion, take whatever action is necessary to determine the nature of the agreement and the terms thereof and to enforce compliance therewith.

(d) No agreement between a county or a municipality and the road department or road board shall be binding unless said agreement be reduced to writing and recorded in the minutes of the state road board in accordance with §334.12(2)(b). Suits at law or in equity for the enforcement of an agreement so recorded may be maintained in the manner provided in §337.19.

History.—§53, ch. 29965, 1955; (4) n. by §1, ch. 61-431.
Note.—Similar provisions in former §§341.14, 341.16 and 336.13.

334.18 Board to employ legal counsel.—The board may employ an attorney as general counsel, a resident attorney and as many assistant attorneys as it deems necessary to advise and represent the board and the department in all highway matters. The resident attorney and all assistant attorneys shall be employed on a full-time basis and shall be directly responsible to the chairman and the board for the efficient performance of their duties. The attorney general shall be ex officio attorney for the department in all matters of litigation. The salaries of all such attorneys shall be fixed by the board. The attorney employed as general counsel shall not be under or subject to the provisions or terms of any merit system.

History.—§17, ch. 29965, 1955; §8, ch. 57-318.
Note.—Similar provisions in former §§341.17 and 341.26.

334.19 Employment of comptroller and internal auditor; duties; financial records and accounts; and bond for comptroller.—

(1) The board shall employ a comptroller whose special duty it shall be to examine into and supervise the methods of bookkeeping and accounting of the department and all similar matters relating to its management. He shall be required to give bond in the amount of one hundred thousand dollars, payable to the governor and his successors in office, to be approved by by the state comptroller, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department.

(2) The board shall by regulation provide for the maintenance of records and accounts of the department, by the comptroller, relating to financial transactions, as will afford a full and complete check against improper payment of bills, and provide a system for the prompt payment of the just obligations of the department, which records shall at all times disclose:

(a) The several appropriations available for the use of the department;

(b) The specific amounts of each such appropriation budgeted by the department for each improvement or purpose;

(c) The apportionment or division of all such appropriations among the several counties and districts, where such apportionment or division is made;

(d) The amount or portion of each such apportionment against general contractual and other liabilities then created;

(e) The amount expended and still to be expended in connection with each contractual and other obligation of the department;

(f) The expense and operating costs of the various activities of the department;

(g) The receipts accruing to the department, and the distribution thereof;

(h) The assets, investments and liabilities of the department.

(3) The comptroller shall act under the general supervision and control of the executive director and shall perform such other related duties as may be designated by the executive director and the chairman.

(4) The comptroller shall maintain a separate account for each county for each of the gas tax proceeds referred to in §339.08(3) and (4). Upon request, the comptroller shall certify to any county the balance remaining in either or both of its accounts, after all expenditures duly authorized by its board of county commissioners to be made therefrom, have been met.

(5) The board shall employ an internal auditor whose duties shall include, but not be restricted to, reviewing and appraising policies, plans, procedures, accounting, financial and other operations of the department, and recommending changes for the improvement thereof. He shall have access at all times to any records,

data, or other information of the department necessary to carry out his duties.

(6) The internal auditor shall act under the general supervision and control of the chairman and the board, and shall perform such other related duties as may be designated by the chairman and the board.

History.—§18, ch. 29965, 1955; §1, ch. 61-229; (6) n. §2, ch. 61-492; §1, ch. 63-87.
Note.—Similar provisions in former §341.11.

334.20 Expenditures.—All expenditures by the department shall be made upon vouchers issued and certified to by the director in such manner as the board may by regulation provide and paid by warrants issued by the state comptroller upon the state treasurer.

History.—§19, ch. 29965, 1955.
Note.—Similar provisions in former §341.12.

334.21 Budget; preparation; adoption; execution; and amendment.—

(1) The fiscal year of the department shall begin July 1 of each year beginning July 1, 1956 and end on June 30 of each succeeding year. Such fiscal year shall constitute a budget year of the department.

(2) Not later than May 1 of each year, the director shall prepare and file with the budget director a full and complete budget of all anticipated expenditures for the administration and maintenance of the department for the next ensuing fiscal year, giving details as to the number and amounts to be paid employees and for necessary and regular administrative and maintenance expense, and providing for a contingency fund of five per cent of the total of the administrative and maintenance expenses anticipated. The budget director shall examine said budget, and as soon as practicable shall transmit to the budget commission his report thereon. The budget commission shall examine the budget and the report of the budget director and shall approve or amend and approve said budget. When approved, the budget director shall certify the action of the budget commission to the director and the budget as certified shall be the administrative budget for the department and shall be included as such in the annual budget prepared by the department for the next ensuing fiscal year.

(3) The director shall prepare a tentative budget and work program including the administrative budget provided for in subsection (2) hereof, and the board shall, at a meeting to be held at least sixty days prior to the beginning of its fiscal year, pursuant to such tentative budget and work program and administrative budget, prepare a budget to control the expenditures of all funds made available for administrative purposes and for road construction and maintenance purposes during the ensuing year. The board shall use the results of the rating of roads, pursuant to regulations previously adopted, in determining priorities, not otherwise provided by law, when preparing such budget. A separate budget shall be prepared for the "unrestricted road fund," i.e., moneys made available for expenditure for road construction and maintenance; and a separate budget shall be prepared for the restricted road funds, i.e., moneys made available for expenditure as restricted by law or agreement for road construction and maintenance in any county or special district or for the payment of interest and principal on any obligations incurred for road construction and maintenance in any county or special district which are to be liquidated from moneys made available through the department for that purpose.

(4) Nature and scope of the budget:

(a) The budget shall present a complete, balanced financial plan for the ensuing budget year. The receipt side of the budget shall set forth all anticipated fund balances to be brought forward at the beginning of the budget year. The fund balance shall be the difference between the current assets and current liabilities and reserves, as commonly defined in accounting terminology, of each fund enumerated herein. It shall set forth all estimated revenues and receipts by source anticipated to be available during the ensuing year for which the budget is prepared; except that no anticipated receipts estimated to be received under the various federal aid road or highway acts of congress shall be budgeted in excess of the amount of state receipts set aside to match such federal aid, and the state money thus set aside to match federal aid money shall be used for no other purpose than the construction of roads under agreements entered into by and between the United States bureau of public roads and the department. Provided, however, the board shall prior to the preparation of the budget ascertain the amount of federal aid funds which shall be available to the department for expenditure in the fiscal year for which the budget is prepared, and shall budget sufficient appropriate funds for matching and other purposes, not to exceed one-half the receipts of the first (4-cent) gas tax, for expenditure on United States numbered highways, and funds so budgeted shall be used for no other purpose. Such highways shall be the United States numbered highways in accordance with the official log of the American association of state highway officials, as of January 1, 1955, and any subsequent extensions thereto and shall constitute a priority system until all such roads shall have a sufficiency rating of good, or better in accordance with regulations prescribed by the board.

(b) The expenditure side of the budget shall set forth all proposed expenditures of the department for the fiscal year, classified by the activities to be carried on by the department; it shall set forth all proposed expenditures for salaries and other current operating expenses of the department; it shall set forth all proposed expenditures for the construction and for the maintenance of roads; and it shall set forth proposed expenditures for the payment of obligations of the department and the payment of interest and principal on obligations incurred for road construction and maintenance purposes by any county or special district

which are to be liquidated from moneys made available through the department for that purpose.

(c) The unrestricted fund budget shall be so planned as to exhaust the estimated resources of the department for the year with the exception of an estimated reserve, in such reasonable amount as the board may deem necessary, for the purpose of doing emergency work which may be found to be necessary to be done during the year in order to prevent the stoppage of travel over any road over which the department has jurisdiction and control, and a reserve for the cash working balance hereinafter provided for in subsection (8)(b). At any time during the last two months of the budget year, the emergency work reserve, or any portion of it may be appropriated for road construction or maintenance projects listed in the program of work provided for herein, upon approval of the board, which approval must be recorded in its minutes.

(d) The budget shall be balanced; that is, the estimate of expenditures to be made during the year plus reserves shall be equal to the total estimated receipts plus the fund balance estimated to be available at the beginning of the year.

(5) A tentative program of work to be undertaken during the ensuing budget year shall be prepared for each fund setting forth all construction and maintenance projects to be undertaken during the year under the budget for the unrestricted fund and under the budget for the restricted funds. The program of work for each fund may list projects, the sum total of the estimated cost of which may exceed the amount budgeted for construction and for maintenance set forth in the budget for each fund by fifty per cent in order to provide alternate projects in case any particular listed project in the program of work cannot be undertaken during the year for any reason; provided, that no construction or maintenance project costing more than ten thousand dollars shall be undertaken without the approval of the board as recorded in its minutes. The purpose of this section is to avoid the necessity of including an amount in the budget for construction and maintenance of roads which is greater than the resources available for that purpose during any budget year, and to make the program of work of the department flexible by providing alternate projects for road construction and maintenance.

(6) Publication of the budget and the program of work:

(a) The proposed budget and the program of work for the unrestricted fund, made up as aforesaid, shall be published once in one of the newspapers of general circulation in the state, published in each of the following cities: Jacksonville, Pensacola, Tampa, Orlando, and Miami, together with a notice of the time and place of the public meeting for considering such proposed budget and program of work.

(b) Two copies of the proposed budget and the program of work for the unrestricted fund, together with notice of public hearing above referred to, shall be furnished to each clerk of the circuit courts of the state, and said clerk shall post a copy of said budget and program of work and notice of hearing at the front door of the courthouse, and shall retain in his office one copy of said budget, program of work, and notice of hearing, which shall be, during his regular office hours, open to the inspection of the public.

(7) Adoption of the budget:

(a) The board shall appoint a time and place for the public hearing on the proposed budget and the program of work prepared for the unrestricted fund, at which time it shall hear all complaints and suggestions offered by the public as to any changes desired in such budget and program of work; such time of hearing shall be not less than thirty nor more than forty-five days before the beginning of the fiscal year for which the budget is prepared.

(b) Upon completion of such hearing, the board shall, not more than fifteen days prior to the beginning of the fiscal year, decide upon and make up a final budget and program of work for the ensuing year in accordance with the foregoing requirements, and no construction or maintenance work shall be undertaken by the department other than that set forth in such budget and program of work as adopted or amended; provided, however, the department may, during the year, do emergency work necessary to prevent stoppage of travel over any state road under its jurisdiction and control, not exceeding in cost the amount set aside for an emergency fund as above provided.

(8) Execution of the budget:

(a) The board shall not during any fiscal year expend any money or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this section shall be null and void, and no money shall be paid thereon. The board shall require a financial report from the comptroller prior to the execution of any contract. Any contract executed in wilful violation of the provisions of this section shall become a liability against the bond of any board member voting to approve such contract; provided, however, that nothing herein contained shall prevent the making of contracts for a period exceeding one year, but any contract so made shall be executory only for the amounts agreed to be paid for services to be rendered in succeeding fiscal years; and provided further, that the executory amounts of such contracts shall be limited as provided in paragraph (b) hereof.

(b) In the operation of its primary or unrestricted fund, the department shall have on hand at the close of business which closing shall be not later than the tenth calendar day of the following month at the end of each month of the fiscal year, an available cash balance equivalent to not less than ten per cent

of the unpaid balance of all primary fund obligations outstanding at the close of such month.

At the close of business at the end of any month during the fiscal year as defined above, the unpaid balance of all primary fund obligations outstanding shall not exceed ten times the available primary fund cash balance at the close of such month.

In the event this cash position is not maintained at the close of business at the end of any month, no further primary fund construction contracts shall be awarded or executed until the proper cash position, as defined above, has been regained at the close of business of a subsequent month.

Any construction contract awarded or executed in wilful violation of this section shall become a liability against the bond of any board member voting to approve the same.

(9) Amendment of the budget:

(a) The board shall have the authority to amend its budgets at any time during the fiscal year as follows:

1. Transfer within the same funds of any unencumbered budget item, or any portion thereof, from one activity to another.

2. Transfer between the unrestricted fund and the restricted funds, within the provisions of the restrictions provided by law or by agreement as to the expenditure of said funds, any unencumbered balance budgeted for road construction and maintenance purposes or for debt services.

3. Budget and expend a receipt of a nature from a source not anticipated in the adopted budget, including but not limited to grants, donations, gifts, or reimbursements for damages, for the purpose for which received or for any other authorized purpose. Such receipt and budgeted expenditure shall be added to the budget of the proper fund.

4. Budget and expend any receipts in excess of the total anticipated receipts in the adopted budget, provided that the total of all receipts budgeted must first be exceeded before such excess receipts may be budgeted and expended.

5. Substitution of project in the work program of any fund: Provided, such substituted project, in the primary work program shall not exceed five per cent of the total of the original work program and in the secondary work program shall not exceed twenty-five per cent of the total of the original work program applicable to the specific county.

(b) All amendments to the budget shall be made as provided by law for the adoption of the annual budget of the department except such amendment as authorized by paragraph (a) subparagraph 5, of this section shall be made by resolution of the board, adopted in open session.

History.—§20, ch. 29965, 1955; (2), (4)(a)(d), (8)(a), (9) by §9, ch. 57-318; (8) a. by §1, ch. 61-80.
Note.—Similar provisions in former §341.20.

334.22 Biennial reports.—

(1) The board shall report to the governor not later than sixty days before the meeting of each session of the legislature such changes in the laws as the board may agree upon as being expedient to secure the best results in road construction and repair work.

(2) The board shall also file with the governor not later than thirty days prior to such meeting of each session of the legislature a report covering the operation of the department for the two preceding fiscal years, which shall include a summary statement of the financial operations of the department and any other fiscal information that the governor may request.

History.—§21, ch. 29965, 1955.
Note.—Similar provisions in former §341.18.

334.23 Annual audit by state auditor.—The state auditor shall make an audit of the books and accounts of the department not less than once each year. The board is authorized to reimburse the state auditor for the expense of the annual audit. A copy of the annual state audit shall be filed with the secretary of the senate and the chief clerk of the house of representatives for the use and benefit of the members of the legislature.

History.—§22, ch. 29965, 1955.
Note.—Similar provisions in former §341.13.

334.24 Road appraisal reports; research studies.—

(1) The department shall:

(a) Collect data and information as to all roads in the state, and where practicable have maps and plats thereof made;

(b) Investigate and collect data and information as to the best methods and materials for road building and repair;

(c) Investigate and gather information as to road building and repairing in the different localities in this state;

(d) Compile all such data and information, and furnish the same free, upon request, to the boards of county commissioners of the several counties;

(e) Keep on file at the department headquarters copies of same as a public record.

(2) The department is hereby authorized to enter into contracts from time to time with the universities of higher learning within the state for the training of engineers, making of engineering research studies and the furnishing of data concerning same in the fields of soil stabilization, properties of concrete and concrete aggregate, bituminous wearing surfaces and pavements, and other highway research fields which are needful and beneficial in the planning, construction and improvement of public highways. The department is authorized to pay for such services out of the state road trust fund.

History.—§23, ch. 29965, 1955; (2) §1, ch. 63-174.
Note.—Similar provisions in former §§341.14 and 341.75.

334.25 Seal of board.—The board shall adopt and use a common seal, and a certificate under seal of the board signed by the chairman, or as otherwise provided by regulation of the board, shall constitute sufficient evidence of the action of the board.

History.—§24, ch. 29965, 1955.
Note.—Similar provisions in former §341.07.

CHAPTER 335

FLORIDA HIGHWAY CODE, SECOND PART

State Highway System

335.01 Designation and classification of state roads.—

(1) All public roads open to travel by the public generally and dedicated to the public use, according to law or by prescription, and roads which are constructed out of public funds and dedicated for general public usage and all extensions thereof, and connections thereto are hereby designated and declared to be and are established as state roads.

(2) State roads shall be divided into four classes:

(a) the state highway system;
(b) the state park road system;
(c) the county road systems; and
(d) the city street systems.

History.—§25, ch. 29965, 1955.
Note.—Similar provisions in former §341.81.
cf.—§334.03 State roads, defined.

335.02 Authority to designate roads of the state highway system.—

(1) The board shall have authority to locate and designate certain roads as state roads in the state highway system and construct and maintain the same with funds which are now or which may hereafter become available from the state or from the state and federal government. No such federal or state roads shall be redesignated or relocated until after a public hearing held thereon by the board or a member thereof designated by the chairman in each county affected after reasonable notice published in a newspaper of such county and for opportunity to any interested party to be heard either in person or by counsel and to introduce testimony in their behalf at a public hearing to be held for that purpose. Such roads when so located and designated shall become the property of the state, and shall be under the jurisdiction and control of the board.

(2) The board may determine and fix the lines and locations of such roads between the cities and places thereon. The department may survey and locate the line or route of any road or section of any road, designated as part of the state highway system. Whenever such survey and location shall be made and adopted by the board, a map or plat of such survey and location, certified by the director, shall be filed in the office of the clerk of the circuit court of each county through which such state road, or section thereof, so surveyed and located, shall run.

History.—§26, ch. 29965, 1955; (1) by §1, ch. 59-224.
Note.—Similar provisions in former §§341.16 and 341.47.
cf.—§335.06 State park road system.

335.03 Interstate highways; designation.—

(1) The board shall have the powers and authority to select, in cooperation with the state highway departments of adjoining states, routes of the national system of interstate highways.

(2) The board shall have the authority to make necessary special rules and regulations to enable and assure expeditious planning and construction of the federal interstate system of highways in Florida and to take full advantage of the federal highway act of 1956, and amendments thereto. Such regulations, to apply only to the federal interstate system of highways, may provide for the budgeting and expenditure of any funds now or to be available for the purpose including all necessary state matching funds.

History.—§27, ch. 29965, 1955; §1, ch. 57-85.
Note.—Similar provisions in former §341.621(4)(a).

335.04 Classification of roads; standards; distinctions.—

(1) The board shall by regulation adopt a classification plan for all roads in the state highway system, which shall be based upon standards relating to financing, design and service. The board shall not designate a road as part of the state highway system unless the route of such road meets the requirements herein, and complies with regulations of the board.

(2) The state highway system shall be divided into the primary road system and the secondary road system and the distinction between each system shall be as prescribed herein, and as prescribed by regulations of the board.

(3) The primary road system shall be di-

vided into arterial highways and other primary roads and, excluding the interstate system, shall be limited to eleven thousand miles. Provided, however, that the interstate system shall be entitled to all of the benefits and privileges of the state primary road system.

(a) Arterial highways shall be such roads as are designated federal interstate highways and other roads connecting urban areas having a population in excess of ten thousand inhabitants and following a continuous and reasonably direct route between such areas, and municipal connecting links of such roads.

(b) Other primary roads shall be all federal numbered highways not designated as arterial highways and such roads that connect the county seats of adjacent counties of the state and county seats of counties of the state with county seats of adjoining states in a reasonably direct route, and municipal connecting links of such roads.

(c) Provided that the board shall have the power, at its discretion, after full public hearing, to designate any other highway on the state highway system carrying primarily through traffic and serving a need not of a local character and which would serve as an integral part of the primary system as a part of the state primary highway system.

(d) Provided further that any roads heretofore maintained at any time as a primary road shall be maintained, constructed and reconstructed as a part of the primary road system.

(4) The secondary road system shall consist of such roads selected by resolution of the county commissioners of the several counties of the state and approved by the board. Provided, no road hereafter established shall be approved as a part of the state highway system by the board with a right of way width of less than fifty feet and provided that the board may establish parellel one-way sections with a minimum of fifty feet.

History.—§28, ch. 29965, 1955; (3), (4) §1, ch. 57-407; (3) §1, ch. 59-165.

cf.—§349.07 Jacksonville expressway as part of state road system.

§334.03(12) Primary road system defined.

§334.03(16) Secondary road system defined.

335.041 Expenditure of secondary road funds, designation of roads.—The boards of county commissioners of the several counties within the state, by proper resolution, may designate the roads, highways and municipal connecting links and extensions thereof or city streets for construction or reconstruction from gasoline tax funds accruing to the state road department for expenditure in each of said counties under the provisions of §208.44, and §16, Art. IX, of the state constitution. All such work, when requested and authorized by the state road department, shall be performed under the supervision of and to the specifications of the state road department. The maintenance of the roads, streets or highways and municipal connecting links constructed or reconstructed under this section shall be determined by a cooperative agreement between the boards of county commissioners and the state road department.

History.—§1, ch. 63-252.

335.05 Certain streets designated as municipal connecting link roads.—

(1) City and town streets, roads, and structures, or portions thereof, that constitute the route of connection between, or extension of, state roads in the state highway system, including feeder roads from by-passed areas and designated by the board as municipal connecting links or feeder roads shall be designated by the board as a part of the state highway system.

(2) The department shall keep a record of such municipal connecting links and feeder roads designated as part of the state highway system and shall furnish, as soon as practicable, to each affected community and county a list of such roads.

(3) The department is authorized, and required, to maintain under its control and supervision such designated municipal connecting links and feeder roads; and is authorized to enter into any and all contracts, inclusive of agreements with cities and towns, and with any federal agency of the United States, for such purposes; provided, nothing herein contained shall require the department to sweep, sprinkle or light said municipal connecting links or feeder roads.

(4) The department, whenever it constructs or reconstructs any state road in the state highway system which enters or passes through any city or town, shall construct or reconstruct the municipal connecting link of such road to conform to the standards of construction approved by the board. Provided, however, that whenever any such municipal connecting link is constructed or reconstructed, no obligation shall rest upon the department to remove or relay any public utility.

(5) The board is authorized to provide and maintain signs and markers for the regulation of traffic and shall prescribe regulations for traffic, including traffic signal lighting, minimum and maximum speeds, and parking upon such roads. Such regulations, when made and once published in a newspaper published and having a general circulation in such city or town or posted at the city hall when there is no such newspaper, shall supersede any and all regulations relating to such traffic made by such city or town, or any laws regulating traffic upon such roads. Such regulations shall have the force and effect of law and violation of any of said regulations shall be a misdemeanor. Such regulations shall be enforced by all law enforcement officers.

(6) Before any person shall enter upon such roads, or the rights of way thereof, for the purpose of laying conduits, pipes, poles or wires, or making any obstruction, or any excavation, which necessitates any change in the condition or structure thereof, a permit for any such purpose must be secured from the board with

the concurrence of the affected city or town where such city or town is not itself making the application for the permit; and the board is hereby authorized to prescribe rules and regulations under which such permits will be issued, and to require indemnity for any damage occasioned by the issuance of any such permit.

History.—§29, ch. 29965, 1955; (1)-(3) by §10, ch. 57-318; (3) by §1, ch. 59-141.
Note.—Similar provisions in former §341.64.
cf.—§334.03(10) Municipal connecting links defined.

335.06 State park road system.—

(1) The board is authorized to expend state road funds to construct, reconstruct, and maintain roads within the boundaries of any lands embraced within the state park system.

(2) The board is authorized to provide suitable roads leading to any lands or other property embraced within the state park system.

(3) Such roads shall be located, relocated, constructed, reconstructed, and maintained, numbered, marked and regulated in such manner as shall be agreed upon between the board and the Florida board of parks and historic memorials, and both boards are authorized to enter into such agreements.

(4) Such roads shall not be included in the state highway system unless so designated by the state road board.

History.—§30, ch. 29965, 1955.
Note.—Similar provisions in former §341.67.

335.07 Sufficiency rating of roads.—

(1) The board is authorized and required to adopt a system of sufficiency rating of roads in the state highway system.

(2) Such system shall include, but shall not be limited to, the consideration of the following factors:

(a) Structural adequacy;
(b) Safety, and
(c) Service.

(3) The determination of rating accorded to such factors shall take into consideration the volume of traffic using the roads, and the minimum engineering standards required to safely accommodate such volume of traffic; age of roads; width of pavement and shoulders; number and degree of curves, both horizontal and vertical; ridability; and maintenance economy. In addition to the factors and considerations herein required, the board may prescribe by regulation other factors or considerations to be used in obtaining sufficiency rating.

History.—§31, ch. 29965, 1955.

335.08 Numbering roads of state highway system.—

(1) The board is authorized to number and renumber the roads of the state highway system, and to reduce the total numbers of same as far as practicable.

(2) The board may establish a systematic numbering plan, giving even numbers to roads extending in the general direction of east and west, and odd numbers to roads extending in the general direction of north and south.

History.—§32, ch. 29965, 1955; (2) by §11, ch. 57-318.
Note.—Similar provisions in former §341.65(1).

335.09 Uniform marking and erection of signs; historical points of interest.—

(1) The department shall erect suitable road signs indicating the distance between cities and towns, and markers showing the numbers assigned to each road in the state highway system. Such system of marking shall correlate with, and, as far as possible, shall conform to the recommendations of the manual on traffic control devices as adopted by the American association of state highway officials.

(2) The department may erect and maintain along the state highway system signs indicating the historical points of interest.

(3) On state maintained roads outside municipalities where no sidewalks are provided, the state road department shall, where practicable, erect signs warning pedestrians to walk on the left side of the road facing traffic.

History.—§33, ch. 29965, 1955; (3) n. by §2, ch. 59-96.
Note.—Similar provisions in former §§341.38 and 341.65(2).

335.091 Blue Star memorial highway designation.—

(1) The chairman of the state road department, in cooperation with the Florida federation of garden clubs, inc., is hereby authorized to designate certain roads and highways in Florida as "Blue Star memorial highway."

(2) It shall be the duty of the executive board of the Florida federation of garden clubs, inc., to submit to the chairman of the state road department routes on certain roads and highways in the state to be designated Blue Star memorial highway. Upon such designation, member clubs of the Florida federation of garden clubs, inc., may, with the advice, cooperation and approval of the state road department, erect suitable markers and beautify said memorial highway.

(3) The chairman of the state road department shall file with the secretary of state a record of such roads and highways so designated as Blue Star memorial highway.

History.—§§1-3, ch. 59-77.

335.10 Regulation of use of state roads; civil liability for injury thereto.—

(1) The department shall prevent use of, and traffic on, the state highway system and the state park road systems that might injure or destroy the same.

(2) Any person shall be civilly liable to the department for the actual damage to a road in such systems by reason of his wrongful act, which damage may be recovered by suit, and when collected shall be paid into the state treasury to the credit of the state roads trust fund.

History.—§34, ch. 29965, 1955; (2) §2, ch. 61-119.
Note.—Similar provisions in former §341.24.

335.11 Determination of speed.—The board, with respect to the state highway and the state park road system shall conduct an investigation and determine safe speed limits as provided under chapter 317.

History.—§35, ch. 29965, 1955; §12, ch. 57-318.

335.12 Vehicle size and weight controlled.—
(1) The board, with respect to the state highway and state park road systems may:
(a) Limit the use of highways and enforce limitations as to weight, load and size of vehicles as provided for under chapters 317, 320, 323, and 861;
(b) Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for in §§317.81 and 320.40;
(c) Prohibit the operation or impose restrictions on vehicular use of certain highways because of hazardous conditions existing thereon as provided for under §317.82.

History.—§36, ch. 29965, 1955.

335.13 Regulation of advertising signs.—
(1) No person shall erect any billboard or advertisement adjacent to the right-of-way of the state highway system, outside the corporate limits of any city or town, except as provided for in chapter 479.

(2) No person shall erect any billboard, advertisement, advertising signs, advertising structures or lights within the right of way limits of any road in the state road system, the state park road system or the county road system or any municipal connecting link thereof, provided the board is authorized to adopt rules and regulations concerning the placement of signs, canopies and other overhanging encroachments along and over all state roads which are within corporate limits of municipalities, or which are of curb and gutter construction outside corporate limits, provided that no supports are located within the right of way. The chairman shall have the authority to direct immediate removal of any violations of the above section; provided, however that in the event the value of the billboard, advertisement, advertising signs, advertising structures or lights have a value greater than one hundred dollars and bears thereon the name of the owner, no such billboards, advertisement, advertising signs, advertising structures or lights shall be removed until the owner thereof, as shown thereon, shall have received a thirty day notice as provided by chapter 479; providing the state road department may not authorize the erection of signs prohibited by any municipality.

History.—§37, ch. 29965, 1955; (2) §1, ch. 63-501.

335.14 Traffic devices on state highway system.—The board shall designate and prescribe the location, form and character of informational, regulatory and warning sign, curb and pavement or other markings and traffic signals installed or placed by any public authority, or other agency, upon any road in the state highway or state park road systems. No such sign, marking or signal shall be located or placed without the approval of the board, and, if a federal aid road, the additional concurrence of the United States commissioner of public roads. Any sign, marking or signal placed without the approval of the board with concurrence of the United States commissioner of public roads where required may be removed, without payment to the erecting authority, if, upon request of the board said erecting authority refuses to remove such sign, marking or signal.

History.—§38, ch. 29965, 1955; §13, ch. 57-318.
Note.—Similar provisions in former §341.621(4)(c).

335.15 Detour roads.—
(1) Whenever any road or structure in the state highway system shall be repaired, reconstructed, relocated or in anywise altered, in such a manner as necessitates the closing of such road or structure to use by the public, the department shall provide a detour road to afford a safe means of travel around such road or structure so closed. The department may use as a part of such detour road any other existing road. The length of the detour route shall be as short as may be practicable.
(2) The provision of subsection (1) of this section shall not be construed to prevent the board from adopting regulations for one-way travel for a distance not in excess of one mile.
(3) The provisions of this section shall be applicable in all cases, whether the work provided for in subsection (1) shall be done by the department, or at its direction or under its supervision.
(4) The provisions of this section shall not apply where the same would be contrary to the regulations or requirements of any federal agency providing all or a part of the funds for any such work.
(5) This section shall not apply in cases of emergency highway work caused by act of God or other sudden, unexpected event.

History.—§39, ch. 29965, 1955.
Note.—Similar provisions in former §341.74.

335.16 Wayside parks and access roads to public waters.—
(1) The board is authorized to adopt regulations and to expend state road funds for the establishment, construction, reconstruction, and maintenance of wayside parks, boat ramps and other park facilities on and near the edge of public waters or along the state highway system.
(2) The board is authorized to adopt regulations and to expend state road funds for the establishment, construction, reconstruction and maintenance of those access roads which extend from a state road to a wayside park, boat ramp or other park facilities which are contiguous to said state road.
(3) The board is authorized to acquire such rights of way for the above purposes as the board may deem necessary by gift or purchase, but not by condemnation.
(4) Such access roads leading to public waters, as described in subsection (2), shall be included in the appropriate state road system as determined by the state road board.

History.—§40, ch. 29965, 1955; §1, ch. 59-227.
Note.—Similar provisions in former §§141.01 and 141.03.

CHAPTER 336

FLORIDA HIGHWAY CODE, THIRD PART

County Road System

336.01 Designation of county road system.—The county road system shall consist of all public roads outside of municipalities, not included in the state highway system or state park road system, and such municipal connecting links and extensions as may be agreed upon by the boards of county commissioners and municipal authorities.

History.—§41, ch. 29965, 1955.

336.02 Responsibility for county road system.—The county commissioners are invested with the general superintendence and control of the county roads and structures within their respective counties, and may establish new roads, change and discontinue old roads, and keep the same in good repair in the manner herein provided. They shall be responsible for establishing the width and grade of such roads and structures in their respective counties.

History.—§42, ch. 29965, 1955; §1, ch. 57-776.
Note.—Similar provisions in former §§343.01, 343.03, 343.09 and 343.15.
cf.—§861.11 Width of county roads.

336.03 County engineer; duties and compensation.—The commissioners may employ a coun-

ty engineer, whenever in the judgment of the commissioners the work and affairs of the county require the attention and services of such engineer. The county engineer shall have general supervision and control of all road work of the county, subject only to the order of the board of county commissioners. The compensation of the engineer shall be fixed by the county commissioners, and shall be payable out of the county general fund or road and bridge fund.

History.—§43, ch. 29965, 1955; §26, ch. 63-572.
cf.—§125.07 County engineer, duties, compensation.

336.04 Superintendent of county roads; duties and compensation.—The commissioners may appoint an experienced and competent road builder, who shall be known as the superintendent of public roads. All work on the public roads of the county, outside of cities and towns, shall be under the supervision of such superintendent, who shall be responsible to and subject to the direction of the commissioners. The compensation of the superintendent shall be fixed by the commissioners.

History.—§44, ch. 29965, 1955.
Note.—Similar provisions in §343.13.

336.05 Naming of county roads; recording.—

(1) The commissioners are authorized to name and rename streets and roads, except state roads designated by number by the department, lying outside the boundaries of any incorporated municipality.

(2) The commissioners are authorized to refuse to approve for recording any map or plat of a subdivision when recording of such plat would result in duplication of names of streets or roads or when said plat, in the opinion of said commissioners, will not provide adequate and safe access or drainage.

History.—§45, ch. 29965, 1955; (2) by §2, ch. 57-776.
Note.—Similar provisions in former §343.47.

336.06 Sign boards to be placed at public road crossings.—

(1) The commissioners may cause mile posts, traffic control and directional signal, signs to be erected on all public roads under their jurisdiction, and may place at all crossings and intersections a sign board with proper indicating marks pointing in each direction to the city, town, village or community which such roads enter; giving the number of miles in each direction; with lettering in black color on a white background, the letters and figures to be not less than three inches high.

(2) On county maintained roads outside municipalities where no sidewalks are provided, the respective boards of county commissioners shall, where practicable, erect signs warning pedestrians to walk on the left side of the road facing traffic.

History.—§46, ch. 29965, 1955; §3, ch. 57-776; (2) n. §3, ch. 59-96.
Note.—Similar provisions in former §343.28.

336.08 Relocation or change of roads.—The board of county commissioners may establish, locate, change or discontinue public county roads, by resolution.

History.—§48, ch. 29965, 1955; §5, ch. 57-776.
Note.—Similar provisions in former §343.30.

336.09 Closing and abandonment of roads; authority.—

(1) The commissioners, with respect to property under their control may in their own discretion, and of their own motion, or upon the request of any agency of the state, or of the federal government, or upon petition of any person or persons, are hereby authorized and empowered to:

(a) Vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway, and to renounce and disclaim any right of the county and the public in and to any land in connection therewith;

(b) Renounce and disclaim any right of the county and the public in and to any land, or interest therein, acquired by purchase, gift, devise, dedication or prescription for street, alleyway, road or highway purposes, other than lands acquired for state and federal highway; and

(c) Renounce and disclaim any right of the county and the public in and to land, other than land constituting, or acquired for, a state or federal highway, delineated on any recorded map or plat as a street, alleyway, road or highway.

(2) The commissioners, upon such motion, request, or petition, may adopt a resolution declaring that at a definite time and place a public hearing will be held to consider the advisability of exercising the authority granted in this section.

History.—§49, ch. 29965, 1955.
Note.—Similar provisions in former §§343.35 and 343.42.

336.10 Closing and abandonment of roads; publication of notice.—Before any such road shall be closed and vacated, or before any right or interest of the county or public in any land delineated on any recorded map or plat as a road shall be renounced and disclaimed, the commissioners shall hold a public hearing, and shall publish notice thereof, one time, in a newspaper of general circulation in such county at least two weeks prior to the date stated therein for such hearing. After such public hearing, any action of the commissioners, as herein authorized, shall be evidenced by a resolution duly adopted and entered upon the minutes of the commissioners. The request of any agency of the state, or of the United States, or of any person, to the commissioners to take such action shall be in writing and shall be spread upon the minutes of the commissioners; provided, however, that the commissioners of their own motion and discretion, may take action for the purposes hereof. Notice of the adoption of such a resolution by the commissioners shall be published one time, within thirty days following its adoption, in one issue of a newspaper of general circulation published in the county. The proof of publication of notice of public hearing, the resolution as adopted, and the proof of publication of the notice of the adoption of

such resolution shall be recorded in the deed records of the county.

History.—§50, ch. 29965, 1955.
Note.—Similar provisions in former §343.43.

336.11 Closing and abandonment of roads; ratification of prior actions.—The actions by the commissioners, heretofore taken, closing, vacating, or abandoning any road as herein described, and appearing in the minutes of such commissioners, are hereby ratified, approved and confirmed in all respects, and such roads are declared closed, vacated and abandoned, consistent with the provisions of the resolution or other action of such commissioners, as shown by their minutes.

History.—§51, ch. 29965, 1955.
Note.—Similar provisions in former §343.44.

336.12 Closing and abandonment of roads; termination of easement; conveyance of fee.—The act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, shall abrogate the easement theretofore owned, held, claimed or used by or on behalf of the public and the title of fee owners shall be freed and released therefrom; and if the fee of road space has been vested in the county, same will be thereby surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.

History.—§52, ch. 29965, 1955.
Note.—Similar provisions in former §343.46.

336.14 County road districts.—Each county commissioner's district is declared a county road district, and the roads of the county road system in such districts shall be under the supervision of the commissioners in each county.

History.—§54, ch. 29965, 1955.
Note.—Similar provisions in former §343.08.

336.15 Special tax road districts; establishment; election.—

(1) All county road districts levying a road district tax shall be designated special tax road districts.

(2) The commissioners shall order an election to be held in any county road district to determine whether such district shall become a special tax road district for the purpose of levying and collecting a district road tax for the exclusive use of the public roads within the district, and to elect trustees, whenever one-fourth of the electors, qualified as herein prescribed, shall petition for such election.

(3) The election shall be ordered and held on a day not earlier than thirty days, nor later than sixty days, from the day of presentation of the petition to the commissioners in regular session, and the election shall be held at the regular polling places within the district.

(4) The three persons receiving the highest number of votes at such election shall be declared road trustees of the district, and shall serve for the next ensuing two years. A majority of the ballots cast shall determine:

(a) Whether the road district shall become a special tax road district;

(b) The number of mills of district tax not to exceed five mills, to be levied and collected annually for the two succeeding years.

History.—§55, ch. 29965, 1955.
Note.—Similar provisions in former §§139.01 and 139.02.

336.16 Notice of election to be published.—The commissioners shall cause a notice of such election to be published once a week for four consecutive weeks, prior thereto, in a newspaper of general circulation published in the county; and if no newspaper be published in such county, then they shall cause written or printed notices of the election to be posted in five public places within the district. The commissioners shall appoint inspectors and clerks for the election, whose duties shall be the same as similar officers in general elections, except as herein stated.

History.—§56, ch. 29965, 1955.
Note.—Similar provisions in former §139.04.

336.17 Ballot.—The ballot used at any election under this law shall be written or printed in black ink on plain white paper, and shall be substantially of the following form:

For (or against) Special Tax Road District____
Road Trustees (stating their names) _____

_____

_____

Maximum Tax Levy _____ Mills _____

Provided, that in counties where the use of voting machines is authorized by law, the requirements of this section shall be adapted to the use of such voting machines.

History.—§57, ch. 29965, 1955.
Note.—Similar provisions in former §139.13.

336.18 Commissioners to canvass returns.—The commissioners shall canvass the returns of election at their next regular meeting or at a special meeting called for that purpose, and declare the results of election at that meeting.

History.—§58, ch. 29965, 1955.
Note.—Similar provisions in former §139.05.

336.19 Qualification of electors.—All qualified electors residing within the road district sought to be made a special tax road district who pay a tax on real or personal property, shall be entitled to vote in such election. The cost of the publication of the notice of such election, and of the election itself shall be paid by the commissioners out of the first money collected from the special tax district.

History.—§59, ch. 29965, 1955.
Note.—Similar provisions in former §139.07.

336.20 Elections held biennially.—Elections shall be held biennially in each special tax road district, as near as practicable upon the anniversary of the original election, under the direction of the commissioners, to determine who shall be trustees for the succeeding two years, and the number of mills of district road tax to be levied and collected for each of such years. The election shall be held under the same rules and regulations, and qualifications of electors

shall be the same as prescribed for those voting in the original election creating a special tax road district.

History.—§60, ch. 29965, 1955.
Note.—Similar provisions in former §139.08.

336.21 Districts to continue until abolished.—Special tax road districts created shall continue until abolished or changed by like proceedings as those by which they were created.

History.—§61, ch. 29965, 1955.
Note.—Similar provisions in former §139.03.

336.22 Election governed by general election laws.—All special tax road district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as otherwise provided herein, and the supervisor of registration of any county shall, upon payment for said service, furnish to the commissioners on demand, a certified list of the qualified electors for the year next preceding any such special tax election.

History.—§62, ch. 29965, 1955.
Note.—Similar provisions in former §139.06.
cf.—Ch. 100, General, special, bond and referendum elections.

336.23 Control of roads in special tax road districts.—All county roads within a special tax road district shall be under the direction and control of the commissioners as in other districts, and subject to the same laws, rules and regulations prescribed for the construction, maintenance and repair of other public roads.

History.—§63, ch. 29965, 1955.
Note.—Similar provisions in former §139.10.
cf.—§§336.02, 336.14 Control of roads.

336.24 Trustees to have supervision of all district roads.—

(1) Whenever a special tax road district is created and trustees are elected, they shall have the supervision of all the county roads within such district. The powers of trustees shall not be those of control, but of supervision only, and shall extend to all the county roads within the special tax road district.

(2) Any trustee failing to discharge the duties of the position shall be removed, after due notice to said trustee, by the commissioners, and all vacancies occurring in the board of trustees, from any cause, shall be filled, for the unexpired term, by the commissioners by appointment of a trustee or trustees from among the qualified electors of such special tax road district.

History.—§64, ch. 29965, 1955.
Note.—Similar provisions in former §139.09.

336.25 Duty of trustees.—

(1) The trustees, on or before June 1 in each year, shall prepare an itemized estimate, showing the amount of money necessary and likely to be raised for the next ensuing fiscal year, and certify therein the rate of millage voted to be assessed and collected upon the taxable property within the special tax road district for that year. It shall also state the number of miles of railroad track and telegraph lines within the territorial limits of the special tax road district.

(2) This itemized estimate shall be made in duplicate, one copy to be filed with the clerk of the commissioners and one copy with the comptroller of the state.

(3) The commissioners shall order the assessor to assess, and the collector to collect, the amount legally assessed upon the property of the special tax road district, at the rate of millage designated by the board of trustees, and pay the same to the county depository.

(4) The comptroller of the state shall assess all of the railroads and railroad property, together with the telegraph lines and telegraph property situated within such special tax road district, and collect the taxes thereon and remit the same to the depositories of the county.

(5) All special funds collected within a special tax road district shall be disbursed upon the recommendation of the board of trustees, solely for road purposes within the district in which collected, and as near as practicable, in the year in which the tax is collected.

(6) The trustees shall make no contract with any one of its members embracing any monetary consideration.

History.—§65, ch. 29965, 1955.
Note.—Similar provisions in former §139.11.

336.26 Trustees a corporation.—The trustees of any special tax road district shall be a corporation, and may hold property, sue and be sued, and perform other corporate functions; provided, that no debt shall be created without the approval of the commissioners.

History.—§66, ch. 29965, 1955.
Note.—Similar provisions in former §139.12.

336.27 Bridge approaches; special powers of bond trustees in small counties.—

(1) All county boards of bond trustees, having administrative duties, in all counties with a population of 20,000 or less, according to the immediately preceding federal census, are hereby authorized and empowered to expend any or all funds now or hereafter available from any source, including sinking funds, for bridge approaches or expendable for bridge approaches, for or upon the improvement of any rights of way, roads or streets, including the acquisition of rights of way, now existing, or hereafter existing, or now or hereafter proposed, as state or federal highways, and however designated, and within or without the corporate limits of any municipality, provided any such right of way, road or street is within a radius of one mile of the terminus of any bridge mentioned herein.

(2) All rights of way, roads and streets now or hereafter existing or now or hereafter proposed, and which are now, or which may hereafter be, designated as state roads, by statute, or by the board or otherwise, and which are within a radius of one mile from the terminus of any bridge mentioned above are severally declared to be approaches to any bridge mentioned above and any moneys now or hereafter provided by law to be expendable for bridge approaches of any such bridge, shall be, and the same are hereby made available for the im-

provement of such roads and streets including the acquisition of rights of way.

History.—§67, ch. 29965, 1955.
Note.—Similar provisions in former §139.14.

336.28 County special road and bridge districts; establishing procedure.—

(1) Whenever residents of any territory embraced wholly, or in part, in one or more road districts, or embraced wholly, or in part, in one or more special road and bridge districts, in any county, desire to have such territory constituted into a special road and bridge district, and to have permanent roads and bridges constructed or reconstructed therein, they shall present to the commissioners of that county a petition signed by not less than twenty-five per cent of the duly registered electors, who are freeholders residing within the territory which it is proposed to create into a special road and bridge district, which petition shall include:

(a) A description of the territory by metes and bounds or other accurate description;

(b) A description and the proposed location of the roads and bridges to be constructed or reconstructed;

(c) The amount estimated as being necessary to pay for such construction; and

(d) Whether the cost of such construction is to be paid for by the issuance and sale of bonds, or by the levy and collection of a special road and bridge tax upon the taxable property within the district, as hereinafter provided.

History.—§68, ch. 29965, 1955.
Note.—Similar provisions in former §140.01.

336.29 Commissioners to order election; qualification of electors.—

(1) At their first meeting after the receipt of the petition, the commissioners shall investigate the facts, and find and determine whether such petition has been duly signed by the requisite number of registered electors who are freeholders residing within such territory.

(2) If the petition is determined sufficient, such determination shall be regarded for all purposes as conclusive, and the commissioners shall order an election to determine whether or not such territory shall be constituted into a special road and bridge district, and the proposed roads and bridges constructed or reconstructed, and paid for, as specified in the petition.

(3) Only duly qualified electors who are freeholders residing in the territory to be included in such district shall be entitled to vote at such election.

History.—§69, ch. 29965, 1955.
Note.—Similar provisions in former §140.02.

336.30 Notice of election; laws applicable; appointment of inspectors; certification conclusive.—

(1) The commissioners shall have a notice of the election published for not less than thirty days next preceding the date of the election, which notice shall set out:

(a) The territory proposed to be included in the special road and bridge district;

(b) A general description of the roads and bridges proposed to be constructed or reconstructed;

(c) The estimated cost of such construction; and

(d) The manner in which payment for the construction is to be made.

(2) The election shall be held in substantial conformity to the laws applicable to general elections.

(3) The inspectors for such election shall be appointed by, and the ballots to be voted shall be prepared and furnished by the commissioners.

(4) The inspectors shall make returns to the commissioners immediately after the election, and the commissioners shall hold a special meeting as soon thereafter as practicable, for the purpose of canvassing the election returns and certifying to the result thereof. After twenty days have elapsed following such certification, the determination shall be regarded for all purposes as conclusive.

History.—§70, ch. 29965, 1955.
Note.—Similar provisions in former §§140.03 and 140.04.
cf.—Ch. 100 General, special, primary and referendum elections.

336.31 Election limitation; order creating district; use of special taxes; bond election required.—

(1) If the commissioners shall find and determine that the result of the election is adverse to the proposition of constituting the special road and bridge district, no other election for the same purpose shall be held within one year thereafter.

(2) If a majority of the votes cast at such special election shall be in favor of the proposition to create a special road and bridge district, the commissioners shall enter an order constituting such territory into a special road and bridge district and designate the district by name or number, and declare and publish the boundaries thereof.

(3) Special taxes assessed and collected upon the taxable property within such district, because of such election, shall be applied solely to:

(a) The construction, reconstruction, repair and maintenance of the roads and bridges specified and approved by the election; or

(b) The payment of the interest and sinking fund of bonds that have been issued for the construction of such roads and bridges.

(4) No bonds shall be issued under the provisions of this law until approved at an election in compliance with the provisions of Art. IX, §6 of the state constitution.

History.—§71, ch. 29965, 1955.
Note.—Similar provisions in former §140.04.

336.32 Prospective and retroactive validation of districts.—All special road and bridge districts created and constituted of territory lying wholly, or in part, in one or more special road and bridge districts, are hereby validated, confirmed and declared to be legally constituted in all respects and shall not be adjudged or decreed by any court of law or of equity to be illegally constituted and created because of

any reconstruction or rebuilding either in whole, or in part, of the roads and bridges therein, or because of being in or consisting of part or parts of one or more special road and bridge districts. The provisions of this section shall have not only a prospective force and effect, but a retroactive force and effect, and are applicable alike to special road and bridge districts theretofore created, now being created or hereafter created under the authority of this law.

History.—§72, ch. 29965, 1955.
Note.—Similar provisions in former §§140.05 and 140.23.

336.33 Advertising for bids; awarding contracts; provisos.—

(1) As soon as practicable after constituting a special road and bridge district, the commissioners shall have proper plans and specifications prepared for the authorized construction or reconstruction of roads and bridges.

(2) If the contract price for such work does not exceed the estimated amount voted for at the special election, the commissioners shall award the contract for such construction or reconstruction to the lowest responsible bidder, after advertising for bids in the manner prescribed by law.

(3) The commissioners may, within their discretion, reject any and all bids received and readvertise the contract until a satisfactory bid is received and accepted.

(4) When it shall become apparent to the commissioners that the estimates for the improvements in the district are too low, then the commissioners shall have a new estimate made for the additional amount necessary to complete the program as laid out in the original petition. They shall call an election in the district in the same manner as in the original election, based on the original petition, which, if carried, shall authorize them to issue additional bonds of the same denomination and running for the same number of years and bearing the same interest as the original bonds voted for the carrying out of the original program in the said special road and bridge district.

History.—§73, ch. 29965, 1955.
Note.—Similar provisions in former §140.06.

336.34 Supervision of construction under commissioners; condemning land and material for work; roads in municipalities.—

(1) The construction, repair and maintenance of the roads and bridges in special road and bridge districts shall at all times be subject to the supervision and control of the commissioners.

(2) The commissioners may exercise the right of eminent domain for the purpose of obtaining land and materials to be used in the construction, repair or maintenance of the roads and bridges provided for in this law.

(3) Whenever any of the roads or bridges proposed to be constructed, are located within the territorial boundaries of any incorporated city or town, the commissioners shall have the right of eminent domain and control over such streets or territory within such municipality as may be necessary for such construction.

History.—§74, ch. 29965, 1955.
Note.—Similar provisions in former §140.08.

336.35 Construction of additional roads and bridges.—After the construction of the improvements provided by the special election, creating any special road and bridge district, the residents of such special district may at any future time provide for the construction of additional roads and bridges by presenting to the commissioners, a petition calling for a special election to provide for such improvements; and the same procedure shall be had, as is provided for creating special road and bridge districts and for the construction of roads and bridges therein, provided, however, that such roads and bridges and connecting or service roads may be reconstructed, repaired or replaced as maintenance costs of such roads.

History.—§75, ch. 29965, 1955; §6, ch. 57-776.
Note.—Similar provisions in former §140.19.

336.36 Abolition of districts; restriction.—

(1) Any special road and bridge district may be abolished by a majority vote at an election called by the commissioners of the county for such purpose, after publication of such notice as is required to create such special road and bridge district, at which election the qualification of electors shall be the same as in elections to create special road and bridge districts.

(2) No special road and bridge district shall be abolished while it has outstanding indebtedness, without first making provision for the liquidation of such outstanding indebtedness.

History.—§76, ch. 29965, 1955.
Note.—Similar provisions in former §§140.21 and 140.22.

336.37 Special road, bridge and ferry districts; petition; law applicable.—

(1) Whenever residents of any territory embraced wholly, or in part, in one or more road district, or embraced wholly, or in part, in one or more special road and bridge district, in any county of this state, desire to have such territory constituted into a special road, bridge and ferry district, and to have permanent roads and bridges constructed and free public ferries constructed and maintained and operated therein, they shall present to the commissioners of that county a petition signed by not less than twenty-five per cent of the duly registered electors, who are freeholders, residing within the territory which it is proposed to create into a special road, bridge and ferry district. The petition shall describe:

(a) The said territory, by metes and bounds, or other proper and accurate description;

(b) The proposed location of the roads, bridges and ferries to be constructed, maintained and operated;

(c) The amount estimated as being necessary to pay for the construction, maintenance and operation of same; and

(d) Whether the cost of such construction,

maintenance and operation is to be paid for by the issuance and sale of bonds, or by a levy and collection of a special road and bridge tax upon the taxable property within said special road, bridge and ferry district.

(2) The provisions applicable to special road and bridge districts shall apply to special road, bridge and ferry districts created herein.

History.—§77, ch. 29965, 1955.
Note.—Similar provisions in former §§140.01, 141.01 and 141.03.

336.38 Election to be called.—After the petition has been determined sufficient, the commissioners shall call an election to determine whether the territory shall be constituted into a special road, bridge and ferry district and the proposed roads, bridges and ferries constructed, maintained and operated and paid for as specified in the petition, in like manner as is now provided for the establishment of special road and bridge districts.

History.—§78, ch 29965, 1955.
Note.—Similar provisions in former §141.02.

336.39 Contracts for ferries; bids; bonding.—Upon the creation of a special road, bridge and ferry district, the commissioners shall award contracts for the construction of suitable ferry boats to be operated on all ferries in the district, and award contracts for the operation of such ferries for a period of four years. Such contracts shall be awarded upon bids. Any persons to whom any contract is awarded shall be required to furnish bond for the faithful performance of such contract in such sums as the commissioners shall require.

History.—§79, ch. 29965, 1955.
Note.—Similar provisions in former §141.04.

336.40 County commissioners may acquire necessary materials; procedure.—

(1) The commissioners in the construction of roads and highways may appropriate and use any material which may be necessary to the proper construction, maintenance and repairing of the roads and highways in their several counties. Before using such material, they shall endeavor to purchase or obtain the same from the respective owners thereof. Should the commissioners and owners of the materials or land be unable to agree on the price to be paid, then the commissioners may proceed to condemn the land upon which such material is located, and have damages awarded to the owner thereof, in the same manner as is now provided for the condemnation of lands for roads and highways.

(2) The commissioners may agree with the owner of any tract of land for the purchase of any road materials on his land, on such terms as are satisfactory to such commissioners, and the owner. If such owner and the commissioners fail to agree upon terms, the chairman of the commissioners shall issue his writ ad quod damnum, directed to the sheriff or constable, ordering him to summon a jury of twelve men, registered electors, freeholders, in the vicinity of such road. The jury, upon actual view of the land in question, shall certify to the commissioners what damage will accrue to the owner of such land by reason of the contemplated action. The sheriff or other officer shall return the certification, signed by all the jury, to the next meeting of the commissioners. The commissioners shall order the damages so assessed to be paid out of the county treasury from the road fund.

History.—§85, ch. 29965, 1955.
Note.—Similar provisions in former §§343.06 and 343.07; tr. §337.06.

336.41 Counties; employing labor and providing road equipment.—

(1) The commissioners may employ labor and provide equipment as may be necessary for constructing and opening of new roads or bridges and repair and maintenance of any existing roads and bridges.

(2) It shall be the duty of all persons to whom the commissioners deliver equipment and supplies for road and bridge purposes, to make a strict accounting of the same to the commissioners.

(3) The commissioners may contract with the board to perform maintenance upon the secondary system roads in said county and said board shall monthly pay to the commissioners the agreed cost thereof.

History.—§86, ch. 29965, 1955; (3) n. by §1, ch. 57-783.
Note.—Similar provisions in former §343.12; tr. §337.07.

336.42 County convicts may be put to labor.—The commissioners may employ all persons in the jail of their respective counties under sentence upon conviction for crime, to labor upon the roads, bridges, or other public works of the county where they are so imprisoned.

History.—§87, ch. 29965, 1955.
Note.—Formerly §337.08.

336.43 Counties; guards for convicts.—The commissioners shall appoint such guards as may be needed to take charge of the convict road force. The compensation for such guards shall be paid by the commissioners out of the county road fund.

History.—§88, ch. 29965, 1955.
Note.—Similar provisions in former §343.29; tr. §337.09.

336.44 Counties; contracts for construction of roads; procedure; contractor's bond.—

(1) The commissioners may let the work on roads out on contract, when, in their judgment, such would be to the advantage of the county.

(2) Such contracts shall be let to the lowest competent bidder, after publication of notice for bids containing specifications furnished by the commissioners in a newspaper published in the county where such contract is made, for a period of two weeks prior to the making of such contract.

(3) Upon accepting a satisfactory bid, the commissioners shall enter into a contract with the party whose bid has been accepted. Such contract shall contain the specifications of the work to be done or material furnished, the time limit in which the construction is to be completed or material delivered, the time and amounts in which payments are to be made upon the contract, and a penalty to be paid

by the contractor for the failure to comply with the terms of such contract.

(4) The successful bidder shall enter into a good and sufficient bond with the commissioners for the faithful execution of the contract; the amount of the bond to be fixed by the commissioners, and the sufficiency of said bond to be likewise approved by the commissioners.

(5) The commissioners may reject any or all bids and require new bids to be made.

History.—§102, ch. 29965, 1955.
Note.—Similar provisions in former §§140.07 and 343.14; tr. §337.23.
cf.—§125.08 Certain contracts, competitive bids.

336.45 Counties; joint construction of bridges with railroads.—The commissioners may make contracts with railway companies for the joint construction and maintenance of bridges on the county road system in their respective counties, and for the construction and maintenance of railway tracks over such bridges.

History.—§103, ch. 29965, 1955.
Note.—Similar provisions in former §343.02; tr. §337.24.

336.46 County commissioners, power of eminent domain; purchase agreements; payment.—

(1) The commissioners are given the power of eminent domain to acquire land for rights of way for county roads within their respective counties, and to condemn lands for borrow pits, drainage ditches, and other materials and property necessary for building such roads.

(2) The commissioners are authorized to enter into agreements with land owners for the purchase of land and materials for road purposes. If the commissioners and the land owner cannot agree upon the price for such land or materials, then the commissioners shall exercise the power of eminent domain or other authority vested in the commissioners for such purposes. Title to any land so acquired shall be taken in the name of the county.

(3) Payment for any land acquired under this section shall be made from funds set aside for county road purposes.

History.—§109, ch. 29965, 1955.
Note.—Similar provisions in former §§341.22, 343.16 and 343.26; tr. §337.30.

336.47 County bridges, authority to construct, acquire; joint bridges; double-decking bridges.—

(1) The commissioners may construct, control and operate bridges on county roads over and across water in and bounding their respective counties.

(2) The commissioners may acquire any bridge, crossway, passageway, wharf, dock, viaduct, or structure in, upon, along, over, across or approaching any water in, or bounding, their respective counties and adjacent land for approaches thereto, by condemnation or otherwise, and pay therefor as herein provided.

(3) The commissioners may make contracts with electric and other passenger railway companies for the joint construction and maintenance of bridges along the county roads in their respective counties, and for the construction and maintenance of railway tracks over such bridges.

(4) The commissioners are authorized to double-deck or parallel a bridge, on the county road systems and shall have the right to use the whole or any part of any such bridge, and approaches thereto, in double-decking or paralleling the same.

(5) The provisions of this section shall not be construed to authorize the construction of any bridge across any navigable stream in this state, without first obtaining the approval of the federal government as to its location and construction.

History.—§120, ch. 29965, 1955.
Note.—Similar provisions in former §§343.02, 343.24 and 343.25; tr. §338.10.
cf.—§130.17 Building bridges over navigable streams.

336.48 County bridges built under special law.—Nothing in this law shall apply or be construed to affect the construction or building of bridges constructed or built under the provisions of any special law, where bonds are issued for such building and construction by virtue of an election held for such purpose.

History.—§121, ch. 29965, 1955.
Note.—Similar provisions in former §343.23; tr. §338.11.

336.49 Counties; special road and bridge district bonds.—

(1) After a special road and bridge district has been constituted pursuant to the provisions of this law, and before awarding the contract or contracts for the construction of the roads and bridges provided for by the special election, if by such election it was provided that the construction of the improvements was to be paid for by the issue and sale of bonds, the commissioners shall, as soon as practicable, issue and sell special road and bridge bonds for the amount provided for by such special election.

(2) After any special road and bridge district shall have been organized as authorized by this law, a petition signed by not less than twenty-five per cent of the duly registered electors, who are freeholders residing within the territorial limits of the district, may be presented to the commissioners for the purpose of authorizing additional construction, and the issuance of additional bonds.

(a) Such petition shall briefly describe the proposed road or bridge construction, and the amount of money necessary for such construction, and that it is desired that bonds of the district be issued in the amount so named to pay for such work of construction, in addition to warrants or bonds of the district that may then have been already issued, and praying that a special election within such district be called to determine whether such bonds should be issued for such purpose.

(b) The commissioners, after being satisfied that the petition in all respects complies with the requirements of law, shall order a special election to be held in the district to determine whether or not such bonds should be issued as specified in the petition.

(c) The other requirements of this law re-

lating to: the calling and holding of an election; giving of notice, making, canvassing and certifying the returns of such election; issuing of bonds; and levying taxes to pay the principal and interest of the bonds, shall be followed and apply to the issuance of such bonds referred to in the petition, as nearly as the same can be conveniently made adaptable and applicable thereto. The commissioners may prescribe and determine all other necessary details as to the procedure connected with or leading up to the issuance of such bonds.

(d) All of the provisions of this law shall have not only a prospective force and effect, but also a retrospective force and effect, so that bonds of any special road and bridge district proposed to be issued before this law shall have gone into effect, shall be regarded as valid and effective if in fact before the adoption of this law there had been a substantial compliance with the requirements herein.

(3) In issuing and selling such bonds and in disbursing the proceeds thereof, the commissioners shall act in substantial conformity with the provisions of these statutes applicable to the issue and sale of bonds for the purpose of constructing hard surfaced roads and public buildings.

(a) The tax for the payment of interest to provide a sinking fund for the payment of the bonds shall be assessed and collected only upon the taxable property within the boundaries of the special road and bridge district.

(b) The bond trustees shall be selected by the commissioners and shall be resident freeholders of the special road and bridge district.

History.—§144, ch. 29965, 1955.
Note.—Similar provisions in former §140.09; tr. §339.13.

336.50 Assessment of tax for sinking fund and interest.—Whenever any special road and bridge district has been constituted and special road and bridge bonds issued by the commissioners, as provided in this law, the commissioners shall assess annually, a tax upon all real and personal property, railroads, telegraph and telephone lines, owned or situated within the special road and bridge district, to realize a sum sufficient to pay the interest upon such bonds as it may become due, and to create a sinking fund for the payment of the principal of such bonds at the maturity of same, which sinking fund shall be provided by resolution of the commissioners before issuing such bonds.

History.—§145, ch. 29965, 1955.
Note.—Similar provisions in former §140.10; tr. §339.14.

336.51 Use of surplus of proceeds of bonds.—Should there remain any of the proceeds of the sale of such special road and bridge bonds after paying for the construction of the improvement for which the bonds were issued, such surplus shall be held by the bond trustees and paid out by them, upon order of the commissioners, for the repair and maintenance of the roads and bridges within the special district.

History.—§146, ch. 29965, 1955.
Note.—Similar provisions in former §140.11; tr. §339.15.

336.52 Time warrants.—

(1) If the approved bond issue of a special road and bridge district proves insufficient to complete the authorized construction, necessitating further funds for the completion of such construction, the commissioners shall be authorized to issue time warrants of such district.

(2) The amount of such time warrants shall not exceed ten per cent of the amount of bonds originally voted for such construction. The time warrants shall bear interest at the rate of eight per cent per annum from their issuance and shall mature in not more than ten years from their issuance.

(3) Such time warrants may be either sold and the proceeds thereof used to pay for the completion of the roads and bridges, or such warrants may be delivered in payment of such work.

(4) No such warrants may be issued more than three years from the date of the original bonds. Where such time warrants shall come within the purview of §6, Art. IX, of the constitution, the same shall be issued only after they have been approved in an election called and held in the said district in the manner hereinabove provided for the original election.

(5) The commissioners shall levy an annual tax on all taxable property, real and personal, in any such district sufficient to pay the interest on such warrants, and to provide a sinking fund for the payment thereof at maturity.

History.—§147, ch. 29965, 1955.
Note.—Similar provisions in former §§140.12 and 140.13; tr. §339.16.

336.53 Payments for construction by special road and bridge tax; issuing warrants; amounts of warrants.—

(1) If, in the election providing for the special road and bridge district and the construction of the roads and bridges therein, it was provided that the cost of such improvements was to be paid for by a special road and bridge tax, instead of special road and bridge bonds; then, after letting the contract or contracts for the construction of the roads and bridges provided for by such special election, the commissioners shall pay for the construction of such improvements by issuing warrants on the county depository for such sum or sums, as may be due from time to time upon such contract or contracts.

(2) Such warrants shall be paid only from the funds collected from the special road and bridge tax as hereinafter provided for, and when such warrants are paid, they shall be charged against the special road and bridge fund for that special district. In no instance shall the total amount of warrants issued against the special road and bridge fund of any special district exceed the total amount authorized at the election held to authorize the construction of such roads and bridges.

History.—§148, ch. 29965, 1955.
Note.—Similar provisions in former §140.14; tr. §339.17.

336.54 Annual assessment and collection of taxes.—

(1) After letting of the contract for the improvements voted for at the special election, and until the same have been fully paid for, there shall be annually assessed and collected upon all real and personal property, railroad, telegraph and telephone lines owned or situated within the special road and bridge district, a special road and bridge tax, not exceeding twenty mills on the dollar in any one year. Such special tax shall be in addition to the county road tax and other taxes levied and assessed for state and county purposes.

(2) Upon collection, such tax shall be kept in a separate fund to be known as the special road and bridge fund of the special district in which such improvements were made. Disbursements from such fund shall be made by the commissioners only in liquidation of warrants issued in payment for the construction of roads and bridges as provided for by the special election held in the special road and bridge district.

History.—§149, ch. 29965, 1955.
Note.—Similar provisions in former §140.15; tr. §339.18.

336.55 Method of assessment, equalization and collection of taxes.—

(1) All special road and bridge district taxes shall be assessed, equalized and collected upon the taxable property within the special road and bridge district, by the same officers and in the same manner as is provided by law for the assessment, equalization and collection of other county taxes.

(2) The commissioners shall assess and have collected from all taxable property within the special road and bridge district the special road and bridge district tax, as herein provided, until all warrants issued in payment for the roads and bridges authorized by the special election, have been paid and cancelled. The comptroller of the state shall assess all railroads and railroad property, together with telegraph lines and telegraph property situated in such special road and bridge district and shall collect the taxes thereon in the same manner as required by law to assess and collect taxes for state and county purposes, and shall remit the same to depositories of the counties to the credit of each special road and bridge district fund and to be paid out as provided by law.

History.—§150, ch. 29965, 1955.
Note.—Similar provisions in former §140.16; tr. §339.19.

336.56 Special maintenance tax.—After the construction of the roads and bridges authorized by the special election, the commissioners shall estimate from year to year, the amount necessary to keep in repair and maintain the roads and bridges within such district; and shall assess annually all taxable property within the district, a tax not exceeding ten mills on the dollar, which tax shall be collected and paid into the special road and bridge fund of that special district, and used solely by the commissioners for the repair and maintenance of the roads and bridges within the district.

History.—§151, ch 29965, 1955.
Note.—Similar provisions in former §140.17; tr. §339.20.

336.57 Proportion of general tax to special district.—Any special road and bridge district created under authority of this law shall be entitled to receive for the repair and maintenance of the roads and bridges in such district, its due proportion of the county tax levied and collected upon the taxable property of the county for general road purposes. The special tax provided for herein shall be levied and collected on the taxable property in the special district, only for such repair and maintenance of the roads and bridges in the special district that cannot be paid for from its proportion of the general county road tax.

History.—§152, ch. 29965, 1955.
Note.—Similar provisions in former §140.18; tr. §339.21.

336.58 Validation of bonds.—

(1) Whenever the commissioners, in behalf of any special road and bridge district organized under the provisions of this law shall have authorized the issuance of bonds pursuant to any of the provisions of this law, such commissioners may, if they shall so elect, cause such bonds to be validated in accordance, as nearly as it is practicable to apply the same, with the provisions of law relating to the validating of bonds issued by counties and municipalities.

(2) In the event of the exercise of such election by the commissioners, all the provisions of law relating to the validating of bonds issued by counties and municipalities shall be held also to include and apply to bonds issued by special road and bridge districts.

(3) The decree of validation that shall be entered by the court shall have the same conclusive force and effect as the law now relates to bonds issued by counties and municipalities.

(4) This provision as to validation proceedings shall not be construed as being compulsory upon, but only optional, with the commissioners.

History.—§153, ch. 29965, 1955.
Note.—Similar provisions in former §140.20; tr. §339.22.

336.59 Levy of tax for road and bridge purposes; proportion to municipalities.—

(1) The commissioners shall levy a tax not to exceed ten mills on a dollar on all property in their county each year for road and bridge purposes. Such tax, when collected, shall be paid over to the county depository and kept in a separate fund, which fund shall not be expended for any other purpose than for work on the public roads and bridges in the county, and for the payment of the salaries of employees engaged in road and bridge work, and in providing the necessary tools, materials, implements and equipment and for the necessary work on such roads and bridges.

(2) One-half the amount realized from such special tax on the property in incorporated

cities and towns, shall be turned over to such cities and towns, to be used in repairing and maintaining the roads and streets thereof, as may be provided by the ordinances of such cities and towns.

History.—§154, ch. 29965, 1955.
Note.—Similar provisions in former §343.17; tr. §339.23.

336.60 Gates across county roads; permit.—

(1) The commissioners may permit the construction of gates across the county roads of their respective counties whenever, in their opinion, the same will not unnecessarily interfere with the public travel, and shall prescribe the place where such gate shall be placed and the manner of the construction and maintenance thereof.

(2) The commissioners may rescind any such permit whenever they shall deem it necessary for the public good. At least thirty days previous notice shall be given the party to whom such permit shall have been granted before the same shall be rescinded.

History.—§157, ch. 29965, 1955.
Note.—Similar provisions in former §§343.31-343.33; tr. §339.26.

CHAPTER 337

FLORIDA HIGHWAY CODE, FOURTH PART

Construction; Contracts; Land Acquisition

337.01 Authority of board to acquire equipment.—The board shall have the authority to purchase, lease or acquire, as it deems necessary, all road material, road machinery, tools, equipment and supplies necessary for the execution of its duties and responsibilities, under its maintenance budget.

History.—§80, ch. 29965, 1955.
Note.—Similar provisions in former §§341.14, 341.141 and 341.15.

337.02 Purchases subject to competitive bids; advertisement; emergency purchases.—

(1) No purchase of road material, machinery, tools, equipment or supplies in excess of three thousand dollars shall be made by the board unless made upon competitive bids received, after advertising therefor in a newspaper of general circulation, at least once a week for not less than two consecutive weeks, prior to the date on which bids are to be received. The board may at its discretion, award a contract to the lowest responsible bidder or it may reject all bids and proceed to readvertise.

(2) If the chairman, or in his absence the director, shall determine that a real emergency exists in regard to the purchase of road material, machinery, tools, equipment, or supplies, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, the provisions for competitive bidding shall not apply and the chairman or director may authorize or make purchases of such road material, machinery, tools, equipment, or supplies, without giving opportunity for competitive bidding thereon. The chairman or director shall, within ten days after such determination and purchase, file with the board a written statement of the road material, machinery, tools, equipment, or supplies purchased and a certificate as to the conditions and circumstances constituting such emergency, which statement shall be incorporated in the minutes of the board.

History.—§81, ch. 29965, 1955.
Note.—Similar provisions in former §§287.08 and 341.15.
cf.—§287.081 Purchase exceeding $1000.00 to be made on bids. §287.111 Scope.

337.03 Board authorized to purchase surplus properties.—

(1) The board is authorized to purchase from the federal government any supplies, material, equipment, appliances or other property at such price and upon such terms as may in the judgment of the board be proper, without first advertising for bids, regardless of the value of, or the price paid for such property; provided, however, that the price paid for such supplies, materials, equipment, appliances or other property shall not exceed the price for which such property may be purchased upon the open market.

(2) Payment of the cost of all supplies, ma-

terial, equipment, appliances or other property purchased pursuant to the authority given in subsection (1) shall be made upon vouchers issued and certified to by the director of the department and countersigned by the chairman and paid by warrant issued by the state comptroller upon the state treasurer out of any funds that may be apportioned and set aside for the maintenance of the department.

History.—§82, ch. 29965, 1955.
Note.—Similar provisions in former §341.141.

337.04 Unlawful for certain persons to be financially interested in purchase; penalty.— It is unlawful for the board or any member thereof, or any employee of the department, or any company, corporation or firm in which any member or employee of the board or department is in any way financially interested, to bid on or enter into or be in any way personally interested in the purchase or the furnishing of any materials or supplies to be used in the work of the state or any county of the state. Any person upon the conviction thereof shall be punished by a fine of not more than $500.00 or by imprisonment not exceeding twelve months, and removal from office by the governor.

History.—§83, ch. 29965, 1955.
Note.—Similar provisions in former §341.15.

337.05 Sale of obsolescent highway equipment.—

(1) The board shall be authorized to sell, exchange or otherwise dispose of all obsolescent road machinery, equipment, and material no longer needed for highway purposes.

(2) Whenever the value of any such property, as appraised by the board, exceeds five hundred dollars, the board shall advertise for bids in a newspaper of general circulation, at least once a week for not less than two consecutive weeks in the county where the property is located. The board may at its discretion sell such property to the highest bidder or it may reject all bids and proceed to readvertise.

(3) The board is authorized to sell any such property to a municipality or county of the state without advertising for bids, provided such county or municipality agrees not to resell such property except to the board. In emergencies the board may sell other materials and supplies to such counties or municipalities.

(4) Any funds or money derived from the sale of such property shall be credited to the funds from which such purchase was made originally.

History.—§84, ch. 29965, 1955; (3) §1, ch. 61-149.

337.10 Use of state convict road force.— The department may apply the labor of the state convict road force, as provided by law, to any or all highway construction or maintenance done under the supervision of said department.

History.—§89, ch. 29965, 1955.
cf.—§944.51 State road department prison camps; authority.
§945.07 Prison camps.
§945.11 Use of prisoners in public works.
§965.01(1)(a) Division of corrections.

337.11 Authority of board to contract; advertise; acquire rights of way; option; preservation of records.—

(1) The board shall have authority to:

(a) Enter into contracts for the construction and maintenance of all roads designated as part of the state highway system or state park road system; and

(b) Enter into contracts for such road construction and maintenance as may be placed under its supervision by law, or by resolution of the commissioners, board of bond trustees, district, or other subdivision of any county.

(2) The department shall advertise for bids on all work at least once a week for not less than two consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located. The first publication shall be not less than fourteen days prior to the date on which bids are to be received and the second publication shall be not less than seven days prior to the date on which bids are to be received. No advertisement for bids shall be published until title to all necessary rights-of-way for the construction of the project covered by such advertisement shall have been vested in the state for the use and benefit of the state road department, and all railroad crossing and utility agreements have been executed. Provided that title to all necessary rights-of-way shall be deemed to have been vested in the state of Florida where such title has been dedicated to the public or acquired by prescription.

(3) The board may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to readvertise or perform the work with convict labor or free labor.

(4)(a) Any supplemental agreement to any contract entered into by the department shall be reduced to written contract form, approved by the contractor's surety, approved by the board and entered in detail in the minutes, together with the vote of each member voting thereon, and executed by the board chairman and the contractor.

(b) The board shall make rules and regulations to permit the use of written change orders when signed by the engineer and contractor for minor modifications of a contract within the restrictions prescribed below. All such change orders shall be reported to the board and entered in its minutes prior to making any payment thereon.

(c) Supplemental agreements shall be used to clarify the plans and specifications of a contract or to provide for unforeseen work, grade changes or alterations in plans which could not have been reasonably contemplated or foreseen in the original plans and specifications and which are necessary for the completion of the work required under the existing contract. No supplemental agreement shall exceed the physical limits of the original contract or project. For the purpose of this section, physical limits shall mean the length or width of any project and any major change in elevation of the original grade and shall specifically include drainage structures not running parallel to the project.

(d) Any such supplemental agreement or

change order in violation of this section shall be null and void, and no money shall be paid thereon. Any willful violation of this section shall become a liability against the bond of any board member voting to approve such supplemental agreement or change order. The provisions of this section shall become a part of every construction contract entered into by the state road department and shall be incorporated therein verbatim.

(5) The state road department shall preserve all records which reflect the quantities of materials used in the construction of any road project supervised by the state road department for a period of three years. This requirement shall be equally binding where materials are purchased by prime or sub-contractors.

History.—§90, ch. 29965, 1955; (2) §1, ch. 61-432; (4) §1, ch 61-443; (5) n. §1, ch. 61-222.
Note.—Similar provisions in former §341.14.

337.12 Unlawful for certain persons to be financially interested in contracts; penalty.—

(1) It is unlawful for the board or any member thereof, or any employee of the board or department, or any company, corporation or firm in which any member or employee of the board or department is in any way financially interested, to bid on, or enter into or be in any way interested in a contract for the working or building of any state road or for the performance of any other work in which the department may be concerned.

(2) Any person upon conviction thereof shall be punished by a fine of not less than $500.00, or by imprisonment not exceeding twelve months, and removal from office by the governor.

History.—§91, ch. 29965, 1955.
Note.—Similar provisions in former §341.15.

337.13 Regulations for qualification of bidders; applicant must file statements.—

(1) The board shall adopt regulations for the qualification of competent and responsible bidders. Such regulations shall include requirements with respect to equipment, past record, experience of applicant, and personnel of organization.

(2) The board shall require all applicants to furnish the state highway engineer a statement under oath, on such forms as the board may prescribe, setting forth detailed information with respect to their financial resources, equipment, past record, personnel of organization and experience, together with such other information as the board may deem necessary.

History.—§92, ch. 29965, 1955.

337.14 Application for qualification; certificate of qualification; restriction.—

(1) Any person desiring to bid for the performance of any contract which the board proposes to let, must first be certified by the state highway engineer as qualified pursuant to law and regulations of the board. Each application for certification shall be accompanied by a financial statement of the applicant which financial statement shall reflect the financial condition of the applicant as of a date not more than ninety days prior to the date of filing the application and which financial statement shall be certified by a certified public accountant or public accountant approved by the state highway engineer. The state highway engineer shall be required to act upon the application for qualification within thirty days after the same is presented.

(2) Upon the receipt of such application the state highway engineer shall cause the same to be examined, and the statements therein to be verified as deemed necessary, and shall determine whether the applicant is competent, responsible, and possesses the necessary financial resources.

(3) If the applicant is found to possess the prescribed qualifications, the state highway engineer shall issue to him a certificate of qualification which shall be valid for a period of fifteen months from the date of the applicant's financial statement, or such shorter period as the state highway engineer may prescribe, unless thereafter revoked by the board for cause.

(4) The certificate of qualification shall contain a statement fixing the actual amount of work, in terms of estimated cost, which the applicant will be permitted to have on contract with the board and not completed at any one time, and may contain a statement by the state highway engineer limiting such bidder to the submission of bids upon a certain class of work.

(5) Subject to such restrictions, the certificate of qualification shall authorize the holder to bid on all work on which bids are taken by the board during the period of time therein specified.

History.—§93, ch. 29965, 1955; (1)-(4) §14, ch. 57-318; (1)-(3) §1, ch. 61-501.

337.15 Rehearing; review.—

(1) Any applicant for a certificate of qualification aggrieved by the action of the state highway engineer, may, within ten days after receiving notification of such action, request in writing a reconsideration by the board of his application, and may submit additional evidence bearing on his qualifications. The board shall thereupon reconsider the application, and may adhere to, modify or reverse the action of the state highway engineer. The board shall act upon any request for reconsideration within thirty days after the filing thereof, and shall immediately notify the applicant of the action taken.

(2) Any applicant who is aggrieved by the decision of the board upon such reconsideration may apply to the circuit court of Leon county for a review of the board's decision by filing a petition for a writ of certiorari within the time and in the manner prescribed by the Florida appellate rules and the statutes of this state not superseded by or in conflict with said rules.

History.—§94, ch. 29965, 1955; (1) §15, ch. 57-318; (2) §15, ch. 63-512.

337.16 Delinquent bidding, suspension and revocation of certificate; hearing.—

(1) No contractor shall be qualified to bid

when an investigation by the highway engineer discloses that such contractor is delinquent on a previously awarded contract, and in such case his certificate of qualification shall be suspended or revoked.

(2) The board may suspend, for a specified period of time, or revoke for good cause any certificate of qualification.

(3) Any person found delinquent on a contract or whose certificate is revoked or suspended shall be given the same benefit of hearing as provided in the case of a person refused an original certificate.

History.—§95, ch. 29965, 1955.

337.17 Bid guaranty.—The board shall require guaranty with each bid in an amount to be specified by the board which shall not exceed ten per cent of the preliminary estimate of the cost of the work. The guaranty may, in the discretion of the bidder, be in the form of a cashier's check, bank money order, bank draft of any national state bank, certified check, or surety bond, payable to the governor and his successors in office. The surety on any bid bond shall be a company recognized to execute bid bonds for contracts of the federal government.

History.—§96, ch. 29965, 1955; §16, ch. 57-318.

337.18 Surety bonds required; defaults; damage assessments.—

(1) A bond shall be required, in every instance, of the successful bidder in an amount equal to the contract price, the contract price being understood to mean the estimated cost of the particular contract let. The surety on such bond shall be a surety company authorized to do business in the state. All bonds shall be payable to the governor, and his successors in office, and conditioned for the prompt, faithful, and efficient performance of the contract according to plans and specifications and within the time period specified, and for the prompt payment of all persons furnishing labor, material, equipment and supplies therefor.

(2) The board shall adopt regulations for the determination of default on the part of any contractor for cause attributable to such contractor. Every contract let by the board for the performance of work shall contain a provision for payment to the department by the contractor of liquidated damages for any such default. Such liquidated damages shall be one-quarter of one per cent of the total amount of the contract for each day of such default, but shall not exceed three hundred dollars per day for each day such contractor is in default. Any such liquidated damages paid to the department shall be deposited to the credit of the fund from which payment for the work contracted was authorized.

(3) Such bonds shall be subject to the additional obligation that the principal and surety executing the same shall be liable to the state in a civil action instituted by the board or any officer of the state authorized in such cases, for double any amount in money or property the state may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the contractor, his agent, or employees.

History.—§97, ch. 29965, 1955.
cf.—§255.05 Bond of contractor constructing public buildings; suit by materialmen, etc.

337.19 Suits by and against department; limitation of actions; forum.—

(1) Suits at law and in equity may be brought and maintained by and against the department on any claim under contract for work done; provided, that no suit sounding in tort shall be maintained against the department.

(2) Suits against the department under this section can only be commenced within two years from and after the time of the completion of the work done.

(3) All actions and suits brought against the department shall be cognizable only in the courts of this state.

History.—§98, ch. 29965, 1955.
Note.—Similar provisions in former §341.25.

337.20 Service of process upon department.—Service of process in suits against the department shall be made upon the chairman, or, in his absence, upon the director.

History.—§99, ch. 29965, 1955.
cf.—§47.27 Service of process upon department.

337.21 Agency of the state.—The department shall be an agency of the state for the purpose of carrying out its duties and responsibilities under the law, and as such may sue and be sued in the manner provided by law.

History.—§100, ch. 29965, 1955.

337.22 Bid specifications on supplies.—When the department advertises for bids on a contract for supplies, materials, equipment or other items needed by the department, specifications shall be drafted in such manner as shall afford adequate protection to the state as to quality and performance, but no specifications shall be drafted in any manner which shall preclude competition in bidding.

History.—§101, ch. 29965, 1955.

337.25 Acquisition, lease and disposal of real and personal property. —

(1) The department may purchase, lease, or otherwise acquire any land or buildings or other improvements, including personal property within such buildings or on such lands, necessary to carry out its duties and functions in acquiring rights of way or easements for the construction and maintenance of all roads under its jurisdiction, and such property shall be held in the name of the state. A complete inventory shall be made of all real or personal property immediately upon possession or acquisition, and such inventory shall include an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or sites of each piece of realty, structure or severable item, and the serial number assigned to each. Copies of each inventory shall be filed both in the state office and in the district office in which the property is located. Such inven-

tory shall be carried forward to show the final disposition of each item of property, both real and personal.

(2) The department may sell, lease, or convey, in the name of the state, any land, buildings or other property, real or personal, which shall have been acquired under the provisions of subsection (1), and which shall not be necessary for the construction of the contemplated road. In disposing of properties as authorized under this section the board may authorize the proper administrative official to negotiate for the sale of such properties, real or personal, wherein the value of such properties is less than one hundred dollars. No properties acquired under subsection (1), whose value shall exceed one hundred dollars, shall be sold except by receipt of sealed competitive bids, after due advertisement, or by public auction held at the site of the improvement which is being sold. Sales of houses and other structures as provided hereby shall first be made in single units. Thereafter sales in bulk may be made as herein provided. Removal of houses and other structures when made under bulk sale provisions as herein provided, shall not be permitted until all houses and structures sold in single units have been removed from the site. Due advertisement under this section shall be advertisement in a newspaper of general circulation in the area of the improvements of not less than fourteen calendar days prior to the date of the receipt of bids or the date on which public auction is to be held.

(3) The state road department shall supply consecutively numbered receipts for each item sold. Such receipts shall contain the purchase price and the inventory serial number assigned to the item sold. A copy of such receipt shall be attached to the appropriate inventory and filed in the state office.

History.—§104, ch. 29965, 1955; §1, ch. 61-430.
Note.—Similar provisions in former §341.42.

337.26 Execution and effect of instruments; no warranties.—

(1) An instrument of sale, lease or conveyance executed in the name of the department, and signed by the director with the corporate seal of the board affixed thereto, certified to by the secretary, shall be effective to pass the title or interest of the state in the property conveyed.

(2) No instrument of conveyance by the department shall warrant the title to any property sold, leased or conveyed.

History.—§105, ch 29965, 1955; §17, ch. 57-318.
Note.—Similar provisions in former §341.44.

337.27 Rights of way acquired by department; eminent domain; procedure; title; cost.—

(1) The power of eminent domain is vested in the department to condemn all necessary lands and property for the purpose of securing rights of way, borrow pits and drainage ditches for existing, proposed or anticipated roads in the state highway system or state park road system. The department shall also have the power to condemn any material and property necessary for such purposes.

(2) Such condemnation proceedings shall be maintained in the name of the department, and the same rights and powers shall accrue to the department as accrue to the counties under the procedure defined and set forth in chapters 73 and 74 and §§127.01 and 127.02.

(3) Title to any land acquired in the name of the department shall vest in the state.

(4) The department is authorized to pay the judgment or compensation, including deposits required, awarded in any such proceedings out of any funds coming into the hands of the department for the maintenance or construction of any road on the state highway or state park road system.

History.—§106, ch. 29965, 1955; (4) by §18, ch. 57-318.
Note.—Similar provisions in former §341.21.
cf.—Chs. 73, 74 and 127 Eminent domain.

337.28 Rights of way furnished by counties; eminent domain; contracts with board; bond.—

(1) The several counties shall be authorized to acquire rights of way and other necessary land incident thereto for the roads of the state secondary system within their respective counties.

(2) The several counties may furnish, at their own expense, rights of way for any road in the state primary system or state park road system provided the same shall be first surveyed and located in the county by the department.

(3) Condemnation proceedings for the acquisition of rights of way, and other necessary land, as herein provided, shall be brought by the commissioners and prosecuted as prescribed in chapters 73 and 74; and title to such land shall vest in the state.

(4) The various counties may enter into contracts with the department to furnish rights of way, borrow pits, drainage ditches and material and property necessary and useful for road building purposes.

(5) Upon request of the department the county shall furnish a bond, with sufficient sureties, conditioned to indemnify the department against expenses and liabilities incurred by reason of any breach of such contract by the county.

(6) The counties may use any road funds coming into their hands for the purpose of acquiring by purchase or condemnation any such lands required for rights of way for roads of the state highway or state park road system.

History.—§107, ch. 29965, 1955.
Note.—Similar provisions in former §§341.22 and 341.23.

337.29 Title to roads in state highway and state park road systems; recording deeds.—

(1) Title to all roads designated in the state highway system or state park road system shall be in the state, unless otherwise provided herein.

(2) Upon the vesting of title to any lands for highway purposes in the state, the commis-

sioners or public municipal authorities, as the case may be, shall forthwith issue a deed to the state covering said lands which shall be duly recorded. Recordation of deeds shall also be effected upon acquisition of any lands by the department.

History.—§108, ch. 29965, 1955.
Note.—Similar provisions in former §§341.23 and 341.60.
cf.—§338.14 Title to roads in state highway and state park and road systems.

337.31 Roads presumed to be dedicated.—

(1) Whenever any road constructed by any of the several counties or incorporated municipalities or by the department shall have been maintained, kept in repair or worked continuously and uninterruptedly for a period of four years by any county, municipality, or by the department, either separately or jointly, such road shall be deemed to be dedicated to the public to the extent in width which has been actually worked for the period aforesaid, whether the same has ever been formally established as a public highway or not. Such dedication shall be conclusively presumed to vest in the particular county in which the road is located, if it be a county road, or in the particular municipality, if it be a municipal street or road, or in the state, if it be a road in the state highway system or state park road system, all right, title, easement and appurtenances therein and thereto, whether there be any record of conveyance, dedication or appropriation to the public use or not.

(2) The filing of a map in the office of the clerk of the circuit court of the county in which such roads are located showing such lands and reciting thereon that they have vested in either the state, a county or municipality pursuant to the provisions of this law or by other means of acquisition, duly certified to by the director if the road involved is a road in the state highway system or state park road system, or by the chairman and clerk of the commissioners of the county if the road involved is a county road, or by the mayor and clerk of the municipality if the road involved is a municipal road or street, shall be taken as prima facies evidence of the ownership of such lands either by the state or by the county or municipality as the case may be.

History.—§110, ch. 29965, 1955.
Note.—Similar provisions in former §§341.59 and 341.66.

337.40 Acquisition of rights of way, agreements with investment boards of state and county and teachers' retirement systems.—The department is authorized to purchase real property that is determined to be necessary for the completion of the federal interstate highway system or for the improvement or expansion of the primary highway system by the following method:

The department, through its chairman, may enter into an agreement with the state and county retirement system investment board as described in §122.14, or with the retirement system for school teachers' board of trustees as described in §238.03, for the acquisition by gift, devise, purchase or condemnation, of real property that the department has deemed necessary for the completion of the federal interstate highway system in Florida, and for the extension or improvement of the primary road system in the state of Florida. Such agreement may be entered into for the acquisition of an individual parcel of land or for the acquisition of any number of parcels of land within the limits of a contemplated interstate or primary highway project, provided that the total amount expended by the state and county retirement trust fund investment board and the retirement system for school teachers' board of trustees under all such agreements shall not, at any one time, exceed ten per cent of the total assets of each of said funds, respectively.

The chairman may act as agent for the retirement system for school teachers' board of trustees and for the state and county retirement system investment board in the acquisition of property authorized by this act. The title to such property shall be acquired in the name of the participating fund.

The power of eminent domain is hereby vested in the retirement system for school teachers' board of trustees and the state and county retirement system investment board for the specific purpose of acquiring property under this act. The agreement may provide that the department as agent for the respective board, may file suits in eminent domain, utilizing chapters 73 and 74, and in all such actions the petitioner shall be the state road department of Florida and title shall vest in the specified participating fund.

The agreement shall require that the department shall purchase all property acquired by a respective fund under this act for federal interstate highway projects within two years from the date of the original agreement, but may contain options for renewal of said agreement for one-year periods. Provided, however, that if the department desires to exercise its option to extend the original agreement beyond the two-year period, it shall notify the respective fund, in writing, not less than ninety days prior to the expiration date of the agreement to be extended. Provided, further, upon receipt of such notice from the department, the respective fund shall notify, in writing, the department of its consent or refusal to such extension, and if the respective fund refuses to grant the extension the department shall have ninety days from the expiration date of the original agreement within which to pay said respective fund the total purchase price of property under said agreement. The agreement may provide for the purchase by the department of any property acquired by the respective fund for extension or improvement of the primary state road system within two years from its date and may contain provisions for renewal thereof for additional one-year periods.

Provided, however, no agreement or extension thereto shall extend the final payment by the department to the respective fund after Novem-

ber 15, 1964, and provided, further, all payments to the respective funds under any agreements, or extensions thereto made hereunder shall be made on or before November 15, 1964, irrespective of dates specified in such agreement or extensions. Should the department fail to pay any purchase installment within thirty days after the same becomes due the comptroller shall withdraw sufficient funds from primary gasoline tax funds in the state road trust fund to pay the delinquent installment and such delinquent installments shall constitute a first lien and priority on such primary gasoline tax funds and no distribution shall be made by the comptroller to the department until such delinquent installment has been paid.

The department, before publication of invitations to bid on a construction project, the rights of way for which are subject to an agreement as provided by this act, or the expiration of said agreement, whichever date is earlier, shall purchase from the respective fund all property acquired by said fund under the agreement with the department. Any such agreement shall designate the specific department fund or department funds to be used by the department to carry out such agreement.

The department shall pay to said fund, as costs of the property, the following amounts:

(a) The original cost of the property to the fund; and

(b) An annual percentage of such original cost.

The original agreements may provide for the payment of this portion of the purchase price to the fund involved on an annual basis during the time that title to the property is held by the respective fund, upon demand by the respective fund, and such annual percentage shall be equal to the highest yield said fund could receive from any legal investment available for purchase at the time of execution of the agreement, irrespective of the maturity date of the available investment.

The department shall purchase property acquired for interstate highway projects from the fund holding title to same, in compliance with such agreements, and for such purpose is authorized to use any funds available to the department for such purpose, including primary gasoline tax funds.

Upon purchase of any such property by the department from the fund or funds, the conveyance shall be from such fund or funds to the state road department of Florida.

Neither the deed of conveyance from private individuals to the respective fund, nor the deed of conveyance from the respective fund to the department, shall be subject to the provisions of §201.02, nor shall the property so conveyed be subject to taxes by local authorities while title is held by the respective fund.

The agreements shall provide that the department shall have the full and exclusive use and management of the property during the time title is held by the respective fund or funds and shall have the right to all rentals and other income arising from the use of such property. The department, through its chairman, shall authorize the payment of insurance premiums and incidental costs of maintaining such property while under the control of the department and the department shall save each of the investment boards harmless from any loss or liability whatsoever in connection with the management of such property.

Such agreements may contain any other provisions agreed upon by the department and the respective funds which are necessary to carry out the purpose of this law and shall be reviewed by the state board of administration as to fiscal sufficiency and be subject to approval by said state board of administration.

The property acquired under such agreements may be managed, controlled, used, rented or leased by the department or may be managed by any person, firm, partnership, association or corporation under contract with the department for such. All income received by the department from the use and management of such property prior to use thereof for road construction purposes shall be paid into the highway rights of way acquisition and management fund created by this act.

The department shall authorize the payment of the incidental costs of acquisition in connection with the purchase by the respective fund and shall further authorize the payment of insurance premiums and costs of maintaining such property from any funds available to the department for acquisition of rights of way to the extent that the funds available in the rights of way acquisition and management fund created by this law are not sufficient to pay such costs; provided, that when such costs are incurred in connection with the acquisition or management of property acquired for primary rights of way, such costs shall be charged against the secondary gasoline tax accruing to the state road department under §16, Art. IX, state constitution, for use in the county in which such land lies.

History.—§1, ch. 61-233.

337.41 Sale of rights of way property not required for highway purposes; procedure.—In the event that circumstances alter the highway requirements after the department has purchased an acquired property under the provisions of this act so that such property or parts thereof is no longer required for highway purposes, the department is authorized to sell such property, after due advertisement, to the highest bidder at public auction, or to the highest bidder upon the receipt of sealed competitive bids. For the purpose of this act, reasonable advertisement shall be deemed notice in a newspaper of general circulation in the area in which the property is located once each week for three consecutive weeks prior to the date of the receipt of bids or of the date of the public auction.

Prior to the advertising for the sale of such property under this section, the department shall have such property appraised by competent independent appraisers and no property

shall be sold either at public auction or by sealed bids for less than said value as determined by said appraisal. Proceeds from the sale of any property as provided by this act shall be credited to the fund or funds from which the original purchase price of said property was taken.

History.—§2, ch. 61-233.

337.42 Highway rights of way acquisition and management fund.—There is hereby created, in the department, the highway rights of way acquisition and management fund. All moneys accruing from property used and managed or sold by the department as authorized by this act shall be paid into said fund, except as otherwise provided by this act. Moneys in this fund may be expended for the purpose of payment of incidental costs of acquisition, insurance premiums and administrative costs of maintaining and managing property purchased under the authority of this act.

Any moneys in said fund in excess of the enumerated requirements above may be used for the purpose of acquiring rights of way for additional interstate or primary projects.

History.—§3, ch. 61-233.

337.43 Purchase of rights of way with secondary gasoline tax funds.—Secondary gasoline tax funds remitted to the department for use in the several counties may be used or committed under the provisions of this act for the purchase of any rights of way determined to be necessary for the expansion or improvement of the primary road system upon the following conditions:

(1) The board of county commissioners of any county wishing to avail itself of the provisions of this act shall adopt a resolution requesting and authorizing the department to enter into agreements as provided by this act, and pledging for the purchase of the property from the funds any secondary gasoline taxes accruing to the credit of the respective county;

(2) The property to be purchased by the funds shall be wholly within the territorial limits of the respective county;

(3) Approval of the department of such resolution; and

(4) Certification from the state board of administration that the respective county has sufficient accrued funds, or funds to accrue within the time limits of the agreement, to cover purchase from the respective fund.

History.—§4, ch. 61-233.

337.44 Agreements under act binding obligations.—All agreements made between the department and the state and county retirement systems investment board or the retirement system for school teachers' board of trustees, under the provisions of this act, shall be valid and binding obligations of the department and its board then in office, as well as future boards, within the time specified by such agreements and all agreements made pursuant to the requests of boards of county commissioners as provided in §337.43 shall bind boards of county commissioners in office at the time of the adoption of the resolution, and succeeding commissioners during the terms of said agreements.

History.—§5, ch. 61-233.

337.45 Effective and expiration dates of act.—Chapter 61-233 shall take effect June 12, 1961, and shall expire on December 31, 1964.

History.—§6, ch. 61-233.

CHAPTER 338

FLORIDA HIGHWAY CODE, FIFTH PART

Limited Access Facilities; Bridge and Toll Facilities; Public Utilities

338.01 Authority to establish limited access facilities.—

(1) The highway authorities of the state, counties, cities, towns, and villages, acting alone or in cooperation with each other or with any federal, state, or local agency of any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within incorporated cities and towns such authority shall be subject to municipal consent; provided further, such consent shall not be necessary when such limited access facility shall be or become a part or link of a municipal connecting link road as defined in this code.

(2) If the jurisdiction or control of either the board or the commissioners over any public highway or highways is jointly involved or would be affected by the exercise of such authority, their joint action or agreement shall be necessary to make such exercise of authority hereunder effective.

(3) Such action shall be taken by appropriate resolution or ordinance of the highway authority or authorities, and notice of such action shall be given by publication in a newspaper of general circulation in the locality affected at least fifteen days before such authority shall become effective, and appropriate traffic signs and markers shall be erected along the facility affected to give due notice to public travel of the action taken hereunder.

(4) The highway authorities of the state, counties, cities, villages, and towns, in addition to the specific powers granted in this law shall also have and may exercise, relative to limited access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Such units may regulate, restrict, or prohibit the use of such limited access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a limited access facility as contained in this law.

(5) Except to the extent authorized by law for turnpike projects, no automotive service station or other commercial establishment for serving motor vehicle users, except public utility facilities, shall be constructed or located within the right-of-way of, or on publicly owned or publicly leased land acquired or used for, or in connection with, a controlled access facility; provided that nothing in this section shall apply to any right-of-way extending to any mean high water line of any body of water.

History.—§111, ch. 29965, 1955; (5) n. §1, ch. 61-435.
Note.—Similar provisions in former §348.03.
cf.—§334.03(8) **Definition of limited access facilities.**

338.02 Designation; new and existing facilities; grade crossing eliminations.—

(1) The highway authority of the state, county, city, town, or village may designate and establish limited access highways as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility.

(2) The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of limited access facilities with existing state and county roads, and city and town or village streets, by grade separation or service road, or by closing of such roads and streets at the right of way boundary line of such limited access facility; and after the establishment of any limited access facility no highway or street which is not part of said facility shall intersect the same at grade. No city, town, or village street, county or state highway or other public way shall be opened into or connected with any such limited access facility without the consent and

previous approval of the highway authority in the state, county, city, town or village having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby.

History.—§112, ch. 29965, 1955.
Note.—Similar provisions in former §348.06.

338.03 Design of limited access facility.—

(1) The highway authorities of the state, county, city, town and village are authorized to so design any limited access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and its determination of such design shall be final. In this connection such highway authorities are authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing section, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices.

(2) No person shall have any right of ingress or egress to, from or across limited access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

History.—§113, ch. 29965, 1955.
Note.—Similar provisions in former §348.04.

338.04 Acquisition of property and property rights for limited access facility.—

(1) For the purposes of this law, the highway authorities of the state, county, city, town, or village may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions.

(2) All property rights acquired under the provisions of this law shall be in fee simple.

(3) In connection with the acquisition of property or property rights for any limited access facility or portion thereof, or service road in connection therewith, the state, county, city, town, or village highway authority may, in its discretion acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right of way proper.

History.—§114, ch. 29965, 1955.
Note.—Similar provisions in former §348.05.

338.05 Authority of local units to consent.—The highway authorities of the state, city, county, town, and village are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of limited access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this law.

History.—§115, ch. 29965, 1955.
Note.—Similar provisions in former §348.07.

338.06 Local service roads.—In connection with the development of any limited access facility the state, county, city, town, or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over limited access facilities under the terms of this law, if in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the limited access facility proper by means of all devices designated as necessary or desirable by the proper authority.

History.—§116, ch. 29965, 1955.
Note.—Similar provisions in former §348.08.

338.07 State bridges, authority to erect; procedure.—

(1) The department is authorized to enter into contracts for, and to make regulations for the construction and maintenance of bridges on roads designated as part of the state highway system or state park road system, and other bridges as may be placed under its supervision and control by law, or by resolution of the commissioners or board of bond trustees of any county, or district, or other subdivision of any county.

(2) The department shall prepare plans and specifications for all such proposed work, other than maintenance work of a regular or routine nature, and advertise for bids on same at least once a week for not less than two consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located.

(3) The board may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to readvertise or perform the work with convict labor or free labor.

History.—§117, ch. 29965, 1955.
Note.—Similar provisions in former §341.14.

338.08 Cooperation with adjoining states as to connecting bridges.—

(1) The department may, whenever it deems it practicable and to the best interests of the state cooperate with any highway department of an adjoining state, or any political subdivision or other duly authorized agency therein, in the construction, building, or by participation in the cost of purchase, of any bridge, which extends from each adjoining state so that such bridge or one of its approaches physically connects, or when constructed will physically connect, any designated and established road of the state highway system of Florida, to the extent of fifty per cent of the construction cost or purchase price of any such bridge.

(2) The expense of constructing or acquiring any such bridge shall be paid from funds provided for use of the department for state road purposes.

(3) Nothing in this section is intended to contravene the paramount power of the congress to regulate and control interstate bridges, or bridges over navigable waters, and the authority hereby granted the board shall be exercised in conformity with permissive acts of the congress.

History.—§118, ch. 29965, 1955.
Note.—Similar provisions in former §341.39.

338.09 Lease or purchase of former state improvement commission properties.—The department is authorized to lease or purchase from the Florida development commission such roads or bridges as may have been acquired or constructed under the provisions of former chapter 420 and to pay either the rental or the purchase price from the surplus gasoline taxes which may in the future accrue to the credit of the county or counties in which the road or bridge is located, under the provisions of §16, Art. IX, of the Florida constitution; provided, however, the county commissioners of such county must approve the same by resolution.

History.—§119, ch. 29965, 1955.
Note.—Similar provisions in former §420.15.
cf.—Ch. 288, The Florida development commission.
§288.08 Road department to lease or purchase; authorized.

338.12 Toll facilities; contracts for construction; franchises; construction supervised by department.—

(1) The department may contract for the construction, ownership, maintenance and operation of toll bridges, tunnels, viaducts, fills, roads, or trestle structures, and approaches thereto, used in connection with the roads and bridges of the state highway or state park road system.

(2) For this purpose the department may grant an exclusive franchise to run for a period of thirty years or until such structures shall be acquired by the state. Any person granted a franchise under the authority herein shall comply with the terms and conditions hereinafter set forth. No franchise shall be granted until the same has been approved by the commissioners of each county affected.

(3) The provisions of §337.29 shall not apply to such toll facilities, and title shall not vest in the state until any bonded indebtedness is retired.

(4) The department shall approve the fairness and equity of the tolls, or the schedule of tolls, submitted by the person contracting for any such toll facility; and no tolls or schedules of tolls shall be put in force and operation until so approved. The department may from time to time change and revise such tolls and schedules.

(5) So long as any such toll facility and approaches thereto shall remain the property of the contractor, or his assigns, neither the state, nor the department nor any subdivision of the state, shall permit the construction or operation of any other bridge, viaduct, road, fill or trestle structure which shall conflict in any way with the terms of the contract entered into for the construction of such toll facility and approaches thereto between the contracting person and the department, nor shall the state or any subdivision thereof interfere in any manner with the contracting person, or his assigns, in the maintenance or operation of any such toll facility and approaches thereto, except as may be necessary for the public safety or for the compelling compliance with the contract between the department and such contracting person.

(6) Every such toll facility and approaches thereto to be constructed and erected by any contracting person shall be constructed under the supervision of the department, and according to plans and specifications made or approved by the department, and the cost thereof to be approved by the department.

History.—§122, ch. 29965, 1955.
Note.—Similar provisions in former §§341.30-341.33 and 341.35.

338.13 Toll facilities; purchase, lease or rent of.—

(1) The department is authorized to purchase, lease or rent annually any ferry and any toll bridge or road, for use in connection with the roads of the state highway system or state park road system.

(2) The department shall have the exclusive right and privilege at any time after thirty years from the completion of any such toll facility and approaches thereto, to purchase and acquire the same from the owner, which option shall be retained by the terms and conditions of the contract between the contracting person and the department when the original contract is made.

(3) The department shall have the right at any time after the completion of any such toll facility and approaches thereto, to lease or rent annually the same from the owner, subject to the terms and conditions provided for in the contract between the contracting person and the department. Upon so entering into any lease or rental of any such toll facility and approaches thereto, the department may provide for a necessary sinking fund to retire the principal value and cost of construction of such facility and approaches thereto. The department shall also have the right to lease and rent annually any toll bridges and roads heretofore constructed on, or connecting any road of the state highway or state park road system subject to the provisions of this section with respect to the amount of annual rental which may be paid. Any moneys used for any of the purposes provided by this section shall come from funds allocated in the annual budget of the department for such purposes.

(4) The department may, at any time after the completion of any such toll facility, purchase and acquire the same from the owner subject to terms and conditions provided in the

contract between the contracting person and the department, and may also purchase and acquire any toll road or bridge constructed under the laws of Florida. In no case shall the department be permitted to take over by purchase any such facility subject to bonded or mortgaged indebtedness, unless such bonded or mortgaged indebtedness shall have been created in favor of an agency of the federal government, in which event said purchase is expressly authorized, and providing further, however, that any moneys used for the purposes herein provided shall come from funds allocated in the annual budget of the department.

History.—§123, ch. 29965, 1955.
Note.—Similar provisions in former §§341.30, 341.34-341.36.

338.14 Department may contract with public project owners.—

(1) The department is authorized to enter into agreements with any municipal corporation, county, district authority, or any political subdivision, or any agency or commission of the state, each of which is hereafter referred to as the public project owner which has heretofore acquired or constructed any toll revenue-producing bridge, causeway, tunnel, ferry, toll road or any combination thereof hereafter referred to as the project or which has adopted, or may hereafter adopt proceedings pursuant to which such public project owner is to acquire or construct any toll revenue-producing bridge, causeway, tunnel, ferry, road, toll road or any combination thereof hereinafter referred to as the project, for the purpose of doing or agreeing to do any one or more of the following:

(a) Leasing from any public project owner any project or part thereof for such period of years and under such terms and provisions, including provisions for the operation and maintenance thereof either by the public project owner or by the department, as may be considered desirable and be specified in the lease or leases.

(b) Purchasing from any public project owner any project or part thereof under such terms and provisions, including provisions for the operation and maintenance thereof either by the public project owner or by the department, as may be specified in the purchase contract or contracts.

(c) Paying the cost or any part of the cost of the operation and maintenance of any project for such period as may be fixed in such agreement. The payment of such cost may be made a charge upon the general revenues of the department or may be made a charge solely on certain specified revenues, including revenues derived from the state gasoline tax, or may be made a charge partly upon such general gasoline tax revenues, and a charge partly upon such certain specified revenues.

(d) Entering into such agreements with the federal government and any of its branches or agencies and doing such things as may be necessary to secure federal aid money, and assistance in the acquisition, construction, improvement, repair, maintenance and operation of any project or part thereof.

(e) Constructing, improving, repairing, maintaining or operating any project or part of project.

(f) Making to the public project owner any grant of funds, materials, property, easements, or rights of way for use in the acquisition, construction, improvement, repair, maintenance or operation of any project or part thereof.

(g) Operating or maintaining any project or part thereof as a road of the state highway or state park road system or part thereof, and this in spite of the fact that title to such project or part thereof remains in the public project owner. The provisions of any existing law requiring title to the state roads to be vested in the state shall not be operative as to projects or parts of projects made roads of the state highway or state park road system or maintained and operated as such roads under the provisions of this section.

(h) Making available to any public project owner, for paying the cost or part of the cost of constructing, repairing, improving, maintaining or operating any project, any federal aid funds or any other funds under the control of the department which may properly be used for such purposes.

(2) Any such public project owner is hereby authorized to enter into an agreement or agreements with the department for the purpose of accomplishing any one or more of the purposes set out in subsection (1) and any such public project owner may use any funds available to it by authority of law for use on any such project to accomplish any such purposes covered by any such agreement or agreements, and the department is hereby authorized to use federal aid or any state funds appropriated or allocated to it for state road purposes to carry out said agreements with public project owners. Any public project owner which is a county may use any county road and bridge funds from whatever source derived for accomplishing any of said purposes for any such project which is a county purpose.

(3) The department may make any project, or part thereof, a part of the state highway or state park road system, and may make any road of which any project comprises a part, a road of the state highway or state park road system, and may do so either without the vesting of title to such project in the state or under such provision for the later vesting of title in the state as may be considered advisable by the department.

(4) When any agreement shall have been entered into or made under the provisions of this law, any public project owner which is a party thereto or the department shall be entitled and are hereby empowered to enforce the provisions of such agreement through appropriate action in any court of competent jurisdiction.

(5) Whenever any agreement is made for operation of any project or part thereof by the

department under the provisions of this law, the department may either operate such project or part thereof free from tolls or may fix and collect such tolls for the use thereof as it may from time to time see fit as may be provided in such agreement, and if tolls are so charged and collected the department may dispose of such tolls for any purpose and in any manner which it may deem fit and which may be provided in such agreement.

History.—§124, ch. 29965, 1955.
Note.—Similar provisions in former §341.63.
cf.—§337.29 Title to roads in state highway and state park systems.

338.15 Department may lease or rent toll bridges of counties and municipalities; exception.—

(1) When any toll bridge on the state highway or state park road system has been or may be constructed by or for any county or municipality, which county or municipality has issued its bonds or other obligations to pay all or a part of the costs of construction of such bridge, and which bridge is authorized by law to be operated by said county as a toll bridge only for the purpose of paying off the obligations of such county or municipality for the cost of construction of such bridge, upon which event the said bridge will by provision of law become the property of the state, the department shall have the right and privilege to rent or lease from such county or municipality and to take over, maintain and operate free of tolls such bridge upon paying to said county annually as rental therefor such sum as may be agreed upon between the department and the commissioners of such county or the governing body of such municipality, not to exceed the sum which shall be necessary to pay the interest and meet the requirements of the sinking fund created to retire the obligations of the county incurred in the construction of such bridge, and which rentals shall be applied to that purpose and no other; and which rentals the department may contract for and pay. Any moneys used by the department for the purposes of this section shall be paid out of funds allocated in the annual budget of the department to the district in which the bridge so rented or leased is located.

(2) The provisions of this section shall not apply to any toll bridge constructed by or for any county where the freeholders or qualified electors of such county or municipality shall have voted within two years prior to June 5, 1933, at any referendum election, however called or held, to retain tolls for any general or special county purpose; nor to toll bridges located wholly within the corporate limits of any city or town situated in any county having a population of more than one hundred thousand according to the last federal census.

History.—§125, ch. 29965, 1955.
Note.—Similar provisions in former §341.29.

338.16 Certain toll bridges and toll roads prohibited.—

(1) No person shall establish, build or complete any toll bridge over any stream or body of water on that state road extending from the Georgia state line, at a point on the St. Mary's river known as Wild's Landing, to Orlando, via Yulee, Jacksonville, Orange Park, Green Cove Springs, Palatka, East Palatka, Crescent City, DeLand, and Sanford heretofore declared, designated and established as a road of the state highway system by the board; nor shall any person establish, build or complete as a toll road any part of the aforesaid state road.

(2) No person shall charge toll for passage over any such toll bridge or toll road, on such state road.

(3) In any case where a toll bridge may be established, built or completed by any person at a point not directly on such state road but near thereto, and such bridge shall not be on any public road leading to any community not reached by such state road, but is on a road or way which is in fact only a detour from the state road to furnish passage for travel using such state road, it is unlawful to connect such toll bridge by any road or way leading from such bridge to such state road, and the department shall prevent such connection from being made, by placing and maintaining a fence or barrier on the right of way of such state road across such connecting way or road, and the department may resort to a court of equity to enjoin any one violating or attempting to violate the provisions of this section.

(4) Nothing contained in this section shall be construed to apply to toll roads or toll bridges heretofore or hereafter established or built on any road or roads which connect with such state road and lead to or serve any community, city or town in the state; and the provisions of this section shall not be construed to repeal or limit in any way any special act of the legislature providing for or governing the construction and operation of any toll road or bridge.

(5) The terms of this section shall apply in any case where the stream or body of water spanned by the bridge lies partly within the boundary of this state and partly within the boundary of an adjoining state, as well as in case the stream or body of water lies wholly within this state.

(6) Any one who violates any of the terms of this section shall be deemed guilty of a misdemeanor and shall be punished by fine not exceeding $100 or by imprisonment not exceeding ninety days.

History.—§126, ch. 29965, 1955.
Note.—Similar provisions in former §§341.48-341.51.

338.17 Use of right of way for utilities subject to regulation; permit.—

(1) The department, commissioners, and authorities of municipalities or special districts hereinafter referred to as the authority having jurisdiction and control of public roads are authorized to prescribe and enforce reasonable regulations with reference to the placing and maintaining along, across, or on any road under their respective jurisdictions any electric transmission, telephone or telegraph

lines, pole lines, poles, railways, ditches, sewers, water, heat, or gas mains, pipe lines, fences, gasoline tanks and pumps, or other structures hereinafter referred to as the utility.

(2) The authority may grant to any person, who is a resident of this state, or to any corporation organized under the laws of this state, or licensed to do business within this state, the use of a right of way for the utility in accordance with such regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. Such permit shall be required when inspection or repair of the utility interferes with the normal flow of traffic.

(3) Nothing herein shall restrict the action of public authorities in extraordinary emergencies. And nothing in this law shall be construed as modifying or abridging the powers conferred upon the state railroad and public utilities commission in Title XXV, the intent of this section being that the power hereby granted to the authorities shall be exercised only in such manner as not to conflict with the valid exercise of powers granted to such commission.

History.—§127, ch. 29965, 1955.
cf.—Ch. 362 Utilities along roads.

338.18 Damage to road caused by utility.— When any public road is damaged or impaired in any way because of the installation, inspection or repair of any utility located thereon, the owner of the utility shall, at his own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the authority is authorized to do so and charge the cost thereof against the owner under the provisions of §338.20.

History.—§128, ch. 29965, 1955.
cf.—Ch. 362 Utilities along roads.

338.19 Relocation of utility; expenses.—

(1) Any utility heretofore or hereafter placed upon, under, over or along any public road that is found by the state or other authority to be unreasonably interfering in any way with the convenient, safe or continuous use or maintenance, improvement, extension or expansion of such public road shall, upon thirty days written notice to the utility or its agent, by the state or other authority be removed or relocated by such utility at its own expense; provided, however, that if the relocation of utility facilities, as referred to in §111 of the federal aid highway act of 1956, public law 627 of the eighty-fourth congress, is necessitated by the construction of a project on the federal aid interstate system, including extensions thereof within urban areas, and the cost of such project is eligible and approved for reimbursement by the federal government to the extent of ninety per cent or more under the federal aid highway act, or any amendment thereof, then in that event the utility owning or operating such facilities shall relocate same upon order of the state road department, and the state shall pay the entire expense properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(2) If such removal or relocation is incidental to work to be done on such road, the notice shall be given at the same time the contract for the work is advertised for bids, or thirty days prior to the commencement of such work by the authority.

(3) Whenever an order of the authority requires such removal or change in the location of any utility from the right of way of a public road, and the owner thereof fails to remove or change the same at his own expense to conform to the order within the time stated in the notice, the authority shall proceed to cause the utility to be removed. The expense thereby incurred shall be paid out of any money available therefor, and shall, except in those cases where the state is required by subsection (1) of this section to pay the expense, be charged against the owner and levied and collected and paid into the fund from which the expense of such relocation was paid.

History.—§129, ch. 29965, 1955; (1), (3) §1, ch. 57-135; §1, ch. 57-1978.
cf.—Ch. 362 Utilities along roads.

338.20 Removal or relocation of utility facilities; notice and order; court review.—

(1) Whenever it shall become necessary for the authority to remove or relocate any utility as provided in the preceding section, the owner of the utility, or his chief agent, shall be given notice of such removal or relocation and an order requiring the payment of the cost thereof, and shall be given reasonable time, which shall not be less than twenty nor more than thirty days, in which to appear before the authority to contest the reasonableness of the order. Should the owner or his representative not appear, the determination of the cost to the owner shall be final.

(2) A final order of the authority shall constitute a lien on any property of the owner and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the owner's property is located.

(3) Within sixty days from the final order of the authority, the owner may obtain judicial review of the proceedings thereof by filing in the circuit court of the county in which the utility was relocated, or in the circuit court of Leon county when the board is the respondent, a petition for a writ of certiorari in the manner prescribed by the Florida appellate rules.

History.—§130, ch. 29965, 1955; (3) §16, ch. 63-512.

338.21 Elimination of railway-highway crossing hazards.—

(1) The department shall, in cooperation with the several railroad companies operating in the state, determine, fix upon and adopt a program for the expenditure of moneys now available and of the moneys to become available for the construction cost of projects for the elimi-

nation of hazards of railway-highway crossings.

(2) Every railroad company maintaining a railway-highway crossing shall, upon reasonable demand and notice from the department, install, maintain and operate at such crossing an automatic flashing light signal, the design of which shall be mutually approved by the department and the railway company, so that it will give to the users of such road reasonable warning of approach of trains or cars on the tracks of said railroad company, the cost of such signals and the expense of installation to be paid from the moneys described in subsection (1).

History.—§131, ch. 29965, 1955; §1, ch. 63-88.
Note.—Similar provisions in former §341.73.

CHAPTER 339

FLORIDA HIGHWAY CODE, SIXTH PART

Financing; Miscellaneous

339.01 Investments of first gas tax funds.—(1) The department is authorized to invest any first gas tax funds, which may be uncommitted, and are deemed by the board unusable, unexpendable and not presently required for road construction purposes, in gasoline or other fuel tax anticipation certificates issued for the retirement of road and bridge bond indebtedness of counties and special road and bridge districts by the state board of administration by authority of §16, Art. IX of the state constitution.

(a) Any investment so made shall be in gasoline or other fuel tax anticipation certificates which mature within four years from the time the investment is made.

(b) Such investments shall be made only by authority of a majority vote of the members of the board, which action shall be by resolution setting up the amount to be paid for each separate investment, and the principal and interest rates and the date of maturity of each separate investment, duly recorded in its official minute records.

(c) Investments hereby authorized shall be made in the same manner as any other authorized expenditures of the department are made.

(d) Expenditures for such investments are hereby duly authorized, appropriated and legalized, and the comptroller is hereby authorized and directed to draw his warrant accordingly.

(2) Any gasoline or other fuel tax anticipation certificates purchased as investments under the authority of this section shall be deposited and kept in the state treasury in the state road fund. The state treasurer shall receive all payments of interest and principal upon such investments and credit the same to the state road fund and surrender to the state board of administration gasoline or other fuel tax anticipation certificates and interest coupons thereon for such payments. It shall be the duty of the state treasurer to furnish within fifteen days after demand of the board a statement to the board showing the condition of any such investment account.

(3) In connection with the acquisition of any of the securities herein referred to, the department shall be prohibited from incurring any expense chargeable against the several accounts, funds of which are invested.

(4) The department may at any time before maturity of any gasoline or other fuel tax anticipation certificate or certificates purchased by it, sell or liquidate the same.

(a) Such sale or liquidation must be authorized by resolution, adopted by majority vote of the members of the board, setting forth fully the details of such sale or liquidation. A certified copy of the resolution shall be delivered to the stae treasurer within ten days after consummation of such sale or liquidation, together with the funds received from such sale or liquidation to be deposited in the state road fund.

(b) No such sale or liquidation shall be effected by the department without first advertising for bids for at least two consecutive weeks in some newspaper having a general circulation in the county (or special road and bridge district therein) for which such gasoline or other fuel tax anticipation certificate or certificates were issued, and also in some newspaper of general circulation in Leon county.

(c) Only the highest bid shall be accepted, and then only if such bid shall be not less than the principal of such certificate or certificates, plus accrued interest thereon to date of delivery of such certificate or certificates to the highest bidder.

History.—§132, ch. 29965, 1955.
Note.—Similar provisions in former §341.68.

339.02 Investments of second gas tax funds.—(1) The department is authorized to invest any second gas tax funds heretofore or hereafter accruing to the department for use pursuant to any statute, and any eighty per cent surplus funds heretofore or hereafter accruing to the department for use pursuant to §16, Art. IX of the state constitution, which are uncommitted, and are deemed by the board unusable, unexpendable and not presently required, in gasoline or other fuel tax anticipation certificates issued for the retirement of road and bridge bond indebtedness of counties and special road and bridge districts by the state board of administration by authority of §16, Art. IX of the state constitution. Any such investment so made shall be for gasoline or other fuel tax anticipation certificates which mature within four years from the time the investment is made. Such investment shall be made only by authority of a majority vote of the members of the board, which action shall be by resolution duly recorded in the minutes of the board, setting forth:

(a) The particular county account in the state treasury from which funds are to be invested;

(b) The amount to be paid from each account or accounts for each investment; and

(c) The principal and interest rates and the maturity date of each separate investment made. Investments hereby authorized shall be made in the same manner as any other authorized expenditures of the department are made, and such expenditures for said investments are hereby duly authorized, appropriated and legalized, and the comptroller is hereby authorized and directed to draw his warrant accordingly.

(2) Any gasoline or other fuel tax anticipation certificates purchased as investments under the authority of this section shall be deposited and kept in the state treasury in the particular county account from which such investment was made. The state treasurer shall receive all payments of interest and principal upon such investment and credit the same to the proper account to which the same are receivable, and surrender to the state board of administration the gasoline or other fuel tax anticipation certificates and interest coupons thereon redeemed by such payments. It shall be the duty of the state treasurer to furnish, within fifteen days after demand of the board, a statement to the board showing the condition of any such investment account.

(3) In connection with the acquisition of any of the securities herein referred to, the department shall be prohibited from incurring any expense chargeable against the several accounts, funds of which are invested.

(4) The department may at any time before maturity of any such gasoline or other fuel tax anticipation certificate or certificates purchased by it, sell or liquidate the same.

(a) Such sale or liquidation must be authorized by resolution adopted by majority vote of the members of the board, setting forth fully the details of such sale or liquidation. A certified copy of the resolution shall be delivered to the state treasurer within ten days after consummation of the sale or liquidation, together with the funds received from the sale or liquidation to be deposited in the particular county account to which the same are receivable.

(b) No such sale or liquidation shall be effected by the department without first advertising for bids for at least two consecutive weeks in a newspaper of general circulation published in the county (or special road and bridge district therein) for which such certificate or certificates were issued, and in a newspaper of general circulation published in the county from whose account funds were invested in such certificate or certificates, and in a newspaper of general circulation published in Leon county.

(c) Only the highest bid shall be accepted, and then only if such bid shall be not less than the principal of such certificate or certificates, plus accrued interest thereon to date of delivery of such certificate or certificates to the highest bidder.

History —§133, ch. 29965, 1955.
Note.—Similar provisions in former §341.69.

339.03 Transfer of certain state road funds; investment; distribution of proceeds.—(1) The department is authorized to transfer to the state board of administration for the purpose of investment, such funds as are temporarily uncommitted, unusable or unexpendable for road and bridge construction purposes, and such funds received by the department from the Florida development commission pursuant to §§288.23-288.30, as shall not immediately be needed by the department for construction of the project or projects to which such funds are applicable.

(2) At the time of transferring such funds to the state board of administration, pursuant to the provisions of this section, the board shall furnish the state board of administration with a schedule showing the estimated amount of funds needed for future construction by months, which schedule may be revised by the board from time to time as conditions warrant.

(3) The state board of administration is hereby authorized to accept such funds and shall keep the same in a separate account to be designated as the state road department investment account and shall use such funds solely for the purpose of investment in:

(a) United States government securities;

(b) Road and bridge bonds or gasoline or other fuel tax anticipation certificates administered by the state board of administration under the provision of §16, Art. IX of the state constitution;

(c) In Florida development commission bonds, notes or certificates containing a pledge of the eighty per cent surplus two cents gasoline tax accruing under said §16, Art. IX.

(4) The state board of administration shall at all times endeavor to keep invested the maximum amount of such funds, commensurate with the schedule of construction needs of the department.

(5) The state board of administration shall report monthly to the department on all earnings, profits, liquidations and other transactions involving the investment funds. Proceeds of sale of investments, earnings and profits shall be credited by the state board of administration to the state road department investment account.

(6) The state board of administration shall transfer funds from the investment account to the department for its construction needs in accordance with the schedule of such construction needs, or for the payment of the lease-purchase rentals to which the same are applicable, and such transferred funds shall consist of earnings and profits or proceeds from the sale of investments, as may be required.

(7) The department shall credit each account which goes to make up the investment fund with its proportionate share of the earnings and profits from such investments.

History.—§134, ch. 29965, 1955; §24, ch. 57-1.
Note.—Similar provisions in former §§341.79, 341.80.

339.04 Disposition of proceeds of sale or lease of realty by department.—Any money derived from the sale, lease or conveyance of any property by the department shall be deposited in the state treasury and placed in the state roads trust fund.

History.—§135, ch. 29965, 1955; §2, ch. 61-119.
Note.—Similar provisions in former §341.43.

339.05 Assent to federal aid given.—The state hereby assents to the provisions of the act of congress approved July 11, 1916, known as the federal aid law, which act of congress is entitled, "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," and assents to all subsequent amendments to such act of congress and any other act heretofore passed or that may be hereafter passed providing for federal aid to the states for the construction of highways and other related projects. The department is authorized to make application for the advancement of federal funds and to make all contracts and do all things necessary to cooperate with the United States government in the construction of roads under the provisions of said acts of congress and all amendments thereto.

History.—§136, ch. 29965, 1955.
Note.—Similar provisions in former §341.62(1).

339.06 Department may amortize advancements from United States.—The department may set aside, from any revenues allocated to it by law, such sums as are necessary and sufficient to properly amortize any amount advanced under act of congress, and to make suitable provision from year to year in its annual budget for such amortization.

History.—§137, ch. 29965, 1955.
Note.—Similar provisions in former §341.41.

339.07 National aid expended under supervision of department.—All funds and all road building equipment, supplies and materials that have heretofore or may hereafter be apportioned to this state by congress to aid and assist in road building shall be expended and used under the control and supervision of the department, and any and all expenses necessary to secure such equipment, supplies and materials for the use of the state to be used on the roads under the supervision of the department, are authorized to be paid out of the state roads trust fund.

History.—§138, ch. 29965, 1955; §24, ch. 57-1; §2, ch. 61-119.
Note.—Similar provisions in former §341.19.

339.08 Use of gas tax revenue by department.—

(1) The board shall by regulation provide for the expenditure of the proceeds of the first gas tax accruing to the department, in accordance with its annual budget.

(2) Such regulations shall provide that the use of the first gas tax be restricted to the following purposes:

(a) To pay administrative expenses of the board and department, including administrative expenses incurred by the several state road districts;

(b) To pay the cost of construction of the primary road and state park road system, including amounts necessary to match federal aid funds for such purposes;

(c) To pay the cost of maintaining the state primary highway system and state park road system;

(d) To make such other lawful expenditures of the board or department for the payment of which no other funds may be specified, including the payment of compensation to employees of the department except those employees whose jobs are designated as J in the official Florida merit system pay plan for overtime work in excess of forty hours per week or other accepted standard work week, in cash or by way of compensatory time as may be prescribed by regulation of the board. Any other laws in conflict herewith are hereby repealed.

(e) To pay the cost of maintaining state roads which were classified or maintained as primary roads on January 1, 1956, and not included by the road board in the state primary highway system when said system was reclassified by the road board in June, 1956, pursuant to the provisions of this code.

(3) The board shall by regulation provide for the expenditure of the proceeds of the eighty per cent of the seventh cent gas tax accruing to the department for use of the counties in accordance with its annual budget; such moneys to be used by the department in the construction and maintenance of roads, including the purchase of right of way, in the county to which such gas tax applies. Such roads shall be those selected by the commissioners and approved by the department to be a part of the secondary system of roads, as herein defined.

(4) The board shall by regulation prescribe for the expenditure of the proceeds of the eighty per cent surplus of the second gas tax remitted to the department for use in the counties in accordance with its annual budget; provided, however, the department shall not expend any funds derived from the eighty per cent surplus of the second gas tax for the construction or reconstruction of any road or bridge except where requested to do so by resolution from the county commissioners; such moneys shall then be used by the department for the construction or reconstruction of roads and bridges or for the lease or purchase of bridges on the state highway system within the county to which such surplus applies or to acquire right of way for such roads and bridges; provided, however, that nothing herein contained shall in any way impair the present county road and bridge district bonds, revenue certificates, or other valid obligations of the respective counties.

History.—§139, ch. 29965, 1955; (2) (e) n. §1, ch. 31416, 1956; (3), (4) §19, ch. 57-318; (2)(d) §1, ch. 63-219.

339.081 State roads trust fund; accounts.—

(1) The state comptroller shall maintain within the state roads trust fund the following accounts:

(a) The restricted state roads moneys account to which shall be credited the proceeds of the gas taxes referred to in §339.08 (3) and (4). No moneys shall be paid out or transferred from this account except pursuant to a duly adopted resolution of the appropriate board of county commissioners which resolution shall be filed with the comptroller; provided, however, nothing herein shall prohibit transfers made pursuant to §215.18.

(b) The unrestricted state roads moneys account to which shall be credited all other funds accruing to the state road department which are not otherwise required to be maintained in separate accounts.

(c) Such other accounts as may be authorized by bond resolutions or agreements with any other public bodies or agencies.

(2) The unrestricted state road moneys may be used on the secondary roads of any county only on such terms and conditions as shall be prescribed by the department and entered in its records.

(3) No engineering shall be furnished or charged to the secondary road trust fund except upon request by resolution of the board of county commissioners.

History.—§1, ch. 61-492.

339.09 Use of gasoline revenues tax restricted.—

(1) Funds available to the department or any county from any gasoline tax revenues shall not be used for any nonhighway purposes, provided however, that the road department shall construct and maintain roads and parking areas adjacent to and within the grounds of state institutions, public junior colleges, farmers' markets and wayside parks or state park roads, upon request of proper authorities and with the approval of the road department.

(2) When funds are needed for welcome stations, the cost of such improvements shall be budgeted by the Florida development commission and be subject to legislative approval and appropriation from the proper fund.

(3) Such improvements as provided in (2) shall be made by the department, or pursuant to contract under its supervision, at the expense of the Florida development commission on the basis of the cost of such improvements.

History.—§140, ch. 29965, 1955; (1) §1, ch 63-385.
Note.—Similar provisions in former §341.72.

339.10 Confirming advances of first gas tax funds to counties; authorizing advances in the future.—

(1) The action of the board in making advances of first gas tax funds to certain of the counties which were financially unable to supply the necessary funds for the acquisition of state road rights of way and for the construction of sections of state roads in the county to be repaid from future gasoline tax surpluses accruing to such counties, be and the same is hereby confirmed and approved.

(2) The board whenever it deems it advisable and in the best interest of the state because of the financial inability of a county to provide the necessary funds or in order to anticipate future surplus gasoline tax funds accruing to the county, may make advances of first gas tax funds to a county for the acquisition of rights of way for roads of the state primary highway system therein or for the construction of road projects of the state primary highway system therein to be repaid out of any future accruals to the county of gasoline tax funds to be expended therein by the county or by the department.

(3) Any such advance shall be made the subject of a written agreement between the department and the commissioners, and a copy thereof shall be furnished the state comptroller and the state board of administration. The agreement shall provide that all right of way acquisitions by the county shall be under the supervision of the state road department and the advanced funds shall be paid directly for right of way parcels purchased or condemned upon requisitions of the state road department, which are audited and approved by the state comptroller and for which state warrants are drawn by the state comptroller, countersigned by the governor. All construction fund advances shall be expended under construction contracts let and supervised by the department. Such agreement shall provide for the repayment of such advance out of any gasoline taxes accruing to the county or to the department for expenditure therein.

(4) The board shall adopt and promulgate appropriate rules and regulations to effectuate the provisions of this section.

(5) This section shall be cumulative and is not intended to repeal any existing authority conferred upon the department and the sev-

eral counties with reference to the subjects dealt with herein.

History.—§141 ch. 29965, 1955; (1), (2) §2, ch. 61-119.
Note.—Similar provisions in former §341.78.
cf.—§339.08 Use of gas tax revenues by department.

339.11 Department authorized to charge off old accounts.—

(1) The department is authorized, in its discretion, to cancel and charge off any claim or account which appears on the records of the department against any county or municipality if such claim or account arose and is claimed to have become due prior to January 1, 1941.

(2) The department shall show on its official minutes the disposition made of any such claim or account, and such action by the department shall be final and effect a complete discharge and cancellation of any such claim.

History.—§142, ch. 29965, 1955.
Note.—Similar provisions in former §341.71.

339.12 Contributions by state and county units; bond transfers; federal aid.—

(1) Any department of this state, and any county, or any special road and bridge district in this state, may aid in the construction or maintenance of any state road, by contributions to the department of cash, bonds, time warrants, or other things of value in the construction or maintenance of roads.

(2) The department may accept and receive such aid and any such contributions and dispose and use the same in the construction or maintenance of such road.

(3) In case any such aid or contribution is given or made by any county or special road and bridge district, such aid or contribution shall be used by the department only in the construction or maintenance of such state roads in the county or special road and bridge district as shall be designated and agreed upon by the department and the officials of such county or special road and bridge district.

(4) Upon accepting the contribution of road bonds, the department shall enter into agreements with the commissioners of the county in which such road bonds have been voted by the people, for the construction of the roads and bridges in accordance with specifications agreed upon between the department and the commissioners of such county. The department shall receive from such county in consideration thereof, the net proceeds of the sale of the bonds so voted, after deducting expenses and commission on the sale and administration of such bonds. The department in no instance is to receive from such county an amount in excess of the actual cost of the construction of such roads.

(5) In case any county or special road and bridge district shall transfer and deliver to the department, any county or special road and bridge district road bonds or time warrants under the terms herein provided, such transfer and delivery shall be taken and construed as a sale and delivery of such bonds or time warrants at par or face value thereof.

(a) The department shall agree in writing to expend as much or more than the par or face value of such bonds or time warrants in the construction or maintenance of state roads in the county or special road and bridge district as shall be designated and agreed upon by the department and the officials of the county or special road and bridge district.

(b) The terms herein provided shall apply in any case where such bonds or time warrants have been voted or authorized to be issued.

(6) Trustees, who shall be qualified to act in behalf of any county or special road and bridge district, when such bond issue is transferred to the department, under the provisions of this law, shall be entitled to receive the same compensation, payable in the same manner, as if the bond issue had been sold for cash and the proceeds thereof disbursed by such trustees.

(7) The provisions of this law shall not be construed to require either the commissioners of any county, or the officials of any special road and bridge district, or the department to enter into an agreement for the transfer of such bonds or time warrants as are mentioned herein, but such transfer and assignment shall at all times be within the discretion of the department and such county and district officials.

(8) The department may propose and obtain the designation of any of the said roads and bridges so to be constructed, as federal aid projects, and obtain from the United States payment on account of such construction in accordance with existing regulations.

(9) The federal aid money obtained under subsection (8) of this section shall first be applied to the completion of the roads for which said bonds have been voted, if the money from the bonds is not sufficient therefor, and any residue shall be expended in the construction of any state road that the department and the commissioners of the county may agree upon.

History.—§143, ch. 29965, 1955.
Note.—Similar provisions in former §§341.52-341.58.

339.24 Beautification of roads by department, counties, and cities; expenditure; wayside parks.—

(1) The department, the commissioners of the several counties, and all municipal corporations may include as a part of their programs of road and street construction, and maintenance, the conservation of the natural roadside growths and scenery, and the beautification of roads or streets by the restoration, planting, replanting, seeding and reseeding, of grasses, plants, shrubs, root-stocks or trees, and the maintenance of same along the roadside of all roads or streets.

(2) Expenditures for such purposes shall be considered proper expenditures for highway construction or maintenance.

(3) The department is authorized to expend first gas tax funds to acquire, by donation or purchase, and to lay out, develop, improve, operate and maintain appropriate roadside or wayside parks at sites selected by the board.

History.—§155, ch. 29965, 1955; §2, ch. 61-119.
Note.—Similar provisions in former §§342.01, 343.02.
cf.—§335.16 Wayside parks and access roads to public waters.

339.25 Trees and shrubbery; removal or damage; penalty.—

(1) The removal or cutting or marring or defacing or destruction of any trees or shrubbery which are either planted or natural growths within the rights of way of roads of the state highway or state park road system, and which are maintained by the department as a part of its highway beautification program is prohibited.

(2) It is unlawful for any person to remove, cut, mar, deface or destroy any of said trees or shrubbery without first securing the written permission of the department.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500.00 or by imprisonment in the county jail for a period not to exceed 6 months or by both such fine and imprisonment.

History.—§156, ch. 29965, 1955.
Note.—Similar provisions in former §341.76.
cf.—§861.11 Penalty for cutting or destroying shade trees along public roads.

339.27 Fishing from state road bridges; walkways authorized.—

(1) The board is authorized to investigate and determine whether it is detrimental to traffic safety and dangerous to human life for any person to fish from any state road bridge. When the board, after due investigation, so determines that it is dangerous for persons to fish from any such bridge, its determination shall be reflected in its official minutes and the department shall thereupon post appropriate signs on such bridge stating that fishing therefrom is prohibited.

(2) It shall be a misdemeanor for any person to fish from any bridge which the board has determined is dangerous to fish therefrom and has posted signs as provided in subsection (1) of this section.

(3) All enforcement officers, including Florida highway patrol officers, shall enforce the provisions of this section.

(4) This section shall be cumulative and is not intended to repeal special laws making it unlawful to fish from any bridge.

(5) Any state, county or municipal agency or authority charged with the maintenance and construction of public roads and bridges is authorized to construct and maintain pedestrian walkways, fishing walks or fishing bays on public bridges under its jurisdiction whenever it is deemed necessary to do so in the interest of safety.

History.—§158, ch. 29965, 1955.
Note.—Similar provisions in former §§341.77 and 348.10.

339.28 Injuring boundary marks, guideposts, etc.—Whoever wilfully and maliciously damages, removes or destroys any milestone, mileboard or guideboard erected upon a highway or other public way, or willfully and maliciously defaces or alters the inscription on any such marker, or extinguishes any lamp, or breaks or removes any lamp or lamp post or railing or post erected on any bridge, sidewalk, street, or highway, shall be punished by imprisonment not exceeding 6 months, or by fine not exceeding $50.00.

History.—§159, ch. 29965, 1955.
cf.—§822.11 Injuring boundary marks, guideposts, etc.

339.29 Dumping trash on public highways; penalty.—

(1) It is unlawful for any person to dump or cause to be dumped or place or cause to be placed any refuse or rubbish of any kind whatsoever or to leave the carcass of any fish or other form of marine life along the right-of-way of the paved public highways and roads of the state.

(2) Any person found guilty of violating this section shall be fined not more than $100.00 or be imprisoned not more than 30 days.

History.—§160, ch. 29965, 1955; (1) §1, ch. 61-304.
cf.—§861.10 Dumping trash on public highways.
§821.36 Dumping garbage, refuse, rubbish, etc., penalty.

339.30 Unlawful use of limited access facilities; penalties.—

(1) On limited access facilities it shall be unlawful for any person:

(a) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line;

(b) To make a left turn, a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line;

(c) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line;

(d) To drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the limited access facility proper.

(e) To go on foot upon the expressway or ramps connecting an expressway to any other street or highway; provided that this paragraph shall not apply to maintenance personnel of the state road department or any governmental subdivision.

(f) To operate upon an expressway any vehicle which by its design or condition is incompatible with the safe and expedient movement of traffic, including but not limited to bicycles, motor-driven cycles, or animal-drawn vehicles. It is unlawful for any person to ride any horse, mule, or other animal upon the expressway or its shoulders.

(g) To park, stand, or stop a vehicle on the paved roadway of the expressway or on the paved portion of any ramp connecting such expressway to any other street or highway, or upon the shoulder of any expressway; provided that disabled vehicles, and vehicles in improper condition to be driven due to mechanical failure or accident may be parked on such shoulders for a period not to exceed 6 hours. This section shall not be applicable to vehicles stopping to render aid to injured persons, assistance to disabled vehicles in obedience to

the directions of law officers, or in compliance with applicable traffic laws.

(h) To tow disabled vehicles on any expressway; provided that any vehicle disabled on an expressway may be towed to the nearest exit ramp and then to the surfaced streets.

(2) For purposes of this section, motor-driven cycles includes every motorcycle, motor scooter or motor bicycle capable of producing not more than five brake horsepower.

(3) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon arrest and conviction therefor, shall be punished by a fine of not less than $5.00 nor more than $100.00 or by imprisonment in the city or county jail for not more than 30 days, or by both fine and imprisonment.

History.—§161, ch. 29965, 1955; (1)(e)-(h), (2) n. §1, ch. 63-90.
Note.—Similar provisions in former §348.09.

339.31 Obstructing highway.—Whoever obstructs any public road or established highway by fencing across or into the same, or by wilfully causing any other obstruction in or to such road or highway, or any part thereof, shall be punished by fine not exceeding $100.00, or by imprisonment for a term not exceeding 60 days, and the judgment of the court shall also be that the obstruction be removed.

History.—§162, ch. 29965, 1955.
cf.—§861.01 Obstructing highways.

339.32 Microfilming of records by department.—The department is authorized to photograph, microphotograph or reproduce on film, whereby each page will be exposed in exact conformity with the original, all its documents, records, maps, data and information of a permanent character, including its personnel records, payrolls, maps, designs and drawings, biennial reports, data of cost and type histories of roads, its data of studies and research, its historical road data, right of way deeds, easements and releases, agreements covering roads and bridges, condemnation judgments, all contracts and agreements extending over a period of years, permits issued utilities and others, agreements with U. S. bureau of public roads, public roads administration, counties, cities and other governmental subdivisions and agencies, road board minute records, fiscal data of a permanent character that should be preserved as records and such other documents, data and records as it may in its discretion select. The department is authorized to destroy any documents after they have been photographed and filed except the original minutes of the meetings of the board and such title deeds, easements, leases and releases relating to the right of way of state roads and other property owned or leased by the board, which it deems should be preserved in original form. Photographs or microphotographs in the form of film or print of any records made in compliance with the provisions of this section shall have the same force and effect as the originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with original photographs or microphotographs.

History.—§163, ch. 29965, 1955.
Note.—Similar provisions in former §341.081(3).

339.33 Road signs may be manufactured at state prison.—All signs used by the department to designate and mark highways and all signs used as warning and traffic signs may be manufactured by the state convicts at the state prison, provided that the cost of manufacturing these signs does not exceed the cost of an outside manufacturer. The department will use these signs upon their being proved to be equal in quality to signs manufactured by outside concerns.

History.—§164, ch. 29965, 1955.
Note.—Similar provisions in former §341.142.

339.34 Copy of laws to be furnished to department.—The secretary of state shall furnish to the board, without charge, a copy of the laws of the state in like manner as said laws are furnished to other state officials.

History.—§165, ch. 29965, 1955.
Note.—Similar provisions in former §341.27.

339.35 Prior contracts validated.—Nothing contained in this law shall affect any contract or instrument validly executed prior to the effective date of this law.

History.—§166, ch. 29965, 1955.

CHAPTER 340

TURNPIKE AUTHORITY

340.01 Short title. — This chapter shall be known and may be cited as Florida turnpike law.

History.—§1, ch. 28128, 1953.

340.02 Purpose.—The purpose of this chapter is to facilitate vehicular traffic, diminish the present handicaps and hazards and promote safety on the congested highways in Florida, and make possible the construction of modern express highways, and to carry out said purpose the Florida state turnpike authority hereinafter created is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined) at the location herein established, and at such other locations as may be hereafter established by law, and to issue turnpike revenue bonds of said authority, payable solely from revenues, to pay the cost of such projects. It is the further purpose of this act to prohibit the construction, maintenance, repair or operation of any toll turnpike project by any subdivision of the government of the state, subsequent to the enactment of this law, except upon specific authorization by the legislature.

History.—§2, ch. 28128, 1953.

340.03 Turnpike routes; study of proposed projects. —

(1) The legislature hereby approves as the general route for a turnpike project, a route extending from a point in Dade county or Broward county in a general northerly direction to a point in Duval county, and any turnpike project or part or parts thereof constructed in accordance with said route shall be known as the Sunshine state parkway; provided, however, that unless and until the legislature shall determine otherwise, any other provision of this section to the contrary notwithstanding, the authority herein created is authorized hereby to construct, maintain, repair and operate a turnpike project, and such project is hereby established only at the following location or such part or parts thereof as the authority may determine to be suitable for a project as contemplated by this section: Beginning at a point in Dade county or Broward county, and adhering to the aforesaid route, thence in a general northerly direction for a distance not exceeding one hundred and ten miles from the point of beginning; provided further, however, that the exact route and termini shall be determined as provided by §340.06(6). The general northerly direction in this section referred to shall mean either an east coast or central Florida route, and thorough study shall be made of both routes.

(2) The authority is hereby authorized and empowered to construct, maintain, repair and operate an additional turnpike project and such project is hereby established at the following location or such part or parts thereof as the authority may determine to be suitable for a project as contemplated by this section: Beginning at a point in St. Lucie county, thence in a generally northwesterly direction to a point in Lake county, thence in a generally northerly direction through Marion county, to a point in Duval county in the vicinity of the metropolitan area of the city of Jacksonville; provided however, that the exact route and termini shall be as provided in §340.06(6).

(3) The authority herein created is hereby directed to immediately obtain engineering and traffic and other expert studies of the costs, feasibility and practicability of a turnpike project from a point in Hillsborough or Pinellas county, extending in a general northeasterly direction connecting with the additional turn-

pike project authorized by subsection (2) of this section; and if found economically feasible shall construct, maintain, repair and operate such turnpike project at the location herein established; provided, however, that the exact route and termini shall be determined as provided by §340.06(6).

(4) The authority herein created is authorized hereby to obtain engineering and traffic and other expert studies for the location and of the costs, feasibility and practicability of a turnpike project from a point on the additional turnpike project authorized by subsection (2) of this section northwesterly or westerly to a point in Escambia county, or to a point of juncture at the boundary between the states of Alabama and Florida with any turnpike projected, authorized or constructed in the state of Alabama; such studies to be financed under the provisions of §340.27, but only out of funds reimbursed to the state road department by the Florida state turnpike authority; and if found economically feasible shall construct, maintain, repair and operate such turnpike project at the location herein established; provided, however, that the exact route and termini shall be determined as provided by §340.06(6).

History.—§3, ch. 28128, 1953; §1, ch. 29634, 1955.

340.031 Proposed new turnpike project. — The Florida state turnpike authority is hereby authorized and empowered to obtain engineering and traffic and other expert studies for the location and costs, feasibility and practicability of a turnpike project at the following location or such part or parts thereof as the authority may determine to be suitable for a project as contemplated by this section: Beginning at a point in Hillsborough county, thence in a generally southerly direction to a point in Manatee county, thence in a generally southerly direction to a point in Sarasota county, thence in a generally southerly direction to a point in Charlotte county, thence generally in a southeasterly direction to a point in Lee county, thence in a southeasterly direction to a point in Collier county, thence in a southeasterly direction to a point in Dade county; and if found economically feasible shall construct, maintain, repair and operate such turnpike project or part or parts thereof as the authority may determine to be feasible and suitable at the location herein established, provided, however, the exact route and termini shall be as provided in §340.06 (6).

History.—§1, ch. 61-220.

340.04 Definitions.—As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) Authority shall mean the Florida state turnpike authority created by §340.05, or, if said authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this chapter to the authority shall be given by law.

(2) (a) Project or turnpike project shall mean any limited access express highway constructed or to be constructed under the provisions of this chapter, at the location herein established, or at such other locations as may be hereafter established by law, having center divisions, ample shoulder widths, long-sight distances, lanes in each direction and grade separations at intersections with public roads and at intersections with all railroads, and shall include, but not be limited to all bridges, tunnels, overpasses, underpasses, traffic circles, interchanges, feeder roads, landscaping, entrance plazas, approaches, toll houses, service areas, communication facilities, such facilities for motor fuel and food as the authority may deem necessary or desirable, and administration, storage and other buildings which the authority may deem necessary for the operation of such project, together with all property, rights, easements and interests which may be acquired by the authority for the construction or the operation of such project.

(b) The authority is specifically prohibited from granting concessions or selling any services or products along the project covered by this act or subsequent projects except the sale of motor fuel with attendant towing and maintenance facilities and the sale of food with attendant nonalcoholic beverages.

(3) (a) Cost as applied to a turnpike project shall embrace the cost of construction, the cost of acquisition of all land, rights of way, property, rights, easements and interests acquired by the authority for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if considered advisable by the authority, for one year after completion of construction, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expenses as may be necessary or incident to the construction of a project, the financing of such construction and the placing of the project in operation.

(b) Any obligation or expense incurred by the state road department prior or subsequent to June 11, 1953, for traffic surveys, borings, surveys, preparation of plans and specifications, and other engineering services in connection with the determination as to whether or not a turnpike project should be constructed in Florida, shall be regarded as a part of the cost of the project authorized by §340.03, and shall be reimbursed to said state road department out of the proceeds of turnpike revenue bonds hereinafter authorized.

(4) Owner shall include all individuals, copartnerships, associations or corporation, and all counties, political subdivisions, municipalities and all public agencies and officers of the state having any title or interest in any

property, rights, easements and interests authorized to be acquired by this chapter.

(5) Bonds or revenue bonds shall mean bonds of the authority authorized under the provisions of this chapter.

(6) Feeder road shall mean any road which in the opinion of the authority is necessary to create or facilitate access to a project.

(7) Public roads shall include all public highways, roads and streets in the state, whether maintained by the state, county, other political subdivision, city, or town.

(8) Revenues shall mean all tolls, charges, rentals, gifts, grants, moneys, and all other funds coming into the possession or under the control of the authority by virtue of the provisions hereof, except the proceeds from the sale of bonds issued under this chapter.

History.—§4, ch. 28128, 1953; (2) §1, ch. 59-69.

340.05 Florida state turnpike authority.—

(1) A state agency to be known as Florida state turnpike authority is hereby created. The authority shall consist of five members, one from each congressional district as defined and limited on June 9, 1937. One of such members shall be a member of the state road department and shall be designated by the governor. The other four members of the authority shall be appointed by the governor, subject to confirmation by the state senate. The members of the authority first appointed shall continue in office for terms expiring January 10, 1954, January 10, 1955, January 10, 1956 and January 10, 1957, respectively, the term of each such member to be designated by the governor, and until their respective successors shall be duly appointed and qualified. The successors of each such appointed member shall be appointed for a term of four years. A person appointed to fill a vacancy shall be appointed to serve only for the unexpired term. Immediately after such appointments, the members of the authority shall enter upon their duties and the discharge of the powers of the authority under this chapter.

(2) The governor shall designate one of the appointed members as chairman, and the chairman so designated shall serve as such at the pleasure of the governor and until his successor has been designated. The chairman shall be the chief executive officer of the authority, shall be primarily responsible for the discharge of the administrative functions of the authority, and shall be paid a salary of twelve thousand dollars per annum. The other members shall serve as members of the authority without compensation; provided, that each member of the authority shall be reimbursed for traveling expenses incurred in the performance of his duties as provided in §112.061.

(3) The members of the authority shall elect a vice-chairman, and shall also elect a secretary-treasurer who need not be a member of the authority. Three members of the authority shall constitute a quorum who, for all purposes, must act unanimously. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all rights and perform all duties of the authority.

(4) Before the issuance of any turnpike revenue bonds under the provisions of this act, each appointed member of the authority shall give a surety bond in the sum of twenty-five thousand dollars and the secretary-treasurer shall give a surety bond in the sum of fifty thousand dollars, each such surety bond to be conditioned upon the faithful performance of the duties of their office or employment, to be executed by a surety company authorized to transact business in this state, and to be payable to the governor and his successors in office, and to be approved by the attorney general.

(5) The authority is hereby declared to be a body corporate and politic, and shall be regarded as performing an essential governmental function in carrying out its corporate purpose and in exercising the powers granted by this chapter.

History.—§5, ch. 28128, 1953; (2) §1, ch. 63-257 and §12, ch. 63-400.

340.06 General powers.—The authority shall have the following powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal;

(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name;

(5) To construct, maintain, repair and operate turnpike projects;

(6) To determine the exact route and exact termini of turnpike projects;

(7) To issue turnpike revenue bonds of the authority, payable solely from revenues, and to refund its bonds, as provided in this chapter;

(8) To fix and revise from time to time and charge and collect tolls or other charges for transit over or use of any project;

(9) To establish rules and regulations for the use of any project;

(10) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter;

(11) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land and other property, which it may determine is reasonably necessary for any project or for the relocation or reconstruction of any public road by the authority under the provisions of this chapter or for the construction of any feeder road as defined herein, and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, roads or parkways, owned by or in which any county, political subdivision, city, town, village, public agency or officer of the

state has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect turnpike projects.

(12) To sell, exchange, or otherwise dispose of any real property not necessary for its corporate purpose or whenever the authority shall determine that it is in the best interest of the authority;

(13) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. When the cost under such contract or agreement, other than compensation for personal services, involves an expenditure of more than fifteen hundred dollars the authority shall make a written contract with the lowest and best bidder after advertisement for not less than two consecutive weeks in a newspaper of general circulation and in such other publications as the authority may determine. Such notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The authority may reject any and all bids. A bond with good and sufficient surety as shall be approved by the authority, shall be required of all contractors in an amount equal to one hundred per cent of the contract price, conditioned upon the faithful performance of the contract;

(14) To locate and designate, and to establish, limit and control such points of ingress to and egress from each project as may be necessary or desirable in the judgment of the authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(15) To construct, maintain, repair and operate any feeder road which in the opinion of the authority will increase the use of a project or projects, to take over for maintenance, repair and operation any existing public road as a feeder road, and to realign any such existing public road and build additional sections or road over new re-alignment in connection with such existing public road;

(16) To receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any project, and to receive and accept aid or contributions from any source, of either money, property or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made; providing, however, that no federal funds now received by the state may be diverted to or received or accepted by the authority.

(17) To employ a general counsel, such engineers, full-time salaried attorneys, nationally recognized bond counsel, accountants, construction and financial experts, superintendents, managers and other employees and agents as the authority deems advisable and as may be necessary in its judgment and to fix their compensation.

(18) To do all acts and things necessary or convenient to carry out the powers and duties expressly granted in this chapter.

History.—§6, ch. 28128, 1953; (13), (17) §1, ch. 61-250.

340.07 Incidental powers.—

(1) The authority shall have the power to construct and reconstruct traffic circles, interchanges and grade separations at intersection of any project with public roads, grade separations at intersections with railroads, and to change and adjust the lines and grades of such public roads so as to accommodate the same to the design of such grade separation. The cost of such construction and any damage incurred in changing and adjusting the lines and grades of such roads shall be ascertained and paid by the authority as a part of the cost of such project. The authority shall not interrupt the flow of traffic on any established state highway; and any approaches, underpasses or overpasses necessary to avoid the interruption of the flow of such traffic shall be constructed at the expense of the authority.

(2) If the authority shall find it necessary in connection with any project to change the location of any portion of any public road, it shall cause the same to be reconstructed at such location as the authority shall deem most favorable and of substantially the same type and in as good condition as the original road. The cost of such reconstruction and any damage incurred in changing the location of any such road shall be ascertained and paid by the authority as a part of the cost of such project;

(3) If the discontinuance or vacation of any public road is required by the construction of any project, such discontinuance or vacation may be effected on application of the authority in the manner now provided by the applicable statutes of the state and where such statutes provide for damage, any damages awarded on account thereof shall be paid by the authority as a part of the cost of such project; provided, that where vacation only is desired of any place used for travel, or portion thereof, as provided by §125.33, the board of county commissioners, upon request of the authority, shall have the same power thereunder as if such request had been made by the United States government;

(4) The authority and its authorized agents and employees shall also have the power to enter upon any lands, waters and premises in

the state for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purpose of this chapter, and such entry shall not be deemed a trespass, nor shall such entry for such purpose be deemed an entry under any eminent domain proceedings which may be then pending. The authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as result of such activities;

(5) The authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, (herein called public utility facilities) of any public utility in, on, along, over or under any project. Whenever the authority shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over or under any project should be relocated in such project, or should be removed from such project, the public utility owning or operating such facility shall relocate or remove the same in accordance with the order of the authority provided, that the cost and expense of such relocation or removal, including the cost of installing such facilities in a new location, or new locations, and the cost of any lands, or any rights or interest in lands, or any other rights acquired to accomplish such relocation or removal, shall be ascertained and paid by the authority as a part of the cost of such project, excepting, however, cases in which such public utility facilities are located within the right of way of existing public roads being constructed, reconstructed, improved or which will become a part of any project under the provisions of this act, provided, however, that the above exception shall not apply to public utility facilities owned by a city, county or subdivision thereof. Providing that no rural electric cooperative or any communications company or any private or public utility shall be required to pay any of the costs and expenses of removing or relocating any facilities or installations belonging to any rural electric cooperative or communications company or private or public utility from or on any rights of way provided for in this chapter, and the authority created by this law shall relocate or remove same and shall pay the costs and expenses of relocating or removing same. In case of any such relocation or removal of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

(6) The turnpike authority shall construct or provide underpasses or overpasses for the passage of livestock and vehicles under said turnpike at such intervals as it may deem necessary.

History.—§7, ch. 28128, 1953.

340.08 Cooperation of counties, etc., with authority.—All counties, political subdivisions, cities, towns, villages, and all public agencies and officers of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the authority, upon its request and upon such terms and conditions as the authority and the proper officials of such counties, political subdivisions, cities, towns, villages, and public agencies or officers may agree upon as reasonable and fair, and without the necessity for any advertisement, order of court or other action or formality other than the regular and formal action of the officials concerned and the execution of the proper instrument, any real property which may be necessary or convenient to the effectuation of the purpose of this chapter, including real property already devoted to public use.

History.—§8, ch. 28128, 1953.

340.09 Consent of state to use of its land.—The state hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the authority to be necessary or proper for the construction or operation of any turnpike project.

History.—§9, ch. 28128, 1953.

340.10 Eminent domain proceedings.—

(1) Upon the exercise of the power of eminent domain by the authority, which power is hereby granted the authority, eminent domain proceedings may be instituted and conducted in the name of the authority and the procedure shall be the same as is prescribed by chapter 73.

(2) In any such proceeding instituted by the authority, the authority may file in the cause with its petition, or at any time before judgment, a declaration of taking, signed by its duly authorized agent or attorney, declaring that said lands are thereby taken for the use of the authority, and thereafter the provision of §§74.01-74.12 and 74.14 shall be applicable to said cause in the same manner and to the same extent as said sections would apply and govern if such proceeding had been instituted in the name of the state road department; provided that in any proceeding authorized by this chapter, at the time of entry of the order fixing the amount of the deposit to be made and fixing the time within which, and the terms upon which, the parties in possession shall be required to surrender possession to the petitioner, the court shall by order set said cause for trial and try said cause not later than ninety days after the return date provided in §73.04.

(3) Nothing contained in this law shall be construed to authorize the authority to acquire state owned property by the exercise of the power of eminent domain.

History.—§10, ch. 28128, 1953.

340.11 Taking of public road for feeder road.—Before taking over any existing public road for maintenance, repair and operation as a feeder road, the authority shall obtain the consent of any officials then exercising jurisdiction over said road, which are hereby authorized to give such consent by resolution. Each feeder road or portion thereof acquired, constructed, or taken over under this section for maintenance, repair and operation, in connection with a project by the authority shall for all purposes of this act be deemed to constitute a part of the project, except that no toll shall be charged for transit between points on such feeder road.

History.—§11, ch. 28128, 1953.

340.12 Revenues.—

(1) The authority is hereby empowered to fix, revise, charge and collect tolls and charges for the use of each project and the different parts or sections thereof, to contract with any person, partnership, association or corporation desiring the use of any part thereof for the purpose of providing any of the facilities comprehended in the term turnpike project as defined herein, when, in the opinion of the authority, such facilities are necessary or desirable, and to fix the terms, conditions, rates and charges for use; provided, that facilities for motor fuel and food shall be publicly offered for the operation thereof under rules and regulations to be established by the authority. Such tolls shall not be subject to supervision or regulation by any other commission, board or agency of the state.

(2) To afford users of any turnpike project a reasonable choice of motor fuels of different brands, each gasoline service station or site therefor shall be separately offered for lease upon sealed bids for private operation and, after at least four weeks notice of the offer has been published in a newspaper having general circulation in the state, each such lease shall be awarded to the highest responsible bidder therefor, who may provide for the operation of the service station by a third person, but no person shall be awarded or have the use of, nor shall motor fuel identified by the trademarks, trade names, or brands of any one supplier, distributor, or retailer of such fuel be sold at,

(a) Consecutive service stations along one side of the turnpike, or

(b) More than one service station if they constitute more than twenty per cent of the service stations on the turnpike project.

(3) Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls on each turnpike project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenue from such turnpike project to pay the cost of maintaining, repairing and operating such turnpike project and the principal of and the interest on such bonds as the same shall become due and payable, and to create reserve for such purposes. The tolls and all other revenues derived from each turnpike project or sections thereof in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of this act and such regulations as the resolution authorizing the issuance of such bonds or such trust agreement may provide. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

History.—§12, ch. 28128, 1953.

340.121 Payment of toll on toll facilities required; exemptions.—No persons except employees of the agency operating the toll project when using the toll facility on official state business, state military personnel as defined in §347.19 and persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, shall be permitted to use any toll facility under lease agreement with or operated by the state road department without payment of tolls; and failure to pay the prescribed toll shall be considered a misdemeanor punishable as are other misdemeanors.

History.—§1, ch. 59-70.

340.13 Bonds not debt or pledge of credit of state. — Turnpike revenue bonds issued under the provisions of this chapter shall not be deemed to be a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable exclusively from the fund pledged for their payment or authorized herein. All such bonds shall contain a statement on their face that the state is not obligated to pay the same or the interest thereon and that the faith and credit of the state is not pledged to

the payment of the principal or interest of such bonds. The issuance of turnpike revenue bonds under the provisions of this chapter shall not, directly or indirectly or contingently, obligate the state to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. State funds shall not be used, appropriated or expended to construct, reconstruct, maintain, service, repair, purchase or lease any toll road authorized hereunder or to pay the principal or interest of any revenue certificates or other evidences of indebtedness issued for any such purpose, and the legislature does herewith determine that any such use of state funds would violate the constitution of the state and all such bonds shall contain a statement on their face to this effect.

History.—§13, ch. 28128, 1953.

340.14 Pledge not to restrict certain rights of authority.—The state does pledge to and agree with the holders of the bonds issued pursuant to this chapter, that the state will not limit or restrict the rights hereby vested in the authority to construct, reconstruct, maintain and operate any project as defined in this law or to establish and collect such tolls or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this act or in any way impair the rights or remedies of the holders of such bonds until the bonds, together with interest thereon, are fully paid and discharged.

History.—§14, ch. 28128, 1953.

340.15 Turnpike revenue bonds.—

(1) The authority is hereby authorized to provide for the issuance at one time or from time to time, of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per cent per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. The bonds shall be signed by the chairman of the authority or shall bear his facsimile signature, and the official seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the authority. In case any officer or employee whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer or employee before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office or been employed until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all of the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The authority may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this act, provided, however, if said bonds are sold for less than par, the total amount of the discount shall be added to the total amount of interest to be paid over the life of the certificates at the rate of interest at which said certificates are to be sold and the total thereof shall be considered as interest and the interest actually to be paid by virtue of any discount shall then be computed and said bonds shall not be sold if the interest to be paid plus the discount exceeds five per cent.

(2) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued (subject to the power to invest and reinvest trust funds as provided by §340.18), and shall be disbursed and used as provided by this act and in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same.

(3) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(4) Bonds issued under the provisions of this chapter shall not be subject to the consent or approval of any other state board, commission or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

History.—§15, ch. 28128, 1953.

340.16 Trust agreement.—In the discretion of the authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage a turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of a turnpike project or projects in connection with which such bonds shall have been authorized, the rates of toll to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of the operation of the turnpike project or projects.

History.—§16, ch. 28128, 1953.

340.17 Refunding bonds.—The authority is hereby authorized to provide for the issuance of turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for the additional purpose of constructing improvements of a turnpike project in connection with which the bonds to be refunded shall have been issued. The authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and paying all or any part of the cost of any additional project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same, shall be governed by the provisions of this chapter in so far as the same may be applicable.

History.—§17, ch. 28128, 1953.

340.18 Trust funds.—

(1) All moneys received by the authority pursuant to this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed trust funds to be held and applied solely as provided in this law. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to the provisions of this chapter and such regulations as such resolution or trust agreement may provide.

(2) When, in the opinion of the authority, all moneys in such trust funds are not immediately needed for the purpose for which such funds are provided, the trustee of such funds, upon resolution of the authority specifically adopted for such purpose, is hereby authorized and empowered to temporarily invest and reinvest the amount of such funds authorized in such resolution in United States government securities, which said securities, shall be direct obligations of the United States government; provided, that any such investment or reinvestment shall be subject to any pertinent provisions of the bond resolution or trust agreement. It is the intent of the legislature that trust funds not be permitted to remain idle in the hands of the trustee when such funds can be put to use as aforesaid.

History.—§18, ch. 28128, 1953.

340.19 Remedies.—Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the authority or by any officer thereof, including the fixing, charging and collection of tolls.

History.—§19, ch. 28128, 1953.

340.20 Project, property, income and bonds free from taxation.—The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity,

and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the authority will constitute the performance of essential government functions, the authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the authority under the provisions of this chapter or upon the income therefrom, and every project and any property acquired or used by the authority under the provisions of this chapter and the income therefrom, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall be exempt from taxation within the state.

History.—§20, ch. 28128, 1953.

340.21 Bonds eligible for investment.— Bonds issued by the authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the state, counties, other political subdivisions, cities or towns, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

History.—§21, ch. 28128, 1953.

340.22 Maintenance and repair of turnpike project; etc.—

(1) Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the authority. Each such project shall have such force of toll-takers and other operating employees as the authority may in its discretion employ.

(2) All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under this chapter.

History.—§22, ch. 28128, 1953.

340.23 Traffic control.—

(1) The authority is hereby authorized to adopt and promulgate rules and regulations with respect to the use of a project, which rules and regulations shall relate to vehicular speeds, loads and sizes, safety devices, rules of the road and such other matters, including but not limited to the failure or refusal to pay the toll provided for the use of a project, as may be necessary and proper to regulate traffic in the interest of safety, the maximum convenience of the persons using the project, preservation of a project from unwarranted damage and to carry out the purpose of this chapter. Such rules and regulations, shall apply according to their terms to all sections of a project under the jurisdiction of the authority, their feeder roads and structures and other appurtenances. In so far as such rules and regulations may be inconsistent with the provisions of the vehicle and traffic laws of this state, such rules and regulations shall be controlling. Violations of such rules and regulations shall be punishable by a fine of not exceeding $200.00 or by imprisonment not exceeding 90 days. Such rules and regulations shall not take effect until published in a newspaper of general circulation published in Dade county, and such other publications as the authority may determine, and duly filed in the office of the secretary of state.

(2) The Florida highway patrol, its director and patrol officers are hereby vested with the power and charged with the duty to enforce the rules and regulations of the authority. The power and duty so vested and charged shall be performed and exercised as said director and officers perform and exercise their present duties, functions and powers. Expenses incurred by said patrol in carrying out its powers and duties under this chapter may be treated as a part of the cost of the operation of a project or projects and the department of public safety shall be reimbursed by the authority for such expenses.

History.—§23, ch. 28128, 1953.
cf.—§321.02 Traffic control of turnpike.

340.24 Cessation of tolls.—

(1) When all revenue bonds issued under the provisions of this chapter in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, the authority in its discretion may, if such project or projects are then in good condition and repair to the satisfaction of the state road department, transfer such project or projects to the state road department to become part of the state road system to be maintained thereafter by the state road department; provided, that in any event any such project or projects shall remain subject to sufficient tolls to pay the cost of the maintenance, repair and operation thereof.

(2) Provided, however, that the authority may, after said bonds shall have been paid or a sufficient amount for payment set aside as aforesaid, charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this chapter in connection with another turnpike project or projects which may be hereafter established by law, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal and interest on the bonds issued in connection with the first mentioned project shall

have been paid or provision shall have been made for their payment.

(3) In the event another turnpike project or projects shall be hereafter established by law, the authority may, by resolution, combine two or more projects described in such resolution, including the project specifically authorized by §340.03, and the projects so described shall thereafter constitute and be deemed to be one project within the meaning and for all purposes of this chapter.

History.—§24, ch. 28128, 1953.

340.25 Certificated motor carriers.—All motor common carriers and contract carriers that hold certificates of public convenience and necessity authorizing them to operate over the public roads of this state that will parallel a turnpike project or a section thereof on the date that such project is opened to the public for use, are hereby granted the right to operate their vehicles upon and over said turnpike project or such section thereof which parallels such public roads under such certificates upon compliance with the payment of the required tolls; provided, that such carriers shall comply with the provisions of this chapter and any rule and regulation of the authority as to the use of such project, anything in said certificates to the contrary notwithstanding.

History.—§25, ch. 28128, 1953; §24, ch. 57-1.

340.26 Unlawful for members, etc., to be interested in contract, etc.—Any member, agent, or employee of the authority who is interested, either directly or indirectly, in any contract of another with the authority, or in the sale of any property, either real or personal, to the authority, shall be punished by a fine not exceeding $500.00 or by imprisonment not exceeding 1 year.

History.—§26, ch. 28128, 1953.

340.27 Preliminary and other expenses.—

(1) The state road department, upon the request of the authority, is hereby authorized to expend out of any funds available for the purpose such moneys, and to use such of its engineering and other forces, as may be necessary and desirable in the judgment of the department, to enable and accelerate the beginning of the construction of the project authorized by §340.03.

(2) The state road department is hereby authorized to expend out of any funds available for the purpose such moneys as may be necessary for the study of any turnpike project or projects and to use its engineering and other forces, including other consulting engineers and other traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as it may deem expedient.

(3) All obligations and expenses incurred by the state road department under this section shall be paid by said department and charged to the appropriate turnpike project or projects, and the department shall keep proper records and accounts showing each amount so charged. All obligations and expenses so incurred shall be treated as part of the cost of such project or projects and shall be reimbursed to the state road department out of the proceeds of the bonds herein authorized.

History.—§27, ch. 28128, 1953.

340.28 State officers and employees retirement.—The chairman and all employees of the authority who are paid compensation for their services to the authority, excepting persons employed to render special services in consultative capacities on a contract basis, shall be subject and entitled to the provisions of the state officers and employees retirement law.

History.—§28, ch. 28128, 1953.
cf.—Ch. 122 State officers and employees retirement system.

340.29 Annual report; recommendation.—

(1) On or before April 1, in each year, the authority shall make an annual report of its activities for the preceding year to the governor and each such report shall set forth a complete operating and financial statement covering the operations of the authority during the year, and each year that there is a general session of the legislature, a copy of such annual report shall be furnished to the legislature on the first day of such general session.

(2) In not less than sixty days prior to the general session of the legislature in 1955, and each such session thereafter so long as the authority is in existence, the authority shall submit to the governor and the legislature its recommendation as to the feasibility or practicability of constructing an additional turnpike project or projects in the state.

History.—§29, ch. 28128, 1953.

340.30 Audit of books and accounts.—

(1) The authority shall cause an audit of its books and accounts to be made at least once each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operations of a project or projects.

(2) The state auditor shall make an audit of the books and accounts of the authority not less than once each year. The authority is authorized to reimburse the state auditor for the expense of the annual audit.

History.—§30, ch. 28128, 1953; §2, ch. 63-257.

340.31 Shall keep minutes.—The secretary-treasurer shall keep full and correct minutes of the meetings and final actions of the authority, which minutes shall be open to the inspection of the public at all reasonable times.

History.—§31, ch. 28128, 1953.

340.32 Additional method. — The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that

the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds, except as provided in this chapter.

History.—§32, ch. 28128, 1953.

340.33 Chapter liberally construed. — This chapter shall be liberally construed to effect the purposes thereof.

History.—§33, ch. 28128, 1953.

340.34 Advertising.—No fund heretofore or hereafter appropriated to the state development commission or any successor thereto shall be expended for publicizing or advertising any toll turnpike constructed under the provisions of this chapter, as amended. Any incorporated city or town of Florida may maintain signboards along and upon the right of way of any turnpike project constructed hereunder, provided that such signs shall meet specifications as to location, frequency, construction and design as are prescribed by the Florida state turnpike authority. Such signboards shall not advertise any private industry, business, or attraction, but shall advertise only the community or area placing such board upon the turnpike.

History.—§25, ch. 28128, 1953; §24, ch. 57-1.

340.35 Budget to be furnished budget commission.—The authority shall submit its budgets to the state budget commission, as do other state agencies, pursuant to the provisions of chapter 216, or any amendment thereof; provided, that nothing herein shall authorize or permit the state budget commission to take any action in relation to the budgets of the authority contrary to the terms and provisions of any trust heretofore entered into by the authority.

History.—§3, ch. 63-257.

CHAPTER 342

BEAUTIFICATION OF WATERWAYS

342.03 Beautification and improvement of waterways by counties and municipalities; tax.—It is declared to be a legitimate county or municipal purpose for any county or incorporated city or town in the state to improve and beautify waterways, including lakes, rivers, streams, ditches and canals, within such county or municipality, by opening such waterways and by clearing them of logs and other obstructions, including water-hyacinths and other disagreeable and obnoxious vegetation, and, for all or any part of such purpose, any county or incorporated city or town in the state may levy a tax not to exceed one mill on the dollar of the assessed valuation of all property assessed for taxes in such county or incorporated city or town.

History.—§1, ch. 14651, 1931; CGL 1936 Supp. 2011(4).
cf.—§347.01 et seq., Ferries, toll bridges, dams, etc.
§193.32 Annual tax levies; limitations.

342.04 Time warrants.—Any county or incorporated city or town in the state, desiring to carry on all or any part of the work mentioned in §342.03 may issue and sell time warrants not to exceed in amount the sum of fifteen thousand dollars for any county or the sum of five thousand dollars for any incorporated city or town, provided such time warrants shall not exceed fifty per cent of the estimated revenue to be derived from the tax to be levied by virtue of §342.03; and provided further, that such time warrants shall not be sold for less than their par value and shall not draw a rate of interest in excess of six per cent per year; and provided further, that where such time warrants shall come within the purview of §6, Art. IX of the state constitution, the said time warrants shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such county or city or town, shall participate, which said election shall be called and held, and the result thereof declared and recorded in the manner prescribed by §§100.201-100.351 and said election shall be subject to all the provisions of said chapter.

History.—§2, ch. 14651, 1931; CGL 1936 Supp. 2011(5); §24, ch. 57-1.
cf.—§100.201 et seq. Bond elections.

342.05 Precautions as to use of poisons.—Any county or incorporated city or town in the state, its agents, servants, employees, and contractors, may use any poisonous substance, chemical, or spray in killing water hyacinths and other disagreeable or obnoxious vegetation in the waterways mentioned in §342.03, provided no such poisonous substance, chemical, or spray shall be used which might injure or destroy fish life or human or other animal life without first taking sufficient precaution to prevent the same.

History.—§3, ch. 14651, 1931; CGL 1936 Supp. 2011(6).

342.06 Contracts and bond of contractor.—Any county or incorporated city or town in the state may contract to have carried on all or any part of the work mentioned in §342.03, provided such contract shall be let in the manner prescribed by law for other work of a public nature. No such contractor shall use any poisonous substance, chemical or spray in any of the waterways mentioned in §342.03 without first entering into a good and sufficient bond to be fixed and approved by the county or municipal authorities conditioned to indemnify any and all persons against any loss or damage for injury to livestock resulting from the use of such poisonous substance, chemical or spray.

History.—§4, ch. 14651, 1931; CGL 1936 Supp. 2011(7); §23, ch. 29615, 1955.

CHAPTER 344

COUNTY ROAD AND BRIDGE INDEBTEDNESS; BOARD OF ADMINISTRATION, ETC.

344.01 Roads, highways and bridges declared beneficial to state.—It is declared by the legislature that all roads, highways and bridges which have been constructed or built prior to June 21, 1929, in whole or in part, from the proceeds of bonds issued by the counties of the state, or from the proceeds of bonds issued by special road and bridge districts under the laws authorizing same, have been and are, and will continue to be beneficial to the state at large, and have contributed substantially to the general welfare, settlement and development of the entire state.

History.—§1, ch. 14486, 1929; CGL 1936 Supp. 2470(1).

344.08 Bonds to remain obligations of issuing unit.—All bonds issued by any county or special road and bridge district, and outstanding on June 21, 1929, and issued for the purpose of obtaining funds to pay for the construction of roads, or roads and bridges, and all refunding bonds which had then been issued by any county or special road and bridge district for the purpose of retiring bonds originally issued for the purpose of constructing roads, or roads and bridges, shall remain obligations of said counties or special road and bridge districts, respectively, and each of said counties or districts shall be legally liable for the full amount of its bonds, so issued by it, outstanding, together with interest thereon until paid.

History.—§8, ch. 14486, 1929; CGL 1936 Supp. 2470(8).

344.11 Records of indebtedness.—The clerk of the circuit court of each county shall be the official custodian of all records pertaining to outstanding indebtedness of the county, and also of all bonded indebtedness of special road and bridge districts, and shall make a complete record of each issue of such bonds outstanding on June 21, 1929, including all county bonds and special road and bridge district bonds. This record shall contain the information with relation to each issue in a well-bound book, which shall be a public record in the office of the clerk of the circuit court.

History.—§11, ch. 14486, 1929; CGL 1936 Supp. 2470(11); §27, ch. 63-572.

344.13 Apportionment of indebtedness.—If any special road and bridge district shall contain lands in more than one county, the amount of the bonded indebtedness of such special road and bridge district shall be, for the purposes of this chapter, apportioned between or among such counties in the proportion that the assessed valuation of the area of each county included within such special road and bridge district shall bear to the total assessed valuation of such special road and bridge district.

History.—§13, ch. 14486, 1929; CGL 1936 Supp. 2470(13); §1, ch. 57-749.

344.17 Depositories and investments.—All moneys received by the treasurer of the state board of administration, a body corporate under §16, Art. IX of the state constitution, shall be deposited by him in a solvent bank or banks, to be approved and accepted for such purposes by the said board. In making such deposits he shall follow the method for the deposit of state funds. Each bank receiving any portion of the said funds shall be required to deposit with the treasurer of said board satisfactory bonds or treasury certificates of the United States, bonds of the several states, special tax school district bonds, bonds of any municipality eligible to secure state deposits as provided by law, bonds of any county or special road and bridge district of this state entitled to participate under the provisions of §16, Art. IX of the state constitution, bonds issued under the provisions of §18, Art. XII, of the state constitution, or bonds, notes or certificates issued by the Florida state improvement commission, or its successor Florida development commission, which contain a pledge of the eighty per cent surplus two cents second gasoline tax accruing under §16, Art. IX of the state constitution, which shall be equal to the amount deposited with said bank. Such security shall be in the possession of the treasurer of said board or the treasurer of said board is hereby authorized to accept in lieu of the actual depositing with him of such security, trust or safekeeping receipts issued by any federal reserve bank, or member bank thereof, or by any bank incorporated under the laws of the United States; provided, however, that the member bank or bank incorporated under the laws of the United States shall have been previously approved and accepted for such purposes by the state board of administration, and provided, further, that said trust or safekeeping receipt shall be in substantially the

same form as that which the state treasurer is authorized to accept in lieu of securities given to cover deposits of state funds.

History.—§17, ch. 14486, 1929; CGL 1936 Supp. 2470(17); §1, ch. 17889, 1937; §2, ch. 20302, 1941; §1, ch. 20946, 1941; §7, ch. 22858, 1945; §2, ch. 57-749.

cf.—§18.10 Deposit of money in banks of state.
§518.09 Housing bonds legal investments and security.

344.20 State of Florida not obligated.—It is not the purpose or intention of this chapter or any part hereof to obligate the state, directly or indirectly or contingently, for the payment of the obligations of any counties or the obligations of any special road and bridge district, or that the state should assume the payment thereof; and this chapter is not to be construed as obligating the state to the holders of said bonds to make any payment of the same, nor shall such holders have any rights to enforce the appropriation of the moneys hereinabove provided for. Appropriations are made specifically for the benefit of the taxpayers and property owners of the state and for the purpose of rendering assistance to the various state agencies which have already performed part of the functions resting upon the state, and this chapter shall be subject to amendment, alteration or repeal at any time.

History.—§20, ch. 14486, 1929; CGL 1936 Supp. 2470(20).

344.21 Certain bond trustees to continue other functions.—In the case of bond trustees, who not only handle the money and funds of such county or district, but who also govern and administer the affairs of their respective county or district, including the issuance and sale of bonds and the building and construction and maintenance of the roads and bridges thereof, then the provisions of this chapter shall apply only to the interest and sinking funds thereof, and such bond trustees shall continue in office and in the performance of their duties in the administration of the affairs and business of such district as may be authorized by law.

History.—§21, ch. 14486, 1929; CGL 1936 Supp. 2470(21).

344.24 Disposition of excess funds in county accounts.—

(1) If in any case in which a levy of ad valorem taxes has been or may hereafter be laid and collected by or for any county or special road and bridge district, or other taxing district in this state, for the servicing of road and bridge bonded indebtedness being administered by the state board of administration, and the proceeds of which have been remitted to the state board of administration, or if on account of profits realized from investments by the state board of administration or its predecessor, the statutory board of administration, or if on account of tax redemption funds collected and remitted to the state board of administration or its predecessor, the statutory board of administration, there has been or shall hereafter be created an amount of funds in excess of the requirements for which such tax levies were or may be laid and upon which such tax redemptions may be based, or of the account for which such profits upon investments have been or may be realized, all such excess funds shall be transferred and applied as follows:

(a) If created for county-wide bonds or obligations, to the credit of the county, and applied by the state board of administration as gasoline and other fuel tax funds are applied, as required by §16, Art. IX of the state constitution.

(b) If created for special road and bridge district or other special taxing district bonds or obligations, to the credit of the interest and sinking funds of the respective districts, and applied to other district bonds or obligations being administered by the state board of administration; provided, that if there are no such other bonds or obligations of districts, then and in that event, such excess funds shall be transferred to the credit of the county in which such district is located, and applied as provided in paragraph (a) of this subsection.

(2) All funds transferred under the provisions of this section shall be under the control and supervision of the state board of administration, as are all other funds made available to and administered by it under §16, Art. IX of the state constitution.

History.—§§1, 2, ch. 21640, 1943.

344.25 Additional powers of state board of administration; judgments.—In addition to the powers conferred upon the state board of administration by §16, Art. IX of the state constitution, said board is hereby granted the power and authority to set up and recognize as a part of the bonded indebtedness of any taxing unit entitled to participate in the funds made available to said board by said §16, Art. IX, the unpaid balance of any valid judgment rendered against such unit prior to January 1, 1943, and to refund or pay the same as in the manner provided for the payment of the obligations described in said §16, Art. IX, said balance to bear interest from the date of such judgments until paid, at the rate of five per cent per annum; provided, however, that the proceeds of ad valorem tax levies, including tax redemption funds, heretofore or hereafter laid for the purpose of paying the principal and/or interest on bonds upon which such judgments were based shall, promptly upon collection, be remitted to the state board of administration, to be applied to the purposes for which the same were levied; and provided, further, that nothing in this section is intended to authorize the recognition of any of such judgments as presently payable obligations entitled to participate out of gasoline or other fuel tax funds being and to be administered by the state board of administration, but only as entitled to participate in the distribution of such funds and to be refunded, refinanced or paid at such time or times and in such manner as said state board of administration may determine in the exercise of its powers under §16, Art. IX of the state constitution; the purpose of this section being to relieve, so far as this legislature may, the taxing units affected of the burdens imposed by said judgments and of the corresponding duty on

the part of such units to levy ad valorem taxes to pay the same, all within the spirit and intent of said §16, Art. IX of the state constitution.

History.—§1, ch. 21641, 1943.

344.26 State board of administration; duties concerning debt service.—

(1) The constitutional state board of administration shall take over the management, control, bond trusteeship, administration, custody and payment of all debt service or other funds or assets now or hereafter available for all bonds or debentures, issued to finance the construction or purchase of bridges or highways which are now or hereafter leased for a term of more than one year or purchased under installment purchase agreements by the state road department from any public body, county, district, municipality, or other public bridge authority. Said state board of administration shall succeed to all the statutory powers of the respective officials of such public bodies, counties, districts, municipalities or other public authorities with regard to said bonds and debentures, including the power to issue refunding bonds for any of such bonds or debentures or interest coupons thereon, except that in case any ad valorem levies are necessary to service any of said bonds containing ad valorem tax pledges, such tax levies shall be made and collected by the taxing officials now authorized by law to levy and collect the same, who shall promptly remit such collections to the state board of administration. Said levies shall be made upon and by direction of appropriate and seasonable resolutions adopted by the state board of administration, setting forth the amounts to be levied and collected and the necessity for same. It shall be the duty of all officials of any such public body, county, district, municipality or other public authority to turn over to said state board of administration within thirty days after May 27, 1943, or within thirty days after the execution hereafter of any such lease or purchase agreement by the state road department, all moneys or other assets applicable to, or available for, the payment of said bonds or debentures, together with all records, books, documents or other papers pertaining to said bonds or debentures. Any funds or other assets which hereafter become applicable to the payment of such bonds or debentures and come into the hands of any such officials shall be immediately remitted to said state board of administration.

(2) The state road department shall pay all rentals or purchase installments for bridges or highways direct to the state board of administration for application by said board as provided under the terms of said leases or purchase agreements.

History.—§§1, 2, ch. 21853, 1943.
cf.—§349.16 Transfer of refunding powers to authority.

344.261 State board of administration; debt service; approval of bonds, etc., and plan for their retirement.—

(1) Before entering into a lease-purchase agreement with any county, road and bridge district or any other agency, covering any road, bridge, ferry or other highway facility or facilities, which agreement pledges rental and purchase payments by the state road department to apply on retirement of the debt incurred or to be incurred for the construction or supplying of such highway facility, and which debt will, in consequence of chapter 21853, laws of Florida, 1943, be administered by the state board of administration, the department shall first secure from the state board of administration a statement approving the legal and fiscal sufficiency of such bonds or debentures and the plan for their retirement.

(2) This section shall be considered as supplementing and cumulative to existing laws and shall be effective as to any agreements entered into after June 9, 1951.

History.—§§1, 2, ch. 26954, 1951.

344.27 State board of administration; investment of sinking funds.—The state board of administration, a body corporate under §16, Art. IX of the state constitution, is hereby authorized to invest any sinking funds administered by it under the provisions of §16, Art. IX of the state constitution or under the provisions of §344.26, in any of the following securities:

(1) Bonds, notes or certificates issued by the United States government.

(2) County road and bridge or special road and bridge district bonds or refunding issues thereof entitled to participate in the distribution of the two cents second gasoline tax under §16, Art. IX of the state constitution.

(3) Bonds, notes or certificates issued by the Florida state improvement commission, or its successor Florida development commission, or refunding issues thereof, which contain a pledge of the eighty per cent surplus two cents second gasoline tax accruing under §16, Art. IX of the state constitution.

(4) Bonds to which the particular sinking funds are applicable.

(5) Bonds issued under the provisions of §18, Art. XII of the state constitution.

(6) Time deposits in banks and trust companies of the state, approved and accepted by the board, and secured as provided in §344.17.

History.—§§1-3, ch. 25361, 1949; §3, ch. 57-749.

344.29 Anticipated surplus gasoline tax; issuance of certificates of indebtedness authorized.—

(1) BY COUNTY.—Any county, by resolution of its board of county commissioners, and upon certification by the state board of administration of adequate anticipated revenue from twenty per cent surplus gasoline tax to accrue to such county under the provisions of §16, Art. IX of the state constitution, may issue and sell interest bearing certificates of indebtedness to be paid from said twenty per cent surplus gasoline tax for the sole purpose of acquiring right of way or constructing state or county roads within such county, or for refunding any such certificates theretofore issued. Such certificates shall mature within thirty years from date of issue but not later than the year 1992, shall bear interest at not more than six per

cent, and shall be construed not as a general county obligation but merely as an obligation of the board of county commissioners in its representative capacity and secured only by the specified twenty per cent surplus gasoline tax revenue. When approved as to fiscal sufficiency by the state board of administration and as to legal adequacy by the attorney general of the state, such certificates shall have all the qualities of negotiable instruments under the statutes of this state and the law merchant, shall be acceptable as collateral to secure state or county fund deposits, and be eligible as investments for such funds, sinking funds and public trust funds.

The proceeds of such certificates shall constitute a trust fund to be used solely for the purpose or purposes described therein but may, at the discretion of the board of county commissioners of such county, be transferred to and used by the state road department in carrying out such purpose or purposes. Any balance of such proceeds remaining after fulfillment of the purpose for which the certificates were issued shall be deposited in the sinking fund established for their payment.

(2) BY STATE ROAD DEPARTMENT.—The state road department, by resolution of its board, and upon certification by the state board of administration of adequate anticipated eighty per cent surplus gasoline tax revenue to accrue to the department for use in any county in the state under provisions of §16, Art. IX of the state constitution, may issue and sell interest bearing certificates of indebtedness payable from said eighty per cent surplus gasoline tax, for the purpose of financing the acquisition of right of way or for the construction or reconstruction of roads and bridges on the state road system in the county where such eighty per cent surplus gasoline tax accrues, or for the purpose of refunding certificates theretofore issued, but only upon resolution of the board of county commissioners of said county. Such certificates shall mature within thirty years from the date of issue, but not later than the year 1992, shall bear interest at not more than six per cent, and shall not be construed as an obligation of the state or of any political subdivision thereof, but merely as an obligation of the department in its representative capacity, and payable solely from the specified eighty per cent surplus gasoline tax. When approved as to fiscal sufficiency by the state board of administration and as to legal adequacy by the attorney general of the state, the certificates shall have all the qualities of negotiable instruments under the laws of the state or of the law merchant, shall be acceptable as collateral to secure deposits of state and county funds, and shall be eligible as investments for any state, county, municipal or other public trust funds.

The department shall adopt policies and procedures and enter into such covenants with the certificate holders regarding the terms and conditions of such certificates covering the issuance, sale, exchange, refunding, redemption features, execution and so forth, as are in accord with sound fiscal principles and as are not inconsistent with the provisions of this section; provided, however, that the sale thereof to the general public shall be made only on the basis of duly advertised public competitive bidding, but that such certificates may be sold by negotiation to any federal, state or county agency having public funds at its disposal for investment. Said certificates shall constitute an irrevocable agreement between the department and the holders of such certificates.

The state board of administration is hereby authorized, upon request by resolution of the state road department, to act as its agent in the issuance, sale, management, payment and refunding of such certificates of indebtedness.

The proceeds of such certificates of indebtedness shall constitute a trust fund to be kept separate from other funds of the department and shall be used only for the purpose or purposes described in the face of such certificate. Any balance of such trust fund remaining after the purposes described in the certificate have been carried out shall be deposited in the sinking fund set up to retire such certificates.

(3) This section shall be considered as alternate and cumulative to any other law regarding the use of surplus gasoline tax funds accruing under the provisions of §16, Art. IX of the state constitution.

History.—§§1, 2, ch. 59-225; (1) §1, ch. 63-473.

CHAPTER 347

FERRIES, TOLL BRIDGES, DAMS, AND LOG DITCHES

347.01 County commissioners may grant license.—The county commissioners of the several counties may grant leave to applicants, upon the conditions provided in this chapter, to establish ferries, toll bridges, mills and dams, and log ditches, upon and across the rivers and streams of their respective counties, which license shall continue in force for a time to be specified therein by said board not exceeding ten years.

History.—§1, ch. 3300, 1881; RS 637; GS 910; RGS 1692; CGL 2740.

347.02 Notice of application.—Any person desiring the benefits of §347.01 shall advertise in a newspaper published in the county wherein the privilege is to be granted, or if there be no newspaper published in said county, in a newspaper published in the adjoining or nearest county thereto; and shall also post in three conspicuous places in said county notice of his intention to apply to the county commissioners for leave, specifying the object of his application to the commissioners aforesaid, which application shall be in writing, particularly describing the river or stream, and locality thereupon, with the width thereof, and the depth of water where he shall desire to erect or establish a mill, dam, bridge, ferry or log ditch as aforesaid.

History.—§2, ch. 3300, 1881; RS 638; GS 911; RGS 1693; CGL 2741.

347.03 Owner of land to have preference for ferry or toll bridge.—No such license to establish a ferry or toll bridge shall be granted to any person other than the owner of the land through which the highway adjoining the ferry or toll bridge shall run, unless such owner shall consent thereto or shall neglect to apply for such license, after notice as aforesaid.

History.—§3, ch. 3039, 1877; RS 639; GS 912; RGS 1694; CGL 2742.

347.04 Commissioners may regulate.—The board of county commissioners, when they shall grant any license to keep a ferry or toll bridge, shall order and direct the rates of ferriage or toll which the person licensed may charge, and may, from time to time thereafter during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry or bridge, which hours shall be at least from daylight till dark, and may direct how long persons desiring to be crossed may be detained.

History.—§2, ch. 3039, 1877; RS 640; GS 913; RGS 1695; CGL 2743.

347.05 Bond.—Every person applying for such license for a ferry or toll bridge, shall, before the same shall be granted, give bond in a sum to be fixed by the county commissioners, not less than two hundred dollars, with such sufficient sureties as the board shall approve, conditioned to faithfully keep such bridge in good repair, or attend such ferry with such and so many safe and convenient boats, and so many men to work the same, together with such sufficient implements therefor, and to perform the duties of such ferry or toll bridge, during the several hours in each day and at such several rates as the said board shall from time to time order and direct, which bond shall be filed with the clerk of said board.

History.—§5, ch. 3039, 1877; RS 641; §5, ch. 5423, 1905; GS 914; RGS 1698; CGL 2749.

347.06 Certificate of license.—Whenever an application is granted under §347.01, the clerk of the board of county commissioners shall issue his certificate under seal, specifying the privileges therein granted, for which he shall receive the fees prescribed by law for like services.

History.—§1, ch. 3300, 1881; RS 642; GS 915; RGS 1699; CGL 2750.

347.07 License on waters between counties.—Whenever the waters over which any toll bridge or ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize the person obtaining the same to transport and pass persons, goods, wares, and merchandise and effects to and from either side of said waters; provided, that the rate of toll be fixed by the county commissioners of each county.

History.—§7, ch. 3039, 1877; RS 643; GS 916; RGS 1700; CGL 2751.

347.08 Toll bridges and causeways; commission to fix rates and regulate operation.—

(1) The public utilities commission of the state may fix and regulate tolls, charges, uses and hours for keeping open for traffic, of any toll bridges or causeways which are now constructed, built, or that may hereafter be constructed or built over and across any river, bay, bayou or other body of water in the state, and make rules and regulations respecting the same; provided, however, that the maximum rates, charges or tolls on any said toll bridge or causeway not exceeding, including the approaches thereto, four and one-half miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; twenty-five cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; seventy-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger, except trucks of two tons factory rated capacity, or more, for which the maximum toll shall be fifty cents per ton; loose driven horses and stock cattle, twenty cents per head; and provided further that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than four and one-half miles and not exceeding six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; one dollar for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger, except trucks of two tons factory rated capacity, or more, for which the maximum toll shall be fifty cents per ton; loose driven horses and stock cattle twenty-five cents per head; and provided further that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges, including the approaches thereto, is more than six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; fifty cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; seventy-five cents for single team and driver and ten cents for each additional passenger; one dollar for double team and driver and ten cents for each additional passenger; one dollar twenty-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger, except trucks of two tons factory rated capacity, or more, for which the maximum toll shall be fifty cents per ton; loose driven horses and stock cattle, twenty-five cents per head.

(2) Provided further that in regulating tolls and charges for the use of such toll bridges or causeways, not exceeding, including the approaches thereto, four and a half miles in length, the public utilities commission shall also fix reasonable rates to be charged;

(a) Buses for the use of such toll bridge or causeway, and

(b) For annual passes, emblems or permits for passenger automobiles and for trucks over such toll bridge or causeway for persons, firms or corporations desiring the right to the unlimited annual use of such toll bridges or causeways. Nothing in this law shall be construed to interfere with the rights of any person entitled to free passage over any bridge or causeway by virtue of any covenant running with the land.

(3) Provided, however, that this section shall have no application to toll bridges that may, after June 6, 1927, have been or be constructed or purchased and operated by any county, or any political subdivision of any county, or any municipality, or to any toll bridge constructed and operated under any franchise or license granted by the county commissioners of any county: or to any toll bridge or causeway that has been or may be constructed by the state, or by any agency, board or commission of the state, created by the legislature and authorized to fix, charge, receive or collect tolls.

History.—§1, ch. 12221, 1927; CGL 2745; §1, ch. 21743, 1943; §1, ch. 24197, 1947; §1, ch. 25024, 1949; (3) §1, ch. 26493, 1951.
cf.—Ch. 350, Florida public utilities commission.

347.09 Driven livestock; excursion rates.— All loose driven horses and stock cattle crossing said bridge shall, at all times, be under full control of proper drivers to prevent stampeding and keeping them within a walk on said bridge, and no lot, at one time driving, shall exceed fifty in number. They shall also be crossed late in the evening or early in the morning at such an hour as shall be prescribed by

the agent or owner of said toll bridge, causeway or bridges, so as not to interfere with the day traffic.

The owner of such toll bridge may establish commutation or excursion rates lower than the regular schedule of prices prescribed in §347.08.

History.—§2, ch. 12221, 1927; CGL 2746.

347.10 Exercise of powers by public utilities commission.—The public utilities commission shall have and exercise all the powers respecting the enforcement of its orders, rules and regulations made under the provisions of §§347.08-347.10 which it has or may by law exercise, for the enforcement of its orders, rules and regulations respecting railroads.

History.—§3, ch. 12221, 1927; CGL 2747.

347.11 Franchise for certain bridges, etc., to be granted by public utilities commission.—

(1) The granting power and control, for the purpose of enfranchising persons, firms and corporations, public and private, to build, construct, establish, operate and maintain bridges, causeways, tunnels, toll highways and ferries upon, over, across, or under all bays, inlets, bayous, lagoons, and sounds, and the beds and bottoms thereof, classifiable as state lands, submerged or otherwise, or over lands or waters where the grantee shall acquire the title or proprietary rights therein by the exercise of the power of eminent domain or otherwise, bordering on and connecting with the Gulf of Mexico, and making up one continuous expanse and body of water or land and water, and lying within the territorial limits of one or more counties of this state, is vested in the public utilities commission of the state, to be exercised upon the terms and conditions hereinafter provided; except none of the provisions of §§347.11-347.18 shall apply to any ferries, toll bridges or tunnels operating or to be operated under, on or above any of the rivers of the state.

(2) Subsection (1) of this section shall not be construed to repeal, amend or modify any of the provisions of §347.08, relating to toll bridges and causeways.

History.—§1, ch. 13884, 1929; CGL 1936 Supp. 2749(1); (1) n. §1, ch. 25145, 1949; (2) n. §1, ch. 25250, §1, ch. 25412, 1949.

347.12 Terms of franchise granted by public utilities commission.—The franchise rights provided for in §347.11 shall be granted, to continue in force for a period of fifty years, and shall be an exclusive franchise over, under or across the body of water covered by said franchise for a distance of three and one-half miles along the shore line of said body of water in each direction from each terminus of the bridge, causeway, tunnel, toll highway or ferry, as the case may be; and any person, firm or corporation which shall be granted a franchise as contemplated in §§347.11-347.18 for either a bridge, causeway, tunnel, toll highway or ferry over, under or across any body of water, as described in said sections, shall be entitled to the exclusive right to a franchise over, under, or across said body of water within the limits above described for any of the other purposes or means of transportation, as described in §347.11 subject only to the power and control of the public utilities commission of the state to determine the necessity and public convenience for the additional means of transportation.

History.—§2, ch. 13884, 1929; §1, ch. 14834, 1931; CGL 1936 Supp. 2749(2).

347.13 Additional rights to franchise holders under former act.—There is granted to and conferred upon all persons to whom franchises were granted under chapter 13884, acts 1929, all of the additional rights, powers and privileges enumerated in §347.12, the same as though the said additional rights, powers and privileges were included in said chapter 13884 and in the franchises heretofore granted thereunder.

History.—§2, ch. 14834, 1931; CGL 1936 Supp. 2749(2).

347.14 Conditions upon which franchise is to issue; regulation by public utilities commission; free passage; eminent domain.—Such franchise rights may be given by said commission after application therefor in writing, upon the following conditions:

(1) If the application relates to navigable water, such applicant must exhibit to the commission with his application, the approval thereof from the department of the federal government exercising the dominant power of the congress of the United States, over the navigable waters of the said United States, and in the absence thereof said application shall not be received nor admitted to file.

(2) The intention to make such application shall be advertised in a newspaper of general circulation published in each of the counties wherein the privilege is to be granted, for a period of four full weeks, once a week prior to presenting same, or if there be no newspaper published in said counties, or either of them, then such advertisement shall be circulated by posting in three conspicuous places therein, one of which shall be at the front door of the courthouse of the county, four full weeks prior to presenting same.

(3) The contents of the notices declaring such intention shall describe the locality wherein the privilege is sought, and exactly the nature, extent, and character of such privilege.

(4) The public utilities commission of the state, before making any award of franchise rights under §§ 347.11-347.18, shall give written notice to the board of county commissioners of each county affected, through the chairman of such board, of the pendency of any application hereunder, at least four weeks in advance of the commission's final action thereon.

(5) The grantee of such privilege, as conditions precedent to the effectiveness of the grant, shall furnish to the commission one bond in a sum of not less than five thousand dollars and not more than fifteen thousand dollars, to be approved by said commission,

conditioned for the actual beginning of operations in the exercise of the privileges granted, within not less than twelve months from the time of the granting of same; and shall furnish a like bond in a sum of not less than five per cent and not more than ten per cent of the total estimated costs of construction and equipment of its works, and conditioned for the completion and equipment of such works, within such time as may be prescribed in the discretion of the commission, but not to be longer than five years, provided that the time element in the condition of this second bond may be in the discretion of the commission for good cause extended. The bonds in this subsection provided for shall be made payable to the governor of the state for the use and benefit of the state road department and all moneys collected thereunder shall be paid to the state treasurer for the use of the said state road department.

(6) The said public utilities commission shall have control of the use and enjoyment of such privilege or privileges, by the grantee thereof, in the fixing and prescribing of any tolls to be charged thereunder; and shall have the power to make and shall make rules and regulations, controlling and governing the grantee, in the use of the franchise rights, in §§347.11-347.18 contemplated, so as to safeguard, promote, and protect the public weal and interest involved thereunder; provided that no tolls shall be charged or collected for the use of any toll highways or ferries contemplated under said sections by troops, federal or state, fire departments, police officers in performance of their official duties, or emergency ambulances.

(7) The grantee of any franchise under said sections shall have the right to exercise the power of eminent domain, in acquiring approaches to its structure of ferries, from shore lines, and to connect with streets or public roads, to the same extent and in the same manner, as now exists with respect to the establishment of state or county highways.

(8) Applications for franchise under said sections shall be considered by public utilities commission and determined in the respective order or priority in which they are filed, and in the awarding thereof by said commission, the interests, rights, accommodation and public convenience of the localities and communities involved, shall be adequately protected and safeguarded; provided, however, that no franchise shall ever be granted under the provisions of said sections, the exercise of which would cause the lowering by any department of the United States government, of the classification of any port in the state.

History.—§3, ch. 13884, 1929; CGL 1936 Supp. 2749(3).
cf.—§113.07 Bonds of officials.

347.15 Due process of law required in preemption.—All easements and proprietary rights, of the waters and lands contemplated in §§347.11-347.18 incident to riparian holdings, and vested in private owners, are reserved in the owners thereof, to be preempted only after due process of law.

History.—§4, ch. 13884, 1929; CGL 1936 Supp. 2749(4).

347.16 Termination of franchise.—The franchise rights contemplated by §§347.11-347.18, when granted within the purview hereof, shall continue in such grantee, his personal representatives, successors or assigns for the full term or period thereof, unless otherwise terminated by operation of law; and if, before its expiration, legal termination shall occur or upon its expiration then the properties, construction and equipment and all easement right of the grantee shall pass to and become the properties of the state for the use and benefit of the state road department.

History.—§5, ch. 13884, 1929; CGL 1936 Supp. 2749(5).

347.17 Powers of public utilities commission.—For the purpose of exercising the control and custody, contemplated under §§347.11-347.18, the public utilities commission is vested with all its existing powers, judicial and otherwise, such power to be exercised in conformity with existing laws, for the enforcement and administration thereof.

History.—§6, ch. 13884, 1929; CGL 1936 Supp. 2749(7).

347.18 Unauthorized bridges, etc., prohibited.—No person, firm or corporation, public or private, not authorized by the provisions of §§347.11-347.18 shall be permitted to build, construct, establish, operate or maintain, any bridge, causeway, tunnel, toll highway or ferry, upon, across, over or under the lands or waters contemplated by or within the purview of said sections except that none of the provisions of said sections shall interfere with any existing toll bridge franchise.

History.—§7, ch. 13884, 1929; CGL 1936 Supp. 2749(7).

347.19 Militia and clergymen exempt from paying tolls.—Any person belonging to the military forces of the state going to or returning from any parade, encampment, drill, muster, or other military service or meeting which he may be required to attend, if he is in uniform, presents an order for duty, or such other proper identification to be prescribed by the adjutant general, and all persons driving automobiles or other vehicles belonging to the military department of the state used for transporting military personnel, stores and property, when properly identified shall, together with any such conveyance and military personnel and property of the state in his charge, be allowed to pass free through all toll gates and over all toll bridges and ferries in this state.

Clergymen and preachers of the gospel shall be allowed to pass free over all toll bridges and ferries in this state.

A copy of this section shall be posted at each toll bridge and on each ferry.

History.—§§27, 28, acts of March 5, 1842; RS 644; GS 917; RGS 1701; CGL 2752; §5, ch. 14761, 1931; CGL 1936 Supp. 2752(1).

347.20 Vested rights not impaired.—Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this state.

History.—§10, ch. 3039, 1877; RS 645; GS 918; RGS 1702; CGL 2753.

347.21 County commissioners to grant franchise.—The county commissioners of any county in this state, whenever it shall have been made to appear to them that the convenience of the public requires the maintenance of a ferry for teams and passengers operated on regular schedules at frequent intervals across any river between any two points on opposite sides of the river in the same county, shall by resolution, grant a leave, license and franchise for the establishment, maintenance and operation of such ferry by a grantee or grantees named in the resolution, from a street or a public road on one side of the river to a street or a public road on the other side of the river; which leave, license and franchise shall vest in and be enjoyed by the grantee or grantees and the heirs, successors, and assigns thereof for the terms and on the conditions as in §§347.22-347.25 provided. The word grantee, as used in said sections, shall include the heirs, successors and assigns of the grantee, and the word franchise shall include leave, license, and all rights and privileges pertaining to ferries.

History.—§1, ch. 5185, 1903; GS 919; RGS 1703; CGL 2754.

347.22 Condition under which franchise granted.—Such leave, license and franchise, for the maintenance and operation of such ferry as provided in §347.21, shall be given and granted by resolution upon the following terms and conditions:

(1) The grantee of such leave, license and franchise, shall before the taking effect of such leave, license and franchise, give to the county a good and sufficient bond in the sum of five thousand dollars, to be approved by the county commissioners, conditioned for the establishment, maintenance and operation of a ferry of character to meet the reasonable necessities of the public on regular schedule at such frequent intervals from each side of the river with a ferry boat suitable and safe for the transportation of passengers, vehicles and teams during the hours and on the schedules as fixed by the provisions of the resolution of the board of county commissioners granting the franchise. The county commissioners shall in and by the resolution giving and granting such franchise fix the schedule to be observed and the rate to be charged for ferriage, and the character and capacity of boats, and make such other regulations as may to them appear to be reasonable, to be in force and effect until changed as hereinafter provided.

(2) Such franchise, unless adjudged by the courts forfeited for failure to comply with the terms and conditions thereof, shall run and continue for the full term of and period of fifteen years, and thereafter until the county commissioners shall have terminated the said franchise in the manner herein provided. No leave, license or franchise shall be granted to any person for the operation of any ferry across such river from or to any point within one mile of either terminus of such ferry as fixed by the resolution granting the franchise, and no other ferry shall be established or maintained within one mile thereof; and no such leave, license or franchise shall be so given or granted as to impair or depreciate the value of any vested right or privilege of any person or corporation operating at the time of the passage of this chapter, a ferry for the transportation of passengers and teams at frequent and regular intervals across a river under the provisions of any resolutions of a board of county commissioners, granted under the provisions of existing laws.

(3) At the end of the third year after granting such leave, license or franchise, and at the end of each period of three years thereafter, the county commissioners and the grantee shall each have the right, by having given notice of the intention so to do thirty days prior to any such recurring period of three years, to have arbitrated with the other party any question or questions as to the reasonableness of any rate or rates allowed or charged, or as to the character and reasonableness or frequency of the service required or given, or as to any other matter or thing pertaining to the maintenance or operation of such ferry. For the arbitration of any such question or questions, the county commissioners shall name one arbitrator, and the grantee of the franchise shall name the other, and the two arbitrators shall, if possible, after investigation, decide the question or questions submitted to them, and render to the county commissioners and to the grantee a written decision signed by them. If the two arbitrators so named shall be unable to agree as to a proper decision on any question or questions, they shall mutually agree upon a third disinterested party, who shall investigate the contested question or questions, and the finding of two of the arbitrators shall then be a decision of the arbitrators. All parties shall be bound, and shall abide by and carry out for the ensuing three years the decision of the arbitrators. The county commissioners and the grantee of such franchise shall have the right at any time, without arbitration, to make by resolution of the county commissioners, approved by the grantee, any arrangement that they may deem mutually advantageous to all concerned affecting such ferry service, subject, however, to subsequent change by arbitration at the times and as herein provided.

(4) The county commissioners of any county, wherein such ferry shall have been operated as herein provided, shall have the right to have submitted to the voters of the county, at the general election next preceding the expiration of the said term of fifteen years,

the question as to whether or not the county commissioners shall purchase the property used and operate the ferry, and if the majority of the voters voting on the subject shall have voted for the purchase and operation of the ferry by the county, then the county commissioners and the grantee of the franchise shall each name an arbitrator, and the two arbitrators so named shall name a third, a disinterested person of high standing and integrity, and the three arbitrators, or two of them, if the three cannot agree, shall, after a thorough investigation, fix the amount to be paid by the county to the grantee; and the county commissioners shall thereupon pay to the grantee the amount fixed by the arbitrators, or a majority of them, and shall receive from the grantee a conveyance of all its property used for ferry purposes; and the county commissioners shall operate such ferry so long as its operation by them shall appear practicable, and the grantee of the franchise shall not thereafter, so long as the said ferry shall be operated by the county, operate any such ferry, and all rights of the grantee to operate such ferry shall, during the time of the operation thereof by the county, be withdrawn.

Should the electors of the county at such election fail to approve the purchase and operation of such ferry, or should the county commissioners for any reason fail to make such purchase, the grantee shall have the right to continue the operation of such ferry with all the rights hereby granted and subject to all of the provisions of this chapter as to arbitration of questions of service, charges, etc., for an additional term of ten years, and until the county shall, by vote of its electors, have determined to purchase and operate such ferry, and shall have paid to the grantee the amount fixed by arbitration in the manner above provided.

History.—§2, ch. 5185, 1903; GS 920; RGS 1704; CGL 2755.

347.23 No person to maintain ferry unless authorized.—No person not authorized under the provisions of this chapter shall maintain any ferry for transporting persons or property for profit across any river from any point within one mile of a terminus of any ferry maintained under the provisions of this chapter to any point within one mile of such terminus.

History.—§4, ch. 5185, 1903; GS 921; RGS 1705; CGL 2756.

347.24 Transporting persons for hire within one mile of ferry; penalty.—Any person who shall for profit or hire transport across any river from any point within one mile of any terminus of any ferry maintained under the provisions of law to any point within one mile of a terminus of any such ferry, unless duly authorized by law so to do, shall be punished by fine not exceeding $20.00 for the first offense and by fine not exceeding $50.00, or imprisonment not exceeding 5 days for each subsequent offense.

History.—§5, ch. 5185, 1903; GS 3734; RGS 5759; CGL 7989.

347.25 Maintaining illegal ferries; penalty.—Whoever maintains any ferry for transporting across any river, stream or lake, persons, goods, chattels or effects for profit or hire, unless duly authorized according to law, shall be punished by fine not exceeding $20.00. When any offense mentioned in this section is committed on streams dividing counties the offender may be prosecuted in either county.

History.—§8, ch. 3039, 1877; RS 2738; GS 3733; RGS 5758; CGL 7988.

CHAPTER 348

EXPRESSWAY AUTHORITY LAWS

PART I ST. PETERSBURG EXPRESSWAY AUTHORITY LAW (§§348.011-348.161)

PART II TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY LAW (§§348.50-348.70)

PART III ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY LAW (§§348.0100-348.0114)

PART I

ST. PETERSBURG EXPRESSWAY AUTHORITY LAW

348.011 Short title.—This law shall be known and may be cited as the "St. Petersburg expressway authority law."

History.—§1, ch. 59-520.

348.021 St. Petersburg expressway district; creation.—There is hereby created and established "the St. Petersburg expressway district," which shall comprise and include the following described territory located within the county of Pinellas to wit: All land presently located within the corporate limits of the city of St. Petersburg, together with all that land not presently within the corporate limits of the city of St. Petersburg, lying east of the west line of section twenty-three, township thirty south, range sixteen east, and as extended northerly to the waters of Tampa bay, and southerly to the corporate limits of the city of St. Petersburg.

History.—§2, ch. 59-520.

348.031 Definitions.—The following terms, whenever used or referred to in this law, shall have the following meanings except in those instances where the context clearly indicates otherwise:

(1) The term "authority" shall mean the body politic and corporate, created by this chapter and herein designated as the "St. Petersburg expressway authority."

(2) The term "members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(3) The term "bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form, which the authority is authorized to issue pursuant to this chapter.

(4) The terms "state road department" or "department" shall mean the state road department of the state, organized and existing under and by virtue of the provisions of chapters 334-339.

(5) The term "city" shall mean the city of St. Petersburg, a municipal corporation created and existing under chapter 15505, special laws of 1931, and amendments thereto.

(6) The term "agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designed, or established by, the state.

(7) The term "federal agency" shall mean and include the United States, the president of the United States, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(8) The term "state" shall mean the state of Florida, or any duly constituted department, bureau, division or agency thereof.

(9) The term "limited access expressway" shall mean a street or highway especially designed for through traffic, and over, from or to which, no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(10) The term "expressway" shall be the same as limited access expressway.

(11) "St. Petersburg expressway system" shall mean any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges and avenues of access for said expressway or expressways.

(12) The term "feeder road" shall mean any road which in the opinion of the authority is necessary to create or facilitate access to an expressway.

(13) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History.—§3, ch. 59-520.

348.041 Authority created as governing body.—There is hereby established and created "the St. Petersburg expressway authority" a body corporate and politic hereinafter referred to as the authority, which shall be, for the purposes of this chapter, the governing body and authority of the St. Petersburg expressway district created, established, designated and authorized in §348.021, and such governing body shall consist of five members, all of whom shall be qualified electors and freeholders of and in the city of St. Petersburg, Pinellas county, who have resided within the corporate limits of said city for a period of at least five years and who shall be appointed by the city manager of the city of St. Petersburg, with the approval of the city council of said city. Members of the authority who are first appointed, shall be designated by the city manager of said city to serve for the following terms: One of said members for two years, two of said members for three years, two of said members for four years from the date of their appointment. Thereafter, the term of office of each appointed member shall be for four years. Each appointed member shall hold office until his successor has been appointed and qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. One of the members so appointed shall be designated by the city manager of said city as chairman of the authority. The members of the authority shall not be entitled to compensation but shall be reimbursed for traveling expenses as provided in §112.061. Three members of the authority shall constitute a quorum and resolutions enacted or adopted by the vote of a majority of the members shall become effective without publication or posting or any further action by the authority. The authority may employ a secretary, an executive director, its own counsel and legal staff, such financial advisers and consultants, technical experts, such engineers and such agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms or corporations. The authority may delegate to one or more of its agents or employees such of its powers as it shall deem necessary to carry out the purposes of this chapter, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the city manager of said city for misconduct, malfeasance, misfeasance, or nonfeasance in office, or such other cause as the city manager shall deem to be to the best interest of the authority and the fulfillment of the purposes of this chapter; providing, however, no such removal shall be effective until approved by the city council.

History.—§4, ch. 59-520; §19, ch. 63-400.

348.051 Purpose and powers of authority.—

(1) The general purpose of this chapter is to acquire, hold, construct, maintain, operate, own or lease in the capacity of lessor, a limited access expressway, originating in the vicinity of the western terminus of the third bay bridge located in Pinellas county, and generally known as the Franklin bridge and running through and over lands embraced within the aforementioned St. Petersburg expressway district to a point or points within the city limits of the city, to be determined by said authority and all appurtenant facilities, including but not limited to, all approaches, roads, bridges and avenues of access for said limited access expressway.

(2) In order to enable the authority created and established by this chapter to carry out the purposes hereof, said authority is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, repair, operate, own, lease and sell highways, roads and expressways located within the St. Petersburg expressway district, as hereinbefore described, including, but not limited to, the limited access expressway, heretofore referred to, and including, but not limited to, all appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said limited access expressway or expressways.

(3) The authority is hereby granted and shall have and may exercise all powers necessary, appurtenant, convenient, and incidental to the carrying out of the aforesaid purposes including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use and alter at will, a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(d) To fix, alter, charge, establish and collect rates, fees, rentals and tolls and other charges for the services and facilities of the St. Petersburg expressway system, which rates, fees, rentals, tolls and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this chapter.

(e) To establish and enforce rules and

regulations for the use of any expressway and all appurtenant facilities thereto appertaining.

(f) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidence of indebtedness or obligations either in temporary or definitive form (hereinafter in this chapter sometimes called "bonds") of the authority, to finance the construction, improvement and maintenance of the St. Petersburg expressway system and appurtenant facilities, including all approaches, streets, roads, bridges or avenues of access for the said St. Petersburg expressway system, and for any other purpose authorized by this chapter. Said bonds to mature in not exceeding thirty years from the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, tolls or other charges, such additional revenue, other than revenue from ad valorem taxes, as may be made available to the authority for such purpose by the city of St. Petersburg, county of Pinellas, state of Florida, or any agency, department, corporation or instrumentality thereof, the United States, or any federal agency, department, corporation or instrumentality, and in general to provide for the security of said bonds and rights and remedies of the holders thereof.

(g) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(h) Without limitation of the foregoing to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, and agency of the state, the county of Pinellas, the city of St. Petersburg, or with any other public body of the state.

(i) To acquire in the name of the authority by purchase, lease, or otherwise, on such terms and conditions and in such manner as it may deem or by the exercise of the power of eminent domain, any land and other property, which it may determine is reasonably necessary for any project or for the relocation or reconstruction of any public road by the authority under the provisions of this chapter or for the construction of any feeder road as defined herein, and any and all rights, title and interest in such land and other property, including public lands, roads or parkways, owned by or in which the county of Pinellas or any political subdivision, city, town, village, public agency or the state, federal government or agencies thereof, has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the expressway project or projects.

(j) To sell, exchange, or otherwise dispose of any real property not necessary for its corporate purpose or whenever the authority shall determine that it is in the best interest of the authority.

(k) To determine the exact route and exact termini of the St. Petersburg expressway, including all approaches, streets, bridges or avenues of access thereto.

(l) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the county of Pinellas, the city of St. Petersburg, or with any other public body of the state.

(m) To obtain engineering and traffic and other expert studies of the costs, feasibility and practicability of an expressway project or projects authorized by this chapter and enter into necessary contracts therefor.

(n) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other law.

(4) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state, the county of Pinellas, the city of St. Petersburg, or any other political subdivision, municipality, or agency of the state, nor shall any of the authority's obligations be deemed to be obligations of the state, the county of Pinellas or the city of St. Petersburg, or of any other municipal corporation or political subdivision or agency of the state, nor shall the state, the county of Pinellas, the city of St. Petersburg, or any other municipality or political subdivision or agency of the state, except the authority herein created, be liable for the payment of the principal or of the interest on such obligations, provided, however, nothing herein contained shall be construed to be a limitation or restriction upon the state, county of Pinellas, city of St. Petersburg, the federal government, or any subdivision, department, bureau or agency thereof, from making available and pledging its unencumbered funds, other than funds derived from ad valorem taxes, to the payment of the principal and interest on such obligations.

History.—§5, ch. 59-520.

348.061 Preliminary and other expenses of authority.—

(1) The city, upon the request of the authority is hereby authorized to expend out of any funds available for the purpose, such moneys for the use of its engineering and other bureaus, departments and divisions of the city as may be necessary or desirable in the judgment of the city, to enable the authority to carry out the purposes of this chapter.

(2) The city is hereby authorized to appropriate and expend out of any funds available for the purpose such moneys as it may deem necessary for the study of any expressway project or projects hereunder, and to use its engineering, planning and other city services, including independent consulting engineers and independent traffic engineers, for the purpose

of effecting such study, and to pay for such additional engineering and traffic and other expert studies as it may deem expedient.

(3) The city is hereby authorized to expend out of any funds available for the purpose, such moneys as may be necessary to defray the preliminary expenses and obligations of the St. Petersburg expressway authority, including but not limited to, the payment of salaries of any employees of said authority, the reimbursement of the out-of-pocket expenses of the members of the authority as provided for hereunder, and any and all proper expenditures made by the authority under this chapter.

(4) There is hereby created a separate fund within the city's budgetary and accounting system, to be known and designated as the "St. Petersburg expressway authority fund," into which any revenues and moneys duly appropriated by the city council of the city of St. Petersburg, shall be placed. All expenditures of said moneys from said fund shall be made by the St. Petersburg expressway authority, in accordance with established accounting practices of the city of St. Petersburg, and any expenditures therefrom of any such moneys appropriated to the authority by the city shall be made in accordance with such appropriation or appropriations, and in conformity with the budgetary practices of the city, as prescribed by its charter, provided, however, that any such moneys lawfully pledged or committed by the authority to any indebtedness of the authority shall be placed in a separate and appropriately designated fund within the St. Petersburg expressway authority fund or in an entirely separate appropriately designated other fund as the authority shall direct, and such moneys so funded and pledged or committed, shall be within the exclusive control and jurisdiction of the authority, subject to the commitments of the authority. All other moneys and revenues of the authority from whatever source derived, shall be placed, kept, handled, disbursed and accounted for as the authority shall, by its resolution or resolutions provide, subject to all applicable provisions of law.

(5) Notwithstanding any of the foregoing provisions of this section, the city of St. Petersburg shall not be obligated to appropriate to or for the use of the St. Petersburg expressway authority, any sums of money other than that which the city council of the city of St. Petersburg shall from time to time in its discretion determine to be necessary to carry out the purposes of this chapter, save and excepting such revenues the city may duly pledge under the authority granted to it in this chapter to the payment of the principal and interest of bonds issued by the authority to carry out the purpose of this chapter.

History.—§6, ch. 59-520.

348.071 Pledging of unencumbered revenue of city authorized.—The city of St. Petersburg is hereby authorized to irrevocably pledge to the payment, retirement and financing of said bonds issued or to be issued by the authority for the purposes expressed in this chapter, and to the interest thereon, such unencumbered revenues of the city of St. Petersburg, other than revenue derived from ad valorem taxes, now or hereafter available to said city as may be designated and pledged by proper resolution of the city council of the city of St. Petersburg, provided, however, that in no event shall the city of St. Petersburg be in any way obligated for the payment of principal or interest of or upon any indebtedness created by the authority, other than to the extent of such unencumbered revenue of the city of St. Petersburg as it may pledge for such purposes.

The city of St. Petersburg shall be prohibited from pledging for the payment, retirement and financing of any bonds issued by said authority, any revenue derived from ad valorem taxation.

History.—§7, ch. 59-520.

348.081 Bonds of the authority.—

(1) The bonds of the authority issued pursuant to the provisions of this chapter, shall be authorized by resolution of the members thereof and may be either term or serial bonds, shall bear such date or dates, mature at such time or times not exceeding thirty years from their respective dates, bear interest at such rate or rates not exceeding six per cent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals, tolls or other charges or receipts of the authority including such revenues as may be pledged by the city of St. Petersburg under the authority of this chapter. The bonds shall be executed either by manual or facsimile signature, by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority, and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, or as may be prescribed in such resolution or resolutions of the authority.

Said bonds may be sold either at public or private sale at such price or prices as the authority shall determine to be in its best interest, provided that the interest cost to the authority on such bonds shall not exceed six per cent per annum. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to the pledging of all or any part of the revenues, rates, fees, rentals, tolls and such revenues as shall

be lawfully pledged by the city council of the city of St. Petersburg for such purpose; the completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of said system, and the duties of the authority and others; limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued or of any loan or grant by the United States or the state may be applied; the fixing, charging, establishing and collecting of rates, fees, rentals, tolls, or other charges for the use of the services and facilities of the St. Petersburg expressway system or any part thereof; the setting aside of reservations or sinking funds or repair and replacement funds and the regulation and disposition thereof; limitations on the issuance of additional bonds; the terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds or under which the same may be issued; any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

Any of the bonds issued pursuant to this chapter are hereby declared to be negotiable instruments and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

History.—§8, ch. 59-520.

348.091 Levy of ad valorem tax by authority prohibited.—The St. Petersburg expressway authority is hereby expressly prohibited from levying, assessing, or imposing ad valorem taxes or special assessments on the land or territory comprising the St. Petersburg expressway district.

History.—§9, ch. 59-520.

348.101 Lease-purchase agreements.—In order to effectuate the purposes of this chapter, the authority may enter into lease-purchase agreements with the city of St. Petersburg, the county of Pinellas, the state of Florida or any agency thereof, and the United States or any federal agency relating to and covering the St. Petersburg expressway system.

Such lease-purchase agrcements shall provide for the leasing of the St. Petersburg expressway system by the authority as lessor to any of the aforementioned governmental entities or agencies as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the St. Petersburg expressway system as then constituted shall be transferred in accordance with law by the authority to the lessee under such agreement, and the authority shall deliver to the lessee such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in such lessee.

Such lease-purchase agreements may include such other provisions, agreements and covenants as the authority and the lessee deem advisable or required, including but not limited to provisions as to the bonds to be issued under and for the purposes of this chapter, the completion, extension, improvement, operation and maintenance of the St. Petersburg expressway system, and the expenses and costs of operation of said authority, the charging and collecting of tolls, rates, fees and other charges for the use of the services and facilities thereof, the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation and maintenance of the St. Petersburg expressway system which the authority is hereby authorized to accept and apply to such purposes. The enforcement of payment and the collection of rentals and any other terms, provisions or covenants necessary, incidental or appurtenant to the making of and full performance under such lease-purchase agreement.

History.—§10, ch. 59-520.

348.111 State road department may be appointed agent of authority for construction.—The state road department may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the St. Petersburg expressway system and for the completion thereof. In such event, the authority shall provide the state road department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the state road department to do such construction work including the planning, surveying and actual construction of the completion, extensions, and improvements, to the St. Petersburg expressway system and shall transfer to the credit of an account of the state road department in the treasury of the state the necessary funds therefor and the state road department shall thereupon be authorized, empowered and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—§11, ch. 59-520.

348.121 Acquisition of lands and property.—(1) For the purpose of this law the St. Petersburg expressway authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper.

History.—§12, ch. 59-520.

348.131 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission or individual in, or of, the state to make and enter into with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this chapter. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals, for the purpose of carrying out the provisions of this chapter.

History.—§13, ch. 59-520.

348.141 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this chapter is, shall and will be, in all respects for the benefit of the public, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income or charges at any time received by it, and the bonds issued by the authority, their transfer and the income therefrom, (including any profits made on the sale thereof) shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof.

History.—§14, ch. 59-520.

348.151 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—§15, ch. 59-520.

348.161 Expressway as part of state road system.—The St. Petersburg expressway system shall be a part of the state road system and the state road department is hereby authorized upon the request of the authority, to expend out of any funds available for the purpose, such moneys and to use such of its engineering and other forces as may be necessary and desirable in the sole judgment of the said state road department for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of costs and other preliminary engineering and other studies, provided, however, that nothing contained herein shall obligate the state road department to expend any funds hereunder, except such funds as the state road department shall deem proper.

History.—§16, ch. 59-520.

PART II

TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY LAW

348.50 Title of law.—This law shall be known and may be cited as the "Tampa-Hillsborough county expressway authority law."

History.—§1, ch. 63-447.

348.51 Definitions.—The following terms whenever used or referred to in this law shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Authority" shall mean the body politic, corporate, and agency of the state created by this chapter.

(3) "Bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form, of the authority

issued pursuant to this chapter.

(4) "City" shall mean the city of Tampa.

(5) "County" shall mean the county of Hillsborough.

(6) "Expressway system" or "system" shall mean generally a modern highway system of roads, bridges, causeways and tunnels in the metropolitan area of the city, with access limited or unlimited as the authority may determine, and such buildings, structures, appurtenances and facilities related thereto, including all approaches, streets, roads, bridges and avenues of access for such system.

(7) "Federal agency" shall mean and include the United States, the president of the United States, and any department of, or bureau, corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(8) "Hillsborough county gasoline tax funds" shall mean all the eighty per cent surplus gasoline tax funds or twenty per cent surplus gasoline tax funds accruing in each year to the state road department or the county, as the case may be, for use in Hillsborough county under the provisions of §16, Art. IX of the state constitution, after deduction, if and only to the extent necessary, of any amounts of said gasoline tax funds heretofore pledged by the state road department or the county for outstanding obligations.

(9) "Lease-purchase agreement" or "lease-purchase agreements" shall mean the lease-purchase agreement or agreements which the authority is authorized pursuant to this chapter to execute.

(10) "Members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(11) "Revenues" shall mean all tolls, revenues, rates, fees, charges, receipts, rentals, contributions and other income derived from or in connection with the operation or ownership of the expressway system, including the proceeds of any use and occupancy insurance on any portion of the system but excluding any Hillsborough county gasoline tax funds.

(12) "State road department" or "department" shall mean the state road department of Florida and any successor thereto.

(13) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History.—§2, ch. 63-447.

348.52 Tampa-Hillsborough county expressway authority.—There is hereby created and established a body politic, corporate and an agency of the state, to be known as the "Tampa-Hillsborough county expressway authority."

The governing body shall consist ex officio of the mayor of each city in Hillsborough county having a population in excess of two hundred thousand, the members of the board of county commissioners of Hillsborough county and the member of the board of the state road department from the district in which Hillsborough county is situated. Without limiting any other severance provisions of this chapter, it is hereby declared to be the intent of the legislature that if the provision in this section for any ex officio member of the governing body shall be declared invalid, the governing body shall thereafter consist of the remaining six ex officio members. The authority shall designate one of its members as chairman. The members of the authority shall not be entitled to compensation, but shall be entitled to receive their traveling and other necessary expenses as provided in §112.061. A majority of the members of the authority shall constitute a quorum and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting shall become effective without publication or posting or any further action of the authority. The authority may employ a secretary and executive director, its own counsel and legal staff, and such legal, financial and other professional consultants, technical experts, engineers and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms or corporations. The authority may contract with the Florida development commission for any financial services authorized herein. The authority may delegate to one or more of its officers or employees such of its powers as it shall deem necessary to carry out the purposes of this chapter, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the governor for misconduct, malfeasance, misfeasance and nonfeasance in office.

History.—§3, ch. 63-447.

348.53 Purposes of the authority.—The authority is created for the purposes and shall have power to construct, reconstruct, improve, extend, repair, maintain and operate the expressway system. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of Florida, city of Tampa and the county of Hillsborough, for the increase of their pleasure, convenience and welfare, for the improvement of their health, to facilitate transportation for their recreation and commerce and for the common defense. The authority shall be performing a public purpose and a governmental function in carrying out its corporate purpose and in exercising the powers granted herein.

History.—§4, ch. 63-447.

348.54 Powers of the authority.—Except as otherwise limited herein, the authority shall have the power:

(1) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(2) To adopt, use and alter at will, a seal.

(3) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for

carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(4) To construct, reconstruct or improve on or along the system suitable facilities for gas stations, restaurants and other facilities for the public; such facilities may be publicly offered for leasing for operation under rules and regulations to be established by the authority.

(5) To enter into and make lease-purchase agreements as provided in §348.60 for terms not exceeding forty years, or until all bonds secured by a pledge thereunder, and all refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(6) To fix, alter, charge, establish and collect tolls, rates, fees, rentals and other charges for the services and facilities of the expressway system, which tolls, rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds; provided, however, that such right and power, or any part thereof may be assigned or delegated, by the authority, to the lessee under a lease-purchase agreement.

(7) To borrow money and issue negotiable bonds, and to provide for the rights of the holders thereof.

(8) To secure the payment of bonds by a pledge of all or any portion of the revenues or such other moneys legally available therefor and of all or any portion of the Hillsborough county gasoline tax funds in the manner provided by this chapter; and in general to provide for the security of the bonds and the rights and remedies of the holders thereof. Interest upon the amount of gasoline tax funds to be repaid to the county pursuant to §348.50 shall be payable, at the highest rate applicable to any outstanding bonds of the authority, out of revenues and other available moneys not required to meet the authority's obligations to its bondholders.

(9) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(10) Without limitation of the foregoing, to borrow money and accept gifts or grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the county, the city or with any other public body of the state or any other person and to comply with the terms and conditions thereof.

(11) To have the power of eminent domain.

(12) To construct and maintain over, under, along or across the system, telephone, telegraph, television, electric power and other wires or cables, pipelines, water mains and other conduits and mechanical equipment, not inconsistent with the appropriate use of the system, or to contract for such construction; and upon such terms and conditions as the authority shall determine, to lease all or any part of such property and facilities or the right to use the same whether such facilities are constructed by the authority or under a contract for such construction, for a period of not more than twenty years from the date when such lease is made.

(13) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other law.

Prior to entering into any sale, lease, transfer or disposition of its real properties pursuant to subsection (3), leasing any of its facilities pursuant to subsection (4), or taking final action under subsection (7), the authority shall give notice thereof by publication on at least five separate days, in a newspaper of general circulation in the county. Such notice shall state the place and time, not less than fourteen days following the first such publication, when objections may be filed with and heard by the authority.

History.—§5, ch. 63-447.

348.55 Credit of state not to be pledged.—The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, nor shall any of the authority's bonds be deemed to be obligations of the state or of any political subdivision or agency thereof, except the authority, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such bonds.

History.—§6, ch. 63-447.

348.56 Bonds of the authority.—

(1) The authority shall have the power and is hereby authorized from time to time to issue bonds in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient moneys for achieving its corporate purposes, including construction, reconstruction, improvement, extension, repair, maintenance and operation of the expressway system, the cost of acquisition of all real property, interest on bonds during construction and for a reasonable period thereafter, establishment of reserves to secure bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) Bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding five per cent per annum, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities of lien on the revenues, other available moneys, and the Hillsborough county gasoline tax funds as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature

by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon. The coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority. Such bonds shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon.

The bonds shall be sold at public sale and the net interest cost to the authority on such bonds shall not exceed five per cent per annum. If all bids received on the public sale are rejected, the authority may then proceed to negotiate for the sale of the bonds at a net interest cost which shall be less than the lowest net interest cost stated in the bids rejected at the public sale. Pending the preparation of definitive bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(3) Any such resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, the Hillsborough county gasoline tax funds, or other moneys lawfully available therefor.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, operation, lease or lease-purchase of the expressway system, or any part or parts thereof, and the duties and obligations of the authority and others, including the state road department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by any federal agency or the state or any political subdivision thereof may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the expressway system or any part thereof.

(e) The setting aside of reserves or of sinking funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which same may be issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company within or without the state, as security for such bonds, and may, under such agreements, assign and pledge all or any of the revenues and other available moneys, including all or any portion of the Hillsborough county gasoline tax funds, pursuant to the terms of this chapter. Such deed of trust, indenture or other agreement, may contain such provisions as are customary in such instruments or as the authority may authorize, including, but without limitation, provisions as to:

(a) The pledging of all or any part of the revenues, the Hillsborough county gasoline tax funds, or other moneys lawfully available therefor.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(e) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(5) Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) It is the intention hereof that any pledge made by the authority shall be valid and binding from the time when the pledge is made; that the moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(7) Neither the members nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(8) The authority shall have power out of any funds available therefor to purchase bonds, which shall thereupon be cancelled, at a price not exceeding, if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next date of redemption thereof, or if the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to said date.

History.—§7, ch. 63-447.

348.57 **Refunding bonds.**—Subject to public notice as provided in §348.54, the authority is authorized to provide by resolution for the issuance from time to time of bonds for the purpose of refunding any bonds then outstanding. The authority is further authorized to provide by resolution for the issuance of bonds for the combined purpose of:

(a) Paying the cost of constructing, reconstructing, improving, extending, repairing, maintaining and operating the expressway system.

(b) Refunding bonds then outstanding. The authorization, sale and issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

In the event that the authority shall determine to issue bonds for the purpose of refunding any outstanding bonds prior to the maturity thereof, the proceeds of such refunding bonds may, pending the redemption of the bonds to be refunded, be invested in direct obligations of the United States. It is the express intention of this chapter that outstanding bonds may be refunded and retired by and upon the issuance of bonds notwithstanding that all or a portion of such outstanding bonds will not mature or become redeemable until after the date of issuance of such refunding bonds.

History.—§8, ch. 63-447.

348.58 Remedies.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions or indenture providing for the issuance of bonds, or by any lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this chapter after such principal of or interest on the bonds shall have become due, whether at maturity or upon call for redemption, as provided in said resolution or indenture, or the lessee shall default in any payments under, or covenants made in, any lease-purchase agreement and such default shall continue for a period of thirty days, or in the event that the authority or the lessee shall fail or refuse to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding shall have first given written notice of their intention to appoint a trustee, to the authority and to such lessee.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of twenty-five per cent, or such other percentages as may be specified in any deed of trust, indenture or other agreement aforesaid, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement, including the right to require the lessee to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Hillsborough county gasoline tax funds or other funds so agreed to be paid and to require the lessee to carry out any other covenants and agreements with or for the benefit of the bondholders and to perform its and their duties under this chapter.

(c) Bring suit upon the bonds.

(d) By action or suit in equity require the authority or any lessee under any lease-purchase agreement to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the system or the facilities or any part or parts thereof, the revenues and other pledged moneys and, subject to and in compliance with the provisions of any lease-purchase agreement, operate and maintain the same, for and on behalf of and in the name of, the authority, the lessee and the bondholders, and collect and receive all revenues and other pledged moneys in the same manner as the authority or the lessee might do, and shall deposit all such revenues and moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement, of operating and maintaining the system or any

facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement, to the operation and maintenance of the system, or any facility or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the lessee and the bondholders, and no holder of bonds nor any trustee, shall ever have the right in any suit, action or proceeding at law, or in equity, to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—§9, ch. 63-447.

348.59 Traffic control.—

(1) In addition to the powers conferred by the statutes of the state and the ordinances of the city, the authority is hereby authorized to promulgate such rules and regulations for the use and occupancy of the expressway system as may be necessary and proper for the public safety and convenience, for the preservation of its property and for the collection of tolls.

(2) The enforcement of the rules and regulations of the authority and of those provisions of the statutes and ordinances applicable to the expressway system may be by the city police department and sheriff of Hillsborough county; provided, however, that at the request of the authority, such enforcement shall also be the duty of the Florida highway patrol. Violators shall be apprehended and prosecuted in the same manner as provided for the apprehension and prosecution of violators of such statutes and ordinances who commit violations thereof upon streets, roads and thoroughfares in the state.

History.—§10, ch. 63-447.

348.60 Lease-purchase agreements.—In order to effectuate the purposes of this chapter, the authority may enter into lease-purchase agreements with the city, the county, the state or any agency thereof, including the state road department, and any federal agency relating to and covering the expressway system or any portion thereof.

Such lease-purchase agreements may provide for the leasing of the expressway system or any portion thereof by the authority as lessor to any one or more of the aforementioned governmental entities or agencies as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and may provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreements, title in fee simple absolute to the expressway system, as then constituted, shall be transferred in accordance with law by the authority to such lessee or otherwise as provided in such agreements. In the event of such transfer to the lessee, the authority shall deliver to such lessee such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in such lessee.

The lease-purchase agreements may include such other provisions, agreements and covenants as the authority and the lessee deem advisable or necessary, including but not limited to provisions with respect to bonds, the construction, reconstruction, extension, improvements, operation, repair, and maintenance of the expressway system, the expenses and costs of operation of the system and of the authority, the charging and collecting of tolls, rates, fees and other charges for the use of the services and facilities thereof, the application of federal, state or other grants or aid which may be made or given to assist the authority, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or convenient to the making of and full performance under such lease-purchase agreements.

In the event the state road department is a lessee under any such lease-purchase agreement, it is authorized to pay as rentals thereunder in addition to the revenues accruing thereto from the operation of the expressway system, all or any portion of the Hillsborough county gasoline tax funds and may also pay as rentals any appropriations received by the state road department pursuant to any act of the legislature heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement shall be construed to require the legislature to make or continue such appropriations nor shall any holder of bonds ever have any right to require the legislature to make or continue such appropriations.

In the event the county is a lessee under any such lease-purchase agreement, it shall be authorized to pay as rentals thereunder in addition to the revenues accruing to the county from the operation of the expressway system all or any part of the twenty per cent surplus gasoline tax funds accruing to Hillsborough county.

No pledge of either the eighty per cent surplus gasoline tax funds or the twenty per cent surplus gasoline tax funds under any such lease-purchase agreement shall be made without the consent of the county evidenced by a resolution duly adopted by its board of county commissioners, nor unless the revenues pledged under any such lease-purchase agreements are estimated by the authority to aggregate during the term of such lease-purchase agreements not less than the principal amount of the bonds secured thereunder plus interest thereon. Such resolution, among other things shall provide that any excess of such pledge of the Hillsborough county gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds shall be returned annually to the appropriate board or agency for distribution to the county as provided by law; and shall provide, further, that any Hills-

borough county gasoline tax funds actually expended for such debt service, shall be repaid with interest out of revenues and other available moneys not required to meet the authority's obligations to its bondholders, as determined by the authority.

Any lessee under such lease-purchase agreements shall have power to covenant therein that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of the expressway system, and any part of the cost of completing such system, to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than revenues and Hillsborough county gasoline tax funds. Any such lessee may also agree to make such other payments from moneys available to the county, the city, the authority or the state road department in connection with the construction or completion of such system as shall be deemed by such lessee to be fair and proper under any such covenants heretofore or hereafter entered into.

Any lease-purchase agreement may provide that the system shall be a part of the state road system. The state road department is hereby authorized, upon request of the authority, to expend out of any funds available for the purpose, such moneys, and to use such of its engineering or other forces, as may be necessary and desirable in the judgment of the state road department, for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of costs, preliminary engineering and other studies.

History.—§11, ch. 63-447.

348.61 State road department may be appointed agent of authority for construction.—The state road department may be appointed by the authority as its agent for the purpose of constructing, reconstructing, improving, extending or repairing the expressway system. In such event, the authority shall provide the state road department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the state road department to do such construction work including the planning, surveying and actual construction involved and shall transfer to the credit of an account of the state road department in the treasury of the state the necessary funds therefor. The state road department shall thereupon be authorized, empowered and directed to proceed with such construction work and to use the said funds for such purpose and in the same manner that it is now authorized to use the funds otherwise authorized by law for its use in construction of roads and bridges.

History.—§12, ch. 63-447.

348.62 Acquisition of lands and property.—

(1) For the purpose of this chapter, the authority may acquire private or public property and property rights including rights of access, air, view and light by gift, devise, purchase or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law, in particular chapter 74.

(2) The authority may acquire such rights, title, interest or easements in such lands and property as it may deem necessary for any of the purposes of this chapter.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion, acquire an entire lot, block, parcel or tract of land, if by so doing the interest of the public will be best served, even though such entire lot, block, parcel or tract is not immediately needed for the right of way proper.

History.—§13, ch. 63-447.

348.63 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, authority, corporation or individual in or of the state to make and enter into with the authority, contracts, leases, conveyances or other agreements within the provisions and purposes of this chapter. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals for the purpose of carrying out the provisions of this chapter.

History.—§14, ch. 63-447.

348.64 Covenants of the state.—The state does hereby pledge to and agree with the holders from time to time of the bonds that the state will not limit or alter the rights hereby vested in the authority, the state road department, the county and the city to collect revenues and Hillsborough county gasoline tax funds and to fulfill the terms of any agreements made with the holders of bonds or to in any way impair the rights and remedies of such holders until such bonds and the interest due thereon have been paid. The state does further pledge to and agree with the United States and any federal agency that in the event any federal agency shall construct or contribute funds for the construction, reconstruction, extension or improvement of the system or any part thereof the state will not alter or limit the rights of the authority, the state road department, the county or the city in any manner which would be inconsistent with the continued maintenance or operation of the system or the construction, reconstruction, extension or improvement thereof and which would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority, the state road department, the county and the city shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this chapter.

History.—§15, ch. 63-447.

348.65 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this chapter is, shall and will be in all respects for the benefit of the people of the state for the increase of their commerce, prosperity and for the improvement of their health and living conditions. Since the authority will perform essential governmental functions in effectuating such purpose, the authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it. The bonds, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision or other taxing agency or instrumentality thereof.

History.—§16, ch. 63-447.

348.66 Eligibility for investments and security.—The bonds shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators and all other fiduciaries and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds notwithstanding the provisions of any other law or laws to the contrary.

History.—§17, ch. 63-447.

348.67 Pledges enforceable for bondholders.—It is the express intention of this chapter that any pledge of revenues, Hillsborough county gasoline tax funds or other funds either as rentals to the authority or for the payment of the principal of and interest on bonds, or any covenant or agreement relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the state road department, the county or the city, as may be appropriate.

History.—§18, ch. 63-447.

348.68 Consultation with Hillsborough county planning and zoning commission.—In determining the route or routes, and the design and type of construction in connection with constructing the expressway system or any extension thereof, consideration shall be given by the authority to the long range overall land use plans, and the economic needs of the city and county and the usage for which the properties abutting thereon is best suited. In the furtherance of this purpose, the authority shall consult with the Hillsborough county planning and zoning commission, hereinafter referred to as commission. The authority may, with the advice and consent of such commission, employ a firm of nationally recognized traffic engineers and shall also cause its traffic engineers, in conducting their studies and in preparing surveys and estimates in connection with the location of the route or routes and with such construction, to consult with such commission for the purpose of considering any traffic studies and other pertinent information which the commission may have available. After preliminary studies and recommendations of the authority's traffic engineers, consulting engineers and other advisors have been made, the commission shall submit to the authority its written recommendations as to the best route or routes for the expressway system or any extensions thereof. The authority and the commission shall thereafter hold a joint public hearing on at least ten days notice which shall be published in a newspaper designated by the authority and of general circulation in Hillsborough county at which all interested persons may be heard with respect to the recommended route or routes or alternate routes of the expressway system. After such public hearing the authority shall by resolution determine the route or routes of the expressway system or any extension thereof; provided, however, that an affirmative vote of not less than five members of its governing body shall be required to change or alter the route or routes recommended by the commission.

History.—§19, ch. 63-447.

348.69 Audit required.—The authority shall have its books, records, and accounts audited annually by the state auditor, and shall maintain a copy thereof in its office, available for public inspection.

History.—§20, ch. 63-447.

348.70 Chapter complete and additional authority.—The powers conferred by this chapter shall be in addition and supplemental to the existing respective powers of the authority, the state road department, the county and the city, if any, and this chapter shall not be construed as repealing any of the provisions of any other law, general, special or local, but shall be deemed to supersede such other law or laws in the exercise of the powers provided in this chapter insofar as such other law or laws are inconsistent with the provisions of this chapter and to provide a complete method for the exercise of the powers granted herein. The construction, reconstruction, improvement, extension, repair, maintenance and operation of the expressway system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this chapter by the qualified electors or qualified electors who are freeholders in the state or in the county or in the city or in any other political subdivision of the state shall be required for the issuance of such bonds.

History.—§21, ch. 63-447.

PART III

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY LAW

348.0100 Title of law.—This law shall be known and may be cited as the "Orlando-Orange county expressway authority law."

History.—§1, ch. 63-573.

348.0101 Definitions.—The following terms, whenever used or referred to in this law, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) The term "authority" shall mean the body politic and corporate, and agency of the state created by this chapter.

(2) The term "members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(3) The term "bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form which the authority is authorized to issue pursuant to this chapter.

(4) The term "lease-purchase agreement" shall mean the lease-purchase agreements which the authority is authorized pursuant to this chapter to enter into with the state road department.

(5) The terms "state road department" or "department" shall mean the state road department of the state, organized and existing under and by virtue of the provisions of former chapter 341, or the successor thereto, chapter 29965, Laws of Florida, 1955, now chapters 334-339.

(6) The terms "Florida development commission" or "commission" shall mean the state agency created, organized and existing under and by virtue of the provisions of former chapter 420, or the successor thereto, chapter 29788, Laws of Florida, 1955, now chapter 288.

(7) The term "county" shall mean the county of Orange.

(8) The term "city" shall mean the city of Orlando.

(9) The term "state board of administration" shall mean the body corporate created, organized and existing under and by virtue of the provisions of §16 Art. IX of the state constitution, or any successor thereto.

(10) The term "agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the state.

(11) The term "federal agency" shall mean and include the United States, the president of the United States, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(12) The term "Orange county gasoline tax funds" shall mean all the eighty per cent surplus gasoline tax funds accruing in each year to the state road department for use in Orange county under the provisions of §16 Art. IX of the state constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the state road department or the county for outstanding obligations.

(13) The term "limited access expressway" shall mean a street or highway especially designed for through traffic, and over, from or to which, no person shall have the right of easement, use or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic.

(14) The term "expressway" shall be the same as limited access expressway.

(15) "Orlando-Orange county expressway system" shall mean any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridge and avenue of access for said expressway or expressways.

(16) Words importing singular number shall include the plural number in each case and vice versa, and the words importing persons shall include firms and corporations.

History.—§2, ch. 63-573.

348.0102 Orlando-Orange county expressway authority.—There is hereby created and established a body politic and corporate and agency of the state, to be known as the Orlando-Orange county expressway authority hereinafter referred to as "authority."

The governing body of the authority shall consist of five members. Three members shall be citizens of Orange county, who shall be appointed by the governor; the fourth member

shall be, ex officio, the chairman of the county commissioners of Orange county, and the fifth member shall be, ex officio, the member of the state road board from the district of which Orange county shall from time to time be a part. Two of the members of the authority who are first appointed shall be designated by the governor to serve for terms expiring January 3, 1965, and the other member of the authority who is first appointed shall be designated by the governor to serve for a term expiring January 3, 1967. Thereafter, the term of each appointed member shall be for four years. Each appointed member shall hold office until his successor has been appointed and he has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility and business ability but no person who is an officer or employee of any city or of Orange county in any other capacity shall be an appointed member of the authority. Each such original appointment shall be made within thirty days of the effective date of this act. Any member of the authority shall be eligible for reappointment.

The authority shall elect one of its members as chairman of the authority. The authority shall also elect a secretary and a treasurer, who may or may not be members of the authority. The chairman, secretary and treasurer shall hold such offices at the will of the authority. Three members of the authority shall constitute a quorum and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

Upon the effective date of his appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his duties.

The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, such engineers and such employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons, firms or corporations; and may employ a fiscal agent or agents, provided, however, that the authority shall solicit sealed proposals from at least three persons, firms or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it shall deem necessary to carry out the purposes of this chapter, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

Members of the authority shall be entitled to receive from the authority their traveling and other necessary expenses incurred in connection with the business of the authority as provided in §112.061, but they shall draw no salaries or other compensation.

History.—§3, ch. 63-573.

348.0103 Purposes and powers.—

(1) The authority created and established by the provisions of this chapter is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Orlando-Orange county expressway system hereinafter referred to as "system."

It is the express intention of this chapter that said authority, in the construction of said Orlando-Orange county expressway system, shall be authorized to construct any extensions, additions or improvements to said system or appurtenant facilities, including all necessary approaches, roads, bridges and avenues of access, with such changes, modifications or revisions of said project as shall be deemed desirable and proper.

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use and alter at will a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding forty years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

(e) To enter into and make lease-purchase agreements with the state road department for terms not exceeding forty years, or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish and collect rates, fees, rentals, and other charges for the services and facilities of the Orlando-Orange county expressway system, which rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this chapter; provided, however, that such right and power may be assigned or delegated, by the authority, to the state road department.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "bonds" of the authority, for the purpose of financing all or part of the improvement or extension of the

Orlando-Orange county expressway system, and appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Orlando-Orange county expressway system and for any other purpose authorized by this chapter, said bonds to mature in not exceeding forty years from the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals or other charges, including all or any portion of the Orange county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department; and in general to provide for the security of said bonds and the rights and remedies of the holders thereof. Provided, however, that no portion of the Orange county gasoline tax funds shall be pledged for the construction of any project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the board of county commissioners, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when said pledge of funds shall be in effect.

The authority shall reimburse Orange county for any sums expended from said gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

In the event that the authority shall determine to fund or refund any bonds theretofore issued by said authority, or by said commission as aforesaid prior to the maturity thereof, the proceeds of such funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and it is the express intention of this chapter that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this chapter notwithstanding that part of such outstanding bonds will not mature or become redeemable until six years after the date of issuance of bonds pursuant to this chapter to fund or refund such outstanding bonds.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the county of Orange, the city of Orlando or with any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under both chapters 73 and 74.

(k) To pledge, hypothecate or otherwise encumber all or any part of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Orange county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other law.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including the city of Orlando and the county of Orange, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this act to the contrary notwithstanding, acquisition of right of way for a project of the authority which is within the boundaries of any municipality in Orange county shall not be begun unless and until the route of said project within said municipality has been given prior approval by the governing body of said municipality.

(5) The authority shall have no power other than by consent of Orange county or any affected city, to enter into any agreement which would legally prohibit the construction of any road by Orange county or by any city within Orange county.

History.—§4, ch. 63-573.

348.0104 Bonds of the authority.—

(1) The bonds of the authority issued pursuant to the provisions of this chapter, whether on original issuance or on refunding, shall be authorized by resolution of the members thereof and may be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding five per cent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals or other charges or receipts of the authority including the Orange county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the

coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions.

Said bonds shall be sold at such price or prices as the authority shall determine to be in its best interest; providing, that all such sales shall be made upon the receipt of competitive bids from at least two qualified bidders and provided further that the interest cost to the authority on such bonds shall not exceed five per cent per annum. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals, (including all or any portion of the Orange county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, or any part thereof) or other charges or receipts of the authority, derived by the authority, from the Orlando-Orange county expressway system.

(b) The completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of said system, and the duties of the authority and others, including the state road department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing and collecting of rates, fees, rentals or other charges for use of the services and facilities of the Orlando-Orange county expressway system or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The state board of administration of Florida shall be the fiscal agent of the authority for any bonds issued by the authority pursuant to this chapter, and the authority may enter into any deeds of trust, indentures or other agreements with said fiscal agent, or with any bank or trust company within or without the state, with the consent of said board, as security for such bonds, and may, under such agreements, assign and pledge all or any of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Orange county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, thereunder. Such deed of trust, indenture or other agreement may contain such provisions as are customary in such instruments, or, as the authority may authorize, including* but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair and lease of, or lease-purchase agreement relating to, the Orlando-Orange county expressway system, and the duties of the authority and others including the state road department, with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

History.—§5, ch. 63-573.

*The original act reads "includ-"

348.0105 Remedies of the bondholders.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by a lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this chapter after such principal of or interest on said bonds shall have become due, whether at maturity or upon call for redemption. or the state road department shall default in any payments under, or covenants made in, any lease-purchase agreement between the authority and the state road department, and such default shall continue for a period of thirty days, or in the event that the authority or the state road department shall fail or refuse to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of twenty-five per cent in aggregate principal amount of the bonds then outstand-

ing shall have first given notice of their intention to appoint a trustee, to the authority and to the state road department. Such notice shall be deemed to have been given if given in writing, and deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post office box or station and addressed, respectively, to the chairman of the authority and to the chairman of the state road department at the principal office of the state road department.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of twenty-five per cent, or such other percentages as may be specified in any deed of trust, indenture or other agreement aforesaid, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the state road department, including the right to require the state road department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Orange county gasoline tax funds or other funds of the department so agreed to be paid and to require the state road department to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(c) Bring suit upon the bonds.

(d) By action or suit in equity require the authority or the state road department to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the Orlando-Orange county expressway system or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges or receipts from which are, or may be, applicable to the payment of the bonds so in default, and subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the state road department operate and maintain the same, for and on behalf of and in the name of, the authority, the state road department and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the state road department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues or receipts, derived from the Orlando-Orange county expressway system, or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals, or other charges, revenues or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the state road department, of operating and maintaining the Orlando-Orange county expressway system or any facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver, subject to and in compliance with the provisons of any lease-purchase agreement between the authority and the state road department, to the operation and maintenance of the Orlando-Orange county expressway system, or any facility, or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the state road department and the bondholders, and no holder of bonds on the authority nor any trustee, shall ever have the right in any suit, action or proceeding at law or in equity, to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—§6, ch. 63-573.

348.0106 Lease-purchase agreement.—In order to effectuate the purposes of this chapter and as authorized by this chapter, the authority may enter into a lease-purchase agreement with the state road department relating to and covering the Orlando-Orange county expressway system.

Such lease-purchase agreement shall provide for the leasing of the Orlando-Orange county expressway system, by the authority, as lessor, to the state road department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Orlando-Orange county expressway system as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the state road department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

Such lease-purchase agreement may include such other provisions, agreements and covenants as the authority and the state road department deem advisable or required, including but not limited to, provisions as the bonds to be issued under and for the purposes of this chapter, the completion, extension, improvement, operation and maintenance of the Orlando-Orange county expressway system and the expenses and the cost of operation of said authority, the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof, the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation and maintenance of the Orlando expressway system, which the authority is hereby authorized to accept and apply to such purposes, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or appurtenant to the making of and full performance under such lease-purchase agreement.

The state road department as lessee under such lease-purchase agreement, is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts or income accruing to the state road department from the operation of the Orlando-Orange county expressway system and the Orange county gasoline tax funds and may also pay as rentals any appropriations received by the state road department pursuant to any act of the legislature of the state heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement is intended to nor shall this chapter or such lease-purchase agreement require the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this chapter ever have any right to compel the making or continuance of such appropriations.

No pledge of said Orange county gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of the county of Orange evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for three consecutive weeks before the hearing in a newspaper of general circulation in Orange county. Said resolution, among other things, shall provide that any excess of said pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the state road department for distribution to Orange county as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Orange county planning and zoning commission for its comments and recommendations.

Said state road department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of said system, and any part of the cost of completing said system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than the revenues derived from the operation of said system and said Orange county gasoline tax funds. Said state road department may also agree to make such other payments from any moneys available to said commission, said county or said city in connection with the construction or completion of said system as shall be deemed by said state road department to be fair and proper under any such covenants heretofore or hereafter entered into.

Said system shall be a part of the state road system and said state road department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys, and to use such of its engineering and other forces, as may be necessary and desirable in the judgment of said state road department, for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost and other preliminary engineering and other studies; provided, however, that the aggregate amount of moneys expended for said purposes by said state road department shall not exceed the sum of three hundred seventy-five thousand dollars.

History.—§7, ch. 63-573.

348.0107 State road department may be appointed agent of authority for construction.—The state road department may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the Orlando-Orange county expressway system and for the completion thereof. In such event, the authority shall provide the state road department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the state road department to do such construction work including the planning, surveying and actual construction of the completion, extensions, and improvements to the Orlando-Orange county expressway system and shall transfer to the credit of an account of the state road department in the treasury of the

state the necessary funds therefor and the state road department shall thereupon be authorized, empowered and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—§8, ch. 63-573.

348.0108 Acquisition of lands and property.—

(1) For the purposes of this law the Orlando-Orange county expressway authority may acquire private or public property and property rights, including rights of access, air, view, and light by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) All property rights acquired under the provisions of this law shall be in fee simple.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right of way proper.

History.—§9, ch. 63-573.

348.0109 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission or individual in, or of, the state to make and enter into with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this chapter. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals, for the purpose of carrying out the provisions of this chapter.

History.—§10, ch. 63-573.

348.0110 Covenant of the state.—The state does hereby pledge to, and agrees, with any person, firm or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by the authority for the purposes of this chapter that the state will not limit or alter the rights hereby vested in the authority and the state road department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree, with the United States that in the event any federal agency shall construct or contribute any funds for the completion, extension or improvement of the Orlando-Orange county expressway system, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the state road department in any manner which would be inconsistent with the continued maintenance and operation of the Orlando-Orange county expressway system or the completion, extension or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the state road department shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this chapter and the purposes of the United States in the completion, extension or improvement of the Orlando-Orange county expressway system, or any part or portion thereof.

History.—§11, ch. 63-573.

348.0111 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this chapter is, shall and will be, in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income or charges at any time received by it, and the bonds issued by the authority, their transfer and the income therefrom, including any profits made on the sale thereof shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof.

History.—§12, ch. 63-573.

348.0112 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—§13, ch. 63-573.

348.0113 Pledges enforceable by bondholders.—It is the express intention of this chapter that any pledge by the state road department of rates, fees, revenues, Orange county gasoline tax funds or other funds, as rentals, to the authority, or any covenants or agreements relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the state road department by any holder of bonds issued by the authority.

History.—§14, ch. 63-573.

348.0114 Chapter complete and additional authority.—That the powers conferred by this chapter shall be in addition and supplemental to the existing powers of said board and the state road department, and this chapter shall not be construed as repealing any of the provisions, of any other law, general, special or local, but to supersede such other laws in the exercise of the powers provided in this chapter, and to provide a complete method for the exercise of the powers granted in this chapter. The extension and improvement of said Orlando-Orange county expressway system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this chapter by the qualified electors or qualified electors who are freeholders in the state or in said county of Orange, or in said city of Orlando, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this chapter.

This chapter shall not be deemed to repeal, rescind or modify any other law or laws relating to said state board of administration, said state road department, or said Florida development commission, but shall be deemed to and shall supersede such other law or laws as are inconsistent with the provisions of this chapter.

History.—§15, ch. 63-573.

CHAPTER 349

JACKSONVILLE EXPRESSWAY AUTHORITY LAW

349.01 Title of law.—This law shall be known and may be cited as the "Jacksonville expressway authority law."

History.—Comp. §1, ch. 29996, 1955.

349.02 Definitions.—The following terms whenever used or referred to in this law shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) The term "authority" shall mean the body politic and corporate, and agency of the state created by this chapter.

(2) The term "members" shall mean the governing body of the authority and the term "member" shall mean one of the individuals constituting such governing body.

(3) The term "bonds" shall mean and include the notes, bonds, refunding bonds or other evidences of indebtedness or obligations in either temporary or definitive form, which the authority is authorized to issue pursuant to this chapter.

(4) The term "lease-purchase agreement" shall mean the lease-purchase agreements which the authority is authorized pursuant to this chapter to enter into with the state road department.

(5) The terms "state road department" or "department" shall mean the state road department of the state, organized and existing under and by virtue of the provisions of former chapter 341, Florida Statutes, or the successor thereto, chapter 29965, acts of 1955, now chapters 334-339, Florida Statutes, 1955.

(6) The terms "Florida state improvement commission" or "commission" shall mean the state agency created, organized and existing under and by virtue of the provisions of former chapter 420, Florida Statutes, or the successor thereto, chapter 29788, acts of 1955, now chapter 288, Florida Statutes, 1955.

(7) The term "county" shall mean the county of Duval.

(8) The term "city" shall mean the city of Jacksonville.

(9) The term "state board of administration" shall mean the body corporate created, organized and existing under and by virtue of the provisions of Art. IX, Sec. 16, of the state constitution, or any successor thereto.

(10) The term "agency of the state" shall mean and include the state and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the state.

(11) The term "federal agency" shall mean and include the United States, the president of the United States, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated, or established by, the United States.

(12) The term "Duval county gasoline tax funds" shall mean all the eighty per cent surplus gasoline tax funds accruing in each year to the state road department for use in Duval county under the provisions of Art. IX, Sec. 16 of the state constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the state road department or the county for outstanding obligations.

(13) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History.—Comp. §2, ch. 29996, 1955.

349.03 Jacksonville expressway authority.—There is hereby created and established a body politic and corporate and agency of the state, to be known as the "Jacksonville expressway authority" (hereinafter referred to as "authority").

The governing body of the authority shall consist of five members. Three members shall be citizens of Duval county, who shall be appointed by the governor; the fourth member shall be, ex officio, the chairman of the board of county commissioners of Duval county, and the fifth member shall be, ex officio, the member of the state road department of the state from the second congressional district as defined and limited on June 9, 1937. Members of the authority who are first appointed shall be designated by the governor to serve for terms of two, three and four years, respectively, from the date of their appointment. Thereafter the term of office of each appointed member shall be for four years. Each appointed member shall hold office until his successor has been appointed and has qualified. A vacancy occurring during a term

shall be filled only for the balance of the unexpired term. One of the members so appointed shall be designated by the governor as chairman of the authority. The members of the authority shall not be entitled to compensation, but shall be reimbursed for traveling expenses as provided in §112.061. Three members of the authority shall constitute a quorum and ordinances or resolutions enacted or adopted by the vote of a majority of the members shall become effective without publication or posting or any further action by the authority. The authority may employ a secretary, an executive director, its own counsel and legal staff, such financial advisers and consultants, technical experts, such engineers and such agents and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons, firms or corporations. The authority may delegate to one or more of its agents or employees such of its powers as it shall deem necessary to carry out the purposes of this chapter, subject always to the supervision and control of the authority. Members of the authority may be removed from their office by the governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

History.—§3, ch. 29996, 1955; §19, ch. 63-400.

349.04 Purposes and powers.—

(1) GENERAL.—The authority created and established by the provisions of this chapter is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Jacksonville expressway system (hereinafter referred to as "system") heretofore partially constructed or acquired by Florida state improvement commission in the Jacksonville, Duval county, metropolitan area, as more specifically described in the proceedings of said commission which authorized the issuance of twenty-eight million dollars bonds of said commission for said purpose, and as hereafter completed or improved or extended as authorized by this chapter, and all appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Jacksonville expressway system, and to construct or acquire extensions, additions and improvements to said system and to complete the construction and acquisition of said system.

It is the express intention of this chapter that said authority, in completing the construction of said Jacksonville expressway system, shall not be limited to the description thereof contained in said proceedings of said commission which authorized the issuance of twenty-eight million dollars bonds to finance part of the cost thereof, but shall be authorized to construct any additional extensions, additions or improvements to said system, or appurtenant facilities, including all necessary approaches, roads, bridges and avenues of access, with such changes, modifications or revisions of said project as shall be deemed desirable and proper.

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use and alter at will, a corporate seal.

(c) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding forty years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

(e) To enter into and make lease-purchase agreements with the state road department for terms not exceeding forty years, or until any bonds secured by a pledge of rentals thereunder, and any refundings thereof, are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish and collect rates, fees, rentals and other charges for the services and facilities of the Jacksonville expressway system, which rates, fees, rentals and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this chapter; provided, however, that such right and power may be assigned or delegated, by the authority, to the state road department.

(g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, (hereinafter in this chapter sometimes called "bonds") of the authority, for the purpose of funding or refunding, at or prior to maturity, any bonds theretofore issued by said authority, or by Florida state improvement commission to finance part of the cost of the Jacksonville expressway system, and purposes related thereto, and for the purpose of financing all or part of the completion or improvement or extension of the Jacksonville expressway system, and appurtenant facilities, including all approaches, streets, roads, bridges and avenues of access for said Jacksonville expressway system and for any other purpose authorized by this chapter, said bonds to mature in not exceeding forty years from the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals or other charges, including all or any portion of the Duval county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department; and in general to provide for the security of said bonds and the rights and remedies of the holders thereof.

In the event that the authority shall deter-

mine to fund or refund any bonds theretofore issued by said authority, or by said commission as aforesaid prior to the maturity thereof, the proceeds of such funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States, and it is the express intention of this chapter that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this chapter notwithstanding that part of such outstanding bonds will not mature or become redeemable until six years after the date of issuance of bonds pursuant to this chapter to fund or refund such outstanding bonds.

(h) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any federal agency, the state, any agency of the state, the county of Duval, the city of Jacksonville or with any other public body of the state.

(j) To have the power of eminent domain.

(k) To pledge, hypothecate or otherwise encumber all or any part of the revenues, rates, fees, rentals or other charges or receipts of the authority, including all or any portion of the Duval county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, as security for all or any of the obligations of the authority.

(l) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other law.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

History.—Comp. §4, ch. 29996, 1955.

349.05 Bonds of the authority.—

(1)(a) The bonds of the authority issued pursuant to the provisions of this chapter shall be authorized by resolution of the members thereof and may be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding six per cent per annum, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals or other charges or receipts of the authority including the Duval county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(b) Prior to any sale of bonds the authority shall cause notice to be given by publication in some newspaper published in the county that the authority will receive bids for the purchase of the bonds at the office of the authority in the county. Said notice shall be published twice and the first publication shall be given not less than fifteen days prior to the date set for receiving the bids. Said notice shall specify the amount of the bonds offered for sale and shall state that the bids shall be sealed bids, shall give the schedule of the maturities of the proposed bonds and such other pertinent information as may be prescribed in the resolution authorizing the issuance of such bonds or any resolution subsequent thereto. Bidders may be invited to name the rate of interest which the bonds are to bear or the authority may name rates of interest and invite bids thereon. In addition to publication of notice of the proposed sale the authority shall also give notice in writing of the proposed sale enclosing a copy of such advertisement to the chairman of the state road department and to at least three recognized bond dealers in the state, such notice to be given not less than ten days prior to the date set for receiving the bids.

(c) All bonds and refunding bonds issued pursuant to this chapter shall be sold to the highest and best bidder at such public sale unless sold at a better price or yield basis within thirty days after failure to receive an acceptable bid at a duly advertised public sale, provided that the interest cost to the authority on such bonds shall not exceed six per cent per annum, and provided further, that the authority shall have the right to reject all bids and cause a new notice to be given in like manner inviting other bids for such bonds. In determining the highest and best bidder for bonds offered for sale, the net interest cost to the authority as shown in standard bond tables shall govern; provided, that the determination of the authority as to the highest and best bidder shall be final. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds, and may contain such terms and

conditions as the authority may determine.

(d) The authority may require all bidders for said bonds to give security by bond or deposit to the authority to insure that the bidder shall comply with the terms of the bid, and any bidder whose bid shall be accepted shall be liable to the authority for all damages on account of the nonperformance of the terms of such bid or to a forfeiture of the deposit required by the authority.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to (a) the pledging of all or any part of the revenues, rates, fees, rentals, (including all or any portion of the Duval county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, or any part thereof), or other charges or receipts of the authority, derived by the authority from the Jacksonville expressway system, (b) the completion, improvement, operation, extension, maintenance, repair, lease or lease-purchase agreement of said system, and the duties of the authority and others, including the state road department, with reference thereto, (c) limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied, (d) the fixing, charging, establishing and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Jacksonville expressway system or any part thereof, (e) the setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof, (f) limitations on the issuance of additional bonds, (g) the terms and provisions of any lease-purchase agreement, deed of trust or indenture securing the bonds, or under which the same may be issued, and (h) any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The state board of administration of Florida shall be the fiscal agent of the authority for any bonds issued by the authority pursuant to this chapter, and the authority may enter into any deeds of trust, indentures or other agreements with said fiscal agent, or with any bank or trust company within or without the state, with the consent of said board, as security for such bonds, and may, under such agreements, assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Duval county gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the state road department, thereunder. Such deed of trust, indenture or other agreement, may contain such provisions as is customary in such instruments or, as the authority may authorize, including, but without limitation, provisions as to (a) the completion, improvement, operation, extension, maintenance, repair and lease of, or lease-purchase agreement relating to, the Jacksonville expressway system, and the duties of the authority and others, including the state road department, with reference thereto, (b) the application of funds and the safeguarding of funds on hand or on deposit, (c) the rights and remedies of the trustee and the holders of the bonds, and (d) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

History.—§5, ch. 29996, 1955; §1, ch. 63-272.

349.06 Remedies of the bondholders.—

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by any lease-purchase agreement, deed of trust, indenture or other agreement under which the bonds may be issued or secured. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this chapter after such principal of or interest on said bonds shall have become due, whether at maturity or upon call for redemption, or the state road department shall default in any payments under, or covenants made in, any lease-purchase agreement between the authority and the state road department, and such default shall continue for a period of thirty days, or in the event that the authority or the state road department shall fail or refuse to comply with the provisions of this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided, however, that such holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding shall have first given notice of their intention to appoint a trustee, to the authority and to the state road department. Such notice shall be deemed to have been given if given in writing, and deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post office box or station and addressed, respectively, to the chairman of the authority at the principal office of the authority and to the chairman of the state road department at the principal office of the state road department.

(2) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of twenty-five per cent (or such other percentages as may be specified in any deed of

trust, indenture or other agreement aforesaid) in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in his or its own name:

(a) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter,

(b) By mandamus or other suit, action or proceeding at law, or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the state road department, including the right to require the state road department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Duval county gasoline tax funds or other funds of the department so agreed to be paid and to require the state road department to carry out, any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter,

(c) Bring suit upon the bonds,

(d) By action or suit in equity require the authority or the state road department to account as if it were the trustee of an express trust for the bondholders,

(e) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Any trustee when appointed as aforesaid, or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of the Jacksonville expressway system or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges or receipts from which are, or may be, applicable to the payment of the bonds so in default, and subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the state road department operate and maintain the same, for and on behalf of and in the name of, the authority, the state road department and the bondholders, and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the state road department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues or receipts, derived from the Jacksonville expressway system, or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals, or other charges, revenues or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant hereto for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the state road department, of operating and maintaining the Jacksonville expressway system or any facilities or part or parts thereof, to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the state road department, to the operation and maintenance of the Jacksonville expressway system, or any facility, or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the state road department and the bondholders, and no holder of bonds of the authority nor any trustee, shall ever have the right in any suit, action or proceeding at law, or in equity, to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

History.—Comp. §6, ch. 29996, 1955.

349.07 Lease-purchase agreement.—In order to effectuate the purposes of this chapter and as authorized by this chapter, the authority may enter into a lease-purchase agreement with the state road department relating to and covering the Jacksonville expressway system.

Such lease-purchase agreement shall provide for the leasing of the Jacksonville expressway system, by the authority, as lessor, to the state road department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Jacksonville expressway system as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the state road department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

Such lease-purchase agreement may include

such other provisions, agreements and covenants as the authority and the state road department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this chapter, the completion, extension, improvement, operation and maintenance of the Jacksonville expressway system and the expenses and cost of operation of said authority, the charging and collecting of tolls, rates, fees and other charges for the use of the services and facilities thereof, the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation and maintenance of the Jacksonville expressway system, which the authority is hereby authorized to accept and apply to such purposes, the enforcement of payment and collection of rentals and any other terms, provisions or covenants necessary, incidental or appurtenant to the making of and full performance under such lease-purchase agreement.

The state road department, as lessee under such lease-purchase agreement, is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts or income accruing to the state road department from the operation of the Jacksonville expressway system and the Duval county gasoline tax funds and may also pay as rentals any appropriations received by the state road department pursuant to any act of the legislature of the state heretofore or hereafter enacted; provided, however, that nothing herein nor in such lease-purchase agreement is intended to nor shall this chapter or such lease-purchase agreement require the making or continuance of such appropriations, nor shall any holder of bonds issued pursuant to this chapter ever have any right to compel the making or continuance of such appropriations.

No pledge of said Duval county gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of the county of Duval evidenced by a resolution duly adopted by the board of county commissioners of said county, which resolution, among other things, shall provide that any excess of said pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the state road department for distribution to Duval county as provided by law.

Said state road department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal and replacement of said system, and any part of the cost of completing said system to the extent that the proceeds of bonds issued therefor are insufficient, from sources other than the revenues derived from the operation of said system and said Duval county gasoline tax funds. Said state road department may also agree to make such other payments from any moneys available to said commission, said county or said city in connection with the construction or completion of said system as shall be deemed by said state road department to be fair and proper under any such covenants heretofore or hereafter entered into.

Said system shall be a part of the state road system and said state road department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys, and to use such of its engineering and other forces, as may be necessary and desirable in the judgment of said state road department, for the operation of said authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost and other preliminary engineering and other studies; provided, however, that the aggregate amount of moneys expended for said purposes by said state road department shall not exceed the sum of three hundred seventy-five thousand dollars.

History.—§7, ch. 29996, 1955; 7th para. by §1, ch. 57-809. cf.—§335.04 Classification of roads, etc.

349.08 Transfer of existing Jacksonville expressway system to authority.—

(1) In order to effectuate the purposes of this chapter, and subject to the rights of any holders of bonds heretofore issued by said Florida state improvement commission to finance any part of the cost of said Jacksonville expressway system heretofore constructed by Florida state improvement commission in the Jacksonville, Duval county, metropolitan area, and to the rights of the state road department under any lease-purchase agreement heretofore entered into therefor between Florida state improvement commission and said state road department, all the right, title and interest in and to said Jacksonville expressway system, and all powers, jurisdiction and control over or relating thereto, heretofore vested in Florida state improvement commission, upon the request of the authority, shall be transferred, set over, assigned and conveyed to said authority, and said Florida state improvement commission shall thereupon transmit to the proper officers of the authority all deeds, conveyances, documents, books and records relating to said system, and shall execute all necessary documents and papers to carry out and consummate the conveyance and transfer of said system to said authority as provided for in this chapter; provided, however, that in the event no such request is made by said authority on or before April 1, 1956, then, and in such event, this chapter shall be of no force or effect and, thereafter, all powers, jurisdiction and control over or relating to said Jacksonville expressway system existing in the Florida state improvement commission, the state road department and the state board of administration prior to the enactment of this chapter shall continue in full force and effect to the same extent as if this chapter had never been enacted.

(2) This section, without reference to any other laws, shall be deemed to be and shall constitute complete authority for the transfer, assignment and conveyance herein authorized,

any provisions of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as herein prescribed.

History.—Comp. §8, ch. 29996, 1955.

349.09 State road department may be appointed agent of authority for construction.—The state road department may be appointed by said authority as its agent for the purpose of constructing improvements and extensions to the Jacksonville expressway system and for the completion thereof. In such event, the authority shall provide the state road department with complete copies of all documents, agreements, resolutions, contracts and instruments relating thereto and shall request the state road department to do such construction work including the planning, surveying and actual construction of the completion, extensions, and improvements to the Jacksonville expressway system and shall transfer to the credit of an account of the state road department in the treasury of the state the necessary funds therefor and the state road department shall thereupon be authorized, empowered and directed to proceed with such construction and to use the said funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

History.—Comp. §9, ch. 29996, 1955.

349.10 Acquisition of lands and property.—(1) For the purposes of this law the Jacksonville expressway authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law.

(2) All property rights acquired under the provisions of this law shall be in fee simple.

(3) In connection with the acquisition of property or property rights as herein provided, the authority may in its discretion acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper.

History.—§10, ch. 29996, 1955; §1, ch. 57-800.

349.11 Cooperation with other units, boards, agencies and individuals.—Express authority and power is hereby given and granted any county, municipality, drainage district, road and bridge district, school district or any other political subdivision, board, commission or individual in, or of, the state to make and enter into with the authority, contracts, leases, conveyances, or other agreements within the provisions and purposes of this chapter. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances and other agreements with any political subdivision, agency or instrumentality of the state and any and all federal agencies, corporations and individuals, for the purpose of carrying out the provisions of this chapter.

History.—Comp. §11, ch. 29996, 1955.

349.12 Covenant of the state.—The state does hereby pledge to, and agrees, with any person, firm or corporation, or federal or state agency subscribing to, or acquiring the bonds to be issued by the authority for the purposes of this chapter that the state will not limit or alter the rights hereby vested in the authority and the state road department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agree, with the United States and any federal agency that, in the event that any federal agency shall construct or contribute any funds for the completion, extension or improvement of the Jacksonville expressway system, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the state road department in any manner which would be inconsistent with the continued maintenance and operation of the Jacksonville expressway system or the completion, extension or improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the state road department shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this chapter and the purposes of the United States in the completion, extension or improvement of the Jacksonville expressway system, or any part or portion thereof.

History.—Comp. §12, ch. 29996, 1955.

349.13 Exemption from taxation.—The effectuation of the authorized purposes of the authority created under this chapter is, shall and will be, in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since such authority will be performing essential governmental functions in effectuating such purposes, such authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income or charges at any time received by it, and the bonds issued by the authority, their transfer and the income therefrom, (including any profits made on the sale thereof) shall at all times be free from taxation of any kind by the state, or by any political subdivision, or taxing agency or instrumentality thereof.

History.—Comp. §13, ch. 29996, 1955.

349.14 Eligibility for investments and security.—Any bonds or other obligations issued pursuant to this chapter shall be and constitute legal investments for banks, savings banks,

trustees, executors, administrators, and all other fiduciaries, and for all state, municipal and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

History.—Comp. §14, ch. 29996, 1955.

349.15 Pledges enforceable by bondholders.—It is the express intention of this chapter that any pledge by the state road department of rates, fees, revenues, Duval county gasoline tax funds or other funds, as rentals, to the authority, or any covenants or agreements relative thereto may be enforceable in any court of competent jurisdiction against the authority or directly against the state road department by any holder of bonds issued by the authority.

History.—Comp. §15, ch. 29996, 1955.

349.16 Transfer of refunding powers to authority.—The power vested in the state board of administration by §344.26, to issue its refunding bonds for the purpose of refunding, at or prior to maturity, outstanding obligations of Florida state improvement commission, is, but only insofar as such power to refund is applicable to any bonds of Florida state improvement commission heretofore issued to finance part of the cost of Jacksonville expressway system, hereby transferred to and vested in the authority and the authority is hereby authorized to issue its revenue bonds, for the purpose of refunding such outstanding bonds of Florida state improvement commission, and the state board of administration shall be deemed to be, and is hereby, divested of such power to refund, at or prior to maturity, said bonds of Florida state improvement commission heretofore issued to finance part of the cost of Jacksonville expressway system.

History.—Comp. §16, ch. 29996, 1955.

349.17 Chapter complete and additional authority.—That the powers conferred by this chapter shall be in addition and supplemental to the existing powers of said board and the state road department, and this chapter shall not be construed as repealing any of the provisions of any other law, general, special or local, but to supersede such other laws in the exercise of the powers provided in this chapter, and to provide a complete method for the exercise of the powers granted in this chapter. The refunding of any of the bonds of Florida state improvement commission heretofore issued to finance part of the cost of said Jacksonville expressway system, and the completion, extension and improvement of said system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this chapter without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this chapter by the qualified electors or qualified electors who are freeholders in the state or in said county of Duval, or in said city of Jacksonville, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this chapter.

This chapter shall not be deemed to repeal, rescind or modify any other law or laws relating to said state board of administration, said state road department, or said Florida state improvement commission, but shall be deemed to and shall supersede such other law or laws in the exercise of the powers provided in this chapter insofar as such other law or laws are inconsistent with the provisions of this chapter.

History.—Comp. §17, ch. 29996, 1955.

TITLE XXV

RAILROADS AND OTHER REGULATED UTILITIES

CHAPTER 350

FLORIDA PUBLIC UTILITIES COMMISSION

350.01 Florida public utilities commissioners; election.—The Florida public utilities commission shall consist of three commissioners elected by the qualified electors of this state for terms of four years each dating from the expiration of the present existing terms of said commissioners.

History.—§1, ch. 4700, 1899; GS 2882; §10(16), ch. 7838, 1919; RGS 4607, CGL 6692; §1, ch. 63-279.

350.011 Florida public utilities commission.—The state regulatory agency heretofore known as the Florida railroad and public utilities commission shall be known and hereafter called Florida public utilities commission, and all rights, powers, duties, responsibilities, jurisdiction and judicial powers now vested in said railroad and public utilities commission and the commissioners thereof are hereby vested in the Florida public utilities commission and the commissioners thereof. Whenever reference is made to the Florida railroad and public utilities commission and the commissioners thereof in the laws of the state previously enacted or enacted at this session of the legislature, such reference shall be construed to mean the Florida public utilities commission and the commissioners thereof and all appropriations for the use of said railroad and public utilities commission and the members thereof for the biennium or continuing in nature previously made or made at this session of the legislature, shall be construed to be for the use of said Florida public utilities commission and the commissioners thereof, to be used for the purposes set out in the laws making said appropriations; provided, however, the change in name of said regulatory agency shall in no wise affect any pending causes and proceedings, existing notices, orders, certificates, permits, licenses, or authorities previously granted or any action previously taken by the Florida railroad and public utilities commission.

History.—§1, ch. 24095, 1947; §1, ch. 63-279.

350.03 Power of governor to remove and to fill vacancies.—The governor shall have the same power to remove, suspend or appoint to fill vacancies, in the office of commissioners as in other offices.

History.—§1, ch. 4700, 1899; GS 2884; RGS 4609; CGL 6694.

350.04 Qualifications of commissioners.—The commissioners provided for in this chapter shall not, jointly or severally, or in any way be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company or have any interest in any railroad during their respective terms of office.

History.—§1, ch. 4700, 1899; GS 2885; RGS 4610; CGL 6695.

350.05 Oath of office.—Before entering upon the duties of his office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution and government of the United States and of the State of Florida; that I am qualified to hold office under the constitution of the state, and that I will well and faithfully perform the duties of Florida public utilities commissioner, on which I am now about to enter; that I am not a stockholder in any railroad or freight transportation company, nor in any way, directly or indirectly, in the employment of, or engaged in the management of any railroad or transportation company, so help me God." In case any commissioner should in any way become disqualified, he shall at once remove such disqualification or resign, and upon his failure to do so, he shall be suspended from office by the governor and dealt with as provided by law.

History.—§1, ch. 4700, 1899; GS 2886; RGS 4611; CGL 6696; §1, ch. 63-279.

350.06 Employment of clerk and reporter; place of meeting; expenditures.—Said commissioners may employ a secretary. The office of said commissioners shall be in the supreme court building in Tallahassee, but they may hold sessions anywhere in the state at their discretion, and all sums of money authorized to

be paid on account of said commissioners shall be paid out of the state treasury only on the order of the comptroller countersigned by the governor. Said commissioners may also employ a person capable of stenographic court reporting to be known as the official reporter of the commission, and whose compensation shall be fixed by the commission. Said reporter shall furnish the commission a free copy of all testimony taken by him, but shall receive the same fees for transcripts furnished private parties as are paid to court reporters in the courts of the state, subject to such rules and regulations as may be prescribed by the commission.

History.—§2, ch. 4700, 1899; GS 2887; ch. 5625, 1907; §1, ch. 7811, 1919; RGS 4612; §1, ch. 11365, 1925; §2, ch. 12218, 1927; CGL 6697; §1, ch. 15720, 1931.
cf.—§29.03 Compensation for services of court reporter.

350.07 Rates of toll allowed to be charged by railroad companies.—If any railroad, railroad company or common carrier, organized, or that may be hereafter organized, or exist, in this state under any act of incorporation or general law of this state now in force, or which may hereafter be enacted, or any railroad, railroad company or common carrier, organized, or which may be hereafter organized under the laws of any other state, and doing business in this state, shall charge, collect, demand or receive more than a fair, reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its tracks, or any of the branches thereof, or upon any railroad within this state which it has the right, license or permission to use, operate or control, the same upon conviction thereof, shall be dealt with as hereinafter provided for.

History.—§3, ch. 4700, 1899; GS 2888; RGS 4613; CGL 6698.

350.08 Unjust discriminations by common carriers prohibited.—If any railroad, railroad company or other common carrier as aforesaid, shall make any unjust discriminations in its rates, or charges of toll, or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon any railroad, or upon any of the branches thereof, or upon any railroad or steamship lines connected therewith, which it has a right, license or permission to operate, use or control within this state, the same shall be guilty of violating the provisions of this chapter, and upon conviction thereof shall be dealt with as hereinafter provided.

History.—§4, ch. 4700, 1899; GS 2889; RGS 4614; §1, ch. 10235, 1925; CGL 6699.
cf.—§352.22 Free or reduced transportation may be furnished.

350.09 Application of chapter.—The provisions of this chapter shall apply to the transportation of passengers and property and to the receiving, delivering, storage and handling of property wholly within this state and shall apply to all railroads, railroad companies and common carriers engaged in this state in the transportation of passengers or property by railroads or common carriers therein from any point within this state to any point within this state. So far as is or may be permitted by the constitution and the laws of the United States they shall apply also to interstate and foreign commerce and common carriers to and from points in this state.

History.—§5, ch. 4700, 1899; GS 2890; §1, ch. 6527, 1913; RGS 4615; CGL 6700.

350.10 Definitions of terms.—The term "railroad" as used in this chapter shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, association, partnership, receiver, trustees or any other person operating a railroad, whether owned or operated under a contract, agreement, lease or otherwise; also all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of persons or property; also all freight and passenger depots, yards and grounds used or necessary in the receiving, handling, transportation and delivery of passengers and freight; also all terminal companies or union depot companies, passenger or freight, whether operating train service or not. The term "railroad corporation" or "railroad company" as used in this chapter shall be deemed to mean all corporations, associations, partnerships, receivers, trustees or any other persons now owning or operating or which may hereafter own or operate any railroad in whole or in part in this state or own or operate any express service or train, or car service, including sleeping car, parlor car and dining car service on any railroad in this state. Whenever any railroad company owns and operates in connection with its road and for the purpose of transporting its cars, freight or passengers, any steamer or other water craft, such steamer or water craft shall be deemed a part of the said road.

The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract expressed or implied, for the use thereof and all service in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.

History.—§5, ch. 4700, 1899; GS 2891; §2, ch. 6527, 1913; RGS 4616; CGL 6701.

350.11 Definition of the term "common carrier."—The term "common carrier," as used in this chapter, shall be deemed to mean and include: (1) All persons owning and operating railroads, wholly or partly within this state. (2) All persons owning and operating steamships, engaged in the transportation of freight or passengers from and to ports within this state. (3) All persons owning and operating steamboats used in the transportation of freight or passengers upon the rivers or inland waters in this state, and also all boats or vessels of ten tons net or over and propelled by gasoline, kerosene, fuel oil, or any such like

propelling products running from a coastal port to a coastal port in this state used in the transportation of freight or passengers for hire. (4) All persons owning or operating railroads, passenger terminals or union depots, for the purpose of receiving, delivering or transferring passenger traffic to and from the place or city in which said terminal or union depot may be situated, or to or from one or more of the railroads operating its train service into said terminal or depot from or to any other railroad or railroads.

Whenever any steamship or steamboat company owns and operates any barge, canal boat, steam-tug ferry boat or lighter in connection with its ships or boats, the thing so owned and operated shall be deemed a part of its main line.

History.—§5, ch. 4700, 1899; GS 2892; RGS 4617; §1, ch. 9308, 1923; CGL 6702.
cf.—§1.01(3) "Person" defined.

350.12 Duties and powers of commissioners. (1) It shall be the duty of said commissioners.

(a) To make reasonable and just rates of freight and passenger tariffs to be observed by all railroads, railroad companies and common carriers doing business in this state over their respective lines. This clause shall include the right to prescribe how much baggage may be carried free with each passenger and the rates of excess baggage.

(b) To make reasonable and just rules and regulations to enforce observance of their tariffs for the handling, transportation and delivery of all kinds of freight and for the transportation of passengers.

(c) To make reasonable and just rates of charges for the use and transportation of all kinds of railroad cars conveying all kinds of freight to and from any and all points in this state.

(d) To make reasonable and just rules and regulations for the prevention of any unjust discrimination against persons or localities in charges or in furnishing facilities.

(2) And they shall have power:

(a) To make reasonable and just joint rates for all connecting carriers doing business in this state as to all traffic passing from the line of one common carrier to another, and to apportion such joint rates between said carriers participating therein.

(b) To compel all railroads and railroad companies crossing or meeting each other at any point, or serving the same city, town or locality, provided they be of the same gauge, to construct such switches, side tracks and connections as will enable them to transport cars to and from each other's lines. And in the event railroads or railroad companies required to construct such switches, side tracks and connections are unable to agree upon how the costs thereof shall be borne or apportioned, it shall then be the duty of the commissioners, upon a hearing after notice to each of the railroads or railroad companies between which such switches, side tracks and connections are to be constructed, to apportion the costs between them on a just and equitable basis, or, if justice requires, to impose the entire cost of construction upon one railroad or railroad company.

(c) To require railroads and water carriers serving any given point or community as common carriers of freight or passengers to provide such reasonable physical connection as may be necessary to properly facilitate the transfer of freight or passengers from one of said carriers to the other.

(d) To compel the interchange of traffic and cars between railroad companies under such rules and regulations as will secure due compensation for cars and the prompt return of cars to the railroad company from which they are received.

(e) To require the establishment of stations, including flag stations, at which trains may be required to stop, and the establishment of landings and wharves at which water carriers may be required to stop; to designate the location and require the erection of such freight and passenger depots, houses, platforms and wharves with all necessary conveniences as the safety, convenience and comfort of passengers and the proper handling, care, protection and prompt delivery and transportation of freight may require; to supervise, regulate and control all stations, depots, platforms, houses and wharves and to require a sufficient force of employees to be maintained therein and thereat to conduct in a proper manner the business of the carriers.

(f) To establish such schedules for the arrival and departure of all trains at stations and depots, and to order such connections in point of time to be made between common carriers, as the public convenience, comfort and interest may require, and to prescribe rules and regulations relating to and regulating the changing of time schedules of all common carriers and the bulletining by railroad companies of the arrival and departure of all regular passenger trains which may be late.

(g) To regulate, supervise and control all passenger, terminal or union depot companies, whether owned or operated by any railroad in connection with its main line or by separate company organized for that purpose and to require the admission into such union depot or terminal by the owner, lessee or operator thereof of any railroad company which may desire to enter such terminal or union depot or which may be required to do so by order of the said commissioners and to compel the person operating said depot or terminal to furnish to the railroad entering the same fair and equal participation in all the rights, privileges, connections, interchanges of traffic and other benefits of said depot or terminal and to prescribe and enforce just and reasonable rates for the use of such terminals or depots and the privileges thereof.

(h) To require two or more of the railroads entering the same town, city or point, to erect, operate and maintain a joint passenger or freight or a joint passenger and freight terminal or union depot and to provide for the

interchange of traffic between said railroads.

(i) To require railroads and railroad companies to make connections with private side tracks along their respective lines upon reasonable terms and conditions.

(j) To regulate the charges for storage, wharfage, demurrage and reciprocal demurrage.

(k) To regulate and direct the use and charges for use of refrigerator cars, refrigerator boxes, icing and all other facilities and services incidental to transportation.

(l) To regulate all other matters pertaining to the receiving, handling, care, transportation and delivery of property, and to the safety, care, comfort, convenience, proper accommodation and transportation of passengers that shall be for the good of the public. The operation of this general grant or of any other general grant of power in this chapter shall not be held to be limited by the grants of specific powers.

(m) To prescribe all rules and regulations appropriate for the execution of any of the powers conferred upon them by law either in express terms or by implication. All rules and regulations made and prescribed by the commissioners shall be made prima facie evidence in the manner that the schedules are made prima facie evidence. Every rule, regulation, schedule or order heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof or be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so appears. All presumptions shall be in favor of every action of the commissioners and all doubts as to their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the Florida public utilities commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control public carriers in the public interest. If in any proceeding to enforce any rule, regulation, schedule or order, any part thereof shall be found invalid, the court shall proceed to enforce such portion thereof as may be valid if the same can be done.

History.—§6, ch. 4700, 1899; GS 2893; §3, ch. 6527, 1913; RGS 4618; §1, ch. 8469, 1921; CGL 6703; §1, ch. 63-279.

350.13 Applying joint rates to common carrier; notice; hearing; preventing rebates.—Before applying joint rates to common carriers not under joint management and control, the commissioners shall give thirty days' notice to the carriers of the joint rate contemplated, and of its divisions of the same, and give hearing to the carriers desiring to object to said rates, and shall make just and reasonable rules and regulations to prevent the giving or paying of any bonus, rebate, or device of any description used by said carriers directly or indirectly for the purpose of deceiving or misleading the public as to the actual rates charged.

History.—§6, ch. 4700, 1899; GS 2894; §4, ch. 6527, 1913; RGS 4619; CGL 6704.

350.14 Power to create basing points.—The commissioners may create rating or basing points at places where competing lines of railroads meet, or where water or other competition exists, and break the continuity of rates to and from such points, so as to maintain competition between rival lines and points, and may, in fixing the rate upon any commodity, take into consideration the competition between different localities or shipping points producing or shipping such commodity.

History.—§6, ch. 4700, 1899; GS 2895; RGS 4620; CGL 6705.

350.15 May establish and abolish shipping points.—The Florida public utilities commissioners may establish and abolish stations and shipping points on all railroads and common carriers in this state, for the purpose of computation and making of rates in this state, and prohibit the publication of rates to and from any such stations or shipping points as have been abolished by said Florida public utilities commissioners; provided, that nothing herein shall apply to the physical operation of any railroad or railroad train.

History.—§1, ch. 12220, 1927; CGL 6706; §1, ch. 63-279.

350.16 Commissioners may require necessary facilities, service, etc.—The commissioners may require any railroad, railroad company or common carrier to properly operate its railroad or transportation line and to furnish all the necessary facilities for the convenient and prompt handling, transportation and delivery of all freights offered along its line for transportation, and provide and prescribe all such rules and regulations as may be necessary to secure such operation and the furnishing of such facilities and the prompt handling, transportation and delivery of all freights offered, and may regulate, require and provide for prompt delivery and transfer by any such company or common carrier to any other such company or common carrier within this state of any and all freights consigned or offered for transportation from any point in Florida to any point in Florida whenever such transfer and delivery will afford a shorter or otherwise more available route of transportation than can be given by the company or common carrier first receiving the freight and shall provide and prescribe and enforce observance of all such rules and regulations as to such prompt delivery and transfer as they may deem necessary. Every railroad company shall operate over every part of its line not less than one passenger and one freight train each way daily except Sunday; provided if after hearing and investigation the Florida public utilities commissioners shall determine that the public need does not require such daily service they shall prescribe such service as in their opinion the public need does require and such service will be deemed sufficient until the commissioners shall

otherwise order. However, nothing herein contained shall be held as limiting the right of the Florida public utilities commissioners to require of all railroads and common carriers such greater service as they shall deem to be to the best interest of the public.

History.—§6, ch. 4700, 1899; GS 2896; §5, ch. 6527, 1913; RGS 4621; CGL 6707; §1, ch. 19177, 1939; §7, ch. 22858, 1945; §1, ch. 63-279.

350.17 Terminal facilities erected on certain lands under jurisdiction of commissioners.—Any land, including the beach, shore and bottom of any tidal waters of the state, and riparian rights or property, held in trust by the state for the benefit of all the people of the state, and which the state has heretofore granted to any municipality in the state for the benefit of or aid to commerce or navigation, and which the state or any municipality has granted or leased or in any manner surrendered into the possession or control of any person for the purpose of aiding either interstate or intra-state commerce, and in or upon which any such person has heretofore constructed, or shall hereafter construct, any docks, wharves or other terminal facilities for use by them in connection with any business carried on by them as common carriers, and all railroad tracks used in connection with any such docks, wharves or terminals within the corporate limits of any municipality, are hereby placed under the jurisdiction of the Florida public utilities commission for the purpose of encouraging, aiding and facilitating commerce.

History.—§1, ch. 6977, 1915; RGS 4622; CGL 6708; §1, ch. 63-279.
cf.—§1.01(3) "Person" defined.

350.18 Commissioners may order joint use of terminal facilities.—Whenever the Florida public utilities commission, after a hearing upon its own motion, or upon complaint, shall find that public convenience and necessity, or the need of commerce, require the use by any person, owning, possessing or using any such land, or other such property, or rights for the purpose of constructing, or operating, thereon any such railroads, docks, wharves, or terminals, of the railroads, tracks, docks, wharves, or terminals, or any part thereof, belonging to any other person, and possessed or used by them under any franchise, or other grant, by this state, or any of its municipalities, and that such use will not prevent the owners or others in the possession or use thereof from performing their duties as common carriers or otherwise, as required by their franchise or as conditioned in any other grant, nor result in irreparable injury to such owners, or other users of such tracks, docks, wharves, terminals or equipment, or in any substantial detriment to the service, and that such person owning, controlling or using any such tracks, docks, wharves or terminals have failed to agree upon such joint use, or the terms and conditions or compensation for the same, or for making physical connections, the Florida public utilities commission may, after notice and hearing to all persons directly affected thereby, order and direct that such connections and use shall be permitted, and prescribe reasonable compensation, and reasonable terms and conditions therefor, and prescribe rules and regulations from time to time as may be necessary for such use. That for the purposes of this chapter, the Florida public utilities commission may authorize and require the physical connection of the main spur, switch and lateral tracks, owned, or controlled and operated by any persons, including municipal corporations, and used or designed, or available, for use in connection with any dock, wharves, terminals or other property mentioned in §350.17.

History.—§2, ch. 6977, 1915; RGS 4623; CGL 6709; §1, ch. 63-279.

350.19 Construction of §§350.17 and 350.18.—Sections 350.17 and 350.18 are intended to enlarge and extend the jurisdiction, powers and duties conferred upon the Florida public utilities commission, and shall be construed in connection with other provisions of this chapter whenever necessary to effectuate the purpose of this chapter. The provisions of §§350.17 and 350.18 shall not apply in any municipality in or for which a board of port commissioners has heretofore been created nor repeal, limit or affect any powers of any such municipality or of any such port commissioners therein.

History.—§§3, 4, ch. 6977, 1915; RGS 4624; CGL 6710; §1, ch. 63-279.

350.20 Authority to make rules for separation of races in passenger cars.—The Florida public utilities commissioners may prescribe reasonable rules and regulations relating to the separation of white and colored passengers in passenger cars being operated in this state by any railroad company or other common carrier.

History.—§2, ch. 5893, 1909; RGS 4625; CGL 6711; §1, ch. 63-279.
cf.—§352.06 Penalty for violation of rules concerning race separation on trains.

350.21 May require construction or alteration of depots to secure separation of races; rules and regulations.—The Florida public utilities commissioners may require the building or alteration of any and all passenger depots and terminal stations in this state, in such manner as to secure the separation of white and colored passengers, as required by §352.16, but said commissioners may, for good cause shown, extend the time for the building or alteration of any such depot for such time as may appear to them reasonable. Said commissioners may prescribe all necessary rules, orders and regulations necessary to carry §352.16 into effect.

History.—§2, ch. 5619, 1907; RGS 4626; CGL 6712; §1, ch. 63-279.
cf.—§352.17 Penalty for violation of separation of races in depots.

350.22 May prescribe length of cattle cars and minimum carload.—All companies transporting livestock within the boundaries of the state shall provide, for such transportation of such livestock, properly constructed cars, as set forth in §352.33, of not less than thirty-four feet in length and the Florida public utilities commission shall prescribe the minimum carload for cars of such length.

History.—§4, ch. 5422, 1905; RGS 4627; CGL 6713; §1, ch. 63-279.
cf.—§352.35 Penalty for violations of this section.

350.23 Jurisdiction to enforce provisions of law.—The Florida public utilities commission shall have full jurisdiction of the provisions of §§350.22, 352.33, 352.34 and 352.36, and enforce the provisions thereof, and make such rules and regulations governing such traffic as to them may seem meet.

History.—§5, ch. 5422, 1905; RGS 4628; CGL 6714; §1, ch. 63-279.

cf.—§352.35 Penalty for violations of this section.

350.24 Violation of regulations as to transporting livestock by transportation company.—All transportation companies violating any of the provisions of §§350.22, 350.23, 352.33 and 352.34 shall be subject to a fine of not over one thousand dollars for violation of any of the said provisions; provided, however, that this section shall not apply to any violation in which the delay or default was caused by accident or providential hindrance.

History.—§6, ch. 5422, 1905; RGS 5588; CGL 7774.

350.25 Employment, compensation and duty of inspector of railroads.—The Florida public utilities commissioners shall employ a competent inspector to inspect the physical condition of the roadbeds, right of ways, tracks, depots, rolling stock and other fixtures and equipment of any railroad or railroads being operated wholly or in part in the state, and to investigate and make estimate on cost of reproducing the same.

Such inspector shall be paid such compensation as said commissioners deem proper out of the funds available for the maintenance of the Florida public utilities commission, and he shall report in writing the result of his inspection, investigations and estimations to the said commissioners at such times and in such manner as they shall direct.

History.—§1, ch. 5622, 1907; RGS 4629; CGL 6715; §1, ch. 63-279.

350.26 Commissioners shall adopt rules and regulations to insure the safety of roadbeds, right of ways, tracks, etc.—The Florida public utilities commissioners shall make and adopt reasonable rules and regulations requiring railroad companies and other common carriers operating railroads wholly or in part in the state to maintain the roadbeds, right of ways, tracks, depots, rolling stock, and other fixtures and equipment of such railway lines within the state in a safe and proper condition. Said commissioners shall also prescribe reasonable rules and regulations with respect to the stringing of wires, electric or otherwise, which cross over or under the tracks of any steam railroad, and with respect to the support, maintenance, repair and reconstruction thereof; provided, that before adopting such rules and regulations there shall be a public hearing before said commission, of which reasonable notice shall be given to all interested parties.

History.—§2, ch. 5622, 1907; RGS 4630; §1, ch. 9305, 1923; CGL 6716; §1, ch. 63-279.

350.27 Construction and maintenance of switches, etc.—The Florida public utilities commissioners shall require all railroad companies operating railroads, either in whole or in part within this state, to construct and maintain all their switches and switching devices in a safe manner and condition.

History.—§3, ch. 5622, 1907; RGS 4631; CGL 6717; §1, ch. 63-279.

350.28 Penalty for violation of law; defense of carriers; recovery of penalty; pleadings; evidence; fine imposed illegal, etc.—If any railroad company or other common carrier, operating a railroad wholly or in part in this state, shall refuse to comply with any rate, rule, order or regulation provided or prescribed by the Florida public utilities commissioners under the authority of §350.26 or shall violate the provisions of §350.27, such company or common carrier shall thereby incur a penalty for each offense of not more than $5,000.00 to be fixed, imposed and collected by said Florida public utilities commissioners in the manner provided in this section. If any railroad, railroad company, or other common carrier doing business in this state shall by any officer, agent or employee be guilty of a violation or disregard of any order, rate, schedule, rule or regulation provided or prescribed by said commission, or shall fail to make any report required to be made under the provisions of this chapter or shall otherwise violate any provision of this chapter, such company or common carrier shall thereby incur a penalty for each such offense of not more than $5,000.00, unless otherwise provided, to be fixed and imposed by said commissioners after not less than ten days' notice of the charge of such violation or disregard of such order, rate, schedule, rule or regulation or failure to make report or other violation or disregard of the provisions of this chapter, and upon which charge such company or common carrier shall have had an opportunity to be heard by said commissioners.

The common carrier charged shall file its defense or defenses in writing under oath, specifically setting forth each particular defense. The commissioners may permit amendments to charges and defenses upon such terms and conditions, and with such postponements of hearing, if any, as in their opinion the ends of justice may require. They may also adopt rules to regulate the proceedings before them.

The said penalty in the amount so imposed, if not promptly paid to the state treasurer, shall be recovered with interest thereon from the date of the order in a civil action brought by the said commissioners in the name of the state in any county in the state where such violation has occurred, or in any other county through or in which such common carrier runs or does business.

The complaint shall be deemed sufficient if it recites fully or sets forth the said order on which the suit is brought, with an averment that the defendant is indebted to the plaintiff thereon in the amount of the penalty imposed with interest as aforesaid.

In such cases there shall be no general issues, but the answer shall specifically set forth the particular defense or defenses to the action;

and no defense which existed prior to the day of hearing before the commissioners, and which was not made before them, shall be permitted to stand as a defense in the action.

The fact of the fixing and imposing of such fine by the commissioners shall constitute prima facie evidence of everything necessary to create the liability or require the payment of the fine or penalty as fixed and imposed, and to authorize a recovery thereon in any suit brought by the commissioners, and a copy of the entry in the minute book of the commissioners of the order fixing and imposing such fine or penalty, certified by the chairman of the board of Florida public utilities commissioners, shall constitute prima facie evidence of the fact that such fine or penalty was fixed and imposed by the commission.

Every fine when imposed by the commissioners shall be a lien upon the railroad, equipment, boats and real property of the common carrier on which it is imposed except such real property as is not used in the business of transportation.

If any railroad, railroad company or other common carrier doing business in this state shall claim that any penalty sought to be imposed upon it under the provisions of this section unlawfully deprives said railroad, railroad company or other common carrier of its property or property rights without due process of law, said railroad, railroad company or other common carriers shall have the right by answer to assert such defense in any suit brought under this section, and if the court shall find that the answer is well founded in law and fact it shall enter judgment for the defendant.

An answer filed as a defense upon the ground that the enforcement of the penalty will unlawfully deprive the defendant of its property without due process of law shall be as full and particular in averment as would be essential if pleaded as in a suit in equity seeking an injunction to restrain the enforcement of the acts for which the penalty is sought to be imposed and the courts shall have the power to render such judgment in said action as might be necessary to give said defendant the full benefit of its constitutional rights in the premises.

In all such cases the burden of establishing such last mentioned defense or defenses shall be upon the defendant and the same shall be required to be established by such defendant by a preponderance of the evidence.

A proceeding under §350.36 shall be a bar to a like proceeding under this section and a proceeding under this section shall be a bar to a like proceeding under §350.36.

History.—§12, ch. 4700, 1899; GS 2908; §12, ch. 6527, 1913; RGS 4645; §4, ch. 12218, 1927; CGL 6731; §36, ch. 29737, 1955; §1, ch. 63-279.

cf.—§350.56. Additional penalties.

350.29 Action commenced. — The commissioners shall institute such action through the attorney general or state attorney, who shall not require other fees than those they now receive by law, or by special counsel employed by the commissioners and attorney general, as provided in this chapter, the fees of which special counsel shall be fixed and allowed by the commissioners and the attorney general as may seem to them reasonable and just; and any and all expenses of litigation and proceedings under the provisions of this chapter may be by the commissioners allowed and paid, and in the event of recovery of any such fine or penalty may be paid out of any moneys recovered under the provisions hereof, and the balance of any moneys so recovered shall be, by the state treasurer, put to the credit of the Florida public utilities commission to meet any of the expenses of said commission and the cost of carrying out and enforcing the provisions of this chapter. The commissioners shall have the right to suspend, reduce or remit any fine or penalty so imposed, and may suspend, reduce or remit the same on such terms or conditions as may be fixed by them.

History.—§13, ch. 4700, 1899; GS 2909; RGS 4646; CGL 6732; §1, ch. 63-279.

350.30 May employ special counsel. — The Florida public utilities commissioners may employ special counsel to advise them and to conduct any or all litigation or proceeding of any character instituted by or against them, and such special counsel shall be paid such compensation as said commissioners deem proper out of the funds available for the maintenance of the railroad and public utilities commission.

History.—§1, ch. 5620, 1907; RGS 4647; CGL 6733; §1, ch. 63-279.

350.31 Conducting suits.—All suits instituted by the Florida public utilities commissioners through special counsel shall be conducted as now provided by law, and the attorney general or any state attorney shall join in any such suit when requested to do so by said commissioners.

History.—§2, ch. 5620, 1907; RGS 4648; CGL 6734; §1, ch. 63-279.

350.32 Power to sue in behalf of individuals; damages for discrimination; limitation of actions.—If any railroad, railroad company or other common carrier, doing business in this state shall, in violation or disregard of any rule, rate or regulation provided by the commissioners aforesaid, inflict any wrong or injury upon any person, the Florida public utilities commissioners if requested by such injured person shall institute proceedings to compel restitution; and such action by the Florida public utilities commission shall preclude any settlement by the party or parties injured without the consent of the commission.

If any railroad company or common carrier shall discriminate, by way of rebate or otherwise, directly or indirectly, in favor of any consignor or consignee of freights within this state, or allow him a reduction of the rate fixed by said commissioners as reasonable and just, any other consignor or consignee of freights within this state shall have a right of action against the said railroad company or common carrier, and the amount of his damages shall be fixed by a jury, unless a jury shall be waived, and the measure of damages shall be such sum or sums of money as will fairly

compensate the injury done to said last mentioned consignor or consignee.

In all such cases demand in writing on said railroad, railroad company or common carrier shall be made for the money damages sustained before suit is brought for recovery under this section.

All suits under this chapter shall be brought within two years after the commission of the alleged wrong or injury, except in cases where the Florida public utilities commissioners have heretofore been or shall hereafter be, by refusal of such railroad or common carrier to observe the rates, rules, schedules or regulations by the Florida public utilities commissioners, compelled to resort to suits to enforce such rates, rules, schedules or regulations, and in such cases suits for such loss, damage, or penalty may be brought within twelve months after the termination of such suits in favor of the Florida public utilities commissioners.

History.—§13, ch. 4700, 1899; §1, ch. 5624, 1907; §13, ch. 6527, 1913; RGS 4649; CGL 6735; §1, ch. 63-279.

350.33 Rights of injured persons.—Any person from whom any moneys shall have been exacted by any such company or common carrier in excess of the amounts properly chargeable under the provisions of this chapter, and any person who shall have suffered any pecuniary injury by the violation of any such company or common carrier of any provisions of this chapter, shall have the right, by written demand, to require the commissioners to enforce recovery of his damages, or may upon failure of the commissioners to institute suit therefor within ninety days after such written demand, institute suit in his own name against any such company or common carrier in any court of competent jurisdiction in the county in which the cause of action arose, or in any county in the state through or in which such company or common carrier runs or does business; and any such person upon establishing his right of recovery, shall be entitled to recover the total amount of such overcharge or other pecuniary injury, with interest thereon, together with such additional amount as the jury may find necessary to reasonably compensate him for all expense, including the value of his own time and services, and all reasonable cost and attorneys' fees incurred in the recovery of such damages, and such right of action shall exist in the legal representatives or assignee of any such person.

History.—§13, ch. 4700, 1899; GS 2911; RGS 4650; CGL 6736.

350.34 Additional expense account of appeal and delay; parties to actions.—In the event of an appeal after the judgment for such recovery the appellate court shall, upon an affirmation of such judgment allow and adjudge or require to be allowed and adjudged, the payment of such additional amount as may be necessary to reasonably compensate the plaintiff for all such additional expenses as may be incident to the appeal and delay.

Any such action or any other action instituted by the Florida public utilities commission shall be in the name, except as herein otherwise provided, of the Florida public utilities commissioners without using their individual names, and the recovery had thereon shall be held by such commissioners and applied to the use of the party or parties so injured.

Such commissioners may unite in one action the claims of different persons by whom they may be requested to institute such suits where such claims are of the same character and against the same defendant.

History.—§13, ch. 4700, 1899; GS 2912; RGS 4651; CGL 6737; §7, ch. 22858, 1945; §1, ch. 63-279.

350.35 Rules of evidence.—In all cases under the provisions of this chapter the rules of evidence shall be the same as in civil actions, except as herein otherwise provided. The remedies hereby given the injured person shall be regarded as cumulative to the remedies now given by law against railroads, railroad corporations and common carriers, and this chapter shall not be construed as repealing any statute giving such remedies; provided, that making recompense to any person or corporation for wrongs or injuries done them by any railroad, railroad companies or other common carriers shall not prevent the commissioners from enforcing penalties for any violations of rules, regulations or rates.

History.—§14, ch. 4700, 1899; GS 2913; RGS 4652; CGL 6738.

350.36 Penalties; proceedings to recover.—Every common carrier, railroad, street railroad, railroad corporation, street railroad corporation, express, telephone, telegraph, and terminal company or corporation within the state, and all other corporations, companies, or persons coming under the provisions of this section, or of any other law relating to the Florida public utilities commissioners, and any officers, agents, and employees of the same, shall obey, observe, and comply with every order made by the Florida public utilities commissioners under authority of law.

Any common carrier, railroad, street railroad, railroad corporation, street railroad corporation, express, telephone, telegraph, or terminal company or corporation, or any other corporations, companies, or persons coming under the provisions of this section, which shall violate any provision of this section or the laws heretofore passed, or hereafter passed, or now in force, or which fails, refuses, or neglects to obey, observe and comply with any order, direction or requirement of the Florida public utilities commissioners heretofore or hereafter passed, shall forfeit to the state a sum of not more than five thousand dollars unless otherwise provided for each and every offense, the amount to be fixed by the presiding judge. Every violation of the provisions of this section or any preceding law, or of any such order, direction, or requirement of the Florida public utilities commission shall be a separate and distinct offense.

An action for the recovery of such penalty

may be brought in the county of the principal office of such corporation or company in this state, or in the county of the state where such violation has occurred and wrong shall be perpetrated, or in any county in this state through which said corporation or company operates, or, where the violation consists of an excessive charge for the carriage of freight or passengers or services rendered, in any county in which such charges are made or through which it was intended that such passengers or freight should have been carried or through which such corporation operates, and shall be brought in the name of the state by direction of the Florida public utilities commissioners.

Any procedure to enforce such penalty shall be triable the first term of the court at which it is brought and shall be given precedence over other civil business by the presiding judge, and the court shall not be adjourned until such proceeding is legally continued or disposed of, without the consent of counsel representing the state as plaintiff.

Any judgment in any such case may be taken by either party to the cause to the appropriate district court of appeal for review in the manner and within the time provided by the Florida appellate rules for reviewing judgments rendered by circuit courts in actions at law.

The complaint in any case shall be deemed sufficient if it shall allege the making of an order or rule, regulation, requirement or direction against the defendant, and that such defendant has failed, neglected or refused to obey the same.

In such cases there shall be no general issues, but the answer shall specifically set forth the particular defense to the action, and no defense other than by answer specifically setting forth all of the facts to show a particular defense to the action shall be permitted in the action.

Suits may be brought and instituted under this section by counsel employed by the Florida public utilities commission under the authority of §350.30 and such counsel by and with the consent of said Florida public utilities commissioners may compromise and adjust with the defendant the amount of any penalties sought to be recovered.

All suits brought under this section shall be subject to the provisons of §350.31 relating to the conduct of suits by or on behalf of the Florida public utilities commissioners, and the same legal presumptions shall prevail as in proceedings under §350.28.

History.—§4, ch. 5622, 1907; §3, ch. 12218, 1927; RGS 4632; CGL 6718; §2, ch. 29737, 1955; §1, ch. 63-279; §23, ch. 63-559.

350.37 Power to require delivery by shortest and most available route.—The commissioners may regulate, require and provide for delivery of such freight by the shortest or most available route and no such company or common carrier shall charge more compensation for the transportation of freight or passengers over an unnecessarily long route than would be a just and reasonable charge for the transportation of the same by the nearest available route, whether the nearest available route be over one railroad or line of transportation or over more than one; provided, that when a carrier for the purpose of shortening the distance as compared to the existing route, and for improvement in service to the public, shall have completed within the last five years, or may hereafter construct, a shorter route that does or will reduce the distance between any two or more points in the state not to exceed thirty miles and continues to operate both the new and the old routes such carrier shall be permitted to charge for the transportation of passengers and freight over said shorter route the same rates and fares as were theretofore legally applicable over the longer route, for a period of five years from the time said shorter route was placed in operation, and upon the expiration of said period of time the Florida public utilities commission may, in its discretion, permit said carrier to charge for the transportation of passengers or freight or both over the shorter route the same rates and fares as were theretofore legally applicable over the longer route, and where the distance between any two or more points in the state shall, subsequently to June 4, 1927, by the construction by any carrier of a shorter route, be reduced by more than thirty miles and said carrier continues to operate both the new and the old route, then, in that event the commissioners may, in their discretion, permit said carrier to charge for the transportation of passengers and freight over the last named shorter route the same rates and fares as were theretofore legally applicable over the longer route.

History.—§6, ch. 4700, 1899; GS 2897; RGS 4633; §1, ch. 12219, 1927; CGL 6719; §1, ch. 63-279.

350.38 Construction of §350.37; waiver by carrier.—Nothing contained in §350.37 shall be construed as affecting any principle of rate making, except when and as applied to a situation described in said section.

Any carrier or carriers may file with the Florida public utilities commission a disclaimer or waiver, waiving the provisions of §350.37 and this section, with respect to either freight or passenger rates, or both, over any such reduced route or routes affected by the terms of said sections; and, in that event, the rates as to which such disclaimer or waiver shall be filed shall not be affected by the provisions of §350.37.

History.—§6, ch. 4700, 1899; GS 2897; RGS 4633; §§2, 3, ch. 12219, 1927; CGL 6719; §1, ch. 63-279.

350.39 To furnish common carrier with schedule of rates; evidence; revision of rates.—Said commissioners shall make and furnish to each common carrier doing business in this state, as soon as practicable, a printed or written schedule of just and reasonable rates and charges for transportation of freights, passengers and cars on its transportation lines under its control or management, and such

schedule, certified by the chairman of the commissioners, shall be admitted in evidence without necessity for other proof, and shall in all suits brought against any common carrier wherein is involved the rates of any common carrier for the transportation of freight of any description or charges for the transportation or use of any kind of car upon the tracks of any railroad or of any of the branches thereof, or for the transportation of passengers, or for any unjust discrimination, in relation thereto, be deemed and taken in all the courts of this state as prima facie evidence that the rates fixed in such schedule are just and reasonable rates of charges for the transportation of freight, cars and passengers upon the transportation lines of said carrier; and said commissioners shall, as often as circumstances may require, change or revise any schedule and furnish all common carriers doing business in this state with notice of such changes or revisions, and such notice shall state the time when such changes or revisions shall go into effect.

History.—§8, ch. 4700, 1899; GS 2899; §6, ch. 6527, 1913; RGS 4635; CGL 6721.

350.40 Notice to common carriers before changing rates.—The said commissioners, before changing, revising, fixing, adopting or allowing any such schedule or prescribing any such rules and regulations, shall give public notice of their intended action in such newspapers and for such time as shall be deemed fair and reasonable by said commissioners to all common carriers to be affected and to the public generally, of the times and places of their meetings and all common carriers and persons interested shall be entitled to a just and fair hearing before said commissioners, and whenever any full schedule shall have been made, changed or revised, adopted or allowed, or any rule or regulation prescribed as aforesaid, the commissioners shall in every instance give the date on which the same will go into effect.

History.—§8, ch. 4700, 1899; GS 2900; §7, ch. 6527, 1913; RGS 4636; CGL 6722.

350.41 Publication of notice may be dispensed with.—Where the public interest does not require that public notice shall be given in a newspaper, such publication may be omitted, and the commissioners shall give personal notice to the common carriers and other parties interested. The commissioners shall furnish to all of said railroad companies notice for the building of such freight and passenger depots, houses and platforms and to all said water carriers notice for the building of such landings, wharves and houses, and to all common carriers notice of such changes of schedule for the arrival and departure of all trains and boats as may in the judgment of the commissioners be required to secure close connection between railroads or between railroads and water carriers or between water carriers, for the convenience and comfort of the public, and all courts in this state shall only require proof that such notices were duly served.

History.—§8, ch. 4700, 1899; GS 2901; §8, ch. 6527, 1913; RGS 4637; CGL 6723.

350.42 Commissioners not to discriminate in classes of freight.—Said commmissioners in changing, revising, fixing, allowing or adopting any schedule of rates for freights or cars shall not discriminate unreasonably or unjustly in favor of any one class of freight to the detriment of other classes of freight.

History.—§8, ch. 4700, 1899; GS 2902; RGS 4638; CGL 6724.

350.43 Schedules and rate sheets open to public. — The common carriers affected shall furnish at their own cost and shall keep open to public access in such manner as may be directed by the commissioners their schedules and rate sheets and shall also post within their depots, cars, landings or boats such notices relating to the conduct of their business as the Florida public utilities commissioners may prescribe by rule or regulation.

History.—§8, ch. 4700, 1899; GS 2903; §9, ch. 6527, 1913; RGS 4639; CGL 6725; §1, ch. 63-279.

350.44 Inspection of accounts and records of common carriers; production of books and records, etc.—The commissioners or either of them or such person as they may employ for the purpose may inspect the accounts, books, records and papers of any description of any common carrier subject to their jurisdiction and they may make personal visitation of railroad offices, stations and other places of business within or without the state for the purpose of such examination; provided, that any person other than one of said commissioners who shall make the demand for inspection of the books and papers shall produce his authority in writing from the said commissioners. The commissioners may require by order or subpoena the production within this state at such time and place as they may designate of any accounts, books, records and papers of any description kept by such common carriers in any office or place without the state, or verified copies in lieu thereof if the commissioners shall so order in order that an examination thereof may be made by the commission or under its direction.

History.—§9, ch. 4700, 1899; GS 2904; §10, ch. 6527, 1913; RGS 4640; CGL 6726.

350.45 Power to examine officers and employees of common carriers under oath; compelling reports; reports of accidents; passes, tickets, etc.—The commissioners, or any person employed by them for the purpose of making examination, may examine all officers, agents or employees of any common carrier under oath in relation to its organization, property, business and affairs or the operation of its line. They may at any time, stated or otherwise, call on any common carrier for reports under oath or otherwise, of any matter or thing, or giving any information concerning such organization, property, business or affairs and operation of such power is not limited by the fact that the same subject may be em-

braced in the annual report, and they may require railroad companies or common carriers to report by divisions either in the annual or special reports. All common carriers shall report, as required by the commissioners, all accidents, wrecks, derailments and explosions which occur on their respective lines, with such particulars and in such form as the commissioners may prescribe, but no such report shall be competent evidence in any court against the common carriers making it in any court.

All common carriers shall also report, whenever so required to do by the commissioners, a verified list of all passes, tickets and mileage books issued free or for other than actual bona fide money consideration at full, established rates, together with the names of the recipients thereof, the reason for issuing the same, the points of origin and destination and the amounts received therefor or the consideration thereof. This provision shall not apply to the sale of tickets at reduced rates open to the public, but embraces all other free or reduced transportation whatsoever not open to the public.

History.—§9, ch. 4700, 1899; GS 2905; §11, ch. 6527, 1913; RGS 4641; CGL 6727; §1, ch. 14500, 1929.

350.46 Railroad companies to have black boards to post mark and brand of cattle killed; penalty.—Every railroad company or person operating a line of railroad or running cars or trains in this state, shall have prepared black boards with the words "Marks and Brands" painted in large white letters across the top of each black board, and shall have one of such black boards placed in an accessible and convenient place at each depot on their respective roads or division of roads. Any such railroad company or person failing to comply with the provisions of this section shall be fined not more than twenty-five dollars for each failure to comply.

History.—§1, ch. 4431, 1895; GS 3644; RGS 5580; CGL 7766.

350.47 To keep a record of and publish marks and brands of cattle killed or injured; penalty.—Every person operating any railroad in this state, shall keep a record, in a book for that purpose, at the nearest depot, of the ear marks and brands and flesh marks and description of all live stock killed or injured by trains operated by them, stating the number of mile post nearest to where such stock was killed or injured, which said record book shall be, at all times, open to the inspection of the public. Where said railroad is not fenced, the person operating said road, shall publish one time in some newspaper, published at the county seat of the county in which such stock was killed or injured, the ear marks and brands and flesh marks and description of said stock. Any person failing to comply with any of the provisions of this section, shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding six months.

History.—§§1-3, ch. 5021, 1901; GS 3645; RGS 5581; CGL 7767.

350.48 Engineer to report killing or injury to livestock; penalty.—Every engineer, or other person in charge of an engine or train of cars by which any livestock is killed or injured shall report by telegraph or otherwise, not later than twenty-four hours after such killing or injury, to the supervisor or roadmaster on whose division of railroad such stock may be killed or injured, the killing or injury of such stock; such report to specify the place of killing or injury by stating the same to be north or south, east or west, of the nearest mile post to where such stock was killed or injured. Any engineer or other person in charge of an engine or train by which livestock is killed or injured, who fails to report as provided for in this section, shall be fined not more than twenty-five dollars for each such failure.

History.—§2, ch. 4431, 1895; GS 3646; RGS 5582; CGL 7768.

350.49 Duty of supervisor relative to livestock killed or injured; penalty.—Each supervisor or roadmaster of each railroad or division of railroad in this state shall keep a book in which reports of stock killed or injured made as provided by law shall be set down as soon as may be after the receipt of such reports. The full particulars of such report shall be set down in such book, together with the name of the engineer or other person making the report. Whenever any such supervisor or roadmaster shall receive reports of stock being killed or injured on their roads or division of roads, as herein provided for, he shall see that a report of such killing or injury is written or printed on white paper and posted on the blackboards provided for by §350.46, at the depot nearest to the place of the killing or injury, not later than forty-eight hours after the receipt by him of such report. Such report so posted shall give as full description of such live stock as such supervisor or roadmaster is able to give, and shall state as near as may be the place where the same was killed. Any such supervisor or roadmaster who fails to comply with the provisions of this section shall be fined not more than fifteen dollars for each such failure to comply.

History.—§3, ch. 4431, 1895; GS 3647; RGS 5583; CGL 7769; §7, ch. 22858, 1945.

350.50 Duty of section boss relative to livestock killed or injured; penalty.—Every section boss or railroad track foreman employed upon a railroad in this state, whenever he shall find or shall know of any live stock that has been killed or injured by any engine or cars upon his section of railroad, shall post a notice written on white paper, on all the blackboards prepared for that purpose on his section, giving the marks and brands, color, sex, kind, and, as near as possible, the weight and age of such livestock so killed or injured, and also the name of the owner when known. Such notice shall be kept posted on such black board for at least sixty days. Such section boss or track foreman shall keep a book in which he shall record the marks and brands, color, sex and kind of all

stock killed or injured on his section, the name of the owner when known, and the date and place where such stock was killed or injured. Such section boss or track foreman shall expose such book for inspection to any citizen of this state at any time when he is requested to do so. Any section boss or track foreman failing or refusing to comply with the requirements of this section shall be fined not more than twenty-five dollars for each failure to comply.

History.—§4, ch. 4431, 1895; GS 3648; RGS 5584; CGL 7770.

350.51 Disposition of carcass; penalty.—Any section boss, track foreman or other person who moves, burns, buries, or otherwise disposes of any carcass of any stock found on any railroad in this state before the marks, brands, color and sex have been recorded as provided for in this chapter shall be fined not more than two hundred dollars.

History.—§5, ch. 4431, 1895; GS 3649; RGS 5585; CGL 7771.

350.52 Applies to all railroad companies.—The provisions of §§350.46-350.51 shall apply to all railroads in this state whether operated by one or more companies or owners, and where more than one company is operating or running its trains over the same road, the company owning the said road shall make settlement to the owner for all stock killed or damaged and the same shall be a charge against the company whose train kills or damages such stock.

History.—§7, ch. 4431, 1895; GS 3650; RGS 5586; CGL 7772.

350.53 Railroads to make reports, etc.—Every railroad, railroad company and common carrier incorporated or doing business in this state, or which hereafter shall become incorated or do business in this state shall, annually on or before August 1 transmit to the office of the Florida public utilities commissioners a full and true statement under oath of the proper officers of said corporation, of the affairs of such corporation, company or common carrier as the same existed on the first day of the preceding July, specifying, (1) The amount of capital stock subscribed, the number of shares, and the par value thereof. (2) The name of the owners of its stock, and the amount owned by them respectively, and the residence of each stockholder as far as known. (3) The amount of stock paid in and by whom. (4) The amount of assets and liabilities. (5) The names and places of residence of its officers. (6) The amount of the funded or bonded debt. (7) The amount of floating debt. (8) The estimated value of the roadbed, including iron and bridges. (9) The estimated value of rolling stock. (10) The estimated value of stations and buildings. (11) The estimated value of other property. (12) The length of single track on main line. (13) The length of double track on main line. (14) The length of branches, stating whether they have double or single track. (15) The aggregate length of siding and other tracks above enumerated. (16) The number of tons of through freight carried during the year preceding the making of the report. (17) The number of tons of local freight carried during the same time. (18) The monthly earnings for the transportation of passengers during the same time. (19) The monthly earnings for the transportation of freight during the same time. (20) The amount of expense incurred in the running and management of passenger trains, in the running and management of freight trains and in the running and management of mixed trains during the same time. (21) The expenses incurred in the running and management of the road, including the salaries or compensation of general officers for the same time, which shall be reported separately in detail. (22) The amount expended for repairs, including maintenance of roadways, repairs and removal of bridges, ties and iron. (23) The amount expended for other improvements not included in the last subdivision. (24) The amount expended for motive power, cars, stations, houses, and all other buildings and fixtures, including all other expenditures in the management and running of said road. (25) The rate of fare for passengers for each month during the same time; through and way passengers separately. (26) The tariff of freights, showing the changes of tariff, if any during the same time. (27) A copy of each published rate of fare for passengers and tariffs of freights, issued for the government of its agents during the same time, and whether the rate of fare and tariff of freight in such published lists are the same as those actually received by the company, and if not, what were received. (28) What express companies run on its road and on what terms and conditions, and the kind of business done by them. (29) What freight and transportation companies run on its roads and on what terms, and whether such freight and transportation companies use the cars of the railroad company, or cars furnished by themselves. (30) Whether the freight or cars of such transportation companies are given any preference in speed or order of transportation, and if so, what. (31) Number of free passes issued during same time and to whom. (32) What running or traffic arrangements it has with other railroad companies. (33) What amount of land was granted them by the state and by the United States; how much of said land has already been actually conveyed by deed; how much land is still due them; how much land has been sold, and what has been the gross receipts from such sales of lands since granted by the state and the United States; and answer such additional interrogatories as such commissioners may make and propound to the said railroad and express companies; and this section shall apply to the president, directors and general officers of every railroad and express company now existing, or which shall hereafter be organized and exist in this state, and to every lessee, manager or operator of any

railroad and express line within this state.

History.—§10, ch. 4700, 1899; GS 2906; RGS 4642; CGL 6728; §1, ch. 63-279.
cf.—Ch. 195 Taxes upon railroads and pullman and express companies.

350.54 Railroads to make annual reports.—All common carriers subject to the provisions of this chapter shall make to the Florida public utilities commissioners annually, at such time as said commissioners shall designate, and in accordance with such forms as said commissioners shall prescribe, annual reports for the current year ending December 31, immediately preceding, which shall contain a statement of the organization, capitalization, traffic earnings and such other matters connected with their organization and operations as said commissioners shall require, which said reports shall be verified by affidavits of the principal officers thereof, and said commissioners shall tabulate and file said annual reports, and include them in their annual report to the governor.

History.—§20, ch. 4700, 1899; GS 2920; §1, ch. 7341, 1917; RGS 4660; CGL 6746; §1, ch. 63-279.

350.55 Contracts to be submitted to commissioners for approval.—All contracts and agreements between any and all railroads, railroad companies and common carriers doing business in this state, as to rates of freight and passenger tariffs, use and transportation of cars, shall be submitted to said Florida public utilities commissioners for inspection and correction, that it may be ascertained as to whether or not they are reasonable and just and will insure prompt delivery of freight and passengers to points of destination, or the violation of any section of this chapter, and said commissioners shall have power to revise and correct the same and to make such rules and regulations in accordance therewith as they may deem necessary, which said rules and regulations shall be observed and obeyed by said railroad, railroad companies and common carriers as other rules and regulations of this chapter; and any such agreement not approved by said commissioners shall be deemed illegal and void.

History.—§11, ch. 4700, 1899; GS 2907; RGS 4643; CGL 6729; §1, ch. 63-279.

350.56 Long and short haul; special cases; reduction and increase of rate in competition with water route; application to change rate; penalty; liability of carrier; proviso.—No railroad company engaged in the business of common carrier of freight in the state, shall charge or receive any greater compensation in the aggregate for the transportation of freight of any nature for a shorter than for a longer distance over the same line or route in the same direction, the shorter, being included within the longer distance, or charge any greater compensation as a through route than the aggregate of the intermediate rates, subject to the provisions of this section; but this shall not be construed as authorizing any common carrier, within the terms of this section, to charge or receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the Florida public utilities commissioners such common carrier may in special cases, after investigation, be authorized by the Florida public utilities commissioners to charge less for longer than for shorter distances, for the transportation of freight, and the Florida public utilities commissioners may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section. Whenever a carrier by railroad shall, in competition with a water route, reduce the rate on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless, after hearing by the Florida public utilities commissioners, it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition. No rates or charges shall be required to be changed by reason of the provisions of this section in any case where application shall have been filed before the Florida public utilities commissioners in accordance with the provisions of this section until a determination of such application by the Florida public utilities commissioners.

If any railroad company shall violate any of the provisions of this section, or any rule, order or regulation prescribed by the Florida public utilities commissioners under the authority of this section, such company or common carrier shall thereby incur a penalty for each offense of not more than five hundred dollars, to be fixed, imposed and collected by the Florida public utilities commissioners in the manner provided in §350.28. In case any common carrier subject to the provisions of this section shall do, cause to be done, or permit to be done, any act, matter or thing in this section prohibited or declared to be unlawful, or shall omit to do any act or thing in this section required to be done, such common carrier shall be liable to the person injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this section, and shall thereby incur a penalty of one hundred dollars for each such offense, recoverable by the injured party, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery. This attorney's fee shall be taxed and collected as part of the costs in the case. This section shall not apply to commerce among the several states.

History.—§§1-5, ch. 6523, 1913; RGS 4644; CGL 6730; §1, ch. 63-279.

350.57 Duplicate freight receipts; liability of initial carrier; recovery by initial carrier; may prescribe forms of bills of lading.—All common carriers in this state shall, upon demand, issue duplicate freight receipts to all shippers of freight in which shall be stated the class or classes of freight shipped, freight charges over the line of the carrier issuing such receipts, and as far as is practicable shall state the charges upon the same over the connecting lines transporting such freight, and in all cases the carrier receiving such freight shipped shall be held in all the courts

of this state as responsible for the prompt and safe delivery of same to its point of destination within a reasonable time required for its transportation, which reasonable length of time shall be determined after due investigation by said Florida public utilities commissioners. When the consignee of such freight presents the carrier's receipt to the agent of the carrier last transporting such freight, such agent shall deliver the articles shipped upon the payment of the rates charged for the class of freight as stipulated in said receipt. If any common carrier shall violate this section it shall incur a penalty to be determined as provided for in this chapter.

No contract, receipt, rule or regulation shall exempt the initial common carrier from the liability hereby imposed. The common carrier issuing such freight receipts or bills of lading shall be entitled to recover from the common carrier on whose line the delay, damage, loss or injury shall have been sustained, the amount which it may have been required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof.

The commissioners may prescribe the form or forms of freight receipts or bills of lading.

History.—§15, ch. 4700, 1899; GS 2914; §14, ch. 6527, 1913; RGS 4653; CGL 6739; §1, ch. 63-279.

350.58 Annual report to governor. — The commissioners shall, by the first day of March in every year, make to the governor annual reports of all transactions of their office, including an itemized statement of penalties imposed and fines collected, and recommend from time to time such legislation as they may deem advisable.

History.—§16, ch. 4700, 1899; GS 2915; RGS 4654; CGL 6740.

350.59 Powers to issue certain writs.—Said Florida public utilities commissioners in making any examination for the purpose of obtaining information pursuant to this chapter, may issue summons, subpoenas, subpoenas duces tecum or other writs for the attendance of witnesses by such rules as they may prescribe, and such witnesses shall receive for such attendance same fees and mileage as now allowed witnesses by law in the circuit court, to be ordered paid by the governor upon presentation of subpoena, accompanied by affidavit of the witness as to the number of days served and miles traveled, made before the clerk of said commissioners, who is hereby authorized to administer oaths. In case any person shall refuse or willfully fail to obey such subpoena, subpoena duces tecum or other writ issued by commissioners, the said commissioners may issue an attachment for such witness and compel him to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners; to bring and produce such books or papers or documents required of such person, and said commissioners may punish for contempt as in cases of refusal to obey the orders and process of the circuit court of the state.

History.—§17, ch. 4700, 1899; GS 2916; RGS 4655; CGL 6741; §1, ch. 63-279.
cf.—§90.14 Witnesses; pay.
§932.03 Contempt (criminal).

350.60 May administer oaths; witnesses; examiner; report; service of subpoenas, notices, etc.—In making any investigations or examinations pursuant to this or any other section of this chapter each Florida public utilities commissioner may administer oaths or affirmations, and in such examinations or investigations no person called upon to testify shall be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but such testimony shall not be used against him in any criminal proceeding. The said commissioners may appoint any one of their number, or designate in writing an examiner, to make investigations or examinations outside of their office and such member in making such investigation or examination is hereby invested with the same power as the full board would have. The commissioner so appointed shall report to a full board the result of his investigation. The secretary of said Florida public utilities commission is hereby authorized to serve any subpoena, notice or other process or other paper issued by the commissioners and required by them to be personally served (which service may be by registered mail), and the sheriffs in the different counties in this state shall make such service, and execute all process or orders when required by the commissioners; said sheriffs to be paid the same fees as are allowed them by law for similar services.

History.—§17, ch. 4700, 1899; GS 2917; §15, ch. 6527, 1913; RGS 4656; CGL 6742; §1, ch. 63-279.
cf.—§1.01(13) defines registered mail to include certified mail with return receipt requested.

350.61 Power to declare and punish contempts.—Every officer, agent or employee of any railroad, railroad company or other common carrier, who shall willfully refuse to make and furnish any report required by the commissioners as necessary to the purposes of this chapter, or who shall willfully and unlawfully hinder, delay or obstruct the said commissioners in the discharge of their duties imposed upon them, or who shall commit in their presence during a hearing, investigation or examination, any act which would be deemed a contempt if committed in the presence of the circuit court, may be declared in contempt and punished as provided for in §350.59.

History.—§18, ch. 4700, 1899; GS 2918; §16, ch. 6527, 1913; RGS 4657; CGL 6743.
cf.—§350.59 Powers to issue certain writs.

350.62 Mandamus, injunction, etc.; discovery of names of persons damaged by carrier's violation of law; compelling payment, etc.—The commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this state, by the attorney general, state attorney or special counsel, designated by them, in the name of the state, proceedings by or for mandamus, injunction,

mandatory injunction, prohibition or procedendo, against any such company or common carrier subject to the provisions of this chapter, or against any office, officer, or agent thereof, to compel the observance of the provisions of this chapter, or any rule, rate or regulation of the commissioners made thereunder, or to compel the accounting for and refunding of any moneys exacted in violation of any one of the provisions of this chapter. In all cases where any common carrier shall have become indebted or liable for damages to a large number of persons by reason of its failure to abide by or comply with the provisions of any rule, rate or regulation of the commissioners, or by its violation of any provisions of this chapter, the Florida public utilities commissioners shall demand of such common carrier by written notice served upon it, a discovery of the names of all such persons and an accounting and payment to all such persons of all such indebtedness or damages, and if such common carrier shall refuse or shall fail to make such accountings and payments within sixty days after such notice shall have been served upon it, the Florida public utilities commissioners shall institute a proceeding or proceedings by or for mandamus or mandatory injunction against such common carrier to compel the making of such accountings and payments, and in any such proceeding upon an adjudication against such common carrier there shall be taxed as costs and paid over to the Florida public utilities commissioners to be paid out by them all such costs, attorneys' fees and expenses of such proceedings as shall appear to the court reasonable under all the circumstances and necessary to effect such accounting and settlement without cost or expense to the state or to the claimants, and the courts shall make all such orders as may be necessary or advisable to secure an accounting and payment of costs and damages as full and complete as may appear to be practicable, and any money not paid over to the persons to whom it shall be due within thirty days after such payment shall have been ordered made, shall be paid into the registry of the court to be disbursed to the proper persons upon orders of the court. And said commissioners may do and perform any act or thing necessary to be done to effectually carry out and enforce the provisions and objects of this chapter.

History.—§21, ch. 4700, 1899; GS 2921; §1, ch. 5616, 1907; RGS 4661; CGL 6747; §1, ch. 63-279.

350.63 Judicial powers.—The said Florida public utilities commissioners are vested with judicial powers to do or enforce or perform any function, duty or power conferred upon them by this chapter to the exercise of which judicial power is necessary.

History.—§22, ch. 4700, 1899; GS 2922; RGS 4662; CGL 6748; §1, ch. 63-279.

350.631 Prehearing procedure in any action before the Florida public utilities commission.—The Florida public utilities commission may, in its discretion, direct the attorneys for the parties, or the parties if unrepresented by attorneys, to appear before it, one of its members, or a hearing examiner designated by it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings or the application;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the action.

Notice of a prehearing conference shall be given in the same manner as is required by law for notice of hearing before the commission. Further notices of conference or hearing in the cause may thereafter be given only to those parties or their attorneys who appear in the cause at the initial prehearing conference; provided that if an amendment is made enlarging the scope of an application for certificate of convenience and necessity, notice of further proceedings shall be given as required by law for initial hearings. The commission shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings or the application, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent cause of action, unless modified at the hearing to prevent manifest injustice.

History.—§1, ch. 57-116; §1, ch. 63-279.

350.64 Appeals.—Appeals by either party shall be from judgments, orders and decrees of inferior courts in all suits and cases brought under the provisions of this chapter to the same extent that appeals lie in similar suits and cases brought under any other law in this state. No supersedeas shall be granted from any order, decree or judgment of any court rendered in favor of said commissioners upon any proceeding instituted or caused to be instituted by the commissioners by or for mandamus, injunction, mandatory injunction, prohibition or procedendo, to compel the observance of the provisions of this chapter, as to any rule, rate or regulation of the commissioners, made thereunder, but any such order, decree or judgment shall be respected and obeyed until finally disposed of by the appellate court; but supersedeas may be granted in any other suit or case brought under the provisions of this chapter in which a supersedeas could in a similar suit or case brought under the provisions of other laws of this state be granted.

History.—§23, ch. 4700, 1899; GS 2923; RGS 4663; CGL 6749; §23, ch. 63-559.

350.641 Commission orders; review by certiorari.—

(1) All petitions to the supreme court to review orders of the Florida public utilities

commission by writ of certiorari shall be filed in the supreme court within sixty days after the entry or rendition of the order sought to be reviewed.

(2) Notice of such review shall be given by the petitioner to all parties who entered appearances of record in the proceedings before said commission in which the order sought to be reviewed was made, by serving a copy of the petition for writ of certiorari upon each of said parties, at the same time as a copy of the petition, transcript of record and supporting brief are furnished the respondent Florida public utilities commission.

(3) Within ten days after such service has been made, such parties may file briefs in support of their interests as such interests may appear.

(4) Such parties shall be entitled as a matter of right to make oral argument in support of their interests as such interests may appear in any case where oral argument is granted by the court on the application of the petitioner or the respondent.

History.—§1, ch. 25185, 1949; §1, ch. 63-279.

350.65 Injunction to enforce regulations as to rates.—The writ of injunction shall lie and obtain in all cases of the violation of any freight or passenger rates, or of any schedule of either, or of any failure or refusal to conform to or enforce or put and keep the same, or any or either, in operation, by any railroad company or other common carrier, to prevent the violation of any such rate or schedule, and to compel any such railroad or common carrier to observe and put and keep in operation the same.

History.—§24, ch. 4700, 1899; GS 2924; §17, ch. 6527, 1913; RGS 4664; CGL 6750.

350.66 Commissioners to appeal to interstate commission.—The Florida public utilities commission shall investigate all through rates from points out of Florida to points in Florida and all rules and regulations made by transportation companies engaged in interstate business, both those now fixed and those that may hereafter be fixed. Whenever any such transportation company shall charge a through rate into or out of Florida or shall make any rule or regulation which in the opinion of the commission is excessive, unjust, unreasonable or discriminating in its nature, the commission shall call the attention of the officers of the offending company to the fact, and urge upon them the propriety of changing such rates, rules or regulations. Whenever such rates, rules or regulations are not changed according to the suggestion of the commission, the commission shall present the facts to the interstate commerce commission and appeal to it for relief. In all work devolving upon the Florida public utilities commission prescribed herein they shall receive upon application the services of the attorney general of the state, and he shall also represent them whenever called upon to do so before the interstate commerce commission, and he may employ such special counsel to assist him as he and the commissioners may agree upon, whenever he or the commissioners may deem it necessary, and at such compensation as he and the commissioners may agree upon, and the commissioners may employ special counsel to assist him whenever they may deem it necessary, and at such compensation as he and the commissioners may agree upon.

History.—§1, ch. 5215, 1903; GS 2925; RGS 4665; CGL 6751; §1, ch. 63-279.

350.67 Penalty for employees, etc., violating provisions of chapter.—If any officer, agent or employee of any railroad company, or other common carrier, shall violate or refuse to obey the provisions of law relating to the establishment and operation of a Florida public utilities commission in this state, such officer, agent or employee of such railroad company or other common carrier shall, except in cases where the punishment is otherwise provided, upon conviction thereof be fined not less than $250.00 nor more than $1,000.00 for each and every offense.

History.—§6, ch. 4205, 1893; GS 3633; RGS 5568; CGL 7754; §1, ch. 63-279.

350.76 Microfilming and destroying records.—

(1) The purpose of this section is to make available for the use of the Florida public utilities commission sufficient floor space to enable it to efficiently administer the affairs of said agency.

(2) The Florida public utilities commission is hereby authorized to destroy records and documents as hereinafter provided and to reclaim binders and filing equipment.

(3) The Florida public utilities commission is hereby authorized, in its discretion, to destroy general correspondence files over three years old, certificates and permits which have been revoked or cancelled for more than three years, applications which have been denied or withdrawn for more than three years, together with supporting testimony and exhibits, also any other records not specifically provided for herein.

(4) The Florida public utilities commission is hereby authorized to photograph, microphotograph or reproduce on film whereby each page will be exposed in exact conformity with the original, all old carrier and utility reports, agency reports, account books, certificate and permit applications, transcript of testimony and other records and documents as it may, in its discretion select, and said commission is hereby authorized to destroy any of said documents after they have been photographed and filed and after audit of its office has been completed for the period embracing the dates of said instruments.

(5) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated re-

productions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§§1-5, ch. 23788, 1947; §24, ch. 57-1; §1, ch. 63-279.

350.77 Fees for copies; disposition and record.—

(1) The Florida public utilities commission shall collect for copying, examining, comparing, correcting, verifying, certifying or furnishing orders, records, transcripts of record, papers or other instruments, the same fees that are allowed clerks of the circuit courts of Florida; provided, however, in cases where the legal fee would amount to less than one dollar no fee shall be charged or collected; and, provided further, that transcripts of record not prepared by the parties themselves for verification and certification by the commission's executive secretary shall be prepared by the commission's official reporter and the provisions hereof shall not apply to such transcripts furnished by said reporter.

(2) Copies of commission orders furnished to public officials of Florida, newspapers, periodical publications, federal agencies, state officials of other states, and parties to the proceeding in which the order was entered and their attorneys shall be without charge, provided that the commission may in its discretion charge fees for the furnishing of more than one copy of any order to any of the foregoing.

(3) The Florida public utilities commission shall provide and keep a book in which all fees collected by it as provided for herein shall be recorded, together with the amount and purpose for which collected. Such book shall be a public record of its office. Said commission shall prepare a statement of such fees in duplicate each month and remit one copy of said statement, together with all fees collected by it, to the state treasurer, who shall place the same to the credit of the general revenue fund.

History.—§§1-3, ch. 57-117; §1, ch. 63-279.
cf.—§28.24 Fees of clerk of circuit court.

350.78 Florida public utilities regulatory trust fund; moneys to be deposited therein.—

(1) There is hereby created in the state treasury a special fund to be designated as the Florida public utilities regulatory trust fund which shall be used in the operation of the Florida public utilities commission in the performance of the various functions and duties required of it by law.

(2) All fees, licenses, and other charges, collected by the commission, except mileage taxes under chapter 323, shall be deposited in the state treasury to the credit of said Florida public utilities regulatory trust fund to be used in the operation of said commission as authorized by the legislature; provided, however, punitive fines assessed and collected by said commission shall not be deposited in said trust fund but shall be deposited in the general revenue fund of the state.

(3) Each telephone and telegraph company as defined in chapter 364, and each electric and gas utility under the jurisdiction of the Florida public utilities commission, and which were in operation for the full calendar year 1961, shall pay to said commission on or before July 1 of each year, commencing with July 1, 1963, one twenty-fifth of one per cent of its gross operating revenues derived from intrastate business done within the state of Florida during the calendar year 1961; provided, however, each telephone and telegraph company, and each electric and gas utility, which is or may become subject to the jurisdiction of said commission but which did not operate during the entire calendar year 1961, shall, within ninety days after it has completed its first twelve months' operation under the jurisdiction of said commission, and annually thereafter, pay to said commission one twenty-fifth of one per cent of its gross operating revenues derived from intrastate business done within the state during said twelve months' operation. All payments to the commission under this section shall be deposited in the state treasury to the credit of the Florida public utilities regulatory trust fund to be used in the operation of said commission as authorized by the legislature. In no event shall payments under this section be less than twenty-five dollars annually.

(4) All moneys in the Florida public utilities regulatory trust fund, from time to time, shall be for the use of the Florida public utilities commission in the performance of its various functions and duties as provided by law; subject always, however, to regular control by the state budget commission, as provided by law, and to biennial appropriations by the legislature for salary, expense, and capital expenditures of said regulatory commission.

(5) Biennial appropriations from the general revenue fund of the state for the operation of the Florida public utilities commission may be credited to the Florida public utilities regulatory trust fund in appropriate monthly amounts and all expenditures authorized by the legislature and the state budget commission for the operation of said regulatory commission may be from said trust fund as supplemented by appropriations from the state's general revenue fund.

History.—§§1-5, ch. 63-296; §1, ch. 63-279.

CHAPTER 351

DUTIES OF RAILROADS IN OPERATING TRAINS

351.01 To stop at crossings.—Every train of passenger cars, of freight cars drawn by one or more locomotives, and every street car, propelled by steam, electricity, compressed air, or other power, upon railway track, shall come to a full stop before arriving at or crossing the track of another railroad or street car railway track within fifty feet thereof, and the train or street car, as the case may be, arriving at such crossing first shall move on and cross first; and every such train or street car shall also slow down to a speed of not more than four miles an hour before running on or crossing the draw of any bridge over a stream which is regularly navigated by vessels; provided, however, that whenever the lines of two railroads cross each other on the same grade in this state, the trains shall be brought to a full stop at least fifty feet before reaching the crossing. But the foregoing shall not apply where the crossing is equipped with signal lights or semaphores or other safety appliances which shall indicate that the train may cross in safety, or where a flagman or watchman is stationed and he signals that the train may cross in safety.

History.—§29, ch. 1987, 1874; RS 2263; §1, ch. 4763, 1899; §1, ch. 5216, 1903; GS 2840; RGS 4528; CGL 6591; §1, ch. 14833, 1931.
cf.—§§317.453-317.455 Motor vehicles crossing railroad tracks.

351.02 Must stop train for physician to get off; penalty.—Any conductor of any train, who shall refuse to stop his train at the request of a physician who has been summoned to attend a patient, a sufficient length of time to permit such physician to get off at such regular or flag station, shall be fined for every such offense not more than one thousand dollars.

History.—§§1, 2, ch. 4070, 1891; GS 3658; RGS 5595; CGL 7781.
cf.—§§398.02, 458.13, Physician defined.

351.03 To post sign and ring bell at road crossings.—Every railroad company, whenever its track crosses a highway, shall put up large sign boards at or near said crossing with the following inscription in large letters on both sides of the boards: Look out for the cars! In all incorporated cities and towns the said companies shall cause the bell on the engine to be rung before crossing any of the streets of a city or town, and their trains shall not go faster, through any of the traveled streets of a city or town, than at the rate of twelve miles per hour. This requirement for posting signs shall not apply to railroad crossings having signs as required by §317.455.

History.—§34, ch. 1987, 1874; RS 2264; GS 2841; ch. 7940, 1919; RGS 4529; CGL 6592.
cf.—§351.30 Automatic signals.
§768.03, Accidents at crossing.

351.04 Penalty for violating regulation.—In case any railroad or canal company, or its agents, servants or employees, shall neglect or refuse to comply with any of the provisions of this chapter, or of chapters 352 and 353, such railroad or canal company shall, for each or every violation, or refusal, unless otherwise provided, forfeit and pay the sum of fifty dollars, said penalty to be collected by suit, and to be paid into the county treasury of the county where such action is brought, for the benefit of the school fund.

History.—§42, ch. 1987, 1874; RS 2265; GS 2842; RGS 4530; CGL 6593.

351.05 Locomotives to be equipped with certain headlights; penalty.—All railroad locomotives operated in this state in the service of drawing passenger or freight trains shall be equipped with a first class headlight the illuminating source of which shall consist of an electric incandescent lamp of not less than two

hundred watts rating, and with suitable reflector, which headlight shall be kept in good condition and used by those operating such railroad locomotives. Any person who shall fail to so equip his locomotives used in drawing passenger or freight trains, as herein required, or shall operate and use a locomotive in drawing passenger or freight trains not equipped with a headlight as required by this section, shall be guilty of a misdemeanor and shall upon trial and conviction be fined not more than $1,000.00 or imprisoned not exceeding 12 months.

History.—ch. 6526, 1913; RGS 5567; CGL 7753; §1, ch. 63-208.
cf.—§1.01(3) "Person" defined.
§775.06 Alternative punishment.

351.06 Fixing hours for labor for trainmen.—No railroad doing business in this state shall require or permit its employees who are engaged in the business of operating its trains over its roads, to make runs of over thirteen hours, or make runs aggregating more than thirteen hours in any twenty-four hours, except when such train is detained by reason of casualty, or other cause, from reaching its destination on schedule time, and no conductors nor engineers, after having been on a run or runs for as much as thirteen hours out of every twenty-four hours, shall be required to again go on duty until after eight hours' rest, except in the case above stated. No employee of any railroad company shall be deprived of his right to recover damages for personal injury by reason of the fact that he, at the time of such injury, was making a run of more than thirteen hours in twenty-four hours, or had gone on duty after a thirteen hours' run, or runs aggregating thirteen hours before eight hours' rest.

Any railroad violating any of the provisions of this section shall be subject to a forfeiture of not less than fifty nor more than five hundred dollars; all forfeitures collected under the provisions of this section shall be paid into the state treasury to the credit of the school fund.

History.—§§1-3, ch. 4199, 1893; GS 2843; RGS 4532; CGL 6595.

351.07 Leave of absence for employees holding governmental offices.—When any regular or part-time employee of any railroad company or railroad corporation operating and doing business in the state shall be elected or appointed to any federal, state, county or municipal office, such railroad company or railroad corporation shall, upon application of such employee, grant a leave of absence to such employee for such period of time said employee holds or occupies such office or position, and such leave of absence shall in no wise impair, prejudice or deprive said employee of the seniority ranking held by him at the time of the granting of such leave of absence.

History.—§1, ch. 19273, 1939; CGL 1940 Supp. 6595(1).

351.08 Reinstatement; damages.—Upon the expiration or termination of any such term of office or appointment to any federal, state, county, or municipal office or position, any such regular or part-time employee, upon giving a written notice to such railroad company or railroad corporation, and upon passing such physical and mental examinations as is customarily required, shall be entitled forthwith to reinstatement to the position or employment held by him at the time of such election or appointment, and upon failure or refusal of any railroad company or railroad corporation to immediately reinstate said employee, he shall have and may maintain a civil action for damages against such railroad company or railroad corporation for any salaries or wages which would have been due him from the date of such notice and of the passing of such examination, had he been re-employed as required hereby; in such action, should the plaintiff recover he shall also be entitled to recover a reasonable attorney's fee as compensation for his attorney.

History.—§2, ch. 19273, 1939; CGL 1940 Supp. 6595(2).

351.09 Demand for freight, when prohibited.—No common carrier in this state shall demand of any consignee the freight on goods, wares and merchandise not delivered or ready to be delivered, as a condition precedent to the delivery of goods, wares or merchandise in the custody of said common carrier, at the point of destination. And upon a tender by any consignee of the freight due upon any goods, wares or merchandise in the custody of such carrier at the point of destination it shall deliver the same.

Should any common carrier in this state violate the provisions of this section, it shall forfeit a sum in double the amount of the freight demanded on goods, wares or merchandise not delivered or ready to be delivered, to be collected by suit before any competent court having jurisdiction of the amount.

History.—§§1, 2, ch. 4200, 1893; GS 2844; RGS 4533; CGL 6596.

351.10 Contracts for sale of railroad.—In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. In any contract for the leasing or hiring of such property it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such

contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

(1) The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgement of deeds, and in the same manner as deeds are authorized or proved.

(2) Such instrument shall be filed for record in the office of the secretary of state of this state.

(3) Each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

History.—§1, ch. 4201, 1893; GS 2845; RGS 4534; CGL 6597.

351.11 Record of contract.—The contracts under §351.10 shall be recorded by the secretary of state, in a book of records to be kept for that purpose. On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall be entitled to a fee for such services as for similar services, for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declarations on the margin of the record. This section shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to herein, and any such contract heretofore made may, upon compliance with the provisions of this section, be recorded as herein provided.

History.—§2, ch. 4201, 1893; GS 2846; RGS 4535; CGL 6598.

351.12 Freight notice. — All common carriers engaged in the transportation and delivery of freight in this state, immediately upon receipt of any freight at the point to which it may be consigned, shall notify in writing the consignee of the same. Such common carriers shall make no charges for the storage of such freight until after the expiration of three days after such notice is given as hereinbefore provided. Such common carriers shall be liable for said freight.

History.—§§1, 2, ch. 4202, 1893; GS 2847; RGS 4536; CGL 6599.

351.13 Depot contract.—Whenever any railroad company in this state obtains from any person any grant of land, money, right of way or other thing of value on condition that the said railroad company shall construct a depot, side track or warehouse at any point or locality on the line of its road, such condition shall be held and deemed a contract, and specific performance of the same shall be decreed on bill in chancery filed by the person entitled thereto in the circuit court. If any railroad company shall fail or refuse to obey any decree rendered pursuant to this section, it shall be the duty of the judge of the circuit court rendering the decree, on the failure or refusal of the railroad company to obey the said decree being made known to him, to appoint a receiver for the railroad of said railroad company, who shall thereupon carry out the terms of the decree out of such funds as may come into his hands as receiver.

History.—§§1, 2, ch. 4203, 1893; GS 2848; RGS 4537; CGL 6600.

cf.—§360.01, Authority to erect station or depot.
§§350.12, 350.26 and 350.41, Powers and duties of commissioners.

351.14 Duty of railroad companies with crossing lines.—All railroad companies in this state crossing or meeting each other at any point shall construct such switches, side-tracks and connections as will enable them to transport cars to and from each other's lines; and the expense of such construction shall, unless otherwise provided, be borne equally by such connecting lines of railroad.

History.—§1, ch. 4205, 1893; GS 2849; RGS 4538; CGL 6601.

351.15 Shipping of freight. — All railroad companies or other common carriers doing business in this state shall ship all freight received by them by such routes, and deliver the same to such connecting lines as the shippers may direct; and no railroad company or other common carrier shall refuse to receive any freight because it is billed by the shipper by any particular route; and provided, that no railroad company, nor other common carrier, shall charge any higher rate for delivering freight to a connecting line than would be charged by said company for delivering freight to individuals at the place where such connecting road or common carrier receives such freight.

History.—§2, ch. 4205, 1893; GS 2850; RGS 4539; CGL 6602.

351.16 To receive cars from connecting lines.—All railroad companies or other common carriers shall receive from connecting lines cars loaded with freight, or empty cars, and transport the same to their destination, or to such other connecting line as they may be consigned to, and return such cars to the connecting line from which they are received, and they shall also deliver to connecting lines cars loaded with freight, or empty cars, as they may be consigned; and no railroad company in this state shall charge or collect any higher rate of freight or wheelage than would be charged for transporting and delivering freights to individuals between the point of receipt and the point of delivery.

History.—§3, ch. 4205, 1893; GS 2851; RGS 4540; CGL 6603.

351.17 Recovery of damages.—If any person shall be damaged by the refusal or failure of any railroad company to obey the provisions of §§351.14-351.16, such person shall, upon suit brought, recover from the railroad company so violating said sections damages in full of the amount of loss actually incurred, all costs, charges and reasonable attorney's fees.

History.—§4, ch. 4205, 1893; GS 2852; RGS 4541; CGL 6604.
cf.—§353.04, Claim for damages to freight.

351.18 Duty of state attorney and judge.—If any railroad company shall fail or refuse to comply with the provisions of §351.14, the state attorney of the judicial circuit in which is situated the lines of railroad where the action is attempted, shall institute suit against the offending company in the circuit court, and on the facts being proven the judge of the circuit court shall render a decree requiring a compliance with the conditions of §351.14, and if the railroad company shall fail or refuse to obey said decree, the judge of the circuit court, upon the fact of such refusal being made known to him, shall appoint a receiver for such road, who shall have such side-tracks, switches and connections made as may be necessary, conforming to the rules of said road in placing danger signals, putting in switches and passing trains during the construction of such work; and the state shall not be liable for any damages from accident caused by and during the construction of said work. When the aforesaid rules have been complied with, the cost of the construction of the same shall be a lien on said road paramount to all others; provided, that all costs, charges and a reasonable fee for the state attorney shall be decreed against the railroad company in the cases where a decree is rendered against said company.

History.—§5, ch. 4205, 1893; GS 2853; RGS 4542; CGL 6605.

351.19 Penalty for not complying with laws relating to transfer of freight to other roads.—If any person, agent or employee of any railroad company, or other common carrier, shall violate or refuse to obey the provisions of §§351.14-351.18, such officer, agent or employee of such railroad company or other common carrier shall be fined not less than two hundred and fifty dollars, nor more than one thousand dollars.

History.—§6, ch. 4205, 1893; GS 3653; RGS 5590; CGL 7776.

351.20 Blacklisting of discharged employees prohibited; penalty; written statement of reasons to be furnished.—If any railroad company or other corporation doing business in this state, or any person, agent or employer of any such company or corporation, after having discharged any employee from the service of any such company or corporation, shall attempt to prevent by word or writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars or less than one hundred dollars, and such person, agent, employer, company or corporation shall be liable in damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing to any other person, company or corporation to whom such discharged person has applied for employment a truthful statement of the reasons for such discharge; and shall furnish to such discharged employee, on his application, to such address as may be given by such discharged employee, within ten days after such application made as aforesaid, a true copy of any such written statement.

History.—§1, ch. 4207, 1893; GS 2854; RGS 4543; CGL 6606; §7, ch. 24337, 1947.
cf.—§§448.03-448.04, Penalty for attempting to force employee to trade with specified persons.

351.21 Company responsible for acts of its agents.—If any railroad company or other corporation doing business in this state shall authorize or permit, with its knowledge and consent, any of its officers, agents, employers or employees to commit either or any of the acts prohibited by §351.20, such railroad company or corporation shall be liable in damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action.

History.—§2, ch. 4207, 1893; GS 2855; RGS 4544; CGL 6607.

351.22 Duties of persons, employers and corporations.—Any person, officer, agent, employer, company or corporation, after having discharged any employee from the service of any such company or corporation, upon written demand by such employee, shall furnish to him, within ten days from the application for the same, a full statement in writing of the cause or causes of his discharge, and if any such person, officer, agent, employer, company or corporation as aforesaid shall refuse within ten days after demand as herein provided to furnish such statement to such discharged employee, it shall be ever after unlawful for any such person, officer, agent, employer, company or corporation to furnish any statement of the cause of such discharge to any person or corporation, or to in any way blacklist, or to prevent such discharged employee from procuring employment elsewhere, subject to the penalties prescribed in §351.20. On the trial of any person, company or corporation for a violation of the provisions of §§351.20-351.24, any other person who may have authorized or permitted, with knowledge and consent as aforesaid, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury in any matter

to which he may have testified; and on the trial of any such person for any violation of said sections the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, of the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be a contempt of court, and punishable as such against the custodian or person, company or corporation having the control or in charge of such books and papers who shall fail to produce the same; provided, that such written cause of the discharge, when so made as aforesaid, at the request of such discharged employee, shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same.

History.—§3, ch. 4207, 1893; GS 2856; RGS 4545; CGL 6608.

351.23 Employees to have a statement on demand.—Any person, company or corporation who has received any request or notice in writing, sign, word or otherwise from any person, company or corporation preventing or attempting to prevent the employment of any person discharged from the service of either of the latter, shall, on demand of such discharged employee, furnish to such employee within ten days after such demand a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority furnishing the same; and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by this chapter.

History.—§4, ch. 4207, 1893; GS 2857; RGS 4546; CGL 6609.

351.24 Companies affected.—The provisions of §§351.20-351.23 shall apply to and prevent, under all the penalties in this chapter, railroad companies or corporations under the same general management and control but having separate divisions, superintendents or master mechanics, master machinists, or similar officers, for separate or different lines, their officers, agents and employees, from preventing or attempting to prevent the employment of any such discharged person by any other separate division or officer or agent or employer of any such separate railroad line or lines.

History.—§5, ch. 4207, 1893; GS 2858; RGS 4547; CGL 6610.

351.25 No charge for placing cars. — No charge whatever shall be made by a railroad having the line haul for placing for loading, an empty car at any warehouse or other point on its line or any side track or spur connected therewith or for switching the loaded car to or from the same either for delivery or for transportation for intrastate shipment; it being the purpose of this section to require one placement of a car for loading or unloading upon a side track and its removal in the opposite direction without any charge in addition to the charge for transportation or line haul.

History.—§1, ch. 7320, 1917; RGS 4548; CGL 6611.

351.26 Penalty for violations of §351.25.—Any railroad, railroad company, or common carrier violating the provisions of §351.25, shall thereby incur a penalty for each such offense of not more than five thousand dollars, to be fixed and imposed by the railroad commissioners in accordance with the provisions of §350.28, and each charge made in violation hereof shall constitute a separate offense.

History.—§2, ch. 7320, 1917; RGS 4549; CGL 6612.

351.27 Railroads to allow dredges in Everglades to pass right of way without charge.—All railroad companies shall allow all dredges engaged in the work of constructing canals in the Everglades of Florida to pass through their tracks and right of way without charge or expense.

History.—§1, ch. 6887, 1915; RGS 4550; CGL 6613.

351.28 To maintain drawbridges. — All railroad companies, when requested so to do by the board having in charge the drainage and reclamation of the Everglades of Florida, shall provide and maintain drawbridges, at their expense, over and across any of the canals provided for and used in connection with the drainage and reclamation of the Everglades of Florida.

History.—§2, ch. 6887, 1915; RGS 4551; CGL 6614.

351.29 Penalty for violation of §§351.27 and 351.28.—Any railroad company failing to comply with the provisions of §351.27 or §351.28 shall be subject to a fine of not more than one thousand dollars.

History.—§3, ch. 6887, 1915; RGS 4552; CGL 6615.

351.30 Crossing signs and signboards.—Whenever any railroad company has or may hereafter install at any grade crossing, signals of the automatic flash-light type which are approved by the Association of American Railroads and by the Federal Public Roads Administration, and which have the words "Railroad Crossing" on the side of said crossing signal facing the approach from the highway and which are located one on each side of the railroad track or tracks at a distance of not less than eight feet nor more than thirty feet from the nearest track measured from the gage of the nearest rail to the base of such signal light, then and in any such event, so long as said automatic signals are maintained in force and effect, it shall be unnecessary for railroad companies to comply with, and such railroad companies are herein and hereby relieved from the duty of complying with §§317.455 and 351.03 relating to signboards and crossing signs.

History.—§1, ch. 20679, 1941.

CHAPTER 352

DUTIES TO RAILROAD PASSENGERS AND FREIGHT

352.01 Passengers may be ejected for nonpayment of fare.—If any passenger shall refuse to pay his fare, the conductor of the train and the servants of the corporation may put him and his baggage out of the cars on stopping the cars at any usual stopping place, or near any dwelling house, as the conductor shall elect.

History.—§41, ch. 1987, 1874; RS 2267; GS 2859; RGS 4553; 6616.
cf.—§351.04 Penalty for violating regulation.

352.02 Passenger conductors to have police powers.—The conductors of any train carrying passengers in this state are invested with all the powers, duties and responsibilities of police officers while on duty on their trains.

When a passenger or any other person is guilty of disorderly conduct by fighting or using any obscene, profane or vulgar language, or plays any game of cards or other game of chance for money or other thing of value, upon any passenger train, or drinks intoxicating liquors of any kind in or upon any railway passenger train, coach or vestibule thereof, or platform connected therewith, when such liquors are not used as a medicine in case of actual sickness, the conductor of such train may at the next regular stopping place of such train eject such passenger from the train, using only such force as may be necessary to accomplish such removal, and the conductors may command the assistance of the employees of the company and of the passengers on each train to assist in such removal; and any person neglecting or refusing to render such assistance shall be punished as in the case of neglect or refusal to aid a constable, police officer or watchman in the execution of the duties of his office.

The conductor may cause any person violating the provisions of this section, and which are in violation of the laws of this state, to be detained and delivered to the proper authorities for trial as soon as practicable.

History.—§1, ch. 4072, 1891; GS 3659; §1, ch. 6897, 1915; RGS 5596; CGL 7782.
cf.—§843.06 Neglect or refusal to aid peace officers.

352.03 First-class tickets and accommodations for negro persons.—All railroad companies doing business in this state shall sell to all respectable negro persons first-class tickets, on application, at the same rates that white persons are charged, and shall furnish and set apart for the use of such negro persons who purchase such first-class tickets a car or cars in each passenger train, as may be necessary, equally as good and provided with the same facility for comfort as shall or may be provided for whites using and traveling as passengers on first-class tickets.

No conductor or person in charge of any passenger train on any railroad shall suffer or permit any white person to ride, sit or travel, or to do any act or thing to insult or

annoy any negro person who shall be sitting, riding and traveling, in said car so set apart for the use of negro persons, nor shall he or they, while in charge of such train, suffer or permit any negro person, nor shall such person attempt to, ride, sit or travel in the car or cars set apart for the use of the white persons traveling as first-class passengers; but female colored nurses, having the care of children or sick persons, may ride and travel in such car.

History.—§§1, 2, ch. 3743, 1887; RS 2268; GS 2860; RGS 4554; CGL 6617.

352.04 Separate accommodations for white and colored passengers. — All railroad companies and other common carriers doing business in this state shall provide equal separate accommodations for white and colored passengers on railroads, and all white and colored passengers occupying passenger cars which are operated in this state by any railroad company or other common carrier are hereby required to occupy the respective cars, or divisions of cars, provided for them, so that the white passengers shall occupy only the cars or divisions of cars, provided for white passengers, and the colored passengers only the cars, or division of cars, provided for colored passengers; provided, that no railroad shall use divided cars for the separation of the races without the permission of the railroad commission, nor any car divided for that purpose in which the divisions are not permanent.

History.—§1, ch. 5893, 1909; RGS 4555; CGL 6618.
cf.—§350.20, Florida public utilities commission authorized to make rules and regulations.

352.05 Passenger occupying part of car set apart for opposite race; penalty.—Any white person unlawfully and willfully occupying, as a passenger, any car or part of car not so set apart and provided for white passengers, and any colored passenger unlawfully and willfully occupying, as a passenger, any car or part of car not so set apart and provided for colored passengers, shall, upon conviction, be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding six months. Nothing in this section shall apply to persons lawfully in charge of or under the charge of persons of the other race.

History.—§4, ch. 5893, 1909; RGS 5566; CGL 7752.
cf.—§775.06 Alternative punishment.

352.06 Penalty for violations §352.04. — If any railroad company or other common carrier shall violate any of the provisions of §352.04, or any rule, order or regulation prescribed by the Florida public utilities commissioners under the authority of §350.20, such company or common carrier shall thereby incur for each such offense a penalty of not more than five hundred dollars, to be fixed, imposed and collected by said Florida public utilities commissioners in the manner provided in §350.28.

History.—§3, ch. 5893, 1909; RGS 4556; CGL 6619; §1, ch. 63-279.

352.07 Separate accommodations for white and negro passengers on electric cars. — All persons operating urban and suburban (or either) electric cars as common carriers of passengers in this state, shall furnish equal but separate accommodations for white and negro passengers on all cars so operated.

History.—§1, ch. 5617, 1907; RGS 4557; CGL 6620.
cf.—§1.01(3) "Person" defined.

352.08 Method of division in electric cars. —The separate accommodations for white and negro passengers directed in §352.07 shall be by separate cars, fixed divisions, movable screens, or other method of division in the cars.

History.—§2, ch. 5617, 1907; RGS 4558; CGL 6621.

352.09 Divisions to be marked for white or for colored.—The car or division provided for white passengers shall be marked in plain letters in a conspicuous place, for white, and the car or division provided for negro passengers shall be marked in plain letters in a conspicuous place, for colored.

History.—§7, ch. 5617, 1907; RGS 4559; CGL 6622.

352.10 Not to apply to nurses.—Nothing in §§352.07-352.09, 352.12-352.15 shall be so construed as to apply to nurses of one race attending children or invalids of the other race.

History.—§8, ch. 5617, 1907; RGS 4560; CGL 6623.

352.11 Operating extra cars for exclusive use of either race.—Sections 352.07-352.15 shall not be so construed as to prevent the running of special or extra cars, in addition to the regular schedule cars, for the exclusive accommodation of either white or negro passengers.

History.—§9, ch. 5617, 1907; RGS 4561; CGL 6624.

352.12 Separation of races; penalty.—Any person operating urban and suburban (or either) electric cars as common carriers of passengers in this state, failing, refusing or neglecting to make provisions for the separation of the white and negro passengers on such cars as required by law, shall, for each offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars. This penalty may be enforced against the president, receiver, general manager, superintendent or other person operating such cars.

History.—§3, ch. 5617, 1907; RGS 5600; CGL 7787.

352.13 Duty of conductors; penalty.—The conductor or other person in charge of any such car shall see that each passenger is in the car or division furnished for the race to which such passenger belongs, and any conductor or other person in charge of such car who shall permit any passenger of one race to occupy a car or division provided for passengers of the other race, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding twenty-five dollars, or by imprisonment in the county jail for not exceeding sixty days.

History.—§5, ch. 5617, 1907; RGS 5602: CGL 7789.
cf.—§775.06 Alternative punishment.

352.14 Violation by passengers; conductor

may arrest and eject; penalty.—Any passenger belonging to one race who willfully occupies or attempts to occupy any such car, or division thereof, provided for passengers of the other race, or who occupying such car or division thereof, refuses to leave the same when requested so to do by the conductor or other person in charge of such car, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding fifty dollars, or by imprisonment in the county jail for not exceeding three months. The conductor or other person in charge of such car is vested with full power and authority to arrest such passenger and to eject him or her from the car.

History.—§6, ch. 5617, 1907; RGS 5603; CGL 7790.
cf.—§775.06 Alternative punishment.

352.15 Each day of refusal separate offense.—Each day of refusal, failure or neglect to provide for the separation of the white and negro passengers as directed in this chapter shall constitute a separate and distinct offense.

History.—§4, ch. 5617, 1907; RGS 5601; CGL 7788.

352.16 Separate waiting rooms and ticket windows for white and negro passengers.—All railroad companies and terminal companies in this state shall provide separate waiting rooms and ticket windows of equal accommodation for white and colored passengers at all depots along lines of railway owned, controlled or operated by them, and at terminal passenger stations controlled and operated by them.

History.—§1, ch. 5619, 1907; RGS 4562; CGL 6625.
cf.—§350.21, Construction or remodeling stations to comply with section.

352.17 Penalty for refusal to comply with law or regulations.—If any railroad company or terminal company in this state shall refuse to comply with any provision of §352.16, or to comply with any rule, order or regulation provided or prescribed by the Florida public utilities commissioners under the authority of §350.21, such company shall thereby incur a penalty for each such offense of not more than five thousand dollars, to be fixed, imposed and collected by said Florida public utilities commissioners in the manner provided by law.

History.—§3, ch. 5619, 1907; RGS 4563; CGL 6626; §1, ch. 63-279.
cf.—§350.28 Penalty for violation of law.

352.18 Penalty for not providing separate cars for white and negro persons.—If any railroad company or any conductor or other employee thereof, or any person whatever, shall violate the provisions relating to the accommodation of white or negro passengers, he or they shall be punished by a fine not exceeding five hundred dollars, unless otherwise provided for.

If any railroad company shall fail to comply with said provisions of law the punishment herein prescribed may be inflicted upon the president, receiver, general manager or superintendent thereof, or upon each and every one of them.

History.—§§3, 4, ch. 3743, 1887; RS 2686; GS 3632; RGS 5565; CGL 7751.

352.19 Discrimination in rates.—If any common carrier, engaged in business as such in the state, or any officer, agent or employee thereof, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, than such common carrier charges, demands, collects or receives from any other person for doing a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier, officer, agent, or employee, shall be guilty of unjust discrimination, which is prohibited and declared to be unlawful. It is unlawful for any person to receive any sum of money, rebate, or other thing of value, directly or indirectly, that is prohibited to be given, charged, demanded, collected or received by this section.

History.—§1, ch. 5621, 1907; RGS 4564; CGL 6627.
cf.—§30, Art. XVI, const.
§323.19, Auto transportation companies.
§350.08, Discrimination prohibited.
§350.12, Rules and regulations to prevent discrimination.
§350.32, Action for damages.
§350.42, Classes of freight not to be discriminated against.
§352.22, Permissible reductions in rates.

352.20 Penalty for violation of §352.19.—Any common carrier or corporation violating any provision or provisions of §352.19 shall, upon conviction thereof by a court of competent jurisdiction, be fined not less than one thousand dollars, nor more than twenty-five thousand dollars, and any officer, agent or employee of such corporation, or any other person violating the provisions of §352.19, shall, upon conviction by a court of competent jurisdiction, be deemed guilty of a felony and confined in the state prison for a term of not exceeding five years.

History.—§2, ch. 5621, 1907; RGS 5692; CGL 7906.

352.21 Discrimination in passengers or freight.—Any person engaged in the transportation of passengers or freight in this state, or his agents, who shall make any discrimination against or in favor of any person whatever, upon conviction thereof shall be fined in a sum not less than one thousand dollars nor more than ten thousand dollars.

History.—§2, ch. 4204, 1893; GS 3652; RGS 5589; CGL 7775.
cf.—§1.01(3) "Person" defined.

352.22 Free or reduced transportation prohibited, except in certain instances; penalty.—(1) Any common carrier may grant, and may exchange with any other common carrier, free or reduced transportation or free tickets to or for any of the following classes of persons and property, notwithstanding any such person be a state, county or municipal officer:

(a) Its own officers and own employees (including pensioners, disabled employees, special officers, and persons traveling to accept or leave employment of such common carrier) and their immediate families dependent upon them.

(b) Its contractors and their employees and the persons traveling to accept employment with such contractors engaged in any construction work for such common carriers, and their immediate families dependent upon them.

(c) The widows of deceased employees during their widowhood, and the members of their immediate families dependent upon them.

(d) Its physicians, surgeons, and salaried attorneys at law, and their immediate families dependent upon them.

(e) Persons employed on sleeping, parlor, dining and express cars while on duty only, and to baggage-soliciting agents, watch inspectors and newsboys while on duty only.

(f) Ministers of religion.

(g) Traveling secretaries of Young Men's Christian Associations, and Sunday school field secretaries.

(h) Indigent, homeless or destitute persons when transported by charitable societies, and the necessary agents employed in such transportation.

(i) Persons exclusively engaged in charitable or eleemosynary work, for the purposes of their work.

(j) Persons injured in wrecks, and the physicians, surgeons, nurses, relatives or friends of such injured persons to and from the place of wreck.

(k) To any person, with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitations in this state.

(l) Persons in charge of live stock shipped, from point of shipment to point of destination and return.

(m) To sheriffs of the state without discrimination.

(n) To witnesses attending any hearing or trial before any court or regulatory commission in which a common carrier is interested, including prosecutions for offenses committed against common carriers or against property in their custody. All such free transportation shall be reported to the Florida public utilities commission by the carrier issuing the same at such times and on such forms as may be prescribed by said commission. In all suits, or hearings before any court or regulatory commission, where any railroad is a party and shall transport its witnesses or any of them under the provisions of this section, and shall obtain judgment in its favor, it shall not be allowed to recover any costs as mileage or otherwise for transporting said witness or witnesses.

(o) For the household goods, chattels or other personal effects of all employees, agents or servants within the state.

(p) For the carriage, storage, or handling of property for charitable purposes, or to and from fairs and expositions for exhibit thereat.

(2) Any common carrier may grant reduced rates of transportation to or for any of the following classes of persons and property, notwithstanding any such person be a state, county or municipal officer:

(a) For the transportation of freight wholly within the state for the encouragement of manufacturing industries within the state; the same to be given without discrimination and published in the schedules and rate sheets of such common carriers.

(b) By railroad companies only, to members or delegates to and from meetings or conventions of any religious body, fraternal society, educational associations or conventions of any other regularly organized associations within the state; provided such railroad companies may include the general public in the benefits thereof, at their option.

(3) Any common carrier may issue mileage, excursion, or commutation or round trip passenger tickets, including excursion rates as heretofore to delegates to political conventions, without favor or discrimination, or second class tickets at a lower rate of fare than first class tickets, for the holders of which second class tickets only second class accommodations shall be allowed.

(4) No free or reduced transportation shall be lawful except as specified in this section, and all transportation other than free must be paid for in cash.

(5) Any individual violating the provisions of this section, either by issuing a free pass or giving a reduced rate unlawfully, or by receiving and using or taking the advantage of the same shall be punished by imprisonment not exceeding six months or by fine not exceeding one thousand dollars; and any common carrier violating this section shall be subject to a penalty to be fixed and imposed by the Florida public utilities commissioners and enforced as provided in chapter 350, and in such amount as provided in said chapter 350 for violations thereof in general.

History.—§§1-3, ch. 3739, 1887; RS 2691; §§4, 19, ch. 4700, 1899; GS 2889, 2919, 3636; §1, ch. 5895, 1909; §1, ch. 6229, 1911; §1, ch. 7319, 1917; §1, ch. 7322, 1917; RGS 4565, 4614, 1658, 4659, 5571; §1, ch. 9304, 1923; §1, ch. 10225, 1925; §1, ch. 10235, 1925; §1, ch. 10280, 1925; CGL 6628, 6629, 6630, 6699, 6744, 6745, 7757; §1, ch. 63-279.

cf.—§31, Art. XVI, const.
§350.28 Additional penalties.

352.23 Penalty for issuing free pass to state officers.—If any stockholder, director, president or other officer or agent of any railroad or other transportation company or common carrier in this state, or any person in any way connected with any such company or common carrier, grants, sends or delivers a free pass over any railroad, steamboat or other transportation line, or for any distance thereon, or discounts the fare thereon paid by the public generally, to any member of the legislature, or salaried officer of the state, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§1, ch. 3741, 1887; RS 2689; GS 3634; RGS 5569; CGL 7755.

cf.—§775.06 Alternative punishment.

352.24 Penalty for receiving pass. — Any member of the legislature, or any salaried officer of the state, who receives such pass, or any such discount mentioned in §352.23, shall

be subject to the punishment prescribed therein.

History.—§2, ch. 3741, 1887; RS 2690; GS 3635; RGS 5570; CGL 7756.

352.25 To receive, transport and deliver freight.—Any railroad or canal company operating in this state shall receive for shipment and transportation any and all grain, cotton, lumber and other freight that shall be offered to such company, its authorized agents, servants or employees, for transportation over their road or canal, and shall make and deliver for such grain or other freight consigned to any consignee or consignees the usual bills of lading to the shipper or consignor thereof, and shall transport and convey all freights over its road or canal at the tariff or charges then in force to such person as the same may be directed or shipped to by the owner, shipper or consignor of such property, and shall deliver such freight as may be designated in the bills of lading.

History.—§35, ch. 1988, 1874; RS 2269; GS 2861; RGS 4571; CGL 6636.
cf.—§350.57, Forms of bills of lading.
§353.04, Action against connecting lines.
§§831.01, 831.02, Forgery or counterfeiting bills of lading.

352.26 Freight to be delivered according to terms and direction.—Public or common carriers in this state are required to deliver all freight received by them for transportation according to the terms of the contract under which they are received. The bill of lading or other memorandum, as made between the consignor and carrier at the initial points, shall be considered as the evidence of direction by which freights are to be received, carried and delivered by the common carriers in this state, and any common carrier violating the provisions of this section shall be liable in damages to the person aggrieved.

History.—§1, ch. 3610, 1885; RS 2348; GS 2862; RGS 4572; CGL 6637.
cf.—Ch. 353, Claims for lost or damaged freight.

352.27 Penalty for not delivering freight according to terms and directions.—Any officer, agent or employee of any common carrier in this state who shall violate the provisions of §352.26 shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

History.—§2, ch. 3610, 1885; RS 2695; GS 3640; RGS 5576; CGL 7762.
cf.—§775.06 Alternative punishment.

352.28 Regulations for transporting firewood.—No railroad or canal company shall be compelled to transport firewood, unless the same shall be piled up at some reasonably convenient point on its line in quantities sufficient to load at least five cars at one time or one canal boat. When that is done and three days' notice is given to the proper officer in person, or by mail to the principal officer of such company, such company shall provide sufficient cars or boats to transport such wood, but such wood shall be loaded and unloaded by the owners thereof. The company shall charge no more for the transportation of wood than is prescribed in the tariff or rates.

History.—§36, ch. 1988, 1874; RS 2270; GS 2863; RGS 4573; CGL 6638.

352.29 Must provide flat cars with suitable appliances for hauling lumber, etc. — Every railway company or person engaged in the business of carrying for hire in this state, shall efficiently and suitably equip and supply every and all flat cars and cars belonging to such carrier, and which may be furnished on which to load any cargo of lumber or timber with all proper and sufficient standards, supports, stays, strips, railing, and other equipments and appliances necessary to hold and keep the cargo firmly in place.

History.—§1, ch. 5213, 1903; GS 2864; RGS 4574; CGL 6639.

352.30 Appliances weighed as part of cars.—The standards, supports, stays, strips, railings, equipment, appliances, contrivances, etc., provided for in the preceding section shall constitute and be held and considered part and parcel of said cars and the weight of the same shall be added to the weight of the car and shall be deducted from the weight of the cargo of lumber and timber shipped so that the freight charges shall be charged by the carriers only on the cargo.

History.—§2, ch. 5213, 1903; GS 2865; RGS 4575; CGL 6640.

352.31 Penalty for not providing appliances.—Whenever any such carrier shall fail in the duty imposed upon it, in respect of its said cars in §§352.29 and 352.30 and the unsupplied standards, supports, strips, and other proper equipments shall be provided by the shipper, such carrier owning car, shall pay the shipper one and one-half dollars for each and every car to which it may be necessary for said shipper to supply or provide any such standard, support, strips or other equipments, as compensation to the shipper for the same, payment of which sum shall be made by the carrier to the shipper upon demand of the shipper made upon any agent of the carrier, and the shipper shall have a lien therefor on said car.

History.—§3, ch. 5213, 1903; GS 2866; RGS 4576; CGL 6641.

352.32 River boats to deliver freight in dry places.—The captains of all steamboats and barges transporting freight upon any of the rivers in this state shall place such freight at the landings in the warehouse, or, in case there is no warehouse, in a dry and convenient place, so that it may not be damaged by reason of the water or mud. A failure to comply with the provisions of this section shall subject the owner of such boat or barge to pay to the party injured double the amount of damages sustained and all costs of suit, including a reasonable attorney's fee for the plaintiff.

History.—§3, ch. 5213, 1903; GS 2866; RGS 4576; CGL 6641.

352.33 Construction of cars for transportation of cattle.—It is unlawful for any railway or other transportation company doing business in the state, to transport within the boun-

daries of the state any cattle, hogs, or sheep, shipped from any point in such state to another point in such state, unless the same be transported in properly constructed cattle cars, which said cars shall be cleated and provided with suitable slatted doors as is usual in such properly constructed cars.

History.—§1, ch. 5422, 1905; RGS 4578; CGL 6643.
cf.—§828.14 Water and food for stock on trains, etc.

352.34 Care of livestock in transit.—All transportation companies which shall transport such livestock within the boundaries of the state shall unload the same for feed and water at least once in every twenty-eight hours, or with the written consent of the shipper every thirty-six hours, and upon arrival at the destination of the aforesaid cars, said livestock shall be unloaded immediately by the company so transporting same, and no such car or cars loaded with livestock shall be kept standing on tracks of said railroad at said destination for a longer period than three hours before such livestock is unloaded; provided, that such detention on tracks shall in no case result in preventing the unloading of stock once in every period of twenty-eight hours aforesaid.

History.—§2, ch. 5422, 1905; RGS 4579; CGL 6644; §1, ch. 22725, 1945.
cf.—§828.14 Water and food for stock on trains, etc.

352.35 Penalty for violation of regulations as to transporting livestock by transportation company.—All transportation companies violating any of the provisions of §§350.22, 350.23, 352.33 and 352.34, shall be subject to a fine of not over one thousand dollars for violation of any of the foregoing provisions; except, however, that the provisions of this section shall not apply to any violation of said sections in which the delay or default was caused by accident or providential hindrance.

History.—§6, ch. 5422, 1905; RGS 5588; CGL 7774.
cf.—§828.14, Water and food for stock on trains, etc.
§350.24, Penalty for violation of regulations in transporting livestock.

352.36 Charges for feeding and watering livestock in transit.—The transportation companies transporting livestock in the state shall be entitled to charge as an extra compensation, the actual amount expended by them for feed and water of the aforesaid livestock while en route from the point of shipment to destination.

History.—§3, ch. 5422, 1905; RGS 4580; CGL 6645.

352.37 Penalty for conductors, etc., violating regulations.—Every conductor, engineer or other person, having charge of the running of any train of passenger cars, who willfully or knowingly violates any of the provisions of law relating to the operation of trains, or their duties in relation to passengers, or in regard to the receipt, transportation and delivery of freight, shall, except as otherwise provided by law, be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

History.—§10, ch. 1987, 1874; RS 2685; GS 3631; RGS 5564; CGL 7750.
cf.—§775.06 Alternative punishment.
§351.04 Penalty for violating regulation.

CHAPTER 353

CLAIMS FOR LOST OR DAMAGED FREIGHT

353.01 Claims for freight lost or damaged by common carrier; payment within sixty days. —All common carriers operating within this state when any person, his agent or attorney, files with, or presents to them, or any station agent of said common carrier, or where there is no station agent, upon any other agent of such common carrier, his claim for any freight, baggage or express lost or damaged by said common carrier, or for any overcharge made by such common carrier on any freight, baggage or express, or for any reciprocal demurrage, shall pay the said claim within sixty days from its filing with, or presentation to, said common carrier or any station agent, or other agent of such common carrier.

History.—§§1, 2, ch. 5424, 1905; §1, ch. 5618, 1907; §1, ch. 5894, 1909; RGS 4581; CGL 6646.

cf.—§351.04 Penalty for violating regulation.

353.02 Carrier not paying claim liable for amount and fifty per cent per annum, etc.— Should any common carrier fail to comply with the provisions of §353.01, then the said common carrier making such failure shall be liable to the claimant for the amount of his claim and fifty per cent per annum interest on the principal sum of said claim from the date of the filing of the same with, or presentation of the same to, the common carrier, or any station agent or other agent of such common carrier, and when the said claimant shall bring suit and recover judgment for his claim against said common carrier, he shall be allowed the said fifty per cent per annum, in addition to the principal sum of said claim, and the same shall be allowed in the verdict giving him judgment; provided, however, that the claimant shall not recover and have judgment for the said fifty per cent per annum, nor attorney's fees, as provided for in §353.03, unless he recovers judgment for a sum which fixes the principal sum of said claim at an amount greater than the amount which said common carrier had offered and tendered to the claimant in settlement of his claim before the expiration of said sixty days in which the said common carrier is required to pay such claim under the provisions of §353.01.

History.—§2, ch. 5618, 1907; §2, ch. 5894, 1909; RGS 4582; CGL 6647.

353.03 Attorney's fee.—Any common carrier who fails to comply with the provisions of §353.01, shall, in the event that the claimant shall prevail in an action to recover on his claim, be liable for a reasonable attorney's fee, and the court shall allow the claimant such reasonable attorney's fee, which shall be fixed by the court, not to exceed fifteen dollars if the amount received does not exceed one hundred dollars, and not to exceed fifteen per cent on any amount recovered greater than the sum of one hundred dollars.

History.—§3, ch. 5618, 1907; §3, ch. 5894, 1909; RGS 4583; CGL 6648.

353.04 Action against connecting lines, etc. —When any claim arises under the provisions of this chapter, and the shipment went, or should have gone, over more than one common carrier's line, the claimant may file his claim with any of said common carriers over whose line said shipment went or should have gone, and may bring action against either of them for recovery of damages, as herein provided for; provided, he shall have served said notice on the common carrier he elects to sue.

History.—§4, ch. 5894, 1909; RGS 4584; CGL 6649.

353.05 Construction of chapter.—This chapter shall not be construed to be in conflict with the laws of the state regulating and making punishable usurious contracts.

History.—§2, ch. 5424, 1905; RGS 4585; CGL 6650.

353.06 Limitations on actions against common carriers for freight claims.—Suits upon all causes of action arising against common carriers of freight in this state shall be barred with the expiration of three years from the date of the accrual thereof; provided, that whenever any claim has been filed in writing with any common carrier based upon any alleged cause of action, the party filing such claim or his assigns shall be entitled to bring an action upon such cause of action mentioned in such claim in writing at any time within six months after any common carrier shall have declined or rejected the same, notwithstanding the expiration of the three-year period of limitation hereinbefore provided for, and in all cases where such claim in writing shall be filed with any common carrier during said period of three years.

The limitations herein provided for shall apply to all actions for loss and damage, undercharges and overcharges, and all other cases of any nature whatsoever which may arise against any common carrier in connection with the transportation of freight, whether based upon the common law or statute.

History.—§§1, 2, ch. 11903, 1927; CGL 6651, 6652.

cf.—§351.04 Penalty for violating regulation.

CHAPTER 354

SPECIAL OFFICERS FOR CARRIERS

354.01 Appointment of special officers. — Upon the application of any railroad, express company, or other common carrier, doing business in this state, the governor shall appoint one or more special officers for the protection and safety of such carriers, their passengers and employees, and the property of such carriers, passengers and employees.

History.—§1, ch. 8539, 1921; CGL 6653.
cf.—§113.01 Fees for commissions issued by governor.

354.02 Powers.—Each special officer shall have and exercise throughout every county in which the common carrier for which he was appointed, shall do business, operate, or own property, the power to make arrests for violation of law on the property of such common carrier, and to arrest persons, whether on or off such carrier's property, violating any law on such carrier's property, under the same conditions under which deputy sheriffs may by law make arrests, and shall have authority to carry weapons for the reasonable purpose of their offices.

History.—§2, ch. 8539, 1921; CGL 6654.

354.03 Bond.—Before entering into the performance of his duties every such special officer shall enter into a good and sufficient bond payable to the governor of Florida, and his successors, in the penal sum of five thousand dollars, with some surety company authorized to do business in this state as surety thereon, conditioned for the faithful performance of his duties, and to pay any and all damage done by any illegal act committed by him, to be approved by the comptroller.

History.—§3, ch. 8539, 1921; CGL 6655.

354.04 Compensation.—Such special officers shall not receive any fees or salary from the state or any county, but their compensation shall be agreed upon and paid by the carrier making such application.

History.—§4, ch. 8539, 1921; CGL 6656.

354.05 Term of office; removal.—The special officers provided for herein shall be commissioned by the governor and their commissions shall continue so long as they are employed in such capacity by the railroad, express company or other common carrier, but they shall be removed by the governor at any time, in the manner and for the causes provided by law.

History.—§5, ch. 8539, 1921; CGL 6657; §1, ch. 63-57.

354.06 Fees to sheriff.—In each case where any of the special officers effect an arrest, the sheriff of the county in which such arrest is effected shall be entitled to the lawful fees the same as though such arrest had been effected by him or one of his deputies.

History.—§6, ch. 8539, 1921; CGL 6658.

354.07 Suit for damages on bond. — Any person who shall have been damaged, either in his person or his property, by the wrongful act of such officer may bring suit for the redress of such wrong on the bond of such officer hereinbefore provided for.

History.—§7, ch. 8539, 1921; CGL 6659.

CHAPTER 355

CARRIER'S LIEN AND ENFORCEMENT

355.01 Carrier's lien.—Common carriers transporting goods for hire shall have a lien upon such goods for their lawful charges; and shall have a lien upon any and all goods held by them for delivery, or on demurrage, or in storage; and such lien shall be enforceable in the manner hereinafter provided.

History.—§1, ch. 10176, 1925; CGL 6660.

355.02 Enforcement; nonperishable property.—Whenever any person to whom nonperishable freight shall have been consigned and shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for the period of fifteen days, after notice of arrival of such nonperishable freight shall have been duly sent or given; and disposition of such property shall not have been arranged for within thirty days after the sending or giving of the notice to consignor or shipper hereinafter provided to be sent or given by such carrier, shall have been duly sent or given; and whenever any person shall fail or refuse to take or receive any nonperishable property when entitled to take or receive the same, held by such common carrier for delivery, in storage or on demurrage, for a period of fifteen days after notice by such common carrier to take or receive the same, and disposition of such property shall not have been arranged for within thirty days after the sending or giving of the notice hereinafter provided to be sent or given to shipper or consignor by such carrier, shall have been duly sent or given; such common carrier may sell such nonperishable property at public sale without resorting to the courts for the purpose of satisfying its lawful transportation, demurrage or storage charges.

History.—§2, ch. 10176, 1925; CGL 6661.
cf.—§1.01(3) "Person" defined.

355.03 Sale of nonperishable property.—Before such sale of nonperishable property shall be made, such common carrier shall first mail, send or give to the shipper or consignor thereof, notice in writing that such nonperishable property has been refused or remains unclaimed, as the case may be, for fifteen days after the sending or giving to consignee, or if shipped order notify, the party to be notified, of notice of arrival or of notice to take or receive such property, as the case may be; that if disposition of such nonperishable property be not arranged for within thirty days, that the same will be subject to sale at the end of such thirty days. Such common carrier before causing any sale of nonperishable property to be made, shall also insert and cause to be published once a week for two successive weeks in some newspaper of general circulation at the place of sale or nearest place where such newspaper is published a notice of such sale, containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, or, if held for delivery or in storage or on demurrage, the name of the party for whom so held, as the case may be, if such be known, and the time and place of such sale; provided, that before publication of such notice of sale shall be made, thirty days shall have elapsed since the giving or sending to consignor or shipper, of any notice that the property was refused or remains unclaimed.

History.—§3, ch. 10176, 1925; CGL 6662.

355.04 Livestock.—Whenever any person to whom livestock shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for a period of three days, after the notice of arrival and carrier's intention to sell hereinafter provided to be given in regard to such livestock shall have been duly posted and sent or given, and such livestock shall not have been returned to the shipper or consignor; and whenever any person shall fail or refuse to take or receive livestock, when entitled to take or receive the same, held by such common carrier for delivery or in storage or on demurrage, for a period of three days after notice of demand by such carrier to take or receive such livestock and of the intention of such carrier to sell the same in default of compliance therewith, as hereinafter provided to be given by such carrier, shall have been duly posted and sent or given by such carrier, any such common carrier may, to prevent death, disease, shrinkage, deterioration or further disease, shrinkage or deterioration of such livestock, sell such livestock at public sale without resorting to the courts, for the purpose of satisfying its lawful transportation, demurrage or storage and other charges.

History.—§4, ch. 10176, 1925; CGL 6663.

355.05 Sale of livestock.—Before such sale of livestock shall be made such common carrier shall give three days' notice by telegraph, telephone, messenger, or other expedited means of communication to the shipper and consignee of livestock, if such be known, of the arrival of such livestock and intention of such common carrier to sell the same at the end of three days to prevent death, disease, shrinkage or deterioration or further disease, shrinkage or deterioration of the same, and the time and

place of holding such sale; or in the case of livestock held for delivery, on demurrage or in storage, in the same manner, notice of the demand of such carrier to the shipper and consignee of such livestock to take or receive the same within three days and of such common carrier's intention to sell the same after three days in default of compliance with such demand to prevent death, disease, shrinkage or deterioration or further disease, shrinkage or deterioration of the same and the time and place of such sale. No sale shall be made under the provisions of this section unless such common carrier shall, three days prior to such sale, post at the outer door, customarily used by the public, of the local freight office or in the absence of freight office, at the local freight warehouse of such common carrier, in the village, town or city in which such livestock shall be held or nearest thereto, notice of the arrival of such livestock and carrier's intention to sell, or in the case of livestock held for delivery, on demurrage or in storage, notice of demand to take or receive the same within three days and of such carrier's intention to sell in default of compliance therewith; every such notice to be posted shall further contain the names and addresses of the shipper and consignee if such be known, and a brief description of the livestock to be sold, the reasons for making and the time and place of holding such sale; provided, that if the name of neither the shipper nor the consignee of the livestock intended to be sold shall be known to such common carrier then the posting of the notice herein provided of the holding of such sale with a brief description of the livestock intended to be sold shall be deemed sufficient notice and such sale shall be valid to all intents and purposes.

History.—§5, ch. 10176, 1925; CGL 6664.

355.06 Perishable property other than livestock.—Whenever any person to whom perishable freight other than livestock shall have been transported by a common carrier to the place of destination shall fail or refuse to take or receive the same from such common carrier for a period of twenty-four hours after the notice of arrival and carrier's intention to sell hereinafter provided to be given in regard to such perishable property other than livestock, shall have been duly posted and sent or given, and such perishable goods shall not have been returned to the shipper or consignee; and whenever any person shall fail or refuse to take or receive any perishable property, other than livestock, when entitled to take or receive the same, held by such common carrier for delivery, on demurrage or in storage for a period of twenty-four hours after notice of demand by such carrier to take or receive such perishable property other than livestock and of intention of such carrier to sell the same in default of compliance therewith as hereinafter provided to be given by such carrier, shall have been duly posted and sent or given by such carrier, any such common carrier may in its discretion, to prevent deterioration or further deterioration, sell such perishable property other than livestock, at public sale, without resorting to the courts, for the purpose of satisfying its lawful transportation, demurrage, or storage charges.

History.—§6, ch. 10176, 1925; CGL 6665.

355.07 Sale of perishables other than livestock.—Before sale of such perishable property shall be made, such common carrier shall give twenty-four hours notice by telegraph, telephone, messenger, or other expedited means of communication to the shipper and consignee of such perishable property, if such be known, of the arrival of such perishable property and intention of such common carrier to sell the same at the end of twenty-four hours to prevent deterioration or further deterioration of the same, and the time and place of holding such sale; or in the case of perishable property held for delivery, or on demurrage or in storage, in the same manner, notice of the demand of such carrier to the shipper and consignee of such perishable property to take or receive the same within twenty-four hours and of such carrier's intention to sell the same after twenty-four hours in default of compliance therewith to prevent deterioration or further deterioration of the same, and the time and place of such sale.

No sale shall be made under the provisions of this section unless such common carrier shall, twenty-four hours prior to such sale, post at the outer door, customarily used by the public, of the local freight office or in the absence of freight office, at the local freight warehouse of such common carrier, in the village, town or city in which such perishable property shall be held or nearest thereto, notice of the arrival of such perishable property and carrier's intention to sell, or in the case of perishable property held for delivery, or on demurrage or in storage, notice of demand to take or receive the same within twenty-four hours and of such carrier's intention to sell in default of compliance therewith; such notice to be posted shall further contain the names and addresses of the shipper and consignee, if such be known, a brief description of the property to be sold, the reasons for making and the time and place of holding such sale; provided, that if the name of neither the shipper nor the consignee of the perishable property intended to be sold shall be known to such common carrier, then the posting of the notice herein provided of the holding of such sale with a brief description of the perishable property intended to be sold shall be deemed sufficient notice and such sale shall be valid to all intents and purposes.

History.—§7, ch. 10176, 1925; CGL 6666.

355.08 Bids; disposition of proceeds.—At any sale provided for by this chapter, the common carrier shall sell the property upon which it shall have a lien to the highest and best bidder, but may reject any and all bids.

The carrier shall apply the amounts received

for the property so sold to the satisfaction of the lawful charges accruing thereupon, whether for transportation, storage, demurrage, refrigeration or otherwise, and, if any surplus be left from the proceeds of such sale after such application, such carrier shall hold the same on deposit for the owners of the property sold, without interest, and may pay the same over at any time thereafter to the persons who would have been entitled to receive the property sold.

History.—§8, ch. 10176, 1925; CGL 6667.

355.09 Carrier protected from liability.—No common carrier shall be liable as for a conversion or otherwise for any property sold by it in accordance with the provisions of this chapter.

History.—§9, ch. 10176, 1925; CGL 6668.

CHAPTER 356

FENCING AND EVIDENCE IN LIVESTOCK CASES; RAILROADS

356.01 Railroads to be fenced.—Every railroad company, or person now or hereafter operating or constructing any railroad or railway in the state, shall erect and construct and maintain fences on both sides of its railroad suitable and sufficient to prevent the intrusion of any cattle, horses, hogs or other domestic livestock upon its track; provided, that no fence shall be required within the limits of any incorporated town or city, unless by the ordinances of said town or city, nor within one mile of any city of ten thousand inhabitants, nor within the limits of any precinct, district, or county or other territory where there is in effect any law making it unlawful for such livestock to run at large.

History.—§§1, 2, ch. 4706, 1899; GS 2868, 2869; RGS 4586, 4587; CGL 6669, 6670; §1, ch. 14835, 1931.

356.02 Description of fence required; stock guards and crossings.—All fences enclosing railroads in this state shall be substantially built and shall be of such kind as to prevent the intrusion of any and all cattle, horses, hogs or other domestic livestock upon the track of the said railroad, and there shall be a space left for all road crossings, either neighborhood or public, at least thirty feet wide, with such stock guards on both sides of such road crossings as will prevent cattle, horses, hogs or other domestic livestock entering such railroad enclosures; all such fencing from such livestock guards shall run at an acute angle with the railroad track to the main line of fence, and posts shall be placed in the ground not more than eight feet apart for a distance of sixty feet from such stock guards, and one board shall be placed on said posts twelve inches from the earth, one thirty-six inches and one fifty-four inches from the earth, and shall have such additional boards or wires as may be necessary to make the fence suitable and sufficient to prevent the intrusion upon the track by any cattle, horses, hogs and other domestic livestock; and there shall be such crossings and stock guards constructed on all railroads passing through farms at such places as may be reasonably requested by the owners or their agents.

History.—§4, ch. 4706, 1899; GS 2870; RGS 4588; CGL 6671.

356.03 Fences to be kept in good repair.—The fences and stock guards required in this chapter shall be kept in good repair and maintained by the companies, person or persons owning or operating the said railroads so that they shall at all times be suitable and sufficient to prevent the intrusion of any cattle, horses, hogs or other domestic livestock upon the tracks of such railroad, and the failure of the railroad company, person or persons to maintain said fence as aforesaid shall subject them to the same penalties as is provided for in this chapter for failure to erect such fences and stock guards.

History.—§6, ch. 4706, 1899; GS 2872; RGS 4590; CGL 6673.

356.04 Double damages for killing stock.—Any railroad company, or person owning or operating any railroad in this state who has failed to erect and maintain fences along the sides of its railroad track as is provided in this chapter shall be liable for the full cash value of any and all cattle, horses, hogs or other domestic livestock which may be killed or injured by any train, engine or cars upon the track of the said railroad, if the claim be paid within sixty days after the presentation of the claim for damages by the owner of the killed or injured livestock or his agent or attorney, whether the same was killed or injured negligently or not; provided, that upon the failure to pay the claim within sixty days after its presentation the said railroad companies, or person owning or operating said roads not fenced as herein provided shall be liable for double the value of the animal killed or injured and for attorney's fees.

History.—§5, ch. 4706, 1899; §1, ch. 5020, 1901; GS 2871; RGS 4589; CGL 6672.
cf.—§§356.06, 356.07 When double damages not allowed.

356.05 Presenting claim in writing.—When any livestock is killed or injured upon any railroad in this state, the person entitled to damages therefor shall, by himself, attorney or agent, give notice and present his claim to any general agent or any stock claim agent or general officer of the corporation, or person owning or operating the said railroad, or to any depot or station agent for said corporation or person, residing in the county where such livestock was killed or injured, which said notice and presentation of claim shall be in writing; and if, after such presentation of claim and notice, said corporation or person shall fail to pay the said claim for the space of sixty days, suit may be brought in any court of this state having jurisdiction by the person having the general or special property in said livestock, but nothing herein shall be construed

to authorize two suits by different parties for the same cause of action.

History.—§7, ch. 4706, 1899; §1, ch. 5020, 1901; GS 2873; RGS 4591; CGL 6674.

356.06 Unreasonable or unjust claims where verdict does not exceed amount tendered.—If, when the claim is presented as provided in §356.05, said corporation, or person operating the railroad as aforesaid shall deem such claim unreasonable and unjust, and shall tender or offer to pay such amount for damages as in their estimation is reasonable and just for the livestock so killed or injured, and the claimant shall refuse to accept the amount tendered or offered to be paid, and upon the trial of the cause a jury, or the judge in case the cause be tried without a jury, under the proofs find a verdict for not more than the amount so tendered or offered as aforesaid, the court shall render judgment against the plaintiff in favor of the defendant for all reasonable cost, and said cost shall be deducted from the amount assessed as damages for the livestock killed or injured, and the plaintiff shall not be entitled to any attorney's fees as provided in cases where the plaintiff prevails.

History.—§8, ch. 4706, 1899; GS 2874; RGS 4592; CGL 6675.

356.07 Judgment; when rendered; amount; where verdict exceeds amount tendered but is less than amount demanded; where verdict equals demand.—When the owner of any livestock killed or injured upon any railroad in this state by the engine, train or cars of any company or person owning or operating the said railroad, said road not being fenced, and provided with stock guards as required by this chapter, shall bring suit either by himself, agent or attorney, to collect damages for the killing or injury, after having given the notice required in this chapter, and upon the trial of such case the jury, or in the case the same be tried without a jury, the judge of the court trying the case, shall after hearing the evidence of the value, decide the value to be less than the amount demanded in the written notice and presentation of claim required by this chapter, but more than the amount tendered or offered, then and in that case the court shall render judgment for the plaintiff against the defendant for the actual value only and cost of suit and attorney's fees to be fixed as hereinafter provided.

If the value so decided upon be not less than the amount as originally claimed or demanded, as aforesaid, then in that case the court shall render judgment for the plaintiff against defendant for double the damage found to be due the plaintiff by reason of the killing or injury of the livestock, and also render judgment against the defendant in favor of the plaintiff for all costs of the said suit, which said costs shall include a reasonable attorney's fee, said fee to be determined by the court; provided, however, that no attorney's fee shall be allowed any plaintiff not represented by an attorney in the suit; and provided, that any animal which may be injured by the operation of a railroad in this state so seriously that it cannot reasonably be expected to recover may be killed by the owner, the employees of said railroad or any other person, if necessary to terminate incurable suffering, and the killing of such animal under such circumstances by any person shall be deemed a killing by the railroad company responsible for the injuries under the provisions of this chapter.

History.—§1, ch. 5214, 1903; §9, ch. 4706, 1899; ch. 5020, 1901; GS 2875; RGS 4593; CGL 6676.

356.08 Liable only for actual value.—Where any railroad company or person owning or operating any railroad in this state is complying with the provisions of this chapter it shall only be liable for the actual value of all livestock, horses, cattle or hogs killed or injured by the operation of its engines or cars, including all costs and expenses and reasonable attorney's fees, which said sums shall be a lien and collectible as provided in this chapter.

History.—§13, ch. 4706, 1899; GS 2876; RGS 4594; CGL 6677.

356.09 Time limit to commence actions.—No action shall be commenced under the provisions of this chapter after the expiration of one year from the date the party who is entitled to bring suit had notice of the killing or injury of such livestock.

History.—§11, ch. 4706, 1899; GS 2877; RGS 4595; CGL 6678.

356.10 Injuring or killing prima facie evidence of negligence.—In all cases in which livestock is injured or killed by railway engines or cars within the state, and suit has been or shall hereafter be brought within twelve months after such injury or killing, to recover from the railroad company operating such engines, cars or trains, damages therefor, the fact of the injury or killing of such livestock by such railway engines, cars or trains, when proven to the satisfaction of the jury on the trial of such suit, shall be prima facie evidence of negligence on the part of such railroad company.

History.—§2280 RS 1892; §1, ch. 3908, 1889; GS 2878; RGS 4596; CGL 6679.

CHAPTER 357

RAILROAD CROSSINGS

357.01 Highway crossings maintained by railroad companies.—All railroad companies, or persons owning or operating a line of railroad, log road or tram road in the state shall build, construct, maintain and keep in good condition highway crossings at all points where said line of railroad is crossed by any public, county or settlement road or by any public street where required by the board of county commissioners or the town council; such crossings to be constructed with as little slant as practicable, so as to render easy passage over same with loaded teams.

History.—§1, ch. 6233, 1911; RGS 4597; CGL 6680.
cf.—§1.01(3) "Person" defined.

357.02 Inspection and approval.—The highway and street crossings herein provided for shall at all times be subject to the inspection and approval of the board of county commissioners of the county in which the same is located, or to the inspection and approval of the city or town council if within an incorporated city or town.

History.—§2, ch. 6233, 1911; RGS 4598; CGL 6681.

357.03 Notice to railroad company; service.—Whenever any crossing is not constructed or maintained as provided in §357.01, the county commissioners, or the city or town council, as the case may be, shall give to the owner or operator of such railroad a notice in writing, setting forth the place and nature of crossing required, or repairs needed, requiring the crossing to be built, or the repairs made, within thirty days from the time of the service of such notice. The service of such notice upon any agent of the owner or operator of such railroad, residing or having an office or place of business in the county, shall be deemed service upon the owner or operator, or such service may be effected by mailing a copy of the notice to any officer or director of the company, or to the owner or operator of such railroad, addressed to him at his usual place of business, with the legal postage thereon.

History.—§3, ch. 6233, 1911; RGS 4599; CGL 6682.

357.04 Failure of railroad company to maintain; construction by county or city; lien on roadbed and rolling stock.—If the railroad company, owner or operator of such railroad, log road or tram road shall fail or refuse to construct such crossing or to make the required repairs within the time specified in the notice, then the county commissioners, or the city or town council, as the case may be, shall proceed to have said crossings built or repaired, as required, and upon completion thereof shall file in the office of the clerk of circuit court of the county an itemized statement of the expenses for labor and material, sworn to by the superintendent of the work, which statement shall be by said clerk forthwith recorded in the lien record book, and shall thereupon become a lien upon the roadbed and rolling stock of said railroad.

History.—§4, ch. 6233, 1911; RGS 4600; CGL 6683.

357.05 Suit to enforce payment.—Immediately upon recording such statement the said clerk shall send a copy thereof by mail to any officer or agent of the owner or operator of said railroad, log road or tram road, or deliver the same in person, and if such company, owner or operator shall fail to pay the same within twenty days, then suit may be instituted to enforce the payment thereof.

History.—§5, ch. 6233, 1911; RGS 4601; CGL 6684.

357.06 Enforcement of lien.—The liens created under the provisions of this chapter may be enforced by an ordinary suit at law, or as is now or may hereafter be provided by law for the enforcement of liens.

History.—§6, ch. 6233, 1911; RGS 4602; CGL 6685.

357.07 Attorney's fee.—Judgments rendered and entered under the provisions of this chapter shall include a reasonable allowance for attorney's fees.

History.—§7, ch. 6233, 1911; RGS 4603; CGL 6686.

CHAPTER 358

SALE AND REDEMPTION OF TICKETS

358.01 Agents to be provided with certificates.—Every common carrier shall provide each agent who may be authorized to sell tickets or other evidence of transportation, of the holder's right to travel on the line of such carrier, or any line of which said carrier's line shall form a part, with a certificate setting forth the authority of such agent to make such sale, which certificate shall be attested by the signature of such common carrier, or whenever such common carrier is a corporation, by the signature of one of its proper officers, and posted in a conspicuous place in the office or place of business of such agent.

History.—§1, ch. 4702, 1899; GS 2879; RGS 4604; CGL 6689.

358.02 Only authorized agents to be supplied with tickets.—No general passenger agent or other officer of a common carrier whose duty it may be to supply tickets to the agents of said common carrier for sale to the public, shall supply tickets for sale to any person other than the regularly authorized ticket agent as provided for in §358.01. No person not possessed of such authority, so evidenced, shall sell, barter, or transfer, for any consideration whatever, the whole or any part of any ticket, pass, or other evidence of transportation; provided, that the purchaser of a transferable ticket in good faith, for personal use in the prosecution of a journey, shall have the right to resell same to a person who will, in good faith, personally use it in the prosecution of a journey; and provided further, that nothing herein shall prevent the properly authorized agent of any transportation company from purchasing from the properly authorized agent of any other transportation company a ticket for a passenger to whom he may sell a ticket to travel over any part of the line for which he is the properly authorized agent so as to enable such passenger to travel to the place or junction from which his ticket shall read.

History.—§2, ch. 4702, 1899; GS 2880; RGS 4605; CGL 6690.

358.03 Carrier to redeem unused tickets.—Every common carrier that shall have sold any ticket or other evidence of transportation, of the holder's right to travel on its line or on any line of which it forms a part, shall, if the whole of said ticket be unused, redeem the same, paying therefor the actual amount at which said ticket was sold, or, if any part of such ticket be unused by the purchaser thereof, redeem the same at a rate for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. The purchaser of an unused or partly used ticket or his or her representative, may have the same redeemed at any time within one year after its issue if it be unused, or within one year after it shall have been partly used, in the manner following; he or she shall present the same to any ticket agent of any common carrier over whose line such ticket was sold to be used, whereupon such ticket agent shall issue to the purchaser, or his or her legal representative, a receipt describing the same, and shall take the name and address of such owner, and shall, within five days thereafter, forward to the officer of such common carrier who shall be authorized or designated to redeem such ticket, the said ticket, with such name and address. And said officer whose duty it shall be to redeem such ticket shall, within thirty days after receipt of such ticket with such name and address, forward or mail to such address the value of the ticket as provided in this section. Such redemption shall be made without cost of exchange or other expense to the purchaser of the ticket; provided, that such ticket agent may, in the discretion of the common carrier by which he is appointed, redeem such ticket in cash when presented.

History.—§4, ch. 4702, 1899; GS 2881; RGS 4606; CGL 6691.

358.04 Penalty for violations.—Any person violating any of the provisions of, or neglecting to comply with any of the requirements of law relating to the sale of or redemption of tickets, unless otherwise provided, shall be subject for each offense to a fine not exceeding one thousand dollars, or imprisonment not exceeding one year.

History.—§3, ch. 4702, 1899; GS 3641; RGS 5577; CGL 7763.

cf.—§775.06 Alternative punishment.

358.05 Penalty for failure to redeem unused ticket.—Any ticket agent who shall refuse to give to the purchaser a receipt for a ticket unused or partly used, or refuse to take the name and address of the purchaser of the ticket, or who shall fail within five days after receiving such ticket to forward the same with the name and address to the proper officer for redemption shall, upon conviction thereof, be fined not exceeding one hundred dollars or imprisoned not exceeding sixty days. Any general passenger agent, or other officer designated by a common carrier as the proper person to redeem its unused or partly used tickets, who shall refuse or fail to redeem such tickets in the manner prescribed by law within thirty days after the same shall have reached his hands shall, upon conviction thereof, be fined not exceeding one hundred dollars, or be imprisoned not exceeding sixty days.

History.—§5, ch. 4702, 1899; GS 3642; RGS 5578; CGL 7764.

cf.—§775.06 Alternative punishment.

CHAPTER 359

EXPRESS COMPANIES; PAYMENT OF CLAIMS; RATES

359.01 Payment of claims; notice of claim; damages; proviso.—Any person doing an express business, or transporting express in this state shall, within ninety days after the filing with said person by any shipper, of his claim for the loss of, or any damage to any shipment or a part of any shipment received from the said shipper by the said person for transportation, pay said claim to said claimant, and if said person fails to pay said claim within the said ninety days from its filing, then he shall pay to said claimant the sum of twenty-five per cent per annum on the principal sum of said claim, and when the said claimant shall bring suit and recover for his claim against the said person it shall be proper and he shall be allowed in said suit the said twenty-five per cent per annum in addition to the principal sum of said claim and have judgment therefor; provided, however, that the claimant shall not recover and have judgment for the said twenty-five per cent per annum unless he recovers judgment for a sum based upon the principal of said claim which is greater than the amount which the said person had offered and tendered to pay the claimant in settlement of the claim before the expiration of the ninety days in which the said person is by this chapter required to pay said claim.

History.—§1, ch. 5421, 1905; RGS 4347; CGL 6309.

cf.—§1.01(3) "Person" defined.

359.02 Construction of chapter.—This chapter shall not be construed to be in conflict with the laws of this state regulating and making a legal rate of interest and defining, prohibiting and punishing usurious contracts.

History.—§2, ch. 5421, 1905; RGS 4348; CGL 6310.

359.03 Posting schedule of rates. — Every express company doing business in this state shall have posted in a conspicuous place, easily accessible to the public, at every place where articles are received by such company for shipment by express, or delivered by such company, such articles having been received by express, a schedule of rates, plainly printed; and all such articles shall be weighed on demand of and in the presence of the consignor or consignee, his servant or agent, on standard scales to be furnished by the express company, and no charge greater than that specified in the posted schedule shall be made by such express company.

History.—§1, ch. 5626, 1907; RGS 4349; CGL 6311.

359.04 Penalty for failure of express companies to post rates; charging greater rate than posted.—Any express company doing business in this state violating, failing or refusing to comply with the provisions of §359.03 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars. Every day of such violation, failure or refusal shall constitute a separate and distinct offense; provided, however, that if such violation be an excessive charge for transporting or carrying any article or thing, and within fifteen days after demand at the place where paid such excess over the proper charge be returned to the party paying the same, then the penalty or forfeiture above provided shall not be enforced.

History.—§2, ch. 5626, 1907; RGS 5691; CGL 7905.

359.05 Rate fixed for transporting certain packages.—Any express company doing business in the state shall transport and carry any package of merchandise not weighing over five pounds, of the value of not more than fifty dollars, from point to point in this state not exceeding two hundred miles, for the sum of twenty-five cents, and shall charge no more for the transportation of the same.

History.—§1, ch. 5627, 1907; RGS 4350; CGL 6312.

359.06 Penalty for failure of express company to carry certain packages not exceeding two hundred miles for twenty-five cents.—Any express company, its agents, or employees, who shall violate the provisions of §359.05, and collect more than the amount as prescribed, shall, upon conviction, be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months.

History.—§2, ch. 5627, 1907; RGS 5693; CGL 7907.

cf.—§775.06 Alternative punishment.

CHAPTER 360

SPECIAL POWERS OF RAILROAD AND CANAL COMPANIES; TOLLS

360.01 Certain powers enumerated.—Every railroad and canal company shall be empowered:

(1) To cause such examinations and surveys for the proposed railroad or canal to be made as shall be necessary for the selection of the most advantageous route, and for such purposes by its officers, agents and servants to enter upon the lands or water of any person for that purpose.

(2) To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its road or canal, but the real estate received by voluntary grant shall be held and used for purposes of such grant only.

(3) To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its road or canal and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to sell, lease or buy any lands or real estate not necessary for its use.

(4) To lay out its road or canal, not exceeding two hundred feet in width, and to construct the same, and, for the purpose of cuttings and embankments and for obtaining gravel and other material, to take as much land as may be necessary for the proper construction, operation and security of the road or canal, or to cut down any trees that may be in danger of falling on the road or into the canal, making compensation therefor as provided for land taken for the use of the company.

(5) To construct its road or canal across, along or upon or use any stream of water, water-course, street, highway or canal which the route of its road or canal shall intersect or touch, and whenever the track of any railroad or canal shall touch, intersect or cross any road, highway or street, it may be carried over or under such railroad or canal, as may be found most expedient for the public good; and in case any embankment or cut in the construction of any railroad or canal shall make it necessary to change the course of any highway or street, the company may construct such road or canal so as to change the course or direction of any road, highway or street.

(6) To cross, intersect or unite its railroad with any other railroad heretofore or hereafter to be constructed at any point in its route or upon the ground of any other railroad company with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections; and every company whose railroad is or shall be hereafter intersected by any new railroad can unite with the owners of such new railroads forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor and all the points and matters of such crossing and connections, the same shall be ascertained according to the provisions for exercising the right of eminent domain, and no company which shall have obtained the right of way and constructed its road at the point of intersection before the beginning of proceedings for condemnation shall be required to alter the grade or change the location of its road.

(7) To take and convey persons or property over their railroad or canal by the power or force of steam or animals or by any mechanical power, and to receive compensation therefor, and to do all the business incident to railroads or canal business.

(8) To erect and maintain all convenient buildings, wharves, docks, stations, fixtures and machinery for the accommodation and use of their passengers and freight business.

(9) To regulate the time and manner in which passengers and property shall be transported.

(10) To borrow such sums of money at such rates of interest and upon such terms as the company or its board of directors shall authorize or agree upon and may deem necessary or expedient, and to execute one or more trust deeds or mortgages, or both, as the occasion may require, of railroads or canals constructed or in process of construction by said company, for the amounts borrowed or owing by such company, as its board of directors shall deem expedient; and such company may make such provisions in such trust deed or mortgage for transferring their railroad track or canal right of way, depots, grounds, rights, privileges, franchises, immunities, machines, houses, roll-

ing stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroads or canals, in any manner whatsoever then belonging to the said company, or which shall thereafter belong to it, as security for any bonds, debts or sums of money as may be secured by such trust deed or mortgage, as they shall think proper; and in case of sale of any railroad or canal, or any part thereof, constructed or in course of construction by any railroad or canal company, by virtue of any trust deed or of any foreclosure of any mortgage thereon, the parties acquiring title under such, and their associates, successors or assigns, shall have or acquire thereby, and shall exercise and enjoy thereafter the same rights, privileges, grants, franchises, immunities and advantages in or by said trust deed or mortgage enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage or contracting such debt, so far as the same relate or appertain to that portion of said road or canal or the line thereof mentioned or described and conveyed by said mortgage or trust deed, and no further, as fully and absolutely in all respects as the corporators, officeholders, shareholders and agents of such company might or could have done, had not such sale or purchase taken place, and such purchasers, their associates, successors or assigns may become incorporated as provided by law.

History.—§10, ch. 1987, 1874; RS 2241; GS 2803; RGS 4354; CGL 6316.

cf.—§323.06, Operation of motor vehicles for hire by railroads.
§608.01, Capital stock of railroads and canal companies.

360.02 Railroad and canal companies may condemn land for terminal facilities. — Any railroad or canal company, which is a public carrier or intended to be, in the construction of its railroad or canal, or in the extension of the same, for the purpose of securing terminal facilities therefor on any of the waters of any river, lake, bay, gulf or ocean, shall have and they are hereby given the right to condemn for the use of such railroad or canal company, a sufficient area of land therefor and included in which shall be space on shore for depots, yards, switches, turntables, shops and storehouses, and such area in and over the waters to the limit of the channel, natural or artificial, of rivers, lakes, bays, gulf or oceans sufficient for ample room for docks, wharves, elevators, berths for ships, ware and store houses, tracks, switches, and all required facilities for the reception, retention, transfer and forwarding of commerce.

History.—§1, ch. 4426, 1895; GS 2804; RGS 4355; CGL 6317.

cf.—§73.17, Condemnation of lands of other railroad and canal companies.
§73.18, Right of way rights.
Ch. 361, Public service corporations.

360.03 Where land belongs to state.—Whenever the land or water privileges mentioned in the preceding section shall belong to the State of Florida, the use thereof for the aforesaid purposes shall vest in said railroad or canal company upon the occupancy of both or either the said land or water by such company, for such purposes; provided, that before any rights shall accrue under this section the railroad or canal company desiring such use shall file in the office of the secretary of state a map or plan of the area of lands and of water or either so intended to be used or occupied by it, with such definiteness as may be practicable, so as to avoid confusion, and shall apply for the approval of the trustees of the internal improvement fund or the state board of education (according to which body the title to said land is vested in) of said map or plan; and when such plat or plan is so filed, and such approval secured, the party filing same and securing such approval shall secure the first right to the occupancy and use of the designated locality, which first right of first occupancy and use shall be lost by failure to use any of the premises for the aforesaid purposes within two years from the date of such filing. In the event that said trustees of the internal improvement fund or said state board of education shall deem the acreage claimed under this section to be excessive, the price to be paid for such alleged excess shall be determined by agreement between such railroad or canal company and said trustees of the internal improvement fund or said state board of education; and in the event agreement cannot be reached, the right of such railroad or canal company to occupy and use such alleged excess, and the price, if any, to be paid for same, shall be determined by a proceeding by such railroad or canal company to condemn said land according to the provisions of law respecting the condemnation of land by railroad companies.

History.—§2, ch. 4426, 1895; GS 2805; RGS 4356; §1, ch. 9291, 1923; CGL 6318.

cf.—Ch. 73 Eminent domain.

360.04 Right of way through state lands.—Every railroad or canal company which shall have located or constructed, or which shall hereafter locate or construct its road or canal through any seminary lands, school lands, or swamp and overflowed lands owned and held by this state shall have the right to take, occupy, hold and possess for the purposes of a railroad or canal a strip of land two hundred feet wide through or across each and every tract of land so owned or held by the state, or over which said railroad or canal is or shall be constructed. This section shall not be applicable to any lands that shall be sold by the state prior to the actual survey and location of any such road or canal line and the filing of a plat of such road or canal line in the office of the secretary of state as prescribed by the chapter on internal improvements.

History.—§24, ch. 1987, 1874; RS 2243; GS 2807; RGS 4358; CGL 6320.

360.05 Rolling stock to be fixtures; mortgages affecting after-acquired property.—All rolling stock of any railroad company used or employed in connection with its railroad shall be fixtures; and all such property and additional right of ways, depots, grounds and other

real property acquired subsequently to any deed of trust or mortgage, which may be described as provided for therein, shall be subject to the same lien as is created by such trust deed or mortgage upon the property therein described and to which the company had title at the time of its execution.

History.—§31, ch. 1987, 1874; RS 2242; GS 2806; RGS 4357; CGL 6319.

360.06 Right of way through lands of persons not sui juris.—In case any title or interest in real estate required by any railroad company formed under any law of this state for its incorporation shall be vested in any trustee not authorized to sell, release and convey the same, or in an infant, idiot or person of unsound mind, the circuit court by a summary proceeding or petition may authorize and empower such trustee or the guardian of such infant, idiot or person of unsound mind to sell and convey the same to such company for the purposes of its incorporation on such terms as may be just; and in case any such infant, idiot or person of unsound mind has no guardian, the said court may appoint a guardian for the purpose of making such sale, release or conveyance, or may require security from such guardian as the court may require and deem proper. Before any conveyance or release authorized by this section shall be executed, the terms on which the same is executed shall be reported to the court on oath, and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report and direct the proper conveyance and release to be executed, which shall have the same effect as if executed by an owner of said land having legal power to sell and convey the same.

History.—§23, ch. 1987, 1874; RS 2244; GS 2808; RGS 4359; CGL 6321.

360.07 Crossing highways.—Whenever the track of a railroad or a canal constructed by a company formed under any law of this state shall cross a railroad or highway, such highway may be crossed under or over the track, as may be found most expedient, and in case where an embankment or cutting shall make a change in the line of such highway or is desirable with a view to more easy ascent or descent, said company may take such additional lands for the construction of such road or highway on such new line as may be deemed requisite by the directors unless the land so taken for the purpose aforesaid shall be donated by the owners. The county commissioners shall declare such roads or highways, as located by the railroad or canal company, open for the purposes of a public road or highway, without cost or expense to such railroad or canal company, and such land so declared open shall be held for highway purposes.

History.—§22, ch. 1987, 1874; RS 2245; GS 2809; RGS 4360; CGL 6322.

cf.—§360.01 Railroads or canals may cross streets, highways, etc.

360.08 Change of route.—The directors of every railroad or canal company may, by a vote of two-thirds of their whole number, at any time, alter or change the route or part of the route of the road or canal as constructed, if it shall appear to them that the line can be improved thereby. The company shall make and file in the office of the secretary of state a certificate of such alteration or change, which certificate shall then be entered of record, and such company shall have the same right and power to acquire title to any land required for the purposes of the company in such altered or changed route as if the road had been located there in the first instance. No such alteration shall be made in any city or town, after the road shall have been constructed, unless the same shall be sanctioned by a vote of the common council of the said city, and in case of any alteration made in the route of any railroad which the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. All the provisions of law relative to the first location and acquiring title to land shall apply to every such new or altered portion of the route.

History.—§21, ch. 1987, 1874; RS 2246; GS 2810; RGS 4361; CGL 6323.

360.09 Extension.—Any railroad or canal company now existing or hereafter organized under the laws of this state may extend its railroad or canal from any point named in its charter, or may build branch railroads from any point or points on the line of road. Before making any such extension or building such branch road or canal, the company shall, by resolution of its board of directors to be entered in the records of its proceedings, designate the route of such proposed extension or branch in the manner prescribed in §360.08 and file a certificate as therein provided.

History.—§12, ch. 1987, 1874; RS 2247; GS 2811; RGS 4362; CGL 6324.

360.10 Consolidation, lease and purchase.—Any railroad or canal company in this state may make and enter into contracts with any railroad or canal company which has constructed or shall hereafter construct any railroad or canal within this state or in another state as will enable said companies to run their roads in connection with each other, and to merge their stock, or to consolidate with any company within or without this state, or to lease and purchase the stock and property of any such company, and hold, use and occupy the same in such manner as they shall deem most beneficial to their interests. It is lawful for such companies to build, construct and run as a part of their corporate property such number of steamboats or vessels as they may deem necessary to facilitate the business operation of such company or companies. No railroad company or canal company shall consolidate its franchises or its line or lines or its management with the franchises, line or lines or management of any company or person owning or controlling any parallel or competing line of railroad or canal without permission from the Florida public utilities commission, and all such consolidations or attempted consolidations,

without permission as aforesaid, shall be ultra vires.

History.—§28, ch. 1987, 1874; §1, ch. 3745, 1887; RS 2248; GS 2812; §1, ch. 6230, 1911; RGS 4363; CGL 6325; §1, ch. 63-279.

360.11 Canal company may fix rates of toll, etc.—The president and directors of any canal or navigation company are authorized to agree upon such rates of tolls for the use of such navigation as they may deem reasonable, and as shall be approved by the board of trustees of the internal improvement fund, and such company may collect tolls on all vessels or other water craft which may pass or repass through any canal which such company may cut or construct, or which may pass or repass through any channel they may have dredged or deepened, and such company shall be entitled to demand and receive said tolls on all produce, merchandise, goods or other articles which may be transported through any of the canals cut or waters improved by such company; and all produce, goods, merchandise, boats or other articles or things which may be transported or conveyed through any of said canals constructed, or waters made navigable, shall be liable for the tolls and fees to which they are respectively chargeable, and may be detained until the same be paid and acquitted.

History.—§12, ch. 1639, 1868; RS 2249; GS 2813; RGS 4364; CGL 6326.

360.12 Canal tolls regulated by Florida public utilities commission.—The regulation of canal tolls on any canal or inland waterway on which boats are operated shall be within the province of the Florida public utilities commission, and the Florida public utilities commission shall fix such schedules of tolls or traffic charges to be charged on any public canal.

History.—§1, ch. 6888, 1915; RGS 4367; CGL 6329; §1, ch. 63-279.

360.13 Regulation of traffic charges by commission.—The Florida public utilities commission shall have the same supervisory authority over the canals and inland waterways to regulate traffic charges as they have over railroads and other common carriers.

History.—§2, ch. 6888, 1915; RGS 4368; CGL 6330; §1, ch. 63-279.

360.14 Companies may exercise rights outside of state.—Any railroad or canal company heretofore or hereafter incorporated under the laws of this state may exercise all its rights, franchises and privileges in any other state or territory of the United States, under and subject to the laws of the state and territory where it may exercise, or attempt to exercise, the same, and may accept from any other state or territory and use any other additional power and privilege applicable to the carrying of persons and property by railway, steamboat or ships, in said state or territory, or on the high seas or otherwise, applicable to the doings of said company as herein provided.

History.—§39, ch. 1987, 1874; RS 2250; GS 2814; RGS 4365; CGL 6327.

360.15 Companies incorporated in other states may construct or own lines in this state.—Any railroad or canal company already or hereafter organized under or by virtue of the laws of any other state or territory, desiring to extend or construct the whole or any part of the whole of its line of railroad or canal in this state shall, upon filing in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, be entitled to all the franchises, rights, powers and privileges enjoyed by, and shall be subject to all the liabilities, obligations and penalties imposed upon, domestic companies of the same nature. Whenever a railroad company organized under and by virtue of the laws of another state becomes the owner of a line of road already completed in this state, said railroad company, upon filing in the office of the secretary of state a copy of its charter or reorganization either before or after the enactment of this provision, shall be entitled to the same franchises, rights, powers and privileges enjoyed by, and shall be subject to the same liabilities, obligations and penalties imposed upon, domestic companies of the same nature. Before any foreign railroad or canal company shall transact business in Florida, it shall pay to the secretary of state, the same sum required of any other foreign corporation to obtain a permit to do business in Florida; and such foreign corporation shall at all times be subject to and shall comply with all the provisions of law relative to obtaining permits to transact business in Florida, but no foreign railroad or canal company now doing business in Florida shall be required to obtain such permit.

History.—§1, ch. 3906, 1889; RS 2251; §1, ch. 4615, 1897; GS 2815; ch. 7836, 1919; RGS 4366; CGL 6328.

cf.—§608.05 Filing fees and taxes on corporations.

§613.01 Foreign Corporations must file charter and receive permit to transact business.

§613.02 Permit to transact business.

CHAPTER 361

EMINENT DOMAIN; PUBLIC UTILITIES

361.01 Eminent domain.—The president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works, or their properly authorized agents, may enter upon any lands, public or private, necessary to the business contemplated in the charter, and may appropriate the same, or may take from any land most convenient to their work, any timber, stone, earth or other material which may be necessary for the construction and the keeping in repair of its works and improvements upon making due compensation according to law to private owners.

History.—§10, ch. 1639, 1868; RS 2158; GS 2683; RGS 4111; CGL 6042.
cf.—Ch. 73, Eminent domain.
§§360.01, 360.02, Railroads and canals.
§362.02, Telegraph and telephone companies.

361.02 Constructing dams for water power.—Whenever any person owning lands in this state on any water course, may desire to erect dams for furnishing power for a water grist mill, electric light power, or other machine for public utility, and shall not have the fee simple title to the lands on the opposite side thereof, against which the petitioner would abut his dam, or surrounding lands which would be overflowed thereby, he may proceed to condemn such affected lands under the provisions of law relating to the condemnation of lands for other purposes.

History.—§1, ch. 5198, 1903; GS 2684; RGS 4112; CGL 6043.
cf.—§1.01(3) "Person" defined.

361.03 Right of electric railway companies.—Any electric railway company operating or constructing any line of its railway outside the incorporated limits of cities or towns in this state, whether for the purpose of transporting passengers exclusively or not, shall have the same rights, powers and privileges of eminent domain as are now exercised and enjoyed by all railroad and canal companies in this state, as and with reference to and concerning the condemnation of public and private property for the right of way of such railroads and canals, and such electric railway company shall have the right, privilege and authority to condemn and acquire such right of way for the construction of its lines in the same manner and by the use of the same process as is now prescribed by the laws of this state for the condemnation of right of way for railroads and canals, and each and every one of the laws of the state applying to the condemnation of right of way for railroads and canals in this state, shall apply to, govern and control the acquisition of such right of way by and for such electric railway companies.

History.—§1, ch. 5018, 1901; GS 2685; RGS 4113; CGL 6044.
cf.—§73.17, Condemnation of lands of railroad and canal companies.

361.04 Right of eminent domain to water works companies.—Any corporation organized under the laws of this state, either general or special, for the purpose of supplying any city, town, village, or the inhabitants thereof, or any community with water for domestic or sanitary purposes, or for fire protection, shall have the right, through its officers or agents, to enter upon any land, public or private, necessary to the business contemplated in its charter, and may appropriate the same; or may take from any land most convenient to its works, any timber, stone, earth, water or material which may be necessary for the construction, operation, keeping in repair or preservation of such works, upon making due compensation according to law to private owners; and should such water works company derive its supply of water, or any part thereof, from any lake, pond or stream of water, whether surface or subterranean, it may, upon making compensation as above specified, to private owners, appropriate any land lying contiguous to such pond, lake or stream, necessary for the preservation or protection of said water from diversion or contamination.

History.—§1, ch. 4165, 1893; GS 2686; RGS 4114; CGL 6045.
cf.—Ch. 73 Eminent domain.

361.05 Right of eminent domain to natural gas companies.—Any corporation organized under the laws of this state, or by virtue of the laws of any other state, and qualified to do business in this state, for the purpose of supplying any city, town, village or the inhabitants thereof, or any community with natural gas for domestic or industrial purposes, shall have the right of eminent domain to lay its pipe lines and works; to cause such examinations and surveys for the proposed pipe lines to be made as shall be necessary for the selection of the most advantageous routes; to enter upon any land, public or private, necessary to the business contemplated in its charter; to construct its pipe lines across, over, under, along and upon any stream of water, watercourse, canal, lake, bay, gulf, road, street, highway, railroad and transmission line; to take from any land most convenient to its pipelines and works, any timber, stone, earth, water or material which may be necessary to the construction, operation, keeping in repair or preservation of its pipe lines, works and improvements, upon making due compensation

according to law to private owners, with such reservation, if any, of oil, gas and mineral rights as said owners may determine. If, in the event it should become necessary to make any repairs to or relocation of any tracks of any railroad or for the performance of any work of construction or reconstruction by any railroad upon its right-of-way, it should become necessary to temporarily or permanently relocate any natural gas pipe line constructed upon any railroad right-of-way, such work incident to the relocation of such natural gas pipe line shall be performed, and the expense borne, by the company owning or operating said pipe line.

History.—§1, ch. 26893, 1951.

361.06 Right of eminent domain to petroleum and petroleum products pipeline companies. —Any pipeline company which is or which intends to be a common carrier of petroleum and petroleum products and which is duly incorporated for such purpose under the laws of this state, or which is a foreign corporation and is qualified to do business in this state as a common carrier of petroleum and petroleum products shall have all the rights of eminent domain and all other rights granted to natural gas companies under §361.05 for the purpose of acquisition of rights-of-way for the installation, operation, maintenance, repair and replacement of its pipelines and all structures, pumping stations and other installations and works incident thereto.

It is specifically provided, however, that no such company shall have any right of eminent domain as to any property belonging to or operated by the state or any agency thereof, or by any county, board of public instruction, municipality or public body. However, any such pipeline company shall have the right to all necessary permits to install, operate, maintain, repair and replace its pipelines under, along and across such property, subject only to reasonable regulations that may be imposed by the particular authority having jurisdiction of such property.

History.—§1, ch. 57-1983.

CHAPTER 362

SPECIAL POWERS OF TELEGRAPH AND TELEPHONE COMPANIES

362.01 To occupy roads.—Any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set so as to obstruct or interfere with the common uses of said roads or highways. Permission to occupy the streets of an incorporated city or town must first be obtained from the city or town council.

History.—§1, ch. 782, 1856; RS 2256; §1, ch. 5262, 1903; GS 2820; RGS 4373; CGL 6337.

cf.—§364.01, Subject to regulation of Florida public utilities commission.
§§338.17-338.20 Utilities along roads.

362.02 Powers of eminent domain.—Any telegraph or telephone company now organized, or which may hereafter be organized under the laws of this or any other state, shall have the right to construct, maintain and operate lines of telegraph or telephone along and upon the right of way of any railroad in the state, and to that end is granted all powers for the exercise of the right of eminent domain; provided, the ordinary travel or use of said railroad is not interfered with by reason thereof; and provided further, that no pole shall be erected nearer than twenty feet from the outer edge of the track, unless by the consent of the railroad company.

History.—§1, ch. 5211, 1903; GS 2821; RGS 4374; CGL 6338.

cf.—Ch. 73 Procedure in exercising right of eminent domain.
§§338.17-338.20 Utilities along roads.

CHAPTER 363

RATES AND LIABILITIES OF TELEGRAPH COMPANIES, ETC.

363.01 Rates.—No telegraph, cable company nor any company transmitting telegraph messages in the state shall charge and collect more than four cents per word for the first ten words, exclusive of the date, address and signature, of any message transmitted over any ocean or cable telegraph line a distance of one hundred miles; two cents per word for every additional word for the same number of miles within the state and proportionate rates for any greater or less number of miles that any message is transmitted. They shall also not charge more than two cents per word for the first ten words of any message transmitted over any land telegraph line within the state for the first one hundred miles, one cent per word for every additional word of any message for the same number of miles within the state and proportionate rates for any greater or less number of miles that any message is transmitted.

History.—§1, ch. 3609, 1885; RS 2258; GS 2829; RGS 4382; CGL 6346; §7, ch. 22858, 1945.

363.02 Liability for failure to promptly deliver messages; proviso. — Any telegraph company owning or operating a telegraph line wholly or partly in this state, and engaged in transmitting messages for a consideration, who shall negligently fail promptly to transmit and deliver to the addressee, any message received by such company or by any of its agents or employees for transmission, shall be liable to the sender of such message in a penalty for fifty dollars, and in addition thereto, shall be liable to both the sender and to the addressee of such message for all damages which they or either of them may sustain in consequence of such negligent failure promptly to transmit and deliver any message so received for transmission as aforesaid, and the company shall not be relieved from such penalty or liability by any stipulation or notice to the contrary; provided, that the provisions of this section relative to the delivery of messages shall apply only to deliveries in incorporated cities and towns.

History.—§1, ch. 5628, 1907; RGS 4383; CGL 6347.

363.03 Presumption of negligence. — The failure promptly to transmit or to deliver to the addressee any message so received for transmission as aforesaid shall be presumed to be due to the negligence of the company accepting such message for transmission until the contrary shall be made to appear.

History.—§2, ch. 5628, 1907: RGS 4384; CGL 6348.

363.04 Refusing messages for transmission; damages; evidence, etc.—Any telegraph company owning or operating any telegraph line or lines wholly or partly in this state and engaged in transmitting messages, for a consideration, who shall refuse to receive for transmission any legible message tendered to it or to any of its agents or employees for transmission at any office or place where such messages are usually received for transmission during the usual hours in which the messages are received at such office or place for transmission to the destination to which the message so refused is addressed, provided, such destination is a place to which messages are usually transmitted, together with the usual charge for the transmission of such a message, shall be liable to the sender and addressee of such message in a penalty of fifty dollars, and in addition thereto shall be liable both to the sender and to the addressee of such message for all damages which they or either of them may sustain in consequence of the refusal to receive, transmit and deliver such message unless it shall be made to appear that the line or lines over which such message should be transmitted is or are in such condition that such message could not be transmitted by means thereof, and the burden of showing such a condition of said line or lines shall be upon the company.

History.—§1, ch. 5629, 1907; RGS 4386; CGL 6350; §7, ch. 22858, 1945.

363.05 Attorney's fee.—Any person recovering the penalty specified in, or any damage under, §§363.02-363.04 shall be entitled to recover, in addition thereto, ten per cent of the amount so recovered as attorney's fees.

History.—§3, ch. 5628, 1907; §2, ch. 5629, 1907; RGS 4385, 4387; CGL 6349, 6351.

363.06 Recovery for mental anguish and physical suffering; burden of proof.—Persons engaged in the business of transmitting telegrams into or out of this state, or from one point to another point in this state, shall be liable in damages to the sender and addressee, jointly or severally, of any telegram received for transmission and delivery, whether such telegram is received for transmission into or out of this state, or from one point to another point within this state, for mental anguish, distress or feeling, physical and mental pains and suffering resulting from the negligent failure to promptly transmit or promptly deliver such telegram, or because of the negligent failure to correctly transmit and deliver such telegram. In all cases brought under §§363.06-

363.10, the burden of proof shall be upon the defendant to show to the satisfaction of the jury, or if there be no jury, to the satisfaction of the judge trying the case, by a preponderance of the evidence, that such defendant was free from fault in and about the transmission and delivery of any telegram received for transmission and delivery.

History.—§1, ch. 6522, 1913; RGS 4388; CGL 6352.
cf.—§1.01(3) "Person" defined.

363.07 Assessing damages.—The jury, or the judge where there is no jury, trying any case arising under §363.06 shall assess the damages to be awarded the plaintiff or plaintiffs.

History.—§2, ch. 6522, 1913; RGS 4389; CGL 6353.

363.08 Cipher messages.—Persons engaged in the business of transmitting telegrams into or out of this state, or from one point to another point within this state, shall be liable in damages to the sender and addressee, jointly or severally, of any telegram in cipher received for transmission into or out of this state, or from one point to another point within this state, for damages resulting from the negligent failure of such person to promptly transmit and deliver any such telegram in cipher, in the same manner and to the same extent as if such telegram was not in cipher; provided, that the provisions of this section shall not apply to telegrams relating to sickness or death.

History.—§3, ch. 6522, 1913; RGS 4390; CGL 6354.

363.09 Presumption as to notice of contents.—The receipt of a telegram for transmission by any person engaged in the telegraph business in this state, shall be deemed and held to be notice to such person that such telegram is of importance requiring prompt and correct transmission and delivery.

History.—§4, ch. 6522, 1913; RGS 4391; CGL 6355.

363.10 Contracts limiting liability illegal.—All provisions and stipulations contained in any contract relieving or exempting, or having the effect to relieve or exempt any person engaged in the telegraph business in this state, from the liabilities imposed by law, or purporting to limit the time in which suits may be brought against such person for negligent failure to perform any duty imposed by law, or assumed by any such person to a period of time shorter than the time provided by the statute of limitation of this state, are declared to be against the public policy of this state, to be illegal and void, and no court in this state shall give effect to any such provisions or stipulation contained in any contract whatsoever.

History.—§5, ch. 6522, 1913; RGS 4392; CGL 6356.
cf.—§95.11, Limitation of time upon actions.

CHAPTER 364

REGULATION OF TELEGRAPH AND TELEPHONE COMPANIES BY FLORIDA PUBLIC UTILITIES COMMISSION

364.01 Powers of commissioners.—The Florida public utilities commissioners of this state shall exercise over and in relation to telegraph companies and telephone companies the powers by this chapter conferred.

History.—§§1-4, ch. 6186, 1911; §§1-6, ch. 6187, 1911; §1, ch. 6525, 1913; RGS 4393; CGL 6357; §1, ch. 63-279.
cf.—§30, Art. XVI, const.
Ch. 350, Florida public utilities commission.

364.02 Terms used in chapter defined.—The term "commissioners," when used in this chapter, means the Florida public utilities commissioners of the state.

The term "corporation," when used in this chapter includes a corporation, company, association or joint stock association.

The term "service," is used in this chapter in its broadest and most inclusive sense.

The term "telephone company," when used in this chapter includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire within this state.

The term "telephone line," when used in this chapter, includes conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telephone company to facilitate the business of affording telephonic communication.

The term "telegraph company" when used in this chapter includes every corporation, com-

pany, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any telegraph line or part of telegraph line used in the conduct of the business of affording for hire communication by telegraph within this state.

The term "telegraph line," when used in this chapter, includes conduits, poles, wires, cables, cross-arms, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated or owned by any telegraph company to facilitate the business of affording communication by telegraph.

History.—§2, ch. 6525, 1913; RGS 4394; CGL 6358; §1, ch. 63-279.

364.03 Rates to be reasonable; performance of service; maintaining facilities, etc.—All rates, tolls, contracts and charges, rules and regulations of telephone companies and telegraph companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, by any telephone or telegraph company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

Every telephone company and every telegraph company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

Every telephone company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communications and furnish telephone service as demanded upon terms to be approved by the commissioners.

History.—§3, ch. 6525, 1913; RGS 4395; CGL 6359.

364.04 Schedule of rates, etc., to be filed with commissioners; copy of schedule for use of public, etc.—Upon order of the commissioners, every telephone company and every telegraph company shall file with the commissioners and shall print and keep open to public inspection at such points as the commissioners may designate, schedules showing the rates, tolls, rentals, contracts and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and service to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points.

If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, contracts, and charges applicable for such through service.

The schedule printed as aforesaid shall plainly state the places between which telephone or telegraph service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations or forms of contract which may in any wise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered.

A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telephone company and telegraph company readily accessible to and for convenient inspection by the public at such places as may be designated by the commissioners, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telephone company or telegraph company upon the demand of any person.

A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telephone company and telegraph company in a conspicuous place in every station or office of such company. The commissioners may require compliance with the foregoing provisions either in whole, or in part.

History.—§4, ch. 6525, 1913; RGS 4396; CGL 6360.
cf.—§30, Art. XVI, const.

364.05 Changing rates, tolls, rentals, etc.—Unless the commissioners otherwise order, no change shall be made in any rate, toll, rental, contract or charge, which shall have been filed and published by any telephone or telegraph company in compliance with the requirements of §364.04, except after thirty days' notice to the commissioners and the publication for thirty days as required in the case of original schedules in said section, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, contract or charge will go into effect. All proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated

upon the schedules in force at the time and kept open to public inspection.

The commissioners, for good cause shown, may allow changes in rates, charges, tolls, rentals or contracts without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published.

When any change is made in any rate, toll, contract, rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commissioners to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commissioners may designate. No change shall be made in any rate, toll, rental, contract or charge prescribed by the commissioners without their consent.

History.—§5, ch. 6525, 1913; RGS 4397; CGL 6361.

364.06 Joint rates, tolls, etc.—The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telephone companies and telegraph companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commissioners such evidence of concurrence therein or acceptance thereof as may be required or approved by the commissioners; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties.

History.—§6, ch. 6525, 1913; RGS 4398; CGL 6362.

364.07 Joint contracts to be filed with commissioners. — Every telephone company and every telegraph company shall file with the commissioners, as and when required by them, a copy of any contract, agreement or arrangement in writing with any other telephone company or telegraph company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telephone line or telegraph line or service by, or rates and charges over and upon, any such telephone line or telegraph line.

History.—§7, ch. 6525, 1913; RGS 4399; CGL 6363.

364.08 Unlawful to charge other than schedule rates, etc., free service and reduced rates prohibited.—No telephone or telegraph company shall charge, demand, collect or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telephone company or telegraph company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

No telephone company or telegraph company subject to the provisions of this chapter shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this state; provided, that it shall be lawful in this state to issue exchange passes and franks, and grant free and reduced service, and contract for exchange of services by and between common carriers, as defined by and provided for in the act of congress entitled "An act to regulate commerce," and acts amendatory thereof and supplemental thereto.

History.—§8, ch. 6525, 1913; RGS 4400; CGL 6364.

364.09 Giving rebate or special rate prohibited.—No telegraph or telephone company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this chapter than it charges, demands, collects or receives from any other person for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions.

History.—§9, ch. 6525, 1913; RGS 4401; CGL 6365.

364.10 Undue advantage to person or locality prohibited.—No telegraph company or telephone company shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

History.—§10, ch. 6525, 1913; RGS 4402; CGL 6366.

364.11 Short and long transmission of long distance message.—No telephone or telegraph company subject to the provisions of this chapter shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates subject to the provisions of this chapter but this shall not be construed as authorizing any such telephone company or telegraph company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telephone company or telegraph company the commissioners may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or mes-

sages in special cases after investigation, but the order must specify and prescribe the extent to which the telephone company or telegraph company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telephone company or telegraph company be relieved from the requirements of this section.

History.—§12, ch. 6525, 1913; RGS 4404; CGL 6368.

364.12 Transmission of messages of other companies.—Every telegraph company operating in this state shall receive, transmit and deliver without discrimination or delay, the messages of any other telegraph company.

History.—§13, ch. 6525, 1913; RGS 4405; CGL 6369.

364.13 Commissioners may require installation of stations, etc.—The commissioners shall have power to require the installation and maintenance of telegraph station or telephone toll station now in existence or respective telegraph or telephone lines as may be reasonably necessary for the public convenience and not unjustly burdensome to the company. No telegraph station or telephone toll station now in existence or which may hereafter be established shall be discontinued without the consent of the commissioners.

History.—§14, ch. 6525, 1913; RGS 4406; CGL 6370.

364.14 Readjustment of rates, charges, tolls, etc.; hearing; order compelling facilities to be installed, etc.—Whenever the commissioners shall find, after a hearing had upon their own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telegraph company or telephone company for the transmission of messages by telegraph or telephone, or for the rental or use of any telegraph line, telephone line or any telegraph instrument, wire, appliance, apparatus or device or any telephone receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any telephone extension or extension system, or that the rules, regulations or practices of any telegraph company or telephone company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commissioners shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as hereinafter provided.

Whenever the commissioners shall find, after such hearing that the rules, regulations or practices of any telegraph company or telephone company are unjust or unreasonable, or that the equipment facilities or service of any telegraph company or telephone company are inadequate, inefficient, improper or insufficient the commissioners shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used and fix the same by order or rule as hereinafter provided.

History.—§15, ch. 6525, 1913; RGS 4407; CGL 6371.

364.15 Compelling repairs or improvements; order.—Whenever the commissioners shall find after a hearing had on their own motion or upon complaint, that repairs or improvements to, or changes in, any telegraph line or telephone line ought reasonably to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telegraphic or telephonic communications, the commissioners shall make and serve an order directing that such repairs, improvements, changes, additions or extensions be made in the manner to be specified therein.

History.—§16, ch. 6525, 1913; RGS 4408; CGL 6372.

364.16 Connection of lines, and transfers.—Whenever the commissioner shall find that any two or more telephone companies, whose lines form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections for the transfer of messages or conversations at common points between different localities which are not reached by the line of either company alone, and that such connections or facilities for the transfer of messages or conversations at common points can reasonably be made, and efficient service obtained and that a necessity exists therefor, or shall find that any two or more telegraph or telephone companies have failed to establish joint rates or charges for service by or over their said lines and that joint rates or charges ought to be established, the commissioners may, by their order, require such connection to be made, and that messages be transferred, and prescribe through lines and joint rates and charges to be made, and to be used, observed and in force in the future, and fix the same by order to be served upon the company or companies affected. Provided, however, that the commissioners shall not be authorized to require physical connection of telephone lines owned by different telephone companies where such connection would give interchange of local telephone service between such different telephone companies in the same municipality; and provided further, that the commissioners shall not be authorized to require physical connection between the toll lines owned by different telephone companies when or where all the points reached by the lines sought to be connected are already connected by a through toll line of a telephone company giving adequate service.

History.—§17, ch. 6525, 1913; RGS 4409; CGL 6373.

364.17 Annual and special reports to commissioners; may prescribe forms of records, etc.; examiners; accounts and records.—Unless otherwise ordered by the commissioners, every

telegraph company and every telephone company shall annually furnish to the commissioners, a report in such form as the commissioners may require, and shall specifically answer all questions propounded to it by the commissioners, upon or concerning which the commissioners may need information.

Such annual report shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended, and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business done wholly within the state and the proportion earned from interstate business, the nature of the business showing the percentage the business of each class bears to the total business, the operating and other expenses and the proportion of such expenses incurred in transacting business wholly within the state and the proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commissioners may prescribe, the balance of profits and loss, and a complete exhibit of the financial operation of the company each year, including an annual balance sheet.

Such report shall also contain such information in relation to rates, charges or regulations concerning fares, charges or tolls or agreements, arrangements or contracts affecting the same, as the commissioners may require; and the commissioners may, in their discretion, for the purpose of enabling them to better carry out the provisions of this chapter, prescribe the period of time within which all companies subject to the provisions of this chapter shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commissioners for any such company.

Such reports shall be made out under oath and filed with the commissioners at their office in Tallahassee within three months after the close of the designated year for which such report is made, unless additional time be granted in any case by the commissioners.

The commissioners shall have authority to require any such company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commissioners are authorized or required by this or any other law, to inquire into or keep themselves informed, or which it is required to enforce, such periodical or special reports to be under oath whenever the commissioners so require. The commissioners may, in their discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by such companies, including the accounts, records and memoranda of the business done, the receipts and expenditures of money.

The commissioners shall at all times have access to all accounts, records and memoranda kept by such companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commissioners, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies.

The commissioners may, in their discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commissioners concerning the business done, receipts and expenditures appertaining to those parts of the line within the state; provided, that the forms of any and all accounts, records and memoranda prescribed by the commissioners to be kept by companies which are subject to the interstate commerce act shall conform, whenever in the opinion of the commissioners it is practicable, to the forms and accounts, records and memoranda prescribed by the interstate commerce commission.

History.—§18, ch. 6525, 1913; RGS 4410; CGL 6374.

364.18 Inspection of accounts and records of companies.—The commissioners in person, or by one of their number, or by any person by them employed for the purpose, may inspect the accounts, books, records and papers of telegraph companies and telephone companies, examine the agents and employees of such companies and require reports of such companies, in the same manner and to the same extent that the law may from time to time authorize the exercise of such power over railroads, railroad companies and other common carriers under the jurisdiction of said commissioners.

History.—§21, ch. 6525, 1913; RGS 4413; CGL 6377.

364.19 Regulation of telephone service contracts.—The commissioners may regulate by reasonable rules the terms of telephone service contracts between telephone companies and their patrons.

History.—§19, ch. 6525, 1913; RGS 4411; CGL 6375.

364.20 Power to prescribe rules; rule of evidence; rules to be reasonable; presumptions in favor of commissioners, etc.—The commissioners may prescribe all rules and regulations appropriate for the execution of any of the

powers conferred upon them by law either in express terms or by implication. All rules and regulations made and prescribed by the commissioners shall be prima facie evidence. Every rule, regulation, schedule, order or requirement heretofore or hereafter made by the commissioners shall be deemed and held to be within their jurisdiction and their powers, and to be reasonable and just and such as ought to have been made in the premises and to have been properly made and arrived at in due form of procedure and such as can and ought to be executed, unless the contrary plainly appears on the face thereof or can be made to appear by clear and satisfactory evidence, and shall not be set aside or held invalid unless the contrary so every action of the commissioners and all doubts appears. All presumptions shall be in favor of as to their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the commissioners shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control in the public interest the persons and corporations under their jurisdiction. If in any proceeding to enforce any rules, regulations, schedules or order any part thereof shall be found invalid the court shall proceed to enforce such portion thereof as may be valid if the same can be done.

History.—§20, ch. 6525, 1913; RGS 4412; CGL 6376.

364.21 Penalty for violations; procedure for enforcement.—If any telegraph company or telephone company doing business in this state shall, by any officer, agent or employee, be guilty of a violation or disregard of any rate, schedule, rule, regulation, order or requirement provided or prescribed by said commissioners, or shall fail to make any report required to be made under the provisions of this chapter, or shall otherwise violate any provision of this chapter, such company shall thereby incur a penalty for each such offense of not more than five thousand dollars. The practice or procedure before the commissioners to ascertain whether any such company has incurred any such penalty and the practice and procedure for the enforcement and collection of any such penalty after the same has been imposed by the commissioners shall conform to the practice and procedure now prescribed or which may be hereafter from time to time prescribed for observance in like cases arising under the law for the regulation of railroads, railroad companies and other common carriers.

History.—§22, ch. 6525, 1913; RGS 4414; CGL 6378.

364.22 Penalty for illegal telegraph company charges.—Any agent, officer or employee of any telegraph company in this state who charges greater tolls or rates than those allowed by law, shall be punished by imprisonment not exceeding six months or by fine not exceeding one thousand dollars.

History.—§2, ch. 3609, 1885; RS 2722; GS 3714; RGS 5690; CGL 7904.

cf.—§775.06 Alternative punishment.

364.23 Penalty for disclosing contents of telegrams.—Any officer or person in the employ of any telegraph company or person in charge of any office or place where messages are sent or received by magnetic telegraph, who discloses to any person other than the person to whom the telegraphic message is directed or in any manner makes known to any other person any part of the contents of any communication sent or received by himself on any telegraph line in this state, without the consent of the person sending or from whom such message may be received, shall be punished by imprisonment not exceeding six months or by fine not exceeding five hundred dollars. This section shall not prevent the delivery of any such telegraphic message to the partner or confidential clerk or member of the family of any person to whom such message may be directed.

History.—§10, sub-ch. 10, ch. 1637, 1868; RS 2734; GS 3729; RGS 5754; CGL 7984.

364.24 Penalty for making known telephone messages.—Any officer or person in the employ of any telephone company, or person in charge of any office, exchange or place where messages or communications are sent, received or heard by telephone, who shall disclose or make known to any person other than the person to whom the telephone message or communication is directed, or their duly authorized agent, partner, clerk, or some member of his family, any part of the contents or substance of any message or communication sent, received or heard by him, by telephone, by reason of the position he occupies or fills, without consent of person sending or receiving such message or communication, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

History.—§1, ch. 5210, 1903; GS 3730; RGS 5755; CGL 7985.

cf.—§775.06 Alternative punishment.

364.25 Power to summon witnesses, issue writs, and punish contempts.—The commissioners, in their procedure under this chapter, may summon witnesses, issue writs and punish contempts in the same manner and to the same extent that the law may from time to time authorize the exercise of such powers in like cases arising under the law for the regulation of railroads, railroad companies and other common carriers.

History.—§23, ch. 6525, 1913; RGS 4415; CGL 6379.

364.26 Practice before, by, and against commissioners in relation to rates, etc.—In all matters of practice and procedure and all matters of evidence and the rules of evidence and all matters involving the effect of evidence in proceedings before the commissioners and in proceedings by the commissioners to enforce their rates, rules, regulations, orders and requirements and in proceedings against the commissioners in relation to rates, rules, regulations, orders and requirements prescribed by them, the provisions of law now existing, of which

may be from time to time prescribed, for observance in like cases arising under the law for the regulation of railroads, railroad companies and common carriers, shall govern and control.

History.—§24, ch. 6525, 1913; RGS 4416; CGL 6380.

364.27 Powers and duties as to interstate rates, etc.—The commissioners shall investigate all interstate rates, fares, charges, classifications or rules or practice in relation thereto, for or in relation to the transmission of messages or conversations, where any act in relation thereto shall take place within this state, and when the same are, in the opinion of the commission, excessive or discriminatory, or are levied or laid in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall apply, by petition, to the interstate commerce commission for relief, and may present to the interstate commerce commission all facts coming to their knowledge as to violation of the rulings, orders or regulations of that commission or as to violations of the said act to regulate commerce, or acts amendatory thereof or supplementary thereto.

History.—§25, ch. 6525, 1913; RGS 4417; CGL 6381.

364.28 Judicial powers.—The commissioners shall, so far as the constitution of this state permits, exercise all such judicial powers as may be necessary to enable them to do, enforce or perform any duty, power or function conferred on them by this chapter.

History.—§26, ch. 6525, 1913; RGS 4418; CGL 6382.

364.29 Construction of chapter.—It is the purpose of this chapter to confer only such power and authority as this state may lawfully confer and only such power and authority as may be exercised without interference with interstate commerce and without any contravention of the constitution or laws of the United States; and this chapter shall in all instances be construed in accordance with this express purpose.

History.—§27, ch. 6525, 1913; RGS 4419; CGL 6383.

364.30 Telephone companies; use of outlets, etc.—

(1) Any telephone company, independent or otherwise, operating within the state subject to the provisions of chapter 364, having more than one point of connection or outlet with or through any other telephone company, is hereby authorized and permitted to use and enjoy any of its said points of connection or outlets on any call at any time the same is not in use, and the company with which the telephone call is initiated shall be the sole judge in each instance as to whether the convenience and necessity of its own subscribers, the facility with which the connection and call may be completed, and its financial welfare are best served by the routing selected by the company receiving any such individual call; and under no circumstances shall any telephone company having two or more points of connection or outlets with any other company be required by the connecting company to route all or any specific number of its calls through any one connection at the will of the connecting company.

(2) Any connecting telephone company refusing to give and make a connection with the company through which the call was initially placed, over any connecting point or outlet not in use, shall be guilty of violating the provisions of this section and after hearing before the commissioners of this state, which shall be instituted by a petition setting forth the facts constituting the violation as hereinabove provided, and reasonable notice to the offending or connecting company, on being found guilty of such violation, shall be fined by order of said commission the sum of one hundred dollars for each such violation, which sum shall be paid within thirty days of the entry of such order. On failure to pay such fine within thirty days, a certified copy of such order shall be filed with the clerk of the circuit court of the county in which such violation occurred, and the same shall be a lien against all of the property of the connecting company guilty of such violation. Thereafter said fine, with interest at six per cent per annum, beginning at the end of such thirty-day period, may be enforced and collected as a judgment at law.

History.—§§1, 2, ch. 22073, 1943.

364.31 Reports of violation of gambling laws; facilities for ascertaining violations; penalty.—

(1) All public utilities furnishing communication facilities either to the public or by contract, their agents and employees, are charged with the affirmative duty of reporting to the Florida public utilities commission and the sheriff of the affected county any information obtained in any manner that any communication facility or service is being used in violation of the laws of the state having for their purpose the prohibiting of bookmaking or other gambling.

(2) It is the duty of public utilities to provide all reasonable means to ascertain if any of its facilities are being used in violation of any of the laws of the state having for their purpose the prohibiting of bookmaking or other gambling.

(3) All public utilities are charged with knowledge of the contents of any message or communication which in the regular course of its business comes clearly within its knowledge, or that of its employees or agents, and it shall be the duty of the public utility to report the contents of such messages to the Florida public utilities commission when any such message is for the purpose of aiding or abetting gambling, and it shall be the duty of all employees or agents of public utilities to report in writing such knowledge either to the responsible officials of the public utility by

which they are employed or directly to the Florida public utilities commission.

(4) Any person or public utility refusing or failing to comply with the requirements of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not less than five hundred dollars, nor more than five thousand dollars, or undergo imprisonment for a period not to exceed twelve months, or both, at the discretion of the court; provided further, that the Florida public utilities commission under its general authority and rule making power may impose penalties in the enforcement of the requirements herein or of similar requirements provided by its rules; provided, however, that no public utility shall be liable at law or in equity for any damages or penalties either civil or criminal because of the disclosure to the Florida public utilities commission of the contents of any message resulting from its compliance with the provisions of this section, or of any rule, regulation, order or action of the commissioners pursuant to this section.

(5) This section shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state, and all of the provisions of this section shall be liberally construed for the accomplishment of this purpose.

(6) Nothing contained in this section shall be construed as amending or repealing the provisions of any other law or affecting in anywise the general powers of the Florida public utilities commission, but is intended to be supplemental thereto.

(7) Nothing contained herein shall be construed to permit or require any violation of the provisions of §605 of the federal communications act of 1934.

History.—§§1-7, ch. 26720, 1951; §1, ch. 63-279.

364.32 Definitions; §§364.33-364.40.—In construng §§364.33-364.40, when applied to any line, plant or system or any extension thereof used or to be used in the furnishing of telephone service, where the context so permits, the following words, phrases or terms shall be given the meaning hereafter stated:

(1) The term "person" means (a) any natural person, firm, association, corporation, business, trust or partnership owning, leasing or operating any line, facility or system used in the furnishing of public telephone service within this state; and (b) a cooperative, nonprofit, membership corporation, or limited dividend or mutual association, now or hereafter created, with respect to that part or portion of its operations devoted to the furnishing of telephone service within this state.

(2) The term "commission" shall mean the Florida railroad and public utilities commission.

(3) The term "municipality" shall mean a city or town duly incorporated pursuant to the laws of the state.

(4) The term "territory" shall mean any area, whether within or without the boundaries of a municipality.

History.—§9, ch. 28013, 1953; §24, ch. 57-1; §1, ch. 63-279.

364.33 Certificate of necessity prerequisite to construction, operation or control of telephone line, plant, system. — No person shall hereafter begin the construction or operation of any telephone line, plant or system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida public utilities commission a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition; provided §§364.32-364.40 shall not require, nor shall it be so construed as to require, any such person to secure a certificate for an extension within any municipality within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such person, necessary in the ordinary course of business, or for substitute facilities within or to any municipality or territory already served by such person, or for any extension into territory contiguous to that already served by such person and not receiving similar service from another such person when no certificate of convenience and necessity has been issued to or applied for by any other person, or for the acquisition and operation of any line, plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued or for the construction of which no such certificate was, under the provisions of this law, required.

History.—§1, ch. 28013, 1953; §1, ch. 63-279.

364.34 Application for certificate.—The application for such certificate of convenience and necessity shall be under such rules and regulations as the commission may, from time to time, prescribe. Upon the receipt of any such application for such certificate, the commission shall cause notice thereof, stating a time and place for hearing, to be given by mail or personal service to the chief executive officer of the municipality or municipalities affected, if any, and to any person occupying the territory affected, and shall publish such notice once a week for three consecutive weeks in some newspaper of general circulation in each territory affected.

History.—§2, ch. 28013, 1953.

364.35 Issuance of certificate; powers of commission.—

(1) The commission shall have power, after hearing, to issue said certificate of convenience and necessity, as prayed for, or to refuse to issue the same, or to issue it for the construction, operation, or acquisition of a portion only of the contemplated line, plant or system, or extension thereof.

(2) The commission shall not grant a certificate for a proposed plant, line, or system, or extension thereof, which will be in competi-

tion with or duplication of any other plant, line or system, unless it shall first determine that the existing facilities are inadequate to meet the reasonable needs of the public, or that the person operating the same is unable to or refuses or neglects, after hearing, on reasonable notice, to provide reasonably adequate service.

History.—§§3, 7, ch. 28013, 1953.

364.36 Issuance of certificate; construction, operation existing on May 19, 1953.—Any person engaged in the construction or operation of any line, plant or system, or any extension thereof, on May 19, 1953 shall be entitled to receive a certificate of convenience and necessity from the commission authorizing such person to continue the construction or operation of such line, plant or system, or extension thereof, in the territory professed to be served by such person on May 19, 1953, if within sixty days thereafter such person files maps with the commission showing his existing lines and facilities, his lines or extensions thereof under construction, and the territory professed to be served by such person.

History.—§4, ch. 28013, 1953.

364.37 Controversy concerning territory to be served; powers of commission.—If any person in constructing or extending his line, plant, or system unreasonably interferes or is about unreasonably to interfere with any line, plant, system or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each, the commission on its own initiative or on complaint of any person claiming to be injuriously affected, may, after hearing, on reasonable notice, make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

History.—§5, ch. 28013, 1953.

364.38 Unlawful construction; operation of telephone lines, plant, system; powers of commission.—Whenever any person engages or is about to engage in the construction, operation or acquisition of any line, plant or system without having secured a certificate of convenience and necessity as required by §364.33, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the person complained of to cease and desist from such construction, operation or acquisition until the commission makes and files its decision on said complaint or until the further order of the commission. The commission may after hearing, after reasonable notice, make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

History.—§6, ch. 28013, 1953.

364.39 Authority under certificate to be exercised within reasonable time.—Any person obtaining a certificate of convenience and necessity hereunder for any territory shall exercise said authority within a reasonable time. If such person fails or refuses to provide reasonably adequate service to such territory after notice and a reasonable opportunity to do so, the commission, in addition to other powers provided by law, shall have power to issue a certificate to any other person willing and able to provide reasonably adequate service to such territory.

History.—§8, ch. 28013, 1953.

364.40 Penalty for violations of § § 364.32-364.39.—The provisions of § § 350.36 and 364.21, as now or hereafter amended, shall be applicable to any and all violations by any person of any of the provisions of §§364.32-364.39.

History.—§10, ch. 28013, 1953.

CHAPTER 365

REGULATION OF PRIVATE WIRE SERVICE

365.01 Definitions.—The following words, terms and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

(1) The term "commissioners" when used in this chapter shall mean the Florida public utilities commissioners of the state.

(2) "Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(3) "Person" means a corporation (including a public utility), partnership or association, as well as a natural person.

(4) "Private wire" means any and all "wire service," service equipment, facilities, conduits, poles, wires, circuits, systems by which or by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, teletypewriter, loudspeaker, radio, television, or any other means, or by which the voice or electrical impulses are sent over a wire, but shall not include private wires used for fire or burglar alarm purposes, nor telegraph messenger cell boxes and circuits used in connecting therewith, time clock circuits used for furnishing correct time service, nor any private wires used by any department or agency of the United States government or of this state or by any municipality or other political subdivision of this state.

(5) "Public utility" means a person, partnership, association or corporation, now or hereafter owning or operating in the state, equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(6) The singular shall include the plural.

History.—§1, ch. 25016, 1949; (4) §1, ch. 26820, 1951; §1, ch. 63-279.

365.02 Unlawful to furnish or use wire service for gambling.—It shall be unlawful for any public utility knowingly to furnish to any person any private wire for use or intended for use in the dissemination of information in furtherance of gambling or for gambling purposes, or for any person knowingly to use any private wire in the dissemination of information in furtherance of gambling or for gambling purposes.

History.—§2, ch. 25016, 1949.

365.03 Unlawful use declared a public nuisance.—The use of any private wire for use in the dissemination of information in furtherance of gambling or for gambling purposes is hereby declared to be a public nuisance and subject to abatement as provided for in §§64.11-64.15, both inclusive, but this remedy of injunction shall be in addition to and not in lieu of any remedy provided by this chapter or otherwise provided by law.

History.—§3, ch. 25016, 1949.

365.04 Private wire; contract to declare purpose; exceptions.—It shall be unlawful for any public utility to furnish to any person any private wire, except in pursuance of a written contract signed by the person contracting for said private wire and responsible under the terms of the contract for the payment for the service, and by the person in possession or control of any place or location designated in the contract for installation or connection of said private wire, which contract shall include a detailed written statement of the purpose for which such private wire is intended to be used; provided, that this section shall not apply to the furnishing of any private wire in case of public emergency, or where the furnishing of the said wire is for a temporary purpose not to exceed forty-eight hours; provided, however, that this section relating to contracts shall not apply to any private wire furnished for use in radio broadcasting, or to any protective service operating under a franchise granted by any municipality, or for use in interstate commerce, for use of newspaper of general circulation, or recognized press association furnishing their news service or for use of any agricultural or marketing agency or broker, railroad, pipe line, common carrier, public utility furnishing service to the public and requiring wires for their own intercommunication purposes, or any national or state bank, or any licensed dealer or broker in stocks, bonds, or other securities; provided further that the provisions of this section relating to written contracts shall not apply to customary telephone service either individual, party line, or public (pay station) service, which operate through the general telephone exchange system or toll service.

History.—§4, ch. 25016, 1949; §2, ch. 26820, 1951.

365.05 Contracts reviewable by commission.—It shall be unlawful for any public utility to furnish to any person any private wire without first furnishing to the commissioners one duplicate original and two copies of the written contract required by §365.04. The commissioners shall examine the same forthwith and conduct such investigation as they may deem necessary, and, if upon examination of the contract, or after investigation, or otherwise at any time, the commissioners shall find that the said private wire is intended for or has been used for or is being used for the transmission of information or advices in furtherance of gambling, the commissioners shall disapprove the said contract and give notice of such disapproval to the contracting parties. Thereafter it shall be unlawful for any public utility to furnish the said private wire provided for in the said contract; provided, that this section shall not apply to the furnishing of any private wire in case of public emergency, or where the furnishing of the said private wire is for a temporary purpose not to exceed forty-eight hours.

History.—§5, ch. 25016, 1949.

365.06 Attorney general, state's attorney to assist commission.—

(1) Upon receipt of the written contract, hereinabove referred to, the commissioners shall send one copy to the attorney general of Florida and a copy to the state attorney of the judicial circuit in which the facilities specified in said contract are located, and it shall be the duty of the attorney general and said state attorneys to assist the commissioners in making the investigations referred to in this chapter, and they shall have the right to be present at any hearing before the commissioners, to examine witnesses, present evidence and to make argument.

(2) The commissioners shall notify the public utility and the person contracting for service of the action taken or pending on the contract submitted as herein provided and if the public utility receives no such notice within fifteen days from the time such contracts are received by the commissioners, in that event the public utility may proceed to install and connect such private wire service and no such connection shall be deemed a violation of the provisions of this chapter, provided, however, that such contract shall be subject to review by the commissioners as hereinafter provided in §365.07.

History.—§6, ch. 25016, 1949.

365.07 Procedure for cancelling contracts.—All contracts between a public utility and any person for private wire in effect on May 4, 1949 and all written contracts between a public utility and any person for private wire entered into after May 4, 1949, and approved by the commissioners, shall be subject to review and examination by the commissioners under the procedure stated in §365.06 whenever a written request therefor is made upon the commissioners by the attorney general, or the state attorney of any circuit in Florida, in which the said private line or any part thereof is located; and if the commissioners find that said private wire is being used for the transmission of information or advices for gambling purposes or in furtherance of gambling, the commissioners shall order the public utility to cancel said contract and give notice thereof to the contracting parties. Said notice shall be effective at the expiration of ten days from its date, and thereafter it shall be unlawful for any public utility to furnish the said private wire provided for in the said contract, unless a request for a hearing before the commissioners has been filed with pursuant to §365.08 within such ten days, in which event the order for such cancellation shall be stayed until final order of the commissioners entered after such hearing.

History.—§7, ch. 25016, 1949.

365.08 Aggrieved parties entitled to hearing.—Any public utility or other person party to a contract who shall feel aggrieved at the action of the commission in disapproving, canceling or otherwise terminating such contract for any private wire shall be entitled to a hearing before the commissioners upon written request; provided, however, that when the use which is prohibited by this chapter has to do with customary telephone service, either individual, party line or public telephone (pay station) service, such telephone service shall be discontinued or removed in the following manner:

Each and every telephone and telegraph company operating within the state under the jurisdiction of the Florida public utilities commission, shall furnish service subject to the condition that it will not be used for an unlawful purpose.

Whenever application is made in any such utility for the installation of any telephone or telegraph facility at any location within the state, said utility shall refuse to install the same when it has reasonable grounds to believe that said facility will be used in violation of the law.

Whenever any new or additional service is furnished to any applicant, the records of the utility shall show, in the case of business telephones, the business classification designated by the applicant.

Whenever any such utility is notified in writing by any state or federal law enforcement officer acting within his apparent jurisdiction, either directly or through the Florida public utilities commission, that certain telephone or telegraph facilities, or any part thereof, are being used or have been used in violation of any federal law or the laws of the state, then such utility shall disconnect and remove such facilities and discontinue all telephone and telegraph service rendered over said facilities; provided, however, that no utility shall disconnect and remove such facilities until it has given to the subscriber forty-eight hours written notice of its intention to do so and provided further, that any such subscriber within

such forty-eight hour period, may, upon a showing that special equities are involved and irreparable damage is threatened, apply to the court to stay the discontinuance or removal pending a hearing and determination by such court, whether such service should be discontinued and the facilities removed. The forty-eight hour period prescribed herein shall commence to run from the time the written notice from the utility to the subscriber is served upon such subscriber by delivering the same to the address at which the telephone service is furnished and the facilities are located. The notice from the utility to the subscriber shall be given within twenty-four hours after receipt of notice by the utility of illegal use from any of said law enforcement officers.

Whenever installation of any telephone or telegraph facility has been refused, or said facility has been disconnected and service thereover discontinued, under this section, said utility shall report the same to the commission. Any person aggrieved by the action of the utility shall be entitled to present the matter to the commission for its review and determination. If, after consideration, the commission determines that said party is entitled to said facilities and service, and that the same will not be used in the future for unlawful purposes, then and in that event, the commission may authorize the utility to provide said facilities and service.

History.—§8, ch. 25016, 1949; §3, ch. 26820, 1951; §1, ch. 29805, 1955; §1, ch. 63-279.

365.09 Unlawful to use for purpose not in contract.—It shall be unlawful for any person, who has been furnished a private wire by any public utility in accordance with the provisions of this chapter, to use such private wire for any purpose other than that specified in the contract provided for in §365.04.

History.—§9, ch. 25016, 1949.

365.10 Horse race, etc., information prima facie unlawful.—To further effectuate the purposes of this chapter, it is hereby provided that the contract first referred to in §365.04, shall constitute prima facie evidence that such private wire will be used in furtherance of gambling or for gambling purposes, where it shall appear in such contract, or otherwise, that such private wire will be used, is intended to be used or has been used for the dissemination of information pertaining to any horse-racing, race track, race horse, betting, betting odds or any information relative thereto.

History.—§10, ch. 25016, 1949.

365.11 Burden of proof.—In any proceeding before the commissioners under this chapter and in any hearing or proceeding on appeal, the burden of proof shall be on the person contracting for such private wire to show that the private wire has not been used, or is not being used, or is not intended for use in the furtherance of gambling or for gambling purposes.

History.—§11, ch. 25016, 1949.

365.12 Florida public utilities commission; powers; review of orders.—For the purpose of enforcing the provisions of this chapter the Florida public utilities commission shall have all the powers granted to it under the laws of the state. Review of orders of the commissioners under this chapter shall be by certiorari by the supreme court in the manner and within the time provided by the Florida appellate rules and the statutes of the state not superseded by or in conflict with said rules.

History.—§12, ch. 25016, 1949; §14, ch. 63-512; §1, ch. 63-279.

365.13 Penalties.—Any person or public utility who or which shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay the costs of prosecution and a fine of not less than five hundred dollars nor more than five thousand dollars, or undergo imprisonment for a period not to exceed twelve months, or both, at the discretion of the court; provided, however, that no public utility shall be liable at law or in equity for any damages or penalties, either civil or criminal, for failure to provide or delay in providing service, or for any discontinuance or disconnection of service, resulting from its compliance with the provisions of this chapter or of any rule, regulation, order or action of the commissioners by virtue of the authority vested in them by this chapter.

History.—§13, ch. 25016, 1949.

365.14 Construction.—This chapter shall be deemed an exercise of the police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state, and all of the provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

History.—§15, ch. 25016, 1949.

365.15 Party lines, emergency calls.—

(1) Any person who shall wilfully refuse to immediately relinquish a party line when informed that such line is needed for an emergency call, and in fact such line is needed for an emergency call, to a fire department or police department or for medical aid or ambulance service, or any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call, shall be guilty of a misdemeanor and be punished as prescribed by law.

(2) Party line as used in this section means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

Emergency as used in this section means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

(3) Every telephone directory hereafter published and distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of

telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in this section, such notice to be printed in type which is not smaller than the smallest type appearing on the same page and to be preceded by the word "warning" printed in bold face type; provided, that the provisions of this subdivision shall not apply to those directories distributed solely for business advertising *purposes, commonly known as classified directories, nor to any telephone directory heretofore distributed to the general public. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section and which do not contain the notice herein provided for shall be guilty of a misdemeanor.

History.—§1, ch. 63-54.
*Word changed to "purposes."

365.16 Use of obscene or indecent language over telephone. —

(1) It shall be unlawful for any person to use any words or language of a lewd, lascivious or indecent character, nature or connotation over any telephone. Any person violating these provisions shall be fined not more than $500.00 or imprisoned in the county jail for a period not exceeding 6 months, or both.

(2) After the ninetieth day following May 15, 1963, every telephone directory thereafter published for distribution to the members of the general public shall contain a notice which explains this law, such notice to be printed in type which is no smaller than the smallest type on the same page and to be preceded by the word "warning." The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories.

History.—§§1, 2, ch. 63-51.

CHAPTER 366

REGULATION OF PUBLIC UTILITIES

366.01 Legislative declaration.—The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

History.—§1, ch. 26545, 1951.

366.02 Public utility defined. — The term public utility as used herein means and includes every person, corporation, partnership, association or other legal entity and their lessees, trustees or receivers, now or hereafter either owning, operating, managing or controlling any plant or other facility supplying electricity or gas (natural, manufactured or similar gaseous substance) to or for the public within this state, directly or indirectly for compensation; but the term "public utility" as used herein does not include either a cooperative now or hereafter organized and existing under the rural electrification cooperative law of the state nor a municipality nor any natural gas pipe line transmission company making only sales of natural gas at wholesale and to direct industrial consumers, nor a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity, manufactured or natural gas.

History.—§2, ch. 26545, 1951.

366.03 General duties of public utility.—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate and efficient service upon terms as required by the commission, provided, no public utility shall be required to furnish electricity or gas for resale. All rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

History.—§3, ch. 26545, 1951.

366.04 Florida public utilities commission; jurisdiction.—In addition to its existing functions, the Florida public utilities commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates, service and the issuance and sale of its securities except a security which is a note or draft maturing not more than one year after the date of such issuance and sale, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such public utility is liable) not more than five per cent of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issue. The jurisdiction conferred upon said commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith all lawful acts, orders, rules and regulations of the commission shall in each instance prevail.

History.—§4, ch. 26545, 1951; §1, ch. 63-288; §1, ch. 63-279.

366.05 Powers.—

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to prescribe uniform system and classification of accounts for all public utilities, which among other things shall set up adequate, fair and reasonable depreciation rates and charges; to require the filing by each public utility of periodic reports and all other reasonably necessary data; to require repairs, improvements, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners, and technical, legal and clerical employees as it deems necessary to carry out the provisions of this chapter; to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter; and to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

(2) Every public utility as defined in §366.02, who in addition to the production, transmission, delivery or furnishing of heat,

light or power also sells appliances or other merchandise, shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all appliances used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such appliances, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

History.—§5, ch. 26545, 1951.

366.06 Rates; procedure for fixing and changing.—

(1) All rates being charged and collected by a public utility on May 9, 1951, shall be the lawful rates until changed in accordance with the rules, regulations or orders of the commission or court decree. Under rules and regulations to be prescribed by the commission every public utility shall, within ninety days after the effective date of such rules and regulations, file with the commission schedules showing all rates, classifications and charges for service of every kind furnished by it, and all rules and regulations relating thereto in effect on May 9, 1951. Thereafter current schedules shall be maintained on file with the commission on such forms and under such rules and regulations as the commission may prescribe.

(2) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just and reasonable rates that may be requested, demanded, charged or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for rate-making purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any good-will or going-concern value or franchise value in excess of payment made therefor.

(3) Whenever the commission shall find, upon request made or upon its own motion, that the rates demanded, charged or collected by any public utility company for public utility service, or that the rules, regulations or practices of any public utility company affecting such rates are unjust, unreasonable, unjustly discriminatory, or in any wise in violation of law, or that such rates are insufficient to yield reasonable compensation for the services rendered, or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the utility company, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and to promulgate rules and regulations affecting equipment, facilities and service to be thereafter installed, furnished, and used; provided, however, that nothing in this chapter shall be construed to affect a rate in litigation and refund proceedings thereunder pending in the courts on April 3, 1951; provided, however, that a rate order of a duly constituted local regulatory board or authority entered before April 3, 1951 shall be deemed to be the lawful rates charged and collected by the public utility subject to such regulatory body, and should such rate order be challenged and/or such challenge is pending before the courts of this state or the United States, such rate order shall continue in full force and effect until final determination of such litigation, or until changed by an order of the commission, and the jurisdiction of said board to continue said litigation, and said rates, shall continue until such final determination by the courts, and the commission shall not interfere with the conduct of such litigation nor the jurisdiction of the board.

History.—§6, ch. 26545, 1951.

366.07 Rates; adjustment. — Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or in any wise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classi-

fications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

History.—§7, ch. 26545, 1951; §24, ch. 57-1.

366.08 Investigations, inspections; power of commission.—The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this chapter; provided, such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

History.—§8, ch. 26545, 1951.

366.09 Incrimination at hearing of commission.—Any person called upon to testify before the commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced documentary evidence provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History.—§9, ch. 26545, 1951.

366.10 Review of commission's orders. — Any public utility or any person in interest dissatisfied with any order of the commission may have it reviewed by the supreme court by certiorari.

History.—§10, ch. 26545, 1951.

366.11 Certain exemptions.—No provision of this chapter shall apply in any manner to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the rural electrification cooperative law of the state, nor to the sale of electricity, manufactured gas or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, where such municipality or cooperative is engaged in the sale and distribution of electricity, manufactured or natural gas, nor to the rates provided for in such contracts. Nothing herein shall restrict the police power of municipalities over their streets, highways and public places or the power to maintain or require the maintenance thereof, nor the right of a municipality to levy taxes on public services under §167.431, nor affect the right of any municipality to continue to receive revenue from any public utility as is now provided or as may be hereafter provided in any franchise, nor repeal §167.22.

History.—§11, ch. 26545, 1951.

366.12 Penalty.—If any public utility, by any authorized officer, agent or employee, shall knowingly refuse to comply with or wilfully violate any provision of this chapter or any lawful rate, rule or regulation, order, direction, demand or requirement prescribed by the commission hereunder, such public utility shall incur a penalty for each such offense of not more than five thousand dollars to be fixed, imposed and collected by the commission. Each day that said refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the public utility, enforceable by the commission as statutory liens under chapter 86, the proceeds of which shall be deposited to the credit of the general revenue fund of the state.

History.—§12, ch. 26545, 1951.

366.13 Taxes; not affected.—No provision of this chapter shall in any way affect any municipal tax or franchise tax in any manner whatsoever.

History.—§13A, ch. 26545, 1951.

CHAPTER 367

WATER AND SEWER SYSTEM REGULATORY LAW

367.01 Short title.—This law shall be known and may be cited as the "water and sewer system regulatory law."

History.—§1, ch. 59-372.

367.02 Definitions.—As used in this law the following words and terms shall have the following meanings:

(1) "Commission" shall mean and be limited to the Florida public utilities commission.

(2) "Governmental agency" shall mean a county, a public authority created by an act of the legislature of this state, an incorporated city, town or village in this state, or any taxing district created by such county, public authority, incorporated city, town or village.

(3) "Territory" shall mean any area in this state, whether within or without the corporate limits of any municipality.

(4) "Water system" shall mean and include any real estate, attachments, fixtures, impounded water, water mains, laterals, valves, meters, plant, wells, pipes, tanks, reservoirs, systems, facility, or other property real or personal, used or useful or having the present capacity for future use in connection with the obtaining, treatment, supplying and distribution of water to the public for human consumption, fire protection, irrigation, consumption by business or industry, and without limiting the generality of the foregoing definition shall embrace all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof, but shall not include property used solely for or principally in connection with the business of bottling, selling, distributing or furnishing bottled water, nor water systems utilized by manufacturing plants primarily for the purpose of providing water in connection with its manufacturing operations.

(5) "Sewer system" shall mean and include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage and sewage effluent and residue for the public, and without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, intercepting sewers, pressure lines, mains, laterals, and all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof; except municipally owned or operated sewer systems and systems for the collection, treatment, purification or disposal of industrial wastes for manufacturing plants owned or operated by such manufacturing plants.

(6) "Person" shall mean and include:

(a) Any natural person, firm, association, corporation, except municipal corporations, business, trust or partnership owning, leasing or operating any water system or sewer system or part thereof within this state; and

(b) Any cooperative, nonprofit corporation or association, membership corporation, or limited dividend or mutual association, now or hereafter created, with respect to that part or portion of its operations devoted to the ownership, leasing or operation of a water system or a sewer system within this state but shall not include the owners or operators of any industrial or manufacturing plants maintaining and operating water systems and sewer systems primarily in connection with its manufacturing operations.

(7) "Public utility" shall mean and include every person and every lessee, trustee or receiver now or hereafter owning, leasing, constructing, operating, or managing any water system or sewer system, or both, in this state, serving or proposing to serve four hundred or more connections for compensation paid or received directly or indirectly, but shall not mean or include any person selling, distributing or furnishing bottled water and not otherwise engaged directly or indirectly in owning, leasing, constructing, operating or managing any water system or sewer system nor any utility owned or operated by a governmental agency; nor the owner or operator of any manufacturing or industrial plant owning or operating water or sewer systems primarily in connection with its manufacturing or industrial operations, provided however, any person and any lessee, trustee or receiver now or hereafter owning, leasing, constructing, operating, or managing

any water system or sewer system or both, in this state, serving or proposing to serve less than four hundred connections for compensation paid or received directly or indirectly shall upon application to the commission be classified as a public utility under the provisions of this law; failure to so apply for such classification within the period of six months from June 18, 1959, shall constitute a bar to participation under this law and shall cause such person and every lessee, trustee or receiver now or hereafter owning, leasing, constructing, operating, or managing any water system or sewer system or both, in this state, serving or proposing to serve less than four hundred connections for compensation paid or received directly or indirectly to come within the jurisdiction of any county, municipal or other properly constituted governmental agency for the purpose of regulation and control.

(8) "Certificate" shall mean and be limited to a certificate of public convenience and necessity issued under this law.

History.—§2, ch. 59-372; §1, ch. 63-279.

367.03 Registration of public utilities; notice to registrants.—Every public utility excluding utilities owned or operated by governmental agencies engaged on June 18, 1959, in operating, constructing or extending any water system or sewer system shall register with the commission within sixty days after June 18, 1959, by filing with the commission a written statement setting forth the full legal name of the public utility, its principal place of business and its mailing address. The commission shall give by mail to every public utility so registering and to every recipient of a certificate issued under this law at least ten days written notice of every public hearing required by this law.

History.—§3, ch. 59-372.

367.04 Certificates required for new systems.—From and after June 18, 1959, no public utility shall commence the construction or operation of a water system or sewer system without first obtaining from the commission a certificate of public convenience and necessity pursuant to the provisions of this law; provided, however, that this section shall not apply to any governmental agency; and provided further that no application for a certificate to operate within the corporate limits of a municipality of one hundred thousand or more population according to the last official census shall be entertained until the applicant shall have first obtained a franchise from the municipality subject to such reasonable terms and conditions as the municipality may require; and provided further that no application for a certificate to operate within the unincorporated area of any county of this state shall be entertained until the applicant shall have first obtained a franchise from the board of county commissioners of such county subject to such reasonable terms and conditions as the board of county commissioners may require.

History.—§4, ch. 59-372.

367.05 Procedure for obtaining certificates for new systems.—

(1) APPLICATION.—All applications for certificates required by §367.04 shall be filed with the commission in compliance with such rules and regulations and in such form as the commission may from time to time adopt or prescribe. Each such application shall be accompanied by a filing fee of two hundred fifty dollars to be placed in the general revenue fund.

(2) NOTICE.—Upon the filing of an application complying with the rules and regulations of the commission and payment of the filing fee, the commission shall cause the application to be set for public hearing. At least ten days written notice of such public hearing shall be given by mail to the chief executive officer of every county and municipality affected which has notified the commission that they want to receive notice and to the Florida state board of health, and notice of such public hearing shall be published once a week for three consecutive weeks in a newspaper of general circulation in the territory affected.

(3) PUBLIC HEARING.—Pursuant to such notice the commission shall conduct a public hearing in the county or counties where the public utility is operating to determine whether public convenience and necessity require or will require such construction or operation, taking into consideration among such other matters as it may deem appropriate the questions whether the issuance of such certificate will be in the public interest, health and welfare, and whether the applicant can reasonably be expected to provide adequate service at reasonable rates.

(4) ACTION BY COMMISSION.—After such public hearing the commission shall make its determination of public convenience and necessity. In so doing it shall state its reasons therefor and make findings of the subsidiary facts on which the determination is predicated. In accordance with and based on the determination the commission shall issue a certificate or deny the application.

(5) TIME LIMIT ON CERTIFICATE.—The commission may prescribe in the certificate a reasonable time within which the authority granted thereby shall be exercised. If the service authorized by the certificate is not provided within the time so prescribed, the certificate shall thereby be canceled and rendered null and void; provided, however, that prior to the expiration of the time prescribed in the certificate the commission shall have power for good cause shown to extend such time and to impose such conditions as shall assure the provision of adequate service at reasonable rates.

(6) CERTIFICATE FOR COMPETING SYSTEM.—The commission shall not grant a certificate for the construction, operation or extension of a water system or sewer system in or into any territory served by any public utility or municipality or in or into any territory defined in a certificate issued to a public utility

or which otherwise would compete with any other water system or sewer system unless the commission shall first determine, after public notice and public hearing, that the existing facilities are inadequate to meet the reasonable needs of the public and that the public utility owning or operating the existing facilities has refused or is and will continue to be unable to meet the reasonable needs of the public. In the event of any such determination being made the commission shall, to the extent required by the determination but only to that extent, revoke, amend, limit or restrict any certificate previously issued. Any such determination shall embody a statement by the commission of its reasons therefor and findings by the commission of the subsidiary facts on which the determination is predicated.

History.—§5, ch. 59-372.

367.06 Certificates for existing systems.—

(1) PUBLIC UTILITIES.—Every public utility, or any person, firm, or corporation holding a valid and existing franchise granted by the board of county commissioners of any county of this state in a given county, whether construction has started or not, excluding utilities owned or operated by the governmental agencies engaged on June 18, 1959, in the construction or operation of a water system or sewer system shall be entitled to receive from the commission a certificate of public convenience and necessity authorizing such public utility to continue serving the territory it serves on June 18, 1959, if, within one hundred and twenty days after June 18, 1959, application for such certificate shall be made in compliance with such rules and regulations and in such form as the commission shall have adopted and prescribed. Each such application shall be accompanied by a filing fee of $100 to be placed in the general revenue fund.

(2) EXTENSION OF TIME.—If within sixty days after June 18, 1959, the commission shall not have adopted and prescribed rules and regulations for the filing of and the form in which applications authorized by this section shall be filed, the time for the filing thereof shall be extended for a period of sixty days after such rules, regulations and form shall have been adopted and prescribed.

(3) PROCEDURE FOR ISSUING CERTIFICATES.—If the commission shall determine that the territory professed to be served by any applicant for a certificate under this section does not conflict with, overlap or infringe upon any portion of the territory professed to be served by any other applicant and that all requirements of this section have been complied with, the commission shall issue to the applicant a certificate of public convenience and necessity authorizing it to continue serving such territory.

(4) CONFLICTS.—If the territory professed to be served by any applicant for a permit under this section conflicts with, overlaps or infringes upon any portion of the territory professed to be served by another applicant, the commission, after public notice and public hearing, shall resolve such conflict, overlapping or infringement by a determination establishing and fixing such boundary line or lines between or among the professed territories as are required by public convenience and necessity, taking into consideration among such other matters as it may deem appropriate questions of the public interest, health and welfare, and shall issue certificates accordingly. In making such determination the commission shall state its reasons therefor and make finding of the subsidiary facts on which the determination is predicated.

History.—§6, ch. 59-372.

367.07 Contents of certificates; maps.— Every certificate of public convenience and necessity issued under this law shall describe the territory which the recipient is authorized to serve, shall confer on the recipient the exclusive right to serve such territory, and shall contain such other provisions as the commission may deem appropriate in harmony with the provisions of this law. The commission in its discretion may adopt and prescribe rules and regulations relating to the filing of a map or maps and/or metes and bounds descriptions delineating the territory which each recipient of a certificate is authorized to serve.

History.—§7, ch. 59-372.

367.08 Extensions of systems.—

(1) PERMISSIBLE EXTENSIONS.—Every public utility engaged on June 18, 1959, in the construction or operation of a water or sewer system, and every recipient of a certificate of public convenience and necessity issued under the provisions of this law may extend its facilities to any territory in which at the time of the extension any of its facilities are constructed or operated, and also may extend its facilities in the ordinary course of business within or to any territory which

(a) Is not receiving similar service from any public utility or municipality,

(b) Is not defined in any outstanding certificate, and

(c) Is contiguous to territory served by the extending public utility or to territory defined in its certificate; provided however that no extension shall be permitted in any area within a municipality of one hundred thousand or more population according to the last official census unless such municipality first grants a franchise for such extension.

(2) ANNUAL AMENDMENT OF CERTIFICATES.—Every recipient of a certificate of public convenience and necessity issued under the provisions of this law shall file with the commission on or before March 1 in every year, in compliance with such rules and regulations and in such form as the commission may adopt and prescribe from time to time, a description of all additional territory served by extensions of its facilities in the immediately preceding period of January 1 to December 31, inclusive,

and the commission shall issue to it an amended certificate describing all territory which it had theretofore been authorized to serve together with the additional territory served by such extensions.

(3) PROHIBITED EXTENSIONS.—No public utility excluding utilities owned or operated by municipalities shall extend the facilities of its water system or sewer system or either, except as authorized in subsection (1), without first obtaining for such extension a certificate of public convenience and necessity in accordance with the provisions of §367.05.

(4) INTERFERENCE WITH ANOTHER SYSTEM.—If any public utility in extending its water system or sewer system interferes unreasonably or is about to interfere unreasonably or competes or is about to compete with or duplicates or is about to duplicate, in whole or in part, the service or facilities of any other water system or sewer system, the commission, upon complaint, and after public notice and hearing, may with respect to such interference, competition and duplication or any thereof make such order and prescribe such terms and conditions in harmony with this law as are required by public convenience and necessity, and in so doing shall state its reasons therefor and make findings of the subsidiary facts on which its determination of public convenience and necessity is predicated.

History.—§8, ch. 59-372.

367.09 Stop orders.—Whenever any public utility engages or is about to engage in the construction, operation or extension of a water system or sewer system in violation of this law the commission on its own initiative or upon complaint shall forthwith make such preliminary investigation as it may deem appropriate and may, either with or without notice, enter an order requiring such public utilities to cease and desist from such construction, operation or extension until further order of the commission. A public hearing on such violation shall be held by the commission within thirty days after the entry of the order to cease and desist. Reasonable written notice of the public hearing shall be given by mail to the chief executive officer of every county and municipality affected, to the Florida state board of health, and to every party of record. Notice of such public hearing also shall be published in a newspaper of general circulation in the territory affected. For this purpose one publication of the notice in each newspaper not less than five nor more than ten days before the public hearing shall suffice. Within fifteen days after the hearing the commission shall enter an order taking such action in harmony with the provisions of this law and prescribing such terms and conditions with respect thereto as are just and reasonable and will best further public convenience and necessity, taking into consideration among such other matters as the commission may deem appropriate the public interest, health and welfare. In so doing the commission shall state its reasons for the action taken and make findings of the subsidiary facts on which such action is predicated. For good cause shown the time limits fixed in this section may be enlarged by the commission in any case.

History.—§9, ch. 59-372.

367.10 Transfer of certificates.—If any recipient of a certificate issued under this law shall sell or otherwise transfer all of the physical property comprising its water system or sewer system, it also shall assign its certificate to the purchaser or transferee. Within ten days after such sale or transfer the purchaser or transferee shall surrender the assigned certificate to the commission, which thereupon shall issue to the purchaser or transferee a certificate of public convenience and necessity authorizing the purchaser or transferee to serve the territory described in the surrendered certificate. If the recipient of a certificate issued under this law shall sell or otherwise transfer less than all of the physical property comprising its water system or sewer system it shall, within ten days after such sale or other transfer, surrender its certificate to the commission and file therewith descriptions of

(a) The territory served by the physical property not sold or otherwise transferred, and

(b) The territory served by the physical property sold or otherwise transferred. The commission shall thereupon issue

1. To the seller or transferor a new certificate authorizing it to continue serving the territory served by the physical property not sold or otherwise transferred, and

2. To the purchaser or transferee a new certificate authorizing it to serve the territory served by the physical property sold or transferred, provided, however, nothing in this section shall apply to utilities owned or operated by governmental agencies or utilities acquired by any governmental agencies.

History.—§10, ch. 59-372.

367.11 Duty to serve.—Reasonably sufficient, adequate and efficient service shall be furnished by every public utility engaged June 18, 1959, in the construction or operation of a water system or sewer system to every person applying for service within the territory served by such system, and by every recipient of a certificate issued under this law to every person applying for service within the territory described in such certificate; provided, however, that if the furnishing of service by a public utility or recipient of a certificate in compliance with any application for service would require the extension of an addition to its existing facilities, the public utility or recipient of a certificate, as a condition precedent to furnishing service, may require of the applicant reasonable sums for service availability or reasonable deposits guaranteeing compensatory revenues from the territory to be served or reasonable contributions in aid of construction to help defray the cost of facilities which

will be used and useful in furnishing service, or any combination thereof or reasonable construction or other advances evidenced by refundable or nonrefundable agreements.

Notwithstanding any provisions of this law to the contrary, the provisions of subsections (1)-(5) shall be controlling.

(1) PROVISIONS.—Every public utility or holder of a certificate shall, at its cost, install all necessary plant expansions and extensions, water main extensions, sewage main extensions, force mains, lift stations and other facilities necessary to service a subdivision or area within the territory described in or covered by its certificate when the provisions of subsection (2) have been complied with or occur.

(2) PROVISIONS.—Owners of all or substantially all of the lots in a subdivision or an area which does not have sufficient, adequate and reasonable service of a water or sewer system who have installed or given reasonable assurances, to the public utility or certificate holder, holding a certificate covering said subdivision or area, that they will install within said subdivisions or area sufficient, adequate and reasonable water or sewer distribution or collection systems to service said subdivision or area to make the same a part of the water system or the sewer system of the public utility or certificate holder and who shall convey or assign or give reasonable assurances that they will convey or assign at no cost their said collection system or distribution systems to the public utility or holder of a certificate to service said territory may require the public utility or certificate holder to promptly comply with the provisions of subsection (1).

(3) PROVISIONS.—Upon the failure of a public utility or certificate holder to comply with the provisions of subsection (1) after the compliance with the provisions of subsection (2) by persons as described in subsection (2), the commission shall forthwith enter its order revoking the certificate of the certificate holder or public utility as to the subdivision or area which it has failed to serve in the manner set out in subsection (1).

(4) PROVISIONS.—Upon the occurrence of a revocation pursuant to the provisions of subsection (3), the owners or persons who have caused to be installed or given assurances of installation of a water or sewer system in a subdivision or area pursuant to the provisions of subsection (2) shall, upon application for a certificate for said subdivision or area and compliance with other provisions of this law, be granted a certificate of public convenience and necessity to serve a territory consisting of the subdivision or area where said owner's water or sewer system shall have been installed or assurance for installation have been made.

(5) PROVISIONS.—If any owner of all or substantially all of a subdivision or area shall hereafter install within said subdivision or area a water or sewer system or collection or distribution facilities and shall further convey or assign the same to a public utility or holder of a certificate at no cost, and if the same provides benefits for the public utility or certificate holder from areas other than the specific subdivision or area where the same is installed, then it shall, upon appropriate application, be the duty of the commission to ascertain and determine the value and extent of said benefits to pro rate the same and require reimbursement of the reasonable pro rata part or portion of the cost of installation of said conveyed or assigned water distribution or sewer collection facilities, and thereupon the public utility or certificate holder shall accordingly, as ordered, reimburse said cost.

History.—§11, ch. 59-372.

367.12 Initial rates and rules.—

(1) INITIAL RATES.—All rates and charges of every public utility in effect on June 18, 1959, shall be the lawful rates and charges of the public utility. The rates and charges authorized by the commission prior to or at the time of issuing to a public utility a certificate under §367.05 shall be the lawful rates and charges of such public utility. All such rates and charges shall continue in effect as lawful rates and charges unless and until changed by the commission as provided in this law; except in municipalities of one hundred thousand or more as of the last official census where rates are otherwise fixed pursuant to special acts.

(2) FILING REQUIRED.—Within six months after June 18, 1959, every public utility excluding utilities owned or operated by governmental agencies engaged on June 18, 1959, in the construction or operation of a water system or sewer system shall file with the commission schedules showing all of its rates, classifications and charges for service of every kind furnished by it on June 18, 1959, and a complete copy of all of its rules and regulations relating thereto in effect on June 18, 1959. Prior to or at the time of the issuance to a public utility of a certificate under §367.05, such public utility shall file with the commission schedules showing all of its rates, classifications and charges for service of every kind to be furnished by it and all of its rules and regulations relating thereto and a report by an engineer registered in the state, establishing the fair value of the public utilities property used and useful in the public service, as of June 18, 1959.

(3) CURRENT SCHEDULES.—After making the initial filings required by subsection (1), every public utility excluding utilities owned or operated by governmental agencies shall at all times maintain on file with the commission, in such form and under such rules and regulations as the commission may adopt and prescribe, schedules showing all of its current rates, classifications and charges for service of every kind furnished by it and a complete copy of all of its current rules and regulations relating thereto; provided, however that no such form, rule or regulation shall be adopt-

ed or prescribed by the commission until after the holding by the commission of a public hearing on the proposed form, rule or regulation.

(4) EXCLUSION.—The provisions of subsections (1), (2), and (3) relate and shall apply only to rates and charges for service after the installation and connection of the facilities of a public utility and shall not apply to nor affect any contract or agreement heretofore or hereafter made providing in connection with an application for service for the payment of reasonable sums of money for service availability or reasonable deposits guaranteeing compensatory revenues from the territory to be served or reasonable contributions in aid of construction to help defray the cost of facilities which will be used and useful in furnishing service or any combination thereof or reasonable construction or other advances evidenced by refundable or non-refundable agreements.

History.—§12, ch. 59-372.

367.13 Effective rates.—

(1) PRESENT SERVICE.—After the rates and charges provided for in subsections (1), (2) and (3) of §367.12 become effective no public utility excluding utilities owned or operated by governmental agencies shall charge or receive, directly or indirectly, any other rate or charge for any class of service provided for in the filings required by §367.12, unless and until such rates and charges shall be changed by the commission in accordance with the provisions of this law.

(2) NEW SERVICE.—If any application for the service of a public utility shall be for a new class of service not provided for in the filings required by §367.12, the public utility may furnish the new class of service applied for and fix just, fair, reasonable and compensatory rates and charges therefor. A schedule of any rates and charges so fixed shall be filed with the commission within ten days after the new class of service is furnished. The commission, after public hearing, may approve, increase or reduce such rates and charges as may be just, fair, reasonable and compensatory.

History.—§13, ch. 59-372.

367.14 Changes in rates.—

(1) COMMISSION JURISDICTION.—Whenever upon its own motion or upon complaint, and after public hearing, the commission finds that the existing rates of any public utility holding a certificate under the provisions of this law are unreasonable, insufficient, noncompensatory, unreasonably discriminatory or in any way in violation of the provisions of this law or of any order, rule or regulation prescribed under this law, the commission shall determine just, reasonable, sufficient and compensatory rates to be thereafter observed and in force, and shall fix them by order.

(2) PROPOSED CHANGES.—Any public utility holding a certificate under the provisions of this law desiring to change any rate, or charge, or any rule or regulation relating thereto, shall file with the commission a written notice showing the change or changes proposed, and shall file with the notice a written explanation of the reasons for and the reasonableness of the proposed change or changes. The public utility also shall give such public notice of the proposed change or changes as the commission, in its discretion, may direct.

(3) PUBLIC NOTICE.—When any general increases in a schedule of rates and charges are proposed, they shall not become effective until after a public hearing, except that for good cause shown the commission may, when an emergency situation exists, allow a public utility change in rates or charges, or rules or regulations relating thereto, on a temporary basis, which temporary basis shall be for a period not to exceed ninety days. At least twenty days written notice of such public hearing shall be given by mail to the chief executive officer of every county and municipality affected, and further notice of such public hearing shall be published once a week for two consecutive weeks in a newspaper of general circulation in the territory affected and the first such notice shall be published at least twenty days prior to the date of said public hearing.

(4) TIME FOR HEARING AND ENTRY OF ORDER. — Whenever there is filed with the commission by any public utility holding a certificate under the provisions of this law any notice of general increases in a schedule of rates and charges, the commission may either upon complaint or of its own initiative, and after such public notice, enter upon a hearing to determine whether the proposed rates are just, reasonable, sufficient and compensatory, and said hearing shall be held and the order entered thereon within one hundred eighty days from the date the public utility filed with the commission its written notice showing the change or changes proposed.

(5) REFUND PROCEDURE.—From the effective date of this act any public utility collecting an increase of rates pursuant to any bond or trust arrangement whereby said funds are held in trust pending the final determination by the commission of the validity of said increase of rates, shall cease and desist from collecting said increased rates forthwith. Any public utility holding a certificate under the provisions of this law which has placed increased rates into effect by filing with the commission any bond in a reasonable amount fixed and approved by the commission, with a surety or sureties approved by the commission, conditioned upon the refunding in a manner to be prescribed by order of the commission to persons respectively entitled thereto, of the amount of excess, if the rates so put into effect are lawfully determined to be excessive, or has substituted in lieu of such bond an arrangement for the depositing of the funds with a trustee approved by the commission, or other arrangements satisfactory to the commission, which arrangements would refund the amount of the excess if the rates so put into effect

are lawfully determined to be excessive, shall, within thirty days from the effective date of this act, refund to all persons, firms or corporations, the amount of excess collected over and above the valid and existing rates in effect at the time the public utility gave written notice to the commission of its intention to change its rates.

(6) COMMISSION ACTION.—If after public hearing the commission determines the proposed rates and charges to be unreasonable, insufficient, noncompensatory, or unjustly discriminatory, or in any way in violation of this law or of any order, rule or regulation prescribed under this law, the commission shall determine the just, reasonable, sufficient and compensatory rates and charges to be charged by the public utility and shall fix such rates and charges and the date when they shall become effective, by order to be served upon the public utility. Any rates and charges so fixed shall be observed from their effective date until changed as provided in this law. Any such determination shall embody a statement by the commission of its reasons therefor, a specification and enumeration of all matters and every matter considered by the commission in making the determination, and findings by the commission of the subsidiary facts on which the determination is predicated.

(7) MATTERS TO BE CONSIDERED.—In determining just, reasonable, sufficient and compensatory rates the commission shall give due consideration to the public utility's property used and useful in the public service, the public utility's requirements for cash working capital and for materials and supplies, the revenues received for the service of the public utility, the reasonable operating expenses and other costs of the public utility necessary to provide the service, depreciation expense reflecting rates of depreciation intended and reasonably designed and applied to enable the public utility to recover the cost of its several classes of depreciable property over the estimated periods of their respective service lives, all taxes of every description levied or imposed on the public utility and its property, revenues, income and expenses, the previously incurred and estimated future reasonable costs and expenses of the public utility in and in connection with the proceeding under consideration, the total earnings required by the public utility for the proper discharge of its duty to the public, and such other matters, circumstances and conditions as the commission may find necessary or advisable to enable it to determine and prescribe rates and charges which will provide to the public utility a fair return on the fair value of the property of the public utility used and useful in the public service as evidenced by the engineering report required by §367.12(2) and in all rate proceedings thereafter a fair return on the initial fair value of the property of the public utility used and useful in the public service together with the original cost of all net additions to such property thereafter.

(8) HEARING.—Every hearing involving the rates and charges of any public utility shall be held before a majority of the full commission, or an examiner appointed by the commission.

(9) RECORD.—A full and complete record shall be kept of all rate proceedings had before the commission, and all testimony in every hearing shall be taken down by a reporter appointed by the commission.

(10) SERVICE AND NOTICE OF ORDER.—After the conclusion of a hearing the commission shall make and file its order. A certified copy of such order shall be served by certified mail upon the public utility affected thereby and its attorney, if any, and notice thereof shall be given personally or by mail to every other party to the proceeding and his attorney, if any.

(11) EFFECTIVE DATE OF ORDER.—The order shall take effect and become operative thirty days after the service thereof unless a later effective date be provided therein, and shall continue in force either for a period which may be designated therein or until changed or revoked by the commission. If an order cannot, in the judgment of the commission, be complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply therewith, and may, on application and for good cause shown, grant extensions of the time for compliance.

(12) REHEARING.—After an order has been made by the commission, any party to the proceeding may, pursuant to the commission rules, practices and procedures apply for a rehearing respecting any matter determined in the order, and the commission may, if it appears to be proper, grant and hold such rehearing. If the application be granted, the commission's order shall be deemed vacated and the commission shall enter a new order after the rehearing has been concluded.

(13) EXCLUSION.—The provisions of this section relate and apply only to rates and charges for service after the installation and connection of the facilities of a public utility and shall not apply to nor affect any contract or agreement heretofore or hereafter made providing in connection with an application for service for the payment of reasonable sums of money for service availability or reasonable deposits guaranteeing compensatory revenues from the territory to be served or reasonable contributions in aid of construction to help defray the cost of facilities which will be used and useful in furnishing service, or any combination thereof or any refundable or nonrefundable agreements heretofore or hereafter made evidencing construction or other advances.

History.—§14, ch. 59-372; (2), (3) §1, (4) §2, (5) §3, ch. 61-477.

367.15 Powers of commission.—

(1) SERVICE REGULATIONS.—The commission shall have power to prescribe fair and

reasonable classifications, standards of quality and measurement, and service rules and regulations to be observed by every public utility excluding utilities owned or operated by municipalities. No such classification, standard, rule or regulation shall be prescribed until after the holding by the commission of a public hearing on the proposed classification, standard or rule or regulation.

(2) UNIFORM ACCOUNTING SYSTEMS.—The commission may prescribe uniform systems and classifications of accounts to be kept by public utilities holding a certificate under the provisions of this law, and may prescribe the manner in which the accounts shall be kept, and may require said public utility to keep its books, papers and records accurately and faithfully according to any system of accounts so prescribed. No such action shall be taken by the commission until after the holding by the commission of a public hearing on any proposed uniform system and classifications.

(3) DEPRECIATION.—Every public utility shall have the right and may be required by the commission to charge annually as an operating expense a just, fair and reasonable sum for depreciation and to credit the sum so charged to a depreciation reserve, which depreciation reserve shall be charged with retirements of depreciable property from service.

(4) VALUATION.—The commission may, after public notice and public hearing, ascertain and fix the fair value of the whole or any part of the property of any public utility holding a certificate under the provisions of this law insofar as may be necessary to the exercise by the commission of its jurisdiction under this law.

(5) ANNUAL REPORTS.—The commission may, by rule or regulation applying uniformly to all public utilities of any class excluding utilities owned or operated by governmental agencies, require such public utilities to file annual reports of such uniform content and in such uniform form as the commission may prescribe and furnish for that purpose. No such action shall be taken by the commission until after the holding by the commission of a public hearing on the proposed form of annual report.

(6) SPECIAL REPORTS.—The commission also may require of any public utility holding a certificate under the provisions of this law a special report respecting any matter regarding which the commission is authorized to inquire, or to keep itself informed, or to enforce, in carrying out the provisions of this law.

(7) STAFF.—The commission may employ and fix the compensation of such examiners and technical, legal and clerical employees as may be necessary to carry out the provisions of this law.

(8) RULES AND REGULATIONS.—The commission may prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this law. No such action shall be taken by the commission until after the holding by the commission of a public hearing on the proposed rule or regulation.

(9) ACCESS TO PREMISES.—The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility holding a certificate under the provisions of this law and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and of exercising any power conferred by this law; provided, however, that such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

History.—§15, ch. 59-372.

367.16 Rates of municipal systems.—The commission shall not have jurisdiction to regulate the rates or charges of any system owned or operated by a governmental agency.

History.—§16, ch. 59-372.

367.17 Review of orders of commission.—Any public utility holding a certificate under the provisions of this law, party or other person affected, dissatisfied with any order of the commission may have it reviewed by the supreme court of Florida on writ of certiorari only; provided, however, that no order of the commission shall be reviewed unless an application to the commission for a rehearing has been filed and refused.

History.—§17, ch. 59-372.

367.18 Unaffected powers.—Nothing in this law shall be deemed to repeal or affect §167.22 and chapter 153, or chapter 9861, special acts 1923; chapter 10968, special acts 1925; chapter 31075, special acts 1955; chapter 31076, special acts 1955; chapter 30178, special acts 1955; chapter 31092, special acts 1955; chapter 31011, special acts 1955; chapter 21230, special acts 1941; chapter 23535, special acts 1945; chapter 26223, special acts 1949; chapter 27893, special acts 1951; chapter 6356, special acts 1911; chapter 24605, special acts 1947, as amended by chapter 25927, special acts 1949; chapter 30882, special acts 1955; chapter 23373, special acts 1945; chapter 26443, extra session 1949; chapter 27650, special acts 1951; chapter 27649, special acts 1951; chapter 27659, special acts 1951; chapter 29201, special acts 1953. No provision of this law shall in any way affect any municipal tax or franchise tax in any manner whatsoever, nor to limit, abridge or affect the authority, rights or privileges, now existing or hereafter conferred thereon by law, of any governmental agency to supply water or sewerage service to any area in this state.

History.—§18, ch. 59-372.

367.19 Gross receipts tax.—Every public utility holding a certificate under the provisions of this law shall on or before March 15 in every year report to the comptroller of the state, under oath of its secretary or one of its

other officers, the total amount of the gross receipts derived by it in the immediately preceding period of January 1 to December 31, inclusive, from business done within this state, and at the time of so reporting shall pay to the treasurer of the state a gross receipts tax in the amount of one dollar fifty cents for each one hundred dollars or fraction thereof of such gross receipts, provided, however, that whenever a purchase is made of any water and a tax is paid thereon by a public utility and such public utility resells the same directly to consumers such public utility shall be entitled and shall receive credit upon such taxes as may be due by it under this section to the extent of the tax paid or payable upon such water by the person, firm or corporation from whom such purchase was made. If any public utility fails to make such report and pay such tax, the comptroller, after giving at least five days written notice to the public utility, shall estimate the amount of such gross receipts from such information as he may be able to obtain from any source and shall add ten per cent of the amount of such tax as a penalty and shall proceed to collect such tax and penalty, together with all costs of collection thereof, in the same manner as other delinquent taxes are collected, provided, however, that no penalty shall be added to the tax in the event a return is made and the amount of the tax is paid before the expiration of the time fixed in the notice given by the comptroller. All such tax payments and penalties shall be placed in the general revenue fund. The comptroller may audit such reports and upon demand every public utility shall submit all of its records, papers, books and accounts to the comptroller or his representatives for audit.

History.—§19, ch. 59-372.

367.20 Violations.—All provisions of §350.-36, as now in effect or hereafter amended shall apply in every respect to any violation of any provision of this law.

History.—§20, ch. 59-372.

367.21 Exclusive jurisdiction.—The jurisdiction conferred upon the commission by this law shall be exclusive, except where municipal jurisdiction is exercised in municipalities of one hundred thousand or more population according to the last official census pursuant to existing franchises or special acts.

History.—§21, ch. 59-372.

367.22 Legislative declaration.—The regulation of public utilities as defined herein is declared to be in the public interest, and this law shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions of this law shall be liberally construed for the accomplishment of that purpose; provided however that no existing franchise or contract rights of municipalities having one hundred thousand or more population according to the last official census shall be impaired thereby.

History.—§22, ch. 59-372.

367.23 Effectiveness dependent on resolution by board of county commissioners.—The provisions of this law shall become effective in a county of this state immediately upon the adoption by the board of county commissioners of such county of a resolution declaring that such county is subject to the provisions of this law and the submission of said resolution to the Florida public utilities commission.

History.—§23, ch. 59-372; §1, ch. 63-279.

CHAPTER 368

GAS PIPING SYSTEMS SAFETY CODE

368.01 Short title.—This law may be known and cited as "the Florida gas transmission and distribution piping systems safety code of 1959."

History.—§1, ch. 59-304.

368.02 Definitions.—In construing this code, where the context permits, the word, phrase, or term:

(1) "Commission" means the Florida public utilities commission.

(2) "Pressure" unless otherwise stated is expressed in pounds per square inch above atmospheric pressure, i.e., gauge pressure. (abbreviation—psig)

(3) "Design pressure" is the maximum operating pressure permitted by this code, as determined by the design procedures applicable to the materials and locations involved.

(4) "Maximum allowable test pressure" is the maximum internal fluid pressure permitted by this code for testing for the materials and locations involved.

(5) "Maximum actual operating pressure" is the maximum operating pressure existing in a piping system during a normal annual operating cycle.

(6) "Maximum allowable operating pressure" is the maximum pressure at which a piping system may be operated in accordance with the provisions of this code. It is the pressure which is used in determining the setting of pressure relieving or pressure limiting devices installed to protect the system from accidental over-pressuring.

(7) "Standard service pressure" is the gas pressure which a utility undertakes to maintain on its domestic customers' meters, sometimes called the normal utilization pressure.

(8) "Pressure relief station" consists of equipment installed for the purpose of preventing the pressure on a pipeline or distribution system to which it is connected from exceeding by more than an established increment the maximum allowable operating pressure, by venting gas to the atmosphere whenever the pressure tends to rise too high. The following kinds of equipment generally are employed to provide this type of protection: liquid seals, dead weight mechanical seals, spring loaded relief valves and back pressure regulators used as relief valves. Included in the station are piping and auxiliary devices, such as valves, control instruments, control lines, the enclosure and ventilating equipment installed in accordance with this code.

(9) "Pressure limiting station" consists of equipment installed for the purpose of preventing the pressure on a pipeline or distribution system from exceeding the maximum allowable operating pressure, by controlling or restricting the flow of gas when abnormal con-

ditions develop. While normal conditions prevail, the pressure limiting station may exercise some degree of control of the flow of gas or may remain in the wide open position. Should the pressure on the pipeline or distribution system exceed the normal operating pressure range or setting, due to malfunctioning regulator or other cause, the pressure limiting station will function, automatically, to prevent the pressure on the pipeline or system from exceeding its maximum allowable operating value. The following kinds of equipment generally are employed to provide this type of protection: monitoring regulators, series regulators and automatic shut-off devices. Included in the station are piping and auxiliary devices, such as valves, control instruments, control lines, the enclosure and ventilating equipment installed in accordance with the pertinent requirements of this code.

(10) "Pressure regulating station" consists of equipment installed for the purpose of automatically reducing and regulating the pressure in the downstream pipeline or main to which it is connected. Included are piping and auxiliary devices such as valves, control instruments, control lines, the enclosure and ventilating equipment.

(11) "Service regulator" is a regulator installed on a gas service to control the pressure of the gas delivered to the customer.

(12) "Monitoring regulator" is a pressure regulator set in series with another pressure regulator for the purpose of automatically taking over in an emergency the control of the pressure downstream of the station in case that pressure tends to exceed a set maximum.

(13) "Stress" is the resultant internal force that resists change in the size or shape of a body acted on by external forces. In this code "stress" is often used as being synonymous with unit stress which is the stress per unit area (psi).

(14) "Operating stress" is the stress in a pipe or structural member under normal operating conditions.

(15) "Hoop stress" is the stress in a pipe wall, acting circumferentially in a plane perpendicular to the longitudinal axis of the pipe and produced by the pressure of the fluid in the pipe.

(16) "Maximum allowable hoop stress" is the maximum hoop stress permitted by this code for the design of a piping system. It depends upon the material used, the location of the pipe, and the operating conditions.

(17) "Secondary stress" is stress created in the pipe wall by loads other than internal fluid pressure, such as backfill loads, traffic loads, beam action in a span, loads at supports and at connections to the pipe.

(18) "Nominal wall thickness" (abbreviation-t) is the wall thickness computed by the design equation in §368.28(6). Under this code pipe may be ordered to this computed wall thickness without adding an allowance to compensate for the under-thickness tolerances permitted in approved specification.

(19) "Temperatures" are expressed in degrees Fahrenheit (abbreviation-°F.) unless otherwise stated.

(20) "Ambient temperature" is the temperature of the surrounding medium, usually used to refer to the temperature of the air in which a structure is situated or a device operates.

(21) "Ground temperature" is the temperature of the earth at pipe depth.

(22) "Cold-springing" is the fabrication of piping to an actual length shorter than its nominal length; and forcing it into position, so that it is stressed in the erected condition; thus compensating partially for the effects produced by the expansion due to an increase in temperature. Cold spring factor is the ratio of the amount of cold spring provided, to the total computed temperature expansion.

(23) "Welding nomenclature" are types of welds and names of welded joints as used herein according to their common usage.

(24) "Yield strength" is the strength at which a material exhibits a specified limiting permanent set, or produces a specified total elongation under load. The specified limiting set or elongation is usually expressed as percentage of gauge length, and its values are specified in the various material specifications acceptable under this code.

(25) "Tensile strength" is the highest unit tensile stress (referred to the original cross-section) a material can sustain before failure (psi).

(26) "Specified minimum yield strength" is the minimum yield strength prescribed by the specification under which pipe is purchased from the manufacturer (psi).

(27) "Specified minimum tensile strength" is the minimum tensile strength prescribed by the specification under which pipe is purchased from the manufacturer (psi).

(28) "Specified minimum elongation" is the minimum elongation (expressed in per cent of the gauge length) in the tensile test specimen, prescribed by the specifications under which the material is purchased from the manufacturer.

(29) "Alloy steel" is steel considered to be alloy steel when the maximum of the range given for the content of alloying elements exceeds one or more of the following limits:

manganese	1.65%
silicon	.60%
copper	.60%

or in which a definite range or a definite minimum quantity of any of the following elements is specified or required within the limits of the recognized field of constructional alloy steels:

aluminum
boron

chromium up to 3.99%
cobalt
columbium
molybdenum
nickel
titanium
tungsten
vanadium
zirconium

or any other alloying element added to obtain a desired alloying effect.

(30) "Carbon steel" is steel considered to be carbon steel when no minimum content is specified or required for aluminum, boron, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium or zirconium, or any other element added to obtain a desired alloying effect; when the specified minimum for copper does not exceed 0.40%; or when the maximum content specified for any of the following elements does not exceed the percentages noted: manganese 1.65, silicon 0.60, copper 0.60.

In all carbon steels small quantities of certain residual elements, unavoidably retained from raw materials, are sometimes found which are not specified or required, such as copper, nickel, molybdenum, chromium, etc. These elements are considered as incidental and are not normally determined or reported.

(31) "Pipe" is a tubular product made as a production item for sale as such. Cylinders formed from plate in the course of the fabrication of auxiliary equipment are not pipe as defined here.

(32) "Pipeline or transmission line" is a pipe installed for the purpose of transmitting gas from a source or sources of supply to one or more distribution centers or to one or more large volume customers or a pipe installed to interconnect sources of supply. In typical cases pipelines differ from gas mains in that they operate at higher pressures, they are longer, and the distance between connections is greater.

(33) "Gas main or distribution main" is a pipe installed in a community to convey gas to individual services or other mains.

(34) "Gas service" is the pipe that runs between a main or a pipeline and a customer's meter.

(35) "Low-pressure distribution system" is a gas distribution piping system in which the gas pressure in the mains and services is substantially the same as that delivered to the customer's appliances. In such a system a service regulator is not required on the individual services.

(36) "High-pressure distribution system" is a gas distribution piping system which operates at a pressure higher than the standard service pressure delivered to the customer. In such a system a service regulator is required on each service to control the pressure delivered to the customer.

(37) "Length" is a piece of pipe of the length delivered from the mill. Each piece is called a length regardless of its actual dimension. This is sometimes called "joint" but "length" is preferred.

(38) "Cold expanded pipe" is seamless or welded pipe which is formed and then expanded in the pipe mill while cold so that the circumference is permanently increased by at least .50%.

(39) "Gas storage line" is a pipeline used for conveying gas between a compressor station and a gas well used for storing gas underground.

(40) "Instrument piping" is all piping, valves, and fittings used to connect instruments to main piping, to other instruments and apparatus, or to measuring equipment.

(41) "Control piping" is all piping, valves, and fittings used to interconnect air, gas, or hydraulically operated control apparatus or instrument transmitters and receivers.

(42) "Sample piping" is all piping, valves and fittings used for the collection of samples of gas, steam, water, or oil.

(43) "Private rights-of-way" as used in this code are rights-of-way that are not located on roads, streets or highways used by the public, or on railroad rights-of-way.

(44) (a) "Operating company" as used herein is the individual, partnership, corporation, public agency, or other entity that operates the gas transmission or distribution facilities.

(b) The term "operating company" as used herein means and includes every person, corporation, partnership, association, municipality, cooperative, gas district, or other legal entity and their lessees, trustees or receivers, now or hereafter either owning, operating, managing or controlling any facility supplying gas, natural, manufactured, or similar gaseous substance, except as to liquefied petroleum gases as defined in subsection (50) to or for the public within this State.

(45) "Proprietary items" are items made and marketed by a company having the exclusive right to manufacture and sell them.

(46) "Location class" is a geographic area classified according to its approximate population density and its other characteristics that are considered when prescribing types of construction and methods of testing pipelines and mains to be located in the area.

(47) "Construction type" is a construction specification for pipelines and mains that fixes the stress levels.

(48) "One mile population density index" is a number roughly proportional to population density, applicable to a specific one mile length of pipeline or main and used in some cases to determine design and/or test requirements.

(49) "Ten mile population density index" is a number roughly proportional to population density, applicable to a specific ten mile length of pipeline or main and used in some cases to determine design and/or test requirements.

(50) "Gas" as used in this code is any gas or mixture of gases suitable for domestic or industrial fuel and transmitted or distributed to the user through a piping system. However, this does not include liquefied petroleum gases in the vapor or liquid state. The common types are natural gas, manufactured gas, and liquefied petroleum gas distributed as a vapor with the admixture of air.

(51) "Customer's meter" is a meter which measures gas delivered to a customer for consumption on his premises.

(52) "Service shut-off" is a valve or cock readily accessible and operable by the customer, located in a service pipe between the gas main and the meter.

(53) "Curb shut-off" is a buried valve or cock installed in a service pipe at or near the property line and accessible through a valve box and cover and operable by a removable key.

(54) "Pipe container" is a gas-tight structure assembled in a shop or in the field from pipe and end closures.

(55) "Pipe-type holder" is any pipe-container or group of interconnected pipe-containers installed at one location, and used for the sole purpose of storing gas.

(56) "Bottled" as used in this code is a gas-tight structure completely fabricated from pipe with integral drawn, forged, or spun end closures and tested in the manufacturer's plant.

(57) "Bottled-type holder" is any bottle or group of interconnected bottles installed in one location, and used for the sole purpose of storing gas.

(58) "Stop valve" is a valve installed for the purpose of stopping the flow of fluid in a pipe.

(59) "Hot taps" are branch piping connections made to operating pipelines or mains or other facilities while they are in operation. The connection of the branch piping to the operating line and the tapping of the operating line is done while it is under gas pressure.

(60) "Leakage surveys" are systematic surveys made for the purpose of locating leaks in a gas piping system. Three types of surveys are referred to in this code. The significant difference between the three is the manner in which the presence of a leak is first detected. They all involve verification of the presence of a leak and its location, as for example, by the driving or boring of test holes in the vicinity of the leak and testing the atmosphere in these holes with a combustible gas detector or other suitable device. The three types of surveys are defined herein:

(a) "Vegetation surveys" are leakage surveys made for the purpose of finding leaks in underground gas piping by observing vegetation.

(b) "Gas detector surveys" are leakage surveys made by testing with a combustible gas detector the atmosphere in water meter boxes, street vaults of all types, cracks in pavements and other available locations where access to the soil under pavement is provided.

(c) "Bar test surveys" are leakage surveys made by driving or boring holes at regular intervals along the route of an underground gas pipe and testing the atmosphere in the holes with a combustible gas detector or other suitable device.

(61) "API" means American petroleum institute.

(62) "ASA" means American standards association.

(63) "ASME" means American society of mechanical engineers.

(64) "ASTM" means American society for testing materials.

(65) "AWS" means American welding society.

(66) "AWWA" means American water works association.

(67) "MSS" means manufacturers standardization society of the valve and fittings industry.

(68) "CIPRA" means cast iron pipe research association.

(69) "NBFU" means national board of fire underwriters.

(70) "NFPA" means national fire protection association.

History.—(1)-(44) §3, (44) §47, (45)-(70) §3, ch. 59-304; §1, ch. 63-279.

368.03 Purpose.—

(1) This code covers the design, fabrication, installation, inspection, testing, and the safety aspects of operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and gas services up to the outlet of the customer's meter set assembly. Also included within the scope of this code are gas storage equipment of the closed pipe type fabricated or forged from pipe or fabricated from pipe and fittings, and gas storage lines.

(2) The requirements of this code also cover the conditions of use of the elements of the piping systems described in subsection (1), including, but not limited to, pipe, valves, fittings, flanges, bolting, gaskets, regulators, pressure vessels, pulsation dampeners, and relief valves.

(3) This code does not apply to:

(a) Piping with metal temperatures above 450°F. or below minus 20°F.

(b) Piping beyond the outlet of the customer's meter set assembly.

(c) Piping in oil refineries or natural gasoline extraction plants, gas treating plant piping other than the main gas stream piping in dehydration and all other processing plants installed as part of a gas transmission system, gas manufacturing plants, industrial, and electric plants and piping and other facilities on their side of the meter, or mines.

(d) Vent piping to operate at substantially atmospheric pressures for waste gases of any kind.

(e) Wellhead assemblies, including control valves, and flow lines between wellhead and

trap or separator, or casing and tubing in gas or oil wells.

(f) Proprietary items of equipment, apparatus, or instruments.

(g) Heat exchangers.

(h) Oil or liquid products pipelines.

(i) Prefabricated units which employ plate and longitudinal welds as contrasted to pipe.

(4) The requirements of this code are adequate for safety under conditions normally encountered in the gas industry. Requirements for abnormal or unusual conditions are not specifically provided for, nor are all details of engineering and construction prescribed. It is intended that all work performed within the scope of this section shall meet or exceed the safety standards expressed or implied herein.

(5) This code is concerned with:

(a) Safety of the general public.

(b) Employee safety to the extent that it is affected by basic design, quality of the materials and workmanship, and requirements for testing and maintenance of gas transmission and distribution facilities. Existing industrial safety regulations pertaining to work areas, safety devices, and safe work practices are not intended to be supplanted by this code.

(6) It is not intended that this code be applied retroactively to existing installations insofar as design, fabrication, installation, establishing operating pressure, and testing are concerned. It is intended, however, that the provisions of this code shall be applicable to the operation, maintenance, and up-rating of existing installations.

History.—§2, ch. 59-304.

368.04 Legislative intent.—This code is declared to be in the public interest and this code shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions shall be liberally construed for the accomplishment of that purpose.

History.—§46, ch. 59-304.

368.05 Commission; jurisdiction, rules and regulations.—

(1) In addition to its existing functions, the Florida public utilities commission shall have jurisdiction over each operating company except municipalities with respect to its compliance with the safety standards of this code. The jurisdiction conferred upon said commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages or counties, and in case of conflict therewith all lawful safety acts, orders, rules and regulations of the commission shall in each instance prevail.

(2) In the exercise of such jurisdiction, the commission shall have power to prescribe rules and regulations not inconsistent herewith to be observed by each operating company except municipalities for the enforcement of this code; to require the filing of periodic reports and all other data reasonably necessary to determine whether the safety standards of this code are being complied with; to require repairs and improvements to the gas transmission and distribution piping systems of any operating company except municipalities reasonably necessary under this code to promote the protection of the public; and to exercise all judicial powers, issue all writs and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its safety orders entered under this code.

History.—§§48, 49, ch. 59-304; §1, ch. 63-279.

368.06 Materials and equipment.—It is intended that all materials and equipment that will become a permanent part of any piping system constructed under this code shall be suitable and safe for the conditions under which they are used. All such materials and equipment shall be qualified for the conditions of their use by compliance with certain specifications, standards, and special requirements of this code or otherwise as provided herein.

History.—§4, ch. 59-304.

368.07 Qualification of materials and equipment.—

(1) Materials and equipment fall into five categories insofar as methods of qualification for use under this code are concerned:

(a) Items which conform to standards or specifications listed in this code.

(b) Items that are important from a safety standpoint, of a type for which standards or specifications are listed in this code, but the specific item in question does not conform to a listed standard such as pipe manufactured to a specification not listed in this code.

(c) Items of a type for which standards or specifications are listed in this code but which do not conform to the standards and are relatively unimportant from a safety standpoint because of their small size or because of the conditions under which they are to be used.

(d) Items of a type for which no standard or specification is listed in this code such as a gas compressor.

(e) Unidentified or used pipe.

(2) Prescribed procedures for qualifying each of these five categories are:

(a) Items which conform to standards of specifications listed in this code may be used for appropriate applications, as prescribed and limited by this code, without further qualification.

(b) Important items which do not conform to specifications or standards listed in this code shall be qualified by one of the following means:

1. By petitioning the Florida public utilities commission for approval. If possible, the material shall be identified with a comparable material, and it should be stated in said petition that the material will comply with that specification except as noted. Complete information as to chemical composition and physical properties shall be supplied to the commission, and its approval shall be obtained before this material may be used.

2. Materials conforming to specifications which do not vary materially from a listed spe-

cification and which meet the minimum requirements of this code with respect to quality of materials and workmanship may be used. This shall not be construed to permit deviations which would tend to adversely affect weldability or ductility. If the deviations tend to reduce strength, full allowance for the reduction shall be provided for in the design.

(c) Relatively unimportant items which do not conform to listed standards or specifications may be used provided that:

1. They are tested or investigated and found suitable for the proposed service, and

2. They are used at unit stresses not greater than 50% or those allowed by this code for comparable materials, and

3. Their use is not specifically prohibited by the code.

(d) Materials and equipment not covered by standards or specifications listed in this code may be qualified by the user by investigation and tests (if needed) that demonstrate that the item of material or equipment is suitable and safe for the proposed service, and provided further that the item is recommended for that service from the standpoint of safety, by the manufacturer, and is approved by the commission.

(e) Reuse of pipe in existing line. Removal of a portion of an operating line, and reuse of the pipe in the same line, or in a line operating at the same, or lower pressure, is permitted, subject only to the restrictions of paragraph (g) 2. a., f., and i.

(f) Used pipe, unidentified new pipe, and low pressure pipe (hoop stress less than 6,000 psi) may be used for low-stress level service (hoop stress less than 6,000 psi) where no close coiling or bending is to be done, provided careful visual examination indicates that it is in good condition, free from split seams or other defects that would cause leakage, and provided further that, if the pipe is to be welded, it shall satisfactorily pass weldability tests prescribed in paragraph (g) 2. e.

(g) 1. Used pipe, unidentified new pipe, and low pressure pipe (hoop stress less than 6,000 psi) may be qualified for use at stress levels above 6,000 psi or for service involving close coiling or bending by the procedures and within the limits outlined in the table below.

2. The letters in the table refer to the corresponding subparagraphs following:

	Used, unidentified new, or low pressure pipe	Known used pipe, low pressure pipe excluded
Inspection	a.	a.
Bending properties	b.	
Thickness	c.	c.
Joint efficiency	d.	d.
Weldability	e.	
Defects	f.	f.
Yield strength	g.	
S Value	h.	
Test	i.	i.

a. Inspection.—All pipe shall be cleaned inside and outside, if necessary, to permit good inspection, and shall be visually inspected to insure that it is reasonably round and straight, and to discover any defects which might impair its strength or tightness.

b. Bending properties.—For pipe 2 in. and under the nominal diameter, a sufficient length of pipe shall be bent cold through 90°, around a cylindrical mandrel, the diameter of which is twelve times the nominal diameter of the pipe, without developing cracks at any portion and without opening the weld. For pipe larger than 2 in. in diameter, flattening tests shall be made and the pipe shall meet the requirements of this test. The number of tests required to determine bending properties shall be the same as required in subparagraph g. below, to determine yield strength.

c. Determination of wall thickness.—Unless the nominal wall thickness is known with certainty, it shall be determined by measuring the thickness at quarter points on one end of each piece of pipe. If the lot of pipe is known to be of uniform grade, size and nominal thickness, measurement shall be made on not less than 10% of the individual lengths, but not less than 10 lengths; thickness of the other lengths may be verified by applying a gauge set to the minimum thickness. Following such measurement, the nominal wall thickness shall be taken as the next commercial wall thickness below the average of all the measurements taken, but in no case more than 1.14 times the least measured thickness.

d. Joint efficiency.—If the type of longitudinal joint can be determined with certainty, the corresponding longitudinal joint factor "E" may be used. Otherwise, the factor "E" shall be taken as 0.60 for pipe four inches and smaller, or 0.80 for pipe over 4 in.

e. Weldability.—Shall be determined as follows: A qualified welder shall make a girth weld in the pipe. The weld shall then be tested.

From the completed test weld, the number of specimens cut will depend upon the size of the pipe and requirements of the company. Specimens should be cut from the completed weld in accordance with the table below:

Type and number of test specimens for welder qualification test

Pipe size: Outside diameter (inches)	Recommended number of specimens
4½ and smaller	4
6⅝ to 12¾, inclusive	6
14 and larger	12

Number of specimens			
		Bends	
Tensile	Nick break	Root	Face
2	2	—	—
2	2	1	1
4	4	2	2

Specimens shall be removed and shall be spaced

approximately equidistant around the pipe. Specimens shall be air-cooled to ambient temperature before testing.

The weld must be free of cracks, inadequate penetration, burn-through, and other obvious defects, and it must present a neat workmanlike appearance. Undercutting adjacent to the final bead on the outside of the pipe shall not exceed 1/32 in. in depth.

Tensile-test specimens shall be approximately 1 in. wide; the weld reinforcements, both at the face and at the root of the weld shall not be removed. Specimens may be oxygen-cut and no additional machining or preparation will be necessary, provided the sides are parallel and free from notches or unevenness which may adversely affect the test results.

If two or more of the specimens tested break in the weld or at the junction of the weld and the parent metal, and also fail to develop the minimum specified tensile strength of the pipe metal, the welder shall be disqualified.

Nick-break test specimens may be oxygen-cut, and no other preparation will be necessary. The specimens shall be hacksaw-notched on both edges of the specimen at the center of the weld to cause failure in the weld metal, and shall be broken: By pulling in a suitable testing machine; by supporting the ends and striking the center of the specimen with a heavy hammer; or by supporting one end of the specimen in a vise and striking the other end with sharp hammer blows. The exposed area of the fracture shall have a minimum width of 1 in.

The nick-break test shall show complete penetration and fusion throughout the entire thickness of the weld specimen. If, in the opinion of the company representative, inadequate penetration occurring in one of the test specimens is not representative of the weld, the specimen may be replaced by another specimen cut adjacent to the specimen that was rejected. The exposed surface shall show no more than 6 gas pockets per square inch with the greatest dimension not to exceed 1/16 in. Slag inclusions shall be not greater than 1/32 in. in depth or ⅛ in. in width, and shall be separated by at least ½ in. of sound weld metal. The welder shall be disqualified if any one specimen shows defects exceeding these limitations.

Bend-test specimens shall be approximately 1 in. wide and may be oxygen cut. Both the cover and root bead reinforcement shall be removed flush with the pipe wall. Final removal of excess metal shall leave the surface free of deep scratches, and any remaining scratches shall be transverse to the weld.

Sharp edges shall be reduced to a smooth radius. One-half the number of specimens shall be subjected to face-bend tests, and the other half of the number of specimens shall be subjected to root-bend tests.

All bend-test specimens shall be tested in a guided-bend testjig. Each specimen shall be placed on the die with the weld at mid-span. Face-bend specimens shall be placed with the face of the weld directed toward the gap; root-bend specimens shall be placed with the root of the weld directed toward the gap. The plunger shall be forced into the gap until the curvature of the specimen is approximately u-shaped.

The bend-test shall be considered acceptable if:

(I) No crack or other defect exceeding ⅛ in. in any direction is present in the weld metal or between the weld and the pipe material after bending. (Cracks which originate along the edges of the specimen during testing and that are less than ¼ in. measured in any direction shall not be considered.) Welds in high-test pipe, which may not bend the full u-shape shall be qualified.

(II) The specimen cracks or fractures during bending and the exposed surface shows: Complete penetration and fusion throughout the entire thickness of the weld specimen; no more than 6 gas pockets per square inch with the greatest dimension not to exceed 1/16 in.; and no slag inclusions greater than 1/32 in. in depth or ⅛ in. in width and separated by at least ½ in. of sound metal. If necessary, the specimen shall be broken apart to permit examination of the fracture.

Should one of the welder's bend-test specimens fail to meet these requirements, and, in the opinion of the company representative, lack of penetration occurring is not representative of the weld, the test specimen may be replaced by an alternative specimen cut adjacent to the one that failed. The welder shall be disqualified if the alternative specimen also shows defects exceeding the specified limits.

The welder may be recognized as qualified only if the test weld presents a neat appearance and the specimens are acceptable as to tensile strength and soundness.

If, in the mutual opinion of the company and contractor representatives, failure of a welder to pass the test was because of unavoidable conditions or conditions beyond his control, such a welder may be given a second opportunity to qualify. No further retests shall be given until the welder has submitted proof of subsequent welder training acceptable to the company.

At the option of the company, the qualification weld may be examined by radiographic inspection in lieu of the tests specified. The welder shall be disqualified if the test weld fails to meet requirements of radiographic inspection.

Radiographic inspection shall not be used for the purpose of locating sound areas or areas containing discontinuities and thereafter making destructive tests of such areas to qualify or disqualify a welder.

Each welder shall identify his work in the manner prescribed by the company. Steel-die stamping shall not be used except as permitted by the company.

The company shall maintain a record of the welders employed, until the line is placed in operation, showing the date and results of qualification tests and the identification mark assigned to each.

The qualifying weld shall be made under the most severe conditions under which welding will be permitted in the field and using the same procedure as to be used in the field. The pipe shall be considered weldable if the requirements set forth herein are met. At least one such test weld shall be made for each 100 lengths of pipe in sizes over 4 in. in diameter. On sizes 4 inches and under one test will be required for each 400 lengths of pipe. If, in testing the weld, the above requirements cannot be met, the weldability may be established by making chemical tests for carbon and manganese. The number of chemical tests shall be the same as required for circumferential weld tests, stated above.

f. Surface defects.—All pipe shall be examined for gouges, grooves and dents, and shall be qualified in accordance with the provisions of §368.28(24)-(30).

g. Determination of yield strength.—When the manufacturer's specified minimum yield strength, tensile strength or elongation for the pipe is unknown, and no physical tests are made, the minimum yield strength for purposes of design shall be taken as not more than 24,000 psi. Alternately, the tensile properties may be established as follows:

Lot of	Number of tensile tests—all sizes
10 lengths or less	1 Set of tests from each length
11 to 100 lengths	1 Set of tests for each 5 lengths, but not less than 10
Over 100 lengths	1 Set of tests for each 10 lengths, but not less than 20

All test specimens shall be selected at random.

If the yield-tensile ratio exceeds .85, the pipe shall not be used except as provided in subsection (2) (f).

h. S value.—For pipe of unknown specification, the yield strength, to be used as S in the steel pipe design formula of §368.28(6), in lieu of the specified minimum yield strength shall be 24,000 psi. or determined as follows:

Determine the average value of all yield strength tests for a uniform lot. The value of S shall then be taken as the lesser of the following: 80% of the average value of the yield strength tests; the minimum value of any yield strength test, provided, however, that in no case shall S be taken as greater than 52,000 psi.

i. Hydrostatic test.—New or used pipe of unknown specification and all used pipe the strength of which is impaired by corrosion or other deterioration, shall be re-tested hydrostatically either length by length in a mill type test or in the field after installation before being placed in service, and the test pressure used shall establish the maximum allowable operating pressure subject to limitations described in §368.28 (10) (a) and (b).

History.—§5, ch. 59-304; §1, ch. 63-279.

368.08 Marking.—

(1) All valves, fittings, flanges, bolting, pipe and tubing, shall be marked in accordance with the marking sections of the standards and specifications to which reference is made in this code.

(2) Die stamping, if used, shall be done with dies having blunt or rounded edges to minimize stress concentrations.

History.—§6, ch. 59-304.

368.09 Material specifications. — Standard specifications for various materials must comply with the requirements of this code.

History.—§7, ch. 59-304.

368.10 Equipment specifications.—It is not intended to include in this code complete specifications for equipment, however, certain details of design and fabrication necessarily refer to equipment such as pipe hangers, vibration dampeners, electrical facilities, engines, compressors, etc. Partial specifications for such equipment items are given herein if they affect the safety of the piping system in which they are to be installed. In other cases where the code gives no specifications for the particular equipment item, the intent is that the safety provisions of the code shall govern insofar as they are applicable, and in any case the safety of equipment installed in a piping system shall be commensurate with that of other parts of the same system.

History.—§8, ch. 59-304.

368.11 Welding.—

(1) This code concerns the arc and gas welding of pipe joints in both wrought and cast steel materials, and more specifically covers butt joints in pipe, valves, flanges and fittings, and fillet welded joints in pipe branches, slip-on flanges, socket weld fittings, etc., as applied in pipelines and connections to apparatus or equipment. When valves or equipment are furnished with welding ends suitable for welding directly into a pipeline, the design, composition, welding, and stress relief procedures must be such that no significant damage will be likely to result from the welding or stress relieving operation. This code does not apply to the welding of longitudinal joints in the manufacture of pipe.

(2) These standards apply to manual shielded metal arc and gas welding, automatic submerged arc welding, and for other manual and automatic welding where applicable.

(3) These standards are based on the principle that a welding procedure has been established and qualified for sound and ductile welds. In applying these standards, the welder is required to qualify under the procedure employed. These standards establish the groupings of materials that can be welded under a procedure

which has been qualified with any one of the materials included in the group. The changes in material, filler metal, process or procedure that require requalification of either welding procedure or welder are set out in §368.14 (2) (a) or (b).

(4) The standards of quality for pipelines and mains to operate at 20% or more of the specified minimum yield strength are established under §368.20 and the methods of nondestructive and destructive examination are set out.

(5) All the welding done under the standards of this code shall be performed under a specification which at least embodies the requirements of this code.

History.—§9, ch. 59-304.

368.12 Types of welds.—

(1) BUTT WELDS.—Butt joints may be of the single Vee, double Vee, or other suitable type of groove. Joints with equal internal diameters will not be made with an outside offset greater than 1/8 in., or .3 times the lesser wall thickness. Joints with equal external diameters shall not be made with an internal offset greater than 3/32 in. If the offset is greater than 3/32 in. double weld, or bevel. Joints where internal and external diameters are unequal shall be treated as required in the individual cases described in §368.11.

(2) FILLET WELD.—Fillet welds may be concave to slightly convex. The size of a fillet weld is stated as the leg length of the largest inscribed right isosceles triangle.

(3) SEAL WELDS.—Seal welding shall be done by qualified welders. Seal welding of threaded joints is permitted but the seal welds shall not be considered as contributing to the strength of joints.

History.—§10, ch. 59-304.

368.13 Preparation for welding.—

(1) BUTT WELDS.—

(a) The welding surfaces shall be clean, and free of material that may be detrimental to the weld.

(b) 1. Up to 3/4 in. thickness weld ends may be prepared in one of the following ways:

a. Bevel from 30° to 35° with a 1/16 in. plus or minus 1/32 in. land.

b. Bevel 37-1/2° plus or minus 2-1/2° with a 1/16 in. plus or minus 1/32 in. land.

2. Thicknesses over ¾ in. will be beveled for the first 3/4 in. as in (1) (b) above and the remainder of the thickness will be beveled 10° plus or minus 1°.

(c) The ends of pipe to pipe, or pipe to fitting joints shall be aligned as accurately as practicable giving consideration to existing commercial tolerances on pipe diameters, pipe wall thickness and out of roundness. Alignment shall provide the most favorable condition for the deposition of the root bead and shall be preserved during welding of the root bead.

(d) Root opening of the joint shall be as given in the procedure specification employed.

(2) FILLET WELDS.—Minimum dimensions for fillet welds used in the attachment of slip-on flanges, for socket welded joints, shall be not less than 1.4 times the wall thickness of the pipe used. Fillet welds used in outside welded branch connections shall be made at a minimum angle of 45° and a span dimension of not less than 3/8 times the wall thickness of the branch but not less than 1/4 in., and a minimum of 1/16 in. and maximum of 1/8 in. land spacing. Branch connections made to the inside of the header will be made in the same manner. Fillet welds used in branch connections with localized reinforcement shall follow the same requirements as mentioned above. When saddles are used, all fillet welds made on the reinforcing saddle shall have a span equal to the wall thickness of the saddle used but not greater than the wall thickness of the header. When pads are used, all fillet welds will have a span equal to one-half the thickness of the pad but not less than 1/4 in.

All fillet welds will have equal leg dimensions and a minimum throat of .707 leg dimension.

History.—§11, ch. 59-304.

368.14 Qualification procedures for welders.—

(1) Welders whose work is limited to the application of the oxy-acetylene or manual arc welding processes on piping operating at hoop stresses of less than 20% of the specified minimum yield strength, shall be qualified under any of the references given in subsection (2).

(2) REQUIREMENTS FOR QUALIFICATION OF PROCEDURES AND WELDERS ON PIPELINES TO OPERATE AT HOOP STRESSES OF TWENTY PER CENT OR MORE OF THE SPECIFIED MINIMUM YIELD STRENGTH.—

(a) Welding procedures and welders performing work under this classification must be qualified by meeting the requirements of §368.07 (2) (g) 2. e.

(b) When welders qualified under §368.07 (2) (g) 2. e. are employed on compressor station piping, their qualifying test shall have been based upon the guided bend test.

(c) For the purposes of this code all carbon steels which have a carbon content not exceeding 0.32% by ladle analysis and a carbon equivalent (C+1/4Mn) not exceeding 0.65% by ladle analysis, are considered to come under material grouping P1. Alloy steels having weldability and hardenability characteristics demonstrated to be similar to these carbon steels shall be welded, preheated and stress relieved as prescribed herein for such carbon steels. Other alloy steels shall be welded, preheated, and stress relieved.

(d) Welder requalification tests shall be required if there is some specific reason to question a welder's ability or the welder is not engaged in a given process of welding (i.e., arc or gas) for a period of six months or more.

(e) Records of the tests that establish the

qualification of a welding procedure shall be maintained as long as that procedure is in use. The operating company or contractor shall, during the construction involved, maintain a record of the welders qualified, showing the date and results of tests.

History.—§12, ch. 59-304.

368.15 Tests of welders who are limited to work on lines operating at hoop stresses of less than 20% of the specified minimum yield strength.—

(1) An initial test shall qualify a man for work and thereafter his work shall be checked either by requalification at one year intervals or by cutting out and testing production work at least every six months.

(2) The test may be made on pipe of any diameter 12 in. or smaller. The test weld shall be made with the pipe in a horizontal fixed position so that the test weld includes at least one section of overhead position welding.

(3) The beveling, root opening and other details must conform to the procedure specification under which the welder is qualified.

(4) The test weld shall be cut into four coupons and subjected to the root bend test. If, as a result of this test, a crack develops in the weld material or between the weld and base metal more than 1/8 in. long in any direction, this shall be cause for rejection. Cracks occurring on the corner of the specimen during testing shall not be considered. If no more than one coupon is rejected, the weld is to be considered as acceptable.

(5) Welders who are to make welded service conections to mains should be required to satisfactorily pass the following tests:

(a) Weld a service connection fitting to a pipe section having the same diameter as a typical main. This weld should be made in the same position as this type of weld is made in the field. The weld should be rejected if it shows a serious undercutting or if it has rolled edges.

(b) The weld should be tested by attempting to break the fitting off the run pipe by an available means (knocking off). A sample shall be rejected if the broken weld at the junction of the fitting and run pipe shows incomplete fusion, overlap, or poor penetration.

(6) For the periodic checking of welders who work on small services only (2 in. or smaller in diameter), the following special field test may be employed. This test should not be used as a substitute for the original qualifying test.

(a) Two sample welds made by the welder under test should be taken from steel service pipe. Each sample shall be cut 8 in. long with the weld located approximately in the center. One sample shall have the ends flattened and the entire joint subjected to the tensile strength test. Failure must be in the parent metal and not adjacent to or in the weld metal to be acceptable. The second sample shall be centered in the guided bend testing machine and bent to the contour of the die for a distance of 2 in. on each side of the weld. The sample to be acceptable must show no breaks or cracks after removal from the bending machine.

When a tensile strength testing machine is not available, two bend test samples will be acceptable in lieu of one tension and one bending test.

(7) Personnel who are to work on copper piping should satisfactorily pass the following tests:

(a) A brazed copper bell joint should be made on any size of copper pipe used, with the axis of the pipe stationary and in the horizontal position. The joint so welded is to be sawed open, longitudinally at the top of the pipe. (The top being the uppermost point on the circumference at time joint is brazed.) The joint should be spread apart for examination. The bell end of the joint must be completely bonded. The spigot end of the joint must give evidence that the brazing alloy has reached at least 75% of the total area of the telescoped surfaces. At least 50% of the length at the top of the joint must be joined.

(8) Records shall be kept of the original tests and all subsequent tests conducted on the work of each welder.

History.—§44, ch. 59-304.

368.16 Welding procedure.—

(1) The welding procedure followed during the qualifying tests shall be recorded in detail, and shall be adhered to during subsequent construction.

(2) Welding shall not be done when the quality of the completed weld would be likely to be impaired by the prevailing weather conditions including, but not limited to, airborne moisture, blowing sand, or high wind. Wind shields may be used when practicable.

History.—§13, ch. 59-304.

368.17 Preheating.—

(1) Carbon steels having a carbon content in excess of 0.32% (ladle analysis) or a carbon equivalent (C+1/4Mn) in excess of 0.65% (ladle analysis) shall be preheated. Steels having lower carbon or carbon equivalent may also be preheated when conditions exist that either limit the welding technique that can be used, or that tend to adversely affect the quality of the weld.

(2) When welding dissimilar materials having different preheating requirements, the material requiring the higher preheat shall govern.

(3) Preheating may be accomplished by any suitable method, provided that it is uniform and that the temperature does not fall below the prescribed minimum during the actual welding operations.

(4) The preheating temperature shall be checked by the use of temperature indicating crayons, thermocouple pyrometers or other suitable method to assure that the required pre-

heat temperature is obtained prior to and maintained during the welding operation.

History.—§14, ch. 59-304.

368.18 Stress relieving.—

(1) Carbon steels having a carbon content in excess of 0.32% (ladle analysis) or a carbon equivalent (C+1/4 Mn) in excess of 0.65% (ladle analysis) shall be stress relieved. Stress relieving may also be advisable for steels having lower carbon or carbon equivalent when adverse conditions exist which too rapidly cool the weld.

(2) Welds in all carbon steels shall be stress relieved when the wall thickness exceeds 1-1/4 in.

(3) When the welded joint connects parts that are of different thicknesses but of similar materials, the thickness to be used in applying the rules in subsections (1) and (2) shall be:

(a) The thicker of the two pipes joined.

(b) The thickness of the pipe run or header in case of branch connections, slip-on flanges or socket weld fittings.

(4) In welds between dissimilar materials, if either material requires stress relieving, the joint shall require stress relieving.

(5) All welding of connections and attachments shall be stress relieved when the pipe is required to be stress relieved by the rules of subsection (3) with the following exceptions:

(a) Fillet and groove welds not over 1/2 in. in size (leg) that attach connections not over 2-in. pipe size.

(b) Fillet and groove welds not over 3/8 in. in groove size which attach supporting members or other non-pressure attachments.

(6) STRESS RELIEVING TEMPERATURE.—

(a) Stress relieving shall be performed at a temperature of 1100° F. or over for carbon steels, and 1200° F. or over for ferritic alloy steels. The exact temperature range shall be stated in the procedure specification.

(b) When stress relieving a joint between dissimilar metals having different stress relieving requirements, the material requiring the higher stress relieving temperature shall govern.

(c) The parts heated shall be brought slowly to the required temperature and held at that temperature for a period of time proportioned on the basis of at least 1 hour per in. of pipe wall thickness, but in no case less than 1/2 hour, and shall be allowed to cool slowly and uniformly.

(7) METHODS OF STRESS RELIEVING.—

(a) Heating the complete structure as a unit.

(b) Heating a complete section containing the weld or welds to be stress relieved before attachment to other sections of work.

(c) Heating a part of the work by heating slowly a circumferential band containing the weld at the center. The width of the band which is heated to the required temperature shall be at least 2 in. greater than the width of the weld reinforcement. Care should be used to obtain a uniform temperature around the entire circumference of the pipe. The temperature shall diminish gradually outward from the ends of this band.

(d) Branches, or other welded attachments for which stress relief is required, may be locally stress relieved by heating a circumferential band around the pipe on which the branch or attachment is welded with the attachment at the middle of the band. The width of the band shall be at least 2 in. greater than the diameter of the weld joining the branch or attachment to the header. The entire band shall be brought up to the required temperature and held for the time specified.

(8) EQUIPMENT FOR LOCAL STRESS RELIEVING.—

(a) Stress relieving may be accomplished by: Electric induction, electric resistance, fuel-fired ring burners, fuel-fired torch or other suitable means of heating provided that a uniform temperature is obtained and maintained during the stress relieving.

(b) The stress relieving temperature shall be checked by the use of thermo-couple pyrometers or other suitable equipment to be assured that the proper stress relieving cycle has been accomplished.

History.—§15, ch. 59-304.

368.19 Welding inspection and tests.—

(1) INSPECTION OF WELDS ON PIPING SYSTEMS INTENDED TO OPERATE AT LESS THAN 20% OF THE SPECIFIED MINIMUM YIELD STRENGTH.—The quality of welding should be checked visually on a sampling basis, and if there is any reason to believe that the weld is defective, it shall be removed from the line and tested in accordance with the specification or it may be subject to a nondestructive test as outlined in subsection (2).

(2) INSPECTION AND TESTS OF WELDS ON PIPING SYSTEMS INTENDED TO OPERATE AT 20% OR MORE OF THE SPECIFIED MINIMUM YIELD STRENGTH.—

(a) The quality of welding should be checked by nondestructive tests or by removing completed welds as selected and designated by the operating company. Nondestructive testing may consist of radiographic examination, magnetic particle testing, or other acceptable methods. The trepanning method of nondestructive testing is prohibited.

(b) When radiographic examination is employed, the number and location of welds examined shall be at the discretion of the operating company.

(c) Completed welds which have been removed for inspection shall, to be acceptable, successfully meet the testing requirements outlined under the welder qualification procedure, and in addition, shall meet the standards of acceptability contained in §368.20.

History.—§16, ch. 59-304.

368.20 Standards of acceptability of welds on pipelines intended to operate at 20% or more of the specified minimum yield strength.—

(1) INADEQUATE PENETRATION AND INCOMPLETE FUSION.—Any individual inadequate penetration or incomplete fusion shall not exceed 1 in. in length. In any 12-in. length of weld, the total length of inadequate penetration or incomplete fusion shall not exceed 1 in. The total length of the inadequate penetration or incomplete fusion in any two succeeding 12-in. lengths shall not exceed 2 in. and individual defects shall be separated by at least 6 in. of sound weld metal.

(2) BURN-THROUGH AREAS.—Any individual burn-through area shall not exceed 3/4 in. in length. In any 12-in. length of weld, the total length of burn-through area shall not exceed 1-1/2 in. the total length of burn-through area in any two succeeding 12-in. lengths shall not exceed 3 in., and individual defects shall be separated by at least 6 in. of sound weld metal.

(3) ELONGATED SLAG INCLUSIONS.—Any elongated slag inclusions shall not exceed 2 in. in length or 1/16 in. in width. In any 12-in. length of weld, the total length of elongated slag inclusions shall not exceed 2 in. The total length of elongated slag inclusions in any two succeding 12-in. lengths, shall not exceed 4 in., and individual defects shall be separated by at least 6 in. of sound weld metal. Parallel slag lines shall be considered as individual defects if they are wider than 1/32 in.

(4) ISOLATED SLAG INCLUSIONS.—The maximum width of any isolated slag inclusions shall not exceed 1/8 in. In any 12-in. length of weld, the total length of isolated slag inclusions shall not exceed 1 in., nor shall there be more than four isolated slag inclusions of the maximum width of 1/8 in. in this length. Any two such inclusions shall be separated by 2 in. of sound weld metal. In any 24-in. length of weld, the total length of isolated slag inclusions shall not exceed 2 in.

(5) GAS POCKETS.—The maximum dimensions of any individual gas pocket shall not exceed 1/8 in. Maximum distribution of gas pockets shall not exceed any distribution which is acceptable in standard welding practices.

(6) CRACKS.—No welds containing cracks, regardless of size or location shall be acceptable until such welds have been repaired in conformance with subsection (9).

(7) ACCUMULATION OF DISCONTINUITIES.—Any accumulation of discontinuities having a total length of more than 2 in. in a weld length of 12 in. is unacceptable. Any accumulation of discontinuities which total more than 10% of the weld length of a joint is unacceptable.

(8) UNDERCUTTING. — Undercutting adjacent to the cover bead on the outside of the pipe shall not exceed 1/32 in. in depth and 2 in. in length. Undercutting adjacent to the root bead on the inside of the pipe shall not exceed 2 in. in length.

(9) REPAIR OF DEFECTS.—

(a) Except as provided in paragraph (g), defective welds shall be repaired or removed from the pipeline at the request of the company representative. The company may authorize repairs of defects in the root and filler beads, but any weld that shows evidence of repair work having been done without authorization by the company may be rejected.

(b) Minor cracks in the surface and filler beads may be repaired when so authorized by the company, but any crack penetrating the root bead or the second bead shall be cause for complete rejection of the weld. The entire weld shall then be cut from the pipeline and replaced. Minor cracks shall be defined as cracks visible in the surface bead and not over 2 in. in length.

(c) Before repairs are made, injurious defects shall be removed by chipping, grinding, or oxygen gouging to clean metal. All slag and scale shall be removed by wire brushing.

(d) All such areas should be preheated before the repair weld is started.

(e) Repaired areas shall be carefully inspected and radiographed when considered necessary.

(f) No further repairs shall be allowed in repaired areas.

(g) Repairs may be made to pin holes and undercuts in the final bead without authorization, but must meet with the approval of the company.

History.—§17, ch. 59-304.

368.21 Piping system components and fabrication details.—

(1) The purpose of §§368.21-368.26 is to provide a set of standards for piping systems covering:

(a) Specifications for, and selection of, all items and accessories entering into the piping system, other than the pipe itself.

(b) Acceptable methods of making branch connections.

(c) Provisions to be made to care for the effects of temperature changes.

(d) Approved methods for support and anchorage of piping systems, both exposed and buried.

History.—§18, ch. 59-304.

368.22 Piping system components.—

(1) All components of piping systems, including valves, flanges, fittings, headers, special assemblies, etc., shall be designed to withstand operating pressures, and other specified loadings, with unit stresses not in excess of those permitted for comparable material in pipe in the same location and type of service. Components shall be selected that are designed to withstand the field test pressure to which they will be subjected without failure or leak-

age, and without impairment of their serviceability.

(a) Valves shall be used only in accordance with the service recommenadtion of the manufacturer. Valves shall conform to standards governing minimum wall thickness, materials and dimensions, and may be used in accordance with their pressure-temperature ratings.

(b) Screw-end valves shall be threaded according to standard practices.

(c) Pressure-reducing devices shall conform to the requirements of this code for valves in comparable service conditions.

(2) FLANGE TYPES AND FACINGS.—

(a) The dimensions and drilling for all line or end flanges shall conform to standard practices. Flanges cast or forged integral with pipe, fittings or valves will be permitted in sizes and for the maximum service ratings, subject to the facing, bolting and gasketing requirements of this subsection and subsections (3) and (4).

(b) Screwed companion flanges which comply with standard practices will be permitted in allowable sizes and for maximum service ratings.

(c) Lapped flanges will be permitted in acceptable sizes and pressure standards.

(d) Slip-on welding flanges will be permitted in acceptable sizes and pressure standards. Slip-on flanges of rectangular section may be substituted for hubbed slip-on flanges provided the thickness is increased as required to produce equivalent strength.

(e) Welding neck flanges will be permitted in acceptable sizes and pressure standards. The bore of the flange should correspond to the inside diameter of the pipe used.

(f) Cast iron and steel flanges shall have contact faces finished.

(g) Nonferrous flanges shall have contact faces finished.

(h) 25 psi and class 125 cast-iron integral or screwed companion flanges may be used with a full-face gasket or with a flat ring gasket extending to the inner edge of the bolt holes. When using a full-face gasket, the bolting may be of heat-treated carbon steel, or alloy steel. When using a ring gasket, the bolting shall be of carbon steel, grade B, without heat treatment other than stress relief.

(i) When bolting together two class 250 integral or screwed companion cast-iron flanges, having 1/16-in. raised faces, the bolting shall be of carbon steel, grade B, without heat treatment other than stress relief.

(j) 150 psi steel flanges may be bolted to class 125 cast-iron flanges. When such construction is used, the 1/16-in. raised face on the steel flange shall be removed. When bolting such flanges together using a flat ring gasket extending to the inner edge of the bolt holes, the bolting shall be of carbon steel without heat treatment other than stress relief. When bolting such flanges together using a full-face gasket, the bolting may be heat-treated carbon steel or alloy steel.

(k) 300 psi steel flanges may be bolted to class 250 cast-iron flanges. When such construction is used, the bolting shall be of carbon steel, grade B, without heat treatment other than stress relief. The raised face on the steel flange should be removed, but also in this case, bolting shall be of carbon steel equivalent to grade B.

(3) BOLTING.—

(a) Bolts or bolt studs shall extend completely through the nuts. Standard screw threads, coarse thread series, shall govern bolt and nut threads for carbon steel bolting per grade B, and standard screw threads for high-strength bolting shall govern bolt, bolt-stud and nut threads for carbon steel bolting and alloy steel bolting. Bolt heads shall conform to the regular square head or heavy hexagon dimensions and nuts shall conform to the heavy hexagon dimensions for wrench-head bolts and nuts. For all flange joints where pressure exceeds 300 psi and temperatures are in excess of ordinary atmospheric temperature, alloy steel bolting material is recommended, but high strength carbon steel bolting material may be used. Carbon steel bolting grade B may be used for pressure 300 pounds or lower where the temperature does not exceed 450°. Alloy steel bolting material shall be used for insulating flanges, and for flanged piping in compressor stations, where flanges require a rating exceeding 300 pounds. Nuts shall be in accordance with specification for carbon and alloy steel nuts for bolts for high pressure and high temperature service. Nuts cut from bar stock in such a manner that their axis will be parallel to the direction of rolling of the bar may be used in all sizes for joints in which one or both flanges are cast iron and for joints with steel flanges where the pressure does not exceed 250 psi; they shall not be used for joints in which both flanges are steel and the pressure exceeds 250 psi, except for nut sizes ½ in. smaller, which are permissible in any case.

(b) ⅛-in. undersize bolting may be used on insulating flanges provided that alloy steel bolting material is used.

(4) GASKETS.—

(a) Material for gaskets shall be capable of withstanding the maximum pressure and of maintaining its physical and chemical properties, at any temperature to which it might reasonably be subjected in service.

(b) Gaskets used under pressure and at temperatures above 250° F. shall be of noncombustible material. Metallic gaskets shall not be used with 150 lb. standard or lighter flanges.

(c) Asbestos composition gaskets may be used as permitted in standard pipe line practices. This type of gasket may be used with any of the various flange facings except small male and female, or small tongue and groove.

(d) The use of metal or metal-jacketed asbestos gaskets (either plain or corrugated) is not limited as to pressure provided that the gasket material is suitable for the service temperature. These types of gaskets are recom-

mended for use with the small male and female or the small tongue and groove facings. They may also be used with steel flanges with any of the following facings; lapped, large male and female, large tongue and groove, or raised face.

(e) Full-face gaskets shall be used with all bronze flanges, and may be used with 25 psi or class 125 cast iron flanges. Flat ring gaskets with an outside diameter extending to the inside of the bolt holes may be used with cast iron flanges, with raised face steel flanges, or with lapped steel flanges.

(f) In order to secure higher unit compression on the gasket, metallic gaskets of a width less than the full male face of the flange may be used with raised face, lapped or large male and female facings. Width of gasket for small male and female or for tongue and groove joints shall be equal to the width of the male face or tongue.

(g) Rings for ring joints shall be 9/16 in. high and 5/16 in. wide. The material for these rings shall be suitable for the service conditions encountered and shall be softer than the flanges.

(h) The insulating material shall be suitable for the temperature, moisture and other conditions where it will be used.

(5) STANDARD FITTINGS.—

(a) The minimum metal thickness of flanged or screwed fittings shall not be less than specified for the pressures and temperatures in standard practices.

(b) Steel butt-welding fittings (not flanged) shall have pressure and temperature ratings based on stresses for pipe of the same or equivalent material. To insure adequacy of fitting design, the actual bursting strength of fittings shall at least equal the computed bursting strength of pipe of the designated material and wall thickness. Mill hydrostatic testing of factory made steel butt-welding fittings is not required, but all such fittings shall be capable of withstanding a field test pressure equal to the test pressure established by the manufacturer, without failure or leakage, and without impairment of their serviceability.

(c) Steel socket-welding fittings shall comply with standards for steel socket-welding fittings.

(6) SPECIAL FITTINGS.—When special cast, forged, wrought, or welded fittings are required to dimensions differing from those of regular shapes, standard dimensions should be adhered to, however, other designs of at least equal strength and tightness and capable of withstanding the same test requirements may be substituted.

(7) BRANCH CONNECTIONS.—

(a) Welded branch connections on steel pipe must meet the design requirements of subsections (9) to (14), inclusive.

(b) Threaded taps in cast iron pipe are permitted, without reinforcement, to a size not more than 25% of the nominal diameter of the pipe, except that 1¼ in. taps are permitted in four in. pipe. Larger taps shall be covered by a reinforcing sleeve.

(c) Mechanical fittings may be used for making hot taps on pipelines and mains; provided they are designed for the operating pressure of the pipeline or main, and are suitable for the purpose.

(8) SPECIAL COMPONENTS FABRICATED BY WELDING.—

(a) This section covers piping system components other than assemblies consisting of standard pipe and fittings joined by circumferential welds.

(b) All welding shall be performed using procedures and operators that are qualified in accordance with the requirements of §368.14.

(c) Branch connections shall meet the design requirements of subsections (9) to (14), inclusive.

(d) The design of other components shall be in accordance with recognized engineering practice and applicable requirements of this code.

(e) Prefabricated units, other than regularly manufactured butt-welding fittings, which employ plate and longitudinal seams as contrasted with pipe that has been produced and tested under one of the specifications listed in this code, shall be designed, constructed and tested under standard practices.

(f) Orange-peel bull plugs and orange-peel swages are prohibited on systems operating at stress levels of 20% or more of the specified minimum yield strength of the pipe material. Fish tails and flat closures are permitted for 3 in. diameter pipe and smaller, operating at less than 100 psi. Fish tails on pipe larger than 3 in. diameter are prohibited.

(g) Every prefabricated unit produced under this section of the code shall successfully withstand a pressure test without failure, leakage, distress or distortion other than elastic distortion, at a pressure equal to the test pressure of the system in which it is installed, either before installation or during the system test. When such units are to be installed in existing systems, they shall be pressure tested before installation, if feasible; otherwise, they shall withstand a leak test at the operating pressure of the line.

(9) GENERAL REQUIREMENTS. — All welded branch connections shall meet the following requirements:

(a) When branch connections are made to pipe in the form of a single connection or in a header or manifold as a series of connections. the design must be adequate to control the stress levels in the pipe within safe limits. The construction shall take cognizance of the stresses in the remaining pipe wall due to the opening in the pipe or header, the shear stresses produced by the pressure acting on the area of the branch opening, and any external load-

ings due to thermal movement, weight, vibration, etc. The following paragraphs provide design rules for the usual combinations of the above loads, except excessive external loads.

(b) The reinforcement required in the crotch section of a welded branch connection shall be determined by the rule that the metal area available for reinforcement shall be equal to or greater than the required area.

(c) The required cross-sectional area AR is defined as the product of d times t:

$$AR = d \times t$$

where, d = the length of the finished opening in the header wall measured parallel to the axis of the run.

t = the nominal header wall thickness required by §368.28(6) for the design pressure and temperature.

When the pipe wall thickness includes an allowance for corrosion or erosion, all dimensions used shall be those that will result after the anticipated corrosion or erosion has taken place.

(d) The area available for reinforcement shall be the sum of:

1. The cross-sectional area resulting from any excess thickness available in the header thickness (over the minimum required for the header as defined in paragraph (c) of this subsection and which lies within the reinforcement area as defined in paragraph (e) of this subsection.

2. The cross-sectional area resulting from any excess thickness available in the branch wall thickness over the minimum thickness required for the branch and which lies within the reinforcement area as defined in paragraph (e) of this subsection.

3. The cross-sectional area of all added reinforcing metal including weld metal, which is welded to the header wall and lies within the reinforcement area as defined in paragraph (e) of this subsection.

(e) The area of reinforcement is defined as a rectangle whose length shall extend a distance "d" on each side of the transverse centerline of the finished opening and whose width shall extend a distance of 2½ times the header wall thickness on each side of the surface of the header wall, except that in no case shall it extend more than 2½ times the thickness of the branch wall from the outside surface of the header or of the reinforcement, if any.

(f) The material of any added reinforcement shall have an allowable working stress at least equal to that of the header wall, except that material of lower allowable stress may be used if the area is increased in direct ratio of the allowable stresses for header and reinforcement material respectively.

(g) The material used for ring or saddle reinforcement may be of specifications differing from those of the pipe, provided the cross-sectional area is made in correct proportion to the relative strength of the pipe and reinforcement materials at the operating temperatures and provided it has welding qualities comparable to those of the pipe. No credit shall be taken for the additional strength of material having higher strength than that of the part to be reinforced.

(h) When rings or saddles are used which cover the weld between branch and header, a vent hole shall be provided in the ring or saddle to reveal leakage in the weld between branch and header and to provide venting during welding and heat treating operations. Vent holes should be plugged during service to prevent crevice corrosion between pipe and reinforcing member, but no plugging material should be used that would be capable of sustaining pressure within the crevice.

(i) The use of ribs or gussets shall not be considered as contributing to reinforcement of the branch connection. This does not prohibit the use of ribs or gussets for purposes other than reinforcement, such as stiffening.

(j) The branch shall be attached by the weld for the full thickness of the branch or header wall plus a fillet weld "W_1". The use of concave fillet welds is to be preferred to further minimize corner stress concentration. Ring or saddle reinforcement shall be attached. When a full fillet is not used it is recommended that the edge of the reinforcement be relieved or chamfered at approximately 45° to merge with the edge of the fillet.

(k) Reinforcement rings and saddles shall be accurately fitted to the parts to which they are attached.

(l) Branch connections attached at an angle less than 85° to the run become progressively weaker as the angle becomes less. Any such design must be given individual study and sufficient reinforcement must be provided to compensate for the inherent weakness of such construction. The use of encircling ribs to support the flat or re-entering surfaces is permissible, and may be included in the strength calculations. The designer is cautioned that stress concentrations near the ends of partial ribs, straps or gussets may defeat their reinforcing value.

(10) SPECIAL REQUIREMENTS.—In addition to the requirements of subsection (9), branch conections must meet the special requirements for reinforcement of welded branch connections:

Ratio of design hoop stress to minimum specified yield strength in the header	Ratio of nominal branch diameter to nominal header diameter		
	Less than 25%	25 to 50%	50% and more
Less than 20%	g.	g.	h.
20 to 50%	i. d.	i.	i. h.
50% and more	c. d. e.	b. e.	a. e. f.

(a) Smoothly contoured wrought steel of proven design are preferred. When tees cannot be used, the reinforcing member shall extend around the circumference of the header. Pads, partial saddles, or other types of localized reinforcement are prohibited.

(b) Smoothly contoured tees of proven design are preferred. When tees are not used, the

reinforcing member should be of the complete encirclement type but may be of the pad type, saddle type, or a welding outlet fitting.

(c) The reinforcement member may be of the complete encirclement type, pad type, saddle type, or a welding outlet fitting type. The edges of reinforcement members should be tapered to the header thickness. Legs of fillet welds joining the reinforcement member and header should not exceed the thickness of the header.

(d) Reinforcement calculations are not required for openings 2 in. and smaller in diameter; however, care should be taken to provide suitable protection against vibrations and other external forces to which these small openings are frequently subjected.

(e) All welds joining the header, branch and reinforcing member shall be equivalent to those referred to in §368.13(2).

(f) The inside edges of the finished opening shall, whenever possible, be rounded to a 1/8 in. radius. If the encircling member is thicker than the header and is welded to the header, the ends shall be tapered down to the header thickness and continuous fillet welds made.

(g) Reinforcement of openings is not mandatory, however, reinforcement may be required for special cases involving pressures over 100 psi, thin wall pipe or severe external loads.

(h) If a reinforcement member is required, and the branch diameter is such that a localized type of reinforcement member would extend around more than half the circumference of the header, then a complete encirclement type of reinforcement member shall be used, regardless of the design hoop stress; or a smoothly contoured wrought steel tee of proven design may be used.

(i) The reinforcement may be of any type meeting the requirements of subsection (9).

(11) REINFORCEMENT OF MULTIPLE OPENINGS.—When two or more adjacent branches are spaced at less than two times their average diameter (so that their effective areas of reinforcement overlap) the group of openings shall be reinforced in accordance with subsection (9). The reinforcing metal shall be added as a combined reinforcement, the strength of which shall equal the combined strengths of the reinforcements that would be required for the separate openings. In no case shall any portion of a cross-section be considered to apply to more than one opening, or be evaluated more than once in a combined area.

(12) When more than two adjacent openings are to be provided with a combined reinforcement, the minimum distance between centers of any two of these openings shall preferably be at least 1-1/2 times their average diameter, and the area of reinforcement between them shall be at least equal to 50% of the total required for these two openings on the cross-section being considered.

(13) When two adjacent openings as considered under subsection (12) have the distance between centers less than 1-1/3 times their average diameter, no credit for reinforcement shall be given for any of the metal between these two openings.

(14) Any number of closely spaced adjacent openings, in any arrangement may be reinforced as if the group were treated as one assumed opening of a diameter enclosing all such openings.

History.—§19, ch. 59-304.

368.23 Expansion and flexibility.—

(1) This section is applicable to above ground piping only and covers all classes of materials permitted by this code up to temperatures no greater than 450° F.

(2) AMOUNT OF EXPANSION.—The thermal expansion of the more common materials used for piping shall be determined from the following table:

Thermal expansion of piping materials
Carbon and low alloy
High tensile steel
and wrought iron

Temperature degree F.	Total expansion in inches per 100 feet above 32° F.
32	0.
60	0.2
100	0.5
125	0.7
150	0.9
175	1.1
200	1.3
225	1.5
250	1.7
300	2.2
350	2.6
400	3.0
450	3.5

The expansion to be considered is the difference between the expansion for the maximum expected operating temperature and that for the expected average erection temperature. For materials not included in this table, or for precise calculations, reference shall be made to authoritative source data, such as publications of the national bureau of standards.

(3) FLEXIBILITY REQUIREMENTS.—

(a) Piping systems shall be designed to have sufficient flexibility to prevent thermal expansion or contraction from causing excessive stresses in the piping material, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment or at anchorage or guide points. Formal calculations shall be required only where reasonable doubt exists as to the adequate flexibility of the system.

(b) Flexibility shall be provided by the use of bends, loops, or offset; or provisions shall be made to absorb thermal changes by the use of expansion joints or couplings of the slip joint type or expansion joints of the bellows type. If expansion joints are used, anchors or ties of sufficient strength and rigidity shall be in-

stalled to provide for end forces due to fluid pressure and other causes.

(c) In calculating the flexibility of a piping system the system shall be treated as a whole. The significance of all parts of the line and all restraints, such as solid supports or guides, shall be considered.

(d) Calculations shall take into account stress intensification factors found to exist in components other than plain straight pipe. Credit may be taken for the extra flexibility of such components. In the absence of more directly applicable data, the flexibility factors and stress intensification factors may be used.

(e) Properties of pipe and fittings for these calculations shall be based on nominal dimensions, and the joint factor E shall be taken as 1.00.

(f) The total range in temperature shall be used in all expansion calculations, whether piping is cold-sprung or not. In addition to the expansion of the line itself, the linear and angular movements of the equipment to which it is attached shall be considered.

(g) In order to modify the effect of expansion and contraction, runs of pipe may be cold sprung. Cold spring may be taken into account in the calculations of the reactions as shown in §368.24(5) provided an effective method of obtaining the desired cold spring is specified and used.

(h) Flexibility calculations shall be based on the modulus of elasticity E_c at ambient temperature.

History.—§20, ch. 59-304.

368.24 Combined stress calculations.—

(1) Using the above assumptions, the stresses and reactions due to expansion shall be investigated at all significant points.

(2) The expansion stresses shall be combined in accordance with the following formula:

$S_E = \sqrt{S_b^2 + 4S_t^2}$

Where S_b=i M_b/Z=Resultant bending stress, psi.

S_t=$M_t/2Z$=Torsional stress, psi.

M_b=Resultant bending moment, lb. in.

M_t=Torsional moment, lb. in.

Z=Section modulus of pipe, in.^{3}.

i=Stress intensification factor.

(3) The maximum computed expansion stress range, S_E' shall not exceed 0.72S, where S is the specified minimum yield strength, psi; subject to the further limitation of subsection (4).

(4) The total of the following shall not exceed the specified minimum yield strength, S:

(a) The combined stress due to expansion, S_E,

(b) The longitudinal pressure stress,

(c) The longitudinal bending stress due to external loads, such as weight of pipe and contents, wind, etc.

The sum of the longitudinal pressure stress and the longitudinal bending stress due to external loads shall not exceed 75% of the allowable stress in the hot condition (S x F x T).

(5) The reactions R′ shall be obtained as follows from the reactions R derived from the flexibility calculations:

$R'=(1-2/3C_sR)$, when C_s is less than 0.6

$R'=C_sR$, when C_s is between 0.6 and 1.0

Where

C_s=The cold spring factor varying from zero for no cold spring to one for 100% cold spring.

R=Range of reactions corresponding to the full expansion range based on E_c.

E_c=The modulus of elasticity in the cold condition.

R′ is maximum reaction for the line after cold-springing.

The reactions so computed shall not exceed limits which the attached equipment or anchorage is designed to sustain.

History.—§21, ch. 59-304.

368.25 Supports and anchorage for exposed piping.—

(1) GENERAL. — Piping and equipment shall be supported in a substantial and workmanlike manner, so as to prevent or damp out excessive vibration, and shall be anchored sufficiently to prevent undue strains on connected equipment.

(2) PROVISION FOR EXPANSION.—Supports, hangers and anchors should be so installed as not to interfere with the free expansion and contraction of the piping between anchors. Suitable spring hangers, sway bracing, etc., shall be provided where necessary.

(3) MATERIALS, DESIGN AND INSTALLATION.—All permanent hangers, supports, and anchors shall be fabricated from durable incombustible materials, and designed and installed in accordance with the good engineering practice for the service conditions involved. All parts of the supporting equipment shall be designed and installed so that they will not be disengaged by movement of the supported piping.

(4) FORCES ON PIPE JOINTS.—

(a) All exposed pipe joints shall be able to sustain the maximum end force due to the internal pressure, i.e., the design pressure (psi) times the internal area of the pipe (sq. in.); as well as any additional forces due to temperature expansion or contraction, or to the weight of pipe and contents.

(b) If compression or sleeve-type couplings are used in exposed piping, provision shall be made to sustain the longitudinal forces noted in paragraph (a) of this subsection. If such provision is not made in the manufacture of the coupling, suitable bracing or strapping shall be provided; but such design must not interfere with the normal performance of the coupling nor with its proper maintenance. Attachments must meet the requirements of subsection (5).

(5) ATTACHMENT OF SUPPORTS OR ANCHORS.—

(a) If the pipe is designed to operate at a hoop stress of less than 50% of the specified minimum yield strength, structural supports or anchors may be welded directly to the pipe. Proportioning and welding strength requirements of such attachments shall conform to standard structural practice.

(b) If the pipe is designed to operate at a hoop stress of 50% or more of the specified minimum yield strength, support of the pipe shall be furnished by a member which completely encircles it. Where it is necessary to provide positive attachment, as at an anchor, the pipe may be welded to the encircling member only; the support shall be attached to the encircling member, and not to the pipe. The connection of the pipe to the encircling member shall be by continuous, rather than intermittent, welds.

History.—§22, ch. 59-304.

368.26 Anchorage for buried pipe.—

(1) GENERAL.—Bends or offsets in buried pipe cause longitudinal forces, which must be resisted by anchorage at the bend, by restraint due to friction of the soil or by longitudinal stresses in the pipe.

(2) ANCHORAGE AT BENDS.—If the pipe is anchored by bearing at the bend, care shall be taken to distribute the load on the soil so that the bearing pressure is within safe limits for the soil involved.

(3) RESTRAINT DUE TO SOIL FRICTION.—Where there is doubt as to the adequacy of anchorage by soil friction, calculations should be made.

(4) FORCES ON PIPE JOINTS.—If anchorage is not provided at the bend, pipe joints which are close to the points of thrust origin shall be designed to sustain the longitudinal pullout force. If such provision is not made in the manufacture of the joint, suitable bracing or strapping shall be provided, unless calculations show the joint to be safe.

(5) SUPPORTS FOR BURIED PIPING.—

(a) In pipelines, especially those which are highly stressed from internal pressure, uniform and adequate support of the pipe in the trench is essential. Unequal settlements may produce added bending stresses in the pipe. Lateral thrusts at branch connections may greatly increase the stresses in the branch connection itself, unless the fill is thoroughly consolidated or other provisions made to resist the thrust.

(b) When openings are made in a consolidated backfill to connect new branches to an existing line, care must be taken to provide firm foundation for both the header and the branch, to prevent both vertical and lateral movements.

(6) INTERCONNECTION OF UNDERGROUND LINES.—Underground lines are subjected to longitudinal stresses due to changes in pressure and temperature. For long lines, the friction of the earth will prevent changes in length from these stresses, except for several hundred feet adjacent to bends or ends. At these locations the movement, if unrestrained, may be of considerable magnitude. If connections are made at such a location to a relatively unyielding line, or other fixed object, it is essential that the interconnection shall have ample flexibility to care for possible movement, or that the line shall be provided with an anchor sufficient to develop the forces necessary to limit the movement.

History.—§23, ch. 59-304.

368.27 Design, installation, and testing.— The design requirements of this code are intended to be adequate for public safety under all conditions usually encountered in the gas industry. However, special conditions that may cause additional stress in any part of a line or its appurtenances shall be provided for, using good engineering practice. Examples of such special conditions include: long self-supported spans, unstable ground, mechanical or sonic vibrations, weight of special attachments, and thermal forces other than seasonal.

History.—§24, ch. 59-304.

368.28 Steel pipe.—

(1) (a) POPULATION DENSITY INDICES.—Two population density indices, determined at the time of initial construction, are used to classify locations for design and testing purposes: the 1-mile density index, which applies to any specific mile of pipeline; and the 10-mile density index, which applies to any specific 10-mile length of pipeline.

(b) To determine the 1-mile density indices for a proposed pipeline, lay out a zone one-half mile wide along the route of the pipeline on the center line of this zone. Divide the zone into lengths, each containing one mile of pipeline. Count the number of buildings intended for human occupancy in each of these lengths. These numbers are the 1-mile indices for the pipeline.

(c) To determine the 10-mile density indices for any given 10-mile length of pipeline, proceed as follows: Add the 1-mile density indices for the 10-mile section. In case a 1-mile index equals or exceeds 20, it is to be included in the sum as 20. Divide the sum thus obtained by 10. The quotient is the 10-mile density index for the section.

(2) CLASSIFICATION OF LOCATIONS.—

(a) ***Class 1 locations.***—Class 1 locations include waste lands, deserts, rugged mountains grazing land, and farm land, and combinations of these; provided, however, that:

1. The 10-mile density index for any section of the line is 12 or less.

2. The 1-mile density index for any one mile of line is 20 or less. It is not intended here that a full mile of lower-stress-level pipeline shall be installed if there are physical barriers or other factors that will limit the further expansion of the more densely populated area to a total distance of less than 1 mile. It is intended, however, that where no such barriers exist, ample allowance shall be made in deter-

mining the limits of the lower-stress design to provide for probable further development in the area.

(b) *Class 2 locations.*—Class 2 locations include areas where the degree of development is intermediate between class 1 locations and class 3 locations. Fringe areas around cities and towns, and farm or industrial areas where the 1-mile density index exceeds 20 or the 10-mile density index exceeds 12 fall within this location class.

(c) *Class 3 locations.*—Class 3 locations include areas subdivided for residential or commercial purposes where, at the time of construction of the pipeline or piping system, 10% or more of the lots abutting on the street or right of way in which the pipe is to be located are built upon, and a class 4 classification is not called for. This permits classifying as class 3, areas completely occupied by commercial or residential buildings with the prevalent height of 3 stories or less.

(d) *Class 4 locations.*—Class 4 locations include areas where multistory buildings are prevalent, and where traffic is heavy or dense and where there may be numerous other utilities underground. Multistory means 4 or more "floors" above ground including the first or ground floor. The depth of basements or number of basement floors is immaterial.

(e) *Definitions.*—"Location class" (1, 2, 3 or 4) is defined as the general description of a geographic area having certain characteristics as a basis for prescribing the types of construction and methods of testing to be used in those locations or in areas that are respectively comparable. A numbered location-class refers to the geography of that location or a similar area, and does not necessarily indicate that a correspondingly numbered construction-type will suffice for all construction in that particular location or area. Example: In location class 1, all aerial crossings require type B construction.

(f) When classifying locations for the purpose of determining the type of pipeline construction and testing that should be prescribed, due consideration shall be given to the possibility of future development of the area. If at the time of planning a new pipeline this future development appears likely to be sufficient to change the location class, this should be taken into consideration in the design and testing of the proposed pipeline.

(g) It is also anticipated that some increase in population density will occur in all areas after a line is constructed, and this possibility has been taken into account in establishing the design, construction, and testing procedures for each location class.

(3) CLASSIFICATION OF STEEL PIPE CONSTRUCTION.—It is necessary to distinguish between construction types, as defined in this subsection, and location classes, as defined in subsection (2). If pipelines or mains are located in private rights of way, the code prescribes that type A construction be used in class 1 locations, type B construction in class 2 locations, type C construction in class 3 locations, and type D construction in class 4 locations. There are many exceptions to this association of class 1 with type A, etc., however, as defined in this subsection, most of which are cases where pipelines or mains are located in highways or on bridges, etc. Four types of steel pipe construction are prescribed in this code. The distinguishing characteristics of each type and the locations in which each type shall be used are as follows:

(a) *Type A construction.*—

1. Characteristics: Design factor F = .72
2. Locations where type of construction shall be used:
   a. On private rights of way in class 1 locations.
   b. Parallel encroachments on:
      Privately owned roads in class 1 locations.
      Unimproved roads in class 1 locations.
   c. Crossings without casings of privately owned roads in class 1 locations.
   d. Crossings in casings of unimproved public roads, hard-surfaced roads, highways or public streets and railroads in class 1 locations.

(b) *Type B construction.*—

1. Characteristics: Design factor F = .60.
2. Locations where type construction shall be used:
   a. On private rights of way in class 2 locations.
   b. Parallel encroachments on:
      Privately owned roads in class 2 locations.
      Unimproved public roads in class 2 locations.
      Hard-surfaced roads, highways or public streets and railroads in class 1 locations.
   c. Crossings without casings of:
      Privately owned roads in class 2 locations.
      Unimproved public roads in class 2 locations.
      Hard-surfaced roads, highways or public streets and railroads in class 1 and class 2 locations.
   d. Crossings in casings of:
      Hard-surfaced roads, highways or public streets and railroads in class 2 locations.
   e. On bridges in class 1 and class 2 locations.
   f. Fabricated assemblies in pipelines in location classes 1 and 2.

(c) *Type C construction.*—

1. Characteristics: Design factor F = .50

2. Locations where type of construction shall be used:
   a. On private rights of way in class 3 locations.
   b. Parallel encroachments on:
      Privately owned roads in class 3 locations.
      Unimproved public roads in class 3 locations.
      Hard-surfaced roads, highways or public streets and railroads in class 3 locations.
   c. Crossings without casings of:
      Privately owned roads in class 3 locations.
      Unimproved public roads in class 3 locations.
      Hard-surfaced roads, highways or public streets and railroads in class 2 and 3 locations.
   d. Compressor station piping.

(d) *Type D construction.*—

1. Characteristics: Design factor F = .40
2. Locations where type of construction shall be used:
   a. In all locations in location class 4.

(4) CONSTRUCTION TYPES REQUIRED FOR PARALLEL ENCROACHMENTS OF PIPELINES AND MAINS ON ROADS AND RAILROADS.—

Kind of thoroughfare	Construction Type Required: Location class 1	Location class 2	Location class 3	Location class 4
(a) Privately owned roads	Type A	Type B	Type C	Type D
(b) Unimproved public roads	Type A	Type B	Type C	Type D
(c) Hard surface roads, highways or public streets and railroads	Type B	Type B	Type C	Type D

(5) CONSTRUCTION TYPES REQUIRED FOR PIPELINES AND MAINS CROSSING ROADS AND RAILROADS.—

Kind of thoroughfare	Construction Type Required: Location class 1	Location class 2	Location class 3	Location class 4
(a) Privately owned roads	Type A without casing	Type B without casing	Type C without casing	Type D without casing
(b) Unimproved public roads	Type A without casing Type B without casing	Type B without casing	Type C without casing	Type D without casing
(c) Hard surface roads, highways or public streets and railroads	Type A with casing Type B without casing	Type B with casing Type C without casing	Type C without casing	Type D without casing

(6) STEEL PIPE DESIGN FORMULA.—The design pressure for steel gas piping systems or the nominal wall thickness for a given design pressure shall be determined by the following formula:

$$P = \frac{2St}{D} \times F \times E \times T$$

(For exceptions see subsection (43)-(52).)

Where:

P = Design pressure, psig

S = Specified minimum yield strength, psi stipulated in the specifications under which the pipe was purchased from the manufacturer or determined in accordance with §368.07(2)(g)2. h.

The specified minimum yield strengths of some of the more commonly used piping steels are tabulated as: Specified minimum yield strength for steel pipe commonly used in piping systems. For the minimum specified yield strength of other approved specifications, refer to the particular specification.

Specification	Specified minimum yield strength (psi)
API 5L Grade A seamless or electric-welded	30,000
API 5L Grade B seamless or electric-welded	35,000
API 5L Lap-welded or butt-welded class I open-hearth	25,000
API 5L Lap-welded or butt-welded class II open-hearth	28,000
API 5L Lap-welded or butt-welded Bessemer	30,000
API 5L Lap-welded or butt-welded open-hearth iron or wrought iron	24,000
API 5LX Grade X42	42,000
API 5LX Grade X46	46,000
API 5LX Grade X52	52,000
ASTM A53 Grade A	30,000
ASTM A53 Grade B	35,000
ASTM A53 Lap-welded and butt-welded open hearth or electric furnace	25,000
ASTM A53 Lap-welded and butt-welded Bessemer steel	30,000
ASTM A72	24,000
ASTM A106 Grade A	30,000
ASTM A106 Grade B	35,000
ASTM A135 Grade A	30,000
ASTM A135 Grade B	35,000
ASTM A139 Grade A	30,000
ASTM A139 Grade B	35,000

For special limitation on S see subsection (10) (e) and (f).

D = Nominal outside diameter of pipe, inches.

t = Nominal wall thickness, inches.

F = Construction type design factor obtained from subsection (7).

E = Longitudinal joint factor obtained from subsection (8).

T = Temperature derating factor obtained from subsection (9).

(7) VALUES OF DESIGN FACTOR "F."—

Construction type	Design factor F
Type — A	0.72
Type — B	0.62
Type — C	0.50
Type — D	0.40

(8) LONGITUDINAL JOINT FACTOR "E".—

Specification number	Pipe type	E factor
ASTM A53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace lap welded	.80
	Furnace butt welded	.60
ASTM A106	Seamless	1.00
ASTM A134	Electric fusion welded	.80
ASTM A135	Electric resistance welded	1.00
ASTM A139	Electric fusion welded	.80
ASTM A155	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Furnace lap welded	.80
	Furnace butt welded	.60
API 5LX	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00

(9) TEMPERATURE DERATING FACTOR "T" FOR STEEL PIPE.—

Temperature Degrees Fahrenheit	Temperature Derating factor "T"
250°F. or less	1.000
300°F.	0.967
350°F.	0.933
400°F.	0.900
450°F.	0.867

For immediate temperatures interpolate for derating factor.

(10) LIMITATIONS OF PIPE DESIGN VALUES.—

(a) P for furnace butt welded pipe shall not exceed the restrictions of subsection (6) or 60% of the mill test pressure, whichever is lesser.

(b) P shall not exceed 85% of the mill test pressure for all other pipes; provided, however, that pipe, mill tested to a pressure less than 85% of the pressure required to produce a stress equal to the specified minimum yield, may be retested with a mill type hydrostatic test or tested in place after installation. In the event the pipe is retested to a pressure in excess of the mill test pressure, then P shall not exceed 85% of the retest pressure rather than the initial mill test pressure. It is mandatory to use a liquid as the test medium in all tests in place after installation where the test pressure exceeds the mill test pressure. This subsection is not to be construed to allow an operating pressure or design pressure in excess of that provided for by subsection (6).

(c) Transportation, installation or repair of pipes shall not reduce the wall thickness at any point to a thickness less than 90% of the nominal wall thickness as determined by subsection (6) for the design pressure to which the pipe is to be subjected.

(d) "t" shall not be less than shown in this table:

Least nominal wall thicknesses (inches)

Nominal diameter (inches)	Location classes 1	Location classes 2, 3, and 4	Compressor stations
⅛" —	0.068	0.068	0.095 —
¼" —	0.088	0.088	0.119 —
⅜" —	0.091	0.091	0.126 —
½" —Threaded	0.109	0.109	0.147 —
¾" —or Plain	0.113	0.113	0.154 —
1" —End	0.133	0.133	0.179 —Threaded
1¼" —	0.140	0.140	0.191 —or Plain
1½" —	0.145	0.145	0.200 —End
2" —	0.154	0.154	0.218 —
2½" —	0.103	*0.125 —	0.203 —
3" —	0.104	*0.125 —	0.216 —
3½" —	0.104	*0.125 —	0.226 —
4" —	0.104	*0.125 —	0.237 —
5" —	0.104	*0.125 —	0.250 —
6" —	0.104	0.156 —	0.250 —
8" —Plain	0.104	0.172 —Plain	0.250 —
10" —End	0.104	0.188 —End	0.250 —
12" —Only	0.104	0.203 —Only	0.250 —Plain
14" —	0.134	0.210 —	0.250 —End
16" —	0.134	0.219 —	0.250 —Only
18" —	0.134	0.250 —	0.250 —
20" —	0.134	0.250 —	0.250 —
22", 24", 26"	0.164	0.250 —	0.250 —
28", 30"	0.164	0.281 —	0.281 —
32", 34", 36"	0.164	0.312 —	0.312 —

If threaded pipe is to be used in those sizes for which least nominal wall thicknesses are given for "plain end pipe only," those sizes marked by (*) shall be increased as follows: 2½" to 0.203, 3" to 0.216, 3½" to 0.226, 4" to 0.237, 5" to 0.258, and add 0.100 inch to all other wall thicknesses given in this table.

(e) When pipe that has been cold worked for the purpose of meeting the specified minimum yield strength is heated to 600°F. or higher (welding excepted), the maximum allowable pressure at which it can be used shall not exceed 75% of the value obtained by use of the steel pipe design formula given in subsection (6).

(f) In no case where the code refers to the specified minimum value of a physical property can the actual value of the property be substituted in design calculations, unless the actual is less than the specified minimum.

(11) FABRICATED ASSEMBLIES.—When fabricated assemblies, such as connections for separators, main line valve assemblies, cross-connections, river crossing headers, etc., are to be installed in areas defined as location class 1, type B construction is required throughout the assembly, and for a distance of 5 pipe diameters in each direction beyond the last fittings. Transition pieces at the end of an assembly and elbows used in place of pipe bends are not considered as fittings under the requirements of this subsection.

(12) Pipelines or mains supported by railroad, vehicular, pedestrian, or pipeline bridges shall be in accordance with the construction type prescribed for the area in which the bridge is located, except that in class 1 locations type B construction shall be used.

(13) PROTECTION OF PIPELINES AND MAINS FROM HAZARDS.—When pipelines and mains must be installed where they will be subjected to natural hazards, such as washouts, floods, unstable soil, land slides, or other conditions which may cause serious movement of, or abnormal loads on the pipeline, reasonable precaution shall be taken to protect the pipeline, such as increasing the wall thickness, constructing revetments, erosion prevention, installing anchors, etc. Where pipelines and mains are exposed, such as at spans, trestles, and bridge crossings, the pipelines and mains shall be reasonably protected by distance or barricades from accidental damage by vehicular traffic or other causes.

(14) COVER AND CASING REQUIREMENTS UNDER RAILROADS, ROADS, STREETS OR HIGHWAYS.—

(a) All buried pipelines, mains, and casings when used, shall be installed with a minimum cover of 24 in. unless otherwise provided herein.

(b) Buried pipelines and mains operating at hoop stresses of less than 20% of the specified minimum yield strength and located within private rights of way, private thoroughfares, sidewalks or parkways may be installed with less than the minimum cover of 24 in. if it appears that external damage to the pipe will not be likely to result.

(c) Abandoned pipe having a cover less than 24 in. may be used as a casing or conduit for pipelines and mains operating at hoop stresses less than 20% of the specified minimum yield strength.

(d) Buried pipelines and mains installed in areas where farming or other operations might result in deep plowing, or in thoroughfares or other locations where grading is done, or where the area is subject to erosion, should be provided with more cover than the minimum otherwise required.

(e) Where it is impractical to comply with the provisions of paragraph (a) and it is necessary to prevent damage from external loads, the pipe shall be cased or bridged.

(f) Casings shall be designed to withstand the superimposed loads. Where there is a possibility of moisture entering the casing, the ends of the casing shall be sealed. If the end sealing is of a type that will retain the full pressure of the pipe, the casing shall be designed for the same pressure as the pipe but according to type A construction requirements. Venting of sealed casings is not mandatory; however, if vents are installed they should be protected from the weather to prevent moisture from entering the casing.

(15) CLEARANCE BETWEEN PIPELINES OR MAINS AND OTHER UNDERGROUND STRUCTURES.—The clearance between any gas main or pipeline and any other underground structure not used in conjunction with the pipeline or main shall be as much as the physical circumstances permit but in no event shall such clearance be less than 6 in. for electrical conduit. When this clearance cannot be attained, other suitable precautions to protect the pipe shall be taken, such as the installation of insulating material, installation of casing, etc.

(16) CORROSION FACTORS FOR DESIGN OF STEEL PIPELINES, AND MAINS.—

(a) The design procedures prescribed by this code for pipelines and mains are applicable without modification only when the gas transported is substantially noncorrosive; and the soil in which the pipeline is installed is either substantially noncorrosive, or suitable steps are taken to mitigate external corrosion.

(b) If a corrosive gas is to be transported, or if suitable means of preventing external corrosion in corrosive soils are not to be provided, the thickness of the pipe shall be increased to provide an allowance for corrosion. The minimum corrosion allowances to be provided in any such case shall not be less than .05 in. for external corrosion and .075 in. for internal corrosion. If both external and internal corrosion are to be expected, add both allowances.

(c) If the thickness obtained by adding the required allowances to the thickness computed by steel pipe design formula equation does not exceed the least allowable wall thickness prescribed in subsection (10) (d) at least the thickness given in that table shall be used.

(d) If the maximum hoop stress due to gas pressure is less than 20% of the specified minimum yield strength, allowance for corrosion is not mandatory. However, the installation in corrosive soil of unprotected pipe with wall thickness as thin as permitted by subsection (10) (d) is not recommended even for low-pressure distribution systems.

(17) INTERNAL CORROSION CRITERIA.—

(a) For the purpose of this code, any fuel gas of commercial grade, the water dew point of which is at all times below pipeline temperature, shall be considered to be substantially noncorrosive unless experience with it has indicated otherwise.

(b) Some fuel gases may be substantially noncorrosive even though their water dew point exceeds pipeline temperatures. Such gas shall, however, be assumed to be noncorrosive only if proven so by careful tests or experience.

(18) EXTERNAL CORROSION CRITERIA.—Suitable investigation shall be made, and if it indicates that protection from external corrosion is needed, steel pipelines or mains shall be protected by any recognized method or combination of methods, such as coating with protective material, application of cathodic protection, and electrical bonding or isolation of sections.

(19) CONSTRUCTION SPECIFICATIONS.—All construction work performed on piping systems in accordance with the requirements of this code shall be done under construction specifications. The construction specifications shall cover all phases of the work and should be in sufficient detail to cover the requirements of this code.

(20) INSPECTION PROVISIONS.—The operating company shall make provision for suitable inspection. Inspectors shall be qualified by either experience or training.

(21) The installation inspection provisions for pipelines and other facilities to operate at hoop stresses of 20% or more of the specified minimum yield strength should be adequate either to make possible the following inspections or to do other things that will assure a comparable degree of control of quality of workmanship.

(a) Inspect the surface of the pipe for serious surface defects just prior to the coating operation.

(b) Inspect the surface of the coated pipe as it is lowered into the ditch to find coating lacerations that indicate the pipe might have been damaged after being coated. Damage during the lowering-in process should be found during this inspection.

(c) Inspect the fit-up of the joints before the weld is made.

(d) Visually inspect the stringer beads before subsequent beads are applied.

(e) Inspect the completed welds before they are covered with coating.

(f) Inspect the condition of the ditch bottom just before the pipe is lowered in.

(g) Inspect the fit of the pipe to the ditch before backfilling.

(h) Inspect all repairs, replacements or changes ordered before they are covered up.

(i) Perform such special tests and inspections as are required by the specifications, such as the radiographing of a portion of the welds and the electrical testing of the protective coating.

(22) The inspector shall have authority to order the removal and replacement of any section that fails to meet the standards of this code.

(23) BENDS, ELBOWS, AND MITERS IN STEEL PIPELINES AND MAINS.—Changes in direction may be made by the use of bends, elbows, or miters under the following limitations:

(a) The bends shall be free from buckling, cracks or other evidence of mechanical damage. For field cold bends on sizes 12 in. and larger, the longitudinal axis of the pipe shall not be deflected more than 1-1/2 degree in any length along the pipe axis equal to the diameter of the pipe. All bends other than wrinkle bends shall not have a difference between the maximum and minimum diameters in excess of 2.5% of the nominal diameter.

(b) When a circumferential weld occurs in a bend section, it shall be subjected to radiographic examination after bending.

(c) Hot bends made on cold worked or heat treated pipe shall be designed for lower stress levels in accordance with subsection (10) (e).

(d) Cold wrinkle bends are permitted, but not preferred on systems operating at 40% or more of the specified minimum yield strength. When wrinkle bends are made in welded pipe, the longitudinal weld shall be located as nearly to 90° with the top of the wrinkle as conditions will permit. Hot wrinkle bends are prohibited in cold worked pipe if the strength induced by cold work is needed to keep within the code design limits. Wrinkle bends with sharp kinks will not be permitted. Wrinkles shall have a spacing of not less than the distance equal to the diameter of the pipe measured along the crotch. On pipe 16 in. and larger the wrinkle shall not produce an angle of more than 1-1/2 degrees per wrinkle.

(e) The longitudinal weld of the pipe shall preferably be near the neutral axis of the bend.

(f) Mitered bends are permitted subject to the following limitations:

1. In systems intended to operate at 40% or more of the specified minimum yield strength, mitered bends are not permitted. Deflections caused by misalignment up to 3° are not considered as miters.

2. In systems intended to operate at 10% but less than 40% of the specified minimum yield strength, the total deflection angle at each miter shall not exceed 12-1/2°.

3. In systems intended to operate at less than 10% of the specified minimum yield strength, the total deflection angle at each miter shall not exceed 90°

4. In systems intended to operate at 10% or more of the specified minimum yield strength, the minimum distance between miters measured at the crotch shall not be less than one pipe diameter.

5. Care shall be taken in making mitered joints to provide proper spacing and alignment and full penetration.

(g) Factory made wrought steel welding elbows or transverse segments cut therefrom may be used for changes in direction provided that the arc length measured along the crotch is at least 1 in. on pipe sizes 2 in. and larger.

(24) PIPE SURFACE REQUIREMENTS APPLICABLE TO PIPELINES AND MAINS TO OPERATE AT A HOOP STRESS OF TWENTY PER CENT OR MORE OF THE SPECIFIED MINIMUM YIELD STRENGTH.—Gouges, grooves, and notches have been found to be very important causes of pipeline failures and all harmful defects of this nature must be prevented or eliminated. Precautions shall be taken during manufacture, hauling, and installation to prevent the gouging or grooving of pipe.

(25) DETECTION OF GOUGES AND GROOVES.—

(a) The field inspection provided on each job shall be suitable to reduce to an acceptable minimum the chances that gouged or grooved pipe will get into the finished pipeline or main. Inspection for this purpose just ahead of the coating operation and during the lowering-in and back-fill operation should be completed.

(b) When pipe is coated, inspection shall be made to determine that the coating machine does not cause harmful gouges or grooves.

(c) Lacerations of the protective coating should be carefully examined to see if the pipe surface has been damaged.

(26) FIELD REPAIR OF GOUGES AND GROOVES.—

(a) Injurious gouges or grooves shall be removed.

(b) They may be removed by grinding, provided that the resulting wall thickness is not less than the minimum prescribed by this code for the conditions of usage.

(c) When the conditions outlined in paragraph (b) cannot be met, the damaged portion of pipe shall be cut out as a cylinder and replaced with a good piece. Insert patching is prohibited.

(27) DENTS.—Dents cause serious stress concentrations in pipelines. Dents that are more than 1/4 in. deep, measured as the gap between the lowest point of the dent and a prolongation of the original contour of the pipe in any direction are considered harmful, and shall be removed from pipelines or mains intended to operate at 50% or more of the specified minimum yield strength. Removal of dents in the field shall be done by cutting out a cylindrical section of a pipe and not by insert-patching or pounding out the dent.

(28) ARC BURNS.—Arc burns have been

found to cause serious stress concentration in pipelines of grades 5LX or equal and shall be prevented or eliminated in all lines corresponding to these specifications intended to operate at 50% or more of the specified minimum yield strength.

(29) ELIMINATION OF ARC BURNS.—The metallurgical notch caused by arc burns shall be removed by grinding, provided the grinding does not reduce the remaining wall thickness to less than the minimum prescribed by this code for the conditions of use. In all other cases repair is prohibited and the portion of pipe containing the arc burn must be cut out as a cylinder and replaced with a good piece. Insert-patching is prohibited. Complete removal of the metallurgical notch created by an arc burn can be determined as follows: After visible evidence of the arc burn has been removed by grinding, swab the ground area with a 20% solution of ammonium persulfate. A blackened spot is evidence of a metallurgical notch and indicates that additional grinding is necessary.

(30) APPLICATION AND INSPECTION OF PROTECTIVE COATINGS FOR UNDERGROUND PIPE.—

(a) Protective coatings for underground piping shall be applied in accordance with either the coating manufacturer's recommendations or the company's coating specifications for the particular conditions encountered. These recommendations or specifications shall also cover the patching of damaged spots, the coating of joints, short lengths of pipe and fittings coated in the field.

(b) Crews that apply protective coatings shall be suitably instructed and provided with all the equipment necessary to accomplish their work in a satisfactory manner.

(c) The protective coating shall be inspected and tested either completely or on a sampling basis using a recognized "flaw detector" before or after backfilling.

(31) ELECTRICAL TEST LEADS FOR CORROSION CONTROL OR ELECTROLYSIS TESTING ON PIPELINES OR MAINS TO OPERATE AT TWENTY PER CENT OR MORE OF THE SPECIFIED MINIMUM YIELD STRENGTH.—

(a) When electrical test leads for corrosion control or electrolysis testing are required, care should be exercised in their installation, particularly on pipelines that are stressed to near the maximum stress levels permitted by this code, to avoid stress concentration.

(b) The brazing of electrical test leads directly onto the pipe is prohibited.

(c) All tests lead connections and all bare leads shall be protected by coating and/or wrapping.

(32) HANDLING, HAULING AND STRINGING.—Care should be taken in the selection of the handling equipment and in handling, hauling, unloading, and placing the pipe so as not to damage the pipe.

(33) INSTALLATION OF PIPE IN THE DITCH.—On pipelines operating at stresses of 20% or more of the specified minimum yield strength, it is very important that stresses induced into the pipeline by construction be minimized. This includes grading the ditch so that the pipe has a firm substantially continuous bearing on the bottom of the ditch. The pipe shall fit the ditch without the use of external force to hold it in place until the backfill is completed. When long sections of pipe that have been welded alongside the ditch are lowered in, care shall be exercised so as not to jerk the pipe or impose any strains that may kink or put a permanent bend in the pipe. Slack loops are not prohibited by this paragraph where laying conditions render their use advisable.

(34) BACKFILLING.—

(a) Backfilling should be performed in a manner to provide firm support under the pipe.

(b) If there are large rocks in the material to be used for backfill, care should be used to prevent damage to the coating, by such means as the use of rock shield material, or by making the initial fill with rock free material to a sufficient depth over the pipe to prevent rock damage.

(c) Where flooding of the trench is done to consolidate the backfill, care shall be exercised to see that the pipe is not floated from its firm bearing on the trench bottom.

(35) HOT TAPS.—All hot taps shall be installed by trained and experienced crews.

(36) PRECAUTIONS TO AVOID EXPLOSIONS OF GAS-AIR MIXTURES OR UNCONTROLLED FIRES DURING CONSTRUCTION OPERATIONS.—Operations such as gas or electric welding and cutting with cutting torches can be safely performed on pipelines and mains and auxiliary equipment provided that they are completely full of gas, or air that is free from combustible material. Steps shall be taken to prevent a mixture of gas and air at all points where such operations are to be performed.

(37) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures shall be exercised:

(a) Keep a slight flow of gas moving toward the point where cutting or welding is being done.

(b) The gas pressure at the site of the work shall be controlled by suitable means.

(c) Close all slots or open ends immediately after they are cut, with tape, and/or tightly fitted canvas or other suitable material.

(d) Do not permit two openings to remain uncovered at the same time. This is doubly important if the two openings are at different elevations.

(38) No welding or acetylene cutting should be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has

been provided to prevent the leakage of gas into the pipeline or main.

(39) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and the above precautions cannot be taken, one or more of the following precautions, depending upon circumstances at the job, should be exercised:

(a) Purging of the pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

(b) Testing of the atmosphere in the vicinity of the zone to be heated before the work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

(c) Careful verification before the work starts that the valves that isolate the work from a source of gas do not leak.

(40) PURGING OF PIPELINES AND MAINS.—

(a) When a pipeline or main full of air is placed in service, the air in it can be safely displaced with gas provided that a moderately rapid and continuous flow of gas is introduced at one end of the line and the air is vented out the other end. The gas flow should be continued without interruption until the vented gas is free from air. The vent should then be closed.

(b) In cases where gas in a pipeline or main is to be displaced with air and the rate at which air can be supplied to the line is too small to make a procedure similar to, but the reverse of that described in paragraph (a) feasible, a slug of inert gas should be introduced to prevent the formation of an explosive mixture at the interface between gas and air. Nitrogen or carbon dioxide can be used for this purpose.

(c) If a pipeline or main containing gas is to be removed, the operation may be carried out in accordance with subsection (37) or the line may be first disconnected from all sources of gas and then thoroughly purged with air, water or with inert gas before any further cutting or welding is done.

(d) If a gas pipeline or main or auxiliary equipment is to be filled with air after having been in service and there is a reasonable possibility that the inside surfaces of the facility are wetted with a volatile inflammable liquid, or if such liquids might have accummulated in low places, purging procedures designed to meet this situation shall be used. Steaming of the facility until all combustible liquids have been evaporated and swept out is recommended. Filling of the facility with an inert gas and keeping it full of such gas during the progress of any work that might ignite an explosive mixture in the facility is an alternative recommendation. The possibility of striking static sparks within the facility must not be overlooked as a possible source of ignition.

(41) Whenever the accidental ignition in the open air of a gas-air mixture might be likely to cause personal injury or property damage, precautions shall be taken as, for example: prohibit smoking and open flames in the area, and install a metallic bond around the location of cuts in gaspipes to be made by other means than cutting torches, and take precautions to prevent static electricity sparks, and provide a fire extinguisher.

(42) TESTING AFTER CONSTRUCTION.—All pipelines, mains and services shall be tested after construction, except: Tie-ins. Because it is sometimes necessary to divide a pipeline or main into test sections and install test heads, connecting piping, and other necessary appurtenances for testing, it is not required that the tie-in sections of pipe be tested.

(43) TEST REQUIRED TO PROVE STRENGTH OF PIPELINES AND MAINS TO OPERATE AT HOOP STRESSES OF THIRTY PER CENT OF MORE OF THE SPECIFIED MINIMUM YIELD STRENGTH OF THE PIPE.—All pipelines and mains to be operated at a hoop stress of 30% or more of the specified minimum yield strength of the pipe shall be given a field test to prove strength after construction and before being placed in operation.

(a) Pipelines and mains located in location class 1 shall be tested either with air or gas to 1.1 times the maximum operating pressure or hydrostatically to at least 1.1 times the maximum operating pressure.

(b) Pipelines or mains located in location class 2 shall be tested either with air to 1.25 times the maximum operating pressure or hydrostatically to at least 1.25 times the maximum operating pressure.

(c) Pipelines and mains in location classes 3 and 4 shall be tested hydrostatically to a pressure not less than 1.4 times the maximum operating pressure.

(d) The test requirements for pipelines and mains to operate at hoop stresses of 30% or more of the specified minimum yield strength of the pipe are:

1	2	3	4	5
		Prescribed test pressure		Maximum allowable operating pressure the lesser of
Location class	Permissible test fluid	Minimum	Maximum	
1	Water	1.1 × m.o.p.	None	t.p. ÷ 1.1
	Air	1.1 × m.o.p.	1.1 × d.p.	or
	Gas	1.1 × m.o.p.	1.1 × d.p.	d.p.
2	Water	1.25×m.o.p.	None	t.p.÷1.25
	Air	1.25×m.o.p.	1.25×d.p.	or d.p.
3	Water	1.40×m.o.p.	None	t.p.÷1.40 or d.p.
4	Water	1.40×m.o.p.	None	t.p.÷1.40 or d.p.

m.o.p. = maximum operating pressure (not necessarily the maximum allowable operating pressure)
d.p. = design pressure
t.p. = test pressure

This table brings out the relationships between test pressures and maximum allowable operating pressures subsequent to the test. If an operating company decides that the maximum

operating pressure will be less than the design pressure a corresponding reduction in prescribed test pressure may be made as indicated in column 3. However, if this reduced test pressure is used the maximum operating pressure cannot later be raised to the design pressure without retesting the line to the test pressure prescribed in column 4.

(44) Requirements of subsection (43) (c) for hydrostatic testing of mains and pipelines in location classes 3 and 4 do not apply if at the time the pipeline or main is first ready for test, one or both of the following conditions exist:

(a) The ground temperature at pipe depth is 32° F. or less, or might fall to that temperature before the hydrostatic test could be completed, or

(b) Water of satisfactory quality is not available in sufficient quantity.

(c) In such cases an air test to 1.1 times the maximum operating pressure shall be made and the limitations on operating pressure imposed by subsection (43) (d) do not apply.

(45) Other provisions of this code notwithstanding, pipelines and mains crossing highways and railroads may be tested in each case in the same manner and to the same pressure as the pipeline on each side of the crossing.

(46) Other provisions of this code notwithstanding, fabricated assemblies, including mainline valve assemblies, cross connections, river crossing headers, etc., installed in pipelines in class 1 locations and designed in accordance with type B construction, as required in subsection (11), may be tested as required for class 1 locations.

(47) Notwithstanding the limitations on air testing imposed in subsection (43) (c), air testing may be used in location classes 3 and 4, provided that all of the following conditions apply:

(a) The maximum hoop stress during test is less than 50% of the specified minimum yield strength in class 3 locations, and less than 40% of the specified minimum yield strength in class 4 locations.

(b) The maximum pressure at which the pipeline or main is to be operated does not exceed 80% of the maximum field test pressure used.

(c) The pipe involved is new pipe having a longitudinal joint factor E in subsection (8) of 1.00.

(48) RECORDS.—The operating company shall maintain in its file for the useful life of each pipeline and main, records showing the type of fluid used for test and the test pressure.

(49) TESTS REQUIRED TO PROVE STRENGTH FOR PIPELINES AND MAINS TO OPERATE AT LESS THAN THIRTY PER CENT OF THE SPECIFIED MINIMUM YIELD STRENGTH OF THE PIPE, BUT IN EXCESS OF ONE HUNDRED PSI.—Steel piping that is to operate at stresses less than 30% of the specified minimum yield strength but in excess of 100 psi in location classes 2, 3 and 4 shall be tested to at least 1.5 times the maximum operating pressure. The test medium used may be water, air or gas; provided, however, that no medium shall be used to a higher hoop stress during the test than the maximums set forth as follows:

Maximum hoop stress permissible during test

	Per cent of specified Minimum yield strength			
Location class	1	2	3	4
Test medium				
Water	No max.	No max.	No max.	No max.
Air	79.2	75	50	40
Gas	79.2	30	30	30

(50) LEAK TESTS FOR PIPELINES OR MAINS TO OPERATE AT ONE HUNDRED PSI OR MORE.—Each pipeline and main shall be tested after construction and before being placed in operation to demonstrate that it does not leak. If the test indicates that a leak exists, the leak or leaks shall be located and eliminated, unless it can be determined that no undue hazard to public safety exists.

(a) The test procedure used shall be capable of disclosing all leaks in the section being tested and shall be selected after giving due consideration to the volumetric content of the section and to its location.

(b) In all cases where a line is to be stressed in a strength-proof test to 20% or more of the specified minimum yield strength of the pipe, and gas or air is the test medium, a leak test shall be made at a pressure in the range from 100 psi to that required to produce a hoop stress of 20% of the minimum specified yield, or the line shall be walked while the hoop stress is held at approximately 20% of the specified minimum yield.

(51) LEAK TESTS FOR PIPELINES AND MAINS TO OPERATE AT LESS THAN ONE HUNDRED PSI.—At the time of or prior to placing in operation distribution mains and related equipment to operate at less than 100 psi, they shall be tested to determine that they are gas-tight.

(a) Gas may be used as the test medium at the maximum pressure available in the distribution system at the time of the test. In this case the soap bubble test may be used to locate leaks if all joints are accessible during the test.

(b) Testing at available distribution system pressures as provided for in paragraph (a) may not be adequate if substantial protective coatings are used that would seal a split pipe seam. If such coatings are used the leak test pressure shall be 100 psi.

(52) SAFETY DURING TESTS.—All testing of pipelines and mains after construction shall be done with due regard for the safety of employees and the public during the test. When air or gas is used, suitable steps shall be taken to keep persons not working on the testing operations out of the testing area during the period in which the hoop stress is first raised

from 50% of the specified minimum yield to the maximum test stress, and until the pressure is reduced to the maximum operating pressure.

History.—§25, ch. 59-304.

368.29 Cast iron.—

(1) CAST IRON PIPE DESIGN. BASIC EQUATION TO DETERMINE REQUIRED WALL THICKNESS.—Cast iron pipe shall be designed in accordance with commonly approved methods.

(2) MAXIMUM ALLOWABLE VALUES OF S and R.—The values of S, bursting tensile strength, and R, modulus of rupture, to be used are:

Type of pipe	S	R
Pit cast	11,000 psi	31,000 psi
Centrifugal (metal mold)	18,000 psi	40,000 psi
Centrifugal (sand-lined mold)	18,000 psi	40,000 psi

(3) ALLOWABLE THICKNESSES. — The least cast iron pipe thicknesses permitted are the lightest standard classes for each nominal pipe size.

(4) STANDARD THICKNESS.—The wall thickness, diameter, and maximum working pressure permitted under this code for the type and sizes of cast iron pipe most commonly used for gas piping are shown in tables (a) and (b). For pipe sizes, pressure thicknesses, or laying conditions not shown reference should be made to subsections (1) and (2).

TABLE (a)
STANDARD THICKNESSES OF CAST IRON PIT CAST PIPE FOR GAS

Thickness in inches. Working pressure in pounds per square inch.

Thicknesses include allowances for foundry practice and corrosion.

Laying condition A—Flat bottom trench, without blocks, untamped backfill.

Laying condition B—Flat bottom trench, without blocks, tamped backfill.

Laying condition C—Pipe laid on blocks, untamped backfill.

Laying condition D—Pipe laid on blocks, tamped backfill.

3½ FEET OF COVER

Size in.	Working pressure	Laying condition A	B	C	D
4	10	.40	.40	.40	.40
	50	.40	.40	.40	.40
	100	.40	.40	.40	.40
	150	.40	.40	.40	.40
6	10	.43	.43	.46	.43
	50	.43	.43	.46	.43
	100	.43	.43	.46	.43
	150	.43	.43	.50	.43
8	10	.46	.46	.50	.46
	50	.46	.46	.54	.46
	100	.46	.46	.54	.46
	150	.46	.46	.54	.46
10	10	.50	.50	.54	.50
	50	.50	.50	.58	.50
	100	.50	.50	.58	.50
	150	.50	.50	.58	.50
12	10	.54	.54	.58	.54
	50	.54	.54	.58	.54
	100	.54	.54	.63	.54
	150	.54	.54	.63	.58

3½ FEET OF COVER (cont.)

Size in.	Working pressure	Laying condition A	B	C	D
16	10	.58	.58	.68	.58
	50	.58	.58	.68	.63
	100	.63	.58	.73	.63
20	10	.66	.66	.77	.71
	50	.71	.66	.77	.71
	100	.71	.66	.83	.77
24	10	.74	.74	.80	.74
	50	.80	.74	.86	.80
	100	.80	.74	.93	.86
30	10	.87	.87	.94	.87
	50	.94	.87	1.02	.94
36	10	1.05	.97	1.05	.97
	50	1.05	.97	1.13	1.05
42	10	1.16	1.07	1.16	1.07
	50	1.16	1.07	1.25	1.16
48	10	1.27	1.18	1.37	1.18
	50	1.27	1.18	1.37	1.27

5 FEET OF COVER

Size in.	Working pressure	Laying condition A	B	C	D
4	10	.40	.40	.40	.40
	50	.40	.40	.40	.40
	100	.40	.40	.43	.40
	150	.40	.40	.43	.40
6	10	.43	.43	.50	.43
	50	.43	.43	.50	.43
	100	.43	.43	.50	.43
	150	.43	.43	.50	.43
8	10	.46	.46	.54	.46
	50	.46	.46	.54	.46
	100	.46	.46	.58	.46
	150	.46	.46	.58	.46
10	10	.50	.50	.58	.50
	50	.50	.50	.58	.50
	100	.50	.50	.63	.50
	150	.50	.50	.63	.50
12	10	.54	.54	.63	.54
	50	.54	.54	.63	.54
	100	.54	.54	.63	.54
	150	.58	.54	.68	.58
16	10	.58	.58	.68	.63
	50	.63	.58	.73	.63
	100	.63	.58	.73	.68
20	10	.71	.66	.83	.71
	50	.71	.66	.83	.77
	100	.77	.71	.83	.77
24	10	.80	.74	.86	.80
	50	.80	.74	.93	.86
	100	.86	.80	.93	.86
30	10	.94	.87	1.02	.94
	50	.94	.87	1.10	1.02
36	10	1.05	.97	1.13	1.05
	50	1.13	.97	1.22	1.13
42	10	1.16	1.07	1.25	1.16
	50	1.25	1.07	1.35	1.25
48	10	1.37	1.18	1.37	1.27
	50	1.37	1.18	1.48	1.37

8 FEET OF COVER

Size in.	Working pressure	Laying condition A	B	C	D
4	10	.40	.40	.46	.40
	50	.40	.40	.50	.40
	100	.40	.40	.50	.40
	150	.40	.40	.50	.40
6	10	.43	.43	.54	.43
	50	.43	.43	.54	.43
	100	.43	.43	.58	.43
	150	.43	.43	.58	.43

8 FEET OF COVER (cont.)

Size in.	Working pressure	Laying condition A	B	C	D
8	10	.46	.46	.58	.46
	50	.46	.46	.63	.46
	100	.46	.46	.63	.46
	150	.46	.46	.63	.46
10	10	.50	.50	.68	.50
	50	.50	.50	.68	.54
	100	.54	.50	.68	.54
	150	.54	.50	.68	.58
12	10	.54	.54	.68	.58
	50	.58	.54	.73	.58
	100	.58	.58	.73	.58
	150	.63	.58	.79	.63
16	10	.68	.63	.79	.68
	50	.68	.63	.79	.73
	100	.73	.68	.85	.73
20	10	.77	.71	.90	.83
	50	.77	.71	.90	.83
	100	.83	.77	.97	.83
24	10	.86	.80	.93	.86
	50	.86	.80	1.00	.93
	100	.93	.86	1.00	.93
30	10	1.02	.87	1.10	1.02
	50	1.10	.94	1.19	1.10
36	10	1.13	.97	1.22	1.13
	50	1.22	1.05	1.32	1.22
42	10	1.35	1.07	1.35	1.25
	50	1.35	1.16	1.46	1.35
48	10	1.48	1.18	1.60	1.37
	50	1.48	1.27	1.60	1.48

TABLE (b)

STANDARD THICKNESSES OF CAST IRON GAS PIPE CENTRIFUGALLY CAST IN METAL MOLDS OR SAND LINED MOLDS

Thickness in inches. Working pressure in pounds per square inch.

Thicknesses include allowances for foundry practice and corrosion.

Laying condition A—Flat bottom trench, without blocks, untamped backfill.

Laying condition B—Flat bottom trench, without blocks, tamped backfill.

Laying condition C—Pipe laid on blocks, untamped backfill.

Laying condition D—Pipe laid on blocks, tamped backfill.

3½ FEET OF COVER

Size	Working pressure	Laying condition A	B	C	D
4	10	.35*	.35	.35	.35
		.38**	.38	.38	.38
	50	.35*	.35	.35	.35
		.38**	.38	.38	.38
	100	.35*	.35	.35	.35
		.38**	.38	.38	.38
	150	.35*	.35	.35	.35
		.38**	.38	.38	.38
6	10	.38*	.38	.41	.38
		.41**	.41	.41	.41
	50	.38*	.38	.41	.38
		.41**	.41	.41	.41
	100	.38*	.38	.41	.38
		.41**	.41	.41	.41
	150	.38*	38	41	.38
		.41**	.41	.41	.41

3½ FEET OF COVER (cont.)

Size in.	Working pressure	Laying condition A	B	C	D
8	10	.41	.41	.44	.41
	50	.41	.41	.44	.41
	100	.41	.41	.48	.41
	150	.41	.41	.48	.41

* Class 22 thickness

** Class 23 thickness offers increased factor of safety and is recommended for use in areas of dense population and heavy traffic.

Size	Working pressure	Laying condition A	B	C	D
10	10	.44	.44	.48	.44
	50	.44	.44	.48	.44
	100	.44	.44	.52	.44
	150	.44	.44	.52	.44
12	10	.48	.48	.52	.48
	50	.48	.48	.52	.48
	100	.48	.48	.56	.48
	150	.48	.48	.56	.48
16	10	.54	.50	.58	.54
	50	.54	.50	.63	.54
	100	.54	.54	.63	.58
20	10	.62	.57	.67	.62
	50	.62	.57	.72	.62
	100	.62	.57	.72	.67
24	10	.68	.63	.73	.68
	50	.68	.63	.79	.68
	100	.73	.63	.79	.73
30	10	.79	.73	.85	.79
	50	.85	.73	.85	.85
36	10	.87	.81	.94	.87
	50	.94	.81	1.02	.94
42	10	1.05	.90	1.05	.97
	50	1.05	.90	1.13	1.05
48	10	1.14	.98	1.14	1.06
	50	1.14	.98	1.23	1.14

5 FEET OF COVER

Size	Working pressure	Laying condition A	B	C	D
4	10	.35	.35	.35	.35
		.38	.38	.38	.38
	50	.35	.35	.35	.35
		.38	.38	.38	.38
	100	.35	.35	.35	.35
		.38	.38	.38	.38
	150	.35	.35	.38	.35
		.38	.38	.38	.38
6	10	.38	.38	.41	.38
		.41	.41	.41	.41
	50	.38	.38	.41	.38
		.41	.41	.41	.41
	100	.38	.38	.44	.38
		.41	.41	.44	.41
	150	.38	.38	.44	.38
		.41	.41	.44	.41
8	10	.41	.41	.48	.41
	50	.41	.41	.48	.41
	100	.41	.41	.48	.41
	150	.41	.41	.48	.41
10	10	.44	.44	.52	.44
	50	.44	.44	.52	.44
	100	.44	.44	.52	.44
	150	.44	.44	.56	.44
12	10	.48	.48	.56	.48
	50	.48	.48	.56	.48
	100	.48	.48	.56	.48
	150	.48	.48	.56	.48
16	10	.54	.50	.63	.58
	50	.54	.50	.63	.58
	100	.58	.54	.68	.58

5 FEET OF COVER (cont.)

Size in.	Working pressure	Laying condition A	B	C	D
20	10	.62	.57	.72	.67
	50	.67	.57	.72	.67
	100	.67	.62	.78	.67
24	10	.73	.63	.79	.73
	50	.73	.63	.79	.73
	100	.73	.68	.85	.79
30	10	.85	.73	.92	.85
	50	.85	.79	.92	.85
36	10	.94	.81	1.02	.94
	50	1.02	.87	1.10	.94
42	10	1.05	.90	1.13	1.05
	50	1.13	.97	1.13	1.05
48	10	1.14	.98	1.23	1.14
	50	1.23	1.06	1.33	1.14

8 FEET OF COVER

Size in.	Working pressure	Laying condition A	B	C	D
4	10	.35	.35	.41	.35
		.38	.38	.41	.38
	50	.35	.35	.41	.35
		.38	.38	.41	.38
	100	.35	.35	.41	.35
		.38	.38	.41	.38
	150	.35	.35	.41	.35
		.38	.38	.41	.38
6	10	.38	.38	.48	.38
		.41	.41	.48	.41
	50	.38	.38	.48	.38
		.41	.41	.48	.41
	100	.38	.38	.48	.38
		.41	.41	.48	.41
	150	.38	.38	.48	.38
		.41	.41	.48	.41
8	10	.41	.41	.52	.41
	50	.41	.41	.52	.41
	100	.41	.41	.56	.41
	150	.41	.41	.56	.41
10	10	.44	.44	.60	.44
	50	.44	.44	.60	.44
	100	.44	.44	.60	.48
	150	.48	.44	.60	.48
12	10	.48	.48	.60	.52
	50	.48	.48	.60	.52
	100	.52	.48	.65	.52
	150	.52	.48	.65	.52
16	10	.58	.54	.73	.63
	50	.63	.58	.73	.63
	100	.63	.58	.73	.68
20	10	.67	.62	.78	.72
	50	.72	.62	.78	.72
	100	.72	.67	.84	.78
24	10	.79	.68	.85	.79
	50	.79	.73	.85	.79
	100	.79	.73	.92	.85
30	10	.92	.79	.99	.92
	50	.92	.85	.99	.92
36	10	1.02	.87	1.10	1.02
	50	1.10	.94	1.19	1.02
42	10	1.13	.97	1.22	1.13
	50	1.22	1.05	1.32	1.13
48	10	1.33	1.06	1.33	1.23
	50	1.33	1.14	1.44	1.33

(5) CAST IRON PIPE JOINTS.—

(a) *Caulked bell and spigot joints.*—Dimensions for caulked bell and spigot joints shall conform to the standard practices. This type of joint shall not be used for pressures in excess of 25 psig, unless reinforced with mechanical clamps.

(b) *Mechanical joints.*—Mechanical joints shall utilize gaskets made of resilient material as their sealing medium. The material selected for gaskets shall be of a type not adversely affected by the gas or condensates in the main. The gaskets shall be suitably confined and retained under compression by a separate gland or follower ring.

(c) *Threaded joints.*—The use of threaded joints to couple lengths of cast iron pipe is not recommended.

(d) *Flanged joints.*—The dimensions and drilling for flanges shall conform to the cast iron pipe flanges and flanged fittings series. Flanges shall be cast integrally with fittings or valves.

(e) *Special joints.*—Special joints are not prohibited provided they are properly qualified and utilized in accordance with appropriate provisions of this code.

(6) INSTALLATION OF CAST IRON PIPE.—Underground cast iron pipe shall be laid in accordance with the applicable field conditions.

(7) Underground cast iron pipe shall be installed with a minimum cover of 24 in. unless prevented by other underground structures.

(8) Where sufficient cover cannot be provided to protect the pipe from external loads or damage and the pipe is not designed to withstand such external loads, the pipe shall be cased or bridged to protect the pipe.

(9) Cast iron pipe installed in unstable soils shall be provided with suitable supports.

(10) Suitable harnessing or buttressing shall be provided at points where the main deviates from a straight line and the thrust if not restrained would part the joints.

(11) MARKING AND TESTING OF FIELD JOINTS.—

(a) Cast iron pipe joints shall conform to subsection (5), and shall be assembled in accordance with the manufacturer's written recommendations.

(b) Cast iron pipe joints shall be leak tested in accordance with §368.28(51).

History.—§26, ch. 59-304.

368.30 Compressor stations.—

(1) LOCATION OF COMPRESSOR BUILDING.—The main compressor building for gas compressor stations should be located at such clear distances from adjacent property not under control of the company as to minimize the hazard of communication of fire to the compressor building from structures on adjacent property. Sufficient open space should be provided around the building to permit the free movement of fire-fighting equipment.

(2) BUILDING CONSTRUCTION. — All compressor station buildings which house gas piping in sizes larger than 2 in. in diameter, or equipment handling gas (except equipment

for domestic purposes) shall be constructed of noncombustible materials.

(3) EXITS.—A minimum of two exits shall be provided for each operating floor of a main compressor building and basements and any elevated walkway or platform 10 ft. or more above ground or floor level. Individual engine catwalks shall not require two exits. These exits may be fixed ladders, stairways, etc., of each such building. The maximum distance from any point on an operating floor to an exit shall not exceed 75 ft. measured along the centerline of aisles or walkways. Said exits shall be unobstructed doorways so located as to provide a convenient possibility of escape and shall provide unobstructed passage to a place of safety. Door latches shall be of a type which can be readily opened from the inside, without a key. All swinging doors located in an exterior wall shall swing outward.

(4) FENCED AREAS.—Any fence which may hamper or prevent escape of persons from the vicinity of a compressor station in an emergency shall be provided with a minimum of two gates. These gates shall be so located as to provide a convenient opportunity for escape to a place of safety. Any such gates located within 200 ft. of any compressor plant building shall open outward and shall be unlocked (or openable from the inside without a key) when the area within the enclosure is occupied. Alternatively, other facilities affording a similarly convenient exit from the area may be provided.

(5) ELECTRICAL FACILITIES.—All electrical facilities inside, and within 25 ft. of the outside, of any compressor building, meter or regulator building or any other building in which gas is continuously handled, by an operating company, gauge and instrument lines excepted, at pressures in excess of 50 psig, shall conform to class 1 group D requirements insofar as it is possible with commercially available equipment. All other buildings on compressor station property (except residences) shall be wired with rigid conduit.

(6) CORROSION CONTROL.—Suitable investigation shall be made and if it indicates that corrosion protection is needed, gas piping within compressor stations shall be protected by any recognized method or combination of methods including coating with protective material, the application of cathodic current, or electrical isolation by sections. After installation of piping, periodic inspections or tests of the piping shall be conducted to determine whether or not the pipe metal is adequately protected.

(7) LIQUID REMOVAL.—When condensable vapors are present in the gas stream in sufficient quantity to liquefy under the anticipated pressure and temperature conditions, the suction stream to each stage of compression (or to each unit, for centrifugal compressors) shall be protected against the introduction of dangerous quantities of entrained liquids into the compressor. Every liquid separator used for this purpose shall be provided with manually operated facilities for removal of liquids therefrom. In addition, automatic liquid removal facilities or an automatic compressor-shutdown device or a high liquid level alarm shall be used where slugs of liquid might be carried into the compressors.

(8) LIQUID REMOVAL EQUIPMENT.—Liquid separators, unless constructed of pipe and fittings and no internal welding is used, shall be manufactured in accordance with the boiler and pressure vessel code standards. Liquid separators when constructed of pipe and fittings without internal welding, shall be in accordance with type D construction requirements.

(9) FIRE PROTECTION.—Fire protection facilities should be provided. If fire pumps are a part of such facilities, their operation shall not be affected by emergency shutdown facilities.

(10) EMERGENCY SHUTDOWN FACILITIES.—

(a) Each transmission compressor station shall be provided with an emergency shutdown system by means of which all gas compressing equipment, all gas fires, and all electrical facilities in the vicinity of gas headers and in the compressor building can be shut down and the gas can be blocked out of the station and the station gas piping blown down. The emergency shutdown system shall be operable from any one of at least two locations outside the gas area of the station, preferably near exit gates in the station fence, but not more than 500 ft. from the limits of the station. Blowdown piping shall extend to a location where the discharge of gas is not likely to create a hazard to the compressor station or surrounding area. Unattended field compressor stations of 1,000 horsepower and less are excluded from the provisions of this subsection.

(b) Each compressor station supplying gas directly to a distribution system shall be provided with emergency shutdown facilities located outside of the compressor station buildings by means of which all gas can be blocked out of the station provided there is another adequate source of gas for the distribution system. These shutdown facilities can be either automatic or manually operated as local conditions designate. When no other gas source is available, then no shutdown facilities shall be installed that might function at the wrong time and cause an outage on the distribution system.

(11) ENGINE OVERSPEED STOPS.—Every compressor prime mover except electric induction or synchronous motors shall be provided with an automatic device which is designed to shut down the unit before the speed of the prime mover or of the driven unit exceeds the maximum safe speed of either, as established by the respective manufacturers.

(12) PRESSURE LIMITING REQUIREMENTS.—Pressure relief or other suitable protective devices of sufficient capacity and

sensitivity shall be installed and maintained to assure that the maximum allowable operating pressure of the station piping and equipment is not exceeded by more than 10%.

(13) A pressure relief valve shall be installed in the discharge line of each positive-displacement transmission compressor between the gas compressor and the first discharge block valve. The relieving capacity shall be equal to or greater than the capacity of the compressor. If the relief valves on the compressor do not prevent the possibility of overpressuring the pipeline, as specified in §368.32, a relieving device shall be installed on the pipeline to prevent it from being over-pressured.

(14) An acceptable relief device, in accordance with §368.32, or automatic compressor shutdown device shall be installed in the discharge of each positive displacement distribution compressor between the gas compressor and the first discharge block valve. The relieving device shall be installed and maintained to prevent the maximum allowable operating pressure of the compressor and discharge piping from being exceeded by more than 10%.

(15) Vent lines provided to exhaust the gas from the pressure relief valves to atmosphere shall be extended to a location where the gas may be discharged without undue hazard. Vent lines shall have sufficient capacity so that they will not interfere with the performance of the relief valve.

(16) FUEL GAS CONTROL.—An automatic device shall be provided on each gas engine operating with pressure gas injection, which is designed to shut off the fuel gas when the engine stops. The engine distribution manifold shall be simultaneously automatically vented.

(17) COOLING AND LUBRICATION FAILURES.—All gas compressor units shall be equipped with shutdown or alarm devices to operate in the event of inadequate cooling or lubrication of the units.

(18) MUFFLERS.—The external shell of mufflers for engines using gas as fuel shall be designed in accordance with good engineering practice and shall be constructed of ductile materials. All compartments of the muffler shall be manufactured with vent slots or holes in the baffles to prevent gas from being trapped in the muffler.

(19) BUILDING VENTILATION.—Ventilation shall be sufficient so that employees are not endangered under normal operating conditions (or such abnormal conditions as a blown gasket, packing gland, etc.) by accumulations of hazardous concentrations of flammable or noxious vapors or gasses in rooms, sumps, attics, pits, or similarly enclosed places, or in any portion thereof.

(20) PIPING SPECIFICATIONS.—All compressor station gas piping, other than instrument, control and sample piping, to and including connections to the main pipeline shall be of steel and shall be type C construction.

(21) INSTALLATION OF GAS PIPING.—The provisions of §368.28 (20)-(41) shall apply where appropriate to gas piping in compressor stations.

(22) TESTING OF GAS PIPING.—All gas piping within a compressor station shall be tested hydrostatically after installation to at least 1.4 times the maximum operating pressure except that small additions to operating stations need not be tested where operating conditions make it impractical to test.

(23) IDENTIFICATION OF VALVES AND PIPING.—All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function.

(24) FUEL GAS PIPING.—

(a) All fuel gas lines within a compressor station, serving the various buildings and residential area, shall be provided with master shutoff valves located outside of any building or residential area.

(b) The pressure regulating facilities for the fuel gas system for a compressor station shall be provided with pressure limiting devices to prevent the normal operating pressure of the system from being exceeded by more than 25%, or the maximum allowable operating pressure by more than 10%.

(c) Suitable provision shall be made to prevent fuel gas from entering the power cylinders of an engine and actuating moving parts while work is in progress on the engine or on equipment driven by the engine.

(d) All fuel gas used for domestic purposes at a compressor station, which has an insufficient odor of its own to serve as a warning in the event of its escape, shall be odorized as prescribed in §368.45.

(25) AIR PIPING SYSTEM.—

(a) All air piping within gas compressing stations shall be constructed in accordance with this code for pressure piping.

(b) The starting air pressure, storage volume, and size of connecting piping shall be adequate to rotate the engine at the cranking speed and for the number of revolutions necessary to purge the fuel gas from the power cylinder and muffler. The recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of having to start several of these engines within a short period of time.

(c) A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the air piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. Equipment for cooling the air and removing the moisture and entrained oil should be installed between the

starting air compressor and the air storage tanks.

(d) Suitable provision shall be made to prevent starting air from entering the power cylinders of an engine and actuating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

(e) Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with standard practices.

(26) LUBRICATING OIL PIPING.—All lubricating oil piping within gas compressing stations shall be constructed in accordance with this code for pressure piping.

(27) WATER PIPING.—All water piping within gas compressing stations shall be constructed in accordance with this code for pressure piping.

(28) STEAM PIPING.—All steam piping within gas compressing stations shall be constructed in accordance with this code for pressure piping.

(29) HYDRAULIC PIPING.—All hydraulic power piping within gas compressing stations shall be constructed in accordance with this code for pressure piping.

History.—§27, ch. 59-304.

368.31 Pipe-type and bottle-type holders.—

(1) PIPE-TYPE HOLDERS IN RIGHTS-OF-WAY NOT UNDER EXCLUSIVE USE AND CONTROL OF THE OPERATING COMPANY. —A pipe-type holder which is to be installed in streets, highways or in private rights-of-way not under the exclusive control and use of the operating company shall be designed, installed, and tested in accordance with the provisions of this code applicable to a pipe line installed in the same location and operated at the same maximum pressure.

(2) LOCATION.—Bottle-type holders shall be located on land owned or under the exclusive control and use of the operating company.

(3) PIPE-TYPE AND BOTTLE-TYPE HOLDERS ON PROPERTY UNDER THE EXCLUSIVE USE AND CONTROL OF THE OPERATING COMPANY.—The storage site shall be entirely surrounded with fencing to prevent access by unauthorized persons.

(a) A pipe-type or bottle-type holder which is to be installed on property under the exclusive control and use of the operating company shall be designed in accordance with construction design factors the selection of which depends upon the location class in which the site is situated, the clearance between the pipe containers or bottles and the fence, and the maximum operating pressure, as follows:

Holder site Location class	Design factors Minimum clearance between containers and fenced boundaries of site
	25′ to 100′
1	.72
2	.60
3	.60
4	.40
	100′ or Over
1	.72
2	.72
3	.60
4	.40

(b) The minimum clearance between containers and the fenced boundaries of the site is fixed by the maximum operating pressure of the holder as follows:

Maximum operating pressure	Minimum clearance
Less than 1000 psi	25′
1000 psi or more	100′

(c) The minimum distance in inches between pipe containers or bottles shall be determined by the following formula:

$$C = \frac{3D \times p \times \text{"F"}}{1000}$$

in which:

C = Minimum clearance between pipe containers or bottles in inches.

D = Outside diameter of pipe container or bottle in inches.

P = Maximum allowable operating pressure in pounds per square inch gage.

"F" = Design factor.

(d) Pipe containers shall be installed underground with the top of each container not less than 24 in. below the ground surface.

(e) Bottles shall be installed underground with the top of each container below the normal frost line but in no case closer than 24 in. to the surface.

(f) Pipe-type holders shall be tested in accordance with the provisions of §368.28 (43) for a pipeline located in the same location class as the holder site; provided, however, that in any case where the test pressure will produce a hoop stress of 80% or more of the specified minimum yield strength of the pipe, water shall be used as the test medium.

(4) SPECIAL PROVISIONS APPLICABLE TO BOTTLE-TYPE HOLDERS ONLY.—A bottle-type holder may be manufactured from steel which is not weldable under field conditions, subject to all of the following limitations:

(a) Bottle-type holders made from alloy steel shall meet the chemical and tensile requirements for the various grades of steel.

(b) In no case shall the ratio of actual yield strength to actual tensile strength exceed .85.

(c) Welding shall not be performed on such bottles after they have been heat treated and/or

stress relieved, except that it shall be permissible to attach small copper wires to the small diameter portion of the bottle end closure for cathodic protection purposes using a localized thermit welding process.

(d) Such bottles shall be given a hydrostatic test in the mill, and need not be retested hydrostatically at the time of installation. The mill test pressure shall not be less than that required to produce a hoop stress equal to 85% of the specified minimum yield strength of the steel. Careful inspection of the bottles at the time of installation shall be made and no damaged bottles shall be used.

(e) Such bottles and connecting piping shall be tested for tightness after installation using air or gas at a pressure of 50 psi above the maximum operating pressure.

(5) GENERAL PROVISIONS APPLICABLE TO BOTH PIPE-TYPE AND BOTTLE-TYPE HOLDERS.—

(a) Suitable measures shall be taken to protect the storage system against external corrosion.

(b) No gas containing more than 0.1 grain of hydrogen sulfide per 100 cubit feet at 14.7 psia and 60°F. shall be stored.

(c) Provision shall be made to prevent the formation or accumulation of liquids in the holder, connecting piping and auxiliary equipment, that might cause corrosion or might interfere with the safe operation of the storage equipment.

(d) Relief valves shall be installed in accordance with provisions of this code which will have relieving capacity adequate to limit the pressure imposed on the filling line and thereby on the storage holder to 110% of the design pressure of the holder, or to that pressure which produces a hoop stress of 75% of the specified minimum yield strength of the steel, whichever is the lesser.

History.—§28, ch. 59-304.

368.32 Control and limiting of gas pressure.—

(1) BASIC REQUIREMENT FOR PROTECTION AGAINST ACCIDENTAL OVER-PRESSURING.—Every pipeline, main, distribution system, customer's meter and connected facilities, compressor station, pipe type holder, bottle type holder, container fabricated from pipe and fittings, and all special equipment, if connected to a compressor or to a gas source where the failure of pressure control or other causes might result in a pressure which would exceed the maximum allowable operating pressure of the facility, shall be equipped by the operating company with suitable pressure relieving or pressure limiting devices in accordance with the provisions of this section.

(2) CONTROL AND LIMITING OF GAS PRESSURE IN HOLDERS, PIPELINES AND ALL FACILITIES THAT MIGHT AT TIMES BE BOTTLE TIGHT.—Suitable types of protective devices to prevent overpressuring of such facilities are:

(a) Spring loaded relief valves of types approved for unfired pressure vessels.

(b) Pilot loaded back-pressure regulators used as relief valves, so designed that failure of the pilot system or control lines will cause the regulator to open.

(3) MAXIMUM ALLOWABLE OPERATING PRESSURE FOR PIPELINES OR MAINS.—This pressure is by definition the maximum operating pressure to which the pipeline or main may be subjected in accordance with the requirements of this code. For a pipeline or main in good operating condition, the maximum allowable operating pressure is the lesser of the two pressures described in (a) and (b) below:

(a) The design pressure of the weakest element of the pipeline or main. Assuming that all fittings, valves and other accessories in the line have an adequate pressure rating, the maximum allowable operating pressure of a steel pipeline or main shall be the design pressure determined in accordance with §368.28(6).

(b) The pressure obtained by dividing the pressure to which the pipeline or main is tested after construction by the appropriate factor for the location class involved, as follows:

Location class no.	Pressure
1	Test pressure / 1.10
2	Test pressure / 1.25
3	Test pressure / 1.40
4	Test pressure / 1.40

Other factors than 1.4 should be used if the line was tested under the special conditions described in §368.28 (44), (47) and (49). In such cases use factors that are consistent with the applicable requirements of these sections.

(c) In some cases the operating company will consider that the maximum operating pressure to which a pipeline or main should be subjected is less than the pressure determined by either (a) or (b) above. Pipelines that are known to be seriously corroded or that have other defects seriously affecting their strength and which have been operated for years at lower pressures, fall into this category. In such cases the operating company shall decide the maximum pressure it considers safe, and shall install over-pressure protective devices designed to prevent accidentally exceeding this maximum pressure, if there is a reasonable possibility that the pressure will be exceeded.

(d) If services are connected to the pipeline or main, there are additional considerations

that might in some cases limit the maximum allowable operating pressure of the facility.

(4) QUALIFYING A PIPELINE OR MAIN FOR A NEW AND HIGHER MAXIMUM ALLOWABLE OPERATING PRESSURE.—This subsection applies to pipelines or mains where the new and higher maximum allowable operating pressure will produce a hoop stress of 30% or more of the specified minimum yield strength of the pipe. When the new and higher maximum allowable operating pressure is equal to or less than this value the provisions of subsection (7) shall apply.

Before increasing the maximum allowable operating pressure of a pipeline or main that has been operating for a period of several years or more at a pressure less than that determined by subsection (3) (a), it is required that:

(a) The following investigative and corrective measures be taken:

1. The design and previous testing of the pipeline and the materials and equipment in it be reviewed to determine that the proposed increase in allowable operating pressure is safe and in general agreement with the requirements of this code.

2. The condition of the line be determined by field inspections, examination of maintenance records, or other suitable means.

3. Repairs, replacements or alterations in the pipeline disclosed to be necessary by steps 1. and 2. be made.

(b) The maximum allowable operating pressure may be increased after compliance with (a) above and one of the following provisions:

1. If the physical condition of the line as determined by (a) above indicates that the line is capable of withstanding the desired increased operating pressure in accordance with the design requirements of this code and the line has previously been tested to a pressure equal to or greater than that required by this code for a new line for the proposed new maximum allowable operating pressure, the line may be operated at the increased maximum allowable operating pressure.

2. If the physical condition of the line as determined by (a) above indicates that the ability of the line to withstand the increased maximum operating pressure has not been satisfactorily verified or the line has not been previously tested to the levels required by this code for a new line for the proposed new maximum allowable operating pressure, the line may be operated at the increased maximum allowable operating pressure if the line shall successfully withstand the test required by this code for a new line to operate under the same conditions.

3. If, under the foregoing provisions of (b) above, it is necessary to test a pipeline or main before it can be up-rated to a new maximum allowable operating pressure, and if it is not practical to test the line either because of the expense or difficulties created by taking it out of service, or because of other operating conditions, a new and higher maximum allowable operating pressure may be established as follows:

a. Perform the requirements of (a) above.

b. Select a new maximum allowable operating pressure consistent with the condition of the line and the design requirements of this code; provided, however, that,

c. In no such case shall the new maximum allowable operating pressure exceed 80% of that permitted for a new line of the same design in the same location.

(c) In no case shall the maximum allowable operating pressure of a pipeline be raised to a value higher than would be permitted by this code for a new line constructed of the same materials and in the same locations.

The rate of pressure increase to the new maximum allowable operating pressure should be gradual so as to allow sufficient time for periodic observations of the pipeline.

(5) CONTROL AND LIMITING OF GAS PRESSURE IN HIGH-PRESSURE DISTRIBUTION SYSTEMS.—Each high-pressure distribution system or main, supplied from a source of gas which is at a higher pressure than the maximum allowable operating pressure for the system, shall be equipped with pressure regulating devices of adequate capacity, and designed to meet the pressure, load and other service conditions under which they will operate or to which they may be subjected.

In addition to the pressure regulating devices prescribed, a suitable method shall be provided to prevent accidental over-pressuring of a high-pressure distribution system.

Suitable types of protective devices to prevent over-pressuring of high-pressure distribution systems are:

(a) Relief valves as prescribed in subsection (2) (a) and (b).

(b) Weight loaded relief valves.

(c) A monitoring regulator installed in series with the primary pressure regulator.

(d) A series regulator installed upstream from the primary regulator, and set to continuously limit the pressure on the inlet of the primary regulator to the maximum allowable operating pressure of the distribution system or less.

(e) An automatic shut-off device installed in series with the primary pressure regulator, and set to shut off when the pressure on the distribution system reaches the maximum allowable operating pressure, or less. This device must remain closed until manually reset. It should not be used where it might cause an interruption in service to a large number of customers.

(6) MAXIMUM ALLOWABLE OPERATING PRESSURE FOR HIGH PRESSURE DISTRIBUTION SYSTEMS.—This pressure shall be the maximum pressure to which the system can be subjected in accordance with requirements of this code. It shall not exceed:

(a) The design pressure of the weakest element of the system as defined in §368.02 (2).

(b) 60 psig if the services in the system are not equipped with series regulators or other pressure limiting devices as prescribed in subsection (14).

(c) 25 psig in cast iron systems having unreinforced bell and spigot joints as prescribed in §368.29 (5) (a).

(d) 2 psig in high-pressure distribution systems equipped with service regulators not meeting the requirements of subsection (12) and which do not have an overpressure protective device as required in subsection (13).

In some cases the operating company will consider the maximum pressure to which a system should be subjected is less than the pressure obtained by applying the applicable limits in paragraphs (a), (b), (c) or (d). Systems that are known to be corroded and that have been operated for years at lower pressures than these limits fall into this category. In such cases the operating company shall decide the maximum pressure it considers safe, and shall install overpressure protective devices to prevent accidentally exceeding this maximum pressure if there is a reasonable possibility that the pressure will be exceeded.

(7) QUALIFYING A HIGH-PRESSURE DISTRIBUTION SYSTEM FOR A NEW AND HIGHER MAXIMUM ALLOWABLE OPERATING PRESSURE.—This subsection applies to high-pressure distribution mains and to pipelines where the new and higher maximum allowable operating pressure is less than that required to produce a hoop stress of 30% of the specified minimum yield strength of the pipe. When the new and higher maximum allowable operating pressure is more than this value the provisions of subsection (4) shall apply.

(a) Before increasing the maximum allowable operating pressure of a high-pressure distribution system, that has been operating at less than the applicable maximum pressure stated in subsection (6), to a new maximum allowable operating pressure equal to or less than the maximum applicable pressure in subsection (6), the following factors should be taken into consideration:

1. The design of the system including kinds of material and equipment used.

2. Past maintenance records including results of any previous leakage surveys.

(b) Before increasing the pressure the following steps should be taken:

1. Make a leakage survey, if past maintenance records indicate that such a survey is advisable, and repair leaks found.

2. Repair or replace parts of the system found to be inadequate for the higher operating pressure.

3. If the new maximum allowable operating pressure is to be over 60 psig, install suitable devices on the services to regulate and limit the pressure of the gas in accordance with subsection (11).

4. At bends or offsets in coupled or bell and spigot pipe, reinforce or replace anchorages determined to be inadequate for the higher operating pressure.

(c) The rate of pressure increase to the new maximum allowable operating pressure should be gradual so as to allow sufficient time for periodic observations of the system.

(8) CONTROL AND LIMITING OF GAS PRESSURE IN LOW-PRESSURE DISTRIBUTION SYSTEMS.—Each low-pressure distribution system or low-pressure main supplied from a gas source which is at a higher pressure than the maximum allowable operating pressure for the low-pressure system, shall be equipped with pressure regulating devices of adequate capacity, designed to meet the pressure, load and other service conditions under which they will have to operate.

In addition to the pressure regulating devices prescribed in this subsection, a suitable device shall be provided to prevent accidental overpressuring.

Suitable types of protective devices to prevent overpressuring of low-pressure distribution systems are:

(a) A liquid seal relief valve that can be set to open accurately and consistently at the desired pressure, and to close again when the pressure in the distribution system returns to normal.

(b) Weight loaded relief valves.

(c) An automatic shut-off device as described in subsection (5) (e).

(d) A pilot loaded back-pressure regulator as described in subsection (2) (b).

(e) A monitoring regulator as described in subsection (5) (c).

(f) A series regulator as described in subsection (5) (d).

(9) MAXIMUM ALLOWABLE OPERATING PRESSURE FOR LOW-PRESSURE DISTRIBUTION SYSTEMS.—The maximum allowable operating pressure for a low pressure distribution system shall not exceed either:

(a) A pressure which would cause the unsafe operation of any connected and properly adjusted low pressure gas burning equipment, or

(b) A pressure of 2 psig.

(10) CONVERSION OF LOW-PRESSURE DISTRIBUTION SYSTEMS TO HIGH-PRESSURE DISTRIBUTION SYSTEMS.—

(a) Before converting a low-pressure distribution system to a high-pressure distribution system, it is recommended that the following factors be taken into consideration:

1. The design of the system including kinds of material and equipment used.

2. Past maintenance records including results of any previous leakage surveys.

(b) Before increasing the pressure the following steps should be taken:

1. Make a leakage survey, if past mainten-

ance records indicate that such a survey is advisable, and repair leaks found.

2. Reinforce or replace parts of the system found to be inadequate for the higher operating pressures.

3. Install a service regulator on each service, and test each regulator to determine that it is functioning. In some cases it may be necessary to raise the pressure slightly to permit proper operation of the service regulator.

4. Isolate the system from adjacent low-pressure systems.

5. At bends or offsets in coupled or bell and spigot pipe, reinforce or replace anchorages determined to be adequate for the higher pressures.

(c) The pressure in the system being converted should be increased by steps, with a period to check the effect of the previous increase before making the next increase. The desirable magnitude of each increase and the length of the check period will vary depending upon conditions. The objective of this procedure is to afford an opportunity to discover before excessive pressures are reached any unknown open and unregulated connections to adjacent low-pressure systems or to individual customers.

(11) The requirements for the control and limiting of the pressure of gas delivered to industrial customers are included in subsection (1).

(12) If the maximum actual operating pressure of the distribution system is between 2 psig and 60 psig and a service regulator having the characteristics listed below is used, no other pressure limiting device is required:

(a) A pressure regulator capable of reducing distribution line pressure (pounds per square inch) to pressures recommended for household appliances (inches of water column).

(b) Single port valve with orifice diameter no greater than that recommended by the manufacturer for the maximum gas pressure at the regulator inlet.

(c) The valve seat shall be made of resilient material designed to withstand abrasion of the gas, impurities in gas, cutting by the valve, and to resist permanent deformation when it is pressed against the valve port.

(d) Pipe connections to the regulator shall not exceed 2 in. in diameter.

(e) The regulator must be of a type that is capable under normal operating conditions of regulating the downstream pressure within the necessary limits of accuracy and of limiting the build-up pressure under no-flow conditions to 50% or less of the discharge pressure maintained under flow conditions.

(f) A self-contained service regulator with no external static or control lines.

(13) If the maximum actual operating pressure of the distribution system is between 2 psig and 60 psig and a service regulator not having all of the characteristics listed in subsection (12) is used, or if the gas contains materials that seriously interfere with the operation of service regulators, suitable protective devices shall be installed to prevent accidental overpressuring of the customer's appliances should the service regulator fail. Some of the suitable types of protective devices to prevent overpressuring of customer's appliances are: a monitoring regulator, a relief valve, and an automatic shut-off device. These devices may be installed as an integral part of the service regulator or as a separate unit.

(14) If the maximum actual operating pressure of the distribution system exceeds 60 psig, suitable methods shall be used to regulate and limit the pressure of the gas delivered to the customer, such as:

(a) A service regulator having the characteristics listed in subsection (12) and a secondary regulator located upstream from the service regulator. The secondary regulator is usually set to maintain a pressure of from 5 to 10 psi on the inlet of the service regulator, and shall in no case be set to maintain a pressure higher than 60 psi. A device shall be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to 60 psi or less in case the secondary regulator fails to function properly. This device may be either a relief valve, or an automatic shut-off that shuts, if the pressure on the inlet of the service regulator exceeds the set pressure (60 psi or less), and remains closed until manually reset.

(b) A service regulator and a monitoring regulator set to limit to a maximum safe value the pressure of the gas delivered to the customer.

(c) A service regulator with a relief valve vented to the outside atmosphere, and set to open if the pressure of the gas going to the customer exceeds a maximum safe value. The relief valve may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where the inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and is not recommended for use where the inlet pressure on the service regulator exceed 125 psi. For higher inlet pressures, the methods in subsection (14) (a) and (b) should be used.

(15) REQUIREMENTS FOR DESIGN OF ALL PRESSURE RELIEF AND PRESSURE LIMITING INSTALLATIONS.—All pressure relief or pressure limiting devices shall:

(a) Be constructed of materials such that the operation of the device will not normally be impaired by corrosion of external parts by the atmosphere, or of the internal parts by gas.

(b) Have valves and valve seats that are designed not to stick in a position that will make the device inoperative and result in fail-

ure of the device to perform in the manner for which it was intended.

(c) Be designed and installed so that they can be readily operated to determine if the valve is free; and can be tested to determine the pressure at which they will operate; and can be tested for leakage when in the closed position.

(16) The discharge stacks, vents, or outlet ports of all pressure relief devices shall be located where gas can be discharged into the atmosphere without undue hazard. Consideration should be given to all exposures in the immediate vicinity. All discharge stacks, or vents, shall be protected with rain caps to preclude the entry of water into the stack.

(17) The size of the openings, pipe and fittings located between the system to be protected and the pressure relieving device, and the vent line, shall be of adequate size to prevent hammering of the valve and to prevent impairment of relief capacity.

(18) Precautions shall be taken to prevent unauthorized operation of any stop valve which will make a pressure relief valve inoperative. This provision shall not apply to valves, the operation of which will isolate the system under protection from its source of pressure. Acceptable methods for complying with this provision are:

(a) Lock the stop valve in the open position. Instruct authorized personnel of the importance of not inadvertently leaving the stop valve closed and of being present during the entire period that the stop valve is closed so that they can lock it in the open position before they leave the location.

(b) Install duplicate relief valves, each having adequate capacity by itself to protect the system, and arrange the isolating valves or 3-way valve so that mechanically it is possible to render only one safety device inoperative at a time.

(19) Precautions shall be taken to prevent unauthorized operation of any valve which will make pressure limiting devices inoperative. This provision applies to isolating valves, bypass valves, and valves on control or float lines which are located between the pressure limiting device and the system which the device protects. A method similar to subsection (18) (a) shall be considered acceptable in complying with this provision.

(20) (a) When a monitoring regulator, series regulator, system relief or system shut-off, is installed at a district regulator station to protect a piping system from overpressuring, the installation shall be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting the operation of both the overpressure protective device and the district regulator.

(b) Special attention shall be given to control lines. All control lines shall be protected from falling objects, excavations by others, or other forseeable causes of damage and shall be designed and installed to prevent damage to any one control line from making both the district regulator and the overpressure protective device inoperative.

(21) REQUIRED CAPACITY OF PRESSURE RELIEVING AND PRESSURE LIMITING DEVICES.—Each pressure relieving device, or group of such devices, installed to protect a piping system shall have sufficient capacity and shall be set to operate to prevent the pressure from exceeding the maximum allowable operating pressure, plus 10%, or the pressure which would produce a hoop stress of 75% of the specified minimum yield strength, whichever is lower.

(a) Each pressure limiting device shall be set to prevent the pressure in the facility which it protects from exceeding the maximum allowable operating pressure.

(b) When more than one pressure regulating or compressor station feeds into a pipeline or distribution system and pressure relief devices are installed at such stations, the relieving capacity at the remote stations may be taken into account in sizing the relief devices at each station. However, in doing this the assumed remote relieving capacity must be limited to the capacity of the piping system to transmit gas to the remote location or to the capacity of the remote relief device, whichever is less.

(22) PROOF OF ADEQUATE CAPACITY AND SATISFACTORY PERFORMANCE OF PRESSURE LIMITING AND PRESSURE RELIEF DEVICES.—Where the safety device consists of an additional regulator which is associated with or functions in combination with one or more regulators in a series arrangement to control or limit the pressure in a piping system, suitable checks shall be made to determine that the equipment will operate in a satisfactory manner to prevent any pressure in excess of the established maximum allowable operating pressure of the system should any one of the associated regulators malfunction or remain in the wide open position.

Suitable checks shall be made periodically to insure that the combined capacity of the relief devices on a piping system or facility is adequate to limit the gas pressure at all times to values prescribed by this code. This check should be based on the operating conditions that create the maximum probable requirement for relief capacity in each case, even though such operating conditions actually occur infrequently and/or for only short periods of time.

(23) INSTRUMENT, CONTROL AND SAMPLE PIPING.—

(a) Scope.

1. The requirements given in this section apply to the design of instrument, control and sampling piping for safe and proper operation of the piping itself and do not cover design of piping to secure proper functioning of instruments for which the piping is installed.

2. This section does not apply to permanent-

ly closed piping systems; such as fluid-filled temperature-responsive devices.

(b) Materials and design.

1. The materials employed for valves, fittings, tubing, and piping shall be designed to meet the particular conditions of service.

2. Take-off connections and attaching bosses, fittings, or adapters shall be made of suitable material and shall be capable of withstanding the maximum service pressure and temperature of the piping or equipment to which they are attached. They shall be designed to satisfactorily withstand all stresses without failure by fatigue.

3. A shut-off valve shall be installed in each take-off line as near as practicable to the point of take-off. Blow-down valves shall be installed where necessary for the safe operation of the piping, instruments and equipment.

4. Brass pipe or copper pipe or tubing shall not be used for metal temperatures greater than 400°F.

5. Piping subject to clogging from solids or deposits shall be provided with suitable connections for cleaning.

6. Pipe or tubing of diameters smaller than the minimum diameters required under this section may be specified by the manufacturers of the instrument, control apparatus, or sampling device, provided that the safety of the smaller pipe or tubing as installed is at least equal to that otherwise required under this code.

7. Piping which may contain liquids shall be protected by heating or other suitable means from damage due to freezing.

8. Piping in which liquids may accumulate shall be provided with drains or drips.

9. The arrangement of piping and supports shall be designed to provide not only for safety under operating stresses, but also to provide protection for the piping against detrimental sagging, external mechanical injury, abuse, and damage due to unusual service conditions other than those connected with pressure, temperature, and service vibration.

10. Suitable precautions, such as increasing the pipe wall thickness, shall be taken where internal corrosive conditions may exist. All underground piping shall be protected against corrosion where soil tests or experience indicate that the soil is corrosive.

11. Joints between sections of tubing and/or pipe and between tubing and/or pipe and valves or fittings shall be made in a manner suitable for the pressure and temperature condition, such as by means of flared, flareless, and compression type fittings, or equal, or they may be of the brazed, screwed, or socket-welded type. If screwed-end valves are to be used with flared, flareless, or compression type fittings, adapters are required.

Slip type expansion joints shall not be used; expansion shall be taken care of by providing flexibility.

History.—§29, ch. 59-304.

368.33 Customers' meters and regulators.—

(1) LOCATION FOR CUSTOMERS' METER AND REGULATOR INSTALLATIONS.—

(a) Customers' meters and regulators may be located either inside or outside of buildings, depending upon local conditions, except, that on services requiring series regulation, in accordance with §368.32(14)(a), the upstream regulator shall be located outside of the building.

(b) When installed within a building, the service regulator shall be in a readily accessible location near the point of gas service entrance and, whenever practical, the meters shall be installed at the same location. Meters shall not be installed in bedrooms, closets, bathrooms, under combustible stairways or in unventilated or inaccessible places, nor closer than three feet to sources of ignition, including furnaces and water heaters. On services supplying large industrial customers or installations where gas is utilized at higher than standard service pressure, the regulators may be installed at other readily accessible locations.

(c) When located outside of buildings, meters and service regulators shall be installed in readily accessible locations where they will be reasonably protected from damage.

(d) Regulators requiring vents for their proper and effective operation shall be vented to the outside atmosphere in accordance with the provisions of subsection (3).

(2) OPERATING PRESSURES FOR CUSTOMERS' METER INSTALLATIONS.—Iron or aluminum case meters shall not be used at a maximum operating pressure higher than the manufacturer's rating for the meter. New tinned steel case meters shall not be used at a pressure in excess of 50% of the manufacturer's test pressure; rebuilt tinned steel case meters shall not be used at a pressure in excess of 50% of the pressure used to test the meter after rebuilding.

(3) PROTECTION OF CUSTOMERS' METER AND REGULATOR INSTALLATIONS FROM DAMAGE.—Meters and service regulators shall not be installed where rapid deterioration from corrosion or other causes is likely to occur.

A suitable protective device such as a backpressure regulator, or a check valve, shall be installed downstream of the meter if and as required under the following conditions:

(a) If the nature of the utilization equipment is such that it may induce a vacuum at the meter, install a backpressure regulator downstream from the meter.

(b) Install a check valve or equivalent if:

1. The utilization equipment might induce a backpressure.

2. The gas utilization equipment is connected to a source of oxygen or compressed air.

(3) Liquefied petroleum gas or other supplementary gas is used as standby and might flow back into the meter. A three-way valve in-

stalled to admit the standby supply and at the same time shut off the regular supply can be substituted for a check valve if desired.

All service regulator vents, and relief vents where required, shall terminate in the outside air in rain and insect resistant fittings. The open end of the vent shall be located where, if a regulator failure resulting in the release of gas occurs, the gas can escape freely into the atmosphere and away from any openings into the buildings. At locations where service regulators might be submerged during floods, either a special anti-flood type breather vent fitting shall be installed, or the vent line shall be extended above the height of the expected flood waters.

Pits and vaults, housing customers' meters and regulators, shall be designed to support vehicular traffic when installed in travelled portions of alleys, streets and highways, or driveways.

(4) INSTALLATION OF METERS AND REGULATORS.—All meters and regulators shall be installed in such a manner as to prevent undue stresses upon the connecting piping and/or the meter. Lead connections or other connections made of material which can be easily damaged, shall not be used. The use of standard weight close nipples is prohibited.

History.—§30, ch. 59-304.

368.34 Gas services.—

(1) GENERAL PROVISIONS APPLICABLE TO BOTH STEEL AND COPPER SERVICES. INSTALLATION OF SERVICES BY OPERATING COMPANIES.—

(a) Services shall be installed at a depth which will protect them from excessive external loadings, and local activities, such as gardening. A minimum depth of 12 in. in private property and a minimum depth of 18 in. in streets and roads should be maintained. Where this cannot be done, due to existing substructures, etc., less cover is permitted provided however that where such services are subject to excessive superimposed loads, those portions of the service shall be cased or bridged to avoid harmful additional loads on the pipe, or strengthened to resist them.

(b) Service piping shall be properly supported at all points on undisturbed or well compacted soil, so that the pipe will not be subject to excessive external loading by the backfill. The material used for the backfill shall be free of rocks, building materials, etc., that might cause damage to the pipe or the protective coating.

(c) Where there is evidence of condensate in the gas in sufficient quantities to cause interruptions in the gas supply to the customer, the service shall be graded so as to drain in the main or to drip at the low points in the service.

(2) TYPES OF VALVES SUITABLE FOR SERVICE SHUT-OFFS.—

(a) Valves or cocks used as service shut-offs shall meet the applicable requirements of §§368.06 and 368.22.

(b) The use of soft seat shut-off valves or cocks is not recommended.

(c) A valve incorporated in a meter bar which permits the meter to be by-passed does not qualify under this code as a service shut-off.

(d) Service shut-offs on high pressure services, installed either inside of buildings or in confined locations outside of buildings where the blowing of gas would be hazardous, shall be designed and constructed to minimize the possibility of the removal of the core of the valve or cock accidentally or willfully with ordinary household tools.

(e) The operating company shall make certain that the shut-off valves or cocks installed on high pressure services are suitable for this use either by making their own tests or by reviewing the tests made by the manufacturers.

(f) On services designed to operate at pressures in excess of 60 psig the service shut-off valve or cock shall be the equivalent of a pressure lubricated cock or a needle type valve. Other types of valves or cocks may be used where tests by the manufacturer or by the user indicate that they are suitable for this kind of service.

(3) LOCATION OF SERVICE SHUT-OFFS.—

(a) Service shut-offs shall be installed on all new services (including replacements) in a readily accessible location.

(b) Shut-offs shall be located upstream of the meter if there is no regulator, or upstream of the regulator, if there is one.

(c) All gas services operating at a pressure greater than 10 psig, and all services 2 in. in diameter or larger, shall be equipped with a shut-off located on the service line outside of the building, except that whenever gas is supplied to a theatre, church, school, factory or other building where large numbers of persons assemble, an outside shut-off in such case will be required regardless of the size of the service or of the service pressure.

(d) Underground shut-offs shall be located in a covered durable curb box or standpipe, which is designed to permit ready operation of the valve.

(4) LOCATION OF SERVICE CONNECTION TO MAIN PIPING.—Services should be connected to either the top or the side of the main. The connection to the top of the main is preferred, in order to minimize the possibility of dust and moisture being carried from the main into the service.

(5) TESTING OF SERVICES AFTER CONSTRUCTION.—Each service shall be tested after construction and before being placed in service to demonstrate that it does not leak.

Services to operate at a pressure between 1 psig and 40 psig, shall be given a stand-up air or gas pressure test at not less than 50 psig for at least five minutes before being placed in service.

Services to operate at pressures in excess of

40 psig, but stressed less than 20% of the specified minimum yield, shall be tested to the maximum operating pressure or 100 psig, whichever is the lesser. Services stressed to 20% or more of the specified minimum yield shall be tested in accordance with the requirements for mains.

The service connection to the main need not be included in these pressure tests if it is not feasible to do so.

(6) DESIGN OF STEEL SERVICES.—

(a) Steel pipe, when used for gas services, shall conform to the applicable requirements of §368.06.

(b) Underground steel services, when installed below grade through the outer foundation wall of a building, shall be either encased in a sleeve or otherwise protected against corrosion. The service pipe and/or sleeve shall be sealed at the foundation wall to prevent entry of gas or water.

(c) Steel services, where installed underground under buildings, shall be encased in a gas tight conduit. When such a service supplies the building it subtends, the conduit shall extend into a normally usable and accessible portion of the building and, at the point where the conduit terminates, the space between the conduit and the service pipe shall be sealed to prevent the possible entrance of any gas leakage.

(d) Where practical, welded joints or compression type fittings should be used in all underground steel services.

(e) Consideration shall be given to insulating, near or within the building, those services which are connected through the house piping to water services, electrical ground, etc., so as to eliminate possible galvanic corrosion. This is especially important in areas where stray current electrolysis is prevalent, or where copper or lead water services are used.

(7) INSTALLATION OF STEEL SERVICES IN BORES.—When coated steel pipe is to be installed as a service pipe in a bore, care should be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving or similar methods or in a rocky type soil, the following practices or their equivalents should be observed:

(a) When a service is to be installed by boring or driving and a coated steel pipe is to be used for the service, the coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service. Such installations should be made by first making an oversized bore, removing the pipe used for boring and then inserting the coated pipe.

(b) Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil where there is a likelihood of damage to the coating resulting from the insertion.

(8) The provisions of subsection (7) (a) and (b) do not apply when bare steel pipe is used as the service pipe, or where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil.

(9) SERVICE CONNECTIONS TO STEEL MAINS.—Services may be connected to steel mains by:

(a) Welding a service tee or similar device to the main.

(b) Using a service clamp or saddle.

(c) Compression fittings using rubber or rubber-like gaskets or welded connections may be used to connect service pipe to the main connection fitting. Gaskets used in a manufactured gas system shall be of a type that resists effectively that type of gas.

(10) USE OF CAST IRON SERVICES.—When used for gas services, cast iron pipe shall meet the applicable requirements of §368.29. The use of cast iron pipe less than 6 in. in diameter for gas services is prohibited. Cast iron pipe 6 in. or larger in diameter may be used for gas services except for that portion of the service which extends through the building wall. The latter portion shall be of steel pipe. Cast iron services shall not be installed in unstable soils or under buildings.

(11) SERVICE CONNECTIONS TO CAST IRON MAINS.—Services may be connected to cast iron mains by:

(a) Drilling and tapping the main; provided, however, that the diameter of the tapped hole shall not exceed the limitations imposed by §368.22(7)(b).

(b) Using a reinforcing sleeve.

(12) Service connections shall not be brazed directly to cast iron mains.

(13) Compression fittings using rubber or rubber-like gaskets or welded connections may be used to connect the service pipe to the main connection fitting. Gaskets used in a manufactured gas system shall be of a type that resists effectively that type of gas.

(14) COPPER SERVICES (AND MAINS); COPPER PIPE DESIGN REQUIREMENTS.—The following requirements shall apply to copper pipe, or tubing, when used for gas mains or services:

(a) Copper pipe, or tubing, shall not be used for services or mains where the pressure exceeds 100 psig.

(b) Copper pipe, or tubing, shall not be used for services or mains where the gas carried contains more than an average of 0.3 grains of hydrogen sulfide per 100 standard cubic feet of gas. This is equivalent to a trace as determined by the lead-acetate test.

(c) Copper pipe, or tubing, shall not be used for services or mains where the piping strain or external loading may be excessive.

(d) Copper services may be installed within buildings, provided that the service is not concealed and is suitably protected against external damage.

(e) Copper tubing, or pipe for mains, shall have a minimum wall thickness of 0.065 inches and shall be hard drawn.

(f) The minimum wall thickness for copper pipe, or tubing used for gas services, shall be not less than type "L" specifications for copper water tube.

(g) Underground copper services, where installed through the outer foundation wall of a building, shall be either encased in a sleeve or otherwise protected against corrosion. The service pipe, or tubing, and/or sleeve shall be sealed at the foundation wall to prevent entry of gas or water.

(h) Copper services, where installed underground under buildings, shall be free of joints and shall be encased in a conduit which is designed to prevent gas leaking from the service and getting into the building.

(15) VALVES IN COPPER LINES.—Valves installed in copper lines may be made of any suitable material permitted by this code, except that, ferrous valves installed on underground copper services shall be protected from contact with the soil and/or insulated from the copper pipe.

(16) FITTINGS IN COPPER LINES.—Fittings in a copper line and exposed to the soil, such as service tees, pressure control fittings, etc., shall be made of bronze, copper or brass. If iron or steel fittings are used, they shall be protected as specified above for valves. When mechanical couplings are used, inserts shall be used in the tubing or other precautions taken to prevent possible collapse of the tubing.

(17) JOINTS IN COPPER PIPE AND TUBING.—Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The filler material used for brazing shall be a copper-phosphorous alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing. Copper tubing shall not be threaded but copper pipe with wall thickness equivalent to the comparable size of schedule 40 steel pipe may be threaded and used for connecting screw fittings or valves.

(18) Provision shall be made to prevent harmful galvanic action where copper is connected underground to steel. This can be accomplished in most cases by using one or the other of the following methods: install an insulating type coupling or an insulating flange, between the copper and the steel, or protect the copper and steel for a distance of two feet or more in all directions from the junction with insulating pipe corrosion protection material.

(19) SERVICE CONNECTIONS TO COPPER MAINS.—

(a) Connections using a copper or cast bronze service tee or extension fitting sweat-brazed to the copper main, are recommended for copper mains.

(b) Butt welds are not permitted.

(c) Fillet-brazed joints are not recommended.

(d) The requirements of subsection (17) shall apply to: Joints not specifically mentioned above, and all brazing material.

History.—§31, ch. 59-304.

368.35 Valves; required spacing.—

(1) TRANSMISSION LINES.—Sectionalizing block valves on transmission lines shall be installed at a spacing not to exceed 20 miles within areas conforming to location class 1, 15 miles within areas conforming to location class 2, 8 miles within areas conforming to location class 3, and 5 miles within areas conforming to location class 4.

(2) Valves on distribution mains, whether for operating or emergency purposes, shall be spaced as follows:

(a) Valves shall be installed in high pressure distribution systems in accessible locations in order to reduce the time to shut down a section of main in an emergency. In determining the spacing of the valves consideration should be given to the operating pressure and size of the mains and local physical conditions as well as the number and type of consumers that might be affected by a shutdown.

(b) Valves may be used on low pressure distribution systems, but are not required except as specified in subsection (4)(a).

(3) LOCATION OF TRANSMISSION VALVES.—

(a) Sectionalizing block valves shall be accessible and protected from damage and tampering. If a blow-down valve is involved, it shall be located where the gas can be blown to the atmosphere without undue hazard.

(b) Sectionalizing valves may be installed above ground, in a vault, or buried. In all installations an operating device to open or close the valve shall be readily accessible to authorized persons. All valves shall be suitably supported to prevent settlement, or movement of the attached piping.

(c) Blow-down valves shall be provided so that each section of pipeline between main line valves can be blown down. The sizes and capacity of the connections for blowing down the line shall be such that under emergency conditions the section of line can be blown down as rapidly as is practicable.

(d) This code does not require the use of automatic valves, nor does the code imply that the use of automatic valves presently developed will provide full protection to a piping system. Their use and installation shall be at the discretion of the operating company.

(4) DISTRIBUTION SYSTEM VALVES.—

(a) A valve shall be installed on the inlet piping of each regulator station controlling the flow or pressure of gas in a distribution system. The distance between the valve and the regulator or regulators shall be sufficient to permit the operation of the valve during an emergency, such as a large gas leak or a fire in the station.

(b) Valves on distribution mains, whether for operating or emergency purposes, shall be

located in a manner that will provide ready access and facilitate their operation during an emergency. Where a valve is installed in a buried box or enclosure, only ready access to the operating stem or mechanism is implied.

History.—§32, ch. 59-304.

368.36 Vaults.—

(1) STRUCTURAL DESIGN REQUIREMENTS.—Underground vaults or pits for valves, pressure relieving, pressure limiting or pressure regulating stations, etc., shall be designed and constructed in accordance with the following provisions:

(a) All vaults or pits in roads, streets or highways which may be exposed to vehicular traffic shall be composed of durable structural materials and shall be designed to withstand without damage the heaviest loads to which they may be subjected. Where local regulations do not specify structural limitations, the roof slab or cover shall be designed to carry a 15,000 lb. wheel load distributed over a contact area of the road surface 15 in. in diameter. The walls shall be designed to resist a uniform horizontal pressure of 250 lbs. per square foot without damage. Vaults and pits not subject to vehicular loads shall be designed and constructed in accordance with good structural engineering practice.

(b) Sufficient working space shall be provided so that all of the equipment required in the vault can be properly installed, operated and maintained.

(c) In the design of vaults and pits for pressure limiting, pressure relieving and pressure regulating equipment, consideration shall be given to the protection of the equipment installed from damage, such as that resulting from an explosion within the vault or pit, which may cause portions of the roof or cover to fall into the vault.

(d) Piping entering, and within, regulator vaults or pits shall be steel for sizes 10 in. and less except that control and gauge piping may be copper. Where piping extends through the vault or pit structure, provision shall be made to prevent the passage of gases or liquids through the opening and to avert strains in the piping. Equipment and piping shall be suitably sustained by metal, masonry, or concrete supports. The control piping shall be placed and supported in the vault or pit so that its exposure to injury or damage is reduced to a minimum.

(e) Vault or pit openings shall be located so as to minimize the hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and the operating parts of the equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

(f) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover should be installed or other suitable precautions taken.

(2) ACCESSIBILITY.—Consideration shall be given, in selecting a site for a vault, to its accessibility. Some of the important factors to consider in selecting the location of a vault are as follows:

(a) EXPOSURE TO TRAFFIC.—The location of vaults in street intersections or at points where traffic is heavy or dense should be avoided.

(b) EXPOSURE TO FLOODING.—Vaults should not be located at points of minimum elevation, near catch basins, or where the access cover will be in the course of surface waters.

(c) EXPOSURE TO ADJACENT SUBSURFACE HAZARDS.—Vaults should be located as far as is practical from water, electric, steam, or other facilities.

(3) VAULT VENTILATION. — Underground vaults and closed top pits composing either a pressure regulating or reducing station, or a pressure limiting or relieving station, shall be ventilated as follows:

(a) When the internal volume exceeds 200 cubic feet, such vaults or pits shall be ventilated with two ducts each having at least the ventilating effect of a pipe 4 in. in diameter.

(b) The ventilation provided shall be sufficient to minimize the possible formation of a combustible atmosphere in the vault or pit.

(c) The ducts shall extend to a height above grade adequate to disperse any gas-air mixtures that might be discharged. The outside end of the ducts shall be equipped with a suitable weather-proof fitting or venthead designed to prevent foreign matter from entering or obstructing the duct. The effective area of the openings in such fittings or ventheads shall be at least equal to the cross-sectional area of a 4 inch duct. The horizontal section of the ducts shall be as short as practical and shall be pitched to prevent the accumulation of liquids in the line. The number of bends and offsets shall be reduced to a minimum and provisions shall be incorporated to facilitate the periodic cleaning of the ducts.

(d) Such vaults or pits having an internal volume between 75 cubic feet and 200 cubic feet may be either tightly closed or ventilated. If not ventilated, all openings shall be equipped with tight fitting covers without open holes through which an explosive mixture might be ignited. Means shall be provided for testing the internal atmosphere before removing the cover.

(e) If vaults or pits referred to in paragraph (d) above are ventilated by means of openings in the covers or gratings and the ratio of the internal volume, in cubic feet, to the effective ventilating area of the cover or grating, in square feet, is less than 20 to 1, no additional ventilation is required.

(f) Such vaults or pits having an internal volume of less than 75 cubic feet may be ventilated or not at the option of the operating company.

(4) DRAINAGE AND WATERPROOFING.

(a) Provisions shall be made to minimize the entrance of water into vaults, and vault equipment shall always be designed to operate safely, if submerged.

(b) No vault containing gas piping shall be connected by means of a drain connection to any other substructure, such as a sewer.

(c) Electrical equipment in vaults shall conform to the requirements of class 1, group D.

History.—§33, ch. 59-304.

368.37 Operating and maintenance procedures affecting the safety of gas transmission and distribution facilities.—

(1) Because of many variables, it is not possible to prescribe in a state code a set of operating and maintenance procedures that will be adequate from the standpoint of public safety in all cases without being burdensome and impractical in some. It is possible, however, for each operating company to develop operating and maintenance procedures based on experience, knowledge of its facilities and conditions under which they are operated, which will be entirely adequate from the standpoint of public safety.

(2) BASIC REQUIREMENTS.—Each operating company having gas transmission or distribution facilities within the scope of this code shall:

(a) Have a plan covering operating and maintenance procedures in accordance with the purpose of this code.

(b) Operate and maintain its facilities in conformance with this plan.

(c) Keep records necessary to administer the plan properly.

(d) Modify the plan from time to time as experience with it dictates and as exposure of the public to the facilities and changes in operating conditions require.

(3) ESSENTIAL FEATURES OF THE PLAN.—The plan prescribed in subsection (2) (a) should include:

(a) Detailed plans and instructions to employees covering operating and maintenance procedures for gas facilities during normal operations and repairs, and during emergencies.

(b) Items to be included in the plan for specific classes of facilities are given in §§368.38-368.44.

(c) Particular attention should be given to those portions of the facilities presenting the greatest hazard to the public in the event of an emergency or because of construction or extraordinary maintenance requirements.

History.—§34, ch. 59-304.

368.38 Pipeline maintenance.—

(1) Each operating company should maintain a periodic pipeline patrol program to observe surface conditions on and adjacent to the pipeline right of way, indications of leaks, construction activity other than that performed by the company, and any other factors affecting the safety and operation of the pipeline. Weather, terrain, size of line, operating pressures and other conditions will be factors in determining the frequency of patrol. Main highway and railroad crossings should be inspected with greater frequency and more closely than pipelines in open country.

(2) EXTERNAL CORROSION OF PIPELINES.—Periodic inspections and tests should be conducted to determine if the installed corrosion control methods used are adequate and are properly maintaining protection to the pipe metal. Whenever any portion or section of underground facilities is uncovered, an inspection should be made to determine if protection is needed or if installed protection is adequate.

(3) INTERNAL CORROSION OF PIPELINES.—When active corrosive agents are known to be present in the gas being transmitted, or if evidence of internal corrosion is discovered, the gas should be periodically analyzed to determine the concentration of any corrosive agent and precautions taken, if necessary, to prevent the development of a hazardous condition. Whenever a pipeline is cut for any reason, the internal surface should be carefully inspected for evidence of internal corrosion.

(4) CORROSION RECORDS. — Records should be made of each pipeline inspection for external or internal corrosion covering conditions found, adequacy of cathodic protection, if so protected, condition of pipe coating, depth of pits noted and extent of corroded area. If repairs are made, method used should be stated.

(5) PIPELINE LEAK RECORDS.—Records should be made covering all leaks discovered and repairs made. All pipeline breaks should be reported in detail. These records along with leakage survey records, line patrol records and other records relating to routine or unusual inspections should be kept in the file of the operating company involved, as long as the section of line involved remains in service.

History.—§35, ch. 59-304.

368.39 Distribution piping maintenance.—

(1) PATROLLING. — Distribution mains, which are installed in locations or on structures where abnormal physical movement or abnormal external loading could cause failure or leakage, shall be patrolled periodically and the frequency of the patrolling shall be determined by the severity of the conditions which could cause failure or leakage and the consequent hazards to public safety.

(2) LEAKAGE SURVEYS AND ROUTINE PROCEDURES.—Each operating company having a gas distribution system shall set up in its operating and maintenance plan a provision for the making of periodic leakage surveys. The types of surveys prescribed in the plan shall be one or more of the following employed singly or in combination, or some other effective procedure for locating leaks in underground piping systems:

(a) Gas detector surveys.

(b) Bar test surveys.

(c) Vegetation surveys.
(d) Pressure drop surveys.
(e) Soapsuds testing on exposed pipe and fittings.

(3) The nature of the operations and local conditions of each individual company shall determine the type and scope of the leakage control program most suitable. The character of the general service area together with housing concentration should determine the frequency of the inspection program. The inspection program should include at least the following provisions:

(a) At least once a year a gas detector survey should be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks. Leakage surveys, using one or more of the types referred to in subsection (2), should be made of the distribution system outside of the principal business areas as frequently as experience indicates that they are necessary but not less than once every five years.

(b) Leaks located by these surveys shall be investigated promptly and any necessary repairs shall be made. When the condition of a main or a service, as indicated by leak frequency records or visual observation, deteriorates to the point where it should not be retained in service, it should be replaced or reconditioned.

(4) ABANDONING INACTIVE SERVICES AND MAINS.—Each operating company shall have a plan in its operation and maintenance procedures for sealing off the supply of gas to all abandoned services and mains by means of valves or other effective methods. This plan shall include procedures for abandoning services that have remained inactive for a period of years and for which there is no planned use. The plan should include the following provisions:

(a) If a main is abandoned in place and is disconnected or separated, the ends shall be capped, plugged or otherwise effectively sealed.

(b) If abandoned services are not removed, both ends shall be sealed or other effective means employed to prevent the possible passage of any gas leakage. In cases where a main is abandoned, together with the services connected to it, only the customer's end of such services need be sealed as stipulated above.

History.—§36, ch. 59-304.

368.40 Compressor station maintenance.—(1) COMPRESSORS AND PRIME MOVERS.—The starting, operating and shut-down procedures for all gas compressor units shall be established by the operating company and the operating company shall take appropriate steps to see that the approved practices are followed.

(2) INSPECTION AND TESTING OF RELIEF VALVES.—All pressure relieving devices in compressor stations except rupture disks shall be inspected and/or tested in accordance with §368.42 and shall be operated periodically to determine that they open at the correct set pressure. Any defective or inadequate equipment found shall be promptly repaired or replaced. All remote control shut-down devices shall be inspected and tested periodically to determine that they function properly.

(3) INSPECTION FOR CORROSION.—In existing plants where corrosive or potentially corrosive situations exist, procedures shall be set up for periodic inspections at sufficiently frequent intervals to enable the discovery of corrosion before serious impairment of the strength of the piping or equipment has occurred. Prompt repairs or replacements shall be made when needed.

(4) ISOLATION OF EQUIPMENT FOR MAINTENANCE OR ALTERATIONS.—The operating company shall establish procedures for isolation of units or sections of piping for maintenance, and for purging prior to returning units to service, and shall follow these established procedures in all cases.

(5) STORAGE OF COMBUSTIBLE MATERIALS.—All flammable or combustible materials in quantities beyond those required for everyday use or other than those normally used in compressor buildings, shall be stored in a separate structure built of non-combustible material located a suitable distance from the compressor building. All above ground oil or gasoline storage tanks shall be protected.

(6) NO SMOKING SIGNS.—Smoking shall be prohibited in all areas of a compressor station in which the possible leakage or presence of gas constitutes a hazard of fire or explosion. Suitable signs shall be posted to serve as warnings of these areas.

History.—§37, ch. 59-304.

368.41 Procedures for maintaining pipe-type and bottle-type holders in safe operating condition.—Each operating company having a pipe-type or bottle-type holder shall prepare and place in its files a plan for the systematic, routine inspection and testing of the facilities which provides that:

(1) Procedures shall be followed to enable the detection of external corrosion before the strength of the container has been impaired.

(2) Periodic sampling and testing of gas in storage will be made to determine the dew point of vapors contained in the stored gas that might cause internal corrosion or interfere with the safe operations of the storage plant.

(3) The pressure control and pressure limiting equipment will be inspected and tested periodically to see if it is in a safe operating condition and has adequate capacity.

(4) Each operating company, having prepared such a plan as prescribed in this section, shall follow the plan, and keep records which detail the inspection and testing work done and the conditions found.

(5) All unsatisfactory conditions found shall be promptly corrected.

History.—§38, ch. 59-304.

368.42 Maintenance of pressure limiting and pressure regulating stations.—

(1) All pressure limiting stations, relief devices, and pressure regulating stations and equipment shall be subjected to systematic periodic inspections and/or tests to determine that they are:

(a) In good mechanical condition.

(b) Adequate from the standpoint of capacity and reliability of operation for the service in which they are employed.

(c) Set to function at the correct pressure.

(d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(2) (a) Every distribution system supplied by more than one district pressure regulating station shall be equipped with telemetering or recording pressure gauges to indicate the gas pressure in the district.

(b) On distribution systems supplied by a single district pressure regulating station the operating company shall determine the necessity of installing such gauges in the district. In making this determination the operating company shall take into consideration the operating conditions such as the number of customers supplied, the operating pressures, and the capacity of the installation, etc.

(c) If there are indications of abnormal high or low pressure the regulator and the auxiliary equipment shall be inspected and the necessary measures shall be employed to rectify any unsatisfactory operating conditions. Suitable periodic inspections of single district pressure regulation stations not equipped with telemetering or recording gauges shall be made to determine that the pressure regulating equipment is functioning properly.

(3) Whenever it is practicable to do so, pressure relief valves should be tested in place to determine that they have sufficient capacity to limit the pressure on the facilities to which they are connected to the desired maximum pressure. If such tests are not feasible, periodic review and calculation of the required capacity of the relieving equipment at each station should be made and these required capacities compared with the rated or experimentally determined relieving capacity of the installed equipment for the operating conditions under which it works. If the relieving equipment is of insufficient capacity, steps shall be taken to install new or additional equipment to provide capacity.

History.—§39, ch. 59-304.

368.43 Valve maintenance.—

(1) Pipeline valves that might be required during an emergency shall be inspected periodically and partially operated at least once per year to provide safe and proper operating conditions.

(2) Valves, the use of which may be necessary for the safe operation of a gas distribution system, shall be checked and serviced, including lubrication where necessary, at sufficiently frequent intervals to be reasonably assured of their satisfactory operation. Inspection shall include checking of alignment to permit use of a key or wrench and clearing from the valve box or vault any debris which would interfere with or delay the operation of the valve.

History.—§40, ch. 59-304.

368.44 Vault maintenance.—Regularly scheduled inspections shall be made of each vault housing pressure regulating and pressure limiting equipment and having a volumetric internal content of 200 cubic feet or more to determine if it is in good physical condition and adequately vented. This inspection shall include the testing of the atmosphere in the vault for combustible gas. If gas is found in the vault atmosphere, the equipment in the vault shall be inspected for leaks and leaks found shall be repaired. The ventilating equipment shall also be inspected to determine if it is functioning properly. If the ventilating ducts are obstructed, they shall be cleared. The condition of the vault covers shall be carefully examined to see that they do not present a hazard to public safety.

History.—§41, ch. 59-304.

368.45 Odorization.—Any gas, distributed to consumers through gas mains or gas services or used for domestic purposes in compressor plants, which does not naturally possess a distinctive odor to the extent that its presence in the atmosphere is readily detectable at concentrations well below that required to produce an explosive mixture shall have an odorant added to it to make it so detectable. Odorization is not necessary, however, for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent.

History.—§42, ch. 59-304.

368.46 Pipelines under or crossing electric transmission and distribution lines.—Where gas pipelines cross or are located beneath overhead electric transmission and distribution lines, the company operating the pipelines shall take the following precautions:

(1) Employ blow-down connections that will direct the gas away from the electric conductors.

(2) Install a bonding conductor across points where the main is to be separated and maintain this connection while the pipeline is separated. The current carrying capacity of the bonding conductor should be at least one-half of the capacity of the overhead line conductors.

(3) Make a study on the problems of corrosion and electrolysis, taking the following factors into consideration:

(a) The possibility of the pipeline carrying

either unbalanced line currents or fault currents.

(b) The possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

(c) Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

(d) Desirability of installing electric bonding connections between the pipeline and either the steel tower footings or the buried gound facilities or the groundwire of the overhead electric system.

(4) Investigate the necessity of protecting insulating joints in the pipeline against induced voltages or currents resulting from lightning strokes. Such protection can be obtained by connecting buried sacrificial anodes to the pipe near the insulating joints or by bridging the pipeline insulator with a spark-gap or by other effective means.

(5) During the construction, operation and maintenance of the pipeline, the company operating the pipeline will:

(a) Maintain a minimum ground cover of thirty inches over the pipeline.

(b) Maintain permanent markers indicating the existence and location of the pipeline.

(c) Refrain from constructing any part of the pipeline or appurtenance thereto above ground, except valves, regulators or scrubbers.

History.—§43, ch. 59-304.

368.47 Flattening test for pipe.—

(1) The flattening test shall be made on standard weight and extra strong pipe over 2 in. in nominal diameter. It shall not be required for double extra strong pipe.

(2) For lap-welded and butt-welded pipe the test section shall be 4 to 6 in. in length and the weld shall be located 45° from the line of direction of the applied force.

(3) For electric-resistance-welded pipe, the test section shall be 4 to 6 in. in length and the weld shall be located 90° from the line of direction of the applied force.

(4) For seamless pipe the test section shall not be less than 2-1/2 in. in length.

(5) The test shall consist in flattening a section of pipe between parallel plates until the opposite walls meet. For welded pipe, no opening in the weld shall take place until the distance between the plates is less 3/4 of the original outside diameter for butt-weld, of 2/3 the outside diameter for lap-weld and electric-resistance weld, and no cracks or breaks in the metal elsewhere than in the weld shall occur until the distance between the plates is less than shown below. For seamless pipe no breaks or cracks in the metal shall occur until the distance between the plates is less than that shown below:

Kind of pipe	Distance between plates "H"
For butt-welded pipe	60% of outside diameter
For lap-welded pipe	one-third the outside diameter
For electric-resistance-welded pipe, grades A and B	one-third the outside diameter
For seamless pipe, grades A and B	to the distance "H" developed by the following formula: $H = \frac{(1 + e)\,t}{e + t/D}$

where:

H=distance between flattening plates in inches.

t =nominal wall thickness of pipe in inches.

D=actual outside diameter of pipe in inches, and

e =deformation per unit length (constant for a given grade of steel, 0.09 for grade A and 0.07 for grade B).

History.—§45, ch. 59-304.

TITLE XXVI

CONSERVATION, ARCHEOLOGY, AND GEOLOGY

CHAPTER 370

SALT WATER FISHERIES AND CONSERVATION

370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase or term:

(1) Resident or resident of Florida includes citizens of the United States who have continuously resided in this state, next preceding the making of their application for hunting, fishing or other license, for the following period of time, to wit: for one year, in the state, and six months in the county when applied to all fish and game laws not related to fresh water fish and game.

(2) Salt water fish shall include all classes of pisces, shell fish, sponges and crustacea indigenous to salt water.

(3) Open season shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(4) Closed season shall be that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(5) Salt water except where otherwise provided by law, shall be all of the territorial waters of Florida excluding all lakes, rivers, canals, and other waterways of Florida from such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable because of the saline content, or from such point or points as may be fixed for conservation purposes by the state board of conservation and the game and fresh water fish commission with the consent and advice of the board of county commissioners of the county or counties to be affected.

(6) The phrase common carrier shall include any person, firm or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his services to all such as may choose to employ him and pay his charges.

(7) Transport shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

(8) The word guide shall include any person engaged in the business of guiding hunters or hunting parties, fishermen or fishing parties, for compensation.

(9) Shell fish shall include oysters, clams and whelks.

(10) Coon oysters are oysters found growing in bunches along the shore between high and low water mark.

(11) Reef bunch oysters are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

(12) Food fish shall include mullet, trout, redfish, sheepshead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption.

(13) A natural oyster or clam reef, or bed, or bar, shall be considered and defined as an area containing not less than one hundred square yards of the bottom where oysters or clams are found in a stratum.

(14) Director shall mean the director of conservation, as provided for in §370.02 (3) (a).

(15) Board shall mean the state board of conservation.

(16) Beaches and shores shall mean the coastal and intracoastal shoreline of this state bordering upon the waters of the Atlantic ocean, the Gulf of Mexico, the straits of Florida, and any part thereof, and any other bodies of water under the jurisdiction of the State of Florida, between the mean high water line and as far seaward as may be necessary to effectively carry out the purposes of this act.

(17) Erosion control, beach preservation and hurricane protection shall include any activity, work, program, project or other thing deemed necessary by the state board of conservation to effectively preserve, protect, restore, rehabilitate, stabilize and improve the beaches and shores of this state, as defined above.

History.—§2, ch. 28145, 1953; §1, ch. 63-40.
cf.—§1.01 General definitions.
§372.001 Definitions re fresh water fish.

370.02 Board of conservation.—

(1) MEMBERSHIP; GENERAL DUTIES.—There is hereby created a board of conservation, which shall be composed of the governor, secretary of state, attorney general, comptroller, state treasurer, superintendent of public instruction, and commissioner of agriculture. It shall be the duties of the board to conserve and develop the natural resources of the state and to administer the provisions of chapters 370, 371, 373, 376, 377, 378.

(2) DIVISIONS.—The board of conservation shall be organized into six divisions, as follows:

(a) Administration.
(b) Salt water fisheries.
(c) Water resources and conservation.
(d) Waterways development.
(e) Geology.
(f) Beaches and shores.

(3) DIRECTOR OF BOARD; POWERS AND DUTIES.—

(a) The board may employ a director of the board of conservation and set his compensation. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board.

(b) It shall be the duty of the director to act as the agent for the board in coordinating and directing its activities in the discharge of its responsibilities.

(c) The director may also serve as director of any of the divisions of the board herein created.

(4) DIVISION OF ADMINISTRATION; POWERS AND DUTIES.—

(a) It shall be the duty of the division of administration to administer, coordinate and enforce the provisions of the following statutes, to-wit:

1. Sections 373.261-373.391, weather modification.
2. Chapter 376, archeology.

(b) The division of administration shall also have the duty and responsibility of rendering any other services required by the board and the several divisions, herein set forth, that can advantageously and effectively be centralized and such other functions and duties of the board not specifically assigned by law to some other division.

(c) The director of the board of conservation shall serve as the director of the division of administration. It shall be the duty of the director to supervise, direct, and coordinate the activities of the division of administration. The director shall act as agent for the board in the employment of all personnel, as may be necessary to carry out the work, duties and responsibilities of this division.

(5) DIVISION OF SALT WATER FISHERIES; POWERS AND DUTIES.—

(a) It shall be the duty of the division of salt water fisheries to preserve, manage, and protect the marine, crustacean, shell and anadromous fishery resources of the state in the waters thereof; to regulate the operations of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classifications; to conduct scientific, economic and other studies and research, and to enter into contracts for such studies and research, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

(b) The division of salt water fisheries shall administer, coordinate, and enforce the provisions of §§370.03-370.17 and chapter 371.

(c) The board may employ a director of the division of salt water fisheries. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The director shall act as agent for the board in the employment of all necessary administrative and other personnel, including conservation agents and officers as may be necessary to carry out the work, duties and responsibilities of this division.

(6) DIVISION OF WATER RESOURCES

AND CONSERVATION; POWERS AND DUTIES.—

(a) It shall be the duty of the division of water resources and conservation to administer, coordinate and enforce the provisions of §§373.021-373.241 and to accomplish the purposes of said sections.

(b) The division of water resources and conservation shall have the duty of coordinating, administering, and enforcing the provisions of chapter 378. Said division shall also guide and coordinate the activities of all flood control districts, or water management districts now in existence or hereafter created, whether under the provisions of chapter 378, or by special act of the legislature.

(c) The board may employ a director of the division of water resources and conservation. The director shall possess such qualifications as the board may prescribe and he shall serve at the pleasure of the board. The director shall supervise, direct and coordinate the activities of the division. The director shall act as agent for the board in the employment of all administrative and other personnel as may be necessary to carry out the work, duties and responsibilities of this division.

(7) DIVISION OF WATERWAYS DEVELOPMENT; POWERS AND DUTIES.—

(a) It shall be the duty of the division of waterways development to coordinate the activities of all public bodies, authorities, agencies and special districts charged with the development of waterways within the state, whether such bodies, authorities, agencies, or special districts now exist or may hereafter be created by general or special act of the legislature.

(b) The division of waterways development shall also foster, promote, and guide development of an integrated system of waterways within the state, utilizing, where practical, the natural bodies of water lying therein.

(c) This division of waterways development may disburse to the canal authority of the state any funds transferred to the board of conservation by the trustees of the internal improvement trust fund as herein provided to be used as matching funds for the purpose of acquiring rights of way for any waterways development project authorized by an appropriate federal or state agency the route of which is to pass through or adjacent to the counties comprising any special taxing district created for the purpose of raising funds for acquiring such rights of way. Provided, however, no such matching funds shall be so disbursed except upon approval of the board and upon receipt of satisfactory proof from the canal authority that it has sufficient funds on hand to match the state funds herein referred to on an equal basis. The trustees of the internal improvement trust fund shall transfer to the board of conservation such of its funds as may be available and as the board of conservation may deem necessary to provide the matching fund herein authorized. The use of the funds of the internal improvement trust fund for the purposes herein shall be deemed a valid use of said funds.

(d) The board may employ a director of the division of waterways development, and set his compensation. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The director shall act as agent of the board in the employment of all administrative and other personnel as may be necessary to carry out the work, duties, and responsibilities of this division.

(8) DIVISION OF GEOLOGY; POWER AND DUTIES.—

(a) It shall be the duty of the division of geology to administer, coordinate, and enforce the functions of the geological department as set forth in §§373.011 and 373.012. The division shall also administer, enforce and coordinate the provisions of chapter 377 relating to conservation of oil and gas resources.

(b) The board may employ a director of the division of geology. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The director shall supervise, direct, and coordinate the activities of the division of geology. The director shall act as agent for the board in the employment of all administrative and other personnel as may be necessary to carry out the work, duties and responsibilities to this division.

(9) DIVISION OF BEACHES AND SHORES.—

(a) It shall be the duty of the division of beaches and shores to administer, coordinate and enforce all provisions of law relating to preservation, conservation and restoration of beaches and shores including the control of beach erosion and the protection against hurricane and storm damage. Specific duties of the division of beaches and shores shall include the following:

1. To conduct, direct, encourage, coordinate or otherwise see to a continuing program of basic research into problems of beach erosion, shoreline deterioration and hurricane protection.

2. To prepare a comprehensive, a long-range, statewide plan for erosion control, beach preservation and hurricane protection.

3. To review all plans and activity pertinent to erosion control, beach preservation and hurricane protection, and provide coordination in this field among the various levels of government and among the various areas of the state.

4. To make recommendations to the state board of conservation relative to the use of funds in the erosion control account.

5. To assist in the proper regulation of shoreline alteration and development by investigating proposed work and making recommendations to the trustees of the internal improvement fund.

6. To promote sound planning and development of shoreline upland by devising standards

and working closely with local planning and zoning bodies.

7. To coordinate erosion control, beach preservation and hurricane protection activities with waterways, harbors and other water control and development projects.

8. To provide a clearing service for erosion control, beach preservation and hurricane protection matters by collecting, processing and disseminating pertinent information.

9. To assist and guide localities in the preparation and execution of integrated erosion control, beach preservation and hurricane protection programs.

10. To provide such other services as the state board of conservation may direct.

(b) The board may employ a director of the division of beaches and shores and set his compensation. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The director shall act as agent of the board in the employment of all administrative and other personnel as may be necessary to carry out the work, duties and responsibilities of this division. The director shall supervise, direct and coordinate the activities of the division of beaches and shores.

History.—§2, ch. 28145, 1953; (4) §1, ch 57-367; (6) §1, ch. 57-153; (12) n. §1, ch. 57-253; (2) §1, ch. 59-193; §1, ch. 61-231; (2) §2, (9), n. §3, ch. 63-40.

Note.—Similar provisions in former §§373.01-373.03, 373.06, 373.09, 373.14, 373.22, 373.23, 373.28, 374.32, 374.38, 374.40, 374.41, 375.33.

cf.—Sec. 33, Art. XVI, const. of Florida.
§775.06, Alternative punishment.
§370.061 Confiscation of property and products, a revision of former section 370.02 (11), (12).

370.021 Administration, rules, regulations, etc.—

(1) RULES AND REGULATIONS.—The state board of conservation shall make, adopt, promulgate, amend and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations, powers and responsibilities conferred on said board or any of its divisions. The director of each division shall submit to the board suggested rules and regulations for that division. Any person violating or otherwise failing to comply with any of the rules and regulations adopted as aforesaid shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than $500.00 or imprisoned not more than six months, unless otherwise provided by law.

(2) PENALTY FOR VIOLATION.—Any person violating any provisions of this chapter, unless otherwise provided, upon conviction, shall be subject to a fine of not more than $500.00 or imprisonment in the county jail for not more than one year or by both such fine and imprisonment.

(3) PROMULGATION OF RULES.—All rules and regulations shall be published in a newspaper or newspapers of general circulation in the state and shall take effect and be in force at the time specified therein. Such rules and regulations shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the director of the board of conservation, certifying that the rule or regulation has been lawfully adopted, promulgated and published, and such affidavit shall be prima facie evidence of proper adoption, promulgation and publication of the rule or regulation.

(4) PUBLICATIONS BY BOARD.—The board through the division of administration is given authority, from time to time in its discretion, to cause the statutory laws under its jurisdiction, together with any rules and regulations promulgated by it, to be published in pamphlet form for free distribution in this state. The state board of conservation is hereby authorized to make charges for technical and educational publications and mimeographed material of use for educational or reference purposes. Such charges shall be made at the discretion of the director of said division of administration. Such charges may be sufficient to cover cost of preparation, printing, publishing and distribution. All moneys received for publications shall be deposited in the general revenue fund. The board is further authorized to enter into agreements with persons, firms, corporations, governmental agencies and other institutions whereby publications may be exchanged reciprocally in lieu of payments for said publications.

(5) POWERS OF OFFICERS.—The board may designate such employees of the several divisions as said board may deem necessary in its discretion as conservation officers who shall have the powers and duties conferred in this subsection. All conservation officers, together with the director, are constituted police officers with power to make arrests for violations of the laws of this state and the rules and regulations of the board under their jurisdiction. The general laws applicable to arrests by peace officers of this state shall also be applicable to said director and conservation officers. The director or the conservation officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment and such entry shall not constitute a trespass. It shall be lawful for any boat, motor vehicle or aircraft owned or chartered by the board or its agents or employees to land and depart from any of the beaches or waters of the state. The director or any of the conservation officers shall have the authority, without warrant, to board, inspect and search any boat, fishing appliances, storage or processing plant, fish house, sponge house, oyster house, or any other warehouse, building, or vehicle engaged in transporting any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases where the director or the officers have reason to believe that fish or any salt water products are taken or kept for sale, barter, transportation or other purposes in violation of laws or rules promulgated under this law. Any such officer or director may at any time seize or take possession of any salt water products which have been unlawfully caught, taken, processed, or which are

unlawfully possessed or transported in violation of any statute or regulation of the board of conservation. The director or any of the conservation officers may arrest any person in the act of violating any of the provisions of this law or rules or regulations of the board of conservation. It is hereby declared unlawful for any person to resist such arrest or in any manner interfere, either by abetting, assisting such resistance or otherwise interfere with said director or any conservation officer while engaged in the performance of the duties imposed upon him by law or regulation of the board of conservation.

(6) DUTIES OF ATTORNEY GENERAL.—The attorney general shall attend to the legal business of the board and its divisions but if at any time any question of law or any litigation arises, and the attorney general is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the occasion demands, the several state attorneys shall attend to any such question of law or litigation arising within their respective circuits, and if such state attorney is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the case may demand, the said board may employ additional counsel for that particular cause, with the advice and consent of the attorney general. Such additional counsel's fees shall be paid from the moneys appropriated to the state board of conservation.

(7) DESTRUCTION OF RECORDS.—

(a) The purpose of this section is to make available for the use of the director of the board sufficient floor space for efficient administration of his office.

(b) The director is authorized to destroy copies and records of all licenses, of every nature, issued by the board under his authority provided such records shall not be destroyed until a period of two years shall have elapsed after completion of the audit of said records as provided by law; provided, further, that he shall prepare and preserve a register of all destroyed copies and records, upon which shall be inscribed the nature of the several licenses, the date of issue thereof, and the name and address of the person, persons, or associations of persons to whom issued. The power hereby conferred shall be a continuing power.

(c) The director is further authorized to destroy any other correspondence, documents and records, which in his discretion have, after the expiration of two years from the date of their post-audit as provided by law, become obsolete.

(8) COURTS OF EQUITY MAY ENJOIN, ETC.—Courts of equity in this state shall have jurisdiction to enforce the conservation laws of this state by injunction.

(9) BOND OF EMPLOYEES.—The board may require, as it determines, that bond be given by any employee of the board or divisions thereof, payable to the governor of the state, and his successor in office, for the use and benefit of those whom it may concern, in such penal sums with good and sufficient surety or sureties approved by the board conditioned for the faithful performance of the duties of such employee.

History.—§2, ch. 61-231; (8) §1, ch. 61-22.

370.03 Water bottoms.—

(1) OWNERSHIP.—All beds and bottoms of navigable rivers, bayous, lagoons, lakes, bays, sounds, inlets, oceans, gulfs and other bodies of water within the jurisdiction of Florida shall be the property of the state except such as may be held under some grant or alienation heretofore made. No grant, sale or conveyance of any water bottom, except conditional leases and dispositions hereinafter provided for, shall hereafter be made by the state, the internal improvement fund, the commissioner of agriculture, or any other official or political corporation. Persons who have received, or may hereafter receive permits to do business in this state, with their factories, shucking plants and shipping depots located in this state, may enjoy the right of fishing for oysters and clams from the natural reefs and bedding oysters and clams on leased bedding grounds, and shall have the right to employ such boats, vessels, or labor and assistants as they may need. Provided that no oysters shall be transported unshucked and in the shells, out of the state, except for use in what is commonly known as the half-shell trade. When the oyster meats have been separated from the shells it shall be permissible to ship the meats out of the state for further processing and for canning or packing.

It shall be unlawful to transport oysters out of the state, unshucked and in the shells, for processing or packing.

(2) CONTROL.—The state board of conservation has exclusive power and control over all water bottoms, not held under some grant or alienation heretofore made, including such as may revert to the state by cancellation or otherwise, and may lease the same to any person irrespective of residence or citizenship, upon such terms, conditions and restrictions as said board may elect to impose, without limitation as to area to any one person, for the purpose of granting exclusive right to plant oysters or clams thereon and for the purpose of fishing, taking, catching, bedding and raising oysters, clams and other shell fish. No such lessee shall re-lease, sub-lease, sell or transfer any such water bottom or property; provided, that nothing herein contained shall be construed as giving said board authority to lease sponge beds.

(3) FEES FOR BOTTOM LEASES, ETC.—The board shall charge and receive a fee of two dollars for each lease granted, and in all other cases, not specifically provided by this chapter, the same fees as are allowed clerks of the circuit court for like services. All fees shall be paid by the party served.

(4) CONFIRMATION OF FORMER GRANTS; PROVISO.—All grants prior to June

1, 1913, made in pursuance of heretofore existing laws, where the person receiving such grant, his heirs or assigns, have bona fide complied with the requirements of said law, are hereby confirmed; provided, that if any material or natural oyster or clam reefs or beds on such granted premises are one hundred square yards in area and contained natural oysters and clams (coon oysters not included) in sufficient quantity to have been resorted to by the general public for the purpose of gathering oysters or clams to sell for a livelihood, at the time they were planted by such grantee, his heirs or assigns, such reefs or beds are declared to be the property of the state; and when such beds or reefs exist within the territory heretofore granted as above set forth, or that may hereafter be leased, such grantee or lessee shall mark the boundaries of such oyster and clam reefs or beds as may be designated by the director of conservation as natural oyster or clam reefs or beds, clearly defining the boundaries of the same, and shall post notice or other device, as shall be required by the state board of conservation, giving notice to the public that such oyster or clam beds or reefs are the property of the state, which said notice shall be maintained from September 1st to June 1st of each and every year, on each oyster bed or reef and on each clam bed for such period of each year as the board may direct, at the expense of the grantee or lessee. The director shall investigate all grants heretofore made, and where, in his opinion, the lessee or grantee has not bona fide complied with the law under which he received his grant or lease, he shall report the same to the board which is authorized and required to institute legal proceedings to vacate the same, in order to use such lands for the benefit of the public, subject to the same dispositions as other bottoms.

History.—§§2, 3, ch. 28145, 1953; (1) §1, ch. 29941, 1955.
Note.—Similar provisions in former §§371.02, 371.03, 371.05, 371.24.

370.06 Licenses.—

(1) TAX ON ALL BOATS OPERATED ON NON FRESH WATERS.—From and after the passage of this law, there shall be a license required of all boats, vessels, schooners and launches equipped to take salt water products from the tide or salt waters of the state. All such boats, vessels, schooners or launches before beginning activities or operating must first procure a license from the director of conservation, and for this purpose the owner or owners, captain or agent of such boat, vessel, schooner or launch must present in writing to the said director an application setting forth the name, number, if any, and description of such boat, vessel, schooner or launch, name and post office of owner or owners, together with such further data or information as the director shall deem necessary, upon blanks to be furnished by the director and thereupon the director shall register such boat, vessel, schooner or launch and issue necessary license upon the payment therefor and all licenses shall be issued and granted to the boat, vessel, schooner or launch according to the following schedule:

Commercial boats under sixteen feet long and under four feet beam, one dollar and five cents; boats over sixteen feet long and over four feet beam, twenty cents for each additional foot or fraction thereof of length or beam. A certificate of registration and a boat number as required in chapter 371 shall be issued with each license sold under this law.

(2) ADDITIONAL LICENSE TAX ON ALL BOATS USED FOR COMMERCIAL PURPOSES UNDER COMPLETE OR PARTIAL ALIEN OR NONRESIDENT OWNERSHIP.—An additional license tax of twenty-five dollars shall be required of all aliens or nonresidents of the state on all boats, vessels, schooners or launches used for commerical purposes and owned in whole or in part by such alien or nonresident in addition to the boat license tax required by this section.

(3) LICENSE ON PURSE SEINES.—There is levied, in addition to any other taxes thereon, an annual license tax of twenty-five dollars upon each purse seine used in the waters of this state. This license fee shall be collected in the manner provided in this section. Anyone violating this section shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished accordingly.

(4) LICENSE; ALIEN AND NONRESIDENT COMMERCIAL FISHERMEN.— Aliens and nonresidents shall pay an annual license tax of twenty-five dollars before engaging in taking salt water fish from the waters of this state, other than for personal use, including fish or seafood sold for bait, provided that this tax shall not apply to employees or crewmen who take but do not sell salt water products. Such license to be issued by the director upon proper application made on forms to be furnished by said director. The proceeds from the sale of said licenses shall be deposited in the state treasury to the credit of the state conservation fund.

(5) LICENSE YEAR.—The license year on all licenses relating to fish dealers, seafood dealers, boats, aliens, residents and nonresidents, unless otherwise provided, shall begin on the first day of July of each year and shall end on the thirtieth day of June of the next succeeding year, and all licenses shall be so dated. This section shall not apply to licenses and permits granted when their use is confined to an open season. Provided, that all licenses, now in force, issued for said purposes, under any other license law shall continue in force to their original expiration date; however, all licenses issued for said purposes under this law or issued for said purposes under any other law after the effective date of this act shall expire June 30, 1954.

(6) LICENSE TAG TO BE DISPLAYED ON BOAT.—The director shall furnish to each licensed vessel or boat a tag, on which shall be printed the license year for which the same is

issued. Such tag shall be prominently displayed on such boat or vessel.

(7) LICENSES SUBJECT TO INSPECTION; NONTRANSFERABLE; EXCEPTION.—Licenses of every kind and nature granted under the provisions of the fish and game laws of this state, shall at all times be subject to inspection by the police officers of this state, the conservation officers of the game and fresh water fish commission and the conservation agents of the state board of conservation. Said licenses shall not be transferable unless otherwise provided by law, except that commercial boat licenses may be transferred to resident owners in the manner provided in §371.101, upon payment of a fee of $1.00.

(8) COLLECTION OF LICENSES, FEES.—All such license tax or fees provided for in this chapter shall be collected by the director or his duly authorized agents or deputies to be deposited by the comptroller in the motorboating revolving trust fund as created by §371.171.

(9) GENERAL PENALTY PROVISION.—Any person or persons, corporate or otherwise, violating any of the provisions of this section shall be punished by being fined in the sum of not less than one hundred dollars nor exceeding five hundred dollars, or by being imprisoned not exceeding six months, or by both such fine or imprisonment, unless otherwise provided in this section.

History.—§2, ch. 28145, 1953; (1) §3, (10) §4, ch. 59-399; (3), (4) r. §1, ch. 59-499; (7) §1, ch. 61-520; (8) §2, ch. 61-119.

Note.—Similar provisions in former §§371.16, 371.17, 371.18, 373.04, 373.10, 373.12, 373.25, 374.30.

cf.—§370.17 Alien sponge fishermen licenses.
§775.07 Punishment for misdemeanors.

370.061 Confiscation of property and products.—

(1) CONFISCATION; PROCEDURE. — In all cases of arrest and conviction for the illegal taking, or attempted taking, sale, possession or transportation of salt water fish or other salt water products; such salt water products, seines, nets, boats, motors or other fishing devices or equipment, and such vehicles or other means of transportation used in connection with such illegal taking or attempted taking are hereby declared to be nuisances and shall be seized and carried before the court having jurisdiction of such offense, and said court shall order such nuisances forfeited to the state board of conservation immediately after trial and conviction of the person or persons in whose possession they were found, provided that if a motor vehicle is seized under the provisions of this act and is subject to any existing liens recorded under the provisions of §§319.15 and 319.27, all further proceedings shall be governed by the expressed intent of the legislature not to divest any innocent persons, firm or corporation holding such a recorded lien of any of his reversionary rights in such motor vehicle nor of any of his rights as prescribed in §319.15 or §319.27, and further provided that upon any default by the violator purchaser the said lien holder may foreclose his lien and take possession of the motor vehicle involved. When any illegal or illegally used seine, net, trap, or other fishing device or equipment or illegally taken, possessed or transported salt water products are found and taken into custody, and the owner thereof shall not be known to the officer finding the same, such officer shall immediately procure from the county judge of the county wherein they were found an order forfeiting said salt water products, seines, nets, traps, boats, motors or other fishing devices to the board. All things forfeited under the provisions of this law may be destroyed, used by the board or disposed of by gift to charitable or state institutions, or sold and the proceeds derived from said sale deposited in the state treasury to the credit of the general revenue fund. Provided that forfeited boats, motors and legal fishing devices only, may be purchased from the board for one dollar by the person or persons holding title thereto at the time of the illegal act causing the forfeiture, if such person shall prove that he in no way participated in, gave consent to or had knowledge of such act.

(2) CONFISCATION AND SALE OF PERISHABLE PRODUCTS; PROCEDURE.—When an arrest is made pursuant to the provisions of chapter 370, and illegal, perishable products or perishable products illegally taken or landed are apprehended, the defendant may post bond or cash deposit in an amount determined by the judge to be the fair value of such products, and said defendant shall have twenty-four hours to transport said products outside the limits of Florida for sale or other disposition. Should no bond or cash deposit be given within the time fixed by the judge, the judge shall order the sale of such products at the highest price obtainable and when feasible at least three bids shall be requested. In either event, the amounts received by the judge shall be remitted to the board to be deposited into a special escrow account in the state treasury and held in trust pending the outcome of the trial of the accused. If a bond is posted by the defendant it shall also be remitted to the board to be held in escrow pending the outcome of the trial of the accused. In the event of acquittal, the bond or cash deposit shall be returned to the defendant, or, the proceeds of the sale shall be paid over to the defendant. In the event of conviction the proceeds of the sale, or proceeds of the bond or cash deposit, shall be deposited by said board into the general revenue fund of the state. Such deposit into the general revenue fund shall constitute confiscation.

History.—§3, ch. 61-231; (11) §2, ch. 61-119, (12) §1, ch. 61-58.

370.07 Seafood dealers; regulation.—

(1) DEFINITIONS; LICENSES AUTHORIZED.—License or privilege taxes as hereinafter set forth to be paid annually, are hereby levied and imposed upon dealers in the state in seafoods and salt water products as defined hereafter, and it shall be unlawful for any person, firm or corporation to deal in any such products without first paying for and procuring the license required by this section. Ap-

plication for all licenses shall be made to the director on blanks to be furnished by him, and all licenses shall be issued by the director upon payment to him of the license tax therefor and the proceeds thereof deposited in the state treasury to the credit of the general revenue fund. The licenses are defined as:

(a) 1. "wholesale seafood dealer"; any person, firm or corporation which sells salt water fish or other salt water products to any person, firm or corporation except to the consumer.

2. Whenever a person, firm or corporation, already in possession of a wholesale seafood dealer license, shall find it useful and expedient to have more than one establishment, and the function of such additional establishments shall be the loading and preparation of products for later trans-shipment to the central place of business, it shall not be necessary for that person, firm or corporation to obtain an additional wholesale dealer license.

3. In order for such subordinate establishments or structures to be exempt from the requirement to have a wholesale dealer license, all products passing through must have the licensed wholesale dealer's establishment under whose license the branch functions as their immediate destination.

4. If any products leave the branch or subordinate station for shipment or delivery to any destination other than the wholesale dealer under whose license the branch functions, the loading or subordinate location will also require a wholesale dealer license.

5. All provisions of this act shall apply to establishments and feeder stations when both categories are located within a single county. Whenever inter-county transportation becomes involved, points of origin and points of destination shall both be licensed.

(b) A "retail seafood dealer"; any person, firm or corporation who sells salt water fish or other salt water products directly to the consumer as seafood, but no license shall be required of dealers in merchandise who deal in or sell only salted, cured, canned, or smoked seafood.

(c) Any person, firm or corporation which is under the foregoing definitions, both a wholesale and retail seafood dealer, shall obtain both a wholesale and a retail seafood dealer's license.

(2) LICENSES, AMOUNT.—

(a) Resident wholesale seafood dealers are required to pay an annual license tax of fifty dollars.

(b) Nonresident wholesale seafood dealers are required to pay an annual license tax of one hundred dollars.

(c) Alien wholesale seafood dealers are required to pay an annual license tax of five hundred dollars.

(d) Resident retail seafood dealers are required to pay an annual license tax of ten dollars. If any person takes his own seafood for retail purposes the ten dollar retail license is sufficient.

(e) Nonresident retail seafood dealers are required to pay a license tax of twenty-five dollars per annum in each county in which they do business for each place of business.

(f) Alien retail seafood dealers are required to pay a license tax of fifty dollars per annum in each county in which they do business, for each place of business.

(3) WHOLESALE PERMIT; PENALTY.—

(a) Salt water products produced outside Florida, and transported to Florida for processing, freezing and storage shall not be required to display a wholesale permit stamp on the individual packages, boxes, or containers when they leave the freezer for shipment out of state. Truck drivers, in above instances, shall, however, have in their possession invoices, bills of lading and other similar instruments, stamped with a special permit stamp giving the name of the freezer, the location of the freezer, and stating that items on manifest are produced outside Florida. Invoices, bills of lading, and other similar instruments, shall show the number of packages, boxes or containers and the number of pounds of each species to cover and identify all salt water products in the shipment.

The above stamp shall be requested by the freezer owner, and shall be furnished, at cost, by the Florida state board of conservation.

(b) Salt water products produced in Florida and processed, frozen and stored by Florida wholesale dealers shall not be required to display the wholesale permit stamp of the individual owner on individual packages, boxes or containers when they are removed from freezer for shipment or delivery in or out of Florida. Truck drivers, in above instances, shall, however, have in their possession invoices, bills of lading, and other similar instruments stamped with a special permit stamp giving the name of the freezer, its location and the number of the licensed wholesale dealer written in a blank space provided in the stamp. Invoices, bills of lading, and other similar instruments, shall show the number of packages, boxes, or containers and the number of pounds of each species to cover and identify all salt water products in the shipment.

The above stamp shall be requested by the freezer owner, and shall be furnished, at cost, by the Florida state board of conservation. The freezer owner shall be furnished free of charge a complete list of Florida wholesale seafood dealers and their permit numbers.

(c) Salt water products produced in Florida may be transported within or without the state without each individual box or container displaying the wholesale permit stamp.

Provided, that the truck drivers shall have in their possession, invoices, bills of lading, and other similar instruments, showing the number of boxes or containers and pounds of each species, displayed with the permit stamp of the wholesaler, distributor, or producer from whom the shipment was received;

Provided further, that in the event that the seafood products in transit came from more

than one dealer, distributor, or producer, each lot from each dealer shall be covered by invoices, bills of lading, and other similar instruments, showing the number of boxes or containers and the number of pounds of each species and said instruments shall be stamped with that dealer's, distributor's or producer's wholesale permit stamp.

It shall be unlawful to sell, deliver, ship, or transport, or to possess for the purpose of selling, delivering, shipping, or transporting any fish, seafoods, or other products of the salt waters of Florida, without all invoices and containers of such products having thereon the wholesaler's permit number in such form as may be prescribed under the provisions of this section, and the rules and regulations of the board and any such products found in the possession of any person whosoever in violation of this provision may be seized by the director or his duly authorized deputies or agents and disposed of in the manner provided by law. Provided, that nothing contained in this section shall be construed to apply to the sale and delivery to consumers of such products by licensed retail dealers, in ordinary retail transactions, or to the sale and delivery of his own catch or products, to a Florida licensed wholesale dealer, by any person catching or gathering the same. Wholesale seafood dealers' permits and licenses shall be issued only to applicants who shall furnish to the director satisfactory evidence of law-abiding reputation and who shall pledge themselves to the faithful observance of all of the laws and lawful regulations of this state regulating the conservation, dealing in, taking, selling, transporting, or possession of fish, seafoods, and other salt water products, and cooperation in the enforcement of all such laws, to every reasonable extent, which pledge may be included in the application for permit and license. Any person violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding $600, or by imprisonment not exceeding 1 year.

(4) LICENSE REVOCATION; PENALTY.—Permits and licenses issued to seafood dealers, under the provisions of this chapter, are good only to the person to whom issued, and named therein and are not transferable. Such permit and licenses may be revoked.

(a) By the director upon the conviction of the person, to whom issued, of any violation of the laws or regulations designed for the conservation of fish, seafoods or other products of the fresh or salt waters of this state; or

(b) Upon conviction of the said person, to whom issued, or knowingly dealing in, buying, selling, transporting, possessing or taking any fish, seafood, or salt water product, at any time and from any waters, in violation of the laws of this state; or

(c) By the board upon satisfactory evidence of any violation of the laws or any regulations of this state designed for the conservation of fish, seafoods or other products of the fresh or salt waters of this state or of any of the laws of this state relating to dealing in, buying, selling, transporting, possession or taking of fish, seafoods, or salt water products. Before any permit or license is revoked by the board the person to whom issued shall be furnished with a copy of the charges made against him and shall be given an opportunity to present his defense to the charges made against him either by himself or by attorney.

Upon revocation of such permit or license no other or further permit or license may be issued to the holder of the one revoked within three years from the date of revocation, except upon special order of the board. After revocation as aforesaid it shall be unlawful for such seafood dealer to exercise any of the privileges of a licensed seafood dealer. Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not exceeding $600, or by imprisonment not exceeding 1 year.

(5) RECORDS TO BE KEPT; PENALTY.—Seafood dealers shall be required, by the director to make and preserve a record of the names and addresses of persons from whom or to whom fish, seafoods, or other products of the salt waters of the state are purchased or sold, and the quantity so purchased or sold from or to each vendor or purchaser, and the date of each such transaction, and such record shall be open to inspection at all times by the director. A monthly report shall be made to the director covering such sale or sales of products of salt waters of the state. The permit or license of any dealer shall be revoked for failure or refusal to make and keep such records and make such reports, or for failure or refusal to permit the examination thereof as required, or for falsifying any such record; provided this section shall not apply to sales by retail dealers in retail quantities to consumers. Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not exceeding $500, or by imprisonment not exceeding 6 months.

History.—§2, ch. 28145, 1953; (1)(a), (b), (2) (d), §1, ch. 29990, 1955; (3) §1, ch. 57-387; (4), (5) §§1, 2, ch. 57-335; (1) §2, ch. 61-22; (1) (a) §1, ch. 61-376.

Note.—Similar provisions in former §§371.11, 374.30-374.34.

cf.—§775.06 Alternative punishment.

370.08 Fisherman and equipment; regulation.—

(1) ILLEGAL POSSESSION OF SEINES AND NETS.—No person may have in his custody or possession in any county of this state any fishing seine or net, the use of which for fishing purposes in such county is prohibited by law. Such possession shall be evidence of a violation of this section by both the owner thereof and the person using or possessing said net. The provisions of this section shall not apply to shrimp nets or to pound nets or purse nets when used in taking menhaden fish, or seines used exclusively for taking herring or to legal beach seines used in the open Gulf or Atlantic ocean if the possession of such nets is not prohibited in the county where found.

(2) STOP NETTING DEFINED; PROHIBITION; PENALTY.—It is unlawful for any person to obstruct any river, creek, canal, pass, bayou or other waterway in this state by placing or setting therein any screen, net, seine, rack, wire or other device, or to use, set or place any net or seine or similar device of any kind, either singularly or in rotation or one behind another in any manner whatsoever so as to prevent the free passage of fish. Any person violating this section shall, upon conviction, be fined not less than one hundred dollars or more than five hundred dollars and/or imprisonment for not less than six months or more than one year.

(3) USE OF PURSE SEINES, GILL NETS, AND POUND NETS, ETC.; PENALTY.—No person may take food fish with a purse seine, purse gill net, or other net using rings or other devices on the lead line thereof, through which a purse line is drawn, or pound net, or have any food fish so taken in his possession for sale or shipment. The provisions of this section shall not apply to shrimp nets or to pound nets or purse seines when used for the taking of menhaden fish only. Any person violating this section shall, upon conviction, be punished by a fine of not less than two hundred dollars or more than five hundred dollars or by imprisonment of not less than six months or more than one year.

(4) RETURN OF FISH TO WATER; PENALTY.—All persons, taking food fish from any of the waters of this state, by use of seines, nets, or other fishing devices and not using any of such fish because of size or other reasons, shall immediately release and return such fish alive to the water from which taken and no such fish may be placed or deposited on any bank, shore, beach or other place out of the water. Any person violating or failing to comply with the provisions of this section shall, upon conviction, be punished by a fine of not more than six hundred dollars or imprisonment for not more than six months.

(5) THROWING EXPLOSIVES IN WATER FOR PURPOSE OF KILLING FISH PROHIBITED; PENALTY.—No person may throw or cause to be thrown, into any of the waters of this state, any dynamite, lime, other explosives or discharge any firearms whatsoever for the purpose of killing food fish therein. Any person violating any of the provisions of this section shall be punished by a fine not exceeding six hundred dollars, or by imprisonment not exceeding one year.

(6) SEINES, POCKET BUNTS.—In any counties where seines are not prohibited on the open gulf or Atlantic ocean, such seines may have a pocket bunt on the middle of the seine of a mesh size less than that provided by law.

(7) GILL NETS.—In any county in which gill nets or gill netting is not prohibited, such nets when being fished may be gathered or taken in or taken up in any manner when such nets are gathered in, taken in or taken up by hand, provided, that no net may be pulled up on shore where seining is prohibited.

(8) USE OF GEAR AND OTHER EQUIPMENT.—Whenever it shall appear in the best interests of conservation and will result in a more efficient use of offshore fisheries resources, the director may issue a permit for the use of gear and equipment essential to such exploitation. The provisions of this section do not apply to shrimping and sponging operations and all local and general laws pertaining to shrimps and sponges remain in effect.

History.—§2, ch. 28145, 1953; (6) n. §1, ch. 57-765; (7) n. §1, ch. 57-766; (8) n. §1, ch. 59-477.
Note.—Similar provisions in former §§371.08, 371.09, 371.12, 371.13, 371.14, 373.15.

370.09 Industrial hazards; oil deposits discharge prohibited. — It is unlawful for any person to discharge, flow, drain or deposit oil or to suffer or permit oil to be discharged, flowed, drained or deposited upon or into any of the salt waters of the state, either from or out of any vessel, barge, or other floating craft, or from any wharf, mill, mine, factory or other establishment or place whatever.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §373.13.

370.10 Crustacea, marine animals, fish; regulations; general provisions.—

(1) OWNERSHIP OF FISH, SPONGES, ETC.—All fish, shell fish, sponges, oysters, clams and crustacea found within the rivers, creeks, canals, lakes, bayous, lagoons, bays, sounds, inlets and other bodies of water within the jurisdiction of the state, and within the gulf of Mexico and the Atlantic ocean, within the jurisdiction of the state, excluding all privately owned enclosed fish ponds not exceeding one hundred fifty acres, are the property of the state and may be taken and used by its citizens and persons not citizens, subject to the reservations and restrictions imposed by these statutes. No water bottoms owned by the state shall ever be sold or transferred without reserving in the people the absolute right to fish thereon, except as otherwise provided in these statutes.

(2) TAKING FISH, CRUSTACEA AND ANIMALS FOR SCIENTIFIC PURPOSES.—The state board of conservation may issue certificates, upon such terms, conditions, and restrictions as it may prescribe, to any properly accredited person permitting him to collect and have in possession salt water fish, including shell fish and aquatic mammals, for experimental, scientific and exhibitional purposes. The certificate issued may permit the holder thereof to take and catch food fish or shell fish for use in feeding specimens of fish or aquatic mammals in aquariums. In order to obtain such certificate the applicant must present to said board evidence of his fitness to be entrusted with such certificate. Certificates issued under the provisions of this section may be forfeited and revoked by the said board upon satisfactory proof that the holder has violated any of the provisions of this section or of the

certificate and the holder shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished as provided by law.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §§371.04, 373.08.

370.11 Fish; regulation.—

(1) CATCHING FOOD FISH FOR PURPOSES OF MAKING OIL PROHIBITED; PENALTY.—No person shall take any food fish from the waters under the jurisdiction of the state, for the purpose of making oil, fertilizer or compost therefrom. Purse seines may be used, for the taking of non-food fish for the purpose of making oil, fertilizer or compost. Any person violating any of the provisions of this section shall be punished by a fine of not exceeding six hundred dollars, or by imprisonment for not exceeding one year.

(2) LENGTH OF SALT WATER FISH REGULATED.—No person shall take, have in his possession, buy, offer for sale, sell or unnecessarily destroy, at any time, any of the following salt water fish, of less length than that set forth as follows: Bluefish of less length than ten inches from tip of nose to fork of tail; pompano of less length than ten inches from tip of nose to fork of tail; fluke or flounder of less than eleven inches from tip of nose to fork of tail; mackerel and salt water speckled trout or spotted weakfish of less than twelve inches from tip of nose to fork of tail; redfish of less length than twelve inches from tip of nose to fork of tail; snook of less length than eighteen inches from tip of nose to fork of tail; black mullet of less length than twelve inches from tip of nose to end of tail, except in waters located west of the Aucilla river to the Alabama line, ten inches from tip of nose to end of tail; and waters west of the Withlacoochee river to the Aucilla river eleven inches to be measured from tip of nose to end of tail on black mullet; provided that no more than ten per cent of the individuals of any particular species may be undersized according to legal lengths established for that species.

(3) REGULATION; FISH; SHAD, PROTECTION DURING SPAWNING SEASON; PENALTY.—No person may use any purse or drag seine, or build or maintain any dike or pound in any stream, river or waters of this state, whereby shad may be prevented from running or passing up or through during their spawning season, between November 15th and March 15th of every year; any person violating this section shall, upon conviction, be punished by a fine not exceeding three hundred dollars, or by imprisonment not exceeding ninety days.

(a) FISHING FOR SHAD BETWEEN SATURDAY NIGHT AND MONDAY MORNING; PENALTY.—Whoever fishes for shad between sundown on Saturday afternoon and sunrise on Monday morning shall, upon conviction, be punished by a fine not exceeding one hundred dollars, and by confiscation of the boat and fishing tackle used in such unlawful acts.

(b) SHAD; CLOSED SEASON. — It is unlawful for any person to take, have in his possession, buy, sell, offer for sale, or ship or for any common carrier to transport any fresh or freshly salted shad, or any fresh or freshly salted shad roe between the fifteenth day of March and the fifteenth day of November of each year.

(c) USE OF CERTAIN GILL NET FOR CAPTURE OF SHAD; PENALTY.—No person may place in the rivers of this state any gill net, for the capture of shad, of a less size than two and one-half inches bar from knot to knot, or five inches stretched mesh from knot to knot. Any person violating any of the provisions of this section shall, upon conviction, be punished by a fine not exceeding six hundred dollars, or by imprisonment not exceeding one year.

(d) FISHING FOR SHAD WITH HOOK AND LINE.—

1. Nothing in this section shall prevent the taking of shad at any time by means of pole and line, rod and reel, plug, bob, spinner, spoon, fly, troll or other natural or artificial bait used with hook and line. However, no person is permitted to take in one day more than fifteen shad by the above methods.

2. Any person violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding $300.00 or by imprisonment not exceeding 90 days.

(4) REGULATION; FISH; TARPON, ETC.; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase or purchase any species of fish known as tarpon (tarpon atlanticus) provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two tarpon if they are not being transported for sale. The possession of more than two tarpon by any one person is unlawful; provided, however, any person may catch an unlimited number of tarpon if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two tarpon, except as hereinafter provided. It is expressly provided that any lawful established taxidermist, in the conduct of taxidermy, may be permitted to move or transport any reasonable number of tarpon at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment tarpon from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment. The director of conservation may, in his discretion, upon application issue permits for

the taking and transporting of tarpon for scientific purposes. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not exceeding six months.

(5) REGULATION; FISH; SAILFISH; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase or purchase any species of fish known as sailfish; provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two sailfish if they are not being transported for sale. The possession of more than two sailfish by any one person is unlawful; provided, however, any person may catch an unlimited number of sailfish if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two sailfish except as hereinafter provided. It is expressly provided that any lawful established taxidermist in the conduct of taxidermy, may be permitted to move or transport any reasonable number of sailfish at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment sailfish from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment.

(6) SAILFISH, TRANSPORTING.—Sailfish being transported shall be kept intact and flesh shall not be removed from the skeleton; provided, however, sailfish after having been delivered to a bona fide taxidermist or smoking establishment, may be dismembered.

History.—§2, ch. 28145, 1953; §§1, chs. 29869, 29877, §§1, 2, ch. 29945 and §24, ch 29615, 1955; (2) §1, ch. 57-372; (5) r. §1, ch. 57-127; (2) §1, ch. 59-384; (6) n. §1, ch. 59-473; (2) §1, ch. 61-169.

Note.—Similar provisions in former §§371.07, 374.02, 374.04-374.07, 374.19, 374.23, 374.24.

370.111 Snook, regulation.—

(1) It shall be unlawful to take or attempt to take any snook from any of the salt, fresh, or tidal waters of the state, by means of any device except pole and line, bob, spinner lure, or troll manually.

(2) It shall be unlawful for any person, firm or corporation while fishing any net, seine or any other device prohibited by this section to have in his possession any snook; any snook taken by any trap, seine, net, or any other device prohibited by this section shall be immediately returned to the water alive.

(3) It shall be unlawful for any person to have in his possession more than four snook, none of which shall measure less than eighteen inches in length. It shall be unlawful for any person, firm, or corporation to have in his or its possession at any time more than two days bag limit.

(4) It shall be unlawful for any wholesale or retail fish dealer to possess, buy, sell or store any snook or permit any snook to be possessed, bought, sold or stored on, in or about the premises where such wholesale or retail fish business is carried on or conducted. It shall be unlawful for any person, firm or corporation to buy and sell snook in any form.

(5) Any person, firm or corporation found guilty of violating the provisions of this section shall be punished by fine of not more than $500.00 or by imprisonment of more than 6 months.

History.—§§1-5, ch. 57-275.

370.112 Striped bass, regulation.—

(1) It is unlawful for any person, firm or corporation to take or attempt to take any striped bass from any of the salt, fresh or tidal waters of Florida, by means of any device except pole and line, bob, spinner lure, or manual troll.

(2) It is unlawful for any person, firm or corporation to have in their possession more than six striped bass taken from any of the salt, fresh or tidal waters of Florida, by means of any of the devices permitted in subsection (1) of this section.

(3) It is unlawful for any person, firm or corporation while fishing with any trap, net, seine or any other device prohibited by this section to have in his possession any striped bass. Any striped bass taken or attempted to be taken by trap, net, seine or any other device prohibited by this section shall be immediately returned to the water alive.

(4) It is unlawful for any wholesale or retail fish dealer to have in his possession, to offer to purchase, purchase, to offer to sell, sell, barter or transport for sale any striped bass, or permit any striped bass to be stored, possessed, offered for purchase, purchased, offered for sale or sold in or about the premises where such wholesale or retail fish business is carried on or conducted.

(5) It is unlawful for any person, firm or corporation to offer to purchase, purchase, offer to sell or sell striped bass in any form.

(6) Any person, firm or corporation violating the provisions of this act shall be punished by a fine of not more than $500.00 or by imprisonment of not more than 6 months.

History.—§1, ch. 63-84.

370.12 Marine animals; regulation.—

(1) PROTECTION OF MARINE TURTLE NESTS AND EGGS; PENALTY.—

(a) No person may take, possess, disturb or mutilate or in anywise destroy or cause to be destroyed any marine turtle nest or eggs at any time. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $100.00 or by imprisonment not exceeding 60 days.

(b) 1. It shall be unlawful for any person to take, kill, possess, mutilate or in anywise destroy any loggerhead or green turtle or other sea turtle while such turtle is on the beaches of Florida or within one half mile seaward from the beaches during the months of May, June, July and August of each year.

2. Any person violating this subsection shall, upon conviction, be punished by a fine not exceeding $600 or by imprisonment not exceeding 1 year.

(2) PROTECTION OF MANATEES OR SEA COWS; PENALTY.—

(a) Whenever the state board of conservation shall be satisfied that the interest of science will be subserved, and that the application for a permit to capture a manatee or sea cow is for a scientific or educational purpose and should be granted, it may grant to any person making application a special permit to capture a manatee or sea cow, which permit shall specify the exact number which shall be captured and maintained in captivity. Any person who shall kill, capture, or possess a manatee or sea cow (trichechus latirostris), without having obtained a permit, shall, upon conviction, be fined not more than $500 or imprisoned not more than 6 months, or by both such fine and imprisonment.

(b) It shall be unlawful for any person, firm or corporation to annoy, injure, molest or torture a manatee or sea cow by any instrument, process or procedure. Any person who shall annoy, injure, molest or torture a manatee or sea cow, shall, upon conviction, be fined not more than $500 or imprisoned not more than 6 months, or by both such fine and imprisonment.

History.—§2, ch. 28145, 1953; (1) §§1, 2, ch. 57-771; (2) §1, ch. 59-483.
Note.—Similar provisions in former §§374.16, 374.18.
cf.—§775.06 Alternative punishment.

370.13 Stone crabs; regulation.—It shall be unlawful for any person, persons, firm or corporation to catch or have in their possession, for their own use or to sell or offer for sale any stone crab whatsoever of any size between June 1 and October 15, of each and every year. It shall be unlawful to possess, sell or offer for sale any stone crab at any time, which has a claw less than four inches in length. Provided, further, that female stone crabs may not be taken at any time; and provided, further, that the use of spears, gigs, or similar devices in the taking of stone crabs is expressly prohibited and forbidden. Any person violating this section, shall upon conviction, be fined not less than $100.00, nor more than $500.00 or imprisoned not less than 90 days nor more than 6 months, for each offense.

History.—§2, ch. 28145, 1953; (2) r. §1, ch. 64-482; §1, ch. 63-3.
Note.—Similar provisions in former §§374.08, 374.09.
cf.—§775.06. Alternative punishment.

370.131 Blue crabs; regulation, east of Aucilla river.—

(1) It is unlawful for any person, firm or corporation east of the Aucilla river to take or have in his possession any egg-bearing blue crabs, commonly known as sponge crabs.

(2) Violation of this act shall constitute a misdemeanor and the violator shall be punished as provided by law.

History.—§§1, 2, ch. 63-579.

370.14 Crawfish; regulation.—

(1) CLOSED SEASON; PENALTY. — No salt water crawfish may be taken from waters of this state for commercial purposes and no person may have same in his possession, regardless of where taken, between March 31 and August 1 each year. Provided, however, that it is unlawful for any person at any time to take or have in his possession, regardless of where taken, any salt water crawfish with a shell measurement of tail of less than six inches for any purpose whatsoever. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.

(2) CARRIERS; PENALTY. — No common carrier or employee of said carrier may carry or knowingly receive for carriage or permit the carriage of any crawfish, regardless of where taken, between March 31 and August 1, of each year, except crawfish lawfully imported from a foreign country for reshipment outside of the territorial limits of the state; but in no case will such shipment be permitted to pass through the territorial limits of the state unless accompanied by certified invoice and same must be shipped from the port of entry. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.

History.—§2, ch. 28145, 1953; §1, ch. 29896, 1955.
Note.—Similar provisions in former §§374.10, 374.11.
cf.—§775.06. Alternative punishment.

370.141 Crawfish and stone crab; reports by dealers during closed season required.—

(1) Within three days after the commencement of the closed season for the taking of salt water crawfish and stone crabs, each and every seafood dealer, either retail or wholesale, of the state shall submit to the director of conservation, on forms provided by the director, a sworn report of the quantity, in pounds, of frozen salt water crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crab meat in his (its) name or possession at the beginning of the aforementioned closed season. This report shall state the location of and describe each as to the number of pounds of frozen crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crab meat. Any reports postmarked later than midnight of the third day after the commencement of the closed season shall not be accepted by the director of the board of conservation, and the frozen stocks or crawfish and stone crabs reported therein shall be seized by the director or his authorized agents.

(2) Whenever any dealer fails to submit a report as described above or should any dealer report a greater or lesser amount of frozen

crawfish or stone crabs, frozen crawfish tails or frozen crawfish or stone crab meat than is actually in his (its) possession or name, said dealer is and shall be considered in violation of the provisions of §§370.13 and 370.14, and the director or any of his authorized agents shall seize the entire supply of unreported or falsely reported frozen crawfish and stone crabs, tails or meat and shall carry same before the court for disposal as provided for under §370.02(11).

(3) Provided further, each and every dealer having reported stocks of frozen crawfish and stone crabs as aforesaid may sell or offer for sale such stocks of frozen crawfish or frozen stone crabs; provided, however, such dealer shall submit an additional report on the first and fifteenth day of each month during the duration of the closed season on forms supplied by the director of conservation. Each dealer shall state on this report the number of pounds sold during the report period and the pounds remaining on hand. In every case the amount of frozen crawfish and stone crabs sold and the amount remaining on hand shall total to equal the amount reported on hand in the last submitted report. Reports postmarked later than midnight of the second and sixteenth of each month during the duration of the closed season shall not be accepted by the director of the board of conservation. Whenever any dealer fails to submit the semi-monthly supplementary report as described above the director of conservation or his authorized agents shall impound said dealer's entire stock of frozen crawfish and stone crabs for the remainder of the closed season.

(4) Each and every seafood dealer shall at all times during the closed season make his stocks of frozen crawfish and stone crabs, frozen crawfish tails or frozen crawfish and stone crab meat available for inspection by the director of conservation or his authorized agents.

(5) Each dealer in frozen crawfish or stone crabs, frozen crawfish tails or frozen crawfish and stone crab meat shall keep throughout the period of the closed season copies of the bill of sale or invoice covering each transaction involving frozen crawfish and stone crabs, tails or meats excepting only retail sale directly to the consumer. Such invoices and bills shall be kept available at all times for inspection by the director or his authorized agents.

(6) Any person violating this section shall, upon conviction, be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 1 year or by both such fine and imprisonment.

History.—§§1-6, ch. 57-386.

370.15 Shrimp; regulation.—

(1) GENERAL AUTHORITY; CONSERVATION.—The state board of conservation is authorized and directed to adopt, promulgate and enforce rules and regulations consistent with the provisions of this section and the general policy of encouraging the production of the maximum sustained yield consistent with the preservation and protection of breeding stock, taking into consideration the recommendations of the various marine laboratories, as well as those of interested and experienced groups of private citizens. Such rules and regulations are to control the method, manner and equipment used in the taking of shrimp or prawn, as well as limiting and defining the areas where taken.

(2) CLOSING BREEDING AREAS.—Agents of the board are hereby authorized and directed to stop the taking or catching, killing or destroying of shrimp or prawn at all times and places within the inside or outside waters of this state, wherever a majority of the shrimp or prawn being taken, caught, killed or destroyed are small shrimp or prawn. Small shrimp or prawn are defined as shrimp or prawn that require more than forty-five with the heads and sixty-seven without the heads to make a pound.

(3) REGULATION OF BREEDING AREAS.—Any areas or places as defined in subsection (2) shall be designated sanctuary areas for shrimp and prawn to be opened or closed to the taking of shrimp or prawn according to the provisions of this section or the rules and regulations of the board.

(4) CATCHING SHRIMP AT NIGHT.—It shall be unlawful to catch or attempt to catch shrimp or prawn in the territorial waters of the state in any county whose coastal boundary borders solely on the Atlantic ocean, by use of trawl nets during night hours except during the months of June, July and August.

(5) LIVE BAIT SHRIMP FISHING; PERMITS.—All persons, firms and corporations desiring to fish for live bait shrimp within areas in which trawling is permitted shall first apply to the director of conservation for a permit. Such applications shall be made on forms to be supplied by the director and which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of salt water conservation. Provided, that the director may refuse to grant permit when it shall be apparent that the best interests of salt water conservation will be served by such denial. Provided further, that permits so granted will be subject to immediate revocation upon conviction for violation of this section or when it shall be apparent that the best interests of salt water conservation will be served by such denial. Provided further, that due to the varied habitats and types of bottoms and hydrographic conditions embraced by the open fishing area, the director shall have the authority to specify and regulate the types of gear that may be used in the different sections of the open areas.

(6) (a) It is unlawful to take or catch shrimp, other than bait shrimp with any type net or other method, in the following area:

That portion of Santa Rosa sound lying in Escambia, Santa Rosa and Okaloosa counties

and between Brooks bridge as the east boundary and a line drawn due north and south between Santa Rosa county and Santa Rosa island passing through the center of Deer Point Light as the west boundary. Live bait shrimp may be caught at any time but only under permit issued by the director of conservation. Permittees must fish with gear and under those conditions specified by the director.

Application for such permits shall be on forms supplied by the director and no charges may be made for issuing said permits. Permits shall be revokable when holder does not comply with the laws and regulations applicable to salt water conservation.

(b) Any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and shall be punished as provided by law.

History.—§2, ch. 28145, 1953; (4), (5) n. §1, ch. 59-343; (6) n. §1, ch. 61-525; (6) §1, ch. 63-338.

370.151 Tortugas shrimp beds; closed areas; permits; penalties.—

(1) It is the intention of the legislature of this state that action should be taken to conserve the supply of shrimp in the large shrimp bed which lies in the vicinity of the island of Dry Tortugas in the Florida Keys, and which furnishes more than fifty per cent of the shrimp in waters adjacent to the coast of Florida. It is further the sense of this legislature that the shrimp industry is a valuable industry to the economy of this state and that it deserves adequate protection.

(2) The Tortugas shrimp bed is hereby defined as follows:

Begin at Quick Flashing Wreck buoy located at 24° 57′ north latitude and 81° 46′ west longitude; thence proceed in a direction 248° from true north, until 82° west longitude is reached; thence proceed in a direction 255° from true north until 82° 23′ west longitude and 24° 46′ north latitude is reached; thence proceed in a direction 90° from true north until the 82° meridian west longitude is reached; thence proceed in a direction 48° from true north until the Quick Flashing Wreck buoy is reached which is the point of beginning.

For the purpose of permitting fishing or prohibiting fishing as related to the size of shrimp, those portions of the Tortugas shrimp beds which lie east of the 82° meridian west longitude may be considered separately from those lying west of said meridian.

(3) (a) Whenever the director of the state department of conservation shall determine that in any area or areas within the said Tortugas bed the preponderance of shrimp is of such small size that the continuous taking of shrimp from this area or areas is harmful, the director or his designated representative shall declare said area or areas to be closed. Appropriate buoys or other markings will designate such closed areas and notice of such closings will be published in one daily newspaper in Lee county, in one daily newspaper in Monroe county, and in one bi-weekly newspaper in Collier county, and announced over the radio frequently used by shrimp vessels in this area.

(b) Periodic surveys shall be made by the department of conservation in such closed areas, and when it is determined that the interests of conservation are best served, such closed areas shall again be open for the taking of shrimp, with appropriate notices being published in daily newspapers in Lee and Monroe counties as provided hereinbefore in subsection (3) (a). Such notices shall carry the day and hour on which such closed areas shall be reopened, and they shall be published at least forty-eight hours prior to the designated reopening of such closed areas.

(c) For the purpose of determining the closing of an area with regard to the size of shrimp therein, it is the sense of this legislature that when a series of drags by net in an area shows that the total average catch is sixty count or smaller shrimp, the count being made with heads off, the continued taking of shrimp therein is injurious to proper conservation.

(d) There is also established a nursery area in which no shrimping shall be permitted at any time, except live bait production as provided in this chapter. The nursery area thus established is encompassed by a line defined as follows:

Begin at Coon Key Light in Collier county; thence proceed in a direction of 185° from true north to the Whistle buoy approximately thirteen miles from said Coon Key Light; thence proceed in a direction of 190° from true north to the Quick Flashing Light marking the Wreck buoy which is located at 24° 57′ north latitude and 81° 46′ west longitude; thence proceed in a direction of 248° from true north until the eighty-second meridian is reached; thence proceed 180° from true north along said eighty-second meridian until 24° 35′ north latitude is reached; thence proceed in a direction of 90° from true north until 81° 30′ west longitude is reached; thence proceed in a direction 71° from true north until a point 24° 49′ north latitude and 80° 47′ west longitude is reached; thence proceed in a direction 53° from true north until a point at 25° north latitude and 80° 30′ west longitude is reached; thence proceed in a direction true north until the mainland of Florida is reached; thence proceed west and north along the coast of mainland Florida until a point on the mainland is reached which is located exactly north of aforementioned Coon Key Light located in Collier county; thence proceed true south (180° from true north) until Coon Key Light (the point of beginning) is reached.

There is also established an additional nursery area described as follows:

Beginning at the intersection of the Florida boundary line in the straits of Florida with the meridian longitude 82° 00′ west of Greenwich; running thence westerly along said Florida boundary line in the straits of Florida to the meridian longitude 82° 23′ west of Greenwich; running thence due north along said meridian

longitude 82° 23′ to its intersection with the Florida boundary line in the Gulf of Mexico, which is a straight line drawn from the Island of Dry Tortugas on a bearing of 75° from magnetic north; running thence easterly along said Florida boundary line to its intersection with said meridian longitude 82° 00′; running thence southerly along said meridian longitude 82° 00′ to the point of beginning.

Except that in all nursery areas established, those areas designated as Tortugas shrimp grounds, as above described, shall be opened to fishing when the shrimp are large enough as prescribed in this chapter.

(4) (a) The director of the department of conservation is authorized to take title in the name of the state of Florida to any vessel, or vessels, suitable for use in carrying out the inspection and patrol of the Tortugas bed which may be offered as a gift to the state by any person, firm, corporation or association in the shrimp industry, for the purpose of carrying out the provisions of this section. In the event such title is taken to such vessel or vessels, the director of the department of conservation is authorized to operate and keep said vessel or vessels in proper repair.

(b) The director of the department of conservation is further authorized to accept the temporary loan of any vessel or vessels, suitable for use in carrying out the provisions of this section, for periods not exceeding one year; provided, however, that the state shall not assume any liability to the owner or owners of said vessels for any damage done by said vessels to other vessels, persons or property; and provided further that in the operation of said loaned vessels, upkeep and repair shall consist only of minor repairs and routine maintenance; and provided further that the owner or owners shall carry full marine insurance coverage on said loaned vessel or vessels for the duration of the period during which said vessels are operated by the state.

(c) In the event the department of conservation shall not have a suitable vessel available, the director is authorized and directed to purchase a suitable vessel or vessels and an appropriation of seventy-five thousand dollars is hereby made from the general revenue fund of the state for the 1957-1959 biennium, which shall be available for the purchase, upkeep and repair of said patrol vessel or vessels; necessary buoys or lights, payment of publication costs in newspapers, notices by radio, and other necessary incidental expenses pertaining to this program, including additional personnel.

(d) In the event of emergency, the director of the department of conservation may lease or rent a suitable vessel for periods not exceeding one week.

(5) Whenever, under the provisions of this section, an area of the Tortugas bed as herein described has been closed and notice has been published, and any shrimp fishing vessel shall be found with its nets dragging in such closed area, the master of the vessel and the owner of the vessel shall be deemed guilty of a misdemeanor, and shall upon conviction be assessed such penalties as provided hereinafter. Due regard shall be given by the arresting officer to the receipt of notice of such closing by the offending masters, and, if it should appear to the arresting officer that the offending master did not have actual notice of the closed area, whether by buoys, lights, newspaper notices or radio, the master shall be issued a warning, with copy thereof to the owner of the vessel, as shall appear by the vessel's documents, and a copy shall be retained by the department of conservation. Repeated warning to the same vessel shall be evidence that through carelessness, inattention or neglect, a master or owner is deliberately seeking to avoid compliance with the provisions of this section, and such offender may then be assessed the penalties provided herein.

(6) It shall be unlawful to land or attempt to land any shrimp in the territorial waters or state of Florida without a permit issued by the director of conservation. Such permit shall be issued without charge. The director of conservation may revoke such landing permit upon a violation of any portion of this section. Such revocation of permit by the director may be reviewed by the board of conservation and the decision of the board may be reviewed by the circuit court under the procedure prescribed for appeals in Florida Statutes and the Florida appellate rules.

(7) It shall be unlawful for any person, firm or corporation to receive any shrimp from any vessel not in possession of a valid permit issued by the director. Any person violating this subsection of this section shall upon conviction be punished by a fine of not more than $500.

(8) Each offense under all subsections, except under subsection (7), shall be considered a misdemeanor and punishable upon conviction as follows:

(a) For the first offense the owner or the master, or both, shall be fined not less than $100 nor more than $500. For the second offense the owner or master, or both, shall be fined not less than $500.

(b) For the third offense the vessel shall be confiscated as provided in §370.02(11).

(c) The foregoing fines may be assessed by the court, within its discretion, against the master or owner, or both the master and owner.

(d) In addition to the fines enumerated above, the court may adjudge imprisonment in the county jail not exceeding 3 months for the master.

(9) Nothing in this section shall apply to the taking of live shrimp for bait. All persons, firms and corporations desiring to fish for live bait shrimp within the areas in which trawling is permitted shall first apply to the director of conservation for a permit. Such application shall be made on forms to be supplied by the

director and which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of salt water conservation.

Provided further, that the director may refuse to grant permits when it shall be apparent that the best interests of salt water conservation will be served by such denial.

Provided further, that permits so granted will be subject to immediate revocation upon conviction for violation of this subsection or when it shall be apparent that the best interests of salt water conservation will be served by such revocation.

Provided further, that due to the varied habitats and types of bottoms and hydrographic conditions embraced by the open fishing area, the director shall have the authority to specify and regulate the types of gear that may be used in the different sections of the open area.

Such specifications and regulations shall be consonant with sound salt water conservation.

(10) This section shall not apply to foreign vessels or any vessel not flying the American flag.

History.—§§1-10, ch. 57-358; (2), (3)(c), (3)(d) n. §1, ch. 61-470.

370.16 Oysters and shell fish; regulation.—(1) LEASE, APPLICATION FORM; NOTICE TO RIPARIAN OWNER; LANDS LEASED TO BE COMPACT.—When any qualified person desires to lease a part of the bottom or bed of any of the water of this state, for the purpose of growing oysters or clams, as provided for in this section, he shall present to the state board of conservation a written application setting forth the name and address of the applicant, a reasonably definite description of the location and amount of land covered by water desired, and shall pray that the application be filed; that the water bottoms be surveyed and a plat or map of the survey thereof be made if no plat or map of such bottoms should have been so made thereto, and that the water bottoms described be leased to the applicant under the provisions of this section; such applicant shall accompany with his written application a sufficient sum to defray the estimated expenses of the survey; thereupon the said board shall file such application and shall direct the director to have the same surveyed and platted forthwith at the expense of the applicant. When applications are made by two or more persons for the same lands, they shall be leased to the applicant who first filed application for same; but to all applications for leases of any of the bottoms of said waters owned under the riparian acts of the laws of Florida, heretofore enacted, notice of such aplication shall be given the riparian owner, when known, and when not known, notice of such application shall be given by publication for four weeks in some newspaper published in the county in which the water bottoms lie; and when there is no newspaper published in such county, then by posting such notice for four weeks at the court house door of said county, and preference shall be given to such riparian owners under the terms and conditions herein created, when such riparian owner makes application for such water bottoms for the purpose of planting oysters or clams before the same are leased to another. The lands leased shall be as compact as possible, taking into consideration the shape of the body of water and the condition of the bottom as to hardness, or soft mud or sand, or other conditions which would render the bottoms desirable or undesirable for the purpose of oyster or clam cultivation.

(2) SURVEYS, PLATS AND MAPS OF REEFS.—The board shall accept, adopt and use official reports, surveys and maps of oyster, clam or other shell fish grounds made under the direction of any authority of the United States as prima facie evidence of the natural oyster and clam reefs, for the purpose and intent of this chapter. The said board may also make surveys of any natural oyster or clam reefs when it deems such surveys necessary and where such surveys are made pursuant to an application for a lease, the cost thereof may be charged to the applicant as a part of the cost of his application.

(3) EXECUTION OF LEASES; LESSEE TO STAKE OFF BOUNDARIES; PENALTY FOR FAILURE TO COMPLY WITH REGULATIONS.—As soon as the survey has been made and the plat or map thereof filed with the said board and the cost thereof paid by the applicant, the said board may execute in duplicate a lease of the water bottoms to the applicant. One duplicate, with a plat or map of the water bottoms so leased, shall be delivered to the applicant, and the other, with a plat or map of the bottom so leased shall be retained by the said board, and registered in a lease book which shall be kept exclusively for that purpose by the said board; thereafter such lessees shall enjoy the exclusive use of said lands and all oyster and clams, shell and cultch grown or placed thereon shall be the exclusive property of such lessee as long as he shall comply with the provisions of this chapter. The board shall require the lessee to stake off and mark the water bottoms leased, by such ranges, monuments, stakes, buoys, etc., so placed and made as not to interfere with the navigation, as it may deem necessary to locate the same to the end that the location and limits of the lands embraced in such lease be easily and accurately found and fixed, and such lessee shall keep the same in good condition during the open oyster or clam season. Failure on the part of the lessee to comply with the orders of the said board to this effect within the time fixed by it, and to keep the same in good condition during the open oyster or clam season, shall subject such lessee to a fine not exceeding twenty-five dollars, for each and every such offense. All lessees shall cause the area of the leased water bottoms and the names of the

lessees to be shown by signs as may be determined by the said board, if so required.

(4) LEASES IN PERPETUITY; RENT; STIPULATIONS; TAXES; CULTIVATION, ETC.—

(a) All leases made under the provisions of this chapter, shall begin on the day executed, and shall continue in perpetuity under such restrictions as shall herein be stated. The rent for the first ten years shall be fifty cents per acre, or any fraction of an acre, per year. This rent shall be paid in advance at the time of signing the lease up to the first day of January following, and annually thereafter in advance on or before the first day of January of each year, whether the lease be held by the original lessee or by an heir, assignee or transferee. No taxes, assessments or other licenses than those imposed in this chapter shall be levied or imposed on said leases or said leased lands, but the annual rental exacted and paid shall be held and considered all that can or shall be exacted by the state or county, subordinate political corporations or municipalities.

(b) Effective cultivation shall consist of the growing of oysters or clams in a density suitable for commercial harvesting over the amount of bottom prescribed by law. This commercial density to be accomplished by the planting of seed oysters, shell and cultch of various descriptions. Each tenant leasing from the state water bottoms under the provisions of this section, shall have begun within one year from the date of such lease, bona fide cultivation of the same, and shall by the end of the second year from the commencement of his lease, have placed under cultivation at least one-fourth of the water bottom leased, and shall each year thereafter place in cultivation at least one-fourth of the water bottom leased until the whole, suitable for bedding of oysters or clams, shall have been put in cultivation by the planting thereon of not less than two hundred barrels of oysters, shell or its equivalent in cultch to the acre. Where leases are granted or where grants have heretofore been made under existing laws for the planting of oysters or clams, such lessee or grantee is authorized to plant the leased or granted bottoms both in oysters and clams.

(c) These stipulations will apply to all leases granted after the passing of this section. All leases existing prior to the passing of this section will operate under the law which was in effect when the leases were granted.

(d) When evidence is gathered by the board and such evidence conclusively shows a lack of effective cultivation, said board may revoke leases and return the bottoms in question to the public domain.

(e) When evidence obtained by qualified marine biologists is available to the director which indicates that relatively temporary or transient hydrographic or biological conditions preclude the successful cultivation of oysters, lessees may apply to the director for a permit to suspend planting operations. Such permits shall be revokable upon thirty days notice from the director that growing conditions are again suitable and, upon the revocation of such permits, cultivation will again be mandatory as required by law.

(5) INCREASE OF RENTALS AFTER TEN YEARS.—After ten years from the execution of the lease, the rentals shall be increased to a minimum of one dollar per acre per annum. The board shall assess rental value on the leased water bottoms, taking into consideration their value as oyster or clam growing water bottoms, their nearness to factories, transportation and other conditions adding value thereto, and placing such valuation upon them in shape of annual rental to be paid thereunder as said condition shall warrant. Should the tenant or lessee be dissatisfied with the rental so fixed by the said board, he shall have the right to bring an action by bill in chancery in the circuit court of the county in which the leased lands, or any portion thereof, are situated, against the said board, to have said valuation passed upon by said court, and made to conform to justice and equity. Both parties shall have the right of appeal from the judgment of the circuit court to the appropriate district court of appeal.

(6) LEASES TRANSFERABLE, ETC.— Said leases shall be inheritable and transferable, in whole or in part, and shall also be subject to mortgage, pledge or hypothecation, and shall be subject to seizure and sale for debts as any other property, rights and credits in this state, and this provision shall also apply to all buildings, betterments and improvements thereon. No such inheritance or transfer shall be valid or of any force or effect whatever unless evidenced by an authentic act, judgment or proper judicial deed registered in the office of the board in a book to be provided for said purpose. The said board shall keep proper indexes, so that all original leases and all subsequent changes and transfers can be easily and accurately ascertained.

(7) PAYMENT OF RENT; FORFEITURE FOR NONPAYMENT; NOTICE, ETC. — All leases shall stipulate for the payment of the annual rent in advance on or before the first day of January of each year, and the further stipulation that the failure of the tenant to pay the rent punctually on or before said day, or within thirty days thereafter shall ipso facto, and upon demand, terminate and cancel said lease and forfeit to the state all the works, improvements, betterments, oysters and clams on the said leased water bottoms, and authorize the board to at once enter on said water bottom and take possession thereof, and such water bottom shall then be open for lease as herein provided; and the said board shall within ten days thereafter enter such termination, cancellation and forfeiture on its books and shall give such public notice thereof, and of the fact that the water bottoms are open to lease, as it shall deem proper; provided, that the said

board may, in its discretion, waive such termination, cancellation and forfeiture when the rent due, with ten per cent additional, and all costs and expenses growing out of such failure to pay, be tendered to it within sixty days after the same became due; provided, that in all cases of cancellation of lease, the said board shall, after sixty days' notice by publication in some newspaper published in the state, having a general statewide circulation, which said notice shall contain a full description of the leased waters and beds and any parts thereof, sell such lease to the highest and best bidder; and all moneys received over and above the rents due to the state, under the terms of the lease and provisions herein, and costs and expenses growing out of such failure to pay, shall be paid to the lessee forfeiting his rights therein. No leased water bottoms shall be forfeited for nonpayment of rent under the provisions of this section, unless there shall previously have been mailed by the said board to the last known address of such tenant according to the books of said board, thirty days' notice of the maturity of such lease. Whenever any leased water bottoms are forfeited for nonpayment of rent, and there is a plat or survey thereof in the archives of the said board, when such bedding grounds are re-leased, no new survey thereof shall be made, but the original stakes, monuments and bounds shall be preserved, and the new lease shall be based upon the original survey. This subsection shall also apply to all costs and expenses taxed against a lessee, by the board, under this section.

(8) CANCELLATION OF LEASES TO NATURAL REEFS.—Any person, within six months from and after the execution of any lease to water bottoms, may file a petition with the board for the purpose of determining whether a natural oyster or clam reef, having an area of not less than one hundred square yards, existed within the leased area, on the date of the lease, with sufficient natural or maternal oysters or clams thereon (not including coon oysters) to have constituted a stratum sufficient to have been resorted to by the public generally for the purpose of gathering the same to sell for a livelihood. The said petition shall be in writing addressed to the state board of conservation, verified under oath, stating the location and approximate area of the natural reef, the claim or interest of the petitioner therein and requesting the cancellation of the lease to the said natural reef. No petition may be considered unless it be accompanied by a deposit of ten dollars to defray the expense of examining into the matter. The petition may include several contemporaneous natural reefs of oysters or clams. Upon receipt of such petition the board shall cause an investigation to be made into the truth of the allegations of the petition and if found untrue the ten dollars deposit shall be retained by the board to defray the expense of the investigation, but should the allegations of the petition be found true and the leased premises to contain a natural oyster or clam reef, as above described, the said ten dollars shall be returned to the petitioner and the costs and expenses of the investigation taxed against the lessee and the lease canceled to the extent of the natural reef and the same shall be marked with buoys and stakes and notices placed thereon showing the same to be a public reef, the cost of said markers and notices to be taxed against the lessee. The lessee shall be notified of the filing of the petition and of the time and place of investigation and be given full and reasonable opportunity to be heard. The decision of the board shall be subject to review by certiorari by the circuit court of the county within which the alleged natural reef is situated. The decision of the circuit court shall be subject to appeal to the appropriate district court of appeal.

(9) WHEN NATURAL REEFS MAY BE INCLUDED IN LEASE.—When an application for oyster or clam bedding grounds is filed and upon survey of such bedding ground, it should develop that the area applied for contains natural oyster or clam reefs or beds less in size than one hundred square yards, or oyster or clam reefs or bars of greater size, but not of sufficient quantity to constitute a stratum, and it should further be made to appear to the board by the affidavit of the applicant, together with such other proof as the board may require, that the natural reef, bed or bar could not be excluded, and the territory applied for properly protected or policed, the board may, if it deems it for the best interest of the state and the oyster industry so to do, permit the including of such natural reefs, beds, or bars; and it shall fix a reasonable value on the same, to be paid by the applicant for such bedding ground; provided, that no such natural reefs shall be included in any lease hereafter granted to the bottom or bed of waters of this state contiguous to Franklin county. There shall be no future oyster leases issued in Franklin county.

(10) RIGHTS OF RIPARIAN OWNERS.—Riparian owners shall not, under the provisions of this chapter, be disturbed in the use of the land a reasonable distance out from medium tide for the purpose of erecting wharves, docks, piers, warehouses or other permanent improvements; and such riparian owners shall have the right to fill up from the shore, bank or beach as far as may be desired, not obstructing the channel, but leaving full space for the requirements of commerce, and shall have all the rights given them by these statutes, anything in this section to the contrary notwithstanding.

(11) SETTLEMENT OF BOUNDARY DISPUTES; REVIEW.—The board shall determine and settle all disputes as to boundaries between lessees of bedding grounds, the proceedings to be conducted under such rules and regulations as the board may prescribe. In this connection the board may appoint a master to act in the matter and advise it concerning the same. All

parties shall have a right of review by certiorari by the circuit courts from decisions and orders of the board. The board shall, in all cases, be the judge as to whether any particular bottom is or is not a natural reef, or whether it is suitable for bedding oysters or clams.

(12) TRESPASS ON LEASED BEDS; GATHERING OYSTERS BETWEEN SUNSET AND SUNRISE FROM NATURAL REEFS, ETC.—Any person, who shall willfully take oysters, shells, cultch or clams bedded or planted by a licensee under this chapter, or grantee under the provisions of heretofore existing laws, or riparian owner who may have heretofore planted the same on his riparian bottoms, or any oysters or clams deposited by anyone making up a cargo for market, or who shall willfully carry or attempt to carry away the same without permission of the owner thereof, or who shall willfully or knowingly remove, break off, destroy, or otherwise injure or alter any stakes, bounds, monuments, buoys, notices or other designations of any natural oyster or clam reefs or beds or private bedding or propagating grounds, or who shall willfully injure, destroy or remove any other protection around any oyster or clam beds, or who shall willfully move any bedding ground stakes, buoys, marks or designations, placed by the board, or who shall gather oysters between sunset and sunrise from the natural reefs or from private bedding grounds, unless he shall have lights attached to the rigging of said boat or vessel, if the same be a sailing vessel, or placed in some conspicuous place on said boat or vessel, if the same be a power boat or vessel, in such a manner that it may be seen from every direction, shall be guilty of a violation of the provisions of this section and upon conviction thereof, shall be fined six hundred dollars or imprisoned for one year in the state prison or be subject to both such fine and imprisonment.

(13) PROTECTION OF OYSTER AND CLAM REEFS.—The board shall improve, enlarge and protect the natural oyster and clam reefs of this state to the extent it may deem advisable and the means at its disposal will permit. Said board shall also, to the same extent, assist in protecting the leased or granted reefs in the hands of lessees or grantees from the state. Said board shall also make a detailed report, to the legislature at each session, of its efforts in relation to the oyster and clam business, together with recommendations for their development and the proper protection of the rights of the state and private holders therein.

(14) STAKING OFF WATER BOTTOMS OR BEDDING OYSTERS WITHOUT OBTAINING LEASE; PENALTY.—Any person staking off the water bottoms of this state, or bedding oysters on the bottoms of the waters of this state, without previously leasing same as required by law, shall be guilty of a misdemeanor, and shall, upon conviction, pay a fine not exceeding one hundred dollars, or shall suffer imprisonment not exceeding six months, and shall acquire no rights by reason of such staking off. This provision does not apply to grants heretofore made under the provisions of any heretofore existing laws, or to artificial beds made heretofore by riparian owners or his grantees on his riparian bottoms.

(15) CLOSED SEASON FOR OYSTERS; RULES OF EVIDENCE; PROVISO.—No person may take, gather or catch oysters on the natural reefs of this state, or have such oysters in his possession, for sale between the 1st day of May and the 1st day of September of each year, except from private leased or granted grounds, or artificial beds of riparian owners, except as otherwise provided in this section; and the possession of oysters during said closed season shall be prima facie a violation of this section, and the burden shall be on the possessor of such oysters to prove that they were fished or gathered beyond the jurisdiction of the state or from private oyster beds. The board shall, however, have authority to permit the fishing of unculled oysters from the natural oyster reefs as herein provided, from the first day of April until the first day of October, but only for bedding purposes, and then only under such rules and regulations as said board may adopt to carry out the provisions of law.

(16) REMOVING OYSTERS FROM NATURAL REEFS; LICENSES, ETC., PENALTY.

(a) It is unlawful to use a dredge or any means or implement other than hand tongs in removing oysters from the natural or artificial state reefs, except in bodies of water over a general depth of twelve feet, or where in the opinion of the board, the body of water regardless of its depth, is too open and exposed to be ordinarily fished with hand tongs, in which event the said board shall be authorized to issue a license for the use of scrapers or dredges; provided, the applicant shall pay an annual police license fee of twenty-five dollars for each sailing or power vessel using scrapers or dredges, in addition to its other license, and shall give bond in favor of the governor of the State of Florida, with good security, to be approved by the board in the sum of three thousand dollars, conditioned that said implements shall not be used on the state reefs contrary to law. Upon the payment of twenty-five dollars annually, for each vessel or boat using a dredge or machinery in the gathering of clams, a license may be issued by the director for such use to such person.

(b) Lessees of bedding grounds shall have the right to use in such bedding grounds any implements, or appliances that they may desire. The board shall require that such lessees procure a permit from it to use such implements, and shall require of such lessees that they shall furnish a bond payable to the governor of the State of Florida, to be approved by the said board, in the sum of three thousand dollars, that such implements or appliances

shall not be used on the natural oyster reefs contrary to law. When such implements or appliances are used exclusively on private propagating or bedding grounds, no charge shall be made for said permit. Anyone violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding two years.

(17) CULLING OYSTERS; POSSESSION OF UNDERSIZED OYSTERS REGARDLESS OF SOURCE; REGULATIONS.—

(a) All oysters taken from the waters of this state shall be culled, unless otherwise provided in this section.

(b) In the case of oysters emanating from natural, publicly owned beds, all oysters which measure less than three inches in greatest dimensions and all bedding shells shall be immediately replaced and scattered broadcast upon the natural reefs from which they were taken.

(c) In the case of oysters emanating from privately owned or privately controlled beds, all oysters which measure less than three inches in greatest dimensions, and all bedding shells may be returned to lease or privately managed area or may be spread broadcast over natural publicly owned reefs.

(d) In no case are oysters to be landed which are less than the prescribed legal size, regardless of their source.

(e) Possession or transportation of oysters which in size are less than the three inches required shall be prima facie a violation. All oysters, regardless of source or origin, whether they were produced in Florida or elsewhere, must measure in the shell at least three inches in their greatest dimension.

(f) In determining what oysters shall be removed from marketable oysters, no oysters under three inches in greatest dimensions shall be included in the percentage of oysters undersize; unless they adhere to the marketable oysters so closely that to remove the same would destroy either the oyster undersize or the marketable oysters. No captain or person in charge of any vessel, and no canner, packer, commission man, dealer, or other person shall have in his possession oysters not culled according to law, unless permitted by the board for the purpose of planting as provided by law. An excess of over twenty-five per cent of small oysters estimated as above provided for in any cargo or lot of oysters shall be considered a violation of this section. The director, any conservation agent or any police officer of the state, shall cause to be measured up the whole or a part of any cargo or lot of oysters at the expense of such person or vessel, to determine said percentage when found necessary.

(18) FISHING FOR BEDDING PURPOSES, ETC.—

(a) Designation of areas for the taking of seed oysters to be planted on leases and grants is to be made by qualified personnel of the board. Seed oysters may be taken at any time during the year. The amount of seed oysters to be obtained will be established in each case by the board.

(b) Application for obtaining seed oysters must be made to the board. In return, the board may assign an area and a period of time for the seed oysters to be taken. All planting operations may take place under the surveillance of the director.

(19) SEVERANCE TAX ON OYSTERS AND CLAMS; DISPOSITION.—No severance or privilege taxes on oysters and clams shall be collected after June 17, 1959, provided, all moneys in the "oyster severance tax fund" shall be transferred to the "oyster and clam rehabilitation trust fund."

(20) LICENSES; OYSTER AND CLAM CANNERIES.—Every person, as a condition precedent to the operation of any oyster or clam canning factory in this state, shall obtain a license therefor and pay a license fee of fifty dollars. Said license shall be issued by the director upon proper written application on forms to be furnished by the board. The moneys paid for licenses under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(21) FALSE RETURNS AS TO OYSTERS OR CLAMS HANDLED.—Each packer, canner, corporation, firm, commission man or dealer in fish shall, on the first day of each month, make a return under oath to the state board of conservation, as to the number of oysters, clams and shell fish purchased, caught or handled during the preceding month. All severance tax as provided for in subsection (20) shall be paid to the board with this report. Whoever is found guilty of making any false affidavit to any such report shall be guilty of perjury and punished as provided by law, and any person who fails to make such report shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months.

(22) COLLECTION OF LICENSES AND TAXES.—All taxes and licenses shall be collected by the director under such rules and regulations as may be adopted by the board, and by him deposited in the state treasury to the credit of the general revenue fund. The said director shall keep a detailed account of all funds passing through his hands.

(23) WATER PATROL FOR COLLECTION OF TAX.—

(a) The board may establish and maintain necessary patrols of the salt waters of Florida, with authority to use such force as may be necessary to capture any vessel or person violating the provisions of the laws relating to oysters and clams, and may establish ports of entry at convenient locations where the severance or privilege tax levied on oysters and clams may be collected or paid and may make such rules and regulations as it may deem necessary for the enforcement of such tax.

(b) Each person in any way dealing in shell

fish shall keep a record, on blanks or forms prescribed by said board, of all oysters, clams and shell fish taken, purchased, used or handled by him, with the name of the persons from whom purchased, if purchased, together with the quantity and the date taken or purchased, and shall exhibit said account at all times when requested so to do by the said board, the director or any conservation agent; and he shall, on the first day of each month, make a return under oath to the said board as to the number of oysters, clams and shell fish purchased, caught or handled during the preceding month. The said board may require detailed returns whenever it deems same necessary.

(24) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER AND CLAM LAWS, ETC.—Vessels, with their cargoes, violating the provisions of the laws relating to oysters and clams, may be seized by anyone duly and lawfully authorized to make arrests under this section, or by any sheriff or his deputies, or any constable, and taken into custody, and, when not arrested by the sheriff or his deputies or a constable, delivered to the sheriff of the county in which the seizure is made, and shall be liable to forfeiture, on appropriate proceedings being instituted by the board, before the courts of that county. In such case the cargo shall at once be disposed of by the sheriff or constable, for account of whom it may concern. Should the master or any of the crew of said vessel be found guilty of using dredges or other instruments in fishing oysters on natural reefs contrary to law, or fishing on the natural oyster or clam reefs out of season, or unlawfully taking oysters or clams belonging to a lessee, such vessel shall be declared forfeited by the court, and ordered sold and the proceeds of the sale shall be deposited with the state treasurer to the credit of the general revenue fund; any person guilty of such violations shall not be permitted to have any license provided for in this chapter within a period of one year from the date of conviction. Pending proceedings such vessel may be released upon the owner furnishing bond, with good and solvent security in double the value of the vessel, conditioned upon its being returned in good condition to the sheriff or constable to abide the judgment of the court.

(25) OYSTER REHABILITATION COMMISSION.—The governor of this state may appoint in any county, where natural oyster reefs exist, an oyster rehabilitation commission for such county, the same to be composed of three good and lawful citizens of such county. Such commission shall serve without compensation.

(26) COMMISSION ADVISORY ONLY—The oyster rehabilitation commission in any county shall constitute an advisory commission to the state board of conservation with reference to all matters pertaining to the replanting and rehabilitation of natural oyster bars in such county and shall have no other power than to advise said board concerning the administration of the shell fish laws in the county in which its members are appointed; and to recommend to such board the manner and method of the expenditure of funds provided for the rehabilitation of natural oyster beds in such county so that the fullest benefit of such oyster beds may be received from said expenditure. The recommendation of the said commission shall not be binding upon the board but is advisory only.

(27) DUTIES OF COMMISSION. — The members of the oyster rehabilitation commission shall acquaint themselves with all conditions affecting the natural beds in the county for which appointed and shall locate, select and recommend to the board the natural oyster beds in their respective counties in greatest need of rehabilitation; they shall recommend to said board the ways and means of replanting and rehabilitating said beds, having regard to local conditions, and make such other recommendations concerning the opening and closing of the natural reefs and beds and propagation and care of oysters thereon as may appear to them to be advisable.

(28) CONFERENCE WITH STATE BOARD.—The board shall confer with, receive and consider the recommendations of the several county oyster rehabilitation commissions concerning the shell fish industry of their respective counties and shall be governed thereby only to the extent that the same may be to the best interest of the shell fish industry of the state.

(29) REMOVAL OF COMMISSIONERS.—The governor may remove any commissioner appointed to any county oyster rehabilitation commission, who shall fail or neglect to diligently perform the duties of such office, and shall fill the vacancy so created by such removal so that there shall be a complete commission of three members in each county, having natural oyster reefs or beds, at all times.

(30) OYSTER AND CLAM REHABILITATION.—The board of county commissioners of the several counties may appropriate and expend such sums as they may deem proper for the purpose of planting or transplanting oysters, clams, oyster shell or clam shell or cultch, or to perform such other acts for the enhancement of the oyster and clam industries of the state, out of any sum in the county treasury not otherwise appropriated.

(31) OYSTER CONSERVATION DISTRICTS. — Whenever it shall appear to the board, that any area in the state is in need of special protection, development or encouragement in the planting, propagation, within such area, except private leased or granted oyster grounds. The said area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the board. Notice of the designation of said area or areas as oyster conservation district or districts shall be published once each week for two consecutive weeks,

and such additional publicity of the creation of such district may be circulated as the board may deem necessary.

(32) REVENUE FROM SALE OF DEAD SHELLS AND LEASE BOTTOMS.—Any and all moneys hereafter received or collected by the trustees of the internal improvement trust fund under the provisions of §253.45 or any amendments thereof for or on the account of the sale of dead shell or for the right or privilege to take shell or shell deposits from the sovereignty lands of the state are hereby appropriated for use in financing biological, marketing, transportation, processing, and promotional research for fisheries, oysters, clams, and shrimp, within the jurisdiction of this state. Said moneys shall be deposited in the state treasury into the marine biological research trust fund.

(33) DREDGING OF DEAD SHELLS FROM LIVE GROUND PROHIBITED.—The dredging of dead shell deposits from living oyster grounds is hereby prohibited in the state. The said board is hereby empowered to prohibit all dredging of dead oyster shell deposits when in its judgment and discretion the same will adversely affect the said oyster industry. The said board, however, may authorize the dredging of dead oyster shell deposits by permit when in its judgment and discretion the same will not adversely affect the oyster industry of the state.

(34) OYSTER CONSERVATION COMMISSION WITHIN CONSERVATION DISTRICTS.—The governor of this state shall appoint in any oyster conservation district which may be created under the provisions of subsection (32) an oyster conservation commission for the said district, the same to be composed of seven outstanding citizens of the said district, two of whom shall be experienced oyster gatherers, two of whom shall be experienced oyster dealers, and two of whom shall be experienced business men, not directly connected with the industry, and one of whom shall be the chief conservation agent in the oyster conservation district. The members of such commission shall serve without compensation and shall be vested with the duties, and subject to the limitations, prescribed by subsection (25) through (29) authorizing the creation of oyster rehabilitation commissions.

(35) COOPERATION WITH U. S. FISH AND WILDLIFE SERVICE.—The board shall cooperate with the United States fish and wildlife service, under existing federal laws, rules and regulations, and is authorized to accept donations, grants, and matching funds from said federal government under such conditions as are reasonable and proper for the purpose of carrying out subsection (31) through (36) and said board is further authorized to accept any and all donations including funds, oysters, or oyster shells.

(36) OYSTER SHELLS PROPERTY OF BOARD.—Except in the case of oysters shipped in the shells out of the area where produced, all oyster shells shall be and remain the property of the board when such shells are needed and required for rehabilitation projects and planting operations and when sufficient resources and facilities exist for handling and planting said shell; and when the collection and handling of such shell is practical and useful; provided that bona fide holders of leases and grants who desire to retain such shell as they produce for planting purposes may do so by obtaining a permit from the director; and provided further that such storage, transportation and planting of shells so retained by lessees and grantees shall be carried out under the surveillance of agents of the board and be subject to such reasonable time limits as the director may fix. In the event of an accumulation of an excess of shells, the said board is hereby authorized to sell shells only to private growers for use in oyster or clam cultivation on bona fide leases and grants. No profit shall accrue to the board in these transactions and shells are to be sold for the estimated moneys spent by the board to gather and stockpile said shells. Planting of shells obtained from the board by purchase shall be subject to the surveillance of the board if said board chooses to exercise its right of supervision. Any shells not claimed and used by private oyster cultivators ten years after shells are gathered and stockpiled, may be sold at auction to the highest bidder for any private use.

Whenever the board determines that it is unfeasible to collect oyster or clam shells, the shells become the property of the producer.

Whenever oyster or clam shells are owned by the board and it is not useful, or feasible to use them in the rehabilitation projects, and when no leaseholder has exercised his option to acquire them, the board may sell such shells for the highest price obtainable. The shells thus sold may be used in any manner and for any purpose at the discretion of the purchaser.

Moneys derived from the sale of shell shall be deposited in the state treasury into the oyster and clam rehabilitation trust fund. Said moneys are hereby appropriated and shall be used for the enhancement, enlargement, and improvement of the oyster and clam industries of Florida.

(37) DIVISION OF OYSTER CULTURE.—There is hereby created a division of the state board of conservation which shall be designated as the division of oyster culture to be administered by a director to be employed by the board, and who shall serve under the supervision of the director of conservation. The director of the division of oyster culture shall be an experienced, qualified and recognized aquatic biologist. The duties of the director, division of oyster culture, shall be to protect all oyster beds, oyster grounds and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting or harvesting; to control the pollution of the waters over or surrounding oyster grounds, beds or reefs, and to this end the state board of health is hereby authorized and directed to lend its cooperation to the director, to make

available to him its laboratory testing facilities and apparatus, and to do and perform all acts and things within its power and authority necessary to the performance of his duties.

History.—§2, ch. 28145, 1953; (4) (e) n. §1, ch. 57-256; (19) r. §1, ch. 57-163; (19) §1, ch. 59-346; (36) §1, ch. 59-490; (17) §1, ch. 61-99; (19) §2, ch. 61-58; (20) §3, ch. 61-22; (22) §2, ch. 61-58; (24) §2, ch. 61-119; (30) §2, ch. 61-58; (32) §§2, chs. 61-58, 61-119; (36) §2, ch. 61-58 and §1, ch. 61-100; (5), (8) §19, ch. 63-512; (9) §§1, 2, ch. 63-120; (11) §19, ch. 63-512; (32) §1, ch. 63-396.

Note.—Similar provisions in former §§375.01-375.23, 375.25-375.32, 375.35-375.44.

cf.—§811.08 Penalty for carrying away planted oysters.
§837.01, Perjury otherwise than in judicial proceedings.

370.161 Oyster bottom land grants made pursuant to chapter 3293, laws of Florida, 1881.—

(1) All grants previously issued by the several boards of county commissioners under the authority of chapter 3293, laws of Florida, 1881, shall be subject to provisions of §370.16, F.S. relating to the marking of such lands, the payment of rents, the cultivation of such lands and the forfeiture provisions.

(2) Any grantee of lands referred to in subsection (1) shall mark such lands and begin cultivation thereof as set forth in §370.16, F.S. within ninety days after the effective date of this act. The rentals prescribed by §370.16, F.S. shall be payable immediately upon the effective date of this act and in accordance with the provisions of said section.

(3) If any grantee shall fail to comply with the provisions of this act his grant shall become null and void and the lands shall return to the ownership and jurisdiction of the state.

History.—§§1-3, ch. 61-502.

370.162 Purchase of sponges; state, county or municipality.—All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards and commissions charged with the letting of contracts or the making of purchases shall, in the purchase of sponges, always specify sponges grown, cultivated or otherwise produced in Florida, whenever such sponges are available and price, fitness and quality are equal.

History.—§1, ch. 63-42.

370.17 Sponges; regulation.—

(1) NONRESIDENT LICENSE; SPONGE FISHING; PENALTY.—Any nonresident of the state, who desires to engage in the business or occupation of sponge fishing, either for himself or any other person, shall, before entering into said business or occupation, procure a license therefor and pay an annual license tax of fifty dollars. Any person violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding three months. One-half of any fine collected in any case shall be paid to the party furnishing the necessary proof of the violation of this section.

(2) USE OF DIVING SUITS, ETC., PROHIBITED; PENALTY.—No person may use diving suits, helmets, or other apparatus used by deep sea divers, in taking commercial sponges from any of the waters within the territorial limits of this state. Any person violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

(3) USE AND SIZE OF HOOKS; PENALTY.—Any person engaged in gathering sponges by use of a hook shall use a hook five inches wide for the purpose of removing sponges from the bottom and no hook of other dimensions may be used. Any person violating this section shall, upon conviction, be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year.

(4) TAKING, POSSESSING COMMERCIAL; SIZE; PENALTIES.—

(a) No person may take, by any means or method, from the waters of the gulf of Mexico, the straits of this state or the other waters within the territorial limits of this state, any commercial sponges, measuring, when wet, less than five inches in their maximum diameter.

(b) To make effective the foregoing subsection it is further provided that no person may land, cure, deliver, offer for sale, sell or have in his possession, within the territorial limits of this state, or upon any boat, vessel or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, any commercial sponges measuring, when wet, less than five inches in their maximum diameter.

(c) The presence of commercial sponges within the territorial limits of this state, or upon any boat, vessel, or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, measuring, when wet, less than five inches in their maximum diameter, shall be evidence that the person having such sponges in his possession has violated this section.

(d) Any person violating any of the provisions of this section shall upon conviction be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year.

(5) SPONGE CONSERVATION DISTRICTS; CREATION.—Whenever it shall appear to the board of conservation that any area in the state is in need of special protection, development or encouragement in the planting or propagation of sponges within such area, except private leased or granted sponge grounds, the board may designate such area as a sponge conservation district. The said area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the Board. Notice of the designation of said area or areas as sponge conservation district or districts shall be published once each week for two consecutive weeks, and such additional publicity of the creation of such district may be circulated as the board may deem necessary. Provided that

these provisions shall not apply to privately leased or granted grounds.

(6) POWERS OF THE BOARD.—The said board is hereby authorized and empowered to make, promulgate and put into effect all rules and regulations which the board may consider and decide to be necessary to accomplish the purpose of this chapter for the taking and cultivation of sponges, including the power and authority to determine and fix, in its discretion, the seasons and period of time within which public state grounds may be closed to the taking, possessing, buying, selling or transporting sponges from the sponge cultivation districts herein provided for, and to regulate and prescribe the means and methods to be employed in the harvesting thereof; provided however, that all rules, regulations and orders, and all revisions and amendments thereto, prescribing closed seasons, or prescribing the means and methods of harvesting sponges adopted by the board, shall be filed in the office of the secretary of state and notice thereto shall be published in a newspaper of general circulation in the conservation district affected within ten days from the adoption thereof. Such rule or regulation shall become effective at the expiration of ten days from the date of filing in the office of the secretary of state, or ten days after the publication thereof as herein provided for, whichever may be the later, all of which such rules and regulations when becoming effective under the provisions hereof, shall have the full force and effect of the law.

(7) SPONGE CONSERVATION COMMISSION; CREATION; DUTIES.—The governor of this state shall appoint in any sponge conservation district, which may be created under the provisions of this act, a sponge conservation commission for the said district, the same to be composed of seven outstanding citizens of the said district, two of whom shall be experienced sponge fishermen, two of whom shall be experienced sponge dealers, and two of whom shall be experienced businessmen not directly connected with the industry, and one of whom shall be the chief conservation agent in the sponge conservation district. The members of such commission shall serve without compensation and shall be vested with the duties in regard to sponges and subject to the limitations prescribed by §370.16(27) and (28) prescribing the duties of the oyster rehabilitation commission.

(8) COOPERATION WITH U. S. FISH AND WILD LIFE SERVICE.—The board shall cooperate with the United States fish and wildlife service, under existing federal laws, rules and regulations, and is authorized to accept donations, grants and matching funds from said federal government under such conditions as are reasonable and proper, for the purposes of carrying out this chapter, and said board is further authorized to accept any and all donations including funds and loan of vessels.

(9) RESTRICTIONS. — All sponges grown or cultivated by the state in pursuance of this law shall be the property of the state, the state shall neither lease nor sell any natural sponge areas or beds or any sponge areas or beds cultivated under the provisions of this chapter, and no person may use diving boats, diving suits, helmets or other apparatus used by deep sea divers in taking commercial sponges from any waters within the territorial limits of the state.

(10) PENALTY.—Any person violating any of the foregoing provisions shall upon conviction be subject to punishment as follows: for the first offense, a fine of not more than five hundred dollars or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. For the second offense, a fine of not more than seven hundred fifty dollars or imprisonment in the county jail for not more than eighteen months; or by both such fine and imprisonment. For the third offense, a fine of not more than one thousand dollars, or imprisonment in the county jail for not more than two years; or by both such fine and imprisonment, and upon conviction, to the confiscation of all boats, tackle and equipment used in the commission of such violation.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §§374.25, 374.27-374.29.

370.171 Sponge diving; restricted waters.—(1) Diving for sponges is hereby regulated in the following territorial waters of Florida, as follows:

Diving for sponges is prohibited in the territorial waters of Florida north of a parallel of latitude running through Piney Point (29° 45′ 30″ N.); that diving for sponges be prohibited in waters of less than three and a half fathoms between the parallel of latitude that runs through Piney Point, and the parallel of latitude that runs through Beacon No. 5 (29° 16′ 36″ N.) at the mouth of the Suwannee river; that diving for sponges be prohibited in waters of less than three fathoms, between the parallel of latitude that runs through Beacon No. 5 at the mouth of the Suwannee river and the parallel of latitude that runs through the southern tip of Anclote Key (28° 09′ 54″); that diving for sponges be prohibited at distances of less than three miles from shore in the waters between the parallel of latitude that runs through the southern tip of Anclote Key and the parallel of latitude that passes through the northernmost boundary of Monroe county (25° 48′ 06″).

(2) Any person violating the provisions of this section shall be subject to the penalties as provided by §370.17(10).

History.—§§1, 2, ch. 29907, 1955.

370.172 Spearfishing prohibited; exemptions; penalty. —

(1) For the purpose of this section spearfishing shall mean the taking of any marine life through the instrumentality of a spear, gig

or other device operated by a person submerged or partially under water.

(2) It is unlawful for any person, firm or corporation to take any fish by means of any spear, gig or other similar device in an area in Monroe county known as the Upper Keys, or to engage in any spearfishing in said area; said area shall include all salt waters under the jurisdiction of the state board of conservation beginning at the county line between Dade and Monroe counties and running south, including all of the keys down to and including Long Key.

(3) The use or possession of any spearfishing equipment used for spearfishing is prohibited on the surface of and under the waters in the area in Monroe county set forth in this section.

(4) Nothing in this section shall be construed to prohibit the ordinary taking of fish by the use of cast net, rod and reel, hook and line or legal nets nor the taking or capturing of turtles, skates and rays by means of harpoons or pegs provided skates and rays when taken by this method shall be taken for bait purposes only.

(5) Any person violating this section shall upon conviction be fined not less than $100, nor more than $500 or imprisoned for not less than 90 days nor more than 6 months, for each offense.

History.—§1, ch. 57-303.
Note.—This section enacted as ch. 57-303, laws of Florida, held unconstitutional as violation of §21, Art. III of the state constitution.

370.18 Compacts and agreements; generally.—The state board of conservation may enter into agreements of reciprocity with the fish commissioners or other departments or other proper officials of other states, whereby the citizens of the state may be permitted to take or catch shrimp or prawn from the waters under the jurisdiction of such other states, upon similar agreements to allow such nonresidents or aliens to fish for or catch seafood products within the jurisdiction of the state regardless of residence.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §373.07.

370.19 Atlantic states marine fisheries compact; implementing legislation.—

(1) FORM.—The governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Florida with any one or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell, and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating a monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the Governor thereof. The second shall be a member of the legislature of such state designated by the House Committee on Commerce and Reciprocal Trade of such state. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the Governor. This Commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the Governors and legislatures of the various signatory states legislation dealing with the con-

servation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the Governor of the State its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the States party hereto and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

ARTICLE V

The Commission shall elect from its number a Chairman and a Vice Chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions to conserve its fisheries.

ARTICLE X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the Governor thereof.

ARTICLE XI

The States party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

ARTICLE XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto.

(2) COMMISSIONERS; APPOINTMENT AND REMOVAL.—In pursuance of Article III of said compact there shall be three members

(hereinafter called commissioners) of the Atlantic state marine fisheries commission (hereinafter called commission) from the State of Florida. The first commissioner from the State of Florida shall be the supervisor of conservation of the State of Florida ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of supervisor of conservation and his successor as commissioner shall be his successor as supervisor of conservation. The second commissioner from the State of Florida shall be a legislator and member of the house committee on commerce and reciprocal trade (of the State of Florida ex officio, designated by said house committee on commerce and reciprocal trade) and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The governor (by and with the advice and consent of the senate), shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the governor (by and with the advice and consent of the senate), for the unexpired term. The supervisor of conservation as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner; provided, the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise, they shall begin upon the date upon which said compact shall become effective in accordance with said Article II. Any commissioner may be removed from office by the governor upon charges and after a hearing.

(3) SAME; POWERS OF COMMISSION.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) SAME; POWERS OF COMMISSION SUPPLEMENTAL.—Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida or by the congress or the terms of said compact.

(5) SAME; ACCOUNTS TO BE KEPT BY COMMISSIONERS; EXAMINATION.—

(a) The commission shall keep accurate accounts of all receipts and disbursements and shall report to the governor and the legislature of the State of Florida on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

(b) The comptroller of the State of Florida is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such comptroller may deem proper and to report the results of such examination to the governor of such state.

(6) SAME; APPROPRIATION.—The sum of six hundred dollars, annually, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the expenses of the commission created by the compact authorized by this law. The moneys hereby appropriated shall be paid out of the state treasury on the audit and warrant of the comptroller upon vouchers certified by the chairman of the commission in the manner prescribed by law.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §§374.43-374.48.

370.20 Gulf states marine fisheries compact; implementing legislation.—

(1) FORM.—The governor of this state is hereby authorized and directed to execute the compact on behalf of the State of Florida with any one or more of the states of Alabama, Mississippi, Louisiana and Texas, and with such other state as may enter into a compact, legal joining therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the gulf coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to article I, §10 of the constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the gulf states marine fisheries commission. One shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the gulf coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdiction to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states.

To that end the commission shall draft and recommend to the governors and the legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the gulf seaboard. The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of the state in furthering the interest and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define which shall be an interest.

ARTICLE VII

The fish and wildlife service of the department of the interior of the government of the United States shall act as the primary research agency of the gulf states marine fisheries commission cooperating with the research agencies in each state for that purpose. Representatives of the said fish and wildlife service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in article II of this compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of article II, the participation of such state in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers or the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more states party hereto may further amend this compact by acts of their respective legislatures subject to approval of congress as provided in article I, §10 of the constitution of the United States, to designate the gulf states marine fisheries commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such states as shall be compact, and at their joint expense. The representatives of such states shall constitute a separate section of the gulf states marine fisheries commission for the exercise of the additional powers so granted but the creation of such section shall not be deemed to deprive the states so compacting of any of their privileges or powers in the gulf states marine fisheries commission as constituted under the other articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XII

The operating expenses of the gulf states marine fisheries commission shall be borne by the states party hereto. Such initial appropriations as are set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$ 3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	$13,000.00

The proration and total cost per annum of thirteen thousand dollars, above mentioned, is estimated only, for initial operations, and may be changed when found necessary by the commission and approved by the legislatures of the respective states. Each state party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given to the other states party hereto by the secretary of state of the compacting state so renouncing upon passage of the act.

(2) MEMBERS OF COMMISSION; TERM OF OFFICE.—In pursuance of article III of said compact there shall be three members (hereinafter called commissioners) of the gulf states marine fisheries commission (hereafter called commission) from the State of Florida. The first commissioner from the State of Florida shall be the director of conservation of the State of Florida ex-officio, and the term of any such ex-officio commissioner shall terminate at the time he ceases to hold said office of director of conservation and his successor as commissioner shall be his successor as director of conservation. The second commissioner from the State of Florida shall be a legislator and a member of the house committee on commerce and reciprocal trade (of the State of Florida ex-officio, designated by said house committee on commerce and reciprocal trade) and the term of any such ex-officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The governor, (by and with the advice and consent of the senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the governor (by and with the advice and consent of the senate) for the unexpired term. The director of conservation as ex-officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said article II.

Any commissioner may be removed from of-

fice by the governor upon charges and after a hearing.

(3) COMMISSION; POWERS. — There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) SAME; SUPPLEMENTAL.—Any powers herein granted to the commissioner shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the states of Alabama, Mississippi, Louisiana, Texas and Florida or by the congress or the terms of said compact.

(5) SAME; ACCOUNTS TO BE KEPT BY COMMISSIONERS; EXAMINATION. — The commission shall keep accurate accounts of all receipts and disbursements and shall report to the governor and the legislature of the State of Florida on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The comptroller of the State of Florida is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such comptroller may deem proper and to report the results of such examination to the governor of such state.

History.—§2, ch. 28145, 1953.
Note.—Similar provisions in former §§374.49-374.53.

370.21 Florida territorial waters act; alien-owned commercial fishing vessels; prohibited acts; enforcement.—

(1) This act may be known and cited as the Florida territorial waters act.

(2) It is the purpose of this act to exercise and exert full sovereignty and control of the territorial waters of the state.

(3) No license shall be issued by the board of conservation under §370.06, to any vessel owned in whole or in part by any alien power, which subscribes to the doctrine of international communism, or any subject or national thereof, who subscribes to the doctrine of international communism, or any individual who subscribes to the doctrine of international communism, or who shall have signed a treaty of trade, friendship and alliance or a nonaggression pact with any communist power. The board shall grant or withhold said licenses where other alien vessels are involved on the basis of reciprocity and retorsion, unless the nation concerned shall be designated as a friendly ally or neutral by a formal suggestion transmitted to the governor of Florida by the secretary of state of the United States. Upon the receipt of such suggestion licenses shall be granted under §370.06, without regard to reciprocity and retorsion, to vessels of such nations.

(4) It is unlawful for any unlicensed alien vessel to take by any means whatsoever, attempt to take, or having so taken to possess, any natural resource of the state's territorial waters, as such waters are described by Art. I of the state constitution.

(5) It is the duty of all harbor masters of the state to prevent the use of any port facility in a manner which they reasonably suspect may assist in the violation of this act. Harbor masters shall endeavor by all reasonable means, which may include the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types other than warships of the United States, the presence of alien commercial fishing vessels within the territorial waters of the state, and shall transmit such information promptly to the state department of conservation and such law enforcement agencies of the state as the situation may indicate. Harbor masters shall request assistance from the United States coast guard in appropriate cases to prevent unauthorized departure from any port facility.

(6) All licensed harbor pilots are required to promptly transmit any knowledge coming to their attention regarding possible violations of this act to the harbor master of the port or the appropriate law enforcement officials.

(7) All law enforcement agencies of the state, including but not limited to sheriffs and agents of the department of conservation are empowered and directed to arrest the masters and crews of vessels who are reasonably believed to be in violation of this law, and to seize and detain such vessels, their equipment and catch. Such arresting officers shall take the offending crews or property before the court having jurisdiction of such offenses. All such agencies are directed to request assistance from the United States coast guard in the enforcement of this act when having knowledge of

vessels operating in violation or probable violation of this act within their jurisdictions when such agencies are without means to effectuate arrest and restraint of vessels and their crews.

(8) The fine or imprisonment of persons and confiscation proceedings against vessels, gear and catch prescribed for violations of chapter 370, shall be imposed for violation of this act; provided that nothing herein shall authorize the repurchase of property for a nominal sum by the owner upon proof of lack of complicity in the violation or undertaking.

(9) No crew member or master seeking bona fide political asylum shall be fined or imprisoned hereunder.

(10) Harbor masters and law enforcement agencies are authorized to request assistance from the civil air patrol in the surveillance of suspect vessels. Aircraft of the state forestry department or other state or county agencies which are conveniently located and not otherwise occupied may be similarly utilized.

History.—§§1-10, ch. 63-202.

CHAPTER 371*

REGULATION OF MOTORBOATS

PART I MOTORBOAT REGISTRATION AND SAFETY LAW

PART II REGISTRATION CERTIFICATE TAX ON BOATS AND VESSELS

PART I

MOTORBOAT REGISTRATION AND SAFETY LAW

371.011 Short title.—Part I of chapter 371 shall be known as the Florida motorboat registration and safety law.

History.—§ 1, ch. 59-399.

371.021 Definitions.—As used in part I of this chapter, unless the context clearly requires a different meaning:

(1) Vessel means every description of watercraft and air boats, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) Motorboat means any undocumented vessel propelled by machinery of more than ten horsepower, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(3) Owner means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) Waters of this state means any navigable waters of the United States within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state.

(5) Person means an individual, partnership, firm, corporation, association, or other entity.

(6) Operate means to navigate or otherwise use a motorboat or a vessel.

(7) Board means the state board of conservation composed of the governor, the secretary of state, the attorney general, the comptroller, the state treasurer, the superintendent of public instruction and the commissioner of agriculture.

(8) Certificate means registration by a motorboat owner with the board and includes the issuance of an identifying number awarded

*§370.02 reorganizes state board of conservation into six divisions: administration, salt water fisheries, water resources and conservation, waterways development, and geology. Said divisions to enforce: administration, weather modification, §§373.261-373.391, and archeology, ch. 376; salt water fisheries, ch. 370; water resources and conservation, §§373.021-373.241, and flood control districts, ch. 378; waterways development ch. 374; geology, §§373.011-373.012; ch. 377, conservation of oil and gas resources; and beaches and shores.

each motorboat and the issuance of a pocket-size certificate of registration.

(9) Length means measured from end to end over the deck excluding sheer.

(10) Conservation department or board means the state board of conservation.

(11) Commerial means any vessel engaged in the taking of salt water fish or salt water products, fresh water fish or fresh water products for the purpose of sale either to the consumer, retail dealer or wholesale dealer; for fishing, boating, sight-seeing, transportation or any other purpose wherein a fee is paid by the user, either directly or indirectly, to the owner, operator or custodian of such vessel.

History.—§1, ch. 59-399; (11) §1, ch. 63-103.

371.031 Administration, sale of certificates.—

(1) The administration of part I of this chapter shall be under the board of conservation, which board shall provide for issuing, handling and recording all motorboat registration certificates including the receipt and accounting of all registration fees and payments into the state treasury except as provided in chapter 372, by the game and fresh water fish commission.

(2) The board shall record all accidents and perform such other clerical duties as required.

(3) All records by the board made or kept under this law shall be public records except confidential reports.

History.—§1, ch. 59-399; (1) §2, ch. 63-103.

371.032 Florida boating council.—

(1) There is hereby created a Florida boating council to consist of the director of the conservation department or his appointee, the director of the game and fresh water fish commission or his appointee, the president of the sheriffs' association or his appointee, the governor or his appointee, the attorney general or his appointee, and the sheriffs' bureau and the coast guard as advisory members.

(2) The director of the conservation department shall serve as chairman. A secretary shall be selected by the chairman. Members of the council shall meet at least four times a year and at other times upon call by the chairman. Members shall serve without compensation but shall be reimbursed for traveling expenses as provided in §112.061, out of motor boat administration expense funds appropriated or released to the conservation department.

(3) The Florida boating council shall consider all matters relating to safety, navigation and registration of vessels operating on the waterways of Florida, and methods of enforcement of chapter 371. It shall coordinate and plan educational programs, safety programs, registration improvements and recommend to the governor and to the legislature amendments concerning boating safety, navigation and registration of boats and vessels. It shall coordinate the efforts of all boating groups in Florida in behalf of greater safety and efficient registration of boats.

(4) The council shall make a report to each biennial session of the legislature concerning improvements needed. Its jurisdiction shall not encompass any tax measures. It shall be an advisory body only for the purpose of obtaining better cooperation and unifying the efforts of all agencies engaged in boating supervision and enforcement of boating safety and registration laws.

History.—§§1-4, ch. 63-13; (2), §19, ch. 63-400.

371.041 Operation of unnumbered motorboats prohibited.—Every motorboat propelled by machinery of more than ten horsepower and all vessels required to be registered under chapters 370 and 372, operating on the waters of this state shall be registered and numbered except as specifically exempt under part I of this chapter. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is registered and numbered with the identifying number set forth in the certificate of registration, displayed on each side of the bow of such motorboat, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless the certificate of number awarded to such motorboat is in full force and effect.

History.—§1, ch. 59-399.

371.051 Application, certificate, number, decal, duplicate certificate.—

(1) (a) The owner of each motorboat requiring numbering by this state shall file an application for number with the tax collector of the county, the board of conservation or the Florida game and fresh water fish commission. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee required by this law or chapters 370 or 372, whichever is applicable, based upon the use of the motorboat.

(b) The owner may establish proof of ownership by submitting with his application a bill of sale of the boat, or a builder's contract, or a verification of ownership on a custom-built boat, or any other document acceptable by the conservation department and presented at the time of registration to the agency issuing the registration certificate.

(2) Certificates of registration for pleasure boats shall be issued in the county by the tax collector of each county or his agent. Each tax collector shall be assigned a block of numbers and certificates therefor which upon issue, in conformity with part I of this chapter and with any rules and regulations of the board, shall be valid as if issued directly by the board. The county tax collector or agent duly authorized to issue certificates of registration, the conservation department and the game and fresh water fish commission shall be allowed a

fee of twenty-five cents for each certificate issued. All registration moneys, except the twenty-five cents fee allowed, except as provided in chapter 372, shall be remitted monthly to the board not later than ten days after the first of each month. The board shall transmit all moneys received to the state treasurer for deposit.

(3) The board and the game and fresh water fish commission shall issue certificates of registration and number to commercial motorboat owners required to register under chapters 370 and 372, at no extra cost to such owner other than a twenty-five cents service fee required when such owner submits to either the state board of conservation or the game and fresh water fish commission a license fee required under either §370.06(1), (2), or §§372.63 and 372.64. The board shall assign a block of numbers and certificates therefor to the game and fresh water fish commission for the purposes of this section.

(4) The board of conservation or the game and fresh water fish commission shall issue certificates of registration and numbers for city, county and state owned boats at no charge.

(5) Each certificate of registration issued shall state among other items the number awarded to the motorboat, the name and address of the owner, and a description of the motorboat. The numbers shall be placed on each side of the forward half of the vessel in such position as to provide clear legibility for identification. The numbers shall read from left to right and shall be in block characters of good proportion not less than three inches in height. The numbers shall be of a color which will contrast with the color of the background and so maintained as to be clearly visible and legible; i.e., dark numbers on a light background, or light numbers on a dark background. The numbers shall be maintained in legible condition. The certificate of registration shall be pocket-size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(6) When the ownership of a registered pleasure motorboat changes, an application for transfer of ownership shall be filed with the conservation department within fifteen days, with a fee of one dollar.

Vessels registered as commercial shall file a certificate within fifteen days for a transfer of ownership with the agency issuing the original certificate and license and pay a fee as provided by law.

In making application for a transfer of ownership of either pleasure or commercial vessels, the registered owner shall sign his name and address and shall certify that the boat to be transferred is debt-free or is subject to a lien. Where a lien exists the owner shall furnish to the new owner, on forms supplied by the department, the name and address of the lien holder and the amount due on the boat, together with a statement from the lien holder that the lien holder has knowledge of and consents to the transfer to the new owner.

(7) A decal signifying the year or years during which the certificate is valid shall be furnished by the conservation department with each registration certificate issued. The decal shall be displayed by affixing it to the port (left) side of the boat either before or after the registration number.

(8) Duplicate certificates to replace lost or misplaced certificates may be obtained by mailing one dollar with a request for such a duplicate certificate to the conservation department. No duplicate certificate shall be issued except upon written request of the registered owner or persons authorized by such owner to make such a request. The conservation department shall supply application forms for such duplicate certificates and require such information or documents as are necessary to secure reasonable proof of authority of the person or firm making the request.

(9) Should the classification of a boat change from pleasure to commercial, or from commercial to pleasure, and a current certificate has been issued to a resident owner, the owner shall forward his certificate to the conservation department, with a fee of one dollar, and a new certificate shall be issued.

(10) Anyone guilty of falsely certifying any facts relating to application, certificate, transfer, number, decal, duplicate certificates or any information required under this section shall upon conviction be guilty of a misdemeanor and fined or imprisoned as provided in §775.07.

History.—§1, ch. 59-399; (4), (7), (8) n. §1, ch. 61-511; (1), (6), (7), (9), (10) n. §3, ch. 63-103.

371.061 Term of numbers and certificates, renewal.—Numbers issued by the board on any boat shall be permanent and there shall be no duplication of numbers. The certificate shall be renewable and shall continue in full force and effect for a period of two years unless sooner terminated or discontinued in accordance with the provisions of part I of this chapter. Certificates may be renewed by the owner in the same manner provided for in the initial securing of the same except that the original motorboat number shall remain unchanged. The board shall fix a day and month of the year on which certificates due to expire during the calendar year shall lapse and no longer be of any force and effect unless renewed pursuant to part I of this chapter.

History.—§1, ch. 59-399.

371.071 Special manufacturers' and dealers' number.—

(1) The description of the motorboat used in demonstration purposes by a manufacturer or dealer shall be omitted. In lieu of the description, the word manufacturer or dealer, as appropriate, shall be plainly marked on each certificate.

(2) The manufacturer or dealer shall have the number awarded printed upon or attached to a removable sign or signs to be temporarily

but firmly mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of part I of this chapter.

History.—§1, ch. 59-399.

371.081 Reciprocity of foreign motorboats.—The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to the operative federal law or a federally-approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the ninety day reciprocity period provided for in part I of this chapter. Such recordation shall be in the manner and pursuant to the procedure required for the award of an original number, except that no additional or substitute number shall be issued.

History.—§1, ch. 59-399.

371.091 Federal numbering system adopted.—

(1) The motorboat identification number issued shall be as required by the United States coast guard and shall be divided into parts. The first part shall consist of the symbols identifying the state followed by a combination of numerals and letters which furnish individual vessel identification. The group of digits appearing between letters shall be separated from those letters by hyphens or equivalent spaces.

(2) The first part of the number shall be a symbol indicating Florida which shall be FL.

(3) The remainder of the boat number shall consist of not more than four Arabic numerals and two capital letters or not more than three Arabic numerals and three capital letters, in sequence, separated by a hyphen or equivalent space, in accordance with the serials, numerically and alphabetically.

(4) Since the letters I, O and Q may be mistaken for Arabic numerals, all letter sequences using I, O and Q shall be omitted. Objectionable words formed by the use of two or three letters shall not be used.

History.—§1, ch. 59-399.

371.101 Change of interest and address.—

(1) The owner shall furnish the board notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state pursuant to part I of this chapter or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction, or abandonment shall terminate the certificate for such motorboat except, that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate.

(2) Any holder of a certificate shall notify the board within fifteen days, if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the board with his new address. The board may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

History.—§1, ch. 59-399.

371.111 Only authorized number to be used.—No number other than the number awarded to a motorboat or granted reciprocity pursuant to part I of this chapter shall be painted, attached, or otherwise displayed on either side of the bow of such motorboat.

History.—§1, ch. 59-399.

371.131 Exemption from numbering provisions.—A motorboat shall not be required to be numbered under part I of this chapter if it is in one of the following classifications:

(1) Undocumented vessels used exclusively for racing.

(2) Boats used exclusively on private lakes.

(3) Vessels operating under valid temporary certificate of number.

(4) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided, that such boat shall not have been within this state for a period in excess of ninety consecutive days.

(5) A motorboat from a country other than the United States temporarily using the waters of this state.

(6) A motorboat whose owner is the United States.

(7) A ship's lifeboat.

History.—§1, ch. 59-399; (6) §2 and (8) r. §3, ch. 61-511.

371.141 Collisions, accidents, and casualties.—

(1) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(2) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of fifty dollars shall within ten days report such accident to

the sheriff of the nearest county who shall file with the conservation department a full description of the collision, accident, or other casualty, including such information as requested upon accident report forms furnished by the department. This provision applies to all boats regardless of size of boat or horsepower of motor.

(3) All accident reports required by this section made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the board or other governmental agencies having use of the record, except that the board may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies his presence at such accident. No report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the board shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the conservation department solely to prove a compliance or a failure to comply with the requirements that such a report be made to the conservation department.

History.—§1, ch. 59-399; (2) §4, ch. 61-511.

371.151 Transmittal of information.—In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the board concerning accidents or other data shall be transmitted upon request to said official or agency of the United States and annual statistics shall be assembled as required by federal law.

History.—§1, ch. 59-399.

371.161 Rules and regulations.—The state board of conservation shall make, adopt, promulgate, amend or repeal rules and regulations necessary for carrying out the administrative duties, obligations and powers conferred on the board by this chapter; provided, however, such board shall not have the power to make or adopt rules or regulations providing for the enforcement of this chapter.

History.—§1, ch. 59-399; §4, ch. 63-103.

371.171 Motorboating revolving trust fund; appropriation.—All funds collected from the registration of motorboats through the conservation department and the tax collectors of the state shall be deposited by the comptroller in a motorboating revolving trust fund in order to provide for the administrative cost of this chapter in the following manner:

There is hereby appropriated the sum of fifty thousand dollars from the state general revenue fund to be deposited in the motorboating revolving trust fund to the credit of the conservation department in order to create the initial fund. Such revolving fund shall be released by the budget commission as needed for immediately printing the certificates of registration, postage, clerical assistance, and other administrative costs.

All funds thereafter collected shall be deposited in this motorboating revolving trust fund, and the first fifty thousand dollars collected shall be used to repay the general revenue fund for the initial appropriation. The moneys in the motorboating revolving trust fund shall remain to accumulate during the biennium. From this accumulated fund collected through motorboating registrations, the legislature shall appropriate funds to the conservation department for the administration of this chapter. The unused portion of this fund shall remain during the biennium in the motorboating revolving trust fund.

History.—§1, ch. 59-399; §2, ch. 61-119; §1, ch. 63-105.

371.172 Motorboating revolving trust fund; use of moneys.—

(1) All funds heretofore or hereafter collected by the conservation department and deposited in the motorboating revolving trust fund, except the amount thereof appropriated by the legislature for additional administrative expense of the conservation department, shall from time to time as needed be transferred to the credit of the land acquisition trust fund created by law to administer the outdoor recreation programs in the state.

(2) The provisions of this section shall not affect the provisions of §371.171, but shall be supplemental to said section.

History.—§1, ch. 63-194.

371.181 Penalties.—Any person convicted of violating any provision of §§371.011-371.171 shall be guilty of a misdemeanor and shall be subject to a fine not to exceed $75.00 and costs for each such violation.

History.—§1, ch. 59-399.

371.49 Jurisdiction.—The safety regulations included herein shall apply to all vessels except as specifically excluded, operating upon the navigable waterways or inland lakes, ponds, streams or any other waters in Florida.

History.—§2, ch. 63-105.

371.50 Reckless operation of vessel.—It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device in wilful or wanton disregard for the safety of persons or property, or without due regard, caution and circumspection, or at a speed or in a manner as to endanger, or likely to endanger life, or limb, or damage the property of, or injure any person.

History.—§1, ch. 59-400; §3, ch. 63-105.

371.501 Reporting vessel accidents.—A person involved in an accident of a vessel, including capsizings, sinkings, personal injury or property damage of twenty-five dol-

lars or more to another vessel or dock, shall within thirty-six hours report such accident to the sheriff of the county wherein such accident occurred, or to the state board of conservation, or to the game and fresh water fish commission or to the authorized agent of any of the aforementioned, who shall immediately transmit a copy of the report to the state board of conservation. A copy of every accident report shall be sent to the sheriff of the county. In the event report is not made, it shall be the responsibility of the investigating officer to file a report.

History.—§4, ch. 63-105.

371.502 Duty upon striking vessel; leaving the scene of accident; penalty.—

(1) The operator of any vessel which collides with any other boat, or creates a wake or displacement wave which overturns or damages another boat shall immediately stop and give the operator of such other vessel his name, address and registration number. If the vessel is unattended, the operator of the other vessel involved in the accident shall take all reasonable steps to locate and notify the owner or person in charge of such vessel of the foregoing accident, furnishing to such owner his name, address and registration number and reporting as required in §371.501.

(2) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to persons involved, or without making a reasonable effort to locate the owner or persons affected and subsequently complying with subsection (1) of this section and notifying the appropriate law enforcement official as required in §371.501.

(3) Any person convicted of violating the provisions of this section shall be fined a minimum of $50.00.

History.—§4, ch. 63-105.

371.503 Interference with navigation.—No person shall operate a vessel in a manner which shall unreasonably or unnecessarily interfere with another vessel. Anchoring under bridges or in heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

History.—§4, ch. 63-105.

371.504 Incapacity of operator.—It is unlawful for the owner of any vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated any person who by reason of physical or mental disability is incapable of operating such vessel under the prevailing circumstances. Nothing in this section shall be construed to prohibit operation of boats by paraplegics who are licensed to operate motor vehicles on the highways.

History.—§4, ch. 63-105.

371.51 Operating vessel while under influence of intoxicating liquor or narcotic drugs; penalty.—

(1) It is unlawful for any person who is under the influence of narcotic drugs or intoxicating liquor, when affected to the extent that his or her normal faculties are impaired, to operate any vessel on the waters of this state or be in actual physical control of any vessel on the waters of this state.

(2) If a person under the influence of intoxicating liquor or narcotics damages the property or person of another by reason of the operation of any vessels shall, upon conviction, be imprisoned not more than 12 months in the county jail, or be fined not more than $500.00, or be both fined and imprisoned.

(3) If a person while under the influence of intoxicating liquor or narcotics operates a vessel causing the death of any human being, he shall be deemed guilty of manslaughter and, upon conviction, shall be punished as provided by existing law.

(4) Conviction under the provisions of this section shall not be a bar to any civil suit for damages against the person so convicted.

History.—§2, ch. 59-400; §5, ch. 63-105.

371.52 Motorboat declared dangerous instrumentality; civil liability.—All motorboats, of whatever classification, shall be considered dangerous instrumentalities in this state and any operator of such boats shall, during any utilization of said boats, exercise the highest degree of care in order to prevent injuries to others. Liability for negligent operation of a motorboat shall be confined to the person in whose immediate charge or operation the boat is, and not the owner of the boat unless he is the operator or present in the boat when any injury or damage is occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe such care and such operation as the rules of the common law require.

History.—§3, ch. 59-400.

371.521 Uniform waterway markers for safety and navigation.—

(1) Waterways in Florida, unmarked by the coast guard, which need marking for safety or navigation purposes, shall be marked only under the uniform safety and navigation system adopted by the national motorboat council.

(2) Application for marking inland lakes and state waters and any navigable waters under concurrent jurisdiction of the coast guard and the conservation department shall be made to the conservation department, accompanied by a map locating the approximate placement of markers, a statement concerning the purpose of marking and the names of persons responsible for the placement and upkeep of such markers. The conservation department will secure the proper permission from the coast guard where required, make such investigations as needed and issue a permit. The department

shall furnish the applicant with the information concerning the system adopted and regulations existing for placing and maintaining the uniform safety and navigation markers. The department shall keep records of all approvals given and counsel with individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes in Florida.

History.—§6, ch. 63-105.

371.522 Restricted areas.—It is unlawful to operate a vessel within a restricted water area which has been clearly marked by buoys or some other distinguishing device as a bathing, or otherwise restricted area in accordance with and marked as authorized by §371.521; provided, that this section shall not apply in the case of an emergency, or to patrol or rescue craft.

History.—§7, ch. 63-105.

371.53 Skiing prohibited while under influence of liquor or narcotics; penalty.—No person shall manipulate any water skis, aquaplane, or similar device from a vessel while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana, to the extent that his normal faculties are impaired.

History.—§4, ch. 59-400; §8, ch. 63-105.

371.54 Water skis and aquaplanes regulated.—

(1) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, or an aquaplane, or similar device unless there is in such vessel another person in addition to the operator, in a position to observe the progress of the person or persons being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person or persons being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(3) The provisions of subsections (1) and (2) of this section do not apply to a performer engaged in a professional exhibition or a person preparing to participate in an official regatta, motorboat race, marine parade, tournament or exhibition.

(4) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, or similar device may be affected or controlled in such a way as to cause the water skis, aquaplane, or similar device, or any person thereon to collide or strike against any object, except slalom buoys, ski jumps or like objects used normally in competitive or recreational skiing.

History.—§5, ch. 59-400; §9, ch. 63-105.

371.55 Regattas, races, marine parades, tournaments or exhibitions.—Any person directing the holding of a regatta, tournament or marine parade or exhibition, shall secure a permit from the coast guard when such event is held in navigable waters. A person directing any such affair in any county shall notify the sheriff of the county or the game and fresh water fish commission or the conservation department at least fifteen days prior to any event in order that appropriate arrangements for safety and navigation may be assured. Any person or organization sponsoring a regatta, vessel or other boat race, marine parade, tournament or exhibition shall be responsible for providing adequate protection from marine traffic interference and hazards.

History.—§6, ch. 59-400; §10, ch. 63-105.

371.56 Muffling devices.—The exhaust of every internal combustion engine used on any vessel shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner, and in addition all inboard internal combustion engines used on any vessel shall be equipped with a U.S.C.G. approved spark arrestor. The use of cut-outs is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.

History.—§7, ch. 59-400; §11, ch. 63-105.

371.561 Boat liveries; safety regulations; penalty.—

(1) No boat livery shall knowingly lease, hire, or rent a boat to any person:

(a) When the number of persons intended to use the boat shall exceed the number the livery shall deem safe.

(b) When the horsepower of the motor exceeds the capacity of the boat, making the boat unsafe to operate.

(c) When such boat does not contain a coast guard approved life saving device for each person occupying the boat.

(d) When such boat does not contain a suitable anchor and anchor rope of appropriate size and length.

(e) When such boat does not contain an appropriate paddle or oar.

(f) When such boat is not seaworthy.

(g) That any boat livery shall remain open until last boat has returned. If unnecessarily overdue to notify the proper authorities.

(2) Any person convicted of violating this section shall be punished by a fine of not less than $25.00.

(3) Where the boat livery has complied with subsection (1) of this section his liability shall cease and a person leasing the boat from the livery shall be liable for any violations of this act and shall be personally liable for any accident or injury occurring while in charge of such boat.

History.—§12, ch. 63-105.

371.57 Boat safety regulations; equipment requirements; lighting.—Every boat plying the waters of Florida shall carry safety equipment. The following requirements shall be applicable to the respective classes of boats as indicated:

(1) CLASS A BOATS SHALL HAVE THE FOLLOWING REQUIRED EQUIPMENT, (UNDER 16 FT.).—

(a) *Safety equipment.*—
1. One life saving device in good and serviceable condition, approved by the coast guard, for each passenger.
2. One oar or paddle.
3. One anchor and rope of appropriate size and length.
(b) *Inboard boats; additional equipment.*—
1. Two ventilators capable of removing gases from bilges on boats using gasoline or fuel of a flash point less than 110 degrees F. unless the bilges are not decked over allowing natural ventilation.
2. One flame arrestor on each carburetor to prevent back-fire; except on engines installed before November 19, 1952.
(c) *Lighting requirements between sunset and sunrise.*—
1. One white light aft visible for two miles, such light not to be obstructed by any part of the vessel so as to be visible in all directions.
2. One combination red and green light on forward deck visible for one mile.
3. In lieu of 1., 2., equipped with lights meeting the international standards.
(2) CLASS 1 BOATS (16 FT. TO 26 FT.) SHALL HAVE THE FOLLOWING REQUIRED EQUIPMENT.—
(a) *Safety equipment.*—
1. One life saving device in good and serviceable condition, approved by the coast guard, for each passenger.
2. One underwriter approved fire extinguisher in good and serviceable condition.
3. One anchor and rope of appropriate size.
4. One hand-mouth or power-operated whistle or horn capable of producing a blast of two seconds duration and audible for a distance of one-half mile.
(b) *Inboard boats; additional equipment.*—
1. Two ventilators capable of removing gases from bilges on boats using gasoline or fuel of a flash point less than 110 degrees F. unless the bilges are not decked over allowing natural ventilation.
2. One flame arrestor on each carburetor to prevent back-fire; except on engines installed before November 19, 1952.
(c) *Lighting requirements between sunset and sunrise.*—
1. One white light aft visible for two miles, such light to be unobstructed by any part of the vessel so as to be visible from all directions.
2. One combination red and green light on forward deck visible for one mile.
3. In lieu of 1. and 2., lights that meet with international standards.
(3) CLASS 2 BOATS (26 FT. TO 39 FT.) SHALL HAVE THE FOLLOWING REQUIRED EQUIPMENT.—
(a) *Safety equipment.*—
1. One life saving device in good and serviceable condition, approved by the coast guard, for each passenger.
2. Two underwriter approved class B-I fire extinguishers (portable type) or one fire extinguisher class B-II.
3. One anchor and rope of appropriate size.
4. One hand-mouth or power-operated whistle or horn capable of producing a blast of two seconds duration and audible for a distance of one mile.
5. One bell producing a clear bell-like tone.
(b) *Inboard boats; additional equipment.*—
1. Two ventilators capable of removing gases from bilges on boats using gasoline or fuel of a flash point less than 110 degrees F. unless the bilges are not decked over allowing natural ventilation.
2. One flame arrestor on each carburetor to prevent back-fire; except on engines installed before November 19, 1952.
(c) *Lighting requirements between sunset and sunrise.*—
1. One white—360 degree range at stern visible for two miles.
2. One green running light 112 degree range visible for one mile.
3. One red running light 112 degree range visible for one mile.
4. One white light at bow—225 degree range visible for two miles.
5. In lieu of 1., 2., 3., and 4., lights which meet international standards.
(4) CLASS 3 BOATS (40 FT. TO 65 FT.) SHALL HAVE THE FOLLOWING REQUIRED EQUIPMENT.—
(a) *Safety equipment.*—
1. One life saving device in good and serviceable condition, approved by the coast guard, for each passenger.
2. Three underwriter approved class B-I extinguishers or one class B-II and one class B-I extinguishers.
3. One anchor and rope of appropriate size.
4. One hand-mouth or power-operated whistle or horn capable of producing a blast of two seconds duration and audible for a distance of one mile.
5. One bell producing a clear bell-like tone.
(b) *Inboard boats; additional requirements.*—
1. Two ventilators capable of removing gases from bilges on boats using gasoline or fuel of a flash point less than 110 degrees unless the bilges are not decked over allowing natural ventilation.
2. One flame arrestor on each carburetor to prevent back-fire; except on engines installed before November 19, 1952.
(c) *Lighting equipment between sunset and sunrise.*—
1. One white light—360 degree range at stern visible for two miles, such light to be unobstructed by any part of the vessel so as to be visible in all directions.
2. One green running light 112 degree range visible for one mile.
3. One red running light 112 degree range visible for one mile.
4. One white light at bow 225 degree range visible for two miles.
5. In lieu of 1., 2., 3., and 4., lights which meet international regulations.
(5) The use of sirens on any vessel except police or fire boats shall, after January 1, 1964, be prohibited.

(6) The use of flashing red lights on any vessel except police or fire boats shall, after January 1, 1964, be prohibited.

(7) Every vessel shall, between sunset and sunrise, carry a lighting device capable of shining a white light all around the horizon visible at a distance of at least one mile and shall display such light in sufficient time to avoid collision with another vessel.

(8) Every vessel shall be equipped with at least one adequate coast guard approved life saving device for each occupant.

History.—§8, ch. 59-400; §13, ch. 63-105.

371.58 Safety inspections; qualified.—No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring.

History.—§9, ch. 59-400; §14, ch. 63-105.

371.581 Enforcement.—

(1) This chapter shall be enforced by the state board of conservation and its agents, the game and fresh water fish commission and its agents, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom are authorized and empowered to enforce the provisions of this act and cause any inspections to be made of all boats in accordance with chapter 371, on the inland lakes, rivers, canals or on the navigable waters under the jurisdiction of the state.

(2) Such officers and agents shall have the power and duty to make such investigations; reports and arrests in connection with any violation of the provisions of this act as are necessary to effectuate the intent and purpose of chapter 371.

History.—§15, ch. 63-105.

371.59 Local regulation qualified.—The provisions of part I of this chapter shall govern the operation, equipment and all other matters relating thereto whenever any vessel shall be operated upon the waterways or when any activity regulated hereby shall take place thereon; but nothing in these sections shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are not in conflict herewith, amendments thereto or regulations issued thereunder; provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be not in conflict with the provisions of part I of this chapter, amendments thereto or regulations issued thereunder.

History.—§10, ch. 59-400; §16, ch. 63-105.

371.60 Maximum safety load plate attached.—All vessels sold in Florida shall have attached thereto a plate stating the recommended number of persons or maximum weight load consistent with safe operation of the vessel. This shall not apply to resales but it is the intent of this section to require manufacturers to furnish this information upon the original sale thereof.

History.—§11, ch. 59-400; §17, ch. 63-105.

371.61 Penalties.—Except as otherwise herein specifically provided any person convicted of violating the provisions of §§371.49-371.60 shall be guilty of a misdemeanor and shall upon conviction be punished as provided by law in §775.07, ($200.00 fine or 90 days, or both).

History.—§12, ch. 59-400; §18, ch. 63-105.

PART II

REGISTRATION CERTIFICATE TAX ON BOATS AND VESSELS

371.0100 Definitions.—As used in part II of this chapter, unless the context clearly requires a different meaning:

(1) Vessel is synonymous with boat as used in this act and means a motor or artificially propelled vehicle as property and defined in §13, Art. IX of the state constitution, of every description of watercraft and air boats, other than a seaplane on the water, propelled by motor or sail, and designed for navigation and used or capable of being used as a means of transportation on water.

(2) Motorboat in this act means any undocumented boat or vessel propelled or powered by machinery of more than ten horsepower and includes both the boat and the motor or motors which customarily propel the same whether inboard or outboard, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(3) Owner means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) Waters of this state means any navigable waters of the United States within the ter-

ritorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers and canals under the jurisdiction of this state.

(5) Person means an individual, partnership, firm, corporation, association, or other entity.

(6) Operate means to navigate or otherwise use a boat or a vessel artificially propelled by motor or sail.

(7) Board means the state board of conservation composed of the governor, the secretary of state, the attorney general, the comptroller, the state treasurer, the superintendent of public instruction and the commissioner of agriculture.

(8) Registration certificate tax means a state tax on boats and vessels and outboard motors capable of propelling any such boat or vessel, an identifying number, an annual certificate of registration and a tag or decal designating the year the tax is paid.

(9) Length means measured from end to end over the deck excluding sheer.

(10) Conservation department or board means the state board of conservation.

(11) Commercial means any vessel engaged in the taking of salt water fish or salt water products, fresh water fish or fresh water products for the purpose of sale either to the consumer, retail dealer or wholesale dealer; for fishing, boating, sight-seeing, transportation or any other purpose wherein a fee is paid by the user, either directly or indirectly, to the owner, operator or custodian of such vessel.

(12) Noncommercial means any boat or vessel other than a commercial boat or vessel as defined in this section.

(13) Dealer means any person as defined in this section engaged in the business of buying and selling, or manufacturing for sale, boats and vessels.

(14) Commercial also means rental boat that is propelled by machinery and is made available for hire to an individual or to the general public whether the propulsion power is furnished by owner or by the person hiring such boat.

(15) Sailboat means any boat whose source of propulsion is the natural element (i.e. wind) and is in excess of ten feet in length.

History.—§3, ch. 63-550.

371.0101 Legislative intent.—It is the legislative intent that boats and vessels be taxed uniformly throughout the state. That the purpose of this law is to make taxing and registration procedures similar to those of automobiles and airplanes, all of which are power driven either on land or air or water, as motor vehicles or motorboats and to provide for a boat registration tax and certificate so as to determine the ownership of boat or vessel which travels the territorial waters under the jurisdiction of this state and to aid in the advancement of maritime safety.

History.—§1, ch. 63-550.

371.0102 Legislative declaration.—All boats and vessels hereinafter described propelled in whole or in part by a motor or sail, either inboard or outboard, are hereby declared to be motor vehicles and shall be taxed and certified as motor vehicles; provided, however, that said boats and vessels shall not be entitled to the exemption granted to motor vehicles in §212.08 (3), provided that nothing in this section shall be construed to prohibit any municipality that expends money for the patrol, regulation and maintenance of any lakes, rivers, or waters in such municipality from regulating such boats and vessels resident in such municipalities and charging a license fee therefor. All moneys received from such fee shall be expended for the patrol, regulation and maintenance of the lakes, rivers and waters of such municipality.

History.—§2, ch. 63-550.

371.0103 Exemption from personal property tax.—All boats and vessels and outboard motors capable of propelling any such boat or vessel, shall be exempt from any personal property tax and in lieu thereof shall pay a boat registration certificate tax.

History.—§4, ch. 63-550.

371.0104 Classification and tax.—Boats and vessels shall be classified according to the following schedule and the registration certificate tax shall be in the following amounts:

(1) COMMERCIAL.—Commercial boats shall be certified and licensed as provided in chapters 370 and 372.

(2) NONCOMMERCIAL.—

Class 1—All boats less than 12 feet	$ 1.00
(All to county)	$ 1.00
Class 2—12 feet or more and less than 16 feet in length	$ 5.00
(To county)	$ 2.50
Class 3—16 feet or more and less than 26 feet in length	$10.00
(To county)	$ 7.50
Class 4—26 feet or more and less than 40 feet in length	$30.00
(To county)	$27.50
Class 5—40 feet or more and less than 65 feet in length	$50.00
(To county)	$47.50
Class 6—65 feet or more and less than 110 feet in length	$60.00
(To county)	$57.50
Class 7—110 feet or more in length	$75.00
(To county)	$72.50
Dealer classification	$10.00

(3) Administrative costs shall be deducted as follows:

Class 2, 3, 4, 5, 6 and 7	$ 2.50

(4) SERVICE FEES.—In addition there shall be paid to the issuing agent a fifty cent service fee for each registration or reregistration. There shall be no duplication of fees and boats registered under either this law or chapters 370 or 372, may travel in salt or fresh water at will except as restricted by law applicable to commercial vessels in either chapters 370 or 372.

(5) Fees allowed for administration and

registration fees shall be deposited by the state treasurer into the motorboating revolving trust fund. The registration certificate tax shall be transmitted to each county based on the number of boats registered in the county and the tax shall be distributed in the county, two thirds to the county school board and one third to the general county fund, unless otherwise changed by law.

(6) FRACTIONAL REGISTRATION FEE.—Any boat or vessel registered for the first time after January 30, shall be charged for such registration one half the annual registration rate. The above fractional rates do not apply to boats and vessels subject to registration prior to the time such application for registration is made.

(7) REGISTRATION DATE.—The registration and reregistration of boats and vessels and payment of above fees for the ensuing year shall begin on July 1 and end on July 15, except that the governor may extend the period of registration for an additional thirty days when such extension would be determined desirable. The operation of any boat or vessel after August 15, unless the period is extended, without a current registration as provided in chapters 370, 371 and 372, shall be a misdemeanor and will subject the owner and operator thereof to arrest and punishment as provided by law for the operation of a motor vehicle without proper license.

(8) 1964 REGISTRATION.—That any boat or vessel registered hereunder prior to September 15, 1964, shall be deemed to have been so registered as of January 1, 1964, and in the event any ad valorem assessment has been made against the owner of said registered motor vehicle by the taxing authorities such assessment shall be stricken from the 1964 assessment roll.

(9) This act shall be administered and enforced by the board of conservation, the game and fresh water fish commission, their duly authorized agents, and the sheriffs of the state. All these officers shall have concurrent power and authority to enforce all of the provisions of chapter 371, by inspecting, enforcing, and making arrest wherever the provisions of this law are violated in the territory over which these officials and their agents have jurisdiction.

History.—§7, ch. 63-550.

371.0105 Application; registration certificate tax; boat number; distribution to counties.—

(1) The board of conservation shall issue all licenses. The tax collectors of the state and the game and fresh water fish commission shall be agents of the conservation department for the purpose of issuing licenses and collecting the tax therefor. The owner of each boat or vessel required by this law to pay a registration certificate tax and secure an identification number shall file an application with the tax collector of the county, the board of conservation or the Florida game and fresh water fish commission. The application shall be signed by the owner of the boat or vessel and shall be accompanied by a payment of the tax required by this law.

(2) The annual certificate of registration and identification numbers for boats shall be issued in the county by the tax collector of each county or his agent. The certificate and registration shall be renewable annually on July 1, of each year upon payment of the registration certificate tax. Each tax collector shall be assigned a block of numbers, certificates and annual decals which upon issue, in conformity with this chapter and with any rules and regulations of the board, shall be valid as if issued directly by the board. The county tax collector or agent duly authorized to issue a certificate of registration, decal and number, the conservation department and the game and fresh water fish commission shall be allowed a fee of fifty cents for each certificate issued or renewed. All tax collected, except the fifty cents fee allowed, shall be remitted monthly to the board not later than forty days after the first of each month. The board shall transmit all moneys received to the state treasurer for deposit and distribution.

History.—§8, ch. 63-550.

371.0106 Administration; collection of tax.—

(1) The administration of this act shall be under the board of conservation which board shall provide for the issuing, handling, and recording of all applications, including the receipt and accounting of all collections and taxes and depositing these in the state treasury for distribution to the counties except as provided by law in chapter 372, under the game and fresh water fish commission.

(2) All records made or kept by the board under this law shall be public records except confidential reports.

History.—§9, ch. 63-550.

371.0107 Operation of unnumbered motorboats prohibited.—Every boat propelled by machinery and all vessels required to be registered under chapters 370 and 372, operating on the waters of this state, shall be registered and numbered except as specifically exempt under part 1 of chapter 371. No person shall operate, or give permission for the operation of, any boat on such waters unless the boat is registered for the current year and properly decaled as set forth in §371.051, and numbered with the identifying number set forth in the certificate of registration displayed on each side of the bow of such boat, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless the certificate and number awarded to such boat is in full force and effect.

History.—§10, ch. 63-550.

371.0108 Penalty.—Any person failing to comply with the provisions of this chapter shall be guilty of a misdemeanor and punishable as provided by law.

History.—§11, ch. 63-550.

CHAPTER 372

GAME AND FRESH WATER FISH

372.001 Definitions. — In construing these statutes, when applied to salt and fresh water fish, shell fish, crustacea, sponges, wild birds and wild animals, where the context permits, the word, phrase or term:

(1) "Resident" or "resident of Florida" includes citizens of the United States who have continuously resided in this state, next preceding the making of their application for hunting, fishing or other license, for the following periods of time, to-wit: for six months when applied to the fresh water fish and game laws;

and for one year, in the state, and six months in the county when applied to all other fish and game laws.

(2) "Fish and game" shall include all fresh and salt water fish, shell fish, crustacea, sponges, wild birds and wild animals.

(3) "Game animals" shall include deer and squirrels.

(4) "Fur-bearing animals" shall include muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, bear, panther and opossum.

(5) "Game birds" shall include the antidae, commonly known as swans, geese, brant and river and sea ducks; rallidae, commonly known as rails or marsh hens, coots and gallinules; limcolae, commonly known as shore birds, plovers, surf birds, snipe, woodcocks, sandpipers, tattlers and curlews; gallinae commonly known as wild turkeys, grouse, pheasants and quail; and the species of columbae, known as mourning doves (commonly called turtle doves).

(6) "Non-game birds" shall include all wild birds other than game birds.

(7) "Fresh water fish" shall include all classes of pisces that are indigenous to fresh water.

(8) "Salt water fish" shall include all classes of pisces, shell fish, sponges and crustacea indigenous to salt water.

(9) "Open season" shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(10) "Closed season" shall be that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(11) "Fresh water," except where otherwise provided by law, includes all lakes, rivers, canals, and other water ways of Florida, to such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable and unfit for human consumption, because of the saline content, or to such point or points as may be fixed by the commission of game and fresh water fish, by and with the consent of the board of county commissioners of the county or counties to be affected by such order. The Steinhatchee river shall be considered fresh water from its source to mouth.

(12) "Salt water" shall include all bodies of water, streams, rivers, canals and water ways not defined as fresh water.

(13) Wherever it is made "lawful to take" game, non-game birds, fresh water fish or fur bearing animals or parts thereof or birds' nests or eggs, it shall mean the pursuit, hunting, capturing or killing thereof in the manner and at the time and by means specifically permitted

(14) Wherever it is made "unlawful to take" game, non-game birds, fresh water fish or fur bearing animals or parts thereof or birds' nests or eggs, the phrase shall include pursuing, shooting, hunting, killing, trapping, capturing, snaring, netting, gigging, and collecting and all lesser acts such as worrying the same or placing or using any net or other device for the purpose of taking same, whether or not they result in the intended taking.

(15) The phrase "common carrier" shall include any person, firm or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his services to all such as may choose to employ him and pay his charges.

(16) "Transport" shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

(17) The word "guide" shall include any person engaged in the business of guiding hunters or hunting parties, fishermen or fishing parties, for compensation.

(18) "Shell fish" shall include oysters, clams and whelks.

(19) "Coon oysters" are oysters found growing in bunches along the shore between high and low water mark.

(20) "Reef bunch oysters" are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

(21) "Food fish" shall include mullet, trout, red fish, sheephead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption.

(22) A "natural" oyster or clam reef, or bed, or bar, shall be considered and defined as an area containing not less than one hundred square yards of the bottom where oysters or clams are found in a stratum.

(23) "Private hunting preserve" shall include any area set aside by a private individual or concern on which artificially propagated game or birds are taken.

(24) "A fish management area" is a pond, lake or other water within a county or within several counties designated to improve fishing for public use and established and specifically circumscribed for authorized management by the game and fresh water fish commission and the board of county commissioners of the county in which such waters lie under agreement between the commission and an owner with approval by the board of county commissioners or under agreement with the board of county commissioners for use of public waters in the county in which such waters lie.

History.—§7, ch. 3147, 1879; §§1, 2, 3, ch. 3292, 1881; RS 2761, 2762; §§1, 18, 21, ch. 6532, 1913; §§11, 17, ch. 6877, 1915; RGS 1230; 1247, 1249, 1272, 5830; §1, ch. 8588, 1921; §1, ch. 11838, 1927; CGL 1788, 1805, 1807, 1840, 1902, 8063; §1, ch. 13644, 1929; CGL 1936 Supp. 1977(1); §1, ch. 19226, 1939; CGL 1940 Supp. 1977(1-a); (23) n. §1, ch. 59-73; (24) n. §1, ch. 63-30.

Note.—Formerly §371.01.

372.01 Game and fresh water fish commission.—

(1) The game and fresh water fish commission shall consist of five members, one from each congressional district, as existed on January 1, 1941, who shall be appointed by the governor, subject to confirmation by the senate.

(2) Members so appointed shall annually

select one of their members as chairman. Such chairman may be removed at any time for sufficient cause, by the affirmative vote of the majority of the members of the commission. In case the said office of chairman becomes vacant by removal or otherwise, the same may be filled for the unexpired term at any time by the commission from its members.

(3) Commission members shall receive no compensation for their services as such, but shall be reimbursed for traveling expenses as provided in §112.061.

History.—§2, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); §1, ch. 26766, 1951; (3) §19, ch. 63-400.
cf.—§30, Art. IV, const.

372.02 Powers of commission and conservation officers.—The game and fresh water fish commission shall have power: to adopt and enforce rules and regulations for the government of its meetings and proceedings and for the transaction of its business; to appoint chief conservation officer for each congressional district, who shall reside therein during his employment, at an annual salary, payable in monthly installments from the state game trust fund, to be fixed by said commission not to exceed one thousand eight hundred dollars; to appoint as many conservation officers as may be required to efficiently enforce the game and fresh water fish laws of this state, said officers to be paid such salary, not less than nine hundred dollars per annum, as may be fixed by said commission, payable in monthly installments from the state game trust fund; to appoint honorary game wardens, who shall serve without compensation and who shall not be empowered to carry arms; and to enforce all laws relating to game, non-game birds, fresh water fish and fur-bearing animals. The chief conservation officers and the conservation officers shall be reimbursed for traveling expenses as provided in §112.061. Each chief conservation officer and each conservation officer shall be covered by a public employee's faithful performance of duty bond, with two good and sufficient sureties, or one corporate blanket surety authorized to do business in this state, in the sum of one thousand dollars, to be approved by the commission, conditioned upon the faithful performance of his duties and payable to the governor and his successors in office. It shall be cause for removal for any conservation officer to hunt during the open season provided by law for taking game or to act as guide to any person at any time.

History.—§8, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(3); §1, ch. 59-485; §2, ch. 61-119; §19, ch. 63-400.

372.021 Powers, duties and authority of commission; rules, regulations and orders; effective date and notice.—The game and fresh water fish commission may exercise the powers, duties and authority granted by §30, article IV, of the constitution of Florida, by the adoption of rules, regulations and orders, or otherwise in its discretion, which said rules, regulations and orders shall be promulgated in the manner following:

(1) All general codes of rules, regulations and orders, and all revisions thereof and amendments and additions thereto, of state-wide application, made and adopted by the commission shall be promulgated by the director of the commission, by filing a certified copy thereof in the office of the secretary of state of this state and a certified copy thereof in the office of each county judge of this state, and by the publication of a notice one time in each of the congressional districts of the state in a newspaper published in and having general circulation in such district, notifying and advising the people of the state such code of rules, regulations and orders, or revisions, amendments or additions thereto, have been made and adopted by the commission and a certified copy thereof is on file in the office of the secretary of state and also in the office of each county judge in the state, and a copy thereof may be obtained from the commission at its office in Tallahassee.

(2) Such general code of rules, regulations and orders, and all revisions, amendments and additions thereto, shall become effective thirty days after the filing of a certified copy in the office of the secretary of state.

(3) All rules, regulations and orders, and all revisions thereof and amendments and additions thereto, of less than state-wide application, made and adopted by the commission, shall be filed in the office of the secretary of state and notice thereof shall be published by the director of the commission, one time in a newspaper of general circulation published in the area or areas affected by such rule or regulation, within ten days from the date of the adoption thereof. Such rules, regulations and orders, and all revisions thereof and amendments and additions thereto shall become effective twenty days after being filed in the office of the secretary of state, and by publication as aforesaid the director of game and fresh water fish commission shall give notice such rules and regulations, and revisions thereof and amendments and additions thereto, have been adopted and may be obtained by all interested persons from the county judges of the counties within the areas affected, or from the office of the commission in Tallahassee.

(4) A copy of all rules, regulations and orders and codes of rules, regulations and orders, and all revisions, amendments and additions thereto, whether of state-wide or limited application, shall be certified by the director of game and fresh water fish commission and shall be filed with the secretary of state within ten days after the adoption thereof, and in addition thereto, the said director shall, within the said ten-day period, file in the office of each county judge of this state a true and correct copy of all rules, regulations and orders and all revisions, amendments and additions thereto. A copy of said rules, regulations and orders, and revisions, amendments and additions thereto, or any portion or portions thereof, certified by the secretary of state under the great seal of the State of Florida, or by the director of the game and fresh water fish commission under the seal of the commission,

shall be received as evidence in all courts of this state without further authentication; provided, nothing herein shall be construed as preventing or prohibiting the courts from taking judicial knowledge thereof.

(5) The provisions of subsections (1), (3) and (4) relating to promulgation and filing are directory and not mandatory.

History.—§§4, 5, ch. 21945, 1943.
Note.—Formerly §372.82.

372.022 Sale, trade, etc., commission lands in Lake and Marion counties.—

(1) The game and fresh water fish commission be and it is hereby granted the right and privilege to trade, barter, or sell all lands now under their control in Lake and Marion counties, not being used for the purpose of conservation, or to exchange said lands for other lands that might be necessary for their use and benefit for the purpose of conservation.

(2) The game and fresh water fish commission be and it is hereby granted the right and privilege to trade, barter, or sell all lands now under their control which are no longer necessary for conservation purposes; provided, however, such lands shall not exceed ten acres in size; provided however that the entire proceeds from the sale of such lands, less reasonable expenses incident to such sale, shall be deposited in the general revenue fund of the state, and provided further that the procedures of §§270.08 and 270.09 shall be followed strictly in the sale and disposal of said lands.

History.—§§1, chs. 26981, 26985, 1951; §1, ch. 63-382.
cf.—A4 S30(4) Power to purchase or otherwise acquire lands for use.

372.023 J. W. Corbett wildlife management area.—

(1) The game and fresh water fish commission of this state is authorized and empowered to do the following as to the J. W. Corbett wildlife management area in Palm Beach county, when, in its judgment, it is in the best interest of orderly and economical development of said area, viz:

(a) To trade, barter or exchange lands therein for lands of greater acreage contiguous to said wildlife management area.

(b) To lease a portion or portions thereof upon such terms and upon such conditions as it deems advisable. The rental received from any such lease shall be used in the further development, maintenance and improvement of said wildlife management area. Any such lease shall not contain any covenants or conditions which in anywise conflict or interfere with the operation, development, management or maintenance of said leased lands as a wildlife management area.

(c) To grant easements for construction and maintenance of roads, railroads, canals, ditches, dikes and utilities, including but not limited to telephone, telegraph, oil, gas, electric power, water and sewers.

(d) To convey or release all rights in and to the phosphate, minerals, metals and petroleum that is or may be in, on or under any lands traded, bartered or exchanged pursuant to paragraph (a) hereof.

(2) The trustees of the internal improvement board and the state board of education and all and every board, state department or state agency of the state having any title, right and interest in or to the land including oil and mineral rights in the lands to be traded, bartered or exchanged within the J. W. Corbett wildlife management area in Palm Beach county, is authorized and empowered to convey this interest of whatsoever nature to the record owner.

History.—§§1, 2, ch. 31410, 1956.

372.03 Headquarters of commission. — The game and fresh water fish commission is located at the state capital, and, when suitable adequate office space cannot be provided in the state capitol building, or other buildings owned by the state, the commission may rent or lease suitable office space in Tallahassee. Said commission may also rent or lease suitable and adequate space in other cities and towns of the state for branch or division offices and headquarters and store rooms for equipment and supplies, as the business of the commission may require or necessitate, payment for said rented or leased premises to be made from the state game trust fund.

History.—§2, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); §2, ch. 61-119.
cf.—§28.24 Compensation of clerk of circuit court.

372.04 Director of commission.—The commission shall appoint, fix the salary of, and at pleasure remove, a suitable person, not a member of the commission, as director. Said director shall be reimbursed for traveling and other expenses incurred in the discharge of his official duties. The director shall give bond in the sum of ten thousand dollars, conditioned upon the faithful performance of his official duties, payable to the governor and his successors in office, with some reputable bonding corporation authorized to do business in this state as surety, said bond to be approved by the state comptroller. Said director shall maintain his headquarters and reside at the state capitol.

History.—§2, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); §2, ch. 26766, 1951.
cf.—A4 S30(5) Game and fresh water fish commission; powers, duties, etc.; appointment of director.

372.05 Duties of director. — The director shall:

(1) Keep full and correct minutes of the proceedings of said commission at its meetings, which minutes shall be open for public inspection.

(2) Purchase such supplies and employ such help and assistants as may be reasonably necessary in the performance of his duties.

(3) Have full authority to represent the commission in its dealings with other state departments, county commissioners, and the federal government.

(4) Submit to the commission at each of its meetings a report of all his actions and doings

as official representative of the commission.

(5) Visit each county in the state at least once each year and oftener if it appears to him to be necessary.

(6) Appoint, fix salaries of, and at pleasure remove, subject to the approval of the commission, assistants and other employees who shall have such powers and duties as may be assigned to them by the commission or director.

(7) Have such other powers and duties as may be prescribed by the commission in pursuance of its duties under article IV, §30 of the constitution.

History.—§§2, 3, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(2), 1977(3); §3, ch. 26766, 1951.
cf.—A4 S30(5) Game and fresh water fish commission; powers, duties, etc.; duties of director.

372.051 Seal of commission; certificate as evidence.—The game and fresh water fish commission shall adopt and use a common seal, and a certificate under the seal of the commission, signed by its chairman and attested by its director shall constitute sufficient evidence of the action of the commission; and copies of the minutes of the commission, or any part thereof, or of any record or paper of said commission, or any part thereof, or of any rule, regulation, or order of the commission, or any part thereof, or of any code of rules, regulations or orders of the commission, or any part thereof, certified by the director of the commission under its seal, shall be admissible in evidence in all cases and proceedings in all courts, boards and commissions of this state without further authentication.

History.—§3, ch. 21945, 1943; §4, ch. 26766, 1951.
Note.—Formerly §372.81.

372.06 Meetings of the commission. — At least four meetings of the game and fresh water fish commission shall be held at the state capital no less frequently than once every three months, which meetings shall be known as the quarterly meetings of the commission; other meetings may be held at such times and places as may be decided upon or as provided by rules of the commission, such meetings to be called by the executive secretary on not less than one week's notice to all members of the commission; or meetings may be held upon the request in writing of three members of the commission, at a time and place to be designated in the request, and notice of such meetings shall be given at least one week in advance thereof to all members of the commission by the executive secretary. Three members shall constitute a quorum at any meeting of the commission. No action shall be binding when taken up by the commission, except at a regular or call meeting and duly recorded in the minutes of said meeting.

History.—§2, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(2).

372.061 Meetings; authority to hold at any point in state.—

(1) From and after June 15, 1953, the game and fresh water fish commission of the state is hereby authorized and empowered to hold its meetings at any point in the state; that rules, regulations, resolutions or orders of the commission made and promulgated at meetings held at points other than Tallahassee shall have the same full force and effect as those made and promulgated at meetings held in Tallahassee.

(2) Due and proper notice shall be given publishing the place and date of such meetings.

History.—§§1, 2, ch. 28319, 1953.

372.07 Police powers of commission and its agents.—The game and fresh water fish commission and each and every of its duly authorized conservation agents, have power and authority, throughout the state, to enforce all laws relating to game, non-game birds, fresh water fish and fur-bearing animals, and in connection with said laws, in the enforcement thereof and in the performance of their duties thereunder, to go upon all premises, posted or otherwise; execute warrants and search warrants for the violation of said laws; serve subpoenas issued for the examination, investigation and trial of all offenses against said laws; carry firearms or other weapons, concealed or otherwise, in the performance of their duties; arrest upon probable cause without warrant any person found in the act of violating any of the provisions of said laws or, in pursuit immediately following such violations, examine any person, boat, conveyance, vehicle, game-bag, game-coat or any other receptacle for game, non-game birds, fresh water fish or fur-bearing animals, or any camp, tent, cabin or roster in the presence of any person stopping at or belonging to such camp, tent, cabin or roster, when he has reason to believe, has exhibited his authority and stated to the suspected person in charge his reason for believing that any of the aforesaid laws have been violated at such camp; secure and execute search warrants and in pursuance thereof, to enter any building, enclosure or car and to break open, when found necessary, any apartment, chest, locker, box, trunk, crate, basket, bag, package or container and examine the contents thereof; seize and take possession of all game, non-game birds, fresh water fish and fur-bearing animals, which may have been taken or had in possession or under control or which have been shipped or about to be shipped at any time or in any manner contrary to said laws.

History.—§3, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(3); §7, ch. 22858, 1945.

372.08 Audit of accounts; reports. — The governor shall require an audit of the office and accounts of the game and fresh water fish commission to be made at least once during each fiscal year and said commission shall make an annual written report to the governor as to the administration of its department.

History.—§10, ch. 13644, 1929; CGL 1936 Supp. 1977(10).

372.09 State game trust fund established.—The funds resulting from the operation of the commission and from the administration of the laws and regulations pertaining to birds, game,

fur-bearing animals, fresh water fish, reptiles, and amphibians, together with any other funds specifically provided for such purposes shall constitute the state game trust fund and shall be used by the commission as it shall deem fit in carrying out the provisions hereof and for no other purposes. The commission may not obligate itself beyond the current resources of the state game trust fund unless specifically so authorized by the legislature.

History.—§13, ch. 13644, 1929; §1, ch. 17016, 1935; CGL 1936 Supp. 1977(3); §7, ch. 22858, 1945.
cf.—A4 S30(6) Establishing state game fund.

372.10 Payment of accounts, etc.—All accounts, claims and bills of every nature against the game and fresh water fish commission shall be examined by the said commission and, if found correct, shall be approved and delivered to the comptroller who shall issue a warrant, drawn upon the state treasurer against the state game trust fund, to pay the same. Payment of the salary of the executive secretary and the expenses of the members of the commission shall be made upon the certificate of each as to the correctness thereof, when approved by a majority of the members of the said commission, upon vouchers issued by the executive secretary and countersigned by the chairman, said vouchers to be audited and allowed by the state comptroller and paid by the comptroller's warrant on the state treasurer out of the state game trust fund.

History.—§§2, 9, ch. 13644, 1929; CGL 1936 Supp. 1977(2), 1977(9); §2, ch. 61-119.

372.12 Acquisition of state game lands.—The game and fresh water fish commission, with the approval of the governor, may acquire, in the name of the state, lands and waters suitable for the protection and propagation of game, fish, non-game birds or fur-bearing animals, or for hunting purposes, game farms, by purchase, lease, gift or otherwise to be known as state game lands. The said commission may erect such buildings and fences as may be deemed necessary to properly maintain and protect such lands, or for propagation of game, non-game birds, fresh water fish or fur-bearing animals. The title of land acquired by purchase, lease, gift or otherwise, shall be approved by the attorney general. The deed to such lands shall be deposited as are deeds to other state lands. No such lands shall be purchased at a price to exceed ten dollars per acre. No property acquired under this section shall be exempt from state, county or district taxation.

History.—§§6, 67, ch. 13644, 1929; CGL 1936 Supp. 1977(6), 1977 (67); §7, ch. 22858, 1945; §25, ch. 29615, 1955.
cf.—A4 S30(4) Game and fresh water fish commission; powers, duties, etc.
§372.19 Preserves, refuges, etc., not tax exempt.

372.16 Private game preserves and farms; penalty.—Any person owning land in this state may, after having secured a license therefor from the game and fresh water fish commission, establish, maintain and operate within the boundaries thereof, a private preserve and farm, not exceeding an area of six hundred forty acres, for the protection, preservation, propagation, rearing and production of game birds and animals for private and commercial purposes, provided that no two game preserves shall join each other or be connected. All private game preserves or farms established under the provisions of this section shall be fenced in such manner that domestic game thereon may not escape and wild game on surrounding lands may not enter and shall be subject at any time to inspection by the game and fresh water fish commission, or its conservation officers. Such private preserve or farm shall be equipped and operated in such manner as to provide sufficient food and humane treatment for the game kept thereon. Game reared or produced on private game preserves and farms shall be considered domestic game and private property and may be sold or disposed of as such and shall be the subject of larceny. Live game may be purchased, sold, shipped and transported for propagation and restocking purposes only at any time. Such game may be sold for food purposes only during the open season provided by law for such game. All game killed must be killed on the premises of such private game preserve or farm and must be killed by means other than shooting, except during the open season. All domestic game sold for food purposes must be marked or tagged in a manner prescribed by the game and fresh water fish commission and the owner or operator of such private game preserve or farm shall report to the said commission, on blanks to be furnished by it, each sale or shipment of domestic game, such reports showing the quantity and kind of game shipped or sold and to whom sold. Such report shall be made not later than five days following such sale or shipment. Game reared or produced as aforesaid may be served as such by hotels, restaurants or other public eating places during the open season provided by law on such particular species of game, under such regulations as the commission may prescribe. It is unlawful for any common carrier to knowingly transport or receive for transportation any domestic game unless the package or container containing such shipment has attached thereto a permit for such shipment and such package or container shall be marked on the outside showing quantity and kind of game enclosed. Any person violating the provisions of this section, upon conviction, shall be fined not more than two hundred fifty dollars or imprisoned not more than ninety days, for the first offense and fined not more than five hundred dollars or imprisoned not more than six months for a second or subsequent offense. Any person convicted of violating the provisions of this section shall forfeit, to the commission of game and fresh water fish, any license or permit issued under the provisions hereof and no further license or permit shall be issued to such person for a period of one year following such conviction. Before any private game preserve or farm is established

the owner or operator shall secure a license from the game and fresh water fish commission, the fee for which shall be five dollars per annum.

History.—§70-A, ch. 13644, 1929; §§1-9, ch. 14515, 1929; CGL 1936 Supp. 1901(5)-1901(15), 1977(71).
cf.—§775.06 Alternative punishment.

372.19 Preserves, refuges, etc., not tax exempt.—No property acquired by purchase, lease, gift, contract to purchase or lease, or otherwise, under the provisions of this chapter, as state game lands, or any private lands used as game refuges, shooting grounds, privileges, hatcheries or breeding grounds for fish, game, birds or fur-bearing animals, except state owned lands being used for the protection of game, fish or fur-bearing animals under the provisions of this chapter, shall be exempt from state, county or district taxation. Any contract, lease, gift or purchase of land for such purposes which attempts to exempt or partially exempt such property from taxation shall be null and void and of no effect.

History.—§67, ch. 13644, 1929; CGL 1936 Supp. 1977(67).
cf.—§372.12 Acquisition of state game lands.

372.26 Imported fish.—No person shall import into the state or place in any of the fresh waters of the state any fresh water fish of any species without having first obtained a permit from the game and fresh water fish commission.

History.—§37, ch. 13644, 1929; CGL 1936 Supp. 1977(37).

372.27 Silver Springs and Rainbow Springs, etc., closed to all fishing.—It is unlawful for any person to take any fish within Marion county, from the waters of Rainbow springs and Rainbow river (formerly known as Blue springs and Blue springs river) within a radius of one mile from the head of said spring or from the waters of Silver springs or Silver springs run from the head of said spring to its junction with the Ocklawaha river; provided, that the commission of game and fresh water fish may remove or cause to be removed any gar, mud fish or other predatory fish when in its judgment their removal is desirable.

History.—§ § 34, 34-A, ch. 13644, 1929; §1, ch. 17002, 1935; CGL 1936 Supp. 1977(34), (34-a); §6, ch. 26766, 1951; §1, ch. 28059, 1953.

372.31 Disposition of illegal fishing devices.

(1) In all cases of arrest and conviction for use of illegal nets or traps or fishing devices, as provided in this chapter, such illegal net, trap, or fishing device is declared to be a nuisance and shall be seized and carried before the court having jurisdiction of such offense and said court shall order such illegal trap, net or fishing device forfeited to the game and fresh water fish commission immediately after trial and conviction of the person in whose possession they were found. When any illegal net, trap or fishing device is found in the fresh waters of the state, and the owner of same shall not be known to the officer finding the same, such officer shall immediately procure from the county judge an order forfeiting said illegal net, trap or fishing device to the game and fresh water fish commission. The game and fresh water fish commission may destroy such illegal net, trap or fishing device, if in its judgment said net, trap or fishing device is not of value in the work of the department.

(2) When any nets, traps, or fishing devices are found being used illegally as provided in this chapter, the same shall be seized and forfeited to the game and fresh water fish commission as provided in this chapter.

History.—§25, ch. 13644, 1929; CGL 1936 Supp. 1977(25); §1, ch. 59-81.

372.311 Disposition and appraisal of property seized under this chapter.—

(1) Every officer seizing illegally used property pursuant to the provisions of this law shall forthwith make return of the seizure thereof and deliver the said property to the board of county commissioners of the county wherein the said property was seized. The said return to the board of county commissioners shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was lead to believe, said property was being used for and in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When any illegally used property is seized by any officer pursuant to this law and delivered to the board of county commissioners as aforesaid, the board shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the board of county commissioners shall contain a schedule of the property seized, describing the same in reasonable detail and giving in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps, or fishing devices; and a statement of the names of all persons, firms and corporations known to be interested in the seized property and shall attach to their said return as exhibit thereto, the return of the seizing officer to the board.

(4) The board of county commissioners shall hold the said seized property pending its disposal by the court as hereinafter provided.

History.—§2, ch. 59-81.

372.312 Forfeiture proceedings.—

(1) The return of the board aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction, without regard

to value, under and by virtue of that provision in §6(3), Art. V of the state constitution, under which the circuit courts may be given jurisdiction of "such other matters as the legislature may provide." The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within twenty days from personal service of said citation, when personal service is had.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE_____ JUDICIAL CIRCUIT, IN AND FOR_____ COUNTY, FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter 372, as amended, and is now in the possession of the board of county commissioners of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the circuit court of the _____ Judicial Circuit, in and for _____ County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before _____, 19____, if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court

WITNESS my hand and the seal of the above mentioned court, at _____, Florida, this _____ 19____.

(COURT SEAL)

_____

Clerk of the above mentioned court

By _____

Deputy Clerk

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than twenty-one nor more than thirty days, from the posting or publication thereof, and as to those personally served with process within twenty days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the board's return to have an appraised value of four hundred dollars or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the board's return to have an approximate value of more than four hundred dollars, the citation shall be published once a week for three consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county, and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—§3, ch. 59-81.

372.313 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the board of county commissioners and posting with said board, to be approved by it, a surety bond, payable to the governor of the state, in twice the amount of the value of the said property as fixed in the board's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the board of county commissioners the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the board and the release of the property to the applicant the cause shall proceed to final judgment in the same manner, as it would have, had no such bond been filed, except that any

exception to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—§4, ch. 59-81.

372.314 Proceeding when no claim filed.—When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—§4, ch. 59-81.

372.315 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting the illegal use of nets, traps or fishing devices, and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner or user of the property has been convicted of a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and the burden of proof shall be upon each claimant to satisfy the court that he was without knowledge of such conviction, providing, however, the prima facie presumption of knowledge of a previous conviction of a violation of this law shall only apply to a subsequent proceeding involving the forfeiture of nets, traps or fishing devices, when owned by such previous offender and upon which a lien is held by the same lienee involved in the first claim proceedings. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—§5, ch. 59-81.

372.316 State attorney to represent state.—Upon the filing of the board's return with the clerk of the circuit court the said clerk shall furnish the state attorney with a copy thereof and the said state attorney shall represent the state in the forfeiture proceeding. The attorney general shall represent the state in all appeals from judgments of forfeiture to the supreme court. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—§6, ch. 59-81.

372.317 Judgment of forfeiture.—On final hearing the return of the board to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimant to show that the property was not so used, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after two weeks public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—§7, ch. 59-81.

372.318 Fees for services.—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases and matters.

History.—§8, ch. 59-81.

372.319 Disposition of proceeds of forfeiture.—All sums received from sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof.

History.—§9, ch. 59-81.

372.321 Exercise of police power.—It is deemed by the legislature that this law (§§372.31 to 372.319, both inclusive) is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices and a lawful exercise of the police power of the state for the protection of the public welfare, health, and safety of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.

History.—§10, ch. 59-81.

372.43 Unlawful to kill carrier pigeon; penalty. — It is unlawful for any person to catch, kill, maim, wound, detain or molest any homing pigeon or carrier pigeon, or pigeon carrying a metallic band, the property of another. Any person violating the provisions of this section shall be punished by a fine of not less than five dollars, nor more than twenty-five dollars, or by imprisonment not to exceed sixty days, and in addition to such fine or imprisonment shall be required to pay as costs in the case, to go to the prosecuting witness, the sum of ten dollars.

History.—§1, ch. 4806, 1899; GS 3753; RGS 5778; CGL 8008.
cf.—§775.06 Alternative punishment.

372.57 Fishing, hunting and trapping license.—No person, except residents more than sixty-five years of age and children under fifteen years of age, shall take or attempt to take game, fresh water fish or fur-bearing animals within the state without having first obtained a license and paid the license fee hereinafter set out. Said license shall be dated when issued and when issued in the closed season shall authorize the person named therein to take game, fresh water fish or fur-bearing animals only during the open season next following, and, when issued during the open season shall authorize the person named therein to take game, fresh water fish or fur-bearing animals only during the remainder of such open season. The license issued shall be in the personal possession of the person to whom issued, while taking or attempting to take game, fresh water fish or fur-bearing animals and his failure to exhibit such license to the game and fresh water fish commission or any of its conservation officers, when found taking or attempting to take game, fresh water fish or fur-bearing animals, shall be considered a violation of this chapter. The license fees for fishing in the fresh waters of the state and for hunting and trapping in the state, for residents and nonresidents, which shall not include aliens, who are required to obtain a special license hereinafter mentioned, are as follows:

(1) Fishing license for nonresidents of the state to take fresh water fish for noncommercial purposes in the waters of the state at large by any lawful methods prescribed by rules and regulations of the game and fresh water fish commission shall be seven dollars and fifty cents per annum.

(2) Fishing license for nonresidents of the state for fourteen consecutive days only, to take fresh water fish for noncommercial purposes from the waters of the state at large, by any lawful method prescribed by rules and regulations of the game and fresh water fish commission, shall be three dollars. Fishing license for nonresidents for five consecutive days shall be two dollars.

(3) Fishing license for residents of the state to take fresh water fish with pole and line, road and reel, plug, bob, spinner, spoon, fly, troll, trotline, or other artificial bait or lure in the fresh waters of the state shall be two dollars and seventy-five cents.

(4) No license shall be required for residents of the state fishing with not more than three poles or lines for noncommercial purposes in the county of his residence except on legally established fish management areas.

(5) Hunting license for nonresidents, for the state at large, twenty-six dollars; provided, nonresidents, who are bona fide owners of not less than three thousand acres of land situate in any one county, may obtain such license for the sum of eleven dollars for the privilege of hunting in the county where said lands are situated; provided, further, that said lands are not tax delinquent; this privilege of obtaining such license for eleven dollars shall likewise extend to the wife of said owner.

(6) Hunting license for nonresidents, for ten consecutive days only, for the state at large, eleven dollars.

(7) Hunting license for residents for the state at large, seven dollars.

(8) Hunting license for residents for counties other than county of residence, four dollars per county.

(9) Hunting license for residents for county of legal residence, one and 75/100 dollars.

(10) No license shall be required of a resident to take game in the county of his residence, on his homestead or the homestead of his spouse or minor child, or minor children, to take game on the homestead of their parents.

(11) License for nonresidents to take fur-bearing animals in the state at large, one hundred dollars.

(12) License for nonresidents to take fur-bearing animals in one or more counties, twenty-five dollars for each county in which taken.

(13) License for residents to take fur-bearing animals in the state at large, twenty-five dollars. Provided, however, that residents or nonresidents taking fur-bearing animals by guns or by dogs only, and not by the use of traps or other devices, and not for commercial purposes, who shall have paid the license fees pro-

vided for hunting and taking game, shall not be required to pay the license fees provided for taking fur-bearing animals.

(14) License for residents to take fur-bearing animals in one or more counties, other than the county of their residence, ten dollars for each county in which taken.

(15) License for residents to take fur-bearing animals in the county of their legal residence, three dollars.

(16) Special hunting license for hunting in private hunting preserves for residents or nonresidents, five dollars provided that any person may hunt on a private hunting preserve with any valid resident or nonresident license.

(17) (a) The aforesaid licenses for the state may be issued by any county judge in the state; all other licenses must be issued by the county judge of the county wherein the license is to be effective or used. The official seal of the county judge issuing the license shall be affixed thereto. To cover the cost of issuing the license the county judge issuing the same shall collect and retain as his costs, in addition to the license fee above mentioned, the sum of twenty-five cents for each license costing three dollars or less and fifty cents for each license costing more than three dollars.

(b) Aliens, or persons not citizens of the United States, must obtain special licenses before hunting or fishing in this state as follows:

1. To take fish in the state at large, the fee and license for which shall be the same as that charged nonresidents for fishing licenses. These licenses shall be issued by the county judges.

2. To take wild game or birds in the state at large, the fee for which shall be fifty dollars. These licenses shall be issued by the game and fresh water fish commission.

(18) Any person fishing in a fish management area as defined in §372.001(24), shall be required to purchase only a regular fishing license as provided in §372.57(3).

History.—§§15, 19-21, ch. 13644, 1929; §1, ch. 17015, 1935; §1, ch. 17018, 1935; CGL 1936 Supp. 1977(15), (19)-(21); §1, ch. 19509, 1939; §1, ch. 20886, 1941; am. §1, ch. 23087, 1945; (1) §1, ch. 26943, (2) §1, ch. 26944, 1951; (2) §1, ch. 29672, 1955; (16) §1, ch. 57-185; (16) n. §2, ch. 59-73; (1), (2) §1, ch. 61-366; (17)(a) §1, ch. 61-392; (3), (4), (18) n. §2 ch. 63-30.

372.571 Fishing licenses; expiration.—Each fishing license issued under this chapter shall be dated when issued and shall expire June 30 following; provided, each license issued under §372.57(2) shall expire fourteen days from date; provided, further, that nothing herein or in such license shall be construed as entitling the holder thereof to take fish during the closed season thereon.

History.—§1, ch. 23148, 1945; §26, ch. 29615, 1955.
cf.—§372.57 Fishing, hunting and trapping license.

372.572 Right of resident to fish in certain waters.—Any resident of a county, the territory of which is bounded in whole or in part by a lake, river, creek, bayou, or other body of water, shall be entitled, if otherwise qualified to fish in waters wholly within the county of his residence, to fish in any part of the main body of the waters of such lake, river, creek, bayou, or other body of water forming such boundary, even though such main body thereof be partially or wholly within the territory of another county.

History.—§1, ch. 23978, 1947.

372.573 Permits, land owned, etc., by state; fee.—

(1) The director of the game and fresh water fish commission of the state be, and he is, authorized to issue permits to persons to hunt on lands owned, managed, or leased by the state for the use and benefit of the game and fresh water fish commission and/or by the game and fresh water fish commission.

(2) The director shall charge a fee set by the game and fresh water fish commission and not to exceed five dollars for such permit and the same shall be over and above the license fee for hunting required by law; provided, all persons sixty-five years of age and older shall be exempt from the payment of such fees for such permit provided further that such persons shall obtain a permit before hunting in such areas from the judge of the county of their residence by attesting to the fact that they are sixty-five years of age or older.

History.—§§1, 2, ch. 25463, 1949; (2) §1, ch. 59-390.

372.574 Appointment of sub-agents for issuance and sale of hunting, fishing and trapping licenses.—

(1) The county judge of any county having only one county judge or the senior county judge of any county having more than one county judge shall be authorized to appoint any person, firm, partnership or corporation as a sub-agent for the sale and issuance of fishing, hunting and trapping licenses, giving due consideration to its moral character, business ability, financial responsibility and proper facilities for the proper issuance of said licenses, and shall serve at the pleasure of said county judge. Employees of the county judge, nor their relatives or next of kin by blood, or otherwise, shall be appointed as a sub-agent.

(2) Sub-agents shall issue and sell fishing, hunting and trapping licenses upon the posting of an adequate bond payable to the county judge in an amount to be fixed and approved by the judge under such rules and regulations as may be prescribed by the county judge and required by the existing laws or any subsequent enacted legislation.

(3) Sub-agents shall be authorized to sell and issue fishing, hunting and trapping licenses at such specified locations as, in the judgment of the county judge, will best serve the public interest and convenience in obtaining fishing, hunting and trapping licenses.

(4) It shall be unlawful for any individual, firm, partnership or corporation to act as a sub-agent for the sale and issuance of fishing, hunting and trapping licenses, or to handle in any manner, fishing, hunting and trapping li-

censes for a fee or compensation of any kind unless they have been appointed as a sub-agent by the county judge as prescribed in this section.

(5) Any individual, firm, partnership or corporation who shall willfully violate any of the provisions of this law shall be guilty of a misdemeanor and a conviction therefor shall be fined not less than $100 nor more than $500 for each violation.

(6) Every individual, firm, partnership or corporation acting as a sub-agent for the sale and issuance of fishing, hunting and trapping licenses under the provisions of this section may charge and receive as its compensation a service charge of twenty-five cents for the issuance of every fishing, hunting and trapping license. This service charge shall be an additional sum over and above the sum required by law to be collected for the issuance of each license.

(7) Sub-agents shall be required to report on the first of each month the sale and issuance of fishing, hunting and trapping licenses during the preceding month. Said report to be accompanied with the proper remittance covering the sale of licenses on said report.

(8) Nothing contained herein shall be construed to relieve any county judge of any counties of the state of the duty of issuing fishing, hunting and trapping licenses to the public without the payment of any service charge as required by law.

History.—§§1-8, ch. 59-494.

372.575 Fish management fund created.—From each fishing license issued as authorized in §372.57(3) the sum of one dollar shall be deducted and deposited in a special fish management fund to be used for the specific purpose of improving, expanding and managing only the fish management program in cooperation with the counties and individuals for more general public use of planned, supervised and stocked fish waters in the state.

History.—§3, ch. 63-30.

372.58 False statement in application for license.—Any person who shall swear or affirm to any false statement in any application for license provided by this chapter, shall be guilty of violation of this chapter, and upon conviction thereof, shall be subject to the penalty provided by §372.71, and any false statement contained in any application for such license shall render the license null and void.

History.—§16, ch. 13644, 1929; CGL 1936 Supp. 1977(16).

372.59 License not transferable.—No person shall alter or change in any manner, or loan or transfer to another, any license issued pursuant to the provisions of this chapter, nor shall any other person, other than the person to whom it is issued, use the same.

History.—§17, ch. 13644, 1929; CGL 1936 Supp. 1977(17).

372.60 Issuing of duplicate license. — The game and fresh water fish commission shall furnish to each county judge a form for issuing of duplicate license. Application for such duplicate license shall be made under oath, stating that the licensee has lost or destroyed his original license. Such application shall be made to the county judge from whom original license was purchased and a fee of twenty-five cents shall be collected by county judge issuing such duplicate license. This fee shall cover both the taking of application and the issuing of license.

History.—§18, ch. 13644, 1929; CGL 1936 Supp. 1977(18).

372.61 Reports and remittances of county judges.—The license fees and other fees provided to be paid under this chapter shall be remitted by the several county judges by the tenth of each month to the game and fresh water fish commission, and each county judge shall retain his fee for issuing said licenses. The game and fresh water fish commission shall keep an accurate and up-to-date record of all licenses consigned to the various county judges, giving credit to each account upon receipt of the monthly report of licenses sold or voided, and at the proper time close and balance the seasonal accounts. The judge's report shall be a schedule setting forth the total number of licenses sold, the total number of licenses voided, and the net amount of the report. Forms for making these reports are to be furnished by the game and fresh water fish commission. The various county judges will retain a file of copies of licenses sold to aid in issuing duplicates.

History.—§14, ch. 13644, 1929; CGL 1936 Supp. 1977(14); §1, ch. 26930, 1951.

372.62 Guide license and regulations.—No person shall engage in the business of guiding hunters or hunting parties until he has secured a license to do so from the game and fresh water fish commission. Application for guide license shall be made to the said commission upon blanks furnished by it. The cost of guide license shall be ten dollars per open season, which license shall permit the holder to guide or act as guide for hunters or for hunting parties in the state. An applicant for guide license on making application must state his name, age, address, physical description, and qualifications to act as guide. No guide while acting as guide to hunters or hunting parties shall take any game or carry shotgun or rifle. When a guide is found guilty of violating any provisions of the laws of this state relative to game, birds, fresh water fish or fur-bearing animals, his license shall be revoked.

History.—§65, ch. 13644, 1929; CGL 1936 Supp. 1977(65).

372.63 License for boats rented for hunting and fishing.—Any person who engages in the business of renting boats for hunting in the waters of the state, or fishing in the fresh waters of the state, shall pay an annual license fee on each boat operated, as follows:

(1) Boats under eighteen feet long, one dollar fifty cents;

(2) Boats eighteen to twenty-one feet long, four dollars;

(3) Boats twenty-one to twenty-five feet long, fifteen dollars;

(4) Boats over twenty-five feet long, twenty-five dollars.

Application for such license shall be made to the game and fresh water fish commission upon application blanks furnished by him. The state game commission shall furnish to owners of boats so licensed a metal tag showing number of year license is good for, which tag shall be attached to the boat for convenient inspection. Any subterfuge to circumvent or evade the requirements of this section shall be deemed a violation hereof and shall be punishable as a violation hereof.

History.—§62, ch. 13644, 1929; CGL 1936 Supp. 1977(62); §1, ch. 20880, 1941; §7, ch. 22858, 1945.

372.64 Commercial fishing boat licenses.—All vessels as defined in part I, chapter 371, used for taking fresh water fish commercially shall be licensed. The owners or persons operating commercial boats or vessels shall make application to the game and fresh water fish commission for a license, on application blanks furnished by it. The charge for such license shall be made according to the following schedule:

Commercial boats under sixteen feet long and under four feet beam, one dollar and five cents; boats over sixteen feet long and over four feet beam, twenty cents for each additional foot or fraction thereof of length or beam.

A certificate of registration and a boat number as required in part I, chapter 371, shall be issued with each license sold under this section.

An additional license tax of twenty-five dollars shall be required of all aliens or nonresidents of the state on all boats, vessels, schooners or launches used for commercial purposes and owned in whole or in part by such alien or nonresident in addition to the boat license tax required by this section.

History.—§§32, 33, ch. 13644, 1929; CGL 1936 Supp. 1977(32), 1977(33); §2, ch. 59-399.

372.65 Fresh water fish dealer's license.—No person shall engage in the business of wholesale or retail fresh-water fish dealer until such person has taken out a license to carry on such business, as provided for in this chapter. A wholesale dealer shall be considered one who sells or ships fish by the barrel or half barrel, or in bulk, and shall be required to pay a license fee of fifty dollars per annum. A retail dealer shall be considered anyone who sells fish or supplies in any manner direct to the consumer or wholesale dealer, and shall pay a license fee of five dollars per annum; a nonresident wholesale dealer shall be required to pay a license fee of five hundred dollars per annum, a non-resident or alien retail dealer shall be required to pay a license fee of fifty dollars per annum. Application shall be made to the game and fresh water fish commission for the licenses set forth in this section and §372.66, on blank forms to be supplied by it, and such license shall be dated and issued only for the open season and all moneys derived from this source shall be deposited in the state treasury to the credit of the state game trust fund. This does not apply to dealers operating exclusively in salt water territory.

History.—§31, ch. 13644, 1929; CGL 1936 Supp. 1977(31); §2, ch. 61-119.

372.66 License required for fur and hide dealers.—It is unlawful for any person to engage in the business of a dealer or buyer in alligator skins or green or dried furs in the state or purchase such skins within the state until such person has been licensed as herein provided.

Any resident dealer or buyer who solicits business through the mails, or by advertising, or who travels to buy or employs or has other agents or buyers, shall be deemed a resident state dealer and shall be required to pay a license fee of one hundred dollars per annum and shall pay an agent's license fee of five dollars per annum for each agent or traveling buyer employed by or buying for such licensed state dealer.

Any resident dealer or buyer who does not solicit by mail, advertise, travel to buy or employ or have agents or traveling buyers shall be deemed a resident local dealer and shall be required to pay a license fee of ten dollars per annum.

A nonresident dealer or buyer shall be required to pay a license fee of five hundred dollars per annum and shall pay a license fee of one hundred dollars per annum for each agent, resident buyer or traveling buyer employed by or buying for or acting as agent for such nonresident buyer.

All agents' licenses shall be applied for by, and issued to, a resident state dealer or nonresident dealer and shall show name and residence of such agent and shall be in possession of such agent at all times when engaged in buying furs or hides. Application for such licenses shall be made to the game and fresh water fish commission on blanks furnished by it.

All dealers and buyers shall forward to the game and fresh water fish commission each two weeks during open season a report showing number and kind of hides bought and name of trapper from whom bought and his license number, or if trapper is exempt from license under any of the provisions of this chapter, such report shall show the nature of such exemption. No common carrier shall knowingly ship or transport or receive for transportation any hides or furs unless such shipments have marked thereon name of shipper and the number of his fur-animal license or fur dealer's license.

History.—§61, ch. 13644, 1929; CGL 1936 Supp. 1977(61).

372.661 Private hunting preserve, license; exception.—Any person who operates a private hunting preserve commercially or otherwise shall be required to pay a license fee of twenty-

five dollars for each such preserve; provided, however, that during the open season established for wild game of any species a private individual may take artificially propagated game of such species up to the bag limit prescribed for the particular species without being required to pay the license fee required by this section; provided further that if any such individual shall charge a fee for taking such game he shall be required to pay the license fee required by this section and to comply with the rules and regulations of the game and fresh water fish commission relative to the operation of private hunting preserves.

History.—§3, ch. 59-73.

372.67 Hunters and trappers required to make report.—To each application for license to take game or fur-bearing animals, shall be attached a stub listing the various species of game and fur-bearing animals and the applicant shall state thereon the number of such game and fur-bearing animals as were taken by him within the state in the season next preceding that for which license is applied for. Persons failing to make such statement shall be denied license applied for until they have complied with this provision.

History.—§64, ch. 13644, 1929; CGL 1936 Supp. 1977(64).

372.68 Fresh water fish dealers to report.—All dealers in fresh-water fish shall, at the end of each month, report to the game and fresh water fish commission the amount of the different kinds of fresh-water fish that they have sold during the past month. Failure to make such report shall cause such dealer to be denied license for ensuing year.

History.—§63, ch. 13644, 1929; CGL 1936 Supp. 1977(63).

372.69 Game and fresh water fish commission to furnish forms.—The blank forms and other printed matter necessary to carry out the provisions of this chapter shall be furnished by the game and fresh water fish commission, which is required to make up forms of licenses or other blanks necessary, the same to be uniform throughout the state, and to furnish the same to the county judges of the several counties and authorized agents. The said license shall contain on the back thereof a synopsis of the game trapping or fresh water fishing laws of the state. All licenses shall be consecutively numbered.

History.—§22, ch. 13644, 1929; CGL 1936 Supp. 1977(22).

372.70 Prosecutions.—The prosecuting officers of the several courts of criminal jurisdiction of this state shall investigate and prosecute all violations of the laws relating to game, fresh-water fish, non-game birds and fur-bearing animals which may be brought to their attention by the game and fresh water fish commission or its conservation officers, or which may otherwise come to their knowledge.

History.—§11, ch. 13644, 1929; CGL 1936 Supp. 1977(11).

372.71 Fines and penalties; forfeiture of license.—Any person violating the provisions of this chapter, shall, upon conviction, unless otherwise provided, be fined for the first offense not less than ten dollars nor more than three hundred dollars, or imprisoned not to exceed ninety days, and for a second or subsequent offense shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months. Any person convicted as aforesaid shall forfeit any license or permit that may have been issued to him under the provisions of this chapter and shall forthwith surrender the same to the court. If such violation occurs in the open season no license or permit shall be issued under the provisions of this chapter to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season next following.

History.—§70, ch. 13644, 1929; CGL 1936 Supp. 1977(70); 8092(1).
cf.—§775.06 Alternative punishment.

372.72 Disposition of fines, penalties and forfeitures.—All moneys collected from fines, penalties or forfeitures under this chapter shall go into the fine and forfeiture fund of the county where such convictions are had. The game and fresh water fish commission and its conservation officers shall be allowed for making arrests the same fees as sheriffs, and the same mileage for conveying prisoners, the same to be taxed as costs in the cause, in case of conviction, and paid in the like manner as the compensation of sheriffs, but no fees or mileage shall be allowed in case of acquittal. All mileage and other fees received by the game and fresh water fish commission, or any of its conservation officers under this section, shall be deposited in the state treasury to the credit of the state game trust fund.

History.—§12, ch. 13644, 1929; CGL 1936 Supp. 1977(12); §2, ch. 61-119.
cf.—Ch. 939 Costs.

372.73 Confiscation and disposition of illegally taken game, etc.—All game and fresh water fish seized under the authority of this chapter shall, upon conviction of the offender or sooner if the court so orders, be forfeited and given to some hospital or charitable institution and receipt therefor sent to the commission of game and fresh water fish. All furs or hides or fur-bearing animals seized under the authority of this chapter shall, upon conviction of the offender, be forfeited and sent to the said commission, which shall sell the same and deposit the proceeds of such sale to the credit of the state game trust fund. If any such hides or furs are seized and the offender is unknown, the court shall order such hides or furs sent to the game and fresh water fish commission, which shall sell such hides and furs and deposit the proceeds of such sale to the credit of the state game trust fund.

History.—§66, ch. 13644, 1929; CGL 1936 Supp. 1977(66); §2, ch. 61-119.

372.74 Co-operative agreements with U. S. forest service; penalty.—The game and fresh water fish commission is authorized and empowered:

(1) To enter into co-operative agreements with the United States forest service for the development of game, bird, fish, reptile or fur-bearing animal management and demonstration projects on and in the Osceola national forest in Columbia and Baker counties, and in the Ocala national forest in Marion, Lake and Putnam counties and in the Apalachicola national forest in Liberty county. Provided, however, that no such co-operative agreement shall become effective in any county concerned until confirmed by the board of county commissioners of such county expressed through appropriate resolution.

(2) In cooperation with the United States forest service, to make, adopt, promulgate, amend and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wild life in the above national forests or parts thereof; to shorten seasons and reduce bag limits, or shorten or close seasons on any species of game, bird, fish, reptile, or fur-bearing animal within the limits prescribed by the Florida law, in the above enumerated national forests or parts thereof, when it shall find after investigation that such action is necessary to assure the maintenance of an adequate supply of wild life.

(3) To fix a charge not to exceed five dollars, for persons eighteen years of age and over, and not to exceed two dollars for persons under the age of eighteen years, over and above the license fee for hunting now required by law. This additional fee is to apply only on areas covered by above co-operative agreements. The proceeds from this additional license fee shall be used in the development, propagation of wild life and protection of the areas covered by the co-operative agreements as the commission and the United States forest service may deem proper. Nothing in this section shall be construed as authorizing the commission to change any penalty prescribed by law or to change the amount of general license fees or the general authority conferred by licenses prescribed by law.

(4) Notice of the making, adoption and promulgation of the above rules and regulations shall be given by posting said notices, or copies of the rules and regulations, in the offices of the county judges and in the post offices within the area to be affected and within ten miles thereof. In addition to the posting of said notices, as aforesaid, copies of said notices or of said rules and regulations shall also be published in newspapers published at the county seats of Baker, Columbia, Marion, Lake, Putnam and Liberty counties, or so many thereof as have newspapers, once not more than thirty-five nor less than twenty-eight days and once not more than twenty-one nor less than fourteen days prior to the opening of the state hunting season in said areas. Any person violating any rules or regulations promulgated by the commission to cover these areas under co-operative agreements between the state commission of game and fresh water fish and the United States forest service, none of which shall be in conflict with the laws of Florida, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than three hundred dollars, or imprisonment not to exceed ninety days.

History.—§§1-4, 7, 8, ch. 17939, 1937; CGL 1940 Supp. 1977(117), 3135(9-a); §1, ch. 23090, 1945.
cf.—§775.06 Alternative punishment.

372.75 Use of explosives and other substances prohibited.—No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes.

History.—§29, ch. 13644, 1929; CGL 1936 Supp. 1977(29).

372.76 Search and seizure authorized and limited.—The game and fresh water fish commission and its conservation officers shall have authority when they have reasonable and probable cause to believe that the provisions of this chapter have been violated, to board any vessel, boat or vehicle or to enter any fish-house or warehouse or other building, exclusive of residence, in which game, hides, fur-bearing animals, fish or fish nets are kept and to search for and seize any such game, hides, fur-bearing animals, fish or fish nets had or held therein in violation of law. Provided, however, that no search without warrant shall be made under any of the provisions of this chapter, unless the officer making such search has such information from a reliable source as would lead a prudent and cautious man to believe that some provision of this chapter is being violated.

History.—§30, ch. 13644, 1929; CGL 1936 Supp. 1977(30).

372.77 Assent to provisions of act of congress of September 2, 1937.—

(1) The state hereby assents to the provisions of the act of congress entitled "An Act to provide that the United States shall aid the States in Wildlife Restoration Projects, and for other purposes," approved September 2, 1937 (Public No. 415, 75th Congress), and the game and fresh water fish commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of congress, in compliance with said act and rules and regulations promulgated by the secretary of agriculture thereunder.

(2) From and after the passage of this section it shall be unlawful to divert any funds accruing to the state from license fees paid by hunters for any purpose other than the administration

of the game and fresh water fish commission of the state.

History.—§§1, 2, ch. 20223, 1941.

372.771 Federal conservation of fish and wildlife; limited jurisdiction.—

(1) Consent of the state of Florida is hereby given, to the United States for acquisition of lands, waters, or lands and waters or interests therein, for the purpose of managing, protecting and propagating fish and wildlife and for other conservation uses in the state, providing prior notice has been given by the federal government to the trustees of the internal improvement trust fund, the board of county commissioners of the county where the lands proposed for purchase are located, of such proposed action stating the specific use to be made of and the specific location and description of such lands desired by the federal government for any such conservation use, and that such plans for acquisition and use of said lands be approved by the trustees of the internal improvement trust fund, the board of county commissioners of the county where the lands proposed for purchase are located; provided further that nothing herein contained shall be construed to give the consent of the state of Florida to the acquisition by the United States of lands, waters, or lands and waters, or interests therein, through exercise of the power of eminent domain; provided further that the provisions of this act shall not apply to lands owned by the several counties or by public corporations.

(2) The United States may exercise concurrent jurisdiction over lands so acquired and carry out the intent and purpose of the authority except that the existing laws of Florida relating to the board of conservation or the game and fresh water fish commission shall prevail relating to any area under their supervision.

History.—§§1, 2, ch. 61-242; (1) §2, ch. 61-119.

372.83 Penalties for violation of rules, regulations and orders relating to game and fresh water fish. — Any person violating any rule, regulation or order of the game and fresh water fish commission adopted pursuant to Sec. 30, Art. IV, of the constitution of this state and this chapter shall be guilty of a misdemeanor.

History.—§6, ch. 21945, 1943; §1, ch. 23750, 1947; §11, ch. 25035, 1949; §9, ch. 26766, 1951.

372.84 Forfeiture of licenses, permits, etc.— Any person convicted as aforesaid shall forfeit to the state any license or permit that may have been issued to him under the provisions of this law, or other law of this state relating to game shall forthwith surrender the same to the court. If such violation occurs in the open season, relating to game, no license or permit shall be issued under the provisions of this law to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season on game next following.

History.—§7, ch. 21945, 1943.

372.85 Contaminating fresh waters.—

(1) It shall be unlawful for any person or persons, firm or corporation to cause any dyestuff, coal tar, oil, sawdust, poison or deleterious substances to be thrown, run or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish which may inhabit the same at or below the point where any such substances are discharged, or caused to flow or be thrown into such waters; provided, that it shall not be a violation of this section for any person, firm or corporation engaged in any mining industry to cause any water handled or used in any branch of such industry to be discharged on the surface of land where such industry or branch thereof is being carried on under such precautionary measures as shall be approved by the game and fresh water fish commission.

(2) Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined for the first offense not less than one hundred dollars or more than three hundred dollars, or imprisonment not to exceed ninety days, or be both fined and imprisoned in the discretion of the court, and for the second or subsequent offense shall be fined not less than two hundred dollars or more than five hundred dollars, or imprisoned not more than six months.

History.—§§1, 2, ch. 22009, 1943.
cf.—§§533.01-533.06 Waste from mines escaping into waters of the state.

372.86 Possessing, exhibiting poisonous or venomous reptile; license required.—No person, firm or corporation shall keep, possess or exhibit any poisonous or venomous reptile without first having obtained a special permit or license therefor from the Florida game and fresh water fish commission as herein provided.

History.—§1, ch. 28263, 1953.

372.87 License fee; renewal, revocation.— The Florida game and fresh water fish commission is hereby authorized and empowered to issue a license or permit for the keeping, possessing or exhibiting of poisonous or venomous reptiles, upon payment of an annual fee of five dollars and upon assurance that all of the provisions of §§372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Florida game and fresh water fish commission upon violation of any of the provisions of § § 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the keeping, possessing and exhibiting of any poisonous and venomous reptiles. Such permits or licenses shall be for an annual period to be prescribed by the said commission and shall be renewable from year to year upon the pay-

ment of said five dollars fee and shall be subject to the same conditions, limitations and restrictions as herein set forth.

History.—§2, ch. 28263, 1953.

372.88 **Bond required, amount.**—No person, party, firm or corporation shall exhibit to the public either with or without charge, or admission fee any poisonous or venomous reptile without having first posted a good and sufficient bond in writing in the penal sum of one thousand dollars payable to the governor of the state, and his successors in office, conditioned that such exhibitor will indemnify and save harmless all persons from injury or damage from such poisonous or venomous reptiles so exhibited and shall fully comply with all laws of the state and all rules and regulations of the Florida game and fresh water fish commission governing the keeping, possessing or exhibiting of poisonous or venomous reptiles; provided, however, that the aggregate liability of the surety for all such injuries or damages shall, in no event, exceed the penal sum of said bond. The surety for said bond must be a surety company authorized to do business under the laws of the state or in lieu of such a surety, cash in the sum of one thousand dollars may be posted with the said commission to insure compliance with the conditions of said bond.

History.—§3, ch. 28263, 1953.

372.89 **Safe housing required.** — All persons, firms, or corporations licensed under this law to keep, possess or exhibit poisonous or venomous reptiles shall provide safe, secure and proper housing for said reptiles in cases, cages, pits or enclosures. It shall be unlawful for any person, firm or corporation, whether licensed hereunder or not, to keep, possess or exhibit any poisonous or venomous reptiles in any manner not approved as safe, secure and proper by the Florida game and fresh water fish commission.

History.—§4, ch. 28263, 1953; §1, ch. 57-415.

372.90 **Transportation.** — Poisonous or venomous reptiles may be transported only in the following fashion: The reptile, or reptiles shall be placed in a stout closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which holes shall be screened. Boxes containing poisonous or venomous snakes or other reptiles shall be prominently labeled "Danger—Poisonous Snakes" or "Danger—Poisonous Reptiles."

History.—§5, ch. 28263, 1953; §1, ch. 57-415.

372.901 **Inspection.** — Poisonous or venomous reptiles, held in captivity, shall be subject to inspection by an inspecting officer from the Florida game and fresh water fish commission. The inspecting officer shall determine whether the said reptiles are securely, properly and safely penned. In the event that the reptiles are not safely penned, the inspecting officer shall report the situation in writing to the person or firm owning the said reptiles. Failure of the owner or exhibitor to correct the situation within thirty days after such written notice shall be grounds for revocation of the license or permit of said owner or exhibitor.

History.—§2, ch. 57-415.

372.91 **Opening cages, etc., housing poisonous or venomous reptiles.**—No person except the licensee or his authorized employee shall open any cage, pit or other container which contains poisonous or venomous reptiles.

History.—§7, ch. 28263, 1953.

372.911 **Penalty.**—Any person violating any provision of this chapter shall be guilty of a misdemeanor and subject to the punishment as provided by law. The game and fresh water fish commission is authorized to offer rewards of up to five hundred dollars to any person furnishing information leading to the arrest and conviction of any person who has inflicted or attempted to inflict bodily injury upon any wildlife officer engaged in the enforcement of the provisions of this chapter or the rules and regulations of the game and fresh water fish commission.

History.—§2, ch. 57-415; §1, ch. 59-352.

372.92 **Rules and regulations.**—The Florida game and fresh water fish commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of poisonous and venomous reptiles, either in connection of construction of such cages or otherwise to carry out the intent of § § 372.86-372.91.

History.—§6, ch. 28263, 1953.

372.931 **Hyacinth control.**—The commission shall have the authority to cooperate with the United States and to enter into and make such cooperation agreements or commitments as the commission may determine necessary to carry out the eradication of the water hyacinth, alligator weed and other noxious aquatic plant growths from the waters of the state, and to enter into contracts with the United States obligating the state to indemnify and save harmless the said United States from any and all claims and liability arising out of the initiation and prosecution of any project undertaken under this section; provided however any claim or claims required to be paid under this section shall be paid from money appropriated to the hyacinth control program.

History.—§1, ch. 59-196.

372.97 **Jim Woodruff dam; reciprocity agreements.**—The game and fresh water fish commission of the state is hereby authorized to enter into an agreement of the reciprocity with the game and fish commissioners or the appropriate officials or departments of the state of Georgia and the state of Alabama relative to the taking of game and fresh water fish from the waters of the lake created by the Jim Woodruff dam by permitting reciprocal license privileges.

History.—§1, ch. 57-193.

372.971 St. Mary's river; reciprocity agreements.—The game and fresh water fish commission of the state is hereby authorized to enter into an agreement of reciprocity with the game and fish commissioner or the appropriate officials or departments of the state of Georgia relative to the taking of game and fresh water fish from the waters of the St. Mary's river by permitting reciprocal agreement license privileges.

History.—§1, ch. 61-523.

372.98 Possession of nutria, license, inspection, penalty for violation.—

(1) No person shall release, permit to be released, or be responsible for the release of, within the state, any animal of the species myocastor coypu and known commonly in Florida and referred to herein as nutria.

(2) No person shall have in his possession for sale or otherwise any nutria until such person has obtained a license as provided herein. The fee for such license shall be twenty-five dollars per year. Application for such license shall be made with the game and fresh water fish commission on forms providing therefor.

(3) All persons licensed under this law to keep, possess or exhibit nutria shall provide safe, secure and proper housing for said nutria which will adequately safeguard against the escape of any nutria. Requirements for the construction of such pens or housing shall be as prescribed by the game and fresh water fish commission.

(4) All premises upon which nutria are kept shall be subject to inspection by authorized representatives of the game and fresh water fish commission. Such officers shall determine whether the said nutria are securely, properly and safely housed. In the event the said nutria are not securely, properly and safely housed, the inspecting officer shall so advise in writing the person owning said nutria. Failure of the owner to provide within thirty days after such written notice secure, proper, and safe housing as prescribed by the game and fresh water fish commission shall be grounds for revocation of the license herein provided and confiscation and disposal of the said nutria as a public nuisance.

(5) Any person violating any provision of this section or any rule and regulation of the game and fresh water fish commission pursuant hereto shall be guilty of a misdemeanor and subject to punishment as provided by law.

History.—§§1-5, ch. 59-398.

CHAPTER 373*

STATE BOARD OF CONSERVATION; GEOLOGICAL DEPARTMENT; WATER RESOURCES DEPARTMENT; WEATHER MODIFICATION

373.011 Geological department.—

(1) PERSONNEL.—The board shall through the director of the division of geology employ such suitable persons, as in the judgment of the board may be necessary to conduct the geological survey of the state.

(2) DISBURSEMENTS; SURVEY EXPENSES.—For the purpose of expeditiously and thoroughly carrying out the geological survey, there shall be included a sufficient appropriation in the biennial general appropriations act. The comptroller shall, upon the requisition of the geological department, when approved by the governor, draw his warrant on the treasurer for the amount so appropriated in such sums as may be needed from time to time for the purpose of said survey as herein set forth; and for all such expenditures, the consent and approval of the governor shall be obtained, and the vouchers for all such expenditures made from this fund shall be filed with the comptroller; a statement of his receipts and expenditures shall be printed in such annual report of the geological department. The amount annually appropriated, or so much thereof as may be necessary, shall be expended for the salaries and for the contingent expenses of the survey, including compensation of all temporary and permanent assistance; traveling expenses of the geological department, purchase of materials or other necessary expenses for outfit; expenses incurred in providing for the transportation, arrangement and proper exhibition of the geological and other collections made under the provisions of this law, for postage, stationery and printing and the printing and engraving of maps, and sections to illustrate the annual reports.

(3) DUTIES.—The geological department of the board shall make annually to the governor a report of the progress of its surveys and explorations of minerals, water supply and other natural resources of the state, and shall include in such report full description of such surveys and explorations, occurrences and location of mineral and other deposits of value, surface and subterranean water supply and power and mineral waters, and the best and most economical method of development, to-

*§370.02 reorganizes state board of conservation into six divisions: administration, salt water fisheries, water resources and conservation, waterways development, geology and beaches and shores. Said divisions to enforce: administration, weather modification, §§373.261-373.391, and archaeology, ch. 376; salt water fisheries, ch. 370; water resources and conservation, §§373.021-373.241, and flood control districts, ch. 378; waterways development, ch. 374; and geology, §§373.011-373.012; ch. 377, conservation of oil and gas resources.

gether with analysis of soils, minerals and mineral waters, with maps, charts and drawings of the same.

(4) COLLECTION OF GEOLOGICAL SPECIMENS.—The geological department shall make collections of specimens illustrating the geological and mineral features of the state; one suit of which shall be deposited in the office of the said geological department, at Tallahassee and duplicate suits in the libraries of each of the state colleges; each suit shall be correctly labeled for convenient use and study.

(5) NOTIFYING OWNER OF DEPOSITS LOCATED.—The person in charge of the state geological department and his assistants, when they discover any mineral deposits, or other substance of value shall notify the owner of the land upon which such deposits occur. Failure to notify the owner of such deposit before disclosing the same to any other person shall subject the person, so failing, to a fine not exceeding one thousand dollars and imprisonment not exceeding six months.

(6) CHEMICAL ANALYSIS BY STATE CHEMIST.—All chemical, analytical or assay work shall be performed by the state chemist and his assistants at the direction of the governor upon request of the geological department of the board.

History.—§2, ch. 28145, 1953; (1) §4, ch. 61-231.

Note.—Similar provisions in former §§373.16-373.21 and 370.04. cf.—§775.06, Alternative punishment.

373.012 Topographic mapping.—

(1) In order to accelerate topographic mapping in this state by the United States geological survey, the state road department is hereby authorized and directed to set aside, to pledge, and to make available annually out of its state roads trust fund the sum of thirty thousand dollars; and the trustees of the internal improvement trust fund are hereby authorized and directed to set aside, to pledge and to make available annually out of the internal improvement trust fund the sum of ten thousand dollars; and the central and southern Florida flood control district, out of its funds to be derived out of the proceeds of special assessments of its flood control taxes, is authorized and directed to set aside, to pledge and to make available annually such sum as may be required to meet the needs for topographic mapping of areas affecting said district. Such sums shall be delivered to the treasurer of the United States or to other proper officer, to be applied by the department of the interior, U. S. geological survey, as to said state road department and to said trustees, toward the payment of not exceeding one-half the cost of standard topographic mapping in this state conducted by the United States geological survey and as to said flood control district to be applied toward the payment of such proportion or part of such cost as said district may determine. Provided, however, that said sums authorized in this section for the state road department and for the trustees of the internal improvement trust fund shall not prevent either of said agencies from providing additional amounts for topographic mapping of areas which either agency may consider of priority status in the interest of said agencies.

(2) To further accelerate the rate at which topographic mapping may be carried on in Florida, any state agency having funds available for the purpose, any county or drainage or reclamation or flood control district organized under the laws of this state, any person, firm or corporation, is authorized to contribute to the cost of such mapping by depositing with the state road department such amounts as may be determined to be applied in like manner toward topographic mapping in this state as set forth in subsection (1).

(3) The state road department of Florida, the trustees of the internal improvement trust fund of this state, and central and southern Florida flood control district are hereby authorized to make such arrangements or enter into such agreements with the United States as may be necessary to carry out the purposes of this section.

(4) The commissioner of agriculture of this state, as and when copies of topographic maps are made available to him, shall file maps in the same manner as other plats and maps of the land surveys by the United States, and said maps shall be available for examination by any interested person, and said commissioner may supply duplicates or photostat copies thereof to persons applying therefor for a charge to be determined by said commissioner.

History.—§§1-4, ch. 57-775; (1), (3) §2, ch. 61-119.

373.021 Definitions, §§373.031-373.061; artesian wells.—

(1) An artesian well is defined as an artificial hole in the ground from which water supplies may be obtained and which penetrates any water bearing rock, the water in which is raised to the surface by natural flow, or which rises to an elevation above the top of the water bearing bed. Artesian wells are defined further to include all holes, drilled as a source of water, that penetrate any water bearing beds that are a part of the artesian water system of Florida, as determined by representatives of the Florida geological survey or water resources division.

(2) Waste is defined to be the causing, suffering or permitting any water flowing from, or being pumped from an artesian well to run into any river, creek, or other natural watercourse or channel, or into any bay or pond (unless used thereafter for the beneficial purposes of irrigation of land, mining or other industrial purposes of domestic use), or into any street, road or highway, or upon the land of any person, or upon the public lands of the United States, or of the state, unless it be used thereon for the beneficial purposes of the irrigation thereof, industrial purposes, domestic use, or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land shall be restricted

to a minimum by the use of proper structural devices in the irrigation system.

History.—§§3, 4, ch. 28253, 1953; (1) §1, ch. 59-248.
Note.—Formerly §370.051.

373.031 Artesian wells; flow regulated.—Every person, stock company, association or corporation, county or municipality, owning or controlling the real estate upon which is located a flowing artesian well in this state, shall, within ninety days after June 15, 1953, provide each such well with a valve capable of controlling the discharge from such well, and shall keep such valve so adjusted that only such supply of water shall be available as is necessary for ordinary use by the owner, tenant, occupant or person in control of said land for personal use and in conducting his business.

History.—§1, ch. 28253, 1953.
Note.—Formerly §370.052.

373.041 Artesian wells; penalties for violation.—The owner, tenant, occupant or person in control of an artesian well who shall allow the same to flow continuously without a valve, or mechanical device for checking or controlling the flow, or shall permit the water to flow unnecessarily, or shall pump a well unnecessarily, or shall permit the water from such well to go to waste, shall be guilty of a misdemeanor and subject to the penalties provided by law.

History.—§2, ch. 28253, 1953.
Note.—Formerly §370.053.
cf.—§775.07, Punishment for misdemeanors.

373.051 Procedure where artesian wells not capped.—

(1) The water resources department through its duly authorized agents shall have access to all wells in the state with the consent of the owner.

(2) Should any well be not provided with a valve as required in §373.031, or should any well be allowed to flow in violation of §373.041, then and in such event the water resources division through its duly authorized agents shall, upon being informed of such fact, give notice to the owner to correct such defect, and if the same be not corrected within ten days thereafter, shall have authority to install the necessary valve or cap upon such well and control the flow therefrom in accord with the provisions of §§373.031 and 373.041.

(3) The cost of such installation of such valve and the control of the flow from such wells if made by such officials shall be at the expense of the owner, and for the payment thereof, the agency or party incurring the expense shall have a lien upon the lands upon which such well is located. Said lien may be duly recorded in the public records in counties wherein such lands are located and may be enforced by foreclosure in the circuit courts of the circuit wherein such lands are located. In such foreclosure proceedings, the court shall allow a reasonable attorney's fee to the plaintiff for the preparation and recording of such lien and the legal proceedings incident to the foreclosure of same. Such liens shall be assignable both before and after recording, and the assignee thereof shall have all authority of foreclosure which the assignor thereof originally had.

History.—§5, ch. 28253, 1953; (1), (2) §2, ch. 59-248.
Note.—Formerly §370.054.

373.061 Certain artesian wells exempt.—Nothing in §§373.021-373.051 shall be construed to apply to an artesian well feeding a lake already in existence prior to June 15, 1953, which lake is used or intended to be used for public bathing and/or the propagation of fish, where the continuous flow of water is necessary to maintain its purity for bathing and the water level of said lake for fish.

History.—§6, ch. 28253, 1953.
Note.—Formerly §370.055.

373.071 Water resources law.—Sections 373.071 through 373.251 shall be known and cited as the "water resources law."

History.—§1, ch. 57-380.

373.072 Declaration of policy.—In view of the rapid growth of population, agriculture, industry, and other economic activities, the water resources of the state must be protected, conserved, and controlled to assure their reasonable and beneficial use in the interest of the people of the state. Therefore, it is declared to be the policy of the state that:

(1) Waters in the state are a natural resource.

(2) The ownership, control of development and use of waters for all beneficial purposes is within the jurisdiction of the state which in the exercise of its powers may establish measures to effectuate the proper and comprehensive utilization and protection of the waters.

(3) The changing wants and constantly increasing needs of the people of the state may require the water resources of the state to be put to beneficial uses to the extent of which they are most reasonably capable and therefore the waste and unreasonable use of water should be prevented and the conservation of water should be accomplished.

(4) The public welfare and interest of the people of the state require the proper development, wise use, conservation and protection of water resources together with the protection of land resources affected thereby.

(5) Increasing diversion of surface and subsurface water in certain parts of the state is exceeding or threatening to exceed the natural replenishment of such waters and threatens to exhaust such waters or to render them unfit for use by intrusion of salt water, or from other causes. It is to the interest of the citizens of the state to conserve such waters by allocating their use in a fair and equitable manner.

(6) The foregoing declarations of policy shall not be construed to amend or modify the provisions of §373.101.

History.—§1, ch. 63-336.

373.081 Definitions.—When appearing in this law or in any rule or regulation adopted pursuant thereto, the following words shall mean:

(1) Board or state board—The state board of conversation.

(2) Division—The water resources division.

(3) Local board—The governing board of any water regulatory district created under the authority of this chapter.

(4) Water management district—Any flood control or water management district operating under the authority of chapter 378.

(5) Water regulatory district—Any water control body created under the authority of this chapter.

(6) Beneficial use—A use of water, including the method of diversion, storage, transportation, and application, that is reasonable and consistent with property rights and with the public interest in the proper utilization of water resources, including, but not limited to, domestic, agricultural, industrial, power, municipal, navigational, fish and wildlife, and recreational use.

(7) Water, or water resources—Surface water excluding lakes or ponds completely surrounded by land the title to which is vested in a single owner or in two or more cotenants, joint tenants or tenants by the entireties; and ground water.

(8) Average minimum flow—When required for the purposes of this law, the division shall determine and establish the average minimum flow for a given water-course at a given point thereon. The average minimum flow as used in this law shall be the average of the minimum thirty-day flow occurring during each of the five lowest calendar years in the period of the preceding twenty consecutive years. The determination shall be based upon available flow data, supplemented, when available flow data are incomplete, by reasonable calculations.

(9) Average minimum level—When required for the purposes of this law, the division shall determine and establish the average minimum level for a given lake. The average minimum level as used in this law shall be the average of the minimum thirty-day lake water level occurring during each of the five lowest calendar years in the period of the preceding twenty consecutive years. The determination shall be based upon available lake-level data, supplemented, when available lake-level data are incomplete, by reasonable calculations.

(10) Average minimum elevation—When required for the purposes of this law, the division shall determine and establish the average minimum elevation for ground water at a given point. The average minimum elevation as used in this law shall be the elevation which is one-half of the distance between mean sea level and the average ground-water elevation occurring during the period of the preceding twenty consecutive years. The determination shall be based upon available ground-water elevation data, supplemented, when available ground-water elevation data are incomplete, by reasonable calculations.

History.—§2, ch. 57-380; §2, ch. 63-336.

373.091 Exemptions.—No provision of §§373.081-373.251 shall apply to:

(1) Individual users of water for domestic purposes or ordinary livestock consumption.

(2) That part of rivers or streams which constitute the boundary of the state of Florida or which may divide the lands of the state of Florida from any other state.

(3) Control of water-borne wastes from municipalities or industries.

History.—§3, ch. 57-380.

373.101 Purpose; preservation of existing rights and specific limitations.—The purposes of this law are to implement the declared water policy of this state by effecting the maximum beneficial utilization, development and conservation of the water resources of the state in the best interest of all its people and to prevent the waste and unreasonable use of said resources; however, the present property rights of persons owning land and exercising existing water rights appertaining thereto shall be respected and such rights shall not be restricted without due process of law nor divested without payment of just compensation; and there shall be no authorization to divert water from springs (or downstream therefrom), now developed and operated for recreational purposes or as tourist attractions, to a degree that will materially interfere with such use.

History.—§4, ch. 57-380.

373.131 General powers and duties of division.—The division shall have the following general powers and duties:

(1) To conduct in cooperation with the division of geology and other agencies a continuous study by research and otherwise to determine the most advantageous and best methods for obtaining maximum beneficial utilization, development and conservation of the water resources of Florida and to make periodic reports to the board of its findings and recommendations for transmission to the legislature.

(2) To collect, compile and analyze for its use and guidance in administering the water resources law of this state scientific and factual data from the United States geological survey, the division of geology, the state board of health, the agricultural experiment station, the engineering and industrial experiment station and other federal and state agencies, and such state agencies are directed to cooperate with the division or its agents in making available to it for this purpose such scientific and factual data as they may have.

(3) To cooperate with water management districts, county or other local governmental organizations or agencies created by general, special or local legislation for the purpose of utilizing and conserving the waters of this state and to assist such organizations and agencies in coordinating the use of their facilities and in an exchange of ideas, knowledge and data,

and such organizations and agencies are directed to cooperate with the division in accomplishing this coordination and exchange.

(4) To prepare and provide for the dissemination to the public of current and useful information on the activities and findings of the board and cooperating agencies.

(5) To determine and keep current by continuing study the areas of the state in which salt water intrusion is a threat, or may become a threat to the fresh water resources, and to report its findings to boards of county commissioners and to the public where such studies are made.

History.—§7, ch. 57-380; §7, ch. 61-231; (5) n. §1, ch. 63-210.

373.141 Authorization for capture, storage, and use of water.—

(1) The board is empowered to authorize the capture, storage and use of water of any watercourse only in excess of average minimum flow at the point of capture, except in those instances where hydrologic studies indicate that lowering the ground-water level below the average minimum elevation at the point of capture will not be detrimental to other users, or the water resources of the state, to authorize the capture, storage and use of water of any lake only in excess of average minimum level; to authorize the capture, storage and use of ground water only in excess of average minimum elevation at the point of capture; and to authorize the diversion of such waters beyond riparian or overlying land; provided that such capture, storage, use or diversion of water from a surface or ground water source will not interfere with the reasonable uses existing at the time of the beginning of the capture, storage, use or diversion.

(2) The board may authorize the governing body of any legally constituted district concerned with the management of water to perform within the boundaries of said district any of the activities which the board is empowered to perform by subsection (1) of this section.

History.—§8, ch. 57-380; §3, ch. 63-336.

373.142 Water regulatory districts.—

(1) The board may create or dissolve anywhere within the state, or any water management district may create or dissolve within the area subject to its jurisdiction, water regulatory districts as necessary to serve the purposes of this law. No district shall be dissolved except by the creating agency of such district. No district shall be created or dissolved except pursuant to notice and hearing. A hearing may be called by the board or the water management district:

(a) Upon petition from the board of county commissioners of any county or the boards of county commissioners of any combination of counties in this state as may be wholly or partly within any area proposed to be established as a district; or

(b) Upon petition signed by twenty-five per cent of the freeholders of any territory proposed to be established as a district, according to the most recent list of registered freeholders as disclosed by the records of the office of the supervisor of registration of the counties affected; or

(c) Upon a determination by the board or water management district after investigation that a necessity exists for such action.

(2) No district shall be created or dissolved by the board or the board of a water management district unless the necessity therefor to accomplish the purposes set forth in §373.101 is established by a preponderance of evidence at the hearing. The findings of fact on which the action is based shall be set forth in an opinion of the hearing officer.

(3) Any water regulatory district created under the authority of this section shall conform as nearly as practicable to a hydrologically controllable area based on ground water and recharge area with appropriate consideration for surface water.

History.—§4, ch. 63-336.

373.143 Presentation of petitions.—Petitions provided by §373.142(1)(a) and (b) shall be presented to the governing body of the water management district in the event the territory comprising the proposed district lies within the boundaries of a water management district; otherwise, it shall be presented to the board. Should the governing board of the water management district deny or elect not to consider any petition presented to it under this section, the petitioners may present the petition to the state board.

History.—§5, ch. 63-336.

373.144 Water regulatory district; governing board.—

(1) In the event a water management district after hearing held on petition presented pursuant to §373.143, determines the need exists for the creation of the district, the governing board of the water regulatory district so created may be either the governing board of the water management district or any lesser board or boards under its jurisdiction, as determined by the water management district. In the event that no appropriate lesser board within the water management district is available, the governing board of the water management district may request the governor to appoint a local board under the provisions of subsection (2) of this section. If the governing board of a water regulatory district is a lesser board, or a board appointed by the governor at the request of the water management district, the rules, regulations, and orders of such board shall be subject to the approval of the governing board of the water management district.

(2) In the event the state board after hearing held on petition filed pursuant to §373.143 determines the need exists for the creation of the water regulatory district petitioned, the governor shall appoint a local board for the district consisting of five members who are residents and freeholders of the district. Members shall serve for terms of three years except

that the first board shall be appointed two for three years, two for two years and one for one year. Members of such local board shall serve without compensation but shall be entitled to receive actual traveling expenses, per diem as provided by §112.061, and other actual expenses necessarily incurred in the performance of official duties.

History.—§5, ch. 63-336.

373.151 Hearing; notice; record.—

(1) Notice shall be published of any hearing to be held as provided in §§373.142 and 373.171, other than those described in subsection (2) of this section, once a week for two weeks in a newspaper or newspapers published in and having a general circulation in every county in the district or proposed district. In the event there is no newspaper published in the appropriate county or counties, publication shall be made in a paper having general circulation in the county or counties affected. The notice shall state the purpose, time and place of the hearing.

(2) In the case of any proceeding under §373.171, pursuant to which a local board issues an order to a named person or persons, natural or artificial, affecting such person's use of water, rather than an order of general applicability and future effect, in lieu of the notice provided in subsection (1), of this section the local board shall give notices at least ten days prior to such hearing to such person or persons by personal service or registered or certified mail, stating the time and place of such hearing and the proposed action concerning his use of water.

(3) All hearings pertaining to the creation or dissolution of a water regulatory district shall be held by the board or the water management district as the case may be, or by such persons as the board or district may designate. All hearings required by this law pertaining to rules, regulations and orders shall be held by the local board.

(4) Accurate records of the proceedings had and all evidence introduced at all hearings shall be preserved.

History.—§9, ch. 57-380; §6, ch. 63-336.

373.171 Rules and regulations.—

(1) In order to obtain the most beneficial use of the water resources of the state and to protect the public health, safety, and welfare and the interests of the water users affected, local boards by action not inconsistent with the other provisions of this law and without impairing property rights may:

(a) Establish rules, regulations, or orders, affecting the use of water as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area;

(b) Regulate the use of water within the affected area by apportioning, limiting or rotating uses of water, or by preventing those uses which the local board finds have ceased to be reasonable or beneficial.

(c) Make other rules, regulations, and orders necessary for the preservation of the interests of the public and of affected water users.

(2) In promulgating rules and regulations and issuing orders under this law the local board shall act with a view to full protection of the existing rights to water in this state insofar as is consistent with the purpose of this law.

(3) No rule, regulation or order shall require any modification of existing use or disposition of water in the district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or to the water resources of the state.

(4) No rule or regulation, other than a rule or regulation relating solely to the internal management of any such board, and no order shall be adopted, promulgated, issued, amended, or repealed except after a public hearing pursuant to notice as provided in §373.151. No rule or regulation shall be adopted, issued, amended or repealed unless a need for such action is shown by a preponderance of the evidence presented at the public hearing.

(5) All rules and regulations adopted by the local board shall be filed with the secretary of state as provided in part 1, chapter 120. An information copy will be filed with the division of water resources.

History.—§11, ch. 57-380; §8, ch. 63-336.

373.172 State water resources appeal board; review of orders of local boards in adversary proceedings.—

(1) There is hereby created a state water resources appeal board consisting of five members, residents of Florida, none of whom shall be officers or employees of the state or any county or municipality or any department, division or agency thereof, at least one of whom is a qualified geologist with hydrological training or experience and one of whom is a qualified engineer with hydrological training or experience, and one of whom is a member of the Florida bar. Members of the board shall be appointed by the governor for terms of three years, and he shall designate one of the members so appointed as chairman; provided members of the first board shall be appointed for the following terms: one member, one year; two members, two years; and two members, three years.

(2) Members of the board shall serve without compensation but shall be entitled to receive their actual travel, subsistence and lodging expenses incurred while performing their official duties, provided said expense shall not exceed the amount provided by §112.061, for state officers and employees. Such expenses shall be paid from funds appropriated for the board of conservation and allocated to the division of administration of said board.

(3) (a) Any party aggrieved by the final order of a local board entered in any proceed-

ing shall have the right to review of such order by the appeal board created by this section.

(b) Such review may be had by, and only by, filing a notice of appeal within sixty days from and after the date of the entry of the order appealed from. The notice of appeal shall be filed with the director of the state board, and copies sent to the local board and other parties to the original proceeding. Within thirty days after receipt of such notice, the local board shall file with the appeal board a copy of the record of the proceedings had before it, and all the evidence introduced in such proceeding. This shall constitute the record on appeal. A copy of the record on appeal shall be provided all parties to the appeal upon payment by them to the local board of the reasonable cost of such copy.

(c) The appeal board shall review the record on appeal for the purpose of determining whether the order entered by the local board conforms with the provisions and purposes of this act and that the order is in accordance with the weight of the evidence. Any party to the appeal, and the local board, may file written briefs with the appeal board, and when any party to the proceeding so requests may present oral argument.

(d) On the basis of its review the appeal board may affirm the order, modify the order, rescind the order or remand the order to the local board for further proceedings. When remanding the order to the local board for further proceedings, the appeal board may request the appropriate division of the board of conservation to furnish to the local board such additional information and data as it deems necessary for the determination of the matter to be introduced in evidence and considered in determining the matter.

History.—§9, ch. 63-336.

373.173 Judicial review.—

(1) In the case of any action taken on the basis of any proceeding conducted by the state board, the governing board of a water management district, or a local board, any person, natural or artificial, aggrieved by such action shall have the right to appeal such decision to the district court of appeals in which a major portion of the regulatory district lies; provided that an appeal shall have been first taken to the appeal board as provided in §373.172.

(2) Such review may be had by, and only by, filing a notice of appeal within sixty days from and after the date of the entry of the order of the appeal board. The said notice of appeal shall be filed with the director of the state board and a copy of it filed with the clerk of the district court to which returnable.

(3) The proceeding in court shall be confined to an examination of the record of the proceedings under this law, and no presumption shall be indulged as to the correctness of the action of any state board, appeals board or local board hereunder in creating or dissolving a water district or in adopting, repealing or amending any rule or regulation or in determining the reasonableness thereof. The provisions of chapter 59 shall be applicable to such appeals insofar as the same may be applied. The original record of the appeal board in the cause may be transmitted to the court in accordance with the procedure set forth in §59.27 (4).

History.—§10, ch. 63-336.

373.174 Board; supervisory power over regulatory districts.—The board of conservation shall have general supervisory authority over all water regulatory districts created under this act. On recommendation of the director of the board of conservation, the state board may review any rule, regulation, order, or budget adopted by a local board, and modify or rescind such rule, regulation, order or budget to insure compliance with the provisions and purposes of this act.

History.—§11, ch. 63-336.

373.181 Conduct of hearings, witnesses.—

(1) For the purpose of any hearing authorized by this law the appropriate board is authorized to administer oaths to witnesses and to require the production of books, papers or other documents; may issue subpoenas to compel witnesses to testify and produce such books, papers or other documents (excluding financial records) in their possession as may be in the opinion of said board relevant to any hearing before it; said subpoenas to be served by the sheriff of the county where the witness resides or may be found. Such witnesses shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court which shall be paid by the board holding the hearing.

(2) If any person shall refuse to obey any subpoena as issued or shall refuse to testify or produce any books, papers or other documents required by the subpoena, the board conducting the hearing may present its petition to the circuit court of the county where any such person is served with the subpoena, or where he resides, setting forth the facts, and shall deposit with said court when such subpoena is issued in its behalf, the per diem and mileage to secure the attendance of such witness; whereupon the court shall issue its rule nisi to such person requiring him to obey the same and unless the person shows sufficient cause for failing to obey the said subpoena, the court shall direct such person to obey the same and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§12, ch. 57-380; §12, ch. 63-336.

373.182 Water regulatory districts; costs of organizing and administering.—

(1) In the event a water regulatory district is created within a water management district, the cost and expenses incurred in organizing and administering said regulatory district shall be borne by the water management district or its basins or subdistricts from moneys collected by their existing taxing power.

(2) In the event a water regulatory district

is created outside of a water management district the cost and expenses incurred in organizing and administering said regulatory district shall be paid out of the flood control account of the board of conservation.

History.—§13, ch. 63-336.

373.191 County water conservation projects.—The several counties of the state may cooperate with the board by engaging in county water development and conservation projects and may use county funds and equipment for this purpose and to do all other things necessary in connection with the development and conservation of the county's water resources consistent with the provisions of this law and the rules and regulations adopted pursuant thereto.

History.—§13, ch. 57-380.

373.192 Annual conference on water resources development programs.—

(1) POLICY AND PURPOSE.—The purpose of this act is to establish a method whereby all agencies, commissions, districts, municipalities and political subdivisons, which are eligible to receive federal funds for such projects, may join together in presenting a unified program of water related public works in Florida for federal cooperation or assistance. It is recognized that recent efforts in unifying Florida programs at the national level have met with increasing success and this act is intended only as a further implementation of these efforts. It is urged that the governor's conference on water resources developments and the conference provided by this act be one and the same conference.

(2) The board of conservation shall once each year hold a conference on water resources developmental programs. Each agency, commission, district, municipality or political subdivision of the state, responsible for a specific water resource development program which will require federal assistance, shall be given an opportunity at such conference to present its programs and projects and the needs thereof.

(3) Upon the termination of the water conference, it shall be the duty of the board of conservation to select those projects for presentation in the Florida program, which best represents the public welfare and interest of the people of the state as required for the proper development, wise use, conservation and protection of water resources with the protection of land resources affected thereby.

(4) Upon making the determination as set forth in the above section, the board of conservation shall present to the appropriate committees of the federal government, a program of public works for Florida, requesting authorization or funds for each project.

(5) Nothing contained in this act shall be construed as limiting the powers and authorities of any agency, commission, district, municipality or political subdivision of the state, and nothing contained herein is intended to prohibit or prevent any such group from individually presenting their own request for federal assistance.

History.—§§1-5, ch. 63-307.

373.193 Southeast river basins resources advisory board.—

(1) The governor of this state shall have authority to appoint a representative of this state to serve on the resources advisory board, southeast river basins, as said board is now, or may hereafter be, authorized, designated, and constituted. This power of appointment shall include the authority to fill vacancies in the position of representative of this state on said board from whatever cause existing and, from time to time, to make appointments for successive terms.

(2) The representative of this state on said board shall be reimbursed by this state for his necessary travel expenses while engaged in the business of said board, as provided by §112.061.

(3) For the purpose of paying Florida's pro rata share of the expense of maintaining and operating the resources advisory board; southeast river basin, the board of conservation is hereby authorized to expend an amount not in excess of fifteen thousand dollars per annum out of moneys allocated the division of administration of the board of conservation.

History.—§§1-3, ch. 63-407.

373.194 Salt water barrier line.—

(1) The board may, at the request of the board of county commissioners of any county, at the request of the governing board of any water management district, or any municipality or water district responsible for the protection of a public water supply, or, having determined by adoption of an appropriate resolution that salt water intrusion has become a matter of emergency proportions, by its own initiative, establish generally along the seacoast, inland from the seashore and within the limits of the area within which the petitioning board has jurisdiction, a salt water barrier line inland of which no canal shall be constructed or enlarged, and no natural stream shall be deepened or enlarged, which shall discharge into tidal waters without a dam, control structure or spillway at or seaward of the salt water barrier line, which shall prevent the movement of salt water inland of the salt water barrier line. Provided, however, that the board of conservation is authorized, in cases where salt water intrusion is not a problem, to waive the requirement of a barrier structure by specific permit to construct a canal crossing the salt water barrier line without a protective device and provided, further that the agency petitioning for the establishment of the salt water barrier line shall concur in the waiver.

(2) Application by a board of county commissioners or by the governing board of a water management district, a municipality or a water district for the establishment of a salt water barrier line shall be made by adoption of an appropriate resolution, agreeing to:

(a) Reimburse the board of conservation the cost of necessary investigation, including, but not limited to, subsurface exploration by drilling, to determine the proper location of the salt water barrier line in that county or in all or part of the district over which the applying agency has jurisdiction.

(b) Require compliance with the provisions of this law by county or district forces under their control; by those individuals or corporations filing plats for record and by individuals, corporations or agencies seeking authority to discharge surface or subsurface drainage into tidal waters.

(3) The board of county commissioners of any county or the governing board of any water management district, municipality or water district desiring to establish a salt water barrier line is authorized to reimburse the board of conservation for any expense entailed in making an investigation to determine the proper location of the salt water barrier line, from any funds available to them for general administrative purposes.

(4) No final order establishing a salt water barrier line shall be adopted by the board until a public hearing shall be held as provided in §373.151(1), and the evidence presented at the hearing shall be given consideration in determining the location of the salt water barrier line.

(5) The board of conservation, any board of county commissioners, and the governing board of any water management district, municipality or water district having competent jurisdiction over an area in which a salt water barrier is established shall be charged with the enforcement of the provisions of this section, and authority for the maintenance of actions set forth in §373.221, shall apply to this section.

(6) The provisions of §373.191 shall apply specifically to the authority of the board of county commissioners, or to the governing board of a water management district, a municipality or a water district having jurisdiction over an area in which a salt water barrier line is established, to expend funds from whatever source may be available to them for the purpose of constructing salt water barrier dams, dikes and spillways within existing canals and streams in conformity with the purpose and intent of the board in establishing the salt water barrier line.

History.—§2, ch. 63-210.

373.195 Penalty.—Any person, real or artificial, that shall construct or enlarge, or cause to be constructed or enlarged, a canal or shall enlarge or deepen a natural stream in such a manner as to permit salt water to move inland of an established salt water barrier line, shall be guilty of a misdemeanor punishable by a fine of not more than $100.00 provided that each day such movement of salt water shall continue, shall constitute a separate offense of the provisions of this law.

History.—§3, ch. 63-210.

373.201 Power to enforce.—The state board, the governing board of any water management district within which a water regulatory district is located, any local board, and any officer or agent of these boards may enforce any provision of this law or any rule or regulation adopted and promulgated or order issued thereunder to the same extent as any peace officer is authorized to enforce the law. Any officer or agent of any such board may appear before any magistrate empowered to issue warrants in criminal cases and make an affidavit and apply for the issuance of a warrant in the manner provided by law and said magistrate, if such affidavit shall allege the commission of an offence, shall issue a warrant directed to any sheriff, deputy, or constable for the arrest of any offender.

History.—§14, ch. 57-380; §14, ch. 63-336.

373.211 Enforcement; city and county officers to assist.—It shall be the duty of every state and county attorney, sheriff, constable, police officer and other appropriate city and county officials, upon request, to assist the board, the governing board of any water management district, or any local board, or any of their agents in the enforcement of the provisions of this law and the rules and regulations adopted thereunder.

History.—§15, ch. 57-380; §15, ch. 63-336.

373.221 Maintenance of actions.—The board, the governing board of any water management district, or any local board is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(1) To enforce rules, regulations and orders adopted or issued pursuant to this law.

(2) To enjoin or abate violations of the provisions of this law or rules, regulations and orders adopted pursuant thereto.

(3) To protect and preserve the water resources of the state.

(4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.

History.—§16, ch. 57-380; §16, ch. 63-336.

373.231 Flood control or drainage districts.—The division of water resources shall have authority to perform all functions set forth under this chapter within the boundaries of any flood control or water management district created under the authority of chapter 378; provided, however, that the department shall not exercise authority over such districts with respect to their management, operation or maintenance.

History.—§17, ch. 57-380; §1, ch. 61-156.

373.241 Penalties.—Any person who violates any provision of this law or any rule, regulation or order adopted or issued pursuant thereto is guilty of a misdemeanor and upon conviction shall be subject to punishment by imprisonment, not exceeding 6 months or fine not exceeding $500 or both.

History.—§18, ch. 57-380.

373.261 Definitions; weather modification law.—As used in this chapter relating to weather modification:

(1) "Board" means the state board of conservation.

(2) "Person" includes any public or private corporation.

History.—§1, ch. 57-128.
cf.—§370.02(4) Division of administration.

373.271 Purpose of weather modification law.—The purpose of this law is to promote the public safety and welfare by providing for the licensing, regulation and control of interference by artificial means with the natural precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.

History.—§2, ch. 57-128.

373.281 Artificial weather modification operation; license required.—No person without securing a license from the board, shall cause or attempt to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere, or shall prevent or attempt to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.

History.—§3, ch. 57-128.

373.291 Application for licensing; fee.—

(1) Any person desiring to do or perform any of the acts specified in §373.281 may file with the board an application for a license on a form to be supplied by the board for such purpose setting forth all of the following:

(a) The name and post office address of the applicant.

(b) The education, experience and qualifications of the applicant, or if the applicant is not an individual, the education, experience and qualifications of the persons who will be in control and in charge of the operation of the applicant.

(c) The name and post office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(d) The nature and object of the weather modification operation which the applicant proposes to conduct, including a general description of such operation.

(e) The method and type of equipment and the type and composition of materials that the applicant proposes to use.

(f) Such other pertinent information as the board may require.

(2) Each application shall be accompanied by a filing fee in the sum of one hundred dollars and proof of financial responsibility as required by §373.301.

History.—§4, ch. 57-128.

373.301 Proof of financial responsibility.—

(1) No license shall be issued to any person until he has filed with the board proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by him in the amount of ten thousand dollars because of bodily injury to or death of one person resulting from any one incident, and subject to said limit for one person, in the amount of one hundred thousand dollars because of bodily injury to or death of two or more persons resulting from any one incident, and in the amount of one hundred thousand dollars because of injury to or destruction of property of others resulting from any one incident.

(2) Proof of financial responsibility may be given by filing with the board a certificate of insurance or a bond in the required amount.

History.—§5, ch. 57-128.

373.311 Issuance of license; suspension or revocation; renewal.—

(1) The board shall issue a license to each applicant who:

(a) By education, skill and experience appears to be qualified to undertake the weather modification operation proposed in his application.

(b) File proof of his financial responsibility as required by §373.301.

(c) Pays filing fee required in §373.291.

(2) Each such license shall entitle the licensee to conduct the operation described in the application for the calendar year for which the license is issued unless the license is sooner revoked or suspended. The conducting of any weather modification operation or the use of any equipment or materials other than those described in the application shall be cause for revocation or suspension of the license.

(3) The license may be renewed annually by payment of a filing fee in the sum of fifty dollars.

History.—§6, ch. 57-128.

373.321 Filing and publication of notice of intention to operate; limitation on area and time.—Prior to undertaking any operation authorized by the license, the licensee shall file with the board and cause to be published a notice of intention. The licensee shall then confine his activities substantially within the time and area limits set forth in the notice of intention.

History.—§7, ch. 57-128.

373.331 Contents of notice of intention.—The nature of intention shall set forth all of the following:

(1) The name and post office address of the licensee.

(2) The name and post office address of the persons on whose behalf the weather modification operation is to be conducted if other than the licensee.

(3) The nature and object of the weather modification operation which licensee proposes to conduct, including a general description of such operation.

(4) The method and type of equipment and the type and composition of the materials the licensee proposes to use.

(5) The area in which and the approximate time during which the operation will be conducted.

(6) The area which will be affected by the operation as nearly as the same may be determined in advance.

History.—§8, ch. 57-128.

373.341 Publication of notice of intention.—The licensee shall cause the notice of intention to be published at least once a week for two consecutive weeks in a newspaper having general circulation and published within any county wherein the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation and published within each of such counties. In case there is no newspaper published within the appropriate county, publication shall be made in a newspaper having a general circulation within the county.

History.—§9, ch. 57-128.

373.351 Proof of publication.—Proof of publication shall be filed by the licensee with the board fifteen days from the date of the last publication of notice. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

History.—§10. ch. 57-128.

373.361 Record and reports of operations.—

(1) Each licensee shall keep and maintain a record of all operations conducted by him pursuant to his license showing the method employed, the type and composition of materials used, the times and places of operation, the name and post office address of each person participating or assisting in the operation other than licensee and such other information as may be required by the board and shall report the same to the board at such times as they may require.

(2) The records of the board and the reports of all licensees shall be available for public examination.

History.—§11, ch. 57-128.

373.371 Emergency licenses.—Notwithstanding any provisions of this act to the contrary, the board may grant a license permitting a weather modification operation without compliance by the licensee with the provisions of §§373.331-373.351, and without publication of notice of intention as required by §373.321 if the operation appears to the board to be necessary or desirable in aid of the extinguishment of fire, dispersal of fog or other emergency.

History.—§12, ch. 57-128.

373.381 Suspension or revocation of license; appeal.—

(1) Any license may be revoked or suspended if the board finds, after due notice to the licensee and a hearing therein, that the licensee has failed or refused to comply with any of the provisions of this act.

(2) Any licensee may apply to the circuit court for the county of Leon to review any order of the board within the time provided by the Florida appellate rules. The review shall be by certiorari in the manner prescribed by the Florida appellate rules.

(3) Either the board or the licensee may appeal from the order or decree of the circuit court to the appropriate district court of appeal in the same manner appeals may be taken in suits in equity.

History.—§13, ch. 57-128; (2) §21, ch. 63-512.

373.391 Penalty.—Any person conducting a weather modification operation without first having procured a license, or who shall make a false statement in his application for license, or who shall fail to file any report or reports as required by this act, or who shall conduct any weather modification operation after revocation or suspension of his license, or who shall violate any other provision of this act, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not more than $1,000, or imprisoned not more than 60 days, or both; and if a corporation, shall be fined not more than $1,000. Each such violation shall be a separate offense.

History.—§14, ch. 57-128.

CHAPTER 374

CANAL AUTHORITY-NAVIGATION DISTRICTS-WATERWAYS DEVELOPMENT

PART I CANAL AUTHORITY (§§374.011-374.181)

PART II NAVIGATION DISTRICTS (§§374.301-374.521)

PART III WATERWAYS DEVELOPMENT (§§374.75-374.96)

PART I

CANAL AUTHORITY

374.011 Canal authority, creation; short title.—There is hereby created a body corporate, with the name "The canal authority of the State of Florida," (herein called the corporation), which shall operate under the supervision of the board of conservation. The principal office and necessary branch offices of the corporation shall be established at such places and under such rules and regulations as the board of directors may prescribe. This act may be cited as the "canal authority act."

History.—§1, ch. 16176, 1933; §1, ch. 61-244.

374.021 Capital.—The capital of said corporation shall consist of the rights, privileges and franchises herein and hereby granted to said corporation, which rights, privileges and franchises are hereby determined to be of the value of twenty million dollars.

History.—§2, ch. 16176, 1933.

374.031 Board of directors.—The management of the corporation shall be vested in a board of directors consisting of five members to be appointed by the governor. The terms of the directors shall be four years and until their successors are appointed and qualified. Whenever a vacancy occurs among the directors, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the director whose place he is selected to fill.

History.—§3, ch. 16176, 1933.

374.041 General powers.—The corporation shall have perpetual existence. It shall have the power to adopt, alter and use a corporate seal; to make contracts; to lease, buy, acquire, hold and dispose of real and personal property of every kind and nature; to sue and be sued; to select, employ and dismiss at pleasure such officers, employees, attorneys, consultants and agents as shall be necessary or expedient for the transaction of the business of the corporation, to define their authority and duties, and in the discretion of the board of directors to require bonds of them and to fix the penalties thereof; to fix the compensation of all officers, employees, attorneys, consultants and agents of the corporation; to prescribe, amend and repeal, by its board of directors, bylaws, rules and regulations governing the manner in which its business may be conducted and in which the powers granted to it by law may be enjoyed, including the selection of a chairman and provision for such committees and the functions thereof as the board of directors may deem necessary for facilitating the business of the corporation. The board of directors shall determine and prescribe the manner in which the corporation's obligations shall be incurred and its expenses allowed and paid. The corporation, by and with the consent of any board, commission or department of the state, including any field service thereof, may avail itself of the use of information, facilities, officers and employees thereof in carrying out the provisions of this act.

History.—§4, ch. 16176, 1933.

374.051 Special powers.—The corporation is hereby granted the right, privilege, franchise, power and authority to acquire, own, construct, operate and maintain a canal across the peninsula of Florida, connecting the waters of the Atlantic ocean with the waters of the Gulf of Mexico, together with sea and river approaches thereto, and such lateral and connecting branches as may be necessary or desirable; including a branch to link the St. Johns river with the Atlantic intracoastal waterway, and a branch to link the western reaches of such canal with the eastern terminus of the inland portion of the Gulf intracoastal waterway and the northern terminus of the inland portion of the Gulf intracoastal waterway, such canal shall be constructed along such route, and to be of such size, dimensions, specifications, kind or type as may be approved by the department of the army or other appropriate department or agency of the United States; to construct and

build the necessary cuts, embankments, basins, reservoirs, locks, including such locks to connect Canaveral harbor with the revetments, levees and Atlantic intracoastal waterway and other appurtenances thereto; to construct said canal across, along or upon any stream, waterway, highway, (including state highways), railroad or canal, whenever and wherever the route selected for said canal as aforesaid, shall intersect or touch such stream, waterway, highway, railroad or canal; to repair, construct and reconstruct telephone, telegraph and power transmission lines, water, gas and pipe lines, highway and railroad bridges or tunnels, over, across or under said canal, whenever such repair, construction or reconstruction is necescitated by the construction, maintenance or operation of said canal; to dredge in or about said canal and waterways and to deepen and widen any existing waterways directly connected with said canal; to contract for, to acquire by lease, purchase, or otherwise and to operate, repair, and maintain, ships, tugs, lighters, scows, vessels, railroads, dredges, bridges, engines, rolling stock, electric power houses and power lines, stores, warehouses, wharves, piers, basins, elevators, buildings and machinery, supplies, equipment, appliances and services of every kind and description that may be necessary, useful or convenient in the construction or operation of said canal; to exact and collect tolls and to prescribe rules for the privilege of passing through or along said canal or any portion thereof; and to do any and all things necessary and incur and pay any and all expenditures necessary, convenient or proper in the acquisition, construction, operation and control of said canal and its related locks, improvement and appurtenances. The corporation is likewise authorized to acquire, own, construct, operate and maintain such other waterways project or projects within the state as may be necessary or desirable, including, but not limited to, projects for flood control and water management purposes.

History.—§5, ch. 16176, 1933; §2, ch. 61-244.

374.061 Obligations of indebtedness.—Said corporation is hereby authorized and empowered to borrow, from time to time, money for the construction and operation of said canal and canal system, in such amounts and on such terms, as the board of directors may deem advisable, and for that purpose it may issue bonds or obligations of indebtedness in its own name, in such denominations, and at such rates of interest, and with such maturities, as its board of directors may determine, and in order to secure the payment thereof, said corporation is authorized and empowered to mortgage or pledge said canal and canal system, and the tolls, income and revenues to be derived therefrom. The corporation is further authorized to agree to such other or additional terms and provisions as may be necessary in order to finance the construction and operation of said canal. Bonds or obligations issued or executed by the corporation shall be what is commonly termed "revenue bonds" and shall not constitute or be a debt or general obligation of the state. The payment thereof, both as to principal and interest, shall be made solely out of the tolls and revenues to be derived from the operation of said canal and canal system, or from the proceeds of sales or leases of corporate property, and this fact shall be stated on the face of the bonds.

History.—§6, ch. 16176, 1933.

374.071 Eminent domain.—The said corporation is hereby authorized and empowered to acquire by condemnation, rights of way of such lengths and widths as may be reasonably necessary for the proper construction and efficient operation, repair and improvement of said canal and canal system, its embankments, locks and appurtenances, for spoil areas and borrow pits and for approaches to bridges and tunnels, crossing over or under said canal, including the right to condemn such rights of way (of the lengths and widths as above set forth) over property already devoted to public use for railroad, canal or other public utility purposes, wherever the route of such canal may cross the same and said corporation shall also have the right to acquire by gift, purchase or condemnation, land, timber, earth, rock and other materials or property, and property rights, including riparian rights, in such amounts as may be reasonably necessary or useful in the construction, operation, repair or improvement of said canal and canal system, its improvements, locks and appurtenances. Condemnation proceedings shall be maintained by and in the name of the corporation and the procedure shall be, except insofar as is altered hereby, that now prescribed for condemnation proceedings by railroad corporations in this state.

History.—§7, ch. 16176, 1933.

374.081 State lands; right of taking.—This corporation shall have the right to take, exclusively occupy, use and possess, insofar as may be necessary for carrying out the provisions of this act, any areas of land owned by the state, not in use for state purposes, including swamp and overflowed lands, bottoms of streams, lakes, rivers, bays, the sea and arms thereof and other waters of the state, and the riparian rights thereto pertaining; and when so taken and occupied, due notice of such taking and occupancy having been filed with the secretary of state by the corporation, such areas of land are hereby granted to and shall be the property of the corporation. For the purposes of this section, the meaning of the term "use" shall include the removal of material from and the placing of material on any such land. In case it shall be held by any court of competent jurisdiction that there are any lands owned by the state which may not be so granted, then the provisions of this section shall continue in full force and effect as to all other lands owned by the state. The provisions of this section are subject to all laws and regulations of the United States with respect to navigable waters.

History.—§8, ch. 16176, 1933.

374.091 County donations of rights of way.—The several counties of the state through which, or adjacent to the boundaries of which may pass the route for said canal or any of its lateral or connecting branches, are hereby authorized to donate to the corporation all necessary rights of way, or portions thereof, together with spoil areas, borrow pits and other lands necessary or useful in the acquisition, construction, maintenance and operation of said canal, including approaches for bridges and tunnels crossing over or under said canal, and to that end are vested with the power of eminent domain to condemn all necessary lands for the purpose of securing such rights of way, such condemnation proceedings to be brought, maintained and prosecuted in the manner as prescribed in §§337.28 and 346.46, and such counties are further authorized and empowered to furnish to the corporation money, labor, materials and other property, including reconstruction of highways, and bridges, necessitated in and by the construction of said canal system. The board of county commissioners of each of said counties is hereby authorized to determine the millage necessary to be levied and to levy a tax on real and personal property to procure the necessary funds for such purposes, which are hereby declared to be county purposes.

History.—§9, ch. 16176, 1933.

374.101 Tolls.—The said corporation shall fix and shall have exclusive jurisdiction over the rates of tolls and rules for the use of said canal, without being subject to the supervisory control of any other state board or commission. Tolls may be collected on all vessels or watercraft that pass or repass through said canal or any portion thereof which the corporation may cut or construct, or through any channel not now navigable, that the corporation may have dredged or deepened; and all such vessels and watercraft shall be liable for such tolls and shall be subject to a prior lien therefor, and may be detained by the corporation until the same are paid and acquitted.

History.—§10, ch. 16176, 1933.

374.111 Revenues, use.—All revenues derived by the corporation from the operation of said canal shall be used exclusively for the payment of the administrative expenses of said corporation, the expenses of operation and maintenance of the canal, insurance premiums for insurance of such kinds and in such amounts as the board of directors may deem advisable and including such amounts as may be necessary, from time to time, for deepening and widening the main channel of the said canal, as the requirements of commerce may demand or make advisable, and for the payment of the interest on, and the repayment of the principal of, any moneys that may be borrowed from time to time by the corporation. Any surpluses that may be accumulated from time to time, over and above the cost of operation, administration and maintenance as above defined, and over and above principal, interest and sinking fund requirements on loans, and over and above such amounts as the board of directors may set aside for operating capital, shall be covered into the state treasury and used for the purpose of reducing taxation.

History.—§11, ch. 16176, 1933.

374.122 Pilots.—The corporation shall have full power to employ or appoint and license pilots for piloting vessels and other craft through any canal authorized herein. No pilot shall pilot any vessel or other craft, which the regulations of the corporation require to be piloted, through the portions of said canal specified in such regulations, unless he at that time holds a license from the corporation. The corporation shall prescribe all rules and regulations governing pilotage in any such canal, including the exemption of any craft from the necessity for pilotage, the wages or fees to be paid to pilots, the qualification of pilots, the method of handling and speed of vessels in any such canal, and the measurement of vessels for pilotage. The corporation shall have the power to revoke at will the license of any pilot licensed by it. The corporation shall have the right to deny or prevent at any time the entrance to or use of any such canal or any part thereof by any craft. The provisions of this section are subject to all federal laws and regulations of all federal departments having appropriate jurisdiction.

History.—§12, ch. 16176, 1933.

374.132 Tax exemption.—Agreeable to §16 of Art. XVI of the constitution of Florida, all property of the corporation shall be exempt from taxation.

History.—§13, ch. 16176, 1933.

374.141 Reports.—The corporation shall make to the governor an annual report setting forth in appropriate detail the business transacted during the year and the condition of the corporation at the close of the year. Such annual reports shall be accompanied by duly certified audits of the accounts of the corporation, made by the state auditors. The corporation shall furnish to the governor such additional reports and information as he shall from time to time require.

History.—§14, ch. 16176, 1933.

374.151 Officers; bonds, per diem, compensation.—The members of the board of directors of the corporation shall each give bond in the sum of twenty-five thousand dollars, each conditioned upon the faithful performance of the duties of the office concerned, said bonds to be furnished by reputable bonding companies authorized to do business in this state, to be payable to the governor of the state and his successors in office, and approved by the state comptroller. It shall not be necessary for such bonds to be furnished, however, until the corporation shall have obtained a loan of sufficient moneys with which to construct said canal. Each member of the board shall receive a per diem salary of twelve dollars per day for services rendered to the corporation from time to time,

such salary to be paid upon the approval of the board of directors. Provided, however, that the board may select one of their members as managing director, who shall receive such additional compensation, commensurate with the duties and responsibilities placed upon him, as the board of directors may determine.

History.—§15, ch. 16176, 1933.

374.161 Contracts.—The corporation shall have the power and authority to enter into any and all contracts necessary or convenient to the exercise of any or all of the powers herein and hereby granted, including contracts covering periods of time longer than the terms of office of the members of the board of directors making such contracts and shall also have the power and authority to contract with the United States or any appropriate department or agency thereof for the construction, operation or control of said canal or any portion thereof.

History.—§16, ch. 16176, 1933.

374.171 Transfer to federal government.—In the event that the United States should decide to undertake the construction of said canal across Florida, by an agency or department of the federal government, or in the event the United States should at any time desire to take over the ownership or possession of said canal for the purpose of operating the same free of tolls, the board of directors of the corporation is authorized, upon such terms and in such manner as said board shall deem proper, to assign, transfer and convey to the United States, or to the appropriate agency thereof, such assets, franchises and property, or interests therein, of the corporation, including lands, easements, and rights of way acquired by said corporation hereunder, as may be necessary or desirable, in said board's judgment, to accomplish such purposes.

History.—§17, ch. 16176, 1933; §3, ch. 61-244.

374.181 Liberal construction of act.—It is intended that the provisions of this act shall be liberally construed for accomplishing the work authorized and provided for or intended to be provided for by this act, and where strict construction would result in the defeat of the accomplishment of any part of the work authorized by this act, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—§19, ch. 16176, 1933.

PART II

NAVIGATION DISTRICTS

374.301 Ship canal navigation districts.—For the purpose of raising funds to be used by the canal authority of the state in paying for the cost of securing a right of way for a canal across the state, running through or adjacent to the counties hereinafter named, there is hereby created and incorporated a special taxing district consisting of the counties of Duval, Clay, Putnam, Marion, Levy and Citrus. Said district shall be known and designated as "The cross Florida canal navigation district," but shall in this act, for the purposes of brevity and convenience, be referred to as the "district," or the "navigation district."

History.—§1, ch. 17023, 1935; §1, ch. 61-269.

374.311 Board of commissioners.—A governing body for said district is created, consisting of five members, which body shall be designated as the "board of commissioners of the cross Florida canal navigation district," but which shall, for purposes of brevity and convenience, be referred to as the "board," or the "district board," in this act. Their term of office shall be for four years or until their successors shall have been appointed and qualified; provided, however, that of the directors comprising the first governing body, two shall serve for a term of four years, one shall serve for a term of three years, one shall serve for a term of two years and one shall serve for a term of one year. The directors shall reside in the counties comprising the district with not more than one director to reside in any one county. The directors shall be appointed by the governor.

History.—§2, ch. 17023, 1935; §2, ch. 61-269.

374.321 General powers and duties.—The district board shall have all the powers of a body corporate, including the power to sue and be sued; to make contracts; to adopt and use a common seal and to alter the same as may be deemed expedient; to rent, lease, buy, own, acquire and dispose of such property, real

or personal, as the board may deem proper to carry out the provisions of this act; to appoint and employ and dismiss at pleasure such engineers, attorneys, auditors, consultants, and employees as the board may require, and to fix and pay the compensation thereof; to establish an office or offices for the transaction of its business, either in Tallahassee, or in some city within the district, and to change the same from time to time; to borrow money and, in the manner and subject to the limitations herein contained, to execute, issue and deliver promissory notes, warrants, bonds or other evidences of indebtedness; to pay all necessary costs and expenses involved and incurred in the formation and organization of the district, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this act; to do any and all other acts and things hereinafter authorized or required to be done, whether or not included in the general powers in this section mentioned; and to do any and all things necessary to accomplish the purposes of this act.

History.—§3, ch. 17023, 1935.

374.331 Surety bonds.—Each member of the district board, before assuming to act as such, shall be required to give a good and sufficient surety bond in the sum of ten thousand dollars, payable to the governor of the state, and his successors in office, conditioned upon the faithful performance of his duties as a member of the district board and as a member of the board of directors of said authority. Such bonds shall be approved by and filed with the comptroller of the state, and the premium or premiums thereon shall be paid by the district board as a necessary expense of the district.

History.—§4, ch. 17023, 1935.

374.341 Rules and regulations; committees; quorum.—The district board shall have power to adopt, alter, or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the board may deem necessary or expedient in facilitating its business. Three members of the board (one of whom may be the chairman), shall constitute a quorum for the transaction of business, and a majority vote of all members present shall be necessary in order to authorize any action by the board. The chairman shall be entitled to vote on all questions.

History.—§5, ch. 17023, 1935.

374.351 Compensation and expenses; executive secretary-treasurer.—Each member of the district board shall receive a per diem allowance and traveling expenses as provided by §112.061, for each day's service, but neither such per diem nor mileage shall be paid unless the service performed has been authorized and payment approved by the board. The board may select one of its members to serve as its executive secretary and treasurer, or one of its members as executive secretary and one as treasurer, and in that event he or they shall receive such additional compensation, commensurate with the duties and responsibilities placed upon him or them as the board may determine. The board may, however, in its discretion, appoint a nonmember of the board as such executive secretary and treasurer, or it may appoint a member as executive secretary and a nonmember as treasurer, or vice versa, or it may appoint two nonmembers, one as executive secretary and one as treasurer. In any of such events, the board shall require a surety bond of such appointee or appointees in such amount as the board may fix, which bond, in the case of the appointment of member of the board, shall be in addition to the bond furnished by him as a board member.

History.—§6, ch. 17023, 1935; §1, ch. 63-216.

374.361 Issuance of bonds. — In order to carry out the purposes of this act, the district board is authorized and empowered to issue, in the corporate name of the district, negotiable bonds in an amount not exceeding the sum of two million seven hundred fifty thousand dollars bearing interest at a rate to be fixed by the board, but not in excess of five per cent per annum. Such bonds shall mature at the time or times and shall be issued in the manner and on the terms and conditions, as hereinafter set forth. The proceeds of all bonds so issued, over and above the amounts which may be necessary to retire the outstanding promissory notes of the district, and over and above the amounts reasonably necessary for the board to retain in order to cover its administration and operating expenses, shall be turned over to the canal authority, to be used by it in paying the costs and expenses of acquiring a right of way for a canal across the state, running through or adjacent to the boundaries of the counties comprising the district, together with sea and river approaches thereto and such lateral and connecting branches as may be necessary or desirable, and in paying its administration and operating expenses while so engaged in the acquisition of said right of way, and paying for any other expenses authorized to be incurred by said authority in and by part I of this chapter. All of the said bonds need not be sold at once, but the same shall be sold in such amounts, and at such times as to meet the monetary needs of the authority in acquiring the said right of way, and so that the acquisition thereof by the authority shall not be delayed or interrupted by lack of funds. Any of the proceeds of such bonds, or other district moneys which may have been turned over to the authority as in this act provided, and which shall not be needed for the purpose of acquiring said right of way or in paying the costs and expenses incident thereto, shall, after said right of way shall have been completely secured, be returned and repaid to the district and paid into the bond sinking fund to be created as hereafter provided. If any of

the bonds authorized to be issued and sold hereunder, have not been sold by the time said right of way shall have been completely acquired, and after all expenses incident to such acquisition have been paid, then such bonds shall not be sold thereafter, but the same shall be canceled, and any unused portion of said bonds at that time still remaining in the hands of the district board shall be paid into the said bond sinking fund.

History.—§7, ch. 17023, 1935; §3, ch. 61-269.

374.371 Promissory notes, issuance, repayment.—The district board is authorized and empowered, in order to provide itself and the canal authority with immediate funds, to borrow money, for a period or periods not exceeding one year, and to issue its promissory notes therefor, upon such terms, and at such rate or rates of interest, not exceeding six per cent per annum, as the board may deem advisable; provided, however, that the total amount of money so borrowed on promissory notes as aforesaid, shall not exceed the sum of two hundred thousand dollars. Such notes shall be repaid out of the proceeds of the bond issue hereinafter provided for, unless no bonds are issued or approved, in which event the district board shall make provision in its tax levy for the raising of sufficient funds for the repaying of said notes. The moneys so borrowed on such notes may be used for the purpose of providing the board with sufficient funds with which to administer and operate the district until the proceeds of the bond issues or tax levies hereinafter provided for are available, including all expenses necessarily incurred in calling and holding the election hereinafter provided for; and the remainder thereof shall be turned over to the canal authority, for the same purposes, and in the same manner and subject to the same terms and conditions as are herein set forth with reference to the net proceeds of the bond issue as hereinabove provided.

History.—§8, ch. 17023, 1935; §4, ch. 61-269.

374.391 Bonds; procedure for issuance and calling.—The bonds of the district issued pursuant to the provisions of this act shall be authorized by a resolution of the board and shall be serial bonds maturing at such time or times not exceeding thirty years from their respective dates, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability or interchangeability privileges, be payable in such medium or payment and at such place or places, and be subject to such terms or redemption as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officer or officers as the board shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds, if any, shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the board and shall have the seal of the district affixed, imprinted, reproduced or lithographed thereon, all as may be prescribed in such resolution or resolutions. The bonds issued hereunder shall be sold at public sale at such price or prices as the board shall determine to be in the best interest of the district, provided that the interest cost to the district of such bonds shall not exceed five per cent per annum.

History.—§10, ch. 17023, 1935; §6, ch. 61-269.

374.401 Bonds; signatures. — In case any chairman or secretary of said board, whose signature, counter-signature, or certificate appears upon any of the bonds authorized by this act, or coupons thereon, shall cease to be such chairman or secretary, before the delivery of such bonds to the purchaser, the signature or counter-signature, or certificate shall nevertheless be valid and sufficient for all purposes, the same as if such chairman or secretary had continued to be such chairman or secretary until the delivery of the bonds.

History.—§11, ch. 17023, 1935.

374.411 Bonds; election for issuance.—Before issuing any bonds, the issue shall be provided for by a resolution of the district board, setting forth the amount of bonds proposed to be issued, the denominations and date or dates of maturity thereof, the rate of interest the same are to bear, the time and place where the bonds and the interest thereof shall be payable, and such other terms and conditions as authorized by this act, upon which it is proposed to issue the bonds. The resolution shall further call for and fix a date and otherwise provide for the holding of an election for submission to the qualified freeholders residing in the district, for their approval or disapproval, of the question of the issuance of the bonds. Notice of the resolution and election shall be published in each county in the district once a week for four consecutive weeks before the election is held. The board shall cause to be prepared a sufficient number of ballots to be used at the election, which ballots shall be in substantially the following form:

OFFICIAL BALLOT
SPECIAL BONDING ELECTION

The Florida Canal Navigation District
(Place a cross mark (x) before the proposition of your choice)

FOR: Issuing Florida Canal Navigation District Bonds in an amount not to exceed the sum of $2,750,000.00 bearing interest at the rate of 5% per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right of way for a canal across the state of Florida, running through said district.

AGAINST: Issuing Florida Canal Navigation District Bonds in an amount not to exceed the sum of $2,750,000.00, bearing interest at the rate of 5% per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right of way for a canal across the state of Florida, running through said district.

The election shall be held at the several places in the district where the last general election was held in each of the counties of the district, unless the district board shall otherwise direct, and said board shall appoint the inspectors and clerks of election for each of the election precincts in said district. Only the freeholders who are qualified electors, as herein provided, and residing in said district shall be eligible to vote in said election. The election shall be conducted and the canvass of the votes certified to and returned, and the returns canvassed substantially in the manner and within the time prescribed by general law for holding bond elections, except as herein otherwise provided, and except that the returns of the election from each precinct in each of the counties in said district shall be delivered to the chairman and secretary of the district board instead of to the county officers or official to whom the returns are usually made. The board shall hold a meeting as soon thereafter as is practicable for the purpose of canvassing the election returns and certifying the returns. If a majority of the freeholders who are qualified electors residing in the district shall have participated in the election and a majority of the votes cast in the election are in favor of the issuance of the bonds, then the district board shall be authorized to issue and sell the bonds, in the manner as herein authorized, in the amount specified in the resolution calling the election, and to use the proceeds as authorized in this act. If, however, a majority of the freeholders who are qualified electors residing in the district shall not have participated in the election, or if a majority of the freeholders shall have participated but less than a majority of the votes cast are in favor of the issuance of the bonds, then and in either of such cases, no bonds shall be issued. Prior to the calling of the election, the district board may, by appropriate resolution, call upon the supervisors of registration or other registering officer in each county of the district to call for a reregistration of freeholder electors residing within the district, whereupon the reregistration shall be conducted by the supervisor or other registering officer in the same manner as provided in §97.081, except that the county commissioners of the several counties comprising the district shall not be required to take any action regarding the reregistration. In the event the reregistration be made, then in any election held hereunder after the reregistration, the power to issue bonds of the district shall be based upon the approval by a majority of the votes cast in the election in which a majority of the reregistered freeholders who reregister and are qualified shall participate.

History.—§12, ch. 17023, 1935; §7, ch. 61-269.

374.421 Bonds; additional elections.—In the event the issuance of the bonds is not approved by the first election held under this act, the district board shall be authorized to call another election on the question of the issuance of such bonds, such election to be held not sooner than six months after the first election, and further elections may be called and held, but not oftener than six months apart.

History.—§13, ch. 17023, 1935.

374.431 Legality of bond issue; protest.—No proceedings shall be brought by anyone to contest or question the legality or validity of the bond issue after the expiration of the period of thirty days following the publication of the first notice of the board's resolution authorizing the issuance of the bonds, as provided in §374.411.

History.—§14, ch. 17023, 1935.

374.441 Security for bonds.—Any and all bonds issued pursuant to the authority contained in this act, when sold, issued and delivered, shall become and be binding, valid and legal obligations of the navigation district, and for the security and payment of the bonds and the interest thereon, the entire taxable property lying within the district, and the full faith and credit thereof shall be pledged.

History.—§15, ch. 17023, 1935.

374.451 Bonds; validity and incontestability.—This act, without reference to any other act or statute of the legislature of the state, shall be full authority for the issuance and sale of the bonds herein authorized, which bonds shall have all the qualities of negotiable paper and which shall not be invalid because of any irregularity or defect in the proceedings for the issuance and sale thereof, and any and all such bonds shall be incontestable in the hands of bona fide purchasers thereof. All the bonds, regardless of time of sale, shall be of equal rank and without priority of one over the other, except as to the time of maturity as may be fixed in the bonds. No proceedings in respect to the issuance of said bonds shall be necessary, except such as are required by this act. Provided, however, that the district board may, if it deems such action expedient, validate the bonds, in the same manner as is provided by general law for the validation of bonds of counties and municipalities. If the validation proceedings are pursued, they may be instituted by petition filed in the circuit court in and for Duval county, and the proceedings thereon shall be conducted in the same manner and shall have the same effect as is provided by general law for the validation of county and municipal bonds except that notice of hearing on the petition shall be given by publication in one or more newspapers published in each county in the district, once a week for three consecutive weeks, the first publication to be at least eighteen days prior to the date fixed for the hearing.

History.—§16, ch. 17023, 1935.

374.461 Bonds; sale. — The district board, after the approval of the issuance of the bonds at the election hereinabove provided for, shall have the power and authority to proceed forthwith to sell all of the bonds or portions thereof from time to time, at public sale, or upon sealed proposals, to the highest bidder for cash, after due notice thereof shall have been pub-

lished in a newspaper published in Duval county, once a week for two consecutive weeks, provided, however, that the bonds shall not be sold for less than ninety-five cents on the dollar, plus accrued interest thereon to the date of delivery. The board shall have the right to reject any or all bids, and if no satisfactory bid is received on the day advertised for the sale thereof, the bonds or any part thereof may be sold at private sale at any time within sixty days thereafter, at not less than the highest bid received at the advertised sale, and at not less than the above stated minimum price of ninety-five cents on the dollar, plus accrued interest to date of delivery. The board may, however, sell any or all of the bonds at private sale at any time, whether notice has been published or not, provided that they are sold for not less than par plus accrued interest to date of delivery.

History.—§17, ch. 17023, 1935.

374.471 Sinking fund.—It shall be the duty of the treasurer of the district, as custodian of the funds belonging thereto, out of the proceeds of the taxes levied and imposed as provided in this act, and out of any other moneys in his possession belonging to the district (all of which moneys, so far as may be necessary, are appropriated for the purpose), to pay the interest on and principal of the bonds as the same shall fall due. There is hereby created a sinking fund for the payment of the principal of all of the bonds, and until all of the bonds issued shall have been paid, or until there shall have been accumulated in said sinking fund sufficient funds to pay all of such bonds, the board shall set apart and pay into said sinking fund annually, beginning with the year following the year in which the bonds are issued, out of taxes levied and imposed by this act and other funds of the district at least three and one-half per cent of the total amount of bonds issued and sold hereunder. The sinking fund for the payment of the bonds shall not be appropriated to or used for any other purpose.

History.—§18, ch. 17023, 1935.

374.481 Redemption of bonds, investment of sinking fund.—The board is hereby authorized and empowered to invest the moneys belonging to the sinking fund in bonds issued under the provisions of this act, or in bonds issued by the United States. Whenever necessary or expedient in the opinion of the board, the securities in said sinking fund may be sold and the proceeds used in paying maturing bonds of the district or in calling the bonds for redemption as hereinabove in §374.391 provided, or for the purpose of being invested in conformity with the provisions hereof. Provided, however, that whenever the total amount of money in the sinking fund (computing the bonds held as cash on the basis of their then market value, less the cost of sale), shall exceed the amount necessary to pay bonds maturing during the next ensuing twelve months, the surplus shall immediately be used by the board for the purpose of calling bonds for redemption in the manner as prescribed in §374.391.

History.—§19, ch. 17023, 1935.

374.491 Deposit of funds.—All district funds shall be deposited in a bank or banks to be designated by the board, including federal savings and loan associations. The board shall designate as such depository or depositories the bank or banks that will offer the best inducement as to the payment of interest on daily balances, but before any district moneys are deposited in the depository or depositories, security ample to protect the deposits shall be furnished to the district (without expense to the district), which security shall be in the form either of a surety bond or bonds executed by a surety company or companies authorized to do business in this state, or in the form of a deposit, to the credit of the district, of bonds of the United States or of the district, or insurance for the full amount of the deposit through an agency of the United States. Funds of the district shall be paid out only upon warrant signed by the treasurer of the board and countersigned by the chairman or vice chairman. No warrants shall be drawn or issued disbursing any of the funds of the district except for a purpose authorized by this act and only when the account or expenditure for which the same is to be given in payment has been ordered or approved by the board.

History.—§20, ch. 17023, 1935; §8, ch. 61-269.

374.501 Levy of taxes.—The navigation district shall have, and it is hereby granted, the power to levy, assess, collect and enforce taxes upon all taxable real and personal property in the district, subject to the limitations and restrictions herein contained. The manner in which the power conferred by this section shall be exercised, and the limitations thereon, are as follows:

(1) The county tax assessor of each of the counties of Duval, Clay, Putnam, Marion, Levy and Citrus counties respectively, each year (commencing in the year 1961), immediately after the tax assessment of each of the counties has been reviewed and equalized by the board of county commissioners of each of the counties, respectively, shall report to the district board the assessed valuation of all real and personal property in their respective counties, including the assessed valuation of all railroad lines, railroad property, telephone and telegraph lines, telephone and telegraph property and all other utility lines and property. The sum of all assessments so reported shall be the assessed value of taxable property of the district for the year for the purposes of district taxes and taxation under the provisions of this act.

(2) The district board shall immediately, thereupon, by resolution, determine the total amount to be raised by taxation in such year upon the taxable property of the district, and shall, in and by said resolution, fix and determine the rate of taxation which, when levied upon the assessed valuation of the district as

above determined and defined, will raise the said amount so determined as aforesaid, as the total amount to be raised by taxation in that year, and in and by said resolution the board shall levy and fix said rate of taxation upon all the taxable property in the district. Should the tax assessor of any of the counties in the district fail to send a valuation report to the district board in time to permit the board to consider such valuation in fixing and determining the rate of taxation to be levied, as provided herein, then the board may use the best information available to it as to the valuation for such county or counties in so fixing and determining the rate of taxation to be levied.

(3) The maximum rate of taxation which the district board shall be authorized to levy in any one year shall be that rate which, levied on the assessed valuation of the district for that year, will raise not more than the following amounts, to-wit:

(a) The amount necessary to pay the annual interest requirements on, and to pay the principal of bonds maturing during the ensuing year, of all bonds of the district outstanding and unpaid, provided that the total amount to be raised for such interest, sinking fund and bond-payment purposes shall not exceed, in any one taxable year, the sum of three hundred sixty thousand dollars.

(b) The amount needed by the board for the annual administrative and operating expenses of the district, which amount so to be raised by taxation, shall not exceed the amount which would be raised by a levy of one-fifth mill on the dollar on the assessed valuation of the district.

(4) Certified copies of such tax resolution executed in the name of the board by its chairman, and attested by its secretary, under its corporate seal, shall immediately be delivered to the board of county commissioners of each and every county in the district, and to the comptroller of the state.

(5) It shall be the duty of each of the boards of county commissioners, each year, to order the assessors of each of the counties to levy and assess, and the county tax collector to collect, a tax at the rate fixed by the resolution of the district board upon all of the real and personal property in said counties for said year and said levies and assessments shall be included in the tax roll and warrant of the tax assessor in each of the counties for each fiscal year thereafter. The tax collector of each of the counties shall collect such taxes so levied by the district board in the same manner and at the time as state and county taxes are collected and shall pay and remit the same upon collection, within the time and in the manner as required by law, to the district board.

(6) The tax assessor, tax collector, and board of county commissioners of each and every county in the district shall, when requested by the district board, prepare from their official records and deliver to the board any and all information that may be requested from time to time from him or them regarding the tax valuations, levies, assessments or collections in such counties.

History.—§21, ch. 17023, 1935; §9, ch. 61-269.

374.511 Publication of financial statement.—At least once in each year the district board shall publish once in some newspaper published in each of the counties of the district, a complete detailed statement of all moneys received and disbursed by the district during the preceding year. Such statement shall also show the several sources from which such funds were received, and the balance on hand at the time of publishing the statement, and shall show the complete financial condition of the district.

History.—§22, ch. 17023, 1935.

374.521 Liberal construction.—It is intended that the provisions of this act shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—§23, ch. 17023, 1935.

PART III

WATERWAYS DEVELOPMENT

374.75 Creation of districts.—Whenever the state or federal government or appropriate agency thereof has authorized a waterways development project within the state and has defined and delineated the course or boundaries of said project, the state board of conservation

shall create and establish a special taxing district composed of the county or counties within the state through which or adjacent to which such project runs. A certified copy of the resolution adopted by the board of conservation creating and establishing said district shall be published in a newspaper of general circulation in each county which composes said district once a week for four consecutive weeks commencing within one week of the creation of said district.

History.—§1, ch. 61-121.

374.76 Purpose of district.—The district so created shall be given and designated with an appropriate identifying name. The purpose of the district shall be to raise funds to be used by the canal authority of the state under the direction and control of the state board of conservation in acquiring and paying for rights of way for the development of the particular waterways project.

History.—§2, ch. 61-121.

374.77 Governing body.—

(1) The affairs of the district shall be governed by five persons who shall be known as directors of the district and who shall be the owners of real property and shall reside in the district. Their term of office shall be for four years or until their successors shall have been appointed and qualified; provided, however, that of the directors composing the first governing body, two shall serve for a term of four years, one shall serve for a term of three years, one shall serve for a term of two years, one shall serve for a term of one year.

(2) Unless such district embraces less than five counties not more than one director shall be from any one county. If the district be composed of five counties or less, each county shall have at least one member of the governing body. The directors shall be appointed by the governor.

History.—§3, ch. 61-121.

374.78 Powers of district directors. — The district directors shall have the following powers:

(1) To sue and be sued.

(2) To adopt and use a common seal.

(3) To make and enter into contracts.

(4) To buy, sell, rent, lease, own, acquire and dispose of real and personal property, as the directors may deem necessary to carry out the functions of the district.

(5) To employ and dismiss at pleasure all necessary personnel including without limitation engineers, attorneys, auditors and consultants and to fix their compensation.

(6) To establish an office for the transaction of its business in some city in the district and to change the same from time to time.

(7) To borrow money subject to the conditions and limitations hereinafter set forth.

(8) To execute, issue, validate and sell promissory notes, warrants, bonds or other evidence of indebtedness.

(9) To pay all expenses incurred in the formation, organization, administration and operation of the district and to pay all other expenses reasonably necessary to carry out and accomplish the purposes of this act.

(10) To do all other things and perform all other acts hereinafter authorized or required to be done whether or not included within the general powers of this section.

(11) To do any and all things necessary to accomplish the purposes of this act.

Provided, however, that all acts of the directors taken pursuant to those above enumerated or done pursuant to other provisions of this act shall be subject to the approval of the board of conservation.

History.—§4, ch. 61-121.

374.79 Bond of directors.—Each director of the district before assuming office shall be required to give a good and sufficient surety bond in the sum of ten thousand dollars payable to the governor and his successors in office conditioned on the faithful performance of his duties. Such bond shall be approved by the board of conservation. The premiums on said bonds shall be an expense of the district.

History.—§5, ch. 61-121.

374.80 Organization of district.—The directors shall select one of their members as chairman and they shall select a secretary who need not be a director. The directors shall have the power to adopt, alter and amend its bylaws and rules and regulations governing the transaction of its business and accomplishment of its purposes.

History.—§6, ch. 61-121.

374.81 Issuance of bonds.—Any district created pursuant to the provisions of this act shall be empowered to issue, validate and sell in the district's name negotiable bonds in an amount and for a term determined by the state board of conservation bearing interest at a rate not exceeding the limit set by the state board of conservation, for the purposes of retiring any outstanding promissory notes, paying the administration and operation expenses of the district and for the cost and expense of acquiring rights of way for the waterway development project authorized to run through or adjacent to the said counties comprising the district. That portion of the proceeds from the sale of said bonds by the district to be used for right of way acquisitions shall be turned over to the canal authority of the state and said canal authority shall be charged with the actual acquisition of the rights of way and the payment thereof with the funds available for that purpose.

History.—§7, ch. 61-121.

374.82 Issuance of promissory notes. — Any district created pursuant to the provisions of this act shall be empowered and authorized to borrow money to provide immediate funds in such amount, for periods of time and at an interest rate to be fixed by the state board of conservation and the district shall issue its promissory notes therefor. Such notes shall be repaid from the proceeds of the bond issue unless no such bonds are issued, validated or

sold, in which event the district shall make provisions in its initial tax levy for the raising of sufficient funds to repay said notes. The funds raised by the borrowing of money pursuant to this section shall be used for the purpose of paying all expenses incurred in the organization of the district or incident to its formation and to provide the district with funds for administration and operation until the proceeds of the bonds issued by the district are available or until the proceeds of the tax levies hereinafter provided are available.

History.—§8, ch. 61-121.

374.83 Matching funds.—The board of conservation is authorized to equally match out of state funds any moneys or funds raised by any special taxing district now in existence or hereafter created as herein provided for the purchase or acquisition of rights of way for any waterway development project authorized by the state or federal government or appropriate agency thereof.

History.—§9, ch. 61-121.

374.84 Issuance of bonds; procedure.—The bonds which the district is authorized to issue pursuant to this act shall be in such denominations, be in such form either coupon or fully registered, shall carry such registration, exchangeability or interchangeability privilege, be payable in such medium or payment and at such place or places and be subject to such redemptions as the district directors may prescribe and designate by resolution. Said bonds shall be serial bonds maturing at such time or times as set by the state board of conservation. The bonds shall be executed either by manual or facsimile signature by such officer or officers as the directors may determine, provided such bonds shall bear at least one signature which is manually executed thereon and coupons attached to such bonds, if any, shall bear the facsimile signature or signatures of such officer or officers so designated by the directors and shall have the seal of the district affixed.

History.—§10, ch. 61-121.

374.85 Election for bond issue.—Before issuing any of such bonds, such issue shall be provided for by a resolution of the district directors, setting forth the amount of bonds proposed to be issued, the denominations and date or dates of maturity thereof, the rate of interest the same are to bear, the time and place where said bonds and the interest thereon shall be payable, and such other terms and conditions as authorized by this act, upon which it is proposed to issue said bonds. Said resolution shall further call for and fix a date and otherwise provide for the holding of an election for submission to the qualified freeholders residing in the district, for their approval or disapproval, of the question of the issuance of such bonds. Notice of such resolution and election shall be published in each county in said district once a week for four consecutive weeks before such election is held. The district directors shall cause to be prepared a sufficient number of ballots to be used at said election, which ballots shall be in substantially the following form:

OFFICIAL BALLOT
SPECIAL BONDING ELECTION

(Place a cross mark (x) before the proposition of your choice)

FOR: Issuing District Bonds in an amount not to exceed the sum of ....., bearing interest at the rate of .... per cent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right of way running through said district.

AGAINST: Issuing District Bonds in an amount not to exceed the sum of ....., bearing interest at the rate of .... per cent per annum, the proceeds of which bonds, or so much thereof as may be necessary, to be used in acquiring a right of way running through said district.

Such election shall be held at the several places in the district where the last general election was held in each of the counties of the district, unless the district directors shall otherwise direct, and said directors shall appoint the inspectors and clerks of election for each of the election precincts in said district. Only the freeholders who are qualified electors residing in said district shall be eligible to vote in said election. Such election shall be conducted and the canvass of the vote certified to and returned, and the returns canvassed substantially in the manner and within the time prescribed by general law for holding bond elections, except as herein otherwise provided, and except that the return of said election from each precinct in each of the counties in said district shall be delivered to the chairman and secretary of the district instead of to the county officers or official to whom such returns are usually made. The directors shall hold a meeting as soon thereafter as is practicable for the purpose of canvassing said election returns and certifying the returns thereof. If a majority of the freeholders who are qualified electors residing in said district shall have participated in said election and a majority of the votes cast in said election are in favor of the issuance of said bonds, then the district directors shall be authorized to issue and sell such bonds, in the manner as herein authorized, in the amount specified in the resolution calling the election, and to use the proceeds as authorized in this act. If, however, a majority of the freeholders who are qualified electors residing in said district shall not have participated in said election, or if a majority of such freeholders shall have participated but less than a majority of the votes cast are in favor of the issuance of said bonds, then and in either such case, no such bonds shall be issued.

Prior to the calling of such election, the district directors may, by appropriate resolution, call upon the supervisors of registration or other registering officer in each county of any district created hereunder to call for a reregistration of freeholder electors residing within the district, whereupon such registration supervisor or officer shall conduct the reregis-

tration in the same manner as provided in §97.081, except that the county commissioners of the several counties comprising the district shall not be required to take any action regarding such registration. In the event such reregistration be made, then in any election held hereunder after such reregistration the power to issue bonds of said district shall be based upon the approval by a majority of the votes cast in such election in which a majority of the registered freeholders who reregister and are qualified shall participate.

History.—§11, ch. 61-121.

374.86 Further elections.—In the event the issuance of said bonds is not approved by the first election held, the district directors shall be authorized to call another election on the question of the issuance of such bonds, such election to be held not sooner than six months after such first election, and further elections may be called and held, but not oftener than six months apart.

History.—§12, ch. 61-121.

374.87 Validation. — Any bonds issued by any district created pursuant to this act shall be validated in the same manner as is provided by general law for the validation of bonds of counties and municipalities. Said validation proceedings shall be instituted in the circuit court in and for the most populous county within the district according to the latest official decennial census.

History.—§13, ch. 61-121.

374.88 Sale of bonds.—After the approval of the bonds at the elections herein provided for and the validation of the same, the district shall forthwith sell all of said bonds or portions thereof from time to time at a price of not less than ninety-five per cent of face value plus accrued interest. The manner of sale shall be determined by the directors by resolutions subject to approval by the state board of conservation.

History.—§14, ch. 61-121.

374.89 Sinking fund.—The district directors shall establish and maintain a sinking fund for the payment of the principal and interest on any bonds issued and sold by said district. Until all of said bonds have been paid in full or until there is accumulated in the sinking fund sufficient funds to pay all such bonds, the directors of the district shall deposit and pay into said sinking fund annually out of taxes levied and collected by the district at least funds equal to the amount necessary to pay the said bonds for one year. The sinking fund shall not be used or appropriated for any other purposes.

History.—§15, ch. 61-121.

374.90 Investment of funds. — Any excess funds of the district may be invested in securities of the United States or agency thereof.

History.—§16, ch. 61-121.

374.91 Deposit of funds.—The funds of the district shall be deposited in a bank or banks, including federal savings and loan associations, to be designated by the directors of the board; provided, the bank depository shall furnish the district ample security to protect said deposits. Withdrawal of funds from said bank or banks shall be in such manner as the directors may, by resolution, prescribe.

History.—§17, ch. 61-121.

374.92 Levy of taxes.—Any district created pursuant to the provisions of this act, shall have the power to levy, assess, collect, and enforce taxes upon all the taxable real and personal property in the district, subject to the following restrictions and limitations:

(1) The county tax assessor of each county within the district shall annually, commencing with the year in which the district is created, immediately upon the assessment rolls being equalized, report to the directors of the district the assessed valuation of the real and personal property in their respective counties and the railroad assessment board shall annually, commencing with the year in which the district is created, report to the district directors the assessed valuation of all railroad lines and property, telephone and telegraph lines and property and all other taxable property within the district over which it has jurisdiction for valuation and assessment purposes. The total sum of all assessments so reported shall be the assessed value of taxable property of the district for that year.

(2) Upon receipt of all such assessments, the district directors shall by resolution determine the total amount of money to be raised by taxation in such year and shall also by the same resolution fix and determine the rate of taxation necessary when applied to the total assessed value of property in the district which will raise the amount of money so determined.

(3) The maximum rate of taxation which the district may levy in any one year shall be the rate which when applied to the total assessed value of property in the district for that year will raise not more than the following amounts, to-wit:

(a) The amount necessary to pay the annual interest requirements on and to pay the principal of bonds maturing during the ensuing year, of all bonds of the district outstanding and unpaid.

(b) The amount needed by the district directors for the annual administrative and operating expenses of the district, which amount shall not exceed the amount which would be raised by a levy of a one-fifth mill on the dollar on the total assessed valuation of the district.

(4) The directors of the district shall immediately deliver to the tax assessor and tax collector of each county within the district and to the railroad assessment board, and to the board of conservation, certified copies of the above resolution.

(5) The tax assessor of each county within the district and the railroad assessment board shall each year levy and assess a tax at the rate fixed by the district directors by said resolution upon all of the real and personal

property in said counties and to include the same on the tax rolls. The county tax collector shall, each year, collect the tax levied and assessed in the same manner and at the same time as state and county taxes are collected and shall remit the same upon collection, within the time and in the manner required by law, to the district directors.

(6) The collection of the taxes levied and assessed pursuant to this act shall be enforced in the same manner and at the same time as county taxes. Said taxes of the district shall constitute a lien of equal dignity to all other tax liens on all of the taxable property within the district.

History.—§18, ch. 61-121.

374.93 Budget.—The district directors shall each year, prior to fixing the rate of taxation for that year, prepare an itemized budget for administration and operations, payment of principal and interest on bonds and any other expenses contemplated for the ensuing year and submit the same to the board of conservation for its approval.

History.—§19, ch. 61-121.

374.94 Statement. — The district directors shall publish annually in a newspaper published in each county of the district, a complete and detailed statement of all moneys received and disbursed by the district during the preceding year.

History.—§20, ch. 61-121.

374.95 Construction.—It is intended that the provisions of this act shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—§21, ch. 61-121.

374.96 Construction of small boat channel at Suwannee river mouth.—The waterways development division of the Florida board of conservation shall construct, in cooperation with the Suwannee river valley authority a small boat channel at the mouth of the Suwannee river from the outer bars through the west pass and Salt creek to the town of Suwannee.

History.—§1, ch. 63-574.

CHAPTER 375

OUTDOOR RECREATION AND CONSERVATION

375.011 Short title.—This act may be known and cited as the outdoor recreation and conservation act of 1963.

History.—§1, ch. 63-36.

375.021 Outdoor recreation development; council, committee.—

(1) In furtherance of the provisions of this act there is hereby created an outdoor recreational development council, hereinafter referred to as council, consisting of the governor, secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and superintendent of public instruction. The governor shall serve as chairman of the council. The council shall meet from time to time at the call of the chairman.

(2) There also is hereby created an outdoor recreational planning committee, hereinafter referred to as committee, consisting of the following members: The governor, the director of the state board of conservation, one of the trustees of the internal improvement trust fund who shall be designated by the trustees, the chairman of the Florida development commission, the chairman of the Florida game and frest water fish commission, the chairman of the board of forestry, the chairman of the Florida park service and the chairman of the state road department.

(3) It shall be the responsibility of the council to review the comprehensive outdoor recreational development plan prepared by the committee and to approve such plan if it deems appropriate. The council shall not be limited to the recommendations of the committee, but may take appropriate action on its own motion. If the committee plan is approved, it shall be the responsibility of the council to execute such plan. Any action of the council must be by a major part of it, of whom the governor shall be one.

(4) The committee shall recommend a comprehensive outdoor recreational development plan for this state. The committee shall consult with and advise with all state agencies concerned with the administration of natural resources and outdoor recreation development regarding multiple use of state-owned lands. This plan shall be kept current through continual re-evaluation and revision.

(5) The governor shall serve as chairman of the committee. Any member of the committee may be represented at the various functions of the committee by his duly authorized representative. The committee shall hold regular meetings at least once each month and may hold special meetings at any time at the call of the chairman. The committee shall utilize staff personnel as are authorized by the council.

(6) The council may contract with the government of the United States or any agency or instrumentality thereof or with the state or any county, municipality, or district authority, or political subdivision, or with any private corporation, partnership, association, or person, providing for or relating to the development of outdoor recreation in accomplishing the purposes of this act. The council may receive and accept from any federal agency, state agency, or other public body grants or loans for or in aid of the purposes of this act and the council may receive and accept aid or contributions or loans from any other source of money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such aid, grants, or loans were made.

(7) Nothing herein shall be construed as limiting the existing authority of any officer, board, agency or commission.

History.—§2, ch. 63-36.

375.031 Land management division of trustees of internal improvement trust fund.—

(1) To provide for consolidated and efficient land acquisition and management there is hereby created a land management division under the trustees of the internal improvement trust fund, hereinafter known as trustees. This division shall be a separate and distinct part of the staff organization of the trustees. It shall as directed by the council be responsible for selecting, contracting, appraising, surveying, negotiating for purchase, and performing all other activities necessary or incident to acquiring, improving, enlarging, maintaining, extending, selling, leasing, or disposing of land, water areas, and related resources, and improvements thereon.

(2) The trustees shall acquire, control, and oversee the development and use of all land, water areas and related resources generally classified as outdoor areas as directed by the council. The trustees shall construct, improve, enlarge, extend and maintain capital improvements and facilities upon such outdoor areas, subject always to the overall supervision of the council. In performing these functions the trustees shall be guided also by the recommendations of agencies using or desiring to use land and water areas approved by the council. The council shall recommend to the trustees such procedures and actions as may be necessary to

assure that land, water areas and related resources are used to provide maximum outdoor recreational opportunities and to conserve natural resources.

(3) All land, water areas and related resources hereafter needed by the state for outdoor recreation, wildlife management, forestry management, nature preservation, water conservation and control and other similar or related purposes may be acquired through the procedures provided in this act.

(4) The trustees shall acquire by purchase, lease-purchase agreements or otherwise, on such terms and conditions and in such manner as approved by the council, any land, water areas, related resources and other property which the council may determine is reasonably necessary for outdoor recreation or natural resources conservation under this act, and any and all rights, title and interest in such land, water areas, related resources and other property, including any public lands, parks, playgrounds, reservations, roads or parkways, owned by or in which any county, political subdivision, city, town, village, public agency, or officer of the state has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and fee simple absolute in, easement upon, or the benefit of restrictions upon, abutting property to preserve and protect recreation and conservation areas and projects.

(5) Land, water areas and related resources which may be acquired through the procedures provided in this act shall include, but not be limited to, parks and recreation areas, wildlife preserves, forest areas, wetlands, floodways and water storage areas, beaches, water access sites, boating and navigational channels, submerged lands, historical and archaeological sites, rights of way and sites for access roads and other facilities and appurtenances which may be necessary for maximum development, use, and enjoyment of any outdoor or conservation areas.

(6) The trustees may acquire by the exercise of the power of eminent domain in accordance with the statutes of the state any land or water areas, related resources and property, and any and all rights, title and interest in such land or water areas, related resources and other property which the council determines is reasonably necessary for the preservation of floodways and water storage areas, boating and navigational channels, rights of way for access roads which may be necessary for maximum development and use of any conservation areas and rights of way for access which may be necessary for the use and enjoyment of waterways where the riparian and littoral rights appurtenant to such waterways are severally held.

(7) Upon direction of the council the trustees shall lease acquired land, water areas and related resources, or improvements thereon, to any state agency for its authorized purposes. The council may, in its discretion, require such state agency to pay as rentals on the leased land, water areas, related resources, or improvements, all or any part of the revenues derived from such leases.

(8) Upon direction of the council, the trustees shall sell, lease, or otherwise dispose of certain products and user rights in, under or upon land, water areas and related resources acquired under the provisions of this act, including, but not limited to, oil and minerals, timber and forest products, sand, gravel, earth, grazing rights, and farming rights on such terms and conditions as the council determines, if the sale, lease, or other disposition is not inconsistent with or injurious to the outdoor recreation, conservation, and other purposes for which said lands and water areas were acquired.

History.—§3, ch. 63-36.

375.041 Land acquisition trust fund.—

(1) There is hereby created a land acquisition trust fund to facilitate and expedite the acquisition of land, water areas and related resources required to accomplish the purposes of this act. The land acquisition trust fund shall be held and administered by the trustees, as directed by the council. All moneys and revenue from the operation, management, sale, lease, or other disposition of land, water areas, related resources and the facilities thereon acquired or constructed under this act shall be deposited in or credited to the land acquisition trust fund. Moneys accruing to any agency for the purposes enumerated in this act may be deposited in this fund. There shall also be deposited into the land acquisition trust fund other moneys as authorized by appropriate act of the legislature. All moneys so deposited into the land acquisition trust fund shall be trust funds for the uses and purposes herein set forth, within the meaning of §215.32(1)(b) and such moneys shall not become or be commingled with the general revenue fund of the state, as defined by §215.32(1)(a).

(2) The moneys on deposit in the land acquisition trust fund shall be first applied to pay the rentals due under lease-purchase agreements or to meet debt-service requirements of revenue bonds issued pursuant to §375.051.

(3) Any moneys in the land acquisition trust fund which are not pledged for rentals or debt service as above provided may be expended from time to time to acquire land, water areas, and related resources and to construct, improve, enlarge, extend, operate and maintain capital improvements and facilities in accordance with the plan.

(4) The trustees may disburse moneys in the land acquisition trust fund at the direction of the council to pay the necessary expenses of the council, the committee, and the land acquisition trust fund to effect the purposes of this act.

History.—§4, ch. 63-36.

375.042 Proceeds from sale of state lands; deposit in land acquisition trust fund.—The net proceeds from the sale, lease or other disposition of state lands being administered by

the trustees of internal improvement fund of the state may in their discretion be paid by said trustees into the land acquisition trust fund created by the outdoor recreation and conservation act of 1963; provided, however, this act shall not apply to the distribution of Murphy act funds as provided in §192.46, nor shall this act apply to proceeds payable into the state school fund as required by §4, Art. XII, of the state constitution, nor shall this act apply to proceeds payable into the state school trust fund as provided by §§270.12 and 270.13.

History.—§1, ch. 63-228.

375.051 Issuance of revenue bonds subject to constitutional authorization.—The acquisition of lands, water areas and related resources by the trustees under this act is a public purpose for which revenue bonds may be issued when and only when there has been granted in the state constitution specific authorization for the outdoor recreational development council to issue revenue bonds to pay the cost of acquiring such lands, water areas and related resources and to construct, improve, enlarge and extend capital improvements and facilities thereon as determined by the council to be necessary for the purposes of this act. The trustees may utilize the services and facilities of the attorney general, the development commission, the board of administration, or any other agency in this regard. Provided, however, no revenue bonds, revenue certificates or other evidences of indebtedness shall be issued for the purposes of this act except as specifically authorized by the state constitution.

History.—§5, ch. 63-36.

375.061 Construction.—The provisions of this act shall be liberally construed in a manner to accomplish the purposes thereof.

History.—§6, ch. 63-36.

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this act is to encourage persons to make available to the public land, water areas and park areas for outdoor recreational purposes by limiting their liability to persons going thereon and to third persons who may be damaged by the acts or omissions of persons going thereon.

(2) An owner or lessee who provides the public with a park area for outdoor recreational purposes owes no duty of care to keep that park area safe for entry or use by others, or to give warning to persons entering or going on that park area of any hazardous conditions, structures, or activities thereon. An owner or lessee who provides the public with a park area for outdoor recreational purposes shall not by providing that park area:

(a) Be presumed to extend any assurance that such park area is safe for any purpose,

(b) Incur any duty of care toward a person who goes on that park area, or

(c) Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that park area.

This section shall not apply if there is any charge made or usually made for entering or using such park area, or any part thereof, or if any commercial or other activity for profit is conducted on such park area, or any part thereof.

(3) An owner of land or water area leased to the state for outdoor recreational purposes owes no duty of care to keep that land or water area safe for entry or use by others, or to give warning to persons entering or going on that land or water of any hazardous conditions, structures, or activities thereon. An owner who leases land or water area to the state for outdoor recreational purposes shall not by giving such lease:

(a) Be presumed to extend any assurance that such land or water area is safe for any purpose,

(b) Incur any duty of care toward a person who goes on the leased land or water area, or

(c) Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the leased land or water area.

The foregoing applies whether the person going on the leased land or water area is an invitee, licensee, trespasser, or otherwise.

(4) This act does not relieve any person of liability which would otherwise exist for deliberate, wilful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.

(5) The term outdoor recreational purposes as used in this act shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, and visiting historical, archaeological, scenic or scientific sites.

History.—§§1-5, ch. 63-313.

CHAPTER 376*

ARCHEOLOGY

376.01 State archeological survey and archeologist.—The board may employ a state archeologist who shall possess such qualifications as the board may prescribe and he shall serve at the pleasure of the board. The state archeologist shall conduct an archeological survey of the state.

History.—§1, ch. 16782, 1935; CGL 1936 Supp. 4151(272); §12, ch. 61-231.

376.02 Assistants for state archeologist.—The board may employ such assistants as it deems necessary to assist the state archeologist in carrying out the provisions of this chapter. The assistants shall possess such qualifications as the board may prescribe and shall serve at the pleasure of the board.

History.—§2, ch. 16782, 1935; CGL 1936 Supp. 4151(273); §12, ch. 61-231.

376.03 Declaration.—It is declared that the purposes of this chapter are to further the public interest as follows:

(1) By providing for the timely accumulation of scientific data and artifacts from numerous historical and archeological sites which are being destroyed or threatened with destruction by the rapid population growth and increased land use within the state.

(2) By providing for cooperation with federal agencies and private interests in extracting knowledge and artifacts from the finite archeological resources for the study of Florida history and prehistory which are now suffering from constant and rapid attrition.

(3) By granting to a state agency such powers and imposing upon it such duties so that the state may properly perform its functions in the discovery of sites, artifacts and knowledge which constitute proof of a great heritage as a state, a nation and a geographical area of the world.

History.—§3, ch. 16782, 1935; CGL 1936 Supp. 4151(274); §12, ch. 61-231.

376.04 Powers and duties.—The division of administration of the board through the state archeologist is authorized to carry out a statewide program of salvage archeology commensurate with the expanding land use and economy of the state in cooperation with other state agencies and boards and with federal agencies and the general public. The state archeologist shall make collections of specimens of ancient lore, artifacts, skeletal material and all evidence of ancient culture in Florida and said specimens and artifacts or relics shall be correctly labelled for convenient use and study. The state archeologist shall record and publish the result of his findings and arrange for the preservation of significant discoveries and artifacts for the public benefit. The division of administration in the performance of its powers and duties as set forth in this chapter may accept and administer public and private grants provided for archeological work with particular emphasis on salvage archeological and historical sites on highway rights of way, other state lands and upon private property when the owners thereof shall have granted permission and approval. The division of administration may contract with other public and private agencies including but not limited to state universities for the conduct of scientific salvage archeology if required in the public interest.

History.—§4, ch. 16782, 1935; CGL 1936 Supp. 4151(275).

376.05 Duties of state chemists.—All chemical, analytical or essay work required by the carrying out of the provisions of this chapter shall be performed by the state chemist and his assistants at the direction of the board upon request of the state archeologists.

History.—§5, ch. 16782, 1935; CGL 1936 Supp. 4151(276); §12, ch. 61-231.

*§370.02 reorganizes state board of conservation into six divisions: administration, salt water fisheries, water resources and conservation, waterways development, geology, and beaches and shores. Said divisions to enforce: administration, weather modification, §§373.261-373.391, and archeology, ch. 376; salt water fisheries, ch. 370; water resources and conservation, §§373.021-373.241, and flood control districts, ch. 378; waterways development ch. 374; geology §§373.011-373.012; ch. 377 conservation of oil and gas resources.

CHAPTER 377*

CONSERVATION OF OIL AND GAS RESOURCES

377.01 Governor to enter into interstate compact to conserve oil and gas.—The governor of the state is hereby authorized and directed, for and in the name of the state, to join with other states in the interstate compact to conserve oil and gas, which was heretofore executed in the city of Dallas, Texas, on the 16th day of February, 1935, and is now deposited with the department of state of the United States, and which has been extended with the consent of congress to September 1, 1947.

History.—§1, ch. 22823, 1945.

377.02 Form of compact.—The interstate compact to conserve oil and gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, and New Mexico have ratified and congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

*§370.02 reorganizes state board of conservation into six divisions: administration, salt water fisheries, water resources and conservation, waterways development, and geology and beaches and shores. Said divisions to enforce: administration, weather modification, §§373.261-373.391, and archeology, ch. 376; salt water fisheries, ch. 370; water resources and conservation, §§373.021-373.241, and flood control districts, ch. 378; waterways development ch. 374; and geology, §§373.011-373.012; ch. 377, conservation of oil and gas resources.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI.

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This compact shall expire September 1, 1937, but any state joining herein may, upon sixty (60) days' notice, withdraw herefrom.

The representative of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

History.—§2, ch. 22823, 1945.

377.03 **Extension of compact.**—The governor of Florida is further authorized and empowered, for and in the name of the state, to execute agreements for the further extension of the expiration date of the said "the interstate oil compact" to conserve oil and gas, and to determine if and when it shall be for the best interest of the state to withdraw from said compact upon sixty days' notice as provided by its terms. In the event he shall determine that the state should withdraw from said compact he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state from said compact.

History.—§3, ch. 22823, 1945.

377.04 **Official report of state.**—The governor shall be the official representative of the state on "the interstate oil compact commission," provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all the powers and duties as a member of "the interstate oil compact commission"; provided, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state as a member of said commission. Said assistant representative shall take the oath of office prescribed by the constitution, which shall be filed with the secretary of state.

History.—§4, ch. 22823, 1945.

377.05 **Construction of law.**—Sections 377.-01-377.05 are hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that this law will enable the state to cooperate with other states in fostering and encouraging production of oil necessary for national defense and in preventing and discouraging waste of this vital resource. Therefore, this law shall go into immediate effect.

History.—§5, ch. 22823, 1945.

377.06 **Public policy of state concerning natural resources of oil and gas.**—It is hereby de-

clared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made therefrom, to encourage the continuous and economic supply of the demand therefor; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all purposes indicated by the provisions herein. It is not the intention of this section to limit or restrict or modify in any way the provisions of this law.

History.—§1, ch. 22819, 1945.

377.07 Division of geology, powers, duties, and authority.—The division of geology of the state board of conservation is hereby vested with power, authority and duty to administer, carry out and enforce the provisions of this law as directed in §370.02(8).

History.—§2, ch. 22819, 1945; §8, ch. 61-231.

377.10 Certain persons not to be employed by board.—No person in the employ of, or holding any official connection or position with any person, firm, partnership, corporation or association of any kind, engaged in the business of buying or selling mineral leases, drilling wells in the search of oil or gas, producing, transporting, refining, or distributing oil or gas shall hold any position under, or be employed by, the board in the prosecution of its duties under this law.

History.—§5, ch. 22819, 1945.

377.11 Offices of board.—The board may in its discretion establish an office in Tallahassee, at which office the records of the board concerning its administration and enforcement under the provisions of this law shall be kept.

History.—§6, ch. 22819, 1945.

377.12 Meetings, inquiries and investigations.—

(1) The board, by itself, or by any member or members, or other person or persons, designated by it, may meet and hold hearings and conduct inquiries and investigations at such times, in such places, and in such manner, not inconsistent with the other provisions of this law, as it, him, or they, may determine. When there shall be a meeting called of the entire membership of the board, a majority thereof shall constitute a quorum and such quorum shall have as full power to act in all matters relating to or concerning the administration and enforcement of the provisions of this law, as if all members of the board were present and acting.

(2) The board may hold hearings and conduct inquiries and investigations, by any one, or more, of its members, or other person designated by it, whose findings and determinations shall be final and conclusive, unless, upon a review by the board, or judicial action, the same are modified, or set aside; provided, however, that the foregoing shall not apply to the adoption, promulgation, amendment, and repeal of rules and regulations and to orders of general application.

(3) The word "board" when used in this law, as applied to hearings, inquiries and investigations, unless inconsistent with the context in which such word appears, or with the provisions of this law, shall include all hearings, inquiries, and investigations, whether held by the board by all, or any one, or more, of its members, or by others, designated as herein provided.

History.—§7, ch. 22819, 1945.

377.13 Administering oaths.—Any member of the board, and the secretary thereof, shall have power to administer oaths to any witness or witnesses in any hearing, investigation or proceeding, contemplated by this law, or by any other law of the state relating to the conservation and control of oil or gas or the products therefrom.

History.—§8, ch. 22819, 1945.

377.14 Official seal.—The board shall adopt an official seal, of which all courts shall take judicial cognizance.

History.—§9, ch. 22819, 1945.

377.15 Additional powers, duties and authority of board.—The powers, duties, and authority vested in the state board of conservation under this law shall be in addition to, separate from, and shall not affect, unless in conflict with the provisions hereof, other powers, duties and authority vested in said board by law.

History.—§10, ch. 22819, 1945.

377.16 Expenses of board.—All necessary expenses incurred by the board in the performance of its powers and duties under the provisions of this law shall be payable out of any funds available or to become available for the necessary and regular expenses of the trustees of the internal improvement trust fund of the state, and so much of such funds as may be necessary for the purposes of this law are hereby appropriated for such purposes.

History.—§11, ch. 22819, 1945; §2, ch. 61-119.

377.17 Accounts, claims and bills against board; examination, etc.—All accounts, claims and bills of any nature whatsoever against the board, under the provisions of this law, shall be examined by the board and, if found correct, approved and delivered to the comptroller who, upon receipt thereof, shall issue his warrant drawn upon the state treasurer, in form and manner as warrants are drawn and issued in payment of the necessary and regular expenses of the trustees of the internal improvement trust fund, and the state treasurer is hereby authorized to pay the same out of any funds in the state treasury available or to become available to the trustees of the internal improvement trust fund for its necessary and regular expenses.

History.—§12, ch. 22819, 1945; §2, ch. 61-119.

377.18 Common sources of oil and gas.—All common sources of supply of oil and gas or either of them shall have the production therefrom controlled or regulated in accordance with the provisions of this law.

History.—§13, ch. 22819, 1945.

377.19 Definitions.—Unless the context otherwise requires, the words defined in this section shall have the following meanings when found in §§377.06, 377.07, 377.10-377.40:

(1) "Board," "conservation board" and "state conservation board" shall mean the state board of conservation of the State.

(2) "State" shall mean the State of Florida.

(3) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(4) "Oil" shall mean crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(5) "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (4) above.

(6) "Pool" shall mean an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate "pool" as used herein.

(7) "Field" shall mean the general area which is underlaid, or appears to be underlaid, by at least one pool; and "field" shall include the underground reservoir, or reservoirs, containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field" unlike "pool," may relate to two or more pools.

(8) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another, or others.

(9) "Producer" shall mean the owner or operator of a well or wells capable of producing oil or gas, or both.

(10) "Waste," in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. Waste shall include:

(a) The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) Producing oil or gas in such a manner as to cause unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof, capable of producing oil or gas.

(f) Underground waste however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate and unratable withdrawals, causing undue drainage between tracts of land.

(11) "Product" means any commodity made from oil or gas, and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(12) "Illegal oil" shall mean oil which has been produced within the state from any well, or wells, in excess of the amount allowed by rule, regulation or order of the board, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(13) "Illegal gas" shall mean gas which has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation or order of the board, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(14) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(15) "Reasonable market demand" shall mean the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(16) "Tender" shall mean a permit or certificate of clearance for the transportation or the delivery of oil, gas or products, approved and issued or registered under the authority of the board.

(17) The use of the word "and" shall include

the word "or" and the use of "or" shall include "and," unless the context clearly requires a different meaning, especially with respect to such expressions as "oil and gas" or "oil or gas."

History.—§14, ch. 22819, 1945.

377.20 Waste prohibited.—Waste of oil or gas defined in this law is hereby prohibited.

History.—§15, ch. 22819, 1945.

377.21 Jurisdiction of board.—

(1) The board shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

(2) The board shall have authority and it shall be its duty to make such inquiries as it may deem proper to determine whether waste, over which it has jurisdiction, exists or is imminent. In the exercise of such power, the board shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records, to examine, survey, check, test and gauge oil and gas wells, tanks, refineries and modes of transportation; to hold hearings; to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

History.—§16, ch. 22819, 1945.

377.22 Rules, regulations and orders.—

(1) The board shall provide, by rules and regulations, for ratable takings in all pools on a reasonable and equitable basis.

(2) The board shall have authority to make, adopt, promulgate, amend, and repeal such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including, but not limited to, rules, regulations or orders for the following purposes:

(a) To require the drilling, casing and plugging of wells to be done in such a manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond conditioned for the performance of the duty to plug properly each dry and abandoned well.

(b) To require the making of reports showing the location of all oil and gas wells, and the making and filing of logs, and the taking and filing of directional surveys, and the filing of electrical logs of oil and gas wells if taken, and the saving of cutting and cores, the cuts of which shall be given to the Florida geological survey, and the making of reports with respect to drilling and production records; provided, that such information, or any part thereof, at the request of the operator shall be held confidential by the board for a period of ninety days after the completion of a well, and, at the option of the board, for a longer period.

(c) To prevent wells from being drilled, operated or produced in such a manner as to cause injury to neighboring leases or property.

(d) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(e) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(f) To prevent "blow outs," "caving" and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(g) To prevent fires.

(h) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(i) To regulate the "shooting," perforating and chemical treatment of wells.

(j) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(k) To regulate gas cycling operations.

(l) If necessary for the prevention of waste, as herein defined, to determine, limit and prorate the production of oil or gas, or both from any pool or field in the state.

(m) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.

(n) To regulate the spacing of wells and to establish drilling units.

(o) To prevent, so far as is practical, reasonably avoidable, drainage from each developed unit which is not equalized by counterdrainage.

History.—§16, ch. 22819, 1945.

377.23 Monthly reports to board.—Every producer of oil or gas in the state shall submit to the board, on forms prescribed by the board, a monthly report of the actual production from each and every oil and gas well operated by him, said report to be submitted not later than the twenty-fifth of the month, and to cover the period of the preceding calendar month. Said producer shall submit a duplicate copy of said report at the same time to the state comptroller; and said reports shall be submitted through the medium of the United States mails, and it shall be unlawful for the same to be transmitted or received in any other way.

History.—§17, ch. 22819, 1945.

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before any well in search of oil or gas shall be drilled, the person desiring to drill the same shall notify the board upon such form as it may prescribe and shall pay a fee of fifty dollars for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

(2) Each application for the drilling of a well in search of oil or gas in this state shall in-

clude the address of the residence of the applicant, or each applicant, which address shall be the address of each person involved in accordance with the records of the board until such address is changed on the records of the board after written request.

(3) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by regulations to be prescribed by the board, and the owner of such well shall give notice upon such form as the board may prescribe, of the drilling of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen dollars. No well shall be abandoned until such notice has been given and such fee has been paid.

(4) Application for permission to drill or abandon any well may be denied by the board for only just and lawful cause.

(5) No permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.

(6) No permit to drill a gas or oil well shall be granted at a location in the tidal waters of the state, abutting or immediately adjacent to the corporate limits of a municipality or within three miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.

(7) No permit to drill a gas or oil well shall be granted on any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters of the state abutting or immediately adjacent to an improved beach, or within three miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly approved the application for such permit by resolution.

(8) For the purposes of this section and law, an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given mile of such beach.

History.—§18, ch. 22819, 1945.

377.241 Criteria for issuance of permits.— The state board of conservation, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(1) The nature, character and location of the lands involved; whether rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future.

(2) The nature, type and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.

(3) The proven or indicated likelihood of the presence of oil, gas or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis.

History.—§1, ch. 61-299.

377.242 Permits for drilling or exploring and extracting through well holes or surface extractions. — The state board of conservation shall be vested with the power and authority:

(1) To issue permits for drilling or exploring for oil, gas and related products which are to be extracted from below the surface of the land only through the well hole drilled for gas, oil and related products, provided that no permit shall be required for preliminary geophysical tests and other exploratory operations prior to actual drilling, which are now permitted by the board for oil and gas and related products.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

History.—§1, ch. 61-299.

377.243 Conditions for granting permits for extraction through well holes.—Prior to the application to the board for the permit to drill for oil, gas and related products, referred to in §377.242(1), the applicant must own a valid deed, or other muniment of title, or lease granting said applicant the privilege to explore for oil, gas or related mineral products to be extracted only through the well hole on the land or lands included in the application.

History.—§1, ch. 61-299.

377.244 Conditions for granting permits for surface exploratory and extraction operations.—

(1) Exploration for and extraction of minerals under and by virtue of the authority of a grant of oil, gas or mineral rights, or which, subsequent to such grant, may be interpreted to include the right to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole, that is by means of surface exploratory and extraction operations such as sifting of the sands, dragline, open pit mining or other type of surface operation, which would include movement of sands, dirt, rock, or minerals, shall be exercised only pursuant to permit issued by the board upon applicant complying with the following conditions:

(a) Applicant must own a valid deed, or other muniment of title, or lease granting applicant the right to explore for and extract oil, gas and other minerals from said lands.

(b) The applicant shall post a good and

sufficient surety bond with the board in such amount as the board may determine is adequate to afford full and complete protection for the owner of the surface rights of the lands described in the application, conditioned upon the full and complete restoration, by the applicant, of the area over which the exploratory and extraction operations are conducted to the same condition and contour in existence prior to such operations.

(2) The provisions of this act shall not apply to the exploration and removal from lands of peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances; it being the legislative determination that the mining and extraction operations, and the grants of authority under which these activities are conducted for said substances exempted from the provisions of this act, are dissimilar from the exploratory and extraction operations and the grants of authority under which these activities are conducted for substances which come within the purview of the regulatory provisions of this act.

History.—§1, ch. 61-299.

377.245 Provision for distribution of earnings to lessees or owners of the fractional undivided mineral rights not owned by applicant for permit under §§377.243 and 377.244.—Lessees or owners of the fractional undivided oil, gas or other mineral rights in lands described in permits issued under the provisions of §§377.243 and 377.244, not owned by the applicant named in said permits, shall, as to all productive wells or surface mineral operations on said lands, be entitled to and be paid their pro rata part of the earnings after costs of exploration and operation have been allocated. The board shall prescribe such reasonable and appropriate rules and regulations as shall be deemed necessary and proper to implement the provisions of this section and all other sections of this act.

History.—§1, ch. 61-299.

377.246 Provisions to be cumulative and supplemental. — These provisions contained in §§377.241 through 377.244 shall be cumulative and supplemental to all other provisions contained in chapter 377, on the same subject. These provisions shall also be cumulative and supplemental to all other provisions of law relating to submerged or sovereignty lands or relating to the powers of the trustees of the internal improvement trust fund.

History.—§1, ch. 61-299; §2, ch. 61-119.

377.25 Production pools; drilling units.—(1) No rule, regulation or order of the board shall be such in terms or effect (a) that it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can without waste produce such share, or (b) as to occasion net drainage from a tract, unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can without waste produce such tract's just and equitable share, as set forth in this section, of the production of such pool.

(2) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the board shall, after a hearing, establish a drilling unit or units for each pool. A drilling unit, as contemplated herein, means the maximum area in a pool which may be efficiently and economically drained by one well, and such unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities.

(3) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where it is shown, after notice and upon hearing, and the board finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the board shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract, with respect to which the exception is granted, will be prevented or minimized, and the producer of the well drilled, as an exception, will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(4) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract or tracts in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained; and, to that end, the rules, regulations, permits and orders of the board shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage which is not equalized by counterdrainage, and will give to each producer the opportunity to use his just and equitable share of the reservoir energy.

History.—§19, ch. 22819, 1945.

377.26 Location of wells.—Whenever the board fixes the location of any well or wells on the surface, the point at which the maximum penetration of such well into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface; provided, that the board shall prescribe rules, regulations and orders governing the reasonableness of such variation.

History.—§20, ch. 22819, 1945.

377.27 Drilling units.—

(1) When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may validly agree to integrate their interest and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the board shall, for the prevention of waste and to avoid the risks involved in the drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit.

(2) Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the board is without authority to require integration as provided for in subsection (1) of this section, then, subject to all other applicable provisions of this law, the owners of each tract embraced within the drilling unit may drill on their respective tracts; but the allowable production therefrom shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

History.—§21, ch. 22819, 1945.

377.28 Cycling, pooling, etc., of oil and gas.—

(1) The board, in order to prevent waste and avoid the drilling of unnecessary wells, may permit or require the cycling of gas in any pool or portion thereof and is also authorized to permit or require the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring such reservoir, maintaining pressure, or carrying on secondary recovery operations. The board may require pooling or integration of tracts when reasonably necessary in connection with cycling operations.

(2) All orders requiring integration, pooling, cycling, repressuring pressure maintenance, or secondary recovery operations shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each unit which is not equalized by counterdrainage. The portion of the production allocated to the owner of each tract included in an integrated or pooled unit formed by an integration or pooling order shall, when produced, be considered as if it had been produced from such tract by well drilled thereon. In the event such integration or pooling is required, the operator designated by the board to develop and operate the integrated or pooled unit shall have the right to charge against the interest of each other owner in the production from the wells drilled by such designated operator the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from such wells drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his share of the expense of drilling, equipping and operating the well may be paid to the operator of the well out of production, with the value of production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. In the event of any dispute relative to such costs, the board shall determine the proper cost. In the event a dry hole should be drilled, no liability for any part of the cost of drilling said well shall attach to any person or persons by reason of the integration order of the board.

History.—§22, ch. 22819, 1945.

377.29 Agreements in interest of conservation.—Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners and operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid, by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of the pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the co-operative development and operation thereof, when such agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

History.—§23, ch. 22819, 1945.

377.30 Limitation on amount of oil or gas taken.—

(1) Whenever the total amount of oil or gas which all the pools in the state can produce exceeds the amount reasonably required to meet the reasonable market demand for oil or gas in this state, then the board shall limit the total amount of oil or gas which may be produced in the state by fixing an allowable for the state among the pools on a reasonable basis and in such a manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the allowable for the state, and in fixing allowable for pools producing oil or gas, the board shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas and shall formulate rules setting forth standards or a program for the distribution of the allowable for the state, and shall distribute the allowable

for the state in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the board shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste; and provided, further, that if the amount allocated to a pool as its share of the allowable for the state is in excess of the amount which the pool should produce to prevent waste, then the board shall fix the allowable for the pool so that waste will be prevented.

(2) Whenever the board limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation may be imposed either incidentally to, or without, a limitation of the total amount of oil or gas which may be produced in the state, the board shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage, and so that each producer will have the opportunity to produce or receive his just and equitable share, as above set forth, subject to the reasonable requirement for the prevention of waste.

(3) After the effective date of any rule, regulation or order of the board fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

History.—§24, ch. 22819, 1945.

377.31 Hearings before board.—

(1) The board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this law; but in all hearings, the rules of evidence as established by law shall be applied; provided, however, that the erroneous ruling by the board on the admissibility of evidence shall not of itself invalidate any rule, regulation or order.

(2) No rule, regulation or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the board under the provisions of this law, except after a public hearing upon at least seven days' public notice given in such manner and form as may be prescribed by the board. Such public hearing shall be held at such time, place and in such manner as may be prescribed by the board, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(3) In the event an emergency is found to exist by the board which, in its judgment, requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, it may do so and such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than thirty days from its effective date, and, in any event, it shall expire when the rule, regulation or order, made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

(4) Should the board elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the board in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by such officer or agent shall be by the affidavit of the person making personal service.

(5) All rules, regulations and orders made by the board shall be in writing and shall be entered in full by the secretary in a book to be kept for such purpose by the board, which book shall be a public record and be open to inspection at all times during office hours. A copy of such rule, regulation or order, certified by the secretary, shall be received in evidence in all courts of this state with the same effect as the original thereof.

(6) Any interested person shall have the right to have the board call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the board by making a request therefor in writing. Upon the receipt of such request, the board shall promptly call a hearing thereon, and, after such hearing and with all convenient speed and, in any event, within thirty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate.

History.—§25, ch. 22819, 1945.

377.32 Issuance of subpoenas; service, etc.—

(1) The board, or any member thereof, is hereby empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers and records in any proceeding before the board as may be material upon questions lawfully before the board. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the board or a court, or from obedience to the subpoena of the board or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained

shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry not pertinent to some question lawfully before the board or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the board or court, or in obedience to its subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with any subpoena issued by the board or any member thereof, or, in case of the refusal of any witness to testify or answer as to any matter regarding which he may be lawfully interrogated, any circuit court in this state, on the application of the board, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the board and produce such documents, and give his testimony upon such matters as may be lawfully required, and such court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from such court, or for refusal to testify therein.

History.—§26, ch. 22819, 1945; (2) §23, ch. 29737, 1955.

377.33 Injunctions against board.—

(1) Any interested person adversely affected by any statute of this state with respect to conservation of oil or gas, or both, or by provisions of this law, or by any rule, regulation or order made by the board thereunder, or by any act done or threatened thereunder, and who has exhausted his administrative remedy, may obtain court review and seek relief by a suit for injunction against the board as defendant, or the members thereof by suit in the chancery court in the county or counties wherein the property involved is situated, or in the chancery court of Leon county. Such suit shall have precedence over all other causes, proceedings or suits on the docket of a different nature, and the attorney representing the board may have the case set for trial after ten days' notice to the plaintiff or his attorney. Such trial shall be de novo, the burden of proof shall be upon the plaintiff, but the court shall not be bound by the findings of fact by the board, and all legal evidence with respect to the validity and reasonableness of the order of the board complained of shall be admissible. The statute, provision of this law, or the rule, regulation or order complained of shall be taken as prima facie valid, and such presumption shall not be overcome, in connection with any application for injunctive relief, including temporary restraining order, by verified complaint or affidavit of, or in behalf of, the applicant. The right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth.

(2) No temporary restraining order or injunction shall be granted against the board, or members thereof, or against its attorneys, agents, employees or representatives restraining the board or its members, attorneys, agents, employees or representatives from enforcing any statute of this state relating to conservation of oil or gas, or any of the provisions of this law, or any rule, regulation or order made thereunder, except after due notice, served upon one of the members of the board or its secretary, and after a hearing at which it shall be shown to the court by legal evidence that the act done or threatened is without sanction of law, or that the provisions of this law, or the rule, regulation or order complained of, is invalid or unreasonable, and that if enforced against the complaining party, will cause an irreparable injury. If the board shall so request at such hearing, it shall be entitled to a trial on the merits within ten days after the granting of any temporary order, and, if the plaintiff is not ready for trial at such time, the court shall be authorized to dissolve the temporary restraining order.

(3) No temporary injunction of any kind against the board, or any member or members thereof, or against its attorneys, agents, employees or representatives, shall become effective until the plaintiff shall execute a bond in such amount and upon such conditions as the court may direct. The bond shall be made payable to the governor of the state and his successors in office, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the injunction. All persons claiming injury must bring suit within six months after the date of the final determination of the validity, in whole or in part, of the rule, regulation or order, the enforcement of which was enjoined; otherwise, recovery of such person under the terms of the bond shall be barred and denied.

History.—§§27-29, ch. 22819, 1945; (1) §10, ch. 26484, 1951; §2, ch. 29737, 1955.

377.34 Actions and injunctions by board.—

(1) Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the board, through its counsel, may bring suit against such person in the circuit court in the county of Leon, state, or in the circuit court in the county in which the well in question is located, at the option of the board, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit, the board may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person

from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of a receiver appointed by the court if, in the judgment of the court, such action is advisable.

(2) In the event the board should fail to bring suit within ten days to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this law, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the board in writing of such violation, or threat thereof, and has requested the board to sue, may, to prevent any or further violation, bring suit for that purpose in the circuit court of the county of Leon, in the state. If, in such suit, the court should hold that injunctive relief should be granted, then the board shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the board had at all times been the complainant.

(3) If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made upon him or any employee or agent of that defendant at any place in Florida and by the board mailing copy of the complaint in the action to the defendant at the address of the defendant then recorded with the board.

History.—§30, ch. 22819, 1945.

377.35 Suits, proceedings, appeals, etc.—In all proceedings brought under authority of this law, or of any oil or gas conservation statute of this state, or of any rule, regulation or order made thereunder, and in all proceedings instituted for the purpose of contesting the validity of any provision of the law, or of any oil or gas conservation statute of this state, or of any rule, regulation or order issued thereunder, and in all proceedings instituted for the purpose of contesting the validity of any provision of the law, or of any oil or gas conservation statute, or of any rule, regulation or order made thereunder, review may be had pursuant to Art. V, state constitution, the Florida appellate rules and chapter 120.

History.—§31, ch. 22819, 1945; §22, ch. 63-512.

377.36 False entries and statements; incomplete entries, etc.; penalties.—Any person who, for the purpose of evading this law, or of evading any rule, regulation or order made thereunder, shall intentionally make, or cause to be made, any false entry or statement of fact in any report required to be made by this law, or by any rule, regulation or order made hereunder; or who, for such purpose shall make, or cause to be made, any false entry in any account, record or memorandum kept by any person in connection with any provision of this law, or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person, as may be required by the board under authority given in this law, or by any rule, regulation or order made hereunder; or who, for such purpose, shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or, by any other means, falsify any book, record, or other paper pertaining to the transaction regulated by this law, or by any rule, regulation or order made hereunder, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars, or imprisonment for a term of not more than six months, or to both such fine and imprisonment.

History.—§32, ch. 22819, 1945.

377.37 Penalties; damages, etc.—

(1) Any person who knowingly and willfully violates any provision of this law, or any rule, regulation, or order of the board made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to the payment of liquidated damages to the board of one hundred dollars a day for each and every day of such violation, and for each and every act of violation, such liquidated damages to be recovered in a suit in a court of competent jurisdiction in the county where the defendant resides, or in the county of the residence of any defendant, if there be more than one defendant, or in a court of competent jurisdiction in the county where the violation took place. The place of suit shall be selected by the board, and such suit, by direction of the board, shall be instituted and conducted in the name of the board by counsel for the board. The payment of any damages, as provided for herein, shall not have the effect of changing illegal product into legal product, illegal oil into legal oil, or illegal gas into legal gas, nor shall such payment have the effect of authorizing the sale or purchase or acquisition or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, liquidated damages shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product. The payment of any such damages shall not impair or abridge any cause of action which any person may have against the person violating any provision of this law, or any rule, regulation or order, for an injury resulting to him from such violation.

(2) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation or order made thereunder shall be subject to the same damages as are prescribed herein for the violation by such other person.

History.—§33, ch. 22819, 1945.

377.38 Illegal oil, gas and other products; handling, sale, use, etc., prohibited.—

(1) The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited.

(2) Unless and until the board provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or of transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no liquidated damage shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Liquidated damages shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, liquidated damages as provided in this law shall apply in any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which liquidated damages shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with all applicable rules, regulations or orders of the board relating thereto.

History.—§34, ch. 22819, 1945.

377.39 Seizure and sale of illegal oil, gas and their products.—

(1) Apart from, and in addition to, any other remedy or procedure which may be available to the board, or any liquidated damages which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this subsection, that the commodity involved is contraband. Whenever the board believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through its counsel, bring a civil action in rem for that purpose in the circuit court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross action for injunction or for liquidated damages relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person, who may show himself to be adversely affected by any such seizure and sale, shall have the right to intervene in such suit to protect his rights.

(2) The action referred to above shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons without undertaking to name them, who may be interested in the illegal oil, illegal gas or illegal product mentioned in the complaint to appear and answer within thirty days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. One copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the state. A copy of the summons shall also be published once each week for four successive weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein if such a newspaper is published. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication or posting of said summons. Proof of service of said summons, and the manner thereof, shall be provided by general law.

(3) Where it appears by a verified pleading on the part of the plaintiff or by affidavit or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue an order of seizure, which shall be signed by the clerk and bear the seal of the court. Such order of seizure shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product described therein, and to hold the same subject to the orders of the court. Said order of seizure shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such order of seizure, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

(4) In a proper case, the court may direct the sheriff to deliver the custody of any illegal

oil, illegal gas or illegal product, seized by him under an order of seizure, to a receiver or conservator to be appointed by the court, which receiver or conservator shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the order of the court; provided, that the court may in its discretion appoint any member of the board or any agent of the board as such receiver or conservator.

(5) Sales of illegal oil, illegal gas or illegal product made under the authority of this law, and notices of such sales, shall be in accordance with the laws of this state relating to the sale and disposition of attached property; provided, however, that where the property is in the custody of a receiver or conservator, the sale shall be held by said receiver or conservator, and not by the sheriff. For his services hereunder, such receiver or conservator shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

(6) The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the act which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the general revenue fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing or handling in any other way, of the commodity purchased.

(7) Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character.

History.—§35, ch. 22819, 1945.
cf.—§377.19(12), (13) Definitions "Illegal Oil" and "Illegal Gas."

377.40 Negligently permitting gas and oil to go wild or out of control.—

(1) In order to protect further the gas fields and oil fields in the state, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after twenty-four hours' written notice by the board given to him or the person in possession of such well, make reasonable effort to control such well.

(2) In the event of the failure of the owner of such well, within twenty-four hours after service of notice above provided for, to control the same, if such can be done within the period or to begin, in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the board shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well, all at the reasonable expense of the owner of the well. In order to secure the board in the payment of the reasonable cost and expense of controlling or plugging of such well, the board shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the board shall be repaid. When all such costs and expenses have been repaid, the board shall restore possession of such well to the owner; provided, that in the event the income received by the board shall not be sufficient to reimburse the board, as provided for in this section, the board shall have lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the board shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other like civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the board which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well.

History.—§36, ch. 22819, 1945.

CHAPTER 378*

FLOOD CONTROL

378.01 Creation of flood control district.—Any contiguous body of land in this state may be created into a district for the following purposes:

(1) To cooperate with the United States in the manner provided by congress for flood control, reclamation, conservation and allied purposes in protecting the inhabitants, the land and other property within the district from the effects of a surplus or a deficiency of water when the same may be beneficial to the public health, welfare, safety and utility.

(2) To plan, construct, operate and maintain works of the district as hereinafter defined.

(3) To determine, establish and control level of waters to be maintained in all canals, lakes, rivers, channels, reservoirs, streams or other bodies of water owned or maintained by the district, and to maintain such waters at the levels so determined and established by means of dams, locks, flood gates, dikes and other structures; and to regulate the discharge into or withdrawal from the canals, lakes, rivers, channels, reservoirs, streams or other bodies of water owned or maintained by the district, or which are a work of the district.

(4) To have general control and supervision over canals, lakes, rivers, ditches, channels, reservoirs, streams or other bodies of water which are owned, maintained, or which are a work of the district, insofar as the quality of water may affect the public health, welfare, safety and utility of said bodies of water. To prevent the deposit, directly or indirectly, in any of the canals, lakes, rivers, ditches, channels, reservoirs, streams or other bodies of water which are owned, maintained, or which are a work of the district, by any person, firm, company, corporation or association, in this state, or the managing agent of any person, firm, company, corporation or association in this state or any duly elected, appointed, or lawfully created officers of any county, city, town,

*§370.02 reorganizes state board of conservation into six divisions: administration, salt water fisheries, water resources and conservation, waterways development, geology and beaches and shores. Said divisions to enforce: administration, weather modification, §§373.261-373.391, and archeology, ch. 376; salt water fisheries, ch. 370; water resources and conservation, §§373.021-373.241, and flood control districts, ch. 378; waterways development, ch. 374; geology, §§373.011-373.012; ch. 377, conservation of oil and gas resources.

municipality, or municipal government, or any person or persons in their employ or under their control, management or direction, of any rubbish, filth or poisonous or deleterious substance or substances, liable to affect the health of persons, fish or livestock, providing nothing herein shall be construed to affect in any manner the responsibility, powers, duties and functions vested in the state board of health under any other provision of law.

In effectuating this chapter, the standards of the state board of health shall be used by the district in determination of quality of water and substance or substances to be prevented from entering the waters of the district. The said authority to control and supervise the quality of water and to prevent deposits in the waters mentioned shall be concurrent with the state board of health; provided, however, that said authority to control and supervise the quality of water and to prevent deposits in the waters mentioned shall not be exercised unless and until the state board of health after study and determination of a specific request of the district has certified to the district that the quality of any water under the jurisdiction of the district is injurious to the health of persons, fish or livestock.

In order to make the greatest beneficial use of the waters of the district, it is hereby declared that there shall be the fullest cooperation and exchange of information between the district and the state board of health in the making of any surveys, investigations and inquiries to be made for the purpose of determining whether or in what manner the use of the waters may affect the public health or welfare.

History.—§1, ch. 25209, 1949; §1, ch. 29790, 1955; (3) §1, ch. 61-147; (3) §1, ch. 61-497; (3), (4) n. by §1, ch. 63-224.
cf.—Ch. 25214, 1949, creating central and southern Florida flood control.

378.02 State cooperation with districts authorized.—The state is authorized to cooperate with any such district organized under this chapter or created by the legislature in the interest of flood control, reclamation, conservation and allied purposes.

History.—§2, ch. 25209, 1949; §1, ch. 61-147.

378.03 Flood control account.—There is hereby created in the general revenue fund of this state an account to be known as flood control account. Subject to such appropriation as the legislature may make therefor from time to time, the purpose of said account shall be to provide assistance to districts described in §378.01.

History.—§3, ch. 25209, 1949.

378.04 Disbursements from flood control account.—Subject to the provisions of this chapter, there shall be available to any district created under this chapter out of said flood control account, upon approval of the state board of conservation, a sum or sums of money not exceeding in the aggregate the total estimated amount required to cover the costs allocated to the district for constructing the works of said district and the acquisition of land for water storage areas. Said sum or sums shall be available as money is required for said purposes and shall be a grant to said district.

History.—§4, ch. 25209, 1949.

378.05 Resolution of district for assistance from state.—In order that any district created under this chapter may receive assistance hereunder from the state, the governing board of said district shall adopt an appropriate resolution requesting the state board of conservation to approve payment to said district of a sum or sums to be named within the limits and for the purpose defined in §378.04 hereof. The resolution shall show the total estimated cost allocated to the district for providing the works, and land for water storage areas of said district and shall pledge that said money will be applied solely to the purpose specified in this chapter. Upon approval of said amount or amounts or any modification thereof by the said state board of conservation, the said board shall have authority to make requisition to the comptroller for state warrant in the amount or amounts approved, payable out of the flood control account in favor of said district.

History.—§5, ch. 25209, 1949.

378.06 Authority of the division of water resources and conservation of state board of conservation.—

(1) The division of water resources and conservation of the board is hereby authorized to act for and on behalf of the state in all matters arising out of this chapter and pay any expense incurred in its operation hereunder out of the account herein created.

(2) Any district created under the provisions of this chapter or by special act shall submit its policies, rules and regulations to the board for review and approval by said board.

History.—§6, ch. 25209, 1949; §11, ch. 61-231.
cf.—§378.03 Fire control account.

378.07 Cooperation with the United States and other agencies.—Any district created under the provisions of this chapter shall have authority to cooperate with the United States or with this state, or any department or agency thereof, with any county, district or other governmental agency, and to enter into and make such cooperative agreements or commitments as the governing board of said district may determine to be necessary and needful for carrying out the purposes of this chapter and for the benefit of said district. Such cooperation shall include, but not be limited to, the contribution of cash; the providing of lands, easements and rights-of-way; and the furnishing of assurances (a) to hold and save the United States free from damages due to the construction and operation of works of improvement and (b) to maintain and operate works after completion.

History.—§7, ch. 25209, 1949.

378.08 Petition to create district.—The state board of conservation joined by the owners of fifty-one per cent of the acreage affected may make and sign a petition proposing the creation

of such district. The petition shall state that such district is proposed to be created under the provisions of this chapter; shall give the name of the proposed district; define the boundaries thereof; the purpose for which the same is to be created; the estimated total cost of all improvements including those to be provided by the state, and by the district; the estimated costs of improvements to be borne by the district; the estimated annual or period cost for maintenance and operation to be borne by the district; the number of years which said district shall endure; and may set forth such other information as will be of assistance in determining whether or not the proposed district shall be created. The petition shall contain a prayer asking that the lands within the described boundaries be created into a district under the provisions of this chapter. After the petition shall have been signed, the same shall be filed in the office of the clerk of the circuit court in each county in which land in the proposed district is located.

History.—§8, ch. 25209, 1949; §1, ch. 61-147.

378.09 Costs and expenses of establishing district.—The costs and expenses incident to the establishment of a district, pursuant to this chapter, shall be advanced and paid in the first instance by the state board of conservation from the flood control account, to be reimbursed, by the district after its creation, to the said flood control account. When the court enters its decree creating the district there shall be included therein an order for the payment of such costs and expenses, by the district to the state board of conservation for the said flood control account, which order shall be a lien upon any taxes levied for the benefit of the said district. In case the creation of the proposed district is denied all such costs and expenses shall be paid from the said flood control account.

History.—§9, ch. 25209, 1949.

378.10 Notice of filing petition.—Immediately after the petition shall have been filed, the clerk of the circuit court in each county in which land in the proposed district will be located shall give notice by causing publication to be made once each week for four consecutive weeks (four times being sufficient) in some newspaper published in the county, and said notice shall be substantially in the following form:

NOTICE OF APPLICATION TO FORM A DISTRICT UNDER THE PROVISIONS OF CHAPTER.....(this chapter).

NOTICE IS HEREBY GIVEN to all persons who are the owners of real estate within the following described boundaries:

(Here follows boundary description)

THAT a petition has been filed in this office where any interested person may examine the same, asking that the lands within the foregoing boundaries be formed into a district under chapter.....(this chapter) and stating that the real estate in said district will be affected by the formation of said district and made liable for taxes for the purpose of paying the expense of organization and the district's allocated part of the cost of improvements, and the maintenance and operation of the same, and you and each of you owning real estate within the boundaries of said proposed district as above described, are hereby notified to appear not later than the first return date occurring not less than twenty (20) days after this notice has been published for four consecutive weeks, as required by said chapter, at the office of the Clerk of the Circuit Court of.....County and show cause in writing, if cause there be, why said district, as set forth in said petition, shall not be organized as a public corporation of the State of Florida.

Date of first publication..... 19.....

CLERK OF CIRCUIT COURT OF

.....County, Florida

History.—§10, ch. 25209, 1949; §2, ch. 29737, 1955.

378.11 Objections to creating district.—Any owner of real estate within the proposed district may file his objections with the clerk of the circuit court of the county in which said real estate is located, in writing, not later than the day named in said notice. If there be more than one county in or partly within said district, the clerk of the circuit court of each county shall forward, within five days after the rule day named in said notice, all objections filed with him to the clerk of the circuit court of the county having the largest population as determined by the last census, state or federal, and thereafter the circuit court of said county shall maintain and have original and exclusive jurisdiction coextensive with the boundaries of the said district without regard to county lines for all purposes of this chapter.

History.—§11, ch. 25209, 1949.

378.12 Court to set date for and to hear objections.—

(1) Within five days after the clerk of the circuit court of the county having jurisdiction of the subject as described in §378.11 shall have received the objections transmitted to him by clerks of the circuit courts of other counties, if such there be having lands in said district, said clerk shall notify the senior circuit judge of the circuit court of the judicial district in which said county is situate that objections, or no objections, have been filed and shall deliver all such objections, if any there be, to said judge, or such other judge as may be designated by him, and thereupon the court shall have jurisdiction of the subject. Such objections, if any there be, shall be heard by the court either in term time or vacation in a summary manner without unnecessary delay on a day to be named by the judge thereof.

(2) Notice of said hearing shall be published in a newspaper in each county having lands within said proposed district once each week for two consecutive weeks, the last notice to appear not less than one nor more than two weeks prior to the date of said hearing.

(3) Upon the hearing, which may be ad-

journed from time to time, for good cause shown, of the said objections, if any have been filed, if the court shall be of the opinion that the establishment of the said district and the improvements to be made thereunder will be for the advantage of the owners of the real property therein or that the same would be in the interest of the public health, convenience or welfare, and that the benefits to accrue to property and to the inhabitants of said district will be of value greater than the estimated cost to be borne by said district as set forth in the petition, he shall overrule said objections; and in case all such objections are overruled, or in case no such objections have been filed, the court thereupon shall, by its order duly entered of record, declare and decree said district a public corporation of this state, for a term not exceeding the time mentioned in said petition, and shall adjudge the costs against the district to be paid by it in the manner provided in this chapter. Any person aggrieved by the final order of the circuit court may appeal therefrom to the appropriate district court of appeal in the manner and within the time provided by the Florida appellate rules.

(4) Immediately after the district has been declared a corporation by the court, the clerk thereof shall transmit to the secretary of state to be filed by him a certified copy of the findings and decree of the court incorporating said district. A copy of said findings and decree shall also be recorded in the office of the clerk of the circuit court of each of the counties having land in said district, where the same shall become a permanent record and each such clerk shall receive a fee of one dollar for recording and preserving the same.

History.—§12, ch. 25209, 1949; (3) §23, ch. 63-512.

378.13 Governing board of the district.—

(1) The governing board of the district shall be composed of five members who shall be owners of real property in and shall reside in said district. Their term of office shall be for three years, or until their successors shall have been appointed and qualified; provided, however, that the members composing the first governing board, two shall serve for a term of three years, two for a term of two years, and one for a term of one year.

(2) Unless such district embraces less than five counties not more than one member to compose said board shall be from the same county, and no person shall be appointed from a county where a member of the governing board will remain in office; provided, if the number of counties within, or partly within, such district be five or less, each county shall have not less than one member on said governing board.

(3) Members to compose said board shall be appointed by the governor subject to confirmation of the senate at the then or next succeeding legislative session. In the event the governor's appointee shall not be confirmed by the senate, such failure shall not operate to affect the validity of official acts of said appointee or of the board of which he was a member. For any appointment declined to be confirmed by the senate, the governor shall promptly submit a new appointment for the consideration of said senate.

History.—§13, ch. 25209, 1949.

378.14 Vacancies in the governing board; removal from office.—

(1) Vacancies occurring in the governing board of the district prior to the expiration of the affected term shall be filled for the unexpired term.

(2) The governor of this state shall have authority to remove from office any officer of said district in the manner and for cause defined by the laws of this state applicable to situations which may arise in said district.

History.—§14, ch. 25209, 1949.

378.15 Members of governing board; oath of office; etc.—

(1) Each member of the governing board of the district before entering upon his official duties, shall take and subscribe to an oath before some officer authorized by law to administer oaths, that he will honestly, faithfully and impartially perform the duties devolving upon him in office as member of the governing board of the district to which he was appointed, and that he will not neglect any of the duties imposed upon him by this chapter.

(2) Immediately after their appointment, members composing the governing board shall meet at some convenient place and choose one of their number chairman of the board, and some suitable person secretary, who may or may not be a member of the governing board, and who may be required to execute bond for the faithful performance of his duties as the governing board may determine. Such board shall adopt a seal with a suitable device, and shall keep a well bound book entitled, in effect, "Record of Governing Board of..... District," in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which book shall at reasonable times be open to the inspection of any citizen of Florida, or taxpayer in the district, his agent or attorney at reasonable times.

(3) The chairman and members of the board shall receive no compensation for such services, but while officially on work for the district shall receive their actual traveling expenses, and subsistence and lodging, not to exceed the statutory amount allowed state officers and employees, and for other expenses in the actual amount incurred therefor.

(4) The governing board of the district is hereby authorized to employ such engineers, attorneys, other professional persons, and such personnel and assistants as said board may deem necessary, and under such terms and conditions as it may determine, and to terminate such employment.

(5) By resolution the governing board may

determine the location of its principal office and provide for the change thereof.

History.—§15, ch. 25209, 1949; (3) §1, ch. 29792, 1955; (3) §2, ch. 61-497.

378.151 Rules and regulations; enforcement.—In administering this chapter the governing board of the district is authorized to make and adopt reasonable rules, regulations and orders consistent with law and such rules, regulations and orders may be enforced by mandatory injunction, or other appropriate action in the courts of the state.

History.—§4, ch. 29790, 1955.

378.16 Providing for district works.—

(1) In order to carry out the works for the district, and for effectuating the purposes of this chapter, the governing board is authorized to clean out, straighten, enlarge or change the course of any waterway, natural or artificial, within or without the district; to provide such canals, levees, dikes, dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, bridges, highways and other works and facilities which the board may deem necessary; establish, maintain and regulate water levels in all canals, lakes, rivers, channels, reservoirs, streams or other bodies of water owned or maintained by the district; to cross any highway, or railway with works of the district and to hold, control and acquire by donation, lease or purchase, or to condemn any land, public or private, needed for rights-of-way or other purposes, and may remove any building or other obstruction necessary for the construction, maintenance and operation of the works, and to hold and have full control over the works and rights-of-way of the district.

(2) The works of said district shall be those adopted by the governing board of the district. The district may require or take over for operation and maintenance such works of other districts as the governing board may deem advisable under agreement with such districts.

(3) Recreational planning and development within the area of the district may be undertaken at the discretion of the governing board, provided however no such planning or development shall affect any public housing establishment, and provided further that the power of eminent domain shall not be exercised in recreational planning and development hereunder.

History.—§16, ch. 25209, 1949; (1) §2, ch. 29790, 1955; §1, ch. 61-147; (1), (3) n. §3, ch. 61-497; (2) §2, ch. 63-224.

378.161 District works, operation by other governmental agencies.—The district may permit governing bodies of water conservation districts, drainage and other improvement districts, and federal, state and local governments, authorities or agencies to operate and maintain the works of the district under conditions which the governing board may deem advisable.

History.—§4, ch. 29790, 1955.

378.17 Use of works by other districts.—

(1) The governing board shall have authority to prescribe the manner in which local works provided by other districts or by private persons shall connect with and make use of the works of the district, to issue permits therefor, and to cancel the same for noncompliance with the conditions thereof, or for other cause. It shall be unlawful to connect with or make use of the works of said district without consent in writing from its governing board, and said board shall have authority to prevent, or if done to estop or terminate the same.

(2) Damage resulting from unlawful use of such works, or from violations of the conditions of permit issued by the board shall, if made by other than a public agency, be subject to such penalty as is or may be prescribed by law and in addition thereto by a date and in a manner prescribed by the board, repair of said damage to the satisfaction of said board, or deposit with said board a sum sufficient therefor, and if by a public agency, then at the expense of such agency the repair of said damage to the satisfaction of the board or the deposit with said board of a sum sufficient therefor.

History.—§17, ch. 25209, 1949.

378.18 Subdistricts within major districts.—

(1) Any area within a district created under the provisions of this chapter may be created into a subdistrict for securing additional and more localized benefits not afforded by the works of the said major district, and for providing subdistrict works therefor, and for their maintenance and operation and the administration by its own governing board of the affairs of said subdistrict and the imposition of additional taxes for said purposes.

(2) For effectuating the purposes aforesaid, chapter 298, shall be applicable.

(3) Provided, however, that no obligation or taxes of any subdistrict shall be or become an obligation of the major district, nor shall said subdistrict have authority over the works of the major district, nor the major district over the works of the subdistrict except for the purpose of prescribing the manner in which said works shall be connected with and make use of the works of the major district as provided in this chapter.

History.—§18, ch. 25209, 1949.

378.19 Cost of organizing district.—

(1) The governing board of the district, as soon as convenient after its creation, shall levy a uniform tax to be assessed and collected in like manner as county taxes, against all real estate within the district not exceeding three-tenths mill on the dollar of valuation as determined for that year by the tax assessor of each county having land in said district for the purpose of paying the expense incurred or to be incurred in organizing said district. The proceeds from said tax shall be applied to the purpose described and any balance or surplus remaining thereafter shall be placed to the account of said district to be used for such purposes as the governing board may direct.

(2) If it should appear necessary to procure funds with which to pay expense of organizing said district before a sufficient sum can be obtained from the collection of said tax, the board may borrow a sufficient amount of money to meet emergencies and may issue interest bearing negotiable notes therefor and pledge the proceeds of the tax imposed under the provisions of this section for the repayment thereof. Said board may issue to any person performing work or services, or furnishing anything of value in the organization of said district, interest bearing negotiable evidence of debt.

History.—§19, ch. 25209, 1949.

378.20 To pay cost of works.—For the purpose of paying the cost of the works of said district, the maintenance, operation, and cost of administration, and such other costs as the governing board may determine to be necessary on account of said district, all real estate in said district benefited or to be benefited by the works thereof shall be subject to the taxes provided for in this chapter, and the governing board of said district is hereby authorized to impose annual taxes against the real property in said district benefited by the works thereof.

History.—§20, ch. 25209, 1949; §1, ch. 61-147.

378.21 Determination of benefits.—

(1) As soon as convenient after the creation of said district, the governing board shall determine maximum annual benefits on a relative basis to be derived from the works of the district. Relative benefits shall be determined on the basis of one hundred representing maximum. The minimum benefits which may be ascribed as resulting from the works of the district shall be one. Intermediate degrees of benefits shall be expressed in parts of one hundred. Complete absence of benefits shall be indicated by zero.

(2) When maximum annual benefits shall have been determined, the governing board shall annually thereafter impose taxes on a value benefit basis so as to take into account the value of the property, its kind, susceptibility to improvement, and the maximum annual benefits to be conferred thereon by the works of said district. The board shall determine the over-all benefits accruing or which will accrue from the works of said district. In all respects the benefits found for district taxing purposes shall be those resulting from the works of said district only. The governing board may determine areas of benefits by zones, and place in the same zone areas of equal benefit, or follow such other method as may be deemed suitable for that purpose. Areas having equal benefits shall be taxed at an equal benefit ratio.

(3) Each year the governing board of the district shall determine the percentage or part of the maximum annual benefits theretofore fixed, to be applied in arriving at the tax rate for the current tax year, and timely for the purpose shall certify said rate to the tax assessor of the county in which the real estate subject to the tax is situate. The basis of value shall be that determined by the tax assessor for county taxing purposes of the county in which the real estate is situate.

(4) The base millage to be applied in determining the tax rate is hereby fixed for all property in said district as three-tenths mill on the dollar of assessed value. The annual tax rate shall be ascertained by multiplying three-tenths mill by the part or percentage, as determined by the board for that year, of maximum annual benefits theretofore determined. The amount of the district tax for any year on each piece or parcel of real estate shall be arrived at as follows:

The value of the property as assessed for county purposes multiplied by three-tenths mill, multiplied by the part or per cent of maximum annual benefits as determined by the governing board of the district. In no event or circumstance shall the tax rate of said district as herein authorized for any year exceed a millage in excess of three mills on the dollar of the general county assessed valuation as determined for that year by the tax assessor of the respective counties having lands in the district.

History.—§21, ch. 25209, 1949.

378.22 Benefits to rights of way.—The governing board of the district shall assess benefits to rights of way of railroads and other public service corporations in like manner as for other property, and the imposition and collection of said tax shall be in like manner as is provided with respect to other property, except that the basis of value of railroad rights of way for assessment purposes is hereby fixed at four thousand dollars per mile without reference to number of tracks, or other facilities thereon, and the governing board of the district shall furnish the tax assessor of the county in which such rights of way is located a description thereof, the number of miles in length and the tax rate on value-benefit basis to be applied in assessing district taxes against said rights of way.

History.—§22, ch. 25209, 1949.

378.23 Hearings on benefits.—

(1) When, following the creation of the district, the governing board shall have ascertained the maximum annual benefits to be derived from the works in any area or areas of said district, the said board shall file, with the clerk of the circuit court of each county having real estate in said area or areas, a map of said district on which shall be shown zones of benefits or as benefits may be otherwise indicated, on the basis described in §378.21.

(2) At the same time the said board shall file with said clerk a notice, which the said clerk shall cause to be published in some newspaper published in his county for four consecutive weeks (four publications being sufficient), that the said board has ascertained the benefits which will accrue to land and other real property in the district, and said notice shall be substantially in the following form.

NOTICE is hereby given to all persons who are owners of real estate within.....District that for the purpose of determining amounts of taxes to be assessed annually upon all real estate within said district which will be benefited by the works of said district, the governing board thereof has ascertained benefits which will accrue and has shown the same on a list with the property affected thereby or on a map of said district filed in the office of the clerk of the circuit court of each county having lands in said district, where any person interested therein may examine the same and procur information therefrom. Based on the part or percentage to be determined each year by said board, of the maximum annual benefits to be hereby determined, taxes will be imposed on said real estate at a tax rate to be ascertained by multiplying three-tenths mill by the part or proportion for that year of maximum annual benefits.

Any owner of real estate in said district may file his objections, if any there be, to the benefits as ascertained by the governing board as the same affects real estate owned by him. Such objections shall be in writing, and filed with the board not later than ten days prior to the.....day of....., 19....., on which last named day the board will hold a hearing at the office of the board, at which any person having filed objections in the manner specified, or the representative or attorney for such person, may appear and be heard orally in support of his filed objections.

History.—§23, ch. 25209, 1949.

378.24 Consideration of objections.—As soon as convenient and without unnecessary delay after the close of the hearings by said board on objections to benefits as ascertained by it, the said board shall begin the consideration of said objections. If, in the judgment of said board, the benefits as previously ascertained should be changed or adjusted, or if said benefits should be confirmed, the said board shall so find, and by its order shall fix the benefits to be derived from the works of said district, certified copies of which order shall be filed in the office of the clerk of the circuit court in each county within the district. The benefits so fixed shall be in effect for five years and thereafter until changed.

History.—§24, ch. 25209, 1949; §10, ch. 26484, 1951.

378.25 Review; circuit court, district court of appeal.—The circuit court having jurisdiction of the creation of the district shall have jurisdiction to review the final action of the governing board upon a petition being filed with it for a writ of certiorari. An appeal from the final order of the circuit court may be taken to the appropriate district court of appeal. Both of said review proceedings shall be had in the manner and within the time provided by the Florida appellate rules and the statutes of this state not superseded by or in conflict with said rules.

History.—§25, ch. 25209, 1949; §23, ch. 63-512.

378.26 Proportion of total benefits for tax assessment.—After the benefits conferred or to be conferred upon the real estate within the district shall have been fixed by the governing board, as provided in §378.23, the said board shall each year determine the part or proportion of total benefits to be used in determining the tax rate or rates to apply in arriving at the amount of the tax for the current tax year on all real estate within said district.

History.—§26, ch. 25209, 1949.

378.27 Readjustment of benefits.—Not oftener than each five years, the owners of real estate in that part of any county within the district representing not less than ten per cent of the freeholders subject to tax, may file a petition with the governing board alleging that there has been material change in the benefits to property in the district since the last determination of benefits and praying for a readjustment of said benefits for the purpose of providing a more equitable basis for the levy of district taxes. In such case the board shall afford opportunity to be heard on the petition and dispose of the same in a manner similar to that provided in §378.23 in reference to determination of benefits by the board; or the governing board of the district may on its own account adjust benefits to any property in the district. If such adjustments be upward, then a hearing shall be held in the manner provided in other cases. Any downward adjustment shall not reduce below the limit herein provided that part of the maximum annual tax for bond purposes if bonds have been issued and are outstanding, for the repayment of which such taxes or part thereof has been pledged, unless the holders of a majority in value of said bonds shall have consented thereto.

History.—§27, ch. 25209, 1949.

378.28 District budget and hearing thereon.—

(1) Commencing July 1, 1956, the fiscal year of districts created under the provisions of this chapter shall extend from July 1 of one year through June 30 of the following year. The governing board of the district, shall between April 1 and 10 of each year complete the preparation of a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year. The budget shall set forth, classified by object and purpose, and by fund if so designated, the proposed expenditures of the district for bonds or other debt, for construction, for acquisition of land, and other purposes, for operation and maintenance of the district's works, the conduct of the affairs of the district generally, to which may be added an amount to be held as a reserve.

(2) The budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated

amount to be raised by district taxes and from other sources for meeting the district's requirements.

(3) On a date to be fixed by the governing board, between April 10 and 20 of each year the board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the tentative budget in full, and shall be notice to all owners of property subject to the district taxes that on a date and at a place appearing in the notice, opportunity will be afforded to such owners, their attorneys or agents, to appear before the board and show their objections to the budget. The notice shall be published for two consecutive weeks in a newspaper published in the county seat of each county having land in the district, the last insertion of which shall appear not less than one nor more than three weeks prior to the date set by the board for the hearing on the budget, or if there be no such newspaper then by posting the notice as provided by §49.02.

(4) The hearing will be by and before the governing board of the district on a date to be fixed by the board not sooner than one week and not later than three weeks after the date of the last publication of notice of intention to adopt the budget, and may be continued from day to day until terminated by the board. Promptly thereafter the governing board shall give consideration to objections filed against the budget and in its discretion may amend, modify or change the tentative budget, and shall by June 10 following adopt a final budget for the district which shall thereupon be the operating and fiscal guide for the district for the ensuing year. Provided, however, in the event of disaster, or of emergency arising to prevent or avert the same, the governing board shall not be limited by the budget, but shall have authority to apply such funds as may be available therefor, or as may be procured for such purpose.

History.—§28, ch. 25209, 1949; §3, ch. 29790, 1955; (3), (4) §4, ch. 61-497.

378.29 Imposition of taxes.—

(1) Each year the governing board of the district shall certify to the tax assessor of the county in which the property is situate, timely for the preparation of the tax roll, the tax rate to be applied in determining the amount of the district's annual tax, and the tax assessor shall extend on his county tax roll the amount of such tax, determined at the rate certified to him by the governing board, and shall certify the same to the tax collector at the same time and in like manner as for county taxes.

(2) Collection of district taxes, the issuance of tax sale certificates for nonpayment thereof, the redemption or sale of said certificates, the vesting of title by tax forfeiture, and the sale of the land and other real estate so forfeited shall be at the same time, in conjunction with, and by like procedure and of like effect as is provided by law with respect to county taxes, nor may either the county or the district taxes be paid or redemption effected without the payment or redemption of both. The title to district tax forfeited land shall vest in the county on behalf of said district along with that of the county for county tax forfeited land, said district tax forfeited land to be held, sold, or otherwise disposed of by said county for the benefit of said district. The proceeds therefrom, after deducting costs, shall be paid to the district in amounts proportionate to the respective tax liens thereon.

(3) The district tax liens shall be of equal dignity with those of the county.

(4) The tax officers of the county are hereby authorized and directed to perform the duties devolving upon them under this chapter, and to receive compensation therefor at such rates or charges as are provided by law with respect to similar services or charges in other cases.

History.—§29, ch. 25209, 1949.

378.30 Land held by trustees I. I. trust fund; areas not taxed.—

(1) Land held by the trustees of the internal improvement trust fund shall be subject to the tax imposed under authority of this chapter, and said trustees are authorized to pay the same out of any money in their possession derived from the sale of land or otherwise. For facilitating the assessment of district taxes on land of said fund, the trustees thereof are authorized to prepare lists of land held by them and, timely for the purpose, to transmit a list of said land to the tax assessor of each county in which such land is located, and the tax assessor is directed to extend said land upon the district tax roll according to the description furnished by said trustees and to ascertain the value thereof as for other land.

(2) Land comprising part of the principal of the state school trust fund declared by the constitution to be "sacred and inviolate," or other real estate, title to which is in the state board of education, shall not be subject to the district tax nor shall there be liability therefor upon any state agency.

(3) There shall be excluded from district taxes all bodies of navigable water and unreclaimed water areas meandered by the public surveys, all rights of way of said district, all areas devoted or dedicated to the use of and for the works of the district, rights of way of state and county highways, and streets within the limits of incorporated towns, and property owned by a public agency open to the use of the public or for the public benefit not leased to or operated by a private agency.

History.—§30, ch. 25209, 1949; (1), (2) §2, ch. 61-119.

378.31 Unit areas.—The governing board may, in its discretion, adopt and effectuate unit areas embracing separate or combined drainage basins, or parts thereof, or areas of related lands and works, for convenience or economy in constructing, maintaining and operating the works of the district, and for the purpose of imposing taxes within each area to meet these requirements of the said area.

History.—§31, ch. 25209, 1949.

378.32 Amending former decree incorporating district.—The governing board of any district created hereunder, for and on behalf of such district or the owners of real estate within or without such district, may file a petition in the office of the clerk of the circuit court in each county having land within said district, praying the court to amend its former decree incorporating the district by extending the boundaries of said district so as to include lands not described by or included in the petition and decree of the court previously incorporating said district; or the petition may ask that certain lands be eliminated therefrom; or that the boundary lines of said district be in any manner changed. Notice of proposal to amend the former decree shall be given and hearing had in a manner similar to the procedure providing for the creation of said district.

History.—§32, ch. 25209, 1949.

378.33 Treasurer and depositories.—The governing board shall designate a treasurer who shall be custodian of all funds belonging to the said board and to the said district, and such funds shall be disbursed only upon the order of the governing board by warrant or check signed by the treasurer or assistant treasurer and countersigned by the chairman or vice-chairman of the board. The board is hereby authorized to select as depositories in which the funds of the said board and of the said district shall be deposited by any banking corporation organized under the laws of the state or under the national banking act, doing business in the state, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the said board shall deem just and reasonable and also upon such terms as to security by such depository as said board shall deem proper, which security may be either by satisfactory individual or surety bonds or by the deposit with the treasurer of bonds of the district issued by said board, bonds of the United States, bonds or certificates of the several states, county and municipal bonds or certificates, and county or county school time warrants, issued by any of the counties or cities of the state or by any of the state agencies, departments or commissions authorized to issue bonds or certificates, or issued by authority created by the legislature. Such bonds or certificates may be general obligations of the issuing authority or they may be secured by utility revenues, or other revenues, or by excise taxes, or they may be secured by a limited ad valorem tax; provided, however, that none of the foregoing bonds or certificates shall be accepted as security for the funds herein mentioned unless they shall have qualities pertinent to bank investments; and provided further, that except as to the bonds of the United States or bonds the payment of whose principal and interest is guaranteed by the United States or federal certificates of indebtedness, or state, county or municipal obligation bonds, the bonds or certificates herein mentioned shall be rated in one of the highest four classifications by established nationally recognized investment rating services, the type, amount or value of such bonds or certificates shall be in such amount as may be designated by the governing board of the district.

History.—§33, ch. 25209, 1949; §3, ch. 63-224.

378.331 Investment of funds.—The governing board of the district may, in its discretion, invest funds of the district in the following manner:

(1) That portion of the funds of the district which the board anticipates will be needed for emergencies may be invested in bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged.

(2) All other funds of the district may be invested in securities named in subsection (1) hereof, or in bonds or other interest-bearing obligations of any incorporated county, city, town, school district or road and bridge district located in the state, for which the full faith and credit of such political subdivision has been pledged; provided, such political subdivision or its successor, through merger, consolidation or otherwise, has not within five years previous to the making of such investment, defaulted for more than six months in the payment of any part of the principal or interest of its bonded indebtedness; and, provided, the securities purchased under the provisions of this subsection shall have a maturity date on or before the anticipated date of need for the funds represented thereby.

History.—§4, ch. 29790, 1955.

378.34 May borrow money temporarily.—In order to provide for the works described by this chapter, the governing board is hereby authorized and empowered to borrow money temporarily, from time to time, for a period not to exceed one year at any one time, not including renewals thereof, and to issue its promissory notes therefor upon such terms and at such rates of interest as the said board may deem advisable, payable from the taxes herein levied and imposed, and the increment thereof. Any of such notes may be used in payment of amounts due, or to become due, upon contracts made or to be made by said board for carrying on the work authorized and provided for herein, and the said board may, to secure the payment of any of such notes, hypothecate bonds herein authorized to be issued, and may thereafter redeem such hypothecated bonds. Any of the notes so issued may be paid out of the proceeds of bonds authorized to be issued by this chapter.

History.—§34, ch. 25209, 1949.

378.35 Bonds.—

(1) The governing board is hereby authorized and empowered to borrow money on per-

manent loans and incur obligations from time to time on such terms and at such rates of interest as it may deem proper, not exceeding five per cent per annum, for the purpose of raising funds to prosecute to final completion the works and all expenses necessary or needful to be incurred in carrying out the purposes of this chapter; and the better to enable the said board to borrow the money to carry out the purposes aforesaid, the board is hereby authorized and empowered to issue in the corporate name of said board, negotiable coupon bonds of said district.

(2) The bonds to be issued by authority of this chapter shall be in such form as shall be prescribed by the said board, shall recite that they are issued under the authority of this chapter, and shall pledge the faith and credit of the governing board of the district for the prompt payment of the interest and principal thereof.

(3) Said bonds shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity, or defect in the proceedings for the issue and sale thereof except forgery; and shall be incontestable in the hands of bona fide purchasers or holders thereof for value. The provisions of this chapter shall constitute an irrevocable contract between said board and the district and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this chapter of any of the officers or persons mentioned in this chapter in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment thereof.

(4) The amount of bonds to be issued in any one year, when added to the amount then outstanding, shall be not greater than can be supported for that year in accordance with the bond schedule out of ninety per cent of the taxes imposed, or to be imposed, for that year, plus other moneys in the hands of the district usable for bond purposes after deducting therefrom amounts estimated to be required for maintenance and operation of the works of the district, cost of administration, and amounts for such other purposes as the governing board may determine, nor shall the governing board levy in any year taxes insufficient to support said bonds for such year on the basis herein described.

(5) All bonds and coupons not paid at maturity shall bear interest at a rate not to exceed six per cent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment.

(6) The bonds to be issued by authority of this chapter shall be in denominations of not less than one hundred dollars, bearing interest from date at a rate not to exceed five per cent per annum, payable semi-annually, to mature at annual intervals within forty years commencing after a period of not later than ten years, to be determined by said board, both principal and interest payable at some convenient place designated by said board to be named in said bonds, which said bonds shall be signed by the chairman of the board, attested with the seal of said district and by the signature of the secretary of said board. In case any of the officers whose signatures, countersignatures and certificates appear upon the said bonds and coupons, shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature and certificate shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery of the bonds.

(7) Interest coupons shall be attached to the said bonds and the said coupons shall be consecutively numbered, specifying the number of the bond to which they are attached, and shall be attested by the lithographed or engraved facsimile signature of the chairman and secretary of said board.

(8) In the discretion of said board, it may be provided that at any time, after such date as shall be fixed by the said board, said bonds may be redeemed before maturity at the option of said board, or its successors in office. If any bond so issued subject to redemption before maturity shall not be presented when called for redemption, it shall cease to bear interest from and after the date so fixed for redemption.

History.—§35, ch. 25209, 1949; (4) §1, ch. 61-147.

378.36 Refunding bonds.—The governing board shall have authority to issue refunding bonds to take up any outstanding bonds of said district falling due and becoming payable, when, in the judgment of said board, it shall be for the best interests of said district so to do. The said board is hereby authorized and empowered to issue refunding bonds to take up and refund all bonds of said district outstanding that are subject to call and termination, and all bonds of said district that are not subject to call or redemption, where the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the board. Such refunding bonds may be issued at any time when in the judgment of said board it will be to the interest of the district financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds, or for any other reason in the judgment of said board advantageous to said district.

History.—§36, ch. 25209, 1949.

378.37 Bond election.—When required by the state constitution, the governing board shall call an election of the freeholders in said district, in which said election the matter of whether or not said bonds shall be issued shall be decided as provided by law with respect to bond elections.

History.—§37, ch. 25209, 1949.

378.38 Bonds to be validated.—Whenever the

governing board shall have authorized the issuance of bonds under the provisions of this chapter, the said board may, if it shall so elect, have said bonds validated in the manner provided by chapter 75, and to that end the said board may adopt a suitable resolution for the issuance of said bonds.

History.—§38, ch. 25209, 1949.

378.39 Sale of bonds.—All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such rates as the board may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than ninety-five cents on the dollar, with accrued interest.

History.—§39, ch. 25209, 1949.

378.40 Proceeds from taxes for bond purposes.—It shall be the duty of the treasurer as custodian of the funds belonging to the said board and to the district, out of the proceeds of the taxes levied and imposed by this chapter and out of any other moneys in his possession belonging to the district, which moneys so far as necessary shall be set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds to pay the principal thereof.

History.—§40, ch. 25209, 1949.

378.41 Registration of bonds.—

(1) Whenever the owner of any coupon bond issued pursuant to the provisions of this chapter shall present such bond and all unpaid coupons thereof to the treasurer of the district with request for the conversion of such bond into a registered bond, such treasurer shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print or write upon such coupon bond so presented either upon the back or the face thereof as may be convenient, a statement to the effect that said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time any such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer, and the bond again registered as before, a similar statement being stamped or written thereon.

(2) Such statement stamped, printed or written upon any such bond may be in substantially the following form:

(Date, giving month, year and day.)

This bond is to be registered pursuant to the statutes in such case made and provided in the name of (here insert name of owner), and the interest and principal thereof are hereafter payable to such owner.

.....

Treasurer

(3) If any bond shall have been registered as aforesaid, the principal and interest of said bond shall be payable to the registered owner. The treasurer shall enter in the register of said bonds to be kept by him, or in a separate book, the fact of the registration of such bonds, and in whose names respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

History.—§41, ch. 25209, 1949.

378.42 Unpaid warrants to draw interest.—Any warrant issued under this chapter that is not paid when presented to the treasurer of the district because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant, and such warrant shall draw interest thereafter at a rate not exceeding six per cent per annum, until such time as there is money on hand to pay the amount of such warrant and the interest then accumulated; but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in the treasury to pay said endorsed warrants and interest.

History.—§42, ch. 25209, 1949.

378.43 Audit by state auditor.—At the direction of the governor, audit of the district's accounts may be made from time to time by the state auditor and such audit shall be within the authority of said state auditor to make. Copy of such audit shall be furnished the governor and the governing board of the district, and a copy shall be filed with the clerks of the circuit courts of each county within or partly within said district. The expense of said audit shall be paid by the district upon a statement thereof rendered to the district by the state auditor. Payment of the amount thereof shall be made to the state comptroller to be entered in and to reimburse the account of the state auditing department so as not to reduce the legislative appropriation for said department.

History.—§43, ch. 25209, 1949.

378.44 Publication of notices, process, papers, etc.—Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise expressly provided, the publication thereof in some newspaper or newspapers as defined in chapter 49, having general circulation within the area to be affected, shall be taken and considered as being sufficient.

History.—§44, ch. 25209, 1949.

378.45 Discretionary authority.—For further effectuating the purposes of this chapter, the governing board of the district shall have such discretionary power and authority compatible with the statute in connection with which exercised as shall be necessary to perform such duties and acts and to decide such matters and dispose of the same as are not specifically defined in or covered by statute.

History.—§45, ch. 25209, 1949.

378.451 Promotion, advertisement and im-

provement.—Any flood control district shall have the authority, at the discretion of its governing board, to expend for purposes of promotion, advertisement and improvement of the program and objectives of the district, a yearly sum not to exceed one fourth of one per cent of the moneys collected by taxation within the district.

History.—§5, ch. 61-497.

378.46 State agencies, cities, etc., authorized to convey land to flood control districts.—

(1) When it is found to be in the public interest and for the public convenience and welfare, and for the public benefit, and necessary for carrying out the works of improvement of any flood control district referred to in this chapter for the protection of property and the inhabitants in said district against the effects of water, either from its surplus or deficiency, and for assisting said district in acquiring land for the purposes of said district at least public expense, any state agency, any county, any drainage district, any municipality or any governmental agency or public corporation in this state holding title to land, is hereby authorized, in the discretion of the proper officer or officers, the county commissioners of any county, or the governing board of any agency referred to in this section, to convey the title to or to dedicate land, title to which is in such agency, including tax reverted land, or to grant use rights therein to any flood control district created under any law enacted by the legislature at its 1949 session.

The land to which this section shall apply shall be located within the boundaries of said flood control district.

(2) Land granted or conveyed to said district or dedicated to the purposes thereof, or use rights in said land granted thereto, shall be for the public purposes of said district, and may be made subject to the condition that in the event said land is not so used, or if used and subsequently its use for said purpose is abandoned, that granted shall cease as to said district and shall automatically revert to the granting agency.

(3) Any county, municipality, drainage district, or other taxing agency holding title to land through tax reversion, foreclosure, forfeiture, or through other procedure by which tax title vested in such agency, may, pending the determination of needs of said district, withhold from sale or other disposition from time to time such land as in the judgment of such agency may be needed or helpful in facilitating the purposes of this chapter. In the event more than one taxing agency holds tax title to the same land, resulting in multiple reversion, each of said agencies may grant to said district such right, title or interest as it may have in said land.

(4) Any flood control district within this chapter shall have authority to convey to any other agency described herein land or rights in land owned by said district not required for its purposes, under such terms and conditions as the governing board of said district may determine.

(5) Any land granted or conveyed to such district, or dedicated to the purposes thereof, or the use right of which has been granted thereto, shall not be subject to the district taxes, or other taxes or special assessments so long as said title or said rights remain in said district.

(6) All rights of way of a flood control district, which are within the boundaries of a drainage district, shall not be liable for maintenance taxes of the drainage district.

History.—§§1-5, ch. 25213, 1949; (6) n. §6, ch. 61-497.

378.47 Chapter to be liberally construed.— This chapter shall be construed liberally for effectuating the purposes described herein, and the procedure herein prescribed shall be followed and applied with such latitude consistent with the intent thereof as shall best meet the requirements or necessities therefor.

History.—§46, ch. 25209; §6, ch. 25213, 1949.

378.48 Sale of lands.—The governing board of the district may sell lands to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands determined by the governing board to be surplus may be sold by the district, at any time for the highest price obtainable.

(2) All sales of land shall be for cash or upon terms and security to be approved by the governing board, but a deed therefor shall not be executed and delivered until full payment is made.

(3) Before selling any land, except as provided in subsection (5) hereof, it shall be the duty of the district to cause a notice of intention to sell to be published in a newspaper published in the county in which said land is situated once each week for three successive weeks (three insertions being sufficient), the first publication of which shall be not less than thirty nor more than forty-five days prior to any sale, which notice shall set forth the time and place of the sale and a description of lands to be offered for sale.

(4) All sales shall be conducted at the county courthouse in the county in which the land is located on any day of the week except Sunday and at any time specified in the notice between the hours of 11:00 a.m. and 2:00 p.m.

(5) Public sale shall not be required where surplus lands are being resold to the then owner of that adjacent parcel from which the surplus land was originally parted; provided such sale is made within one year from the time the land is declared surplus; and the owner of the adjacent parcel shall be notified by registered mail to the address shown on the county tax roll within thirty days after the land is declared surplus.

History.—§4, ch. 29790, 1955.

378.49 Lease of lands or interest in land.— The governing board of the district may lease

any lands or interest in land, including but not limited to oil and mineral rights, to which the district has acquired title, or to which it may hereafter acquire title in the following manner:

(1) For the best price and terms obtainable, to be determined by the board.

(2) Before leasing any land, or interest in land including but not limited to oil and mineral rights, the district shall cause a notice of intention to lease to be published in a newspaper published in the county in which said land is situated and such other places as the board may determine once each week for three successive weeks (three insertions being sufficient), the first publication of which shall be not less than thirty nor more than forty-five days prior to any lease, which said notice shall set forth the time and place of leasing and a description of the lands to be leased.

(3) It shall not be necessary to publish the notice as provided by subsection (2) where the lease is made to a person in connection with land acquisition by the district and the lease results in a diminution of the cost to the district in the acquisition of the land.

History.—§4, ch. 29790, 1955.

378.50 Releases.—The governing board of the district may release any canal easement, reservation or right-of-way interests, conveyed to it for which it has no present or apparent future use under terms and conditions determined by the board.

History.—§4, ch. 29790, 1955.

378.51 Execution of instruments.—Any instruments of sale, lease, release or conveyance executed pursuant to the provisions of this chapter shall be executed in the name of the district by its governing board acting by the chairman or vice-chairman of said board and shall have the corporate seal of the board affixed thereto attested by its secretary and any such instrument shall be effective to pass the title or interest of the district in the property conveyed; provided, the district shall not warrant the title to any property sold, leased, released or conveyed.

History.—§4, ch. 29790, 1955.

378.52 Cooperation between districts.—Any flood control district created under the authority of chapter 378, is authorized to advise other flood control districts or water management districts of the state in processing matters with the federal government and to render such technical assistance as may be helpful to the efficient operation of such other districts.

History.—§1, ch. 61-245.

CHAPTER 379

EVERGLADES FIRE CONTROL

379.01 Everglades fire control district created.—There is hereby created the Everglades fire control district, the said district shall encompass all of the territory now known as the Everglades drainage district which lies in the following counties to-wit: Broward, Collier, Dade, Glades, Hendry, Highlands, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

History.—§1, ch. 19274, 1939.

379.02 Board of commissioners; number, appointment, etc.—

(1) A governing authority of the Everglades fire control district is hereby created to be known as the board of commissioners of the Everglades fire control district, which shall be composed of eleven members, one member from each of the counties named in §379.01, to be appointed by the governor, by and with the consent of the senate, whose term of office shall be for two years and who shall serve until their successors are appointed and qualified. All vacancies in office shall be filled in the same manner. The members of the board of commissioners shall be reimbursed for traveling expenses as provided in §112.061, but shall not receive any salary or compensation for their services. Members of said board shall be resident, freeholders of the district.

(2) Immediately after this chapter becomes a law the commissioners herein designated shall assemble and organize by the election of a chairman and a chief fire warden, and each commissioner shall be entitled to one vote in person or by proxy in writing duly signed.

(3) A majority of the board of commissioners shall be necessary to constitute a quorum for the transaction of any business affecting the Everglades fire control district.

(4) Each commissioner before entering upon his official duties shall take and subscribe to an oath before some officer authorized by law to administer oaths that he will honestly, faithfully, and impartially perform the duties devolving upon him in office as commissioner of said Everglades fire control district, and that he will not neglect any of the duties imposed upon him by this chapter.

History.—§§2A-2D, ch. 19274, 1939; (1) §19, ch. 63-400.

379.03 Use of state prisoners and state property.—In the matter of preventing, controlling, and extinguishing fires within the Everglades fire control district, the board of commissioners, by and with the consent of the board of commissioners of state institutions, may use such state prisoners as shall be available for that purpose, and such state equipment and property as shall be adapted for such work, upon such terms and conditions as may be agreed upon between the board of commissioners of the Everglades fire control district and the board of commissioners of state institutions.

History.—§3, ch. 19274, 1939.

379.04 Everglades fire control district trust fund created.—There is created in the state treasury the Everglades fire control district trust fund which shall be credited with such funds as are biennially appropriated thereto by the legislature. The commissioners are authorized to procure additional funds from any department of the federal government which may be further designated or allocated to this state for the purpose of fire prevention and control within the district or territory adjacent or contiguous thereto or flood control or for any like purpose. Any additional funds procured shall be deposited in said Everglades fire control district trust fund. Such fund shall be available for the use of the Everglades fire control district, to be disbursed on requisitions made by the chief of said district and approved by the commissioners, whereupon the state comptroller is authorized to draw state warrants chargeable to said funds except that all requisitions for expenses of board members and the salaries and expenses of the chief fire warden and other employees of the board shall be disbursed upon requisitions made by the board chairman and two members appointed by said board for that purpose.

History.—§4, ch. 19274, 1939; §1, ch. 20973, 1941; §1, ch. 26789, 1951; §2, ch. 61-119.

379.05 Setting fires prohibited.—It shall be unlawful for any person or persons, firm or corporation to set fire or cause the same to be set or started on any lands within the Everglades fire control district, except as in this chapter provided. The clearing of lands by fire, the setting of field fires, forest fires, prairie fires, the encouraging of new pasture by firing, the smoking out or driving of game by fire, and all other fires of such description are prohibited by this chapter, except as herein otherwise specifically provided. It shall be

unlawful to abandon or leave unguarded any camp fire.

History.—§5, ch. 19274, 1939.

379.06 Duties and responsibilities of owners or occupants of land.—The owners of land, proprietors, lessees, tenants, or other occupants of land shall be responsible for the existence of fires thereon, and it shall be the duty of such parties, and they are hereby required by this chapter, to prevent the starting of fires on such lands, and said owners or other occupants shall eliminate and extinguish and assist in eliminating and extinguishing the same when burning or which may exist from any cause whether of their own account or from other source, including the spreading of fires to said lands from outside areas.

History.—§6, ch. 19274, 1939.

379.07 Fire hazards prohibited.—It shall be unlawful for any proprietor of lands, lessees, tenant, or other occupant to have on his premises any brush heap, trash pile, accumulation of stacks of combustible or inflammable material exposed to danger of fire or have the same in such location that the burning thereof may endanger the spread of fire to other property. It shall be and is hereby required by this chapter that all brush, trash or other inflammable material accumulated, existing or resulting from the clearing of the land shall, when collected in piles, heaps or stacks be protected from fire by the clearing of the land around such heaps or piles to prevent the spread of fire therefrom in case of fire, and that such heap, pile or stack shall be burned or otherwise disposed of as shall be directed by notice pursuant to rules and regulations theretofore made and promulgated by the board of commissioners, from the chief of the district or from the county fire warden. It shall be unlawful to stack, pile or accumulate any brush, trash or other inflammable material within one hundred feet of any highway, road or canal bank.

History.—§7, ch. 19274, 1939.

379.08 Supervision of all fires.—The setting of all fires, the burning of all trash and brush, the clearing of all fields, woods, prairie or other lands by fire shall be under the supervision of the chief of the district or by the county fire warden, and in accordance with such rules and regulations as may be prescribed therefor.

History.—§8, ch. 19274, 1939.

379.09 Fire patrols, establishment; purchase of equipment.—The chief of the district is hereby authorized to establish fire patrols in said district and by and with the approval of the board of commissioners may purchase, lease, rent or hire such labor services, teams, equipment or machinery as he may deem necessary and pay therefor such price as may be agreed upon by and with the consent of the commissioners.

History.—§9, ch. 19274, 1939.

379.10 Powers and authority of chief.—The chief of the district, at proper periods of the year and under conditions favorable therefor, may permit, authorize, order and require the burning of fields, woods, prairies, trash piles, brush heaps, or other accumulations of combustible or inflammable material by the owner, proprietor, lessee, tenant, or other occupant of such lands. Such permit, authority, order or requirement by the said chief shall not excuse or relieve the person or persons to whom issued from any liability or responsibility for damages which may result from carelessness or neglect on his part in setting, starting, looking after or guarding fires permitted, authorized, ordered or required to be set. The chief shall have authority and power to require the owners or proprietors of land, lessees, tenants, or other occupants to burn or otherwise dispose of material deemed necessary for safety to be burned or otherwise disposed of, and for failure or refusal so to do, such person, proprietor, lessee, tenant or other occupant shall be subject to the penalties hereinafter described. In case of fires in the district from which damage will result, and of such magnitude as may make necessary, the chief shall have authority to require service or services of any person or persons for assisting him in eliminating and extinguishing such fires and for preventing damage to property in the Everglades fire control district. And the said chief shall pay therefor such price as may be agreed upon, or such sum as the chief may deem just and proper, and as may be approved by the commissioners; provided, further, that the owner, proprietor, lessee, tenant, or other occupant of said land shall receive no compensation for services which he may render on behalf of his own property or property used or occupied by him. To better enable the chief and the county fire wardens provided for in this chapter to enforce and make effective the provisions hereof, and said chief and wardens shall have and are hereby vested with police powers under the laws of this state in the enforcement of the provisions of this chapter and they are hereby vested with the power to make arrests with or without warrants for violations of the provisions of this chapter.

History.—§10, ch. 19274, 1939.

379.11 Penalty.—Any person, firm, association, or corporation, who shall violate any of the provisions of this chapter, shall, upon conviction therefor, be deemed guilty of a misdemeanor, and punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding twelve months, or by both such fine and imprisonment.

History.—§11, ch. 19274, 1939.

379.12 Prosecutions for violations.—It shall be the duty of the sheriff of the county in which any of the lands embraced in the district are located, to cooperate with the chief of the Everglades fire control district and the county fire wardens in the enforcement of the several

provisions of this chapter. It is hereby made the duty of the lawfully constituted prosecuting attorneys of the several courts within the Everglades fire control district, having trial jurisdiction of offenses committed against the provisions of this chapter, to prosecute any and all such violations in the manner and to the extent provided and required by law in the discharge of their official duties in connection with the violation of other criminal laws.

History.—§12, ch. 19274, 1939.

379.13 Purpose.—It is hereby declared that, in and for the Everglades fire control district that fire is a "common enemy" that by reason thereof emergencies have heretofore existed and are certain hereafter to exist and that such measures as hereinabove outlined are necessary and needful for the protection of life and property, the prevention of loss, the preservation of valuable assets of the district, and the enjoyment of the same by the citizens of the said district and the state.

History.—§13, ch. 19274, 1939.